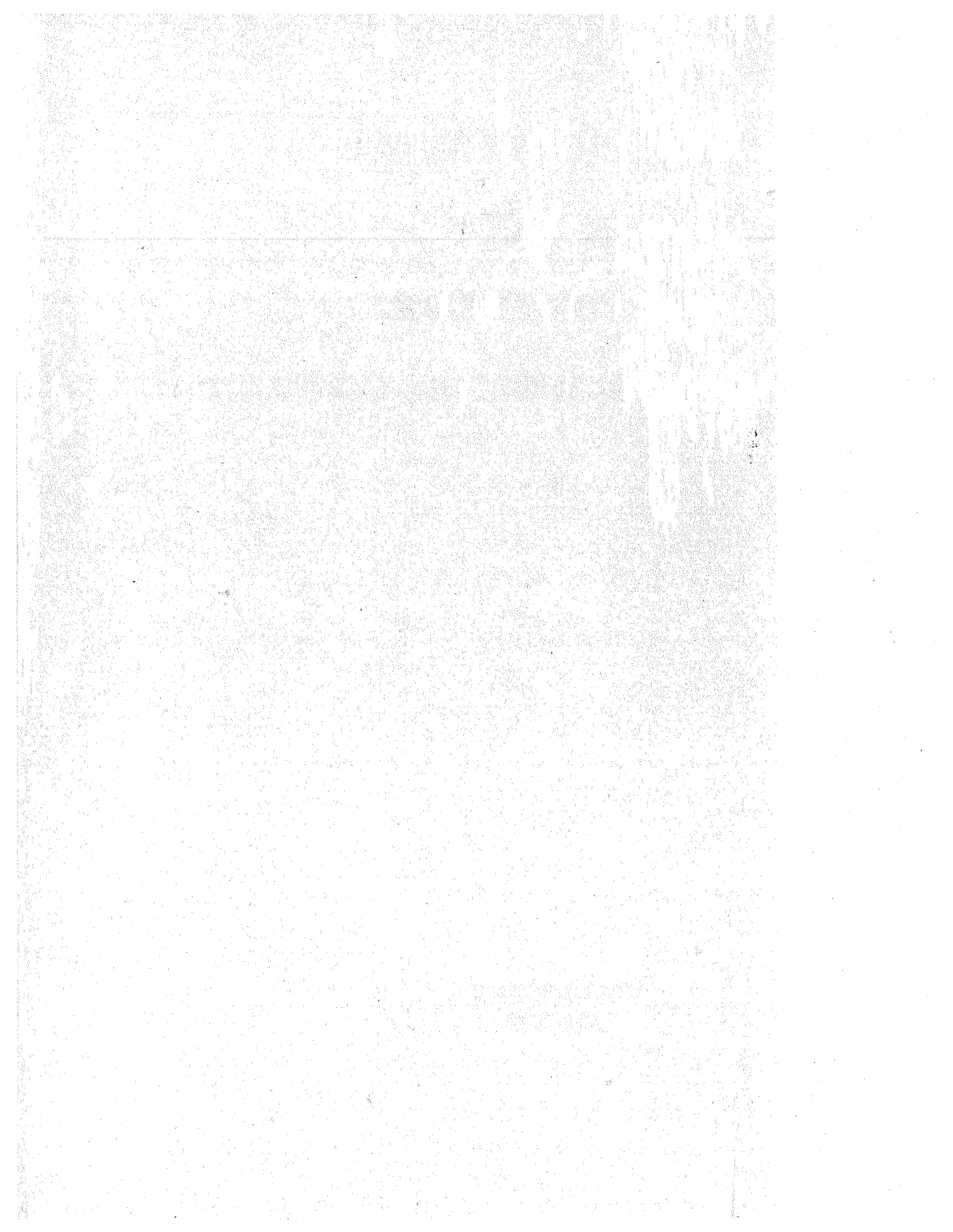


DETERMINATIONS
OF THE
NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

VOLUME ONE
1978-1979



COMMISSION MEMBERS

Name of Member

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Honorable Herbert B. Evans served from
April 1, 1978, to March 31, 1979, and
was succeeded by Honorable Fritz W. Alexander, II.

Honorable Morton B. Silberman served
from April 1, 1978, to December 14, 1978,
and was succeeded by Honorable Isaac Rubin.

ADMINISTRATOR

Gerald Stern, Esq.

CLERK OF THE COMMISSION

Robert H. Tembeckjian

COMMISSION OFFICES

801 Second Avenue
New York, New York 10017
(Principal Office)

Agency Building No. 1
Empire State Plaza
Albany, New York 12223

109 South Union Street
Rochester, New York 14607

TABLE OF CONTENTS

	<i>Page No.</i>
JURISDICTION OF THE COMMISSION.....	1
DETERMINATIONS	
Adams, Paul W.	3
Algire, Duane	5
Aurigemma, Andrew	10
Bulger, William J.	14
Burnham, Helen	19
DiStasi, Lewis C.	24
Dixon, George C.	29
Doolittle, Wilfred	33
McDowell, Lyle	38
Spector, Morris	43
Dudley, John H.	51
Kane, James O.	54
Galarneau, Raymond	58
Hallock, Franklin	62
Manion, Frank	66
Pascale, Michael A.	68
Wordon, Theodore	72
Green, Edward U., Jr.	76
Burke, Henry R.	78
Hammond, Willis R.	80
Levine, Jack	84
Maney, Patrick	88
Modder, John J.	91
Reedy, James H.	95
Schultz, Harold H.	98
Ralston, Richard	101
Sobeck, Francis R.	105
D'Apice, John D.	109
DeLollo, Warren C.	112
Dunbar, Walter C.	115
Kaplan, Louis I.	120
Chase, Carlton M.	123
Dier, John G.	126
Haberneck, Thomas	130
Jerome, James S.	141
O'Connor, John	149
Sawyer, Horace C.	153
Wolanin, Stanley C.	157
Trost, J. Douglas	161
Farr, William	167
Folmsbee, Richard	171
Forsythe, Robert C.	174
Hennessey, Harold A.	178
Kuehnel, Norman E.	182
Lang, Andrew L.	187

McDonald, Frank J.	192
Baroody, George	198
Burley, Roy J.	200
Griebsch, Karl J.	203
Sanford, Edwin W.	207
Scholl, Vincent P.	212
Figueroa, Antonio S.	216
DeRose, Anthony J.	220
Sashin, Harold.	223
Barrett, Charles W.	227
Bergeron, Andre	229
Brown, Allan T.	234
Cmaylo, Walter T.	238
Drollette, Philip.	240
Johnson, Joseph B.D.	244
Kane, James L.	247
Kantrowitz, Isaac	257
Reed, Donald	259
Reich, Joseph.	261
Fancher, Rollin L.	263
Keddie, Robert J.	267
Schwertfeger, Joseph	270
Williams, Vernon E.	273
Lonschein, Arthur W.	277

Decisions By The Former State Commission on Judicial Conduct	284
Matter of John W. Tracy	285
Matter of Edmund Quinones	288
Matter of Joseph Pilato	294
Matter of Edmund V. Caplicki, Jr.	297
Matter of Michael Cerretto	301
Matter of Donald L. Chase	307
Matter of Vincent A. Clark	311
Matter of James W. Coleman	315
Matter of C.H. DuMond	319
Matter of Joseph M. Henderson	323
Matter of Murrill Henry	327
Matter of Kenneth Petzold	330
Matter of Rexford Schneider	334
Matter of Harold Schultz	339
Matter of Charles Shaughnessy	345
Matter of Robert S. Vines	351

JURISDICTION OF THE COMMISSION

The State Commission on Judicial Conduct has the authority to receive and review written complaints of misconduct against judges, initiate complaints on its own motion, conduct investigations, file Formal Written Complaints and conduct formal hearings thereon, subpoena witnesses and documents, and make appropriate determinations as to dismissing complaints or disciplining judges within the state unified court system. This authority is derived from Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law of the State of New York.

The Commission does not act as an appellate court, nor does it review judicial decisions or alleged errors of law. It does not issue advisory opinions, give legal advice or represent litigants. When appropriate, it refers complaints to other agencies.

By provision of the State Constitution (Article VI, Section 22), the Commission "shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system. . ." The Commission may determine that a judge or justice be disciplined "for cause, including but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct, on or off the bench, prejudicial to the administration of justice. . ." The Constitution also provides that the Commission may determine that a judge "be retired for mental or physical disability preventing the proper performance of his judicial duties."

The types of complaints that may be investigated by the Commission include improper demeanor, conflicts of interest, intoxication, bias, prejudice, favoritism, corruption, certain prohibited political activity and other misconduct on or off the bench.

Standards of conduct are outlined primarily by the Rules Governing Judicial Conduct (originally promulgated by the Administrative Board of the Judicial Conference and subsequently adopted by the Chief Administrator of the Courts), and the Code of Judicial Conduct (adopted by the New York State Bar Association).

If the Commission determines in accordance with due process that disciplinary action is warranted, it may render a determination to impose one of four sanctions, which are final, subject to review by the Court of Appeals upon timely request by the respondent-judge. The Commission may render determinations to:

- admonish a judge publicly;
- censure a judge publicly;
- remove a judge from office;
- retire a judge for disability.

In accordance with its rules (22 NYCRR Part 7000), the Commission may also issue a confidential letter of dismissal and caution to a judge, despite a dismissal of the complaint, when it determines that the circumstances warrant comment.

MEMBERS OF THE COMMISSION

The Commission is composed of 11 members serving initial terms of one to four years, after which all appointments are for four years. Four members are appointed by the Governor, three by the Chief Judge of the Court of Appeals, and one each by the four leaders of the Legislature. The Constitution requires that four members be judges, at least one be an attorney and at least two be lay persons.

The Commission elects one of its members to be chairperson and appoints an administrator and a clerk.

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

PAUL W. ADAMS,

A Justice of the Town Court of Phelps, Ontario County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Hon. Herbert B. Evans
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Felice K. Shea

Appearances: Britting & Herriman (By John
C. Britting) for Respondent.
Gerald Stern for the
Commission.

The respondent, Paul W. Adams, a Justice of the Phelps Town Court, Ontario County, was served with a Formal Written Complaint dated June 20, 1978, alleging two charges of misconduct. In his verified Answer dated July 14, 1978, respondent admitted the allegations of the complaint, but asserted, in mitigation of his acts, that he was unaware that such conduct violated the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, the Code of Judicial Conduct, and the Judiciary Law.

The Administrator of the Commission on Judicial Conduct moved for judgment on the pleadings on August 7, 1978. Since there was no genuine issue of material fact raised, a hearing on the issue of misconduct was unnecessary. The Commission, therefore, granted judgment on the pleadings on September 14, 1978. Respondent thereafter appeared before the Commission on October 19, 1978, for a hearing on the issue of a sanction.

Upon the record before us the Commission finds that between

January 1977 and June 1977 respondent failed to disqualify himself in six cases in which the respondent's brother, either as plaintiff or as an officer of his own company, appeared in respondent's court, and that by reason of such acts, respondent violated the applicable Rules Governing Judicial Conduct, the Code of Judicial Conduct and the Judiciary Law as cited in Charge I of the Formal Written Complaint.

The Commission also finds that on May 4, 1977, respondent, in connection with a dispute between Neil Bailey and Phelps Farm Service, Inc., sent a written communication to Mr. Bailey, stating that unless Mr. Bailey paid an amount due to Phelps Farm Service, Inc., further court action would be taken. We conclude that the respondent used his judicial office to advance the interests of Phelps Farm Service, Inc., at a time when he had no jurisdiction over the dispute. By reason of this action, respondent violated the applicable Rules Governing Judicial Conduct and the Code of Judicial Conduct.

In determining the sanction to be imposed upon respondent, the Commission has considered the nature of the charges made and found against respondent, memoranda of law, and the oral arguments of the Administrator of the Commission, respondent's counsel and respondent. Respondent's actions were clearly improper and his assertion that he was unaware of the applicable standards of judicial conduct is not persuasive. Respondent's conduct violated not only those guidelines that are published, but also "the general moral and ethical standards expected of judicial officers by the community" (*Friedman v. State of New York*, 24 N.Y.2d 528, 539-540).

Having found that respondent violated the Rules Governing Judicial Conduct (Sections 33.1, 33.2, 33.3[a][1], 33.3[a][4] and 33.3[c][1][iv][a]), the Code of Judicial Conduct (Canons 1, 2, 3A[1], 3A[4] and 3C[1][d][i]) and the Judiciary Law (Section 14) of New York, the Commission determined that the appropriate sanction is removal.

The foregoing constitutes the findings of fact and conclusions of law required by Judiciary Law, Section 44, subdivision 7.

Dated: November 29, 1978
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter

- of -

DUANE ALGIRE,

a Justice of the Town Court of Barker, Broome County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Mrs. Dolores DelBello
Hon. Herbert B. Evans
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Felice K. Shea
Hon. Morton B. Silberman
Carroll L. Wainwright, Jr., Esq.

Appearances: Collision & Place (By Richard
F. Place) for Respondent.
Gerald Stern for the Commis-
sion.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law as amended effective April 1, 1978, (hereinafter "amended Judiciary Law"), for transmittal by the Chief Judge of the Court of Appeals to the Honorable Duane Algire (hereinafter "respondent").

Respondent is a justice of the Town Court of Barker in Broome County. He is not an attorney. He first took office in January 1975. His current term of office expires on December 31, 1981.

The investigation in this matter was commenced on January 26, 1977, by the former State Commission on Judicial Conduct (hereinafter "former Commission"), pursuant to Section 43, subdivision 2,

of the Judiciary Law then in effect (hereinafter "former Judiciary Law"). In the course of its investigation, the former Commission discovered eleven instances in which respondent granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties.

Pursuant to Section 43, subdivision 5, of the former Judiciary Law, the former Commission determined that cause existed to conduct a hearing. On November 25, 1977, respondent was served with a Notice of Hearing and a Formal Written Complaint. An Amended Notice of Hearing and a Supplemental Formal Written Complaint were served on December 27, 1977, copies of which are hereto attached. In his Answer, which was in the form of a letter dated January 11, 1978, a copy of which is hereto attached, respondent admitted all the factual allegations in the Formal Written Complaint and waived his right to a hearing.

Pursuant to Section 43, subdivision 7, of the former Judiciary Law, on March 13, 1978, the former Commission forwarded its Determination of public censure to the Chief Judge of the Court of Appeals, for transmittal by him to respondent. In a letter to the Commission dated March 16, 1978, the Chief Judge stated that it would be improper to transmit the Determination to the respondent, inasmuch as the pertinent provisions of the former Judiciary Law would be in effect only through March 31, 1978.* Consequently, the Determination was not transmitted to respondent.

Section 48 of the amended Judiciary Law provides for the transfer to the Commission and continuance of all matters left pending by the former Commission and for which Courts on the Judiciary had not been convened, as of April 1, 1978.

This Determination, with findings of fact and conclusions of law as set forth below, is filed by the Commission in accordance with the provisions in Section 44, subdivision 7, of the amended Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to respondent.

*The former Judiciary Law provided that a respondent seeking review of a Determination filed by the former Commission could request the convening of a Court on the Judiciary for this purpose within 30 days of receipt of the Determination. The amended Judiciary Law provides that no new Court on the Judiciary could be convened on or after April 1, 1978. Thus, respondent's 30-day privilege to request convening of a Court on the Judiciary would have extended beyond April 1, 1978, the date after which no new Court could have been convened.

FINDINGS OF FACT

On May 2, 1973, respondent reduced a moving violation to driving with inadequate stop lights in *People v. Vito A. Fusillo* as a result of a communication he received on behalf of the defendant from Judge Michael A. Perretta of the Town Court of Lenox.

On April 23, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Carl E. Linn* as a result of a communication he received on behalf of the defendant from Judge Floyd E. Linn of the Town Court of Clay.

On May 2, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Harold J. Forger III* as a result of a communication he received on behalf of the defendant from Harold J. Forger, Jr., the defendant's father, the Town Clerk of Geddes.

On August 12, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Stanley Goldberg* as a result of a communication he received on behalf of the defendant from Judge Richard Hering of the Town Court of Liberty.

On December 11, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Carol A. Klotz* as a result of a communication he received on behalf of the defendant.

On April 8, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Larry J. Cooper* as a result of a communication he received on behalf of the defendant.

On April 12, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Joseph Gallo* as a result of a communication he received on behalf of the defendant.

On May 16, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. C.J. Draves Arpaia* as a result of a communication he received on behalf of the defendant.

On September 28, 1976, respondent reduced a charge of speeding to failure to use signal lights in *People v. Charles Eppolito* as a result of a communication he received on behalf of the defendant from Judge Michael A. Perretta of the Town Court of Lenox.

On January 18, 1977, respondent imposed an unconditional discharge in *People v. Joseph R. Kelleher* as a result of a communication he received on behalf of the defendant from Deputy Hunkovic.

On August 1, 1977, respondent reduced a charge of speeding to

driving with unsafe tires in *People v. Joseph J. DiStefano* as a result of a communication he received on behalf of the defendant.

CONCLUSIONS OF LAW

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket for reasons that have nothing to do with the circumstances of the case. A judge who accedes to such a request is guilty of favoritism as is the judge who made the request.

By granting favorable dispositions to defendants in traffic cases at the request of third parties, respondent was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1].

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a) (1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p.5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism which the court stated was "wrong and has always been wrong." *Id.*

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Section 44, subdivision 7, of the amended Judiciary Law, the State Commission on Judicial Conduct has determined that respondent should be publicly censured.

Dated: New York, New York
December 13, 1978

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter

- of -

ANDREW AURIGEMMA,

a Justice of the Town Court of Esopus, Ulster County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Mrs. Dolores DelBello
Hon. Herbert B. Evans
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Felice K. Shea
Hon. Morton B. Silberman
Carroll L. Wainwright, Jr., Esq.

Appearances: Sherwood E. Davis for
Respondent.
Gerald Stern for the
Commission.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law as amended effective April 1, 1978, (hereinafter "amended Judiciary Law"), for transmittal by the Chief Judge of the Court of Appeals to the Honorable Andrew Aurigemma (hereinafter "respondent").

Respondent is a justice of the Town Court of Esopus in Ulster County. He is not an attorney. He first took office in January 1973. His current term of office expires on December 31, 1981.

The investigation in this matter was commenced on July 22, 1977, by the former State Commission on Judicial Conduct (hereinafter "former Commission"), pursuant to Section 43, subdivision 2, of the

Judiciary Law then in effect (hereinafter "former Judiciary Law"). In the course of its investigation, the former Commission discovered two instances in which respondent made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases.

Pursuant to Section 43, subdivision 5, of the former Judiciary Law, the former Commission determined that cause existed to conduct a hearing. On January 19, 1978, respondent was served with a Notice of Hearing and a Formal Written Complaint, copies of which are hereto attached. In an Answer entitled Plea and Waiver dated February 9, 1978, a copy of which is hereto attached, respondent pleaded no contest to the charges and waived his right to the scheduled hearing.

Pursuant to Section 43, subdivision 7, of the former Judiciary Law, on March 13, 1978, the former Commission forwarded its Determination of public censure to the Chief Judge of the Court of Appeals, for transmittal by him to respondent. In a letter to the Commission dated March 16, 1978, the Chief Judge stated that it would be improper to transmit the Determination to the respondent, inasmuch as the pertinent provisions of the former Judiciary Law would be in effect only through March 31, 1978.* Consequently, the Determination was not transmitted to respondent.

Section 48 of the amended Judiciary Law provides for the transfer to the Commission and continuance of all matters left pending by the former Commission and for which Courts on the Judiciary had not been convened, as of April 1, 1978.

This Determination, with findings of fact and conclusions of law as set forth below, is filed by the Commission in accordance with the provisions in Section 44, subdivision 7, of the amended Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to respondent.

FINDINGS OF FACT

On July 8, 1975, respondent sent a letter on official court stationery

*The former Judiciary Law provided that a respondent seeking review of a Determination filed by the former Commission could request the convening of a Court on the Judiciary for this purpose within 30 days of receipt of the Determination. The amended Judiciary Law provides that no new Court on the Judiciary could be convened on or after April 1, 1978. Thus, respondent's 30-day privilege to request convening of a Court on the Judiciary would have extended beyond April 1, 1978, the date after which no new Court could have been convened.

to Judge George E. Carl of the Town Court of Catskill on behalf of the defendant, who was charged with speeding, in *People v. Ward Todd*, a case then pending before Judge Carl. Respondent referred in his letter to a prior telephone conversation he had held with Judge Carl regarding the *Todd* case, and he enclosed the sum of \$10.00 in payment of the fine to be levied by Judge Carl on the defendant for the reduction of the charge to violating Thruway rules and regulations.

Sometime between August 25, 1976, and October 12, 1976, respondent sent a letter on stationery which identified him as a judge to Judge Angelo Darrigo of the Town Court of Newburgh on behalf of the defendant, who was charged with speeding, in *People v. Robert Coisson*, a case then pending before Judge Darrigo.

CONCLUSIONS OF LAW

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket for reasons that have nothing to do with the circumstances of the case. A judge who accedes to such a request is guilty of favoritism as is the judge who made it.

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, respondent was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a) (1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Section 44, subdivision 7, of the amended Judiciary Law, the State Commission on Judicial Conduct has determined that respondent should be publicly censured.

Dated: New York, New York
December 13, 1978

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter

- of -

WILLIAM J. BULGER,

a Justice of the Town Court of Wappinger, Dutchess County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Mrs. Dolores DelBello
Hon. Herbert B. Evans
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Felice K. Shea
Hon. Morton B. Silberman
Carroll L. Wainwright, Jr., Esq.

Appearances: Bernard Kessler for
Respondent.
Gerald Stern for the
Commission.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law as amended effective April 1, 1978, (hereinafter "amended Judiciary Law"), for transmittal by the Chief Judge of the Court of Appeals to the Honorable William J. Bulger (hereinafter "respondent").

Respondent is a justice of the Town Court of Wappinger in Dutchess County. He is not an attorney. He first took office on February 21, 1963. His current term of office expires in December 1979.

The investigation in this matter was commenced on June 29, 1977, by the former State Commission on Judicial Conduct (hereinafter

“former Commission”), pursuant to Section 43, subdivision 2, of the Judiciary Law then in effect (hereinafter “former Judiciary Law”). In the course of its investigation, the former Commission discovered one instance in which respondent made an *ex parte* request of another judge for a favorable disposition for a defendant in a traffic case and thirteen instances in which respondent granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties.

Pursuant to Section 43, subdivision 5, of the former Judiciary Law, the former Commission determined that cause existed to conduct a hearing. On November 28, 1977, respondent was served with a Notice of Hearing and a Formal Written Complaint, copies of which are hereto attached. In his Answer dated December 14, 1977, a copy of which is hereto attached, supplemented by an affidavit dated January 24, 1978, a copy of which is hereto attached, respondent admitted all but one of the factual allegations against him and did not address the remaining allegation. In his affidavit, respondent waived his right to the scheduled hearing.

Pursuant to Section 43, subdivision 7, of the former Judiciary Law, on March 13, 1978, the former Commission forwarded its Determination of public censure to the Chief Judge of the Court of Appeals, for transmittal by him to respondent. In a letter to the Commission dated March 16, 1978, the Chief Judge stated that it would be improper to transmit the Determination to the respondent, inasmuch as the pertinent provisions of the former Judiciary Law would be in effect only through March 31, 1978.* Consequently, the Determination was not transmitted to respondent.

Section 48 of the amended Judiciary Law provides for the transfer to the Commission and continuance of all matters left pending by the former Commission and for which Courts on the Judiciary had not been convened, as of April 1, 1978.

This Determination, with findings of fact and conclusions of law as set forth below, is filed by the Commission in accordance with the provisions in Section 44, subdivision 7, of the amended Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to respondent.

*The former Judiciary Law provided that a respondent seeking review of a Determination filed by the former Commission could request the convening of a Court on the Judiciary for this purpose within 30 days of receipt of the Determination. The amended Judiciary Law provides that no new Court on the Judiciary could be convened on or after April 1, 1978. Thus, respondent's 30-day privilege to request convening of a Court on the Judiciary would have extended beyond April 1, 1978, the date after which no new Court could have been convened.

FINDINGS OF FACT

On May 13, 1976, respondent sent a note on court stationery to Judge Vincent S. Francese, co-justice of the Town Court of Wappinger, requesting favorable treatment for the defendant, who was charged with driving with studded tires, in *People v. Lillian T. Koretsky*, a case then pending before Judge Francese.

On June 21, 1974, respondent imposed an unconditional discharge on a speeding charge in *People v. Marylou P. Caccetta* as a result of a letter he received on behalf of the defendant from Judge R. Douglas Hirst of the Village Court of Fishkill, or someone at Judge Hirst's request.

On July 12, 1974, respondent reduced a charge of speeding to illegal parking in *People v. Barbara J. Eberhard* as a result of a letter he received on behalf of the defendant from Judge Edward Filipowicz of the City Court of Poughkeepsie.

On April 15, 1975, respondent imposed an unconditional discharge on a speeding charge in *People v. James E. Nolan* as a result of a letter he received on behalf of the defendant from Judge A. John DeMiceli of the Town Court of Cornwall, or someone at Judge DeMiceli's request.

On May 23, 1975, respondent dismissed a charge of speeding in *People v. Samuel O. Slee* as a result of a letter he received on behalf of the defendant from Judge C. Allerton Morey of the Town Court of Washington.

On April 30, 1975, respondent reduced a charge of speeding to failure to keep right in *People v. Frank DeMarco* as a result of a letter he received on behalf of the defendant from Judge Edmund V. Caplicki of the Town Court of LaGrange.

On July 11, 1975, respondent imposed an unconditional discharge on a charge of driving to the left of the pavement marking in *People v. Luis Urrelo* as a result of a communication he received on behalf of the defendant from Judge Francois Cross of the Town Court of Fishkill.

On July 16, 1975, respondent imposed an unconditional discharge on a charge of driving to the left of the pavement marking in *People v. Neil T. Gargiulo* as a result of a communication he received on behalf of the defendant from Joyce Tomashosky, clerk of the Town Court of East Fishkill.

On February 10, 1976, respondent reduced a charge of passing a red

light to driving with unsafe tires in *People v. Elizabeth L. Bovee* as a result of a communication he received on behalf of the defendant.

On March 10, 1976, respondent imposed an unconditional discharge on a speeding charge in *People v. Robert T. Barber* as a result of a communication he received on behalf of the defendant from Judge Larry Fogarty of the Town Court of East Fishkill, or someone at Judge Fogarty's request.

On March 10, 1976, respondent reduced a charge of speeding to illegal parking in *People v. Anthony Barretto* as a result of a communication he received on behalf of the defendant.

On August 20, 1976, respondent reduced a charge of speeding to failure to obey a traffic control device in *People v. Kenneth C. Lindemann* as a result of a letter he received on behalf of the defendant from "Elna", clerk of the Village Court of Wappingers Falls.

On August 31, 1976, respondent reduced a charge of speeding to illegal parking in *People v. John G. Haverkamp* as a result of a communication he received on behalf of the defendant.

On April 18, 1977, respondent reduced a charge of driving the wrong way on a one-way road to illegal parking in *People v. David Yengo* as a result of a communication he received on behalf of the defendant.

CONCLUSIONS OF LAW

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket for reasons that have nothing to do with the circumstances of the case. A judge who accedes to such a request is guilty of favoritism as is the judge who made the request.

By making an *ex parte* request of another judge for a favorable disposition for a defendant in a traffic case and by granting favorable dispositions to defendants in traffic cases at the request of third parties, respondent was in violation of Section 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3(A) of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge . . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism which the court stated was "wrong and has always been wrong." *Id.*

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Section 44, subdivision 7, of the amended Judiciary Law, the State Commission on Judicial Conduct has determined that respondent should be publicly censured.

Dated: New York, New York
December 13, 1978

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter

- of -

HELEN BURNHAM,

a Justice of the Town Court of Salina, Onondaga County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Mrs. Dolores DelBello
Hon. Herbert B. Evans
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Felice K. Shea
Hon. Morton B. Silberman
Carroll L. Wainwright, Jr., Esq.

Appearances: Bruce O. Jacobs for
Respondent.
Gerald Stern for the
Commission.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law as amended effective April 1, 1978, (hereinafter "amended Judiciary Law"), for transmittal by the Chief Judge of the Court of Appeals to the Honorable Helen Burnham (hereinafter "respondent").

Respondent is a justice of the Town Court of Salina in Onondaga County. She is not an attorney. She first took office on June 7, 1971. Her current term of office expires on December 31, 1981.

The investigation in this matter was commenced on January 26, 1977, by the former State Commission on Judicial Conduct (hereinafter "former Commission"), pursuant to Section 43, subdivi-

sion 2, of the Judiciary Law then in effect (hereinafter "former Judiciary Law"). In the course of its investigation, the former Commission discovered three instances in which respondent made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases and seven instances in which respondent granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties.

Pursuant to Section 43, subdivision 5, of the former Judiciary Law, the former Commission determined that cause existed to conduct a hearing. On January 9, 1978, respondent was served with a Notice of Hearing and a Formal Written Complaint, copies of which are hereto attached. In her Answer, which was in the form of a letter dated February 2, 1978, a copy of which is hereto attached, respondent admitted all the factual allegations in the Formal Written Complaint and waived her right to a hearing.

Pursuant to Section 43, subdivision 7, of the former Judiciary Law, on March 13, 1978, the former Commission forwarded its Determination of public censure to the Chief Judge of the Court of Appeals, for transmittal by him to respondent. In a letter to the Commission dated March 16, 1978, the Chief Judge stated that it would be improper to transmit the Determination to the respondent, inasmuch as the pertinent provisions of the former Judiciary Law would be in effect only through March 31, 1978.* Consequently, the Determination was not transmitted to respondent.

Section 48 of the amended Judiciary Law provides for the transfer to the Commission and continuance of all matters left pending by the former Commission and for which Courts on the Judiciary had not been convened, as of April 1, 1978.

This Determination, with findings of fact and conclusions of law as set forth below, is filed by the Commission in accordance with the provisions in Section 44, subdivision 7, of the amended Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to respondent.

*The former Judiciary Law provided that a respondent seeking review of a Determination filed by the former Commission could request the convening of a Court on the Judiciary for this purpose within 30 days of receipt of the Determination. The amended Judiciary Law provides that no new Court on the Judiciary could be convened on or after April 1, 1978. Thus, respondent's 30-day privilege to request convening of a Court on the Judiciary would have extended beyond April 1, 1978, the date after which no new Court could have been convened.

FINDINGS OF FACT

On November 29, 1972, respondent sent a letter on official court stationery to Judge Joseph Henderson of the Town Court of Parish, on behalf of the defendant, who was charged with speeding, in *People v. Darrell W. Weston*, a case then pending before Judge Henderson. Respondent referred in her letter to a prior telephone conversation she had held with Judge Henderson regarding the *Weston* case, and she enclosed a check for \$20.00 in payment of a fine to be imposed by Judge Henderson on the defendant for the reduced charge of failure to keep right.

On April 11, 1973, respondent sent a letter on official court stationery to Judge James Jerome of the Town Court of Geddes, requesting favorable treatment for the defendant, who was charged with driving a vehicle without a valid certificate of inspection, in *People v. Ludwig Steingerwald*, a case then pending before Judge Jerome.

On April 23, 1974, respondent sent a letter on official court stationery to Judge Thomas O'Connell of the Town Court of Weedsport, on behalf of the defendant, who was charged with speeding, in *People v. Peter A. Weitzman*, a case then pending before Judge O'Connell. Respondent referred in her letter to a prior telephone conversation she had held with Judge O'Connell regarding the *Weitzman* case, and she enclosed a check for \$50.00 in payment of a fine to be imposed by Judge O'Connell on the defendant for the reduced charge of failure to keep right.

On February 26, 1975, respondent imposed an unconditional discharge on a parking violation in *People v. Dick Barnello* as a result of a letter she received on behalf of the defendant from Clifford Hart, the Salina Town Supervisor, or someone at Mr. Hart's request.

On May 8, 1975, respondent reduced a charge of speeding to failure to keep right in *People v. Richard J. Chisholm* as a result of a letter she received on behalf of the defendant from Clifford Hart, the Salina Town Supervisor.

On August 5, 1975, respondent reduced a charge of failure to obey a traffic control device to illegal parking in *People v. Michael A. Gentile* as a result of a letter she received on behalf of the defendant from Clifford Hart, the Salina Town Supervisor.

On August 20, 1975, respondent reduced a charge of making an unsafe lane change to driving with an inadequate muffler in *People v. Jeffrey Rheinhart* as a result of a letter she received on behalf of the

defendant from Judge Joseph Henderson of the Town Court of Parish.

On August 27, 1975, respondent reduced a charge of passing a red light to driving with unsafe tires in *People v. Joseph Riccelli* as a result of a letter she received on behalf of the defendant from Clifford Hart, the Salina Town Supervisor.

On December 19, 1975, respondent reduced a charge of speeding to driving a vehicle without a horn in *People v. Paul Kelly, Jr.* as a result of a letter she received on behalf of the defendant from Judge Charles Crommie of the Town Court of Catskill.

On July 7, 1976, respondent reduced a charge of avoiding a traffic control device to driving with an inadequate muffler in *People v. Florence Lamica* as a result of a letter she received on behalf of the defendant from Mary Lessaongang, clerk of the Town Court of Van Buren.

CONCLUSIONS OF LAW

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket for reasons that have nothing to do with the circumstances of the case. A judge who accedes to such a request is guilty of favoritism as is the judge who made the request.

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases and by granting favorable dispositions to defendants in traffic cases at the request of third parties, respondent was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3(A) of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a) (1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism which the court stated was "wrong and has always been wrong." *Id.*

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Section 44, subdivision 7, of the amended Judiciary Law, the State Commission on Judicial Conduct has determined that respondent should be publicly censured.

Dated: New York, New York
December 13, 1978

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter

- of -

LEWIS C. DiSTASI,

a Justice of the Town Court of Lloyd, Ulster County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Mrs. Dolores DelBello
Hon. Herbert B. Evans
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Felice K. Shea
Hon. Morton B. Silberman
Carroll L. Wainwright, Jr., Esq.

Appearances: Peter R. Maroulis for
Respondent.
Gerald Stern for the
Commission.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law as amended effective April 1, 1978, (hereinafter "amended Judiciary Law"), for transmittal by the Chief Judge of the Court of Appeals to the Honorable Lewis C. DiStasi (hereinafter "respondent").

Respondent is a justice of the Town Court of Lloyd in Ulster County. He is not an attorney. He received his judicial certification in 1965. His current term of office expires on December 31, 1981.

The investigation in this matter was commenced on May 25, 1977, by the former State Commission on Judicial Conduct (hereinafter "former Commission"), pursuant to Section 43, subdivision 2, of the

Judiciary Law then in effect (hereinafter "former Judiciary Law"). In the course of its investigation, the former Commission discovered six instances in which respondent made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases.

Pursuant to Section 43, subdivision 5, of the former Judiciary Law, the former Commission determined that cause existed to conduct a hearing. On November 25, 1977, respondent was served with a Notice of Hearing and a Formal Written Complaint, copies of which are hereto attached. In his Answer, dated December 19, 1977, a copy of which is hereto attached, respondent admitted all the factual allegations in the Formal Written Complaint. In a letter from respondent's attorney dated December 28, 1978, a copy of which is hereto attached, respondent waived his right to a hearing.

Pursuant to Section 43, subdivision 7, of the former Judiciary Law, on March 13, 1978, the former Commission forwarded its Determination of public censure to the Chief Judge of the Court of Appeals, for transmittal by him to respondent. In a letter to the Commission dated March 16, 1978, the Chief Judge stated that it would be improper to transmit the Determination to the respondent, inasmuch as the pertinent provisions of the former Judiciary Law would be in effect only through March 31, 1978.* Consequently, the Determination was not transmitted to respondent.

Section 48 of the amended Judiciary Law provides for the transfer to the Commission and continuance of all matters left pending by the former Commission and for which Courts on the Judiciary had not been convened, as of April 1, 1978.

This Determination, with findings of fact and conclusions of law as set forth below, is filed by the Commission in accordance with the provisions in Section 44, subdivision 7, of the amended Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to respondent.

*The former Judiciary Law provided that a respondent seeking review of a Determination filed by the former Commission could request the convening of a Court on the Judiciary for this purpose within 30 days of receipt of the Determination. The amended Judiciary Law provides that no new Court on the Judiciary could be convened on or after April 1, 1978. Thus, respondent's 30-day privilege to request convening of a Court on the Judiciary would have extended beyond April 1, 1978, the date after which no new Court could have been convened.

FINDINGS OF FACT

On June 4, 1974, respondent sent a letter, on stationery which identifies him as a judge, to Judge Joseph L. Thomson of the Town Court of Cornwall, requesting favorable treatment for the defendant who was charged with speeding in *People v. Louis E. Nasti*, a case then pending before Judge Thomson. In his letter respondent refers to a prior telephone conversation regarding the *Nasti* case and to an enclosed check for \$20.00 in payment of the fine.

On November 30, 1974, respondent sent a letter, on stationery which identifies him as a judge, to Judge Jerald Fiedelholz of the Town Court of New Windsor, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. Jeffrey M. Bennett*, case then pending before Judge Fiedelholz. Respondent referred in his letter to a prior telephone conversation he had held with Judge Fiedelholz regarding the *Bennett* case, and he enclosed a \$10.00 check from the defendant in payment of the fine to be levied by Judge Fiedelholz on the defendant for the reduced charge of driving on unsafe tires.

On March 4, 1975, respondent sent a letter, on stationery which identifies him as a judge, to Judge Andre Bergeron of the Town Court of Lewis, on behalf of the defendant, who was charged with speeding, in *People v. Terry B. Elia*, a case then pending before Judge Bergeron.

On December 12, 1975, respondent sent a letter, on stationery which identifies him as a judge, to Judge George E. Carl of the Town Court of Catskill, on behalf of the defendant, who was charged with speeding, in *People v. Doris Winslow*, a case then pending before Judge Carl.

On May 23, 1976, respondent sent a letter, on stationery which identifies him as a judge, to Court Clerk Betty Green of the Town Court of Newburgh, on behalf of the defendant, who was charged with speeding, in *People v. William T. Damico*, a case then pending before Judge Thomas J. Byrne of the Town Court of Newburgh. Respondent referred in his letter to a prior telephone conversation he had held with Ms. Green regarding the *Damico* case.

On September 1, 1976, respondent sent a letter, on stationery which identifies him as a judge, to Judge Wayne Smith of the Town Court of Plattekill, on behalf of the defendant, who was charged with speeding, in *People v. Andrea M. Padula*, a case then pending before Judge Smith.

On October 2, 1976, respondent sent a letter, on stationery which identifies him as a judge, to Judge George E. Carl of the Town Court of Catskill, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. Frank Rutigliano*, a case then pending before Judge Carl. Respondent referred in his letter to an enclosed check for \$20.00 as payment toward the fine.

On December 16, 1976, respondent sent a letter, on stationery which identifies him as a judge, to Judge Thomas J. Byrne of the Town Court of Newburgh, on behalf of the defendant, who was charged with failure to comply with a sign, in *People v. Leonard Belvedere*. Respondent referred in his letter to a prior telephone conversation with Judge Byrne regarding the *Belvedere* case.

On February 2, 1977, respondent, or someone at his request, communicated with Judge Joseph L. Thomson of the Town Court of Cornwall, on behalf of the defendant, who was charged with speeding 80 miles per hour in a 55 mile-per-hour zone, in *People v. Philip J. Seymour*, a case then pending before Judge Thomson.

CONCLUSIONS OF LAW

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket for reasons that have nothing to do with the circumstances of the case. A judge who accedes to such a request is guilty of favoritism as is the judge who made the request.

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, respondent was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Section 44, subdivision 7, of the amended Judiciary Law, the State Commission on Judicial Conduct has determined that respondent should be publicly censured.

Dated: New York, New York
December 13, 1978

STATE OF NEW YORK
COMMISSION ON JUDICIARY CONDUCT

In the Matter

- of -

GEORGE C. DIXON,

a Justice of the Town Court of Ghent and the Village Court
of Chatham, Columbia County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Mrs. Dolores DelBello
Hon. Herbert B. Evans
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Felice K. Shea
Hon. Morton B. Silberman
Carroll L. Wainwright, Jr., Esq.

Appearances: Connor, Curran, Flint & Schram
(By Theodore Guterman, II)
for Respondent.
Gerald Stern for the
Commission.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law as amended effective April 1, 1978, (hereinafter "amended Judiciary Law"), for transmittal by the Chief Judge of the Court of Appeals to the Honorable George C. Dixon (hereinafter "respondent").

Respondent is a justice of the Town Court of Ghent and the Village Court of Chatham in Columbia County. He is not an attorney. He first took office in the Town of Ghent in January 1976 and in the Village of Chatham in March 1973. His current term of office as town justice expires in December 1979 and as village justice in April 1981.

The investigation in this matter was commenced on July 22, 1977, by the former State Commission on Judicial Conduct (hereinafter "former Commission"), pursuant to Section 43, subdivision 2, of the Judiciary Law then in effect (hereinafter "former Judiciary Law"). In the course of its investigation, the former Commission discovered two instances in which respondent made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases.

Pursuant to Section 43, subdivision 5, of the former Judiciary Law, the former Commission determined that cause existed to conduct a hearing. On January 8, 1978, respondent was served with a Notice of Hearing and a Formal Written Complaint, copies of which are hereto attached. In his Answer, which was in the form of a letter dated January 25, 1978, a copy of which is hereto attached, respondent admitted all the factual allegations in the Formal Written Complaint. In a covering letter dated January 26, 1978, a copy of which is hereto attached, respondent's attorney stated that respondent waived his right to a hearing.

Pursuant to Section 43, subdivision 7, of the former Judiciary Law, on March 13, 1978, the former Commission forwarded its Determination of public censure to the Chief Judge of the Court of Appeals, for transmittal by him to respondent. In a letter to the Commission dated March 16, 1978, the Chief Judge stated that it would be improper to transmit the Determination to the respondent, inasmuch as the pertinent provisions of the former Judiciary Law would be in effect only through March 31, 1978.* Consequently, the Determination was not transmitted to respondent.

Section 48 of the amended Judiciary Law provides for the transfer to the Commission and continuance of all matters left pending by the former Commission and for which Courts on the Judiciary had not been convened, as of April 1, 1978.

This Determination, with findings of fact and conclusions of law as set forth below, is filed by the Commission in accordance with the provisions in Section 44, subdivision 7, of the amended Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to respondent.

*The former Judiciary Law provided that a respondent seeking review of a Determination filed by the former Commission could request the convening of a Court on the Judiciary for this purpose within 30 days of receipt of the Determination. The amended Judiciary Law provides that no new Court on the Judiciary could be convened on or after April 1, 1978. Thus, respondent's 30-day privilege to request convening of a Court on the Judiciary would have extended beyond April 1, 1978, the date after which no new Court could have been convened.

FINDINGS OF FACT

On November 19, 1974, respondent sent a letter on court stationery to Judge George Carl of the Town Court of Catskill, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. George Bidwell*. In his letter respondent refers to a prior telephone conversation and makes notice of a money order which was enclosed.

On May 20, 1975, respondent sent a letter on court stationery to Judge James F. Cleary of the North Greenbush Town Court, on behalf of the defendant, who was charged with being an unlicensed motor vehicle operator and with driving an unregistered motor vehicle, in *People v. Ronald Reinemann*.

CONCLUSIONS OF LAW

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket for reasons that have nothing to do with the circumstances of the case. A judge who accedes to such a request is guilty of favoritism as is the judge who made the request.

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, respondent was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Section 44, subdivision 7, of the amended Judiciary Law, the State Commission on Judicial Conduct has determined that respondent should be publicly censured.

Dated: New York, New York
December 13, 1978

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter

- of -

WILFRED DOOLITTLE,

a Justice of the Town Court of Rosendale, Ulster County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Mrs. Dolores DelBello
Hon. Herbert B. Evans
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Felice K. Shea
Hon. Morton B. Silberman
Carroll L. Wainwright, Jr., Esq.

Appearances: William P. Curran for
Respondent.
Gerald Stern for the
Commission.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law as amended effective April 1, 1978, (hereinafter "amended Judiciary Law"), for transmittal by the Chief Judge of the Court of Appeals to the Honorable Wilfred Doolittle (hereinafter "respondent").

Respondent is currently a justice of the Town Court of Rosendale in Ulster County. He is not an attorney. His current term commenced on January 1, 1978, and expires on December 31, 1981. From 1949 to December 31, 1977, respondent was a justice of the Village Court of Rosendale. The misconduct cited in the findings of fact below occurred during the period that respondent served as justice of the Village Court.

The investigation in this matter was commenced on May 25, 1977, by the former State Commission on Judicial Conduct (hereinafter "former Commission"), pursuant to Section 43, subdivision 2, of the Judiciary Law then in effect (hereinafter "former Judiciary Law"). In the course of its investigation, the former Commission discovered six instances in which respondent made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases.

Pursuant to Section 43, subdivision 5, of the former Judiciary Law, the former Commission determined that cause existed to conduct a hearing. On November 25, 1977, respondent was served with a Notice of Hearing and a Formal Written Complaint, copies of which are hereto attached. In his Answer, which was in the form of a letter dated December 5, 1977, a copy of which is hereto attached, respondent admitted all the factual allegations in the Formal Written Complaint. In a letter from respondent's attorney dated February 7, 1978, a copy of which is hereto attached, respondent waived his right to a hearing.

Pursuant to Section 43, subdivision 7, of the former Judiciary Law, on March 13, 1978, the former Commission forwarded its Determination of public censure to the Chief Judge of the Court of Appeals, for transmittal by him to respondent. In a letter to the Commission dated March 16, 1978, the Chief Judge stated that it would be improper to transmit the Determination to the respondent, inasmuch as the pertinent provisions of the former Judiciary Law would be in effect only through March 31, 1978.* Consequently, the Determination was not transmitted to respondent.

Section 48 of the amended Judiciary Law provides for the transfer to the Commission and continuance of all matters left pending by the former Commission and for which Courts on the Judiciary had not been convened, as of April 1, 1978.

This Determination, with findings of fact and conclusions of law as set forth below, is filed by the Commission in accordance with the provisions in Section 44, subdivision 7, of the amended Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to respondent.

*The former Judiciary Law provided that a respondent seeking review of a Determination filed by the former Commission could request the convening of a Court on the Judiciary for this purpose within 30 days of receipt of the Determination. The amended Judiciary Law provides that no new Court on the Judiciary could be convened on or after April 1, 1978. Thus, respondent's 30-day privilege to request convening of a Court on the Judiciary would have extended beyond April 1, 1978, the date after which no new Court could have been convened.

FINDINGS OF FACT

On January 30, 1973, respondent sent a letter, in which he identifies himself as a judge, to Judge Angelo Darrigo of the Town Court of Newburgh, requesting favorable treatment for the defendant, who was charged with failure to keep right, in *People v. Markle*, a case then pending before Judge Darrigo.

On October 23, 1973, respondent sent a letter, in which he identifies himself as a judge, to the City Traffic Court of Albany, requesting a favorable disposition for the defendant, who was charged with operating a motor vehicle without a valid inspection certificate, in *People v. Frank R. Sorbello*, a case then pending before Judge John C. Holt-Harris of that court.

On April 16, 1974, respondent sent a letter to Judge George Carl of the Town Court of Catskill on behalf of the defendant, who was charged with speeding, in *People v. Heinz Bracklow*, a case then pending before Judge Carl. In his letter respondent referred to a prior telephone conversation he had held with Judge Carl, enclosing a check for \$10.00 and stating: "Thank you for the reduction. . ."

On October 31, 1975, respondent sent a letter to Judge Wayne Smith of the Town Court of Plattekill, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. Frank J. Parone, Jr.*, a case then pending before Judge Smith.

On December 16, 1975, respondent, or someone at his request, communicated with Judge Judson Wright of the Town Court of Coxsackie on behalf of the defendant in *People v. Martin P. Stallone*, a case then pending before Judge Wright.

On March 26, 1976, respondent, or someone at his request, communicated with Judge Arthur A. Reilly of the Town Court of Ulster on behalf of the defendant, who was charged with speeding, in *People v. Paul Liguori*, a case then pending before Judge Reilly.

CONCLUSIONS OF LAW

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket for reasons that have nothing to do with the circumstances of the case. A judge who accedes to such a request is guilty of favoritism as is the judge who made the request.

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, respondent was in violation of

Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se*

misconduct constituting cause for discipline.” In that case, ticket-fixing was equated with favoritism, which the court stated was “wrong and has always been wrong.” *Id.*

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Section 44, subdivision 7, of the amended Judiciary Law, the State Commission on Judicial Conduct has determined that respondent should be publicly censured.

Dated: New York, New York
December 13, 1978

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter

- of -

LYLE McDOWELL,

a Justice of the Town Court of Mt. Hope and the Village
Court of Otisville in Orange County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Mrs. Dolores DelBello
Hon. Herbert B. Evans
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Felice K. Shea
Hon. Morton B. Silberman
Carroll L. Wainwright, Jr., Esq.

Appearances: Veraldi, Van Fleet & Eager
(By Samuel W. Eager, Jr.)
for Respondent.
Gerald Stern for the
Commission.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law as amended effective April 1, 1978, (hereinafter "amended Judiciary Law"), for transmittal by the Chief Judge of the Court of Appeals to the Honorable Lyle McDowell (hereinafter "respondent").

Respondent is a justice of the Town Court of Mt. Hope and the Village Court of Otisville in Orange County. He is not an attorney. He first took office in the Town of Mt. Hope in 1969 and in the Village of Otisville in March 1966. His current term of office as Mt. Hope Town Justice expires on December 31, 1981. His current term as Otisville

Village Court Justice expires in April 1982.

The investigation in this matter was commenced on May 25, 1977, by the former State Commission on Judicial Conduct (hereinafter "former Commission") pursuant to Section 43, subdivision 2, of the Judiciary Law then in effect (hereinafter "former Judiciary Law"). In the course of its investigation, the former Commission discovered seven instances in which respondent made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases.

Pursuant to Section 43, subdivision 5, of the former Judiciary Law, the former Commission determined that cause existed to conduct a hearing. On November 23, 1977, respondent was served with a Notice of Hearing and a Formal Written Complaint, copies of which are hereto attached. In a verified Answer dated December 2, 1977, submitted by his counsel, a copy of which is hereto attached, respondent admitted all the factual allegations in the Formal Written Complaint. In a Memorandum of Law dated January 13, 1978, submitted by his counsel, a copy of which is hereto attached, respondent waived his right to a hearing.

Pursuant to Section 43, subdivision 7, of the former Judiciary Law, on March 13, 1978, the former Commission forwarded its Determination of public censure to the Chief Judge of the Court of Appeals, for transmittal by him to respondent. In a letter to the Commission dated March 16, 1978, the Chief Judge stated that it would be improper to transmit the Determination to the respondent, inasmuch as the pertinent provisions of the former Judiciary Law would be in effect only through March 31, 1978.* Consequently, the Determination was not transmitted to respondent.

Section 48 of the amended Judiciary Law provides for the transfer to the Commission and continuance of all matters left pending by the former Commission and for which Courts on the Judiciary had not been convened, as of April 1, 1978.

This Determination, with findings of fact and conclusions of law as set forth below, is filed by the Commission in accordance with the

*The former Judiciary Law provided that a respondent seeking review of a Determination filed by the former Commission could request the convening of a Court on the Judiciary for this purpose within 30 days of receipt of the Determination. The amended Judiciary Law provides that no new Court on the Judiciary could be convened on or after April 1, 1978. Thus, respondent's 30-day privilege to request convening of a Court on the Judiciary would have extended beyond April 1, 1978, the date after which no new Court could have been convened.

provisions in Section 44, subdivision 7, of the amended Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to respondent.

FINDINGS OF FACT

On October 15, 1974, respondent sent a letter, on stationery which identifies him as a judge, to a justice of the Town Court of Wallkill, requesting favorable consideration for the defendant, who was charged with speeding, in *People v. Kathryn C. Sheridan*, a case then pending before Judge James M. McMahon of that court.

On October 15, 1974, respondent sent a letter, on stationery which identifies him as a judge, to Judge Murry Gaiman of the Town Court of Fallsburg, requesting favorable consideration for the defendant, who was charged with speeding, in *People v. T.L. Carrothers, Jr.*, a case then pending before Judge Gaiman.

On December 15, 1975, respondent sent a letter on official court stationery to Judge Joseph Thomson of the Town Court of Cornwall, requesting favorable consideration for the defendant who was charged with speeding, in *People v. Erwin Breitt* a case then pending before Judge Thomson.

On April 20, 1976, respondent sent a letter, on stationery which identifies him as a judge, to Judge Charles Shaughnessy of the Town Court of Chester, requesting a favorable disposition for the defendant, who was charged with speeding, in *People v. Camille T. Dabenigno*, a case then pending before Judge Shaughnessy.

On July 6, 1976, respondent sent a letter on official court stationery to Judge Thomas Byrne of the Town Court of Newburgh, requesting favorable consideration for the defendant, who was charged with speeding, in *People v. Gust Tsounis*, a case then pending before Judge Byrne.

On August 16, 1976, respondent sent a letter on official court stationery to Judge Earle H. Houghtaling, requesting favorable consideration for the defendant, who was charged with operating an uninspected motor vehicle, in *People v. Charles L. Ketcham*, a case then pending before Judge Houghtaling.

On February 14, 1977, respondent, or someone at his request, communicated with Judge Horace Sawyer of the Village Court of Goshen on behalf of the defendant in *People v. Robert A. Cromie*, a case then pending before Judge Sawyer.

CONCLUSIONS OF LAW

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket for reasons that have nothing to do with the circumstances of the case. A judge who accedes to such a request is guilty of favoritism as is the judge who made the request.

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, respondent was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that

favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J., April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Section 44, subdivision 7, of the amended Judiciary Law, the State Commission on Judicial Conduct has determined that respondent should be publicly censured.

Dated: New York, New York
December 13, 1978

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4
of the Judiciary Law in Relation to

MORRIS SPECTOR,

A Justice of the Supreme Court, New York County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Hon. Herbert B. Evans
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Felice K. Shea
Hon. Morton B. Silberman
Carroll L. Wainwright, Jr., Esq.

Appearances: Irving Anolik for Respondent.
Gerald Stern for the
Commission
(Barry Vucker, Richard Granofsky
Of Counsel).

The respondent, Morris Spector, a Justice of the Supreme Court, New York County, was served with a Formal Written Complaint dated June 19, 1978 alleging four charges of misconduct, based upon the appearance of impropriety arising from a number of appointments of attorneys as guardians ad litem or as referee made by respondent of the following persons:

A partner of the law firm in which respondent's son was employed as an associate (Charge I);

The son of Justice Sidney Fine during a period when Justice Fine also appointed respondent's son (Charge II);

The son of Justice George Postel during a period when Justice Postel also ap-

pointed respondent's son (Charge III);
and

The son-in-law of Justice Abraham
Gellinoff during a period when Justice
Gellinoff also appointed respondent's
son (Charge IV)

In his Verified Answer dated August 15, 1978, respondent admitted all of the factual allegations of the Complaint relating to the appointments, but denied that any of the allegations asserted in the Complaint constituted misconduct or violations of any of the Canons of Judicial Ethics and denied that the motive for the appointments he made related in any way to the employment of respondent's son or to the appointments of respondent's son by the other justices.

On August 30, 1978, the Administrator of the State Commission on Judicial Conduct moved for summary determination of the pleadings and following response from respondent dated September 7, 1978, the Commission denied the motion for judgment on the pleadings on September 15, 1978.

Pursuant to order dated September 26, 1978, Bernard Meyer, Esq., was appointed as Referee to hear and report to the Commission with respect to the above entitled proceeding. After a hearing held on October 13, 1978, the Referee submitted his report dated November 14, 1978 which concluded that Charges I and IV had not been sustained, and that Charges II and III had been sustained in part.

On November 17, 1978, the attorney for the Commission moved to confirm the findings of fact in the Referee's report and on November 22, 1978, the respondent cross-moved to confirm the Referee's report as to Charges I and IV and to disaffirm the Referee's report as to Charges II and III. On November 29, 1978, the attorneys for the Commission and the respondent argued both the motion and the cross-motion, and in addition argued the issue of sanctions, if any, to be imposed by the Commission in the event any of the charges were sustained. The respondent was present during the course of these arguments and was offered the opportunity to make a statement to the Commission.

Upon the record before us the Commission finds that between March of 1968 and November of 1974 respondent appointed the son of Justice Sidney Fine on two occasions, yielding aggregate fees of \$3,400, while Justice Fine appointed the son of respondent on eight occasions, yielding aggregate fees of \$9,393 (Charge II), and that

respondent appointed the son of Justice Postel on ten occasions, yielding aggregate fees of \$11,521 while Justice Postel had appointed respondent's son on five occasions, yielding aggregate fees of \$6,867 (Charge III).

The Commission further finds that respondent was in fact aware of the appointments by Justices Fine and Postel at the time that he was making the appointments of the sons of said justices. The Commission further finds that these cross-appointments of sons of other Supreme Court justices, made with knowledge of their appointments of respondent's son, were not made "with a view solely to [the appointees'] character and fitness" within the meaning of Canon 13 of the Canons of Judicial Ethics and thus said appointments gave "the appearance of impropriety" within the meaning of Canon 4 of the Canons of Judicial Ethics and the applicable portion of Section 33 of the Rules Governing Judicial Conduct. With respect to the appointments by respondent of Justice Postel's son, moreover, the Commission finds that, although there was no "quid pro quo" understanding between respondent and Justice Postel, the closeness of the number of appointments (four by respondent, five by Justice Postel) and the closeness in time of appointments by each to appointments of the other, suggest that appointments of each other's son were being made to avoid a charge of nepotism.

Charge I is dismissed.

While the Commission does not find that the appointment of the employer of respondent's son violated the Canons of Judicial Ethics (Charge I), it wishes to express its deep concern that appointments of employers of close relatives of the appointing members of the judiciary may in the future in some circumstances constitute an appearance of impropriety. In such cases, questions will arise as to the economic or professional benefit which may flow to the judge's relative.

Charge IV is dismissed.

In determining the sanctions to be imposed upon respondent, the Commission has considered the respondent's age (76) and imminent retirement, as well as his otherwise unblemished record as a member of the judiciary for 22 years and, in the light thereof, the Commission has determined that the appropriate sanction is that Respondent be admonished. Insofar as they are not inconsistent with the foregoing, the Commission accepts the findings of fact as set forth in the Referee's report.

The foregoing constitutes the findings of fact and conclusions of law required by Judiciary Law, Section 44, subdivision 7.

The following members of the Commission concur: MRS. ROBB, MR. BROMBERG, JUDGE CARDAMONE, MRS. DELBELLO, JUDGE EVANS, MR. KOVNER, MR. MAGGIPINTO and JUDGE SHEA.

MR. KIRSCH, MR. WAINWRIGHT and JUDGE SILBERMAN dissent in a separate opinion.

Dated: New York, New York
December 14, 1978

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, Subdivision 4
of the Judiciary Law in Relation to

MORRIS SPECTOR,

a Justice of the Supreme Court, First Judicial District.

OPINION DISSENTING FROM COMMISSION
PER CURIAM DETERMINATION

Respondent is charged with having made judicial appointments on the basis of favoritism, giving the appearance of impropriety, in violation of the Canons of Judicial Ethics, and the later Code of Judicial Conduct, and the Rules Governing Judicial Conduct.

The appointments were conceded by the respondent, but the allegations of impropriety were denied, and the issues were submitted to former justice of the Supreme Court, Hon. Bernard S. Meyer, as referee to hear and report. The referee has reported with his findings and conclusions.

The charges are divided into four parts:

Charge I deals with two appointments made by the respondent of an attorney, as a receiver in 1968 and 1969, at a time when respondent's son, James Spector, was employed by the appointee. As to this the learned referee found that the appointments were made solely on the basis of merit, and that the charge was not sustained.

Charge II alleged that the respondent appointed one, Burton Fine, son of another Supreme Court justice, Sidney Fine, as a guardian *ad litem* in two cases, one in February 1971, and the other in October 1974, three and one-half years later, whereas during the period March 1968 through October 1974, a period of six and one-half years, Justice Fine had appointed respondent's son, James Spector, as a guardian, referee and conservator in eight cases. The referee found that the respondent had not discussed these appointments with anyone, and was satisfied that the appointee had the character and ability to perform the appointed tasks satisfactorily. He held, however, that while the appointments were made on merit and were not due to favoritism, nor would justify the impression that respondent may have been in-

fluenced by another, it could not be said, in the light of respondent's friendship with Justice Fine, that the appointments were made "solely" or "only" on the basis of character, fitness and merit, so as to be "free from. . . the appearance of impropriety" within the meaning of Canon 4 of the Canons of Judicial Ethics and free of the "appearance of impropriety" within the meaning of 22 N.Y.C.R.R. 33.2. Except as stated, the referee reported that Charge II was not sustained.

Charge III alleged similar appointments by respondent of one, Sanford Postel, son of a friend and colleague, Supreme Court Justice George Postel, in ten cases between March 1969 and November 1974, while Justice Postel appointed respondent's son, James Spector, in five cases between December 1969 and September 1972. The referee found no relationship between the two; that respondent had never discussed his appointments with any other judge, and no other judge had discussed his appointments with respondent; and that respondent's appointments were made on the basis of character, fitness and merit. He found, however, that they were not "free from. . . the appearance of impropriety" in view of the friendship between the justices, as a result of which the appointments were not made "solely" and "only" on the basis of character, fitness and merit, within the meaning of Canon 4 of the Canons of Judicial Ethics and 22 N.Y.C.R.R. 33.2. Except as stated, Charge III was not sustained by the referee.

Charge IV alleged similar appointments by respondent of one Frederick Levy, son-in-law of his close personal friend and colleague, Supreme Court Justice Abraham Gellinoff, in seventeen cases (seven of which were without fee) over an eight year period, between December 1968 and December 1974, while Justice Gellinoff appointed respondent's son, James Spector, in five cases over a five and one-half year period, between June 1969 and November 1974. The referee reported that respondent knew Frederick Levy very well, as a very capable attorney of 25 years experience when first appointed, and as a man of integrity and ability; that they never discussed his appointments with this or any other judge, nor did they discuss theirs with him; and that during respondent's judicial service he had made thousands of appointments. He concluded that respondent's appointments were not made on the basis of favoritism, nor would they justify the impression of favor, but that they were made solely on the basis of character and fitness, were "free from. . . the appearance of impropriety" within the meaning of Canon 4, were "only on the basis of merit" within the meaning of 22 N.Y.C.R.R. 33.3(b)(4), and "free

of the appearance of impropriety" under 22 N.Y.C.R.R. 33.2. Charge IV was not sustained by the referee.

The learned referee is a highly experienced and respected former justice, whose findings and conclusions are entitled to great weight. I would adopt all of his findings of fact. However, I do not conclude that these findings constitute misconduct requiring the imposition of discipline.

Unfortunately, the record does not contain evidence of how appointments are customarily made by the judiciary. The ideal, of course, is that set forth in the Rules, that appointments be made only on the basis of merit. However, the fitness of the appointee is the responsibility of the appointing judge, and he should not be expected to assume that responsibility without knowing more about the prospective appointee. He should not therefore be criticized if such appointments are made from among those whom he knows to be well-qualified. Clearly, he can have more confidence in his judgment when he knows more about the individual, and can more safely rely upon those he believes he can trust. Literal or strict compliance with the Rules is, therefore, rarely attained or attainable.

In this case, among the thousands of appointments made by the respondent during his judicial service, there were two over a three and one-half year period to Burton Fine, son of Justice Sidney Fine (Charge II), and ten over a five and one-half year period to Sanford Postel, son of Justice George Postel. The appointees were found by the referee to be fully qualified, except that they were related to the other justices, friends of the respondent. Such a relationship should not, under the circumstances, penalize an otherwise qualified candidate for appointment, particularly where the appointments were made in relatively rare instances over a long period of time.

There is no question that respondent's personal relationship with the appointees enabled him better to know their character and ability so as to place his trust in them, rather than some stranger. Thus, the referee may have been technically correct in concluding that the appointments were not made "solely" and "wholly" on merit, and that the relationship may have been an influencing factor. However, an equally reasonable interpretation could lead to the conclusion that the relationship was an important factor enabling the respondent to better judge the candidate for appointment.

The respondent has an unblemished record of distinguished public service for over 38 years, as an assistant U.S. Attorney, an assistant

District Attorney, as a City Court judge, and for the past 22 years as a Supreme Court justice, and he is due to retire on December 31, 1978, at age 76.

I would not determine that the acts charged and sustained by the learned referee warrant disciplinary action under Section 44, subdivision 7, of the Judiciary Law, and I therefore vote to dismiss the complaint pursuant to Judiciary Law Section 44, subdivision 6.

MICHAEL M. KIRSCH
Member, Commission on Judicial Conduct

CARROLL L. WAINWRIGHT, JR.,
CONCURRING
Member, Commission on Judicial Conduct

I concur in the dissent of Commission Member Kirsch. I would only add that until now there has been no prohibition against a judge making an appointment of a relative of another judge. If this is to constitute judicial misconduct, then it would seem to me that such sanction should apply prospectively, and not to appointments made by the respondent judge some four to ten years ago.

To admonish a judge who has served for 22 years for what the majority characterizes as an "appearance of impropriety" seems to me unfair. This is particularly so when this public sanction is imposed during the very last month of respondent's lengthy judicial career.

MORTON B. SILBERMAN
Member, Commission on Judicial Conduct

Dated: New York, New York
December 14, 1978

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JOHN H. DUDLEY,

a Justice of the Village Court of Cato, Cayuga County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: John O. Pepe for Respondent.
Gerald Stern for the
Commission.

The respondent, John H. Dudley, a Justice of the Village Court of Cato, Cayuga County, was served with a Formal Written Complaint, dated October 31, 1978, alleging numerous acts of misconduct over a ten year period relating primarily to his failure to keep records, file reports and dispose of official funds as required by law.

The allegations of misconduct were embodied in 16 separate charges against him, all of which were admitted by respondent by reason of his failure to answer the Formal Written Complaint. See, Operating Rules of the State Commission on Judicial Conduct ("Commission Rules"), §7000.6(b), 22 NYCRR §7000.6(b).

The Administrator of the Commission on Judicial Conduct ("Administrator") moved for summary determination on January 10, 1978. Respondent did not oppose the motion, and since there was present no genuine issue of material fact, a hearing on the issue of misconduct was unnecessary. The Commission therefore granted summary determination on the pleadings on February 1, 1979, and set the matter down for a hearing on the issue of a sanction on February 27, 1979. Both the Administrator and respondent were afforded the op-

portunity to appear or submit a memorandum on the sanction issue. The Administrator submitted such a memorandum, but respondent declined either to appear or submit a memorandum.

Upon the record before us the Commission finds as follows:

1. For 119 of the 125 months between April 1, 1968, and September 10, 1978, respondent failed to report his judicial activities and to remit to the State Comptroller within the first ten days of the succeeding month monies he had received in his judicial capacity.

2. From April 1968 to the present, respondent has failed to make timely deposits in his official bank account of monies he has received in his judicial capacity. In three separate instances such deposits were made only following advice to respondent by State auditors that such monies were undeposited.

3. Respondent failed to report and remit to the State Comptroller various sums which he received in his judicial capacity until his failure to do so was brought to his attention by State auditors, as follows: from January 1969 through December 10, 1971, \$662.00; from April 1972 through October 10, 1974, \$842.00; from June 1976 through April 10, 1977, \$157.00.

4. During two separate periods—from June 1, 1968, to December 29, 1971, and from January 7, 1972, to October 9, 1974—respondent's official assets, consisting of monies on deposit in his official bank account plus undeposited cash, were less than respondent's official liabilities by \$282.00 and \$63.00, respectively.

5. From June 1, 1968, to the present, respondent has failed to issue proper receipts for all fines and bails received by him in his judicial capacity.

6. From July 1, 1974, to the present, respondent has failed to maintain a cashbook chronologically itemizing all monies received and disbursed in his judicial capacity.

7. Respondent has failed to properly dispose of \$270.00 representing bails posted from July 1967 to April 1975.

8. Respondent failed to properly dispose of \$36.60 in filing, jury, and service of process fees, collected from October 1973 to September 1974.

9. Respondent failed to cooperate with the Commission's investigation by failing to respond to written inquiries sent to him by the Commission on January 16 and January 25, 1978.

10. During the periods (i) from January 1973 to September 1978 and (ii) from October 1974 to September 1978, respondent failed to maintain and preserve dockets of (i) motor vehicle proceedings and (ii) all civil and criminal proceedings, respectively, held before him.

11. Respondent has failed to dispose of 53 motor vehicle cases, involving 47 defendants, which were brought before him during the period from June 1971 to June 1976.

12. From December 1971 to November 1976, respondent failed to certify to the Department of Motor Vehicles convictions in all traffic cases.

13. In five separate instances since 1971, respondent has failed to dispose of motor vehicle cases pending before him for a number of years and has failed to keep the requisite records and to take the requisite administrative steps in connection with such cases.

14. From April 1968 to the present, respondent has failed to establish or maintain a small claims part and has failed to schedule at least one session of court every other week for the hearing of small claims.

By reason of the foregoing, we conclude that respondent violated the statutory provisions, rules and canons set forth in Charges I through XVI* of the Formal Written Complaint.

Respondent's behavior clearly was improper, constituting at least negligence and bordering on wanton disregard for the legal and ethical constraints upon him. Similar, though less egregious, conduct has been found to constitute "gross neglect" and to justify removal. *Bartlett v. Flynn*, 50 AD2d 401, 378 NYS2d 145 (4th Dept. 1976), *app. dismiss.*, 39 NY2d 942, 386 NYS2d 1029.

Having found that respondent repeatedly violated provisions of the General Municipal Law, Uniform Justice Court Act, Vehicle and Traffic Law and Village Law; sections of the Rules Governing Judicial Conduct (22 NYCRR §33.1 *et seq.*); and canons of the Code of Judicial Conduct and Canons of Judicial Ethics, the Commission hereby determines that the appropriate sanction is removal.

The foregoing constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: Albany, New York

March 5, 1979

*The reference in Charge VII of the Formal Written Complaint to Section 20.9 of the Uniform Justice Court Rules appears inadvertent. The correct reference is to Section 30.9.

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JAMES O. KANE,

a Justice of the Unadilla Village Court, Otsego County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Van Woert, Dunn, Konstanty &
Nydam (By Robert P. Nydam)
For Respondent.
Gerald Stern for the
Commission (Edith Holleman,
Of Counsel).

The respondent, James O. Kane, the Justice of the Village Court of Unadilla, Otsego County, was served with a Formal Written Complaint, dated August 7, 1978, alleging 11 charges of misconduct over a 4-year period relating to the failure to keep proper records of proceedings before him, file reports thereof and dispose of official funds as required by law.

In his Verified Answer, dated September 13, 1978, respondent denied all of the substantive factual allegations contained in the Complaint. Pursuant to an order of the Commission dated September 26, 1978, James A. O'Connor, Esq., was appointed as Referee to hear and report to the Commission with respect to the factual issues raised by the pleadings. After hearings held on October 10 and November 10, 1978, the Referee submitted his Report, dated January 22, 1979, which concluded that Charges I, III, IV-A, V, IX and XI had been substantiated *in toto*; and that Charges II and IV had been substantiated in part. The Referee made no determination with respect to

Charges VI, VII, VIII and X, which were withdrawn by the Administrator of the State Commission on Judicial Conduct ("Administrator").

On February 27, 1979, the Administrator moved for an Order (i) confirming the findings of fact set forth in the Referee's Report and (ii) rendering a determination pursuant to Section 44, subdivision 7, of the Judiciary Law. Respondent, through his counsel, declined to submit a memorandum in opposition to the motion or to argue orally in opposition, although afforded the opportunity to do both.

Upon the record before us, the Commission finds that the Referee's findings of fact are fully supported by the evidence. More specifically, with respect to the various charges against respondent, the Commission finds as follows:

1. During a two and one-half year period ending November 30, 1976, respondent failed to report and remit to the State Comptroller the sum of \$1,140.54 which he had received in his official capacity as a judicial officer, and only after such deficiency had been cited by State auditors did he deposit the monies and report and remit the funds owed to the State Comptroller. During the period from January, 1973 to December 1976: respondent failed to report and to remit to the State Comptroller an additional \$1,010.00 which he received in 70 other traffic cases involving 57 separate defendants; respondent failed to report and remit an additional \$130.00 which he received in six other criminal proceedings; and respondent failed to maintain and preserve dockets of numerous criminal proceedings held before him and failed to report and remit an additional \$225.00 which he received from some of the defendants in cases in which no dockets were maintained.

2. Respondent falsely certified in a January, 1977 report to the New York State Department of Audit and Control ("Department of Audit and Control") that he had received no money from two youthful offenders, notwithstanding that the defendants each had paid fines of \$150.00 in August, 1976, which respondent failed to report and remit to the State Comptroller.

3. Respondent falsely certified in May, 1976 and January, 1977 reports to the Department of Audit and Control that he received only \$35 in fines from a defendant and granted youthful offender treatment for a charge of operating an uninsured vehicle, when that defendant actually had paid a fine of \$100 on May 9, 1976, for operating an uninsured vehicle. Respondent also made a false entry on a motor vehicle docket that the charge had been dismissed.

4. In a March, 1976 report to the Department of Audit and Control, respondent falsely certified that he had sentenced a defendant to a conditional discharge. The defendant in fact paid a fine of \$50 on the charge on or about May 5, 1976, which fine was not reported, nor was it remitted to the State Comptroller.

5. During the period from December, 1972 to December, 1976, respondent: (a) failed to deposit on a timely basis monies received in his judicial capacity; (b) maintained personal control over such monies for months at a time; (c) failed to remit to the State Comptroller on a timely basis fines, fees and penalties received by him; (d) failed to record in his official justice court cashbook the receipt of various bail and fine monies received by him in his judicial capacity.

By reason of the foregoing, we conclude that respondent violated the statutory provisions, rules and canons set forth in Charges I, II, III, IV, IV-A, V, IX and XI of the Formal Written Complaint.

In determining the sanction to be imposed upon respondent, the Commission has considered the nature of the charges made against respondent and the repeated and gross violations by respondent of the legal, administrative and ethical duties imposed upon him. Respondent's behavior, especially with respect to false certification as to the monies received by him in his official capacity and his maintenance of personal control of those monies for an extended period of time, is unacceptable. Moreover, we are not persuaded by the fact that respondent eventually repaid certain of the sums in question. See, *Becher v. Case*, 277 N.Y.S. 733, 243 App. Div. 375 (2nd Dept. 1935); see also, *Bartlett v. Flynn*, 50 A.D. 2d 401, 378 N.Y.S.2d 145 (4th Dept. 1976), *app. dismissed* 39 N.Y.2d 142, 386 N.Y.S.2d 1029.

Having found that respondent repeatedly violated provisions of the Uniform Justice Court Act, Vehicle and Traffic Law, and Village Law; sections of the Uniform Justice Court Rules (22 NYCRR § 30.1 *et seq.*); sections of the Rules Governing Judicial Conduct (22 NYCRR §33.1 *et seq.*); and Canons of the Code of Judicial Conduct and Canons of Judicial Ethics, the Commission hereby determines that the appropriate sanction is removal. This determination is made notwithstanding respondent's resignation, in view of respondent's acknowledgment on October 30, 1978, that such resignation had not been submitted to the Chief Administrator of the Courts, as required by Section 31(1)(d) of the Public Officers Law, and so is ineffective. Furthermore, respondent waived on that date the time limitations imposed by Section 47 of the Judiciary Law.

The foregoing constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary law.

Dated: Albany, New York
March 5, 1979

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

RAYMOND GALARNEAU,

a Justice of the Town Court of Waterford, Saratoga County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Donald D. Gulling, Jr.,
for Respondent.
Gerald Stern for the
Commission.

PRELIMINARY STATEMENT

This determination of the State Commission on Judicial Conduct ("Commission") is filed in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for service by the Chief Judge of the Court of Appeals upon the Honorable Raymond Galarneau ("respondent").

On October 12, 1978, pursuant to Section 44, subdivision 4, of the Judiciary Law, respondent was served with a Formal Written Complaint, setting forth four charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated October 30, 1978, respondent admitted the allegations in the Formal Written Complaint, either explicitly or by his failure to deny same. See, Operating Procedures and Rules of the Commission ("Commission Rules") §7000.6(b), 22 NYCRR 7000.6(b).

On January 17, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission Rules. The Commission, with all members present and concurring, granted the administrator's motion on January 24, 1979, finding respondent guilty of judicial misconduct and setting down oral argument on the issue of an appropriate sanction on February 27, 1979. Respondent waived oral argument in a letter dated February 14, 1979, and submitted a memorandum, in the form of a letter dated February 23, 1979, for consideration by the Commission.

This determination is filed pursuant to Section 44, subdivision 7, of the Judiciary Law, with findings of fact and conclusions of law as set forth below.

FINDINGS OF FACT

1. On September 7, 1976, respondent sent to Judge Walter E. Burke of the Cohoes Police Court a letter, seeking special consideration on behalf of the defendant in *People v. Francis Fleury*, a case then pending before Judge Burke.

2. On September 13, 1976, respondent sent to Judge Donald Chase of the New Scotland Town Court a letter, seeking special consideration on behalf of the defendant in *People v. Gregory W. Goetsch*, a case then pending before Judge Chase.

3. On August 3, 1976, respondent sent to Judge Richard Lips of the Clifton Park Town Court a letter, seeking special consideration on behalf of the defendant in *People v. James O'Brien*, a case then pending before Judge Lips.

4. On February 12, 1976, respondent imposed an unconditional discharge in *People v. Nina M. DeRossi* as a result of a written communication that he received from Judge Allan T. Brown, seeking special consideration on behalf of the defendant.

CONCLUSIONS OF LAW

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism as is the judge who made the request.

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by acceding to such a request, respondent violated Sections 33.1, 33.2, 33.3(a)(1) and

33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

DETERMINATION

By reason of the foregoing, the Commission concludes that respondent violated the rules and canons set forth in Charges I through IV of the Formal Written Complaint, and we determine that respondent should be censured.

Dated: March 28, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

FRANKLIN HALLOCK,
a Justice of the Town Court of East Fishkill, Dutchess County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Franklin Hallock, Respondent
Pro Se.
Gerald Stern for the
Commission.

PRELIMINARY STATEMENT

This determination of the State Commission on Judicial Conduct ("Commission") is filed in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for service by the Chief Judge of the Court of Appeals upon the Honorable Franklin Hallock ("respondent").

On July 27, 1978, pursuant to Section 44, subdivision 4, of the Judiciary Law, respondent was served with a Formal Written Complaint, setting forth 11 charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated August 14, 1978, respondent admitted the allegations set forth in the Formal Written Complaint, either explicitly or by his failure to deny same. See, Operating Procedures and Rules of the Commission ("Commission Rules") §7000.6(b), 22 NYCRR 7000.6(b).

On January 17, 1979, the administrator of the Commission moved

for summary determination, pursuant to Section 7000.6(c) of the Commission Rules. The Commission, with all members present and concurring, granted the administrator's motion on January 24, 1979, finding respondent guilty of misconduct and setting down oral argument on the issue of an appropriate sanction on February 27, 1979. Respondent waived oral argument on February 15, 1979.

This determination is filed pursuant to Section 44, subdivision 7, of the Judiciary Law, with findings of fact and conclusions of law as set forth below.

FINDINGS OF FACT

1. On June 7, 1976, respondent communicated with Judge Vincent Francese of the Wappinger Town Court, seeking special consideration on behalf of the defendant in *People v. Timothy Hayton*, a case then pending before Judge Francese.

2. On August 19, 1975, respondent sent to Judge Earle Houghtaling of the Walden Village Court a letter, seeking special consideration on behalf of the defendant in *People v. Eugene Tomashosky*, a case then pending before Judge Houghtaling.

3. On January 17, 1973, respondent dismissed a charge of speeding in *People v. Stephen Barnier* as a result of a communication he received seeking special consideration on behalf of the defendant.

4. On May 9, 1973, respondent reduced a charge of speeding (100 mph in a 65 mph zone) to speeding (85 mph in a 65 mph zone) in *People v. Nelson Ellerin*, as a result of a written communication that he received from Judge Joseph Polonsky of the Wawarsing Town Court seeking special consideration on behalf of the defendant.

5. On March 28, 1973, respondent reduced a charge of speeding to failure to obey a sign in *People v. James Laspina*, as a result of a written communication that he received from Rita Scheffer, the Yorktown Town Court Clerk, seeking special consideration on behalf of the defendant.

6. On June 4, 1973, respondent reduced a charge of speeding (101 mph in a 65 mph zone) to speeding (75 mph in a 65 mph zone) in *People v. Johnne Killeen*, as a result of a written communication that he received from Harry Mills seeking special consideration on behalf of the defendant.

7. On November 5, 1973, respondent reduced a charge of speeding to failure to obey a sign in *People v. Paul Janos*, as a result of a com-

munication he received from Joe Christian seeking special consideration on behalf of the defendant.

8. On March 26, 1973, respondent dismissed a charge of speeding in *People v. Stanley Rosenfeld*, as a result of a communication he received from C. Doyle, a police officer seeking special consideration on behalf of the defendant.

9. On January 14, 1977, respondent imposed an unconditional discharge in *People v. Frank Schaufler* as a result of a communication he received from Police Officer Doyle, seeking special consideration on behalf of the defendant.

10. On June 25, 1973, respondent reduced a charge of speeding to failure to obey a sign in *People v. Santi Cacciola* as a result of a communication he received from State Trooper Torhan, seeking special consideration on behalf of the defendant.

11. On October 15, 1973, respondent reduced a charge of speeding to failure to obey a sign in *People v. Kervin V. Hunt* as a result of a communication he received from Mike Sweeney, seeking special consideration on behalf of the defendant.

CONCLUSIONS OF LAW

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism as is the judge who made the request.

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and acceding to such requests from judges and others, respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

DETERMINATION

By reason of the foregoing, the Commission concludes that respondent violated the rules and canons set forth in Charges I through XI of the Formal Written Complaint, and we determine that respondent should be censured.

Dated: March 28, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

FRANK MANION,

a Justice of the Village Court of Ilion, Herkimer County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: George F. Aney for
Respondent.
Gerald Stern for the
Commission.

The respondent, Frank Manion, a justice of the Village Court of Ilion, Herkimer County, was served with a Formal Written Complaint, dated November 30, 1978, alleging that, during the period from April 1, 1976, through December 30, 1977, respondent's official assets, consisting of monies on deposit in his official bank account plus undeposited cash, were less than respondent's official liabilities by the amount of \$8,819.50, which liabilities included \$7,643 in traffic fines and \$1,111 in parking fines which respondent had failed to report and remit to the State Comptroller.

It was further alleged that respondent has failed to provide satisfactory reasons for the shortage of the \$8,819.50 in his official village account and for neglecting to deposit on a timely basis all monies received.

In a stipulation dated February 7, 1979, respondent and the administrator of the State Commission on Judicial Conduct stipulated to the foregoing facts and to the fact that all the monies subsequently had been deposited by respondent. Pursuant to the terms of the

stipulation, respondent also agreed to withdraw all denials in his answer, dated December 12, 1978, inconsistent with said stipulation, and to withdraw all factual issues asserted in the affirmative defense contained in the answer. Pursuant to Section 7000.6(d) of its Operating Procedures and Rules, 22 NYCRR §7000.6(d), the Commission thus makes its determination based on the stipulation and the pleadings as amended thereby.

Upon the record before us, we conclude that respondent violated: Section 2021(1) of the Uniform Justice Court Act; Section 4-410(1)(d) of the Village Law; Section 30.7(a) of the Uniform Justice Court Rules (22 NYCRR §30.7[a]); Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct (22 NYCRR §§ 33.1, 33.2[a] and 33.3[b][1], respectively); and Canons 1, 2(A) and 3(B)(1) of the Code of Judicial Conduct.

In determining the sanction to be imposed upon respondent, the Commission has considered the nature of the charge made against respondent, the extensive period during which respondent's legal and ethical violations persisted, and the magnitude of the violations. Respondent's behavior in failing to report and remit such a sum is unacceptable. Moreover, the fact that respondent subsequently deposited the sums in question is no defense to the misconduct. See, *Becher v. Case*, 277 NYS 733, 243 AD 375 (2d Dept. 1935); see also, *Bartlett v. Flynn*, 58 AD2d 401, 378 NYS2d 145 (4th Dept. 1976), *app. disp.*, 39 NY2d 942, 386 NYS2d 1029.

Having found that respondent violated the statutory, administrative and ethical obligations upon him, the Commission hereby determines that the appropriate sanction is removal.

This determination is made pursuant to Section 47 of the Judiciary Law since respondent resigned as village justice effective January 31, 1979.

The foregoing constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: Albany, New York
March 28, 1979

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

MICHAEL A. PASCALE,

a Justice of the Town Court of Marlborough, Ulster County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Michael A. Pascale,
Respondent Pro Se.
Gerald Stern for the
Commission.

PRELIMINARY STATEMENT

This determination of the State Commission on Judicial Conduct ("Commission") is filed in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for service by the Chief Judge of the Court of Appeals upon the Honorable Michael A. Pascale ("respondent").

On October 12, 1978, pursuant to Section 44, subdivision 4, of the Judiciary Law, respondent was served with a Formal Written Complaint, setting forth five charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated October 25, 1978, respondent admitted the allegations set forth in the Formal Written Complaint, either explicitly or by his failure to deny same. See, Operating Procedures and Rules of the State Commission on Judicial Conduct ("Commission Rules") §7000.6(b), 22 NYCRR 7000.6(b).

On January 17, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission Rules. The Commission, with all members present and concurring, granted the administrator's motion on January 24, 1979, finding respondent guilty of judicial misconduct and setting down oral argument on the issue of an appropriate sanction on February 27, 1979. Respondent waived oral argument in a letter dated February 16, 1979.

This determination is filed pursuant to Section 44, subdivision 7, of the Judiciary Law, with findings of fact and conclusions of law as set forth below.

FINDINGS OF FACT

1. On April 1, 1977, respondent sent to Judge Charles Shaughnessy of the Chester Town Court a letter, seeking special consideration on behalf of the defendant in *People v. Anthony Frasca*, a case then pending before Judge Shaughnessy.

2. On March 29, 1976, respondent sent to Judge Edward Lahey of the New Windsor Town Court a letter, seeking special consideration on behalf of the defendant in *People v. Robert Homestead*, a case then pending before Judge Lahey.

3. On September 13, 1973, respondent sent to the presiding judge of the Highlands Town Court a letter, seeking special consideration on behalf of the defendant in *People v. Ben Jerminario*, a case then pending in that court.

4. On January 25, 1974, respondent sent to Judge Thomas Byrne of the Newburgh Town Court a letter, seeking special consideration on behalf of his cousin, the defendant in *People v. Donna Porcelli*, a case then pending before Judge Byrne.

5. On September 23, 1974, respondent communicated with Judge Walter Gersten of the Thompson Town Court, seeking special consideration on behalf of the defendant in *People v. Anthony Frasca*, a case then pending before Judge Gersten.

CONCLUSIONS OF LAW

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket.

By making *ex parte* requests of other judges for favorable disposi-

tions for defendants in traffic cases, respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-

fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

DETERMINATION

By reason of the foregoing, the Commission concludes that respondent violated the rules and canons set forth in Charges I through V of the Formal Written Complaint, and we determine that respondent should be censured.

Dated: March 28, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

THEODORE WORDON,

a Justice of the Town Court of Durham, Greene County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Theodore Wordon, Respondent
Pro Se.
Gerald Stern for the
Commission.

PRELIMINARY STATEMENT

This determination of the State Commission on Judicial Conduct ("Commission") is filed in accordance with Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for service by the Chief Judge of the Court of Appeals upon the Honorable Theodore Wordon ("respondent").

On October 10, 1978, pursuant to Section 44, subdivision 4, of the Judiciary Law, respondent was served with a Formal Written Complaint, setting forth eight charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated October 19, 1978, respondent admitted the allegations set forth in the Formal Written Complaint, either explicitly or by his failure to deny same. See, Operating Procedures and Rules of the State Commission on Judicial Conduct ("Commission Rules") §7000.6(b), 22 NYCRR 7000.6(b).

On January 17, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission Rules. The Commission, with all members present and concurring, granted the administrator's motion on January 24, 1979, finding respondent guilty of judicial misconduct and setting down oral argument on the issue of an appropriate sanction on February 27, 1979. Respondent waived oral argument on February 22, 1979.

This determination is filed pursuant to Section 44, subdivision 7, of the Judiciary Law, with findings of fact and conclusions of law as set forth below.

FINDINGS OF FACT

1. In November 1974, respondent sent to a judge of the Cornwall Town Court a letter, seeking special consideration on behalf of the defendant in *People v. John Cammerato*, a case then pending in the Cornwall Town Court.

2. On March 19, 1975, respondent sent to a judge of the Clifton Park Town Court a letter, seeking special consideration on behalf of the defendant in *People v. Hans Valestin*, a case then pending in the Clifton Park Town Court.

3. On June 3, 1976, respondent communicated with a judge of the New Scotland Town Court, seeking special consideration on behalf of the defendant in *People v. Brian W. Goff*, a case then pending in the New Scotland Town Court.

4. On October 14, 1975, respondent communicated with a judge of the Catskill Town Court, seeking special consideration on behalf of the defendant in *People v. Dermot P. Mackin*, a case then pending in the Catskill Town Court.

5. On June 26, 1975, respondent sent to Judge Judson Wright of the Coxsackie Town Court a letter, seeking special consideration on behalf of the defendant in *People v. Daniel Fera*, a case then pending before Judge Wright.

6. On June 7, 1974, respondent sent to Judge George E. Carl of the Catskill Town Court a letter, seeking special consideration on behalf of the defendant in *People v. Richard W. Wordon*, a case then pending before Judge Carl.

7. On July 6, 1976, respondent communicated with Judge Charles Crommie of the Catskill Town Court, seeking special consideration on behalf of the defendant in *People v. John A. Tiernan*, a case then

pending before Judge Crommie.

8. On March 1, 1977, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Everett Bowers* as a result of a communication he received from Judge Robert Van Valkenburgh of the Windham Town Court, seeking special consideration on behalf of the defendant.

CONCLUSIONS OF LAW

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism as is the judge who made the request.

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by acceding to such a request, respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . .
[Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing (similar if not identical to that activity of respondent) is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

DETERMINATION

By reason of the foregoing, the Commission concludes that respondent violated the rules and canons set forth in Charges I through VIII of the Formal Written Complaint, and we determine that respondent should be censured.

Dated: March 28, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

EDWARD U. GREEN, JR.,
a Judge of the District Court, County of Suffolk.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: Robert E. Green for
Respondent.
Gerald Stern for the
Commission.

The respondent, Edward U. Green, Jr., a judge of the Suffolk County District Court, was served with a Formal Written Complaint on September 25, 1978. The complaint alleged misconduct in connection with respondent's participation in an August 30, 1975, proceeding in the office of the Suffolk County Police Commissioner.

The allegations of the complaint were denied by respondent in his verified answer, dated October 11, 1978.

On February 9, 1979, the Administrator of the State Commission on Judicial Conduct ("Administrator"), respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 7000.6(d) of the Operating Procedures and Rules of the State Commission on Judicial Conduct (22 NYCRR §7000.6[d]), approved by the Commission on February 27, 1979, pursuant to Section 44, subdivision 4, of the Judiciary Law. On March 21, 1979, the Administrator, respondent and his counsel appeared before the Commission for the purpose of presenting oral argument on the issues of misconduct and sanctions, if any.

The Commission finds as follows: On the evening of August 30, 1975, respondent, a Suffolk County District Court judge, without authority, improperly conducted what purported to be a "legal proceeding," in the office of the Suffolk County Police Commissioner concerning an individual who was being held in police custody under a County Court arrest warrant. During the course of the "proceeding" respondent failed to notify the individual of his right to an attorney or to provide otherwise for the presence of an attorney to represent him; nor was the District Attorney's office or the office of the Special Prosecutor appointed for Suffolk County notified to be present. Respondent also advised the said individual that he deliberately was failing to inform the individual of his constitutional rights in order that any admission the individual made could not be used against him.

The Commission further finds that respondent knew of the controversy which existed between the Suffolk County District Attorney and the Suffolk County Police Commissioner; and that respondent knew that the reason he was asked to be present in the County Police Commissioner's office on August 30, 1975, was related to that controversy. The Commission concludes that respondent either knew or should have known that it was inappropriate for him to participate in that proceeding.

By reason of the foregoing, respondent violated Sections 33.1 and 33.2(a) and 32.2(c) of the Rules Governing Judicial Conduct (22 NYCRR §33.1, 33.2[a] and 33.2[c]) and Canons 1 and 2 of the Code of Judicial Conduct. Whether knowingly or not, respondent's conduct was contrary to the interests of an independent judiciary. At the least he permitted his office to be used by the Suffolk County Police Commissioner in the latter's public dispute with the Suffolk County District Attorney. Respondent's participation in this matter violates his obligation to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The Commission considers by way of mitigation the fact that respondent did attempt to extricate himself from more extensive participation than actually occurred. It is also mindful that the incident was a single instance of misconduct on respondent's otherwise good record. The Commission hereby determines that the appropriate sanction is censure.

The foregoing constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: Albany, New York
April 26, 1979

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

HENRY R. BURKE,

a Judge of the Hornell City Court, Steuben County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Henry R. Burke, Respondent
Pro Se.
Gerald Stern for the
Commission.

The respondent, Henry R. Burke, a judge of the Hornell City Court, Steuben County, was served with a Formal Written Complaint dated October 30, 1978, setting forth a charge of misconduct relating to the improper assertion of influence in a traffic case. In his answer, dated November 21, 1978, respondent admitted the material allegations set forth in the Formal Written Complaint.

The administrator of the Commission moved for summary determination on January 17, 1979, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). The Commission granted the motion on January 24, 1979, finding respondent guilty of misconduct and setting a date for oral argument on the issue of an appropriate sanction. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission finds as follows:

1. Respondent sent a letter dated September 30, 1976, on official

court stationery, to the presiding judge of the Batavia City Court, seeking special consideration on behalf of the defendant in *People v. Winfred N. Pryor*, a case then pending in the Batavia City Court.

2. In his letter dated September 30, 1976, respondent identified Mr. Pryor as his father-in-law when, in fact, Mr. Pryor is not his father-in-law.

3. By reason of the foregoing, respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. By making an *ex parte* request of another judge for a favorable disposition for the defendant in a traffic case, respondent violated the Rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

By reason of the foregoing, the Commission determines that respondent should be admonished.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: May 29, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

WILLIS R. HAMMOND,

a Justice of the Town Court of Brutus, Cayuga County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Raymond S. Sant for
Respondent.
Gerald Stern for the
Commission.

The respondent, Willis R. Hammond, a justice of the Town Court of Brutus, Cayuga County, was served with a Formal Written Complaint dated July 27, 1978, setting forth eight charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, received by the Commission on September 1, 1978, respondent admitted the factual allegations set forth in the Formal Written Complaint.

The administrator of the Commission moved for summary determination on January 24, 1979, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). The Commission granted the motion on February 27, 1979, finding respondent guilty of judicial misconduct and setting a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent neither submitted a memorandum nor appeared for oral argument.

The Commission finds as follows:

1. On or about September 29, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Marjorie Casella* as a result of a written communication he received from Judge Sebastian Lombardi of the Lewiston Town Court, seeking special consideration on behalf of the defendant.

2. On or about March 24, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Theodore Beyer* as a result of a written communication he received from Trooper E. A. Pokorny, seeking special consideration on behalf of the defendant.

3. On or about March 4, 1976, respondent reduced a charge of speeding to failure to keep right in *People v. David Edinger* as a result of a communication he received from a justice of the Tully Town Court, or someone at the justice's request, seeking special consideration on behalf of the defendant.

4. On or about November 18, 1976, respondent reduced a charge of speeding to failure to obey a traffic control device in *People v. Christopher Hanks* as a result of a communication he received from Justice Roger E. Hammer of the Westfield Town Court, or someone at Judge Hammer's request, seeking special consideration on behalf of the defendant.

5. On or about March 28, 1973, respondent accepted forfeiture of bail in lieu of further prosecution of a charge of speeding in *People v. James L. Briggs* as a result of a communication he received from a justice of the Niagara Town Court, or someone at the justice's request, seeking special consideration on behalf of the defendant.

6. On or about August 13, 1976, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People v. Daniel Tartaglia* as a result of a communication he received from a justice of the Gates Town Court, or someone at the justice's request, seeking special consideration on behalf of the defendant.

7. On May 3, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Michael Curran* as a result of a communication he received seeking special consideration on behalf of the defendant.

8. On or about November 18, 1976, respondent, or someone at his request, communicated with Justice Thomas O'Connell of the Brutus Town Court, seeking special consideration on behalf of the defendant in *People v. Frank Dimino*, a case then pending before Judge O'Connell.

By reason of the foregoing, respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making an *ex parte* request of another judge for a favorable disposition for the defendant in a traffic case, and by granting such requests from judges and others with influence, respondent violated the Rules and enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that respondent should be censured.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: May 29, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JACK LEVINE,

a Justice of the Town Court of Liberty, Sullivan County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz. W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Jack Levine, Respondent
Pro Se.
Gerald Stern for the
Commission.

The respondent, Jack Levine, a justice of the Town Court of Liberty, Sullivan County, was served with a Formal Written Complaint dated October 10, 1978, setting forth eight charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated October 31, 1978, respondent admitted the material allegations set forth in the Formal Written Complaint.

The administrator of the Commission moved for summary determination on January 17, 1979, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). The Commission granted the motion on January 24, 1979, finding respondent guilty of misconduct and setting a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and declined to submit a memorandum.

The Commission finds as follows:

1. On or about April 30, 1974, respondent imposed an unconditional discharge in *People v. Patrick M. Dolan* as a result of a written communication he received from Joseph Wasser, Sheriff of Sullivan County, seeking special consideration on behalf of the defendant.

2. On or about February 24, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Joseph H. Rooney* as a result of a written communication he received from Justice Michael Altman of the Fallsburgh Town Court, seeking special consideration on behalf of the defendant.

3. On or about March 3, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Franklin Smith* as a result of a communication he received from Justice James Gorman of the Neversink Town Court, or someone at Judge Gorman's request, seeking special consideration on behalf of the defendant.

4. On or about November 1, 1976, respondent reduced a charge of speeding to failure to keep right in *People v. Herbert Stern* as a result of a written communication he received from Justice Murray Pudalov of the Massapequa Park Village Court, seeking special consideration on behalf of the defendant.

5. On or about June 3, 1974, respondent reduced a charge of speeding to failure to keep right in *People v. Leonard G. Waltz* as a result of a written communication he received from Justice Lloyd Houck of the Hancock Town Court, seeking special consideration on behalf of the defendant.

6. On or about June 10, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People v. David Kosofsky* as a result of a communication he received from a state trooper seeking special consideration on behalf of the defendant.

7. On or about November 17, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Rosa M. Albrecht* as a result of a communication he received from Justice Milton Sardonía of the Bethel Town Court, or someone at Judge Sardonía's request, seeking special consideration on behalf of the defendant.

8. On or about May 3, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Arthur H. Grae* as a result of a communication he received from Justice Burton Ledina of the Monticello Village Court on behalf of the defendant.

9. By reason of the foregoing, respondent violated Sections 33.1,

33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By granting *ex parte* requests from judges and others with influence for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on

the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that respondent should be censured.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: May 29, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

PATRICK MANEY,

a Justice of the Town Court of East Greenbush, Rensselaer County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Mrs. Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Maney and McConville
(By Edward P. McConville)
for Respondent.
Gerald Stern for the
Commission.

The respondent, Patrick Maney, a justice of the Town Court of East Greenbush, Rensselaer County, was served with a Formal Written Complaint dated October 10, 1978, setting forth seven charges of misconduct relating to the assertion of influence in traffic cases. In his answer, received by the Commission on November 10, 1978, respondent admitted the material allegations with respect to all charges, with the exception of Charge VI.

The administrator of the Commission moved for summary determination on February 27, 1979, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). The Commission granted the motion, dismissing Charge VI and finding respondent guilty of misconduct with respect to the remaining six charges, and setting a date for oral argument on the issue of an appropriate sanction. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission finds as follows:

1. On or about March 27, 1974, respondent sent a letter to Justice James Davidson of the Queensbury Town Court, seeking special consideration on behalf of the defendant in *People v. Michael Wacholder*, a case then pending before Judge Davidson.

2. On or about October 11, 1974, respondent sent a letter to Justice Wayne Smith of the Plattekill Town Court, seeking special consideration on behalf of the defendant in *People v. Donald S. Gould*, a case then pending before Judge Smith.

3. On or about June 11, 1975, respondent, or someone at his request, communicated with Justice Arthur Reilly of the Ulster Town Court, seeking special consideration on behalf of the defendant in *People v. Laura Servidone*, a case then pending before Judge Reilly.

4. On or about July 31, 1975, respondent sent a letter to Justice Richard Lips of the Clifton Park Town Court, seeking special consideration on behalf of the defendant in *People v. David S. Mankin*, a case then pending before Judge Lips.

5. On or about December 11, 1975, respondent sent a letter to Justice George E. Carl of the Catskill Town Court, seeking special consideration on behalf of the defendant in *People v. Anthony J. Elacqua*, a case then pending before Judge Carl.

6. On or about May 27, 1976, respondent sent a letter to Justice Harold Schultz of the New Scotland Town Court, seeking special consideration on behalf of the defendant in *People v. Robert A. DeSantis*, a case then pending before Judge Schultz.

7. By reason of the foregoing, respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the rules enumerated above, which read as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the

law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that respondent should be censured.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: May 29, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JOHN J. MODDER,

a Justice of the Tuxedo Town Court, Orange County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Lynch, Lynch, O'Hara &
Gioeli (By Harry V. Lynch)
for Respondent.
Gerald Stern for the
Commission.

The respondent, John J. Modder, a justice of the Town Court of Tuxedo, Orange County, was served with a Formal Written Complaint, dated October 10, 1978, setting forth eight charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated October 20, 1978, respondent admitted the material allegations set forth in the Formal Written Complaint.

The administrator of the Commission moved for summary determination on February 13, 1979, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). The Commission granted the motion on February 27, 1979, dismissing Charge IV of the Formal Written Complaint, finding respondent guilty of judicial misconduct with respect to the remaining seven charges and setting a date for oral argument on the issue of an appropriate sanction. The administrator and respondent submitted memoranda in lieu of oral argument.

1. On or about September 4, 1974, respondent sent a letter to Justice Richard Hering of the Liberty Town Court, seeking special consideration on behalf of the defendant in *People v. John V. Modder*, a case then pending before Judge Hering.

2. On or about April 14, 1975, respondent sent a letter to Justice Thomas Haberneck of the Newstead Town Court, seeking special consideration on behalf of the defendant in *People v. Joseph Castlevetere*, a case then pending before Judge Haberneck.

3. On or about May 28, 1975, respondent reduced a charge of passing a red light to driving with an inadequate muffler in *People v. Diane Travaglione* as a result of a written communication he received from Justice Robert Van Etten of the Woodbury Town Court, seeking special consideration on behalf of the defendant.

4. On or about June 2, 1975, respondent reduced a charge of passing a school bus to driving an unregistered motor vehicle in *People v. John Filipowski* as a result of a communication he received from Tuxedo Police Chief Sam Mottola, or someone at Chief Mottola's request, seeking special consideration on behalf of the defendant.

5. On or about June 23, 1976, respondent sent a letter to Justice James Mohn of the Pembroke Town Court, seeking special consideration on behalf of the defendant in *People v. George Kam*, a case then pending before Judge Mohn.

6. On or about April 1, 1976, respondent reduced a charge of speeding to driving an uninspected vehicle in *People v. Ronald Hewlett* as a result of a communication he received, seeking consideration on behalf of the defendant.

7. On or about September 10, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Joseph Sugarman* as a result of a written communication he received, seeking special consideration on behalf of the defendant.

8. By reason of the foregoing, respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of misconduct, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by acceding to such requests from judges and others with in-

fluence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that respondent should be censured.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: May 29, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JAMES H. REEDY,

a Justice of the Town Court of Galway, Saratoga County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: David L. Riebel for
Respondent.
Gerald Stern for the
Commission.

The respondent, James H. Reedy, a justice of the Town Court of Galway, Saratoga County, was served with a Formal Written Complaint dated October 10, 1978, setting forth five charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated November 4, 1978, respondent admitted the factual allegations set forth in the Formal Written Complaint.

The administrator of the Commission moved for summary determination on February 27, 1979, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). The Commission granted the motion on February 27, 1979, finding respondent guilty of misconduct and setting a date for oral argument on the issue of an appropriate sanction. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission finds as follows:

1. On or about April 23, 1974, respondent sent a letter to Justice

John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in *People v. Vera C. Boerenko*, a case then pending before Judge Holt-Harris.

2. On or about November 18, 1974, respondent sent a letter to Justice Robert Vines of the Moreau Town Court, seeking special consideration on behalf of the defendant in *People v. Fred S. Sanders*, a case then pending before Judge Vines.

3. On or about July 9, 1975, respondent sent a letter to Justice Edward Longo of the Rotterdam Town Court, seeking special consideration on behalf of the defendant in *People v. John S. Keast, Jr.*, a case then pending before Judge Longo.

4. On or about July 12, 1976, respondent sent a letter to Justice George Roland of the Colonie Town Court, seeking special consideration on behalf of the defendant in *People v. Brian R. Collis*, a case then pending before Judge Roland.

5. On or about November 4, 1976, respondent sent a letter to Justice George Roland of the Colonie Town Court, seeking special consideration on behalf of the defendant in *People v. Angelo L. Durante*, a case then pending before Judge Roland.

6. By reason of the foregoing, respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct.

It is improper for a judge to seek to influence another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his

judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that respondent should be censured.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: May 29, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

HAROLD H. SCHULTZ,

a Justice of the New Scotland Town Court, Albany County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Harold Schultz, Respondent
Pro Se.
Gerald Stern for the
Commission (Stephen F.
Downs, John K. Sharkey,
Of Counsel).

The respondent, Harold A. Schultz, a justice of the Town Court of New Scotland, Albany County, was served with a Formal Written Complaint dated December 1, 1978, setting forth one charge of misconduct relating to the improper assertion of influence in a traffic case over which he presided and in which the defendant was his son. In his answer, filed with the Commission on December 26, 1978, respondent admitted the factual allegations set forth in the Formal Written Complaint but denied having granted special consideration to the defendant.

On January 30, 1979, the Commission appointed the Honorable Simon J. Liebowitz as referee to hear and report to the Commission with respect to this matter. A hearing was conducted on March 5, 1979, and the report of the referee was filed with the Commission on March 12, 1979.

The administrator of the Commission moved on March 13, 1979, to confirm the findings of the referee. Respondent submitted a letter in response to the administrator's motion.

The Commission considered the record in this matter on April 17, 1979, and upon that record concludes as follows:

1. On or about August 3, 1978, in connection with *People v. Glenn T. Schultz*, a case then pending in the Town Court of New Scotland, respondent:

- a. failed to disqualify himself from the case, notwithstanding that the defendant was his son, in violation of Section 14 of the Judiciary Law;
- b. granted special consideration to the defendant by interviewing the arresting officer and reducing the charge of speeding to unsafe tire a week before the return date;
- c. failed as of October 26, 1978, to make any record of the case in the town court docket; and
- d. failed as of October 26, 1978, to report the disposition of the case to the State Comptroller, as required by law.

2. Respondent's failure (i) to make a proper record of the case and (ii) to report the disposition as required by law was based on his intention to avoid discovery of his action, and as such constitutes an inexcusable irregularity in the proper performance of his administrative responsibilities.

3. By reason of the foregoing, respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(b)(1) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3B(1) and 3C(1)(d)(i) of the Code of Judicial Conduct.

It is improper for a judge to render a decision in any judicial proceeding on the basis of a personal, and in this case a familial, relationship with the defendant. Both the Judiciary Law and the Rules Governing Judicial Conduct prohibit a judge from presiding over a case if he is related with the sixth degree of consanguinity to one of the parties. (Jud.L. §14; Rules §33.3[c] [1][iv][a].) By presiding over a case in which his son was the defendant, respondent clearly violated both the law and the applicable ethical standards.

Having found that respondent violated the statutory, administrative and ethical obligations upon him and is thereby guilty of judicial misconduct, the Commission now considers the appropriate sanction.

Respondent's misconduct, standing alone, is serious. In *Matter of Byrne*, N.Y.L.J., April 20, 1979, vol. 179, p. 5, the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." The court said such conduct was "wrong and has always been wrong." *Id.*

Respondent's misconduct in this matter is exacerbated by the fact that he had been censured previously for similar misconduct. On March 31, 1978, only four months before his misconduct in *People v. Glenn T. Schultz*, respondent was publicly censured by the former State Commission on Judicial Conduct for asserting or acceding to special influence in a total of 19 separate traffic cases.

Despite the censure in March 1978, respondent repeated the improper practice of ticket-fixing in the *Schultz* case in August 1978, compounding the impropriety with a violation of the Judiciary Law by presiding over a matter involving his son. Such conduct is inexcusable.

The Commission hereby determines that the appropriate sanction is removal from office. This determination is made pursuant to Section 47 of the Judiciary Law, since respondent resigned as town justice effective March 1, 1979.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: May 29, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

RICHARD RALSTON,

a Justice of the Village Court of Schaghticoke, Rensselaer County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Richard Ralston, Respondent
Pro Se.
Gerald Stern for the
Commission.

The respondent, Richard Ralston, a justice of the Village Court of Schaghticoke, Rensselaer County, was served with a Formal Written Complaint dated February 28, 1979, alleging numerous acts of misconduct over a three and a half year period relating primarily to his failure to file prompt reports to the State Comptroller and dispose of official funds as required by law. Respondent was also charged in the Formal Written Complaint with failing to cooperate with an investigation being conducted by this Commission.

The administrator of the Commission moved for summary determination on April 16, 1979, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). Respondent did not submit papers in opposition to the motion. The Commission granted the motion in a determination dated April 26, 1979, finding respondent guilty of judicial misconduct and setting a date for oral argument on the issue of an appropriate sanction. The administrator submitted a

memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum.

The Commission considered the record in this proceeding on May 22, 1979, and upon that record finds the following facts:

1. Between April 1, 1978, and November 1, 1978, respondent received in his judicial capacity at least \$310.00 in fines upon disposing of at least 36 traffic tickets written by the Village of Schaghticoke police. Nevertheless, between April 1, 1978, and February 28, 1979, respondent failed to report or remit to the State Comptroller any of said monies he received, contrary to the requirements of Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 4-410 of the Village Law and Section 1803 of the Vehicle and Traffic Law.

2. From April 1978 to October 1978, respondent made only one deposit into his official justice court bank account, in the amount of \$515.00 on August 3, 1978, notwithstanding that he received monies in his official capacity in each month during this period. Respondent's failure to make timely deposits each month was contrary to the requirements of Section 30.7 of the Uniform Justice Court Rules promulgated by the Chief Administrator of the Courts, which requires the deposit of all official funds within 72 hours of receipt.

3. Between January 1, 1975, and December 31, 1977, respondent failed to report and remit monies he had received in his judicial capacity to the State Comptroller within the first ten days of the month succeeding his receipt of those monies, as specified in the subparagraphs below, despite ten written requests from the State Department of Audit and Control; respondent's failure to report and remit monies promptly was contrary to the requirements of Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 4-410 of the Village Law and Section 1803 of the Vehicle and Traffic Law.

- (a) Respondent's report of activities of May 1975 was filed July 30, 1975.
- (b) Activities for June 1975 were reported July 30, 1975.
- (c) Activities for July 1975 were reported August 29, 1975.
- (d) Activities for August 1975 were reported September 30, 1975.
- (e) Activities for September 1975 were reported October 29, 1975.
- (f) Activities for October 1975 were reported December 8, 1975.
- (g) Activities for December 1975 were reported March 21, 1976.

- (h) Activities for June 1976 were reported August 8, 1976.
- (i) Activities for August 1976 were reported October 18, 1976.
- (j) Activities for September 1976 were reported October 18, 1976.
- (k) Activities for November 1976 were reported December 23, 1976.
- (l) Activities for December 1976 were reported January 21, 1977.
- (m) Activities for January 1977 were reported April 4, 1977.
- (n) Activities for February 1977 were reported April 4, 1977.
- (o) Activities for April 1977 were reported June 7, 1977.
- (p) Activities for June 1977 were reported July 28, 1977.
- (q) Activities for July 1977 were reported September 2, 1977.
- (r) Activities for August 1977 were reported October 18, 1977.
- (s) Activities for October 1977 were reported January 11, 1978.
- (t) Activities for November 1977 were reported January 11, 1978.
- (u) Activities for December 1977 were reported January 11, 1978.

4. From October 1978 through January 1979, respondent failed to cooperate with an investigation being conducted by the State Commission on Judicial Conduct, in that he (i) failed to respond to written inquiries, dated October 31, 1978, November 14, 1978, and November 30, 1978, sent by the Commission to respondent pursuant to Section 42, subdivision 3, of the Judiciary Law and (ii) failed to appear before a member of the Commission on January 4, 1979, and again on January 19, 1979, after having been duly requested by the Commission to so appear, pursuant to Section 44, subdivision 3, of the Judiciary Law in letters dated December 19, 1978, and January 11, 1979, respectively.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct, and Canons 1, 2A and 3A(1) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

Having found the respondent guilty of misconduct, the Commission now considers the appropriate sanction.

The duty of a judge to report and remit promptly monies collected in his judicial capacity must not be neglected, and the damage to public confidence in the judiciary resulting from a failure to so report is serious. His failure (i) to reply to ten requests by the Department of Audit and Control for reports and remittances, and (ii) to reply to five inquiries from this Commission in the course of a duly authorized investigation, compounds the initial misconduct and demonstrates a total disregard of the obligations of judicial office.

By reason of the foregoing, the Commission hereby determines that the appropriate sanction is removal from office.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 2, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

FRANCIS R. SOBECK,

a Justice of the Town of Wellsville, Allegany County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Diebold, Bermingham, Gorman,
Brown & Bridge (By Michael J.
Brown) for Respondent.
Gerald Stern for the
Commission.

The respondent, Francis R. Sobeck, a justice of the Town Court of Wellsville, Allegany County, was served with a Formal Written Complaint dated October 24, 1978, setting forth four charges of misconduct alleging that respondent permitted the Wellsville Medical Group to use his name, judicial title and court address to collect delinquent accounts, and that respondent accepted a check and two credits to his account totaling \$599.41 from the Wellsville Medical Group for the use of his judicial position in the collection of these accounts. In his answer, dated December 23, 1978, respondent admitted the factual allegations set forth in the Formal Written Complaint but denied that the admitted acts constituted judicial misconduct.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating

that the Commission make its determination on the pleadings and the facts as agreed upon. In the agreed statement, respondent acknowledged (i) approving the content and form of the letters sent by the Wellsville Medical Group to its delinquent debtors, as appended to the Formal Written Complaint, (ii) permitting the use of a rubber stamp of his signature and later signing a blank copy of the letters and (iii) permitting the Wellsville Medical Group to use photocopies of the signed, blank copy. Respondent also acknowledged that he knew that these letters had been sent to at least 340 persons, some of whom he acknowledged received more than one letter.

The Commission approved the agreed statement, as submitted, on January 25, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on May 22, 1979, and upon that record finds the following facts:

1. From January 1976 to July 1978, respondent permitted the Wellsville Medical Group to use his name, judicial title and court address in three different form letters, escalating in tone so as to appear threatening, which the Group used to collect delinquent accounts. Respondent permitted the Group to use a rubber stamp facsimile of his signature and to photocopy unaddressed copies of letters, previously signed by him, which he permitted the Group to use for collecting delinquent accounts.

2. Respondent was aware that letters with his signature were sent by the Wellsville Medical Group to more than 340 individuals in the collection of delinquent accounts, and that the Group collected a total of \$5,630.63 between January 1, 1978, and November 30, 1978, through the use of respondent's letters.

3. Although respondent did not request payment from the Wellsville Medical Group for the use of his name, judicial title and court address in the collection of delinquent accounts, respondent accepted the following credits to his account and payment from the Group:

- (a) Between January 24, 1977, and December 30, 1977, respondent received approximately 11 monthly statements of his account with the Wellsville Medical Group, each of which

showed a credit to his account of \$202.97 from the statement of January 24, 1977.

- (b) Between June 5, 1978, and August 30, 1978, respondent received approximately two monthly statements of his account with the Wellsville Medical Group, each of which showed a credit to his account of \$196.44 from the statement of June 5, 1978.
- (c) On June 5, 1978, respondent's wife received a check by mail from the Wellsville Medical Group, payable to respondent in the amount of \$200.00. Attached to the check was the tear-off stub bearing the following typewritten notation: "Services of collecting past due accounts." Respondent's wife showed the check stub to respondent and discussed it with him, whereupon the check was deposited in a bank account registered jointly in the name of respondent and his wife. Respondent was aware the check was so deposited.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(4), 33.5(a)(1), 33.5(c)(1) and 33.5(c)(3) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(4), 5C(1) and 5C(3) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

The obligation to avoid both impropriety and the appearance of impropriety is fundamental to the fair and proper administration of justice. In allowing his judicial office to be used by a private medical group for debt-collecting purposes for more than two years, and by accepting a payment and credits for his acts, respondent's conduct both was improper and appeared to be improper and thereby undermined public confidence in the integrity and impartiality of the judiciary. At the least, the reasonable inference to be drawn from respondent's letters is that a judge of the court in which a debtor could be sued was playing an active role on behalf of a party to the dispute.

Even if there were no question that the debtors would not be brought before respondent's court, respondent's conduct was improper. Judicial office is a position of honor which must be held only by those who will preserve and protect its independence and integrity; it is not to be lent to a private interest seeking to collect a private debt. The applicable principle is expressed in Section 33.2(c) of the Rules Governing Judicial Conduct: "No judge shall lend the prestige of his

office to advance the private interests of others; nor shall any judge convey or permit others to convey the impression that they are in a special position to influence him. . .” Respondent’s actions violate this standard.

The Commission has given consideration to the matter addressed in respondent’s memoranda with respect to whether respondent’s misconduct was deliberate or unintentional. Respondent asserts that his lack of wrongful intent should be considered in mitigation of his admitted acts. Whatever motive underlay his acts, respondent’s misconduct was such that a severe sanction is appropriate. Respondent has violated basic ethical standards. Neither a deliberate nor an unintentional disregard of so fundamental a responsibility would mitigate the detrimental effect on the judiciary which resulted from respondent’s acts.

The Commission has also given consideration to the argument in respondent’s memoranda that, by the standards of the community in which he sits, respondent’s actions were not so improper as to merit the serious sanction of removal. Respondent asserts that he is “ultimately answerable to the community which this Commission seeks to protect.” (Respondent’s Memorandum on Sanction at 14.)

The standard to which this Commission must hold respondent is not one to be defined by the community in which he sits. The Rules Governing Judicial Conduct are a statewide standard, promulgated by a statewide chief administrator of the courts with the approval of the Court of Appeals and applied in matters of judicial discipline by a statewide commission on judicial conduct. Those standards were not meant to be interpreted and applied unevenly throughout the state by this Commission or individual communities. Public faith in our legal system requires that there be one set of standards of judicial conduct, and that those standards be of the highest order.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office. All concur except that Judge Cardamone, Judge Rubin and Mr. Wainwright vote that the appropriate sanction is censure.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: July 2, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JOHN D. D'APICE,

a Judge of the City Court of Yonkers, Westchester County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Wekstein & Fulfree (By Morton
N. Wekstein) for Respondent.
Gerald Stern for the
Commission (Stanley A. Bass,
Of Counsel).

The respondent, John D. D'Apice, a judge of the City Court of Yonkers, Westchester County, was served with a Formal Written Complaint dated October 26, 1978, alleging in two charges of misconduct that respondent (i) improperly used stationery identifying him as a judge in a private dispute with an attorney and (ii) improperly threatened the attorney with filing a professional grievance against him if the dispute were not resolved by the attorney in respondent's favor. In his answer, dated November 18, 1979, respondent denied the material allegations set forth in the Formal Written Complaint, asserted certain affirmative defenses and moved for dismissal of the Formal Written Complaint.

On December 14, 1978, the Commission denied respondent's motion to dismiss the Formal Written Complaint, with a determination dated January 3, 1979, and appointed Michael A. Cardozo, Esq., as

referee to hear and report to the Commission with respect to the issues herein. A hearing was conducted before the referee on February 15, 1979, and the referee's report, dated April 17, 1979, was filed with the Commission on April 18, 1979.

The administrator of the Commission moved on May 15, 1979, to confirm in part and disaffirm in part the report of the referee, and for a determination that respondent be censured. Respondent submitted a memorandum in opposition to the administrator's motion on May 14, 1979.

The Commission heard oral argument by the administrator and respondent's counsel on May 22, 1979, thereafter considered the record in this proceeding and makes the findings and conclusions set forth below.

Charge I of the Formal Written Complaint is dismissed.

With respect to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact:

1. There was a private dispute between respondent and Frank Mangiatordi, Esq., concerning the amount of attorney's fees allegedly owed to respondent by Mr. Mangiatordi, for legal services rendered by respondent in *Palumberi v. Shayne*, prior to respondent's becoming a judge.

2. Respondent, in an effort to coerce Mr. Mangiatordi to pay him the amount of the aforesaid disputed claim, stated in his letter of December 29, 1976, to Mr. Mangiatordi that he would file a grievance against Mr. Mangiatordi with the Judicial Conference [sic] and would request that he be censured for professional misconduct unless Mr. Mangiatordi fulfilled the alleged financial obligation he owed respondent by January 10, 1977.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.5(c)(1) of the Rules Governing Judicial Conduct, Canons 1, 2A and 5C of the Code of Judicial Conduct, and DR1-103(A) of the Code of Professional Responsibility. Accordingly, Charge II is sustained and respondent is thereby guilty of misconduct.

Respondent's attempt to coerce Mr. Mangiatordi to pay the disputed claim, by threatening to file a professional grievance against him, was improper. Grievance proceedings are to determine matters of alleged professional misconduct and are not meant to be used as leverage by one party over another in a private dispute. Indeed, if

respondent in fact believed Mr. Mangiatordi was guilty of professional misconduct, as he stated in his letter of December 29, 1976, then he was under an obligation to report this fact to an appropriate disciplinary panel, whether or not the disputed amount was paid. For respondent to have acted otherwise would have meant that if a settlement had been reached, a matter of professional misconduct would have remained unreported and unexamined. As noted by the referee, respondent's contention that, since his letter of complaint is dated January 7, 1977, he would have reported Mr. Mangiatordi's conduct whether or not the disputed amount had been paid, is not supported by the evidence. While respondent's letter is dated January 7, it was not sent until January 11, one day after the expiration of the deadline set by respondent in his letter of December 29.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mrs. Robb and Mr. Maggipinto dissent with respect to Charge I and vote to sustain the charge.

Judge Rubin and Judge Shea dissent with respect to Charge II and vote to dismiss the charge and impose no sanction.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: July 3, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

WARREN C. DeLOLLO,

a Judge of the Watervliet City Court, Albany County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Warren DeLollo, Respondent
Pro Se.
Gerald Stern for the
Commission.

The respondent, Warren C. DeLollo, a judge of the Watervliet City Court, Albany County, who serves in that capacity part-time and is permitted to practice law ("part-time lawyer-judge"), was served with a Formal Written Complaint dated January 5, 1979, setting forth three charges of misconduct pertaining to (i) respondent's practice of law in cases presided over by his brother or other judges permitted to practice law in the same county in which respondent sits as a judge and (ii) the improper assertion of influence in traffic cases. In his answer and amended answer, respondent admitted all the factual allegations set forth in the charges, admitted violating the ethical standards enumerated in Charges I and III, and denied that the facts admitted with respect to Charge II constituted violations of the ethical standards cited in Charge II. At the same time, respondent alleged certain facts in mitigation of his admitted acts.

The administrator of the Commission moved for summary determination on April 16, 1979, pursuant to Section 7000.6(c) of the Com-

mission's Rules (22 NYCRR 7000.6[c]). The Commission granted the motion on April 17, 1979, finding respondent guilty of judicial misconduct with respect to all three charges, and setting a date for oral argument on the issue of an appropriate sanction. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on May 22, 1979, and upon that record finds the following facts:

1. On December 3, 1973, respondent, an attorney scheduled to assume his current judicial office on January 1, 1974, practiced law before Colonie Town Court Justice Guy DeLollo in connection with *People v. Michael Fera*, a traffic case then pending before Judge Guy DeLollo, notwithstanding that respondent and Judge Guy DeLollo were brothers.

2. On November 23, 1976, respondent, a judge in Albany County who is also permitted to practice law, sent a letter to another judge in Albany County who is permitted to practice law, Judge John E. Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in *People v. Julie F. Lombardo*, a traffic case then pending before Judge Holt-Harris.

3. On January 27, 1977, respondent, a judge in Albany County permitted to practice law, sent a letter to another judge in Albany County who is permitted to practice law, Justice Philip Caponera of the Colonie Town Court, seeking special consideration on behalf of the defendant in *People v. Terrence C. Lynch*, a traffic case then pending before Judge Caponera.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 1, 7 and 9 of the Code of Professional Responsibility, Section 20.18 of the General Rules of the Administrative Board of the Judicial Conference, Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(4) and 33.5(f) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3 of the Code of Judicial Conduct and Section 839.5 of the Rules of the Appellate Division, Third Judicial Department. Charges I through III of the Formal Written Complaint are sustained and respondent is thereby guilty of misconduct.

It is improper for a part-time lawyer-judge in one county to practice law before another part-time lawyer-judge from the same county. In the Third Judicial Department, where these matters under consideration occurred, by Appellate Division rule, it is impermissible for a part-time lawyer-judge in one county to practice criminal law in any other court in that county, whether or not the presiding judge is per-

mitted to practice law. By writing letters to two other part-time lawyer-judges in Albany County, seeking favorable dispositions for the defendants in two traffic cases, respondent practiced law before other part-time lawyer-judges in Albany County and thereby violated the applicable ethical standards and rules cited above. His misconduct is compounded by the fact that, as a judge, respondent is subject as well to promulgated standards which require judges to promote the integrity and impartiality of the judiciary. It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. By making *ex parte* request of other judges for favorable dispositions for the defendants in these two traffic cases, respondent not only improperly practiced law, he violated the applicable Rules Governing Judicial Conduct.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

With respect to respondent's practicing law in a case presided over by his brother, it was clearly improper for him to have done so. Such a practice can only undermine public confidence in the impartiality of the judiciary, and it thereby reflects poorly on the entire judicial system. Even in the absence of specific ethical standards regarding such conduct, respondent should have known better, particularly since he had served as a judge before as well as shortly after this incident, and is thereby presumed to have been acquainted with the ethical standards relevant to judicial proceedings.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure. All concur, except Mrs. Robb, who votes that the appropriate sanction is admonition.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: July 3, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

WALTER C. DUNBAR,

a Justice of the Village Court of Watkins Glen, Schuyler County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Valent & Callahan (By Henry
Valent) for Respondent.
Gerald Stern for the
Commission.

The respondent, Walter C. Dunbar, a justice of the Village Court of Watkins Glen, Schuyler County, was served with a Formal Written Complaint dated December 11, 1978, setting forth six charges of misconduct with respect to (i) respondent's directing the defendants in six cases to make contributions to charities, identified by respondent, as a condition to discharging those six cases, and (ii) respondent's failure to disqualify himself in one of those six cases despite having participated in the investigation of the charge in that case and otherwise having personal knowledge of the facts and disputed issues.

In his answer, respondent admitted the factual allegations contained in five of the six charges in the Formal Written Complaint, and admitted in part and denied in part the factual allegations contained in the sixth charge.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on March 14, 1979,

pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon, including respondent's admission of Charges I through V.

The Commission approved the agreed statement, as submitted, on March 21, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on May 22, 1979.

With respect to Charges I through V of the Formal Written Complaint, the Commission finds the following facts:

1. On December 11, 1976, in connection with the case of *People v. Robert M. Hooper*, respondent imposed a conditional discharge which required the defendant to make a payment of \$50 to a charity known as the "Seneca Santa."
2. On December 23, 1976, in connection with the case of *People v. David Johnson*, respondent imposed a conditional discharge which required the defendant to make a payment of \$20 to a charity known as the United Fund.
3. On December 18, 1976, in connection with the case of *People v. Jeffry S. Bolt*, respondent imposed a conditional discharge which required the defendant to make a payment of \$50 to a charity known as the United Fund.
4. On December 18, 1976, in connection with the case of *People v. William T. Peterson*, respondent imposed a conditional discharge which required the defendant to make a payment of \$50 to a charity known as the United Fund.
5. On December 18, 1976, in connection with the case of *People v. Martin G. Tipaldos*, respondent imposed a conditional discharge which required the defendant to make a payment of \$40 to a charity known as the United Fund.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2 and 33.5(b)(2) of the Rules Governing Judicial Conduct and Canon 5B(2) of the Code of Judicial Conduct. Charges I through V of the

Formal Written Complaint are sustained, and respondent is thereby guilty of judicial misconduct.

With respect to Charge VI of the Formal Written Complaint, the Commission finds the following facts:

6. On December 23, 1976, in connection with *People v. Marty Butler*, in which the defendant was charged with driving with an overloaded axle on December 8, 1976, respondent:

- (a) imposed a conditional discharge which required the defendant to make a payment of \$260 to a charity known as the United Fund in lieu of a fine; and
- (b) with the maker's permission, typed in "Schuyler County United Fund" and the amount of "\$260" on a blank check signed to respondent by the defendant's employer, Keith Paddock, and sent the check to the Schuyler County United Fund.

7. Between January 7, 1977, and January 20, 1977, because respondent was upset that Keith Paddock (i) had stopped payment without notification or explanation on the \$260 check to the United Fund in connection with *People v. Marty Butler*, and (ii) would not return respondent's calls, respondent directed that the driving record of the defendant be investigated. Upon learning that Mr. Butler's driving license had been suspended on December 8, 1976, he reported this to Patrolman Richard Pierce, who in turn reported it to Trooper John Halstead.

8. Thereafter, respondent:

- (a) reopened *People v. Marty Butler*;
- (b) prepared an information for the signature of Trooper John Halstead, charging Mr. Butler with driving with an overloaded axle on December 8, 1976, for the purpose of issuing a warrant for the arrest of Mr. Butler;
- (c) requested Trooper Halstead to sign the information;
- (d) issued a warrant for the arrest of Mr. Butler on the basis of the signed information;
- (e) rejected an offer by the defendant's counsel on January 20, 1977, to pay \$260 to the court as a fine; at the time of the defendant's offer, before the above-mentioned warrant had been executed and before the appearance of the parties in court on the new charges, respondent insisted that the defendant make good a \$260 contribution to the United Fund; and

- (f) refused to consider the acceptance of a \$260 payment as a fine on January 22, 1977, when the defendant, with counsel, appeared before him and entered a plea of not guilty to all the charges.

9. Respondent's report to Patrolman Pierce that Mr. Butler's license had been suspended resulted in Patrolman Pierce charging Mr. Butler with operating while license suspended. Respondent presided over the matter to the extent of arraigning Mr. Butler on January 22, 1977, ordering discovery and adjourning the case first to January 29, 1977, then to February 5, 1977, and then to March 9, 1977.

10. On March 9, 1977, respondent set the trial date in *People v. Marty Butler* as April 9, 1977, a day when the acting village court justice of Watkins Glen was scheduled to be sitting. Thereafter, the acting village court justice presided over the case and disposed of it.

11. Respondent's report to Patrolman Pierce that Mr. Butler's license had been suspended resulted in Trooper Halstead charging Mr. Paddock, Mr. Butler's employer, with permitting Mr. Butler to operate with a suspended license. Respondent presided over this case to the extent of issuing a warrant for the arrest of Mr. Paddock, arraigning Mr. Paddock on January 22, 1977, ordering discovery and adjourning the case first to January 29, 1977, then to February 5, 1977, and then to March 9, 1977.

12. On March 9, 1977, respondent set the trial date in *People v. Keith Paddock* as April 9, 1977, a day when the acting village court justice of Watkins Glen was scheduled to be sitting. Thereafter, the acting village court justice presided over the case and disposed of it.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.2(c), 33.3(a)(4), 33.3(c)(1) and 33.5(b)(2) of the Rules Governing Judicial Conduct and Canons 1, 2, 3C(1) and 5B(2) of the Code of Judicial Conduct. Charge VI of the Formal Written Complaint is sustained and respondent is thereby guilty of misconduct.

It is improper for a judge to request or require a defendant to make a contribution to a charity in lieu of a fine. In *Matter of Richter*, 42 N.Y.2d(aa) (Ct. on the Judiciary 1977), the court declared that discharges conditioned on contributions by the defendant to charities, "[t]hough well-intentioned. . . [are] completely improper. A Judge is forbidden to solicit for charity; a fortiori, he may not direct contributions to charities, particularly where the recipient is specified." *Id.*, 42 N.Y.2d at (hh).

In the instant matter, respondent's misconduct rises to the level of that identified as improper by the court in *Richter*, in that he granted discharges conditioned on the defendants making charitable contributions. As a judge is prohibited by the Rules Governing Judicial Conduct from soliciting funds for a charitable organization (Section 33.5[f] of the Rules), so is he prohibited from using the power of his office to compel contributions to charities.

With respect to Charge VI of the Formal Written Complaint, involving *People v. Marty Butler* and *People v. Keith Paddock*, respondent presided over both matters despite his participation in preparing the prosecution's case in both matters, and despite his admittedly being "upset" by the pre-trial conduct of one of the defendants. By so presiding over these matters, respondent violated Section 33.3(c)(1)(i) of the Rules Governing Judicial Conduct, which requires a judge to "disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including. . . instances where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 3, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

LOUIS I. KAPLAN,

a Judge of the Civil Court of the City of New York,
New York County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Julien, Schlesinger and Finz
(By Stuart A. Schlesinger)
for Respondent.
Gerald Stern for the
Commission.

The respondent, Louis I. Kaplan, a judge of the Civil Court of the City of New York, New York County, was served with a Formal Written Complaint dated November 27, 1978, setting forth 17 charges of misconduct relating to respondent's intemperate and otherwise improper demeanor while presiding over *Millington v. New York City Transit Authority* between April 21, 1975, and May 20, 1975.

In lieu of submitting an answer to the Formal Written Complaint, respondent and his counsel entered into an agreed statement of facts with the administrator of the Commission in February 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement, as submitted, on March 22, 1979, determined that no outstanding issue of fact remained, and set a date for oral argu-

ment to determine (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum prior to oral argument. Respondent did not submit a memorandum and appeared through his attorney for oral argument.

On May 22, 1979, the Commission considered the record in this proceeding with respect to *Millington v. New York City Transit Authority*, a 1975 jury trial over which respondent presided, and upon that record makes the following finding of fact: On ten separate dates, to wit, April 24, 28, 29 and 30, and May 1, 2, 6, 13, 14 and 20, 1975, respondent used intemperate and injudicious language, as set forth in the agreed statement of facts, directed toward defense counsel while presiding in the *Millington* case.

Based upon the foregoing finding of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(a)(2) and 33.3(a)(3) of the Rules Governing Judicial Conduct, Canons 1, 2A, 3A(2) and 3A(3) of the Code of Judicial Conduct, and Sections 604.1(e)(1) and 604.1(e)(5) of the Rules of the Appellate Division, First Judicial Department. Charges I through XVII of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

The Rules Governing Judicial Conduct require a judge to be “patient, dignified and courteous” to all who appear before him and to “conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” (Sections 33.3[a][3] and 33.2[a]). Section 604.1(e)(5) of the Appellate Division Rules (First Department), where the matter under consideration occurred, requires a judge to be the “exemplar of dignity and impartiality” and to “suppress his personal predilections. . . [and] control his temper and emotions.” Respondent’s intemperate conduct throughout the *Millington* trial was unbecoming a judge and fell far short of the applicable standards noted above.

The Commission notes in mitigation that, subsequent to the commencement of the instant proceeding, respondent acknowledged that his conduct toward defense counsel in *Millington* had been discourteous and addressed a letter of apology to defense counsel.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 3, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

CARLTON M. CHASE,

a Justice of the Village Court of Chittenango, Madison County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Mrs. Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Bruce O. Jacobs for
Respondent.
Gerald Stern for the
Commission.

The respondent, Carlton M. Chase, a justice of the Village Court of Chittenango, Madison County, was served with a Formal Written Complaint dated October 16, 1978, setting forth four charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated November 21, 1978, respondent admitted the factual allegations set forth in the Formal Written Complaint.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts dated February 26, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement, as submitted, on February 27, 1979, determined that no outstanding issue of fact remained, and set a date for oral argument to determine (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator

submitted a memorandum in lieu of oral argument. Respondent waived both a memorandum and oral argument.

The Commission considered the record in this proceeding on May 22, 1979, and upon that record finds the following facts:

1. On September 24, 1973, respondent sent a letter to Judge Lawrence F. Finley of the Oneida City Court, seeking special consideration on behalf of the defendant in *People v. Marion C. Barrett*, a case then pending before Judge Finley.

2. On October 8, 1974, respondent sent a letter to the Brutus Town Court, seeking special consideration on behalf of the defendant in *People v. Valere H. Upchurch*, a case then pending in that court.

3. On July 17, 1975, respondent sent a letter to the DeWitt Town Court, seeking special consideration on behalf of the defendant in *People v. Dawn V. Hallinan*, a case then pending in that court.

4. On September 19, 1975, respondent sent a letter to Judge Thomas Haberneck of the Newstead Town Court, seeking special consideration on behalf of the defendant in *People v. James P. Conway*, a case then pending before Judge Haberneck.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who makes such a request is guilty of favoritism, as is the judge who accedes to the request. By making requests for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 10, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JOHN G. DIER,

a Judge of the Warren County Court.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Bacas, Krogman & Nikas
(By David B. Krogman)
for Respondent.
Gerald Stern for the
Commission.

The respondent, John Dier, a judge of the County Court of Warren County, was served with a Formal Written Complaint dated October 10, 1978, setting forth two charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, filed on October 30, 1978, respondent admitted in part and denied in part the factual allegations set forth in the charges and denied that his conduct violated the ethical standards cited in the Formal Written Complaint.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on May 10, 1978, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement on May 21, 1979, determined that no outstand-

ing issue of fact remained, and scheduled oral argument with respect to determining (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on June 21, 1979, and upon that record finds the following facts:

1(a) On September 15, 1975, respondent communicated with Ralph Brown, clerk of the Lake George Town Court, with respect to *People v. Verna Bain*, a case then pending before Justice Robert Radloff of the Lake George Town Court.

(b) Respondent had previously been a justice of the Lake George Town Court. Mr. Brown, who had been clerk of that court when respondent had been a justice of that court, was well known to respondent.

(c) Respondent told Mr. Brown that the defendant in *People v. Verna Bain* was a friend of his and was concerned about losing her special license plates if convicted.

(d) Respondent asked Mr. Brown to speak with Judge Radloff to ascertain whether a conviction for speeding could be avoided. Mr. Brown told respondent he would talk to Judge Radloff about the matter and ascertain whether Judge Radloff would consider a reduction.

(e) Judge Radloff's disposition of *People v. Verna Bain* was based upon the request from respondent.

2(a) On June 6, 1975, respondent spoke by telephone to Justice John Carusone of the Queensbury Town Court with respect to *People v. Donald G. McElroy*, a case then pending before Judge Carusone. Respondent stated that he was acquainted with the defendant, who would appreciate not receiving a mark on his driver's license if Judge Carusone felt the defendant was entitled to judicial leniency.

(b) On June 6, 1975, respondent sent a letter to Judge Carusone, stating that the defendant in *People v. Donald G. McElroy* "would very much appreciate an equipment violation."

(c) Judge Carusone's disposition of *People v. Donald G. McElroy* was not based upon the merits but upon the communications he received from respondent.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and

Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who makes such a request is guilty of favoritism, as is the judge who accedes to the request. By making requests for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Mrs. Robb, Mr. Kirsch and Judge Rubin dissent only with respect to sanction and vote that the appropriate sanction is admonition.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: July 10, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

THOMAS HABERNECK,

a Justice of the Newstead Town Court and the Akron Village
Court, Erie County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Diebold, Bermingham, Gorman,
Brown & Bridge (By Michael J.
Brown) for Respondent.
Gerald Stern for the
Commission.

The respondent, Thomas Haberneck, a Justice of the Town Court of Newstead and the Village Court of Akron, Erie County, was served with a Formal Written Complaint dated July 27, 1978, setting forth 51 charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated September 2, 1978, respondent admitted the factual allegations set forth in the charges by his failure to deny them (Section 7000.6[b] of the Commission's Rules, 22 NYCRR 7000.6[b]), and denied that the factual allegations constituted violations of the ethical standards cited in the Formal Written Complaint. At the same time, respondent asserted certain affirmative defenses.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on March 6, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving

the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts as submitted on March 22, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on May 22, 1979, and upon that record finds the following facts:

1. On December 15, 1972, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Wesley F. Glantz* as a result of a written communication he received from Trooper Don Girven, seeking special consideration on behalf of the defendant.

2. On March 23, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Noria Frasca* as a result of a communication he received from Justice George Baroody of the Manchester Town Court, seeking special consideration on behalf of the defendant.

3. On June 21, 1973, respondent reduced a charge of speeding to passing in a no passing zone in *People v. August Spaziano* as a result of a written communication he received from Detective Sergeant John F. Kennerson of the Monroe County Sheriff's Department, seeking special consideration on behalf of the defendant.

4. On June 21, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Lawrence Stirpe* as a result of a written communication he received from Justice Edward Mazur of the Lancaster Town Court, seeking special consideration on behalf of the defendant.

5. On June 27, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Roland McVige* as a result of a written communication he received from Justice Neil Cramer of the Chili Town Court, seeking special consideration on behalf of the defendant.

6. On July 16, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Mary Cerame* as a result of a written communication he received from Michael Cerame, Commissioner of the Monroe County Civil Service Commission and Office of Personnel, seeking special consideration on behalf of the defendant.

7. On July 18, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Patricia Randolph* as a result of a written communication he received from Amherst Town Court Clerk Frank V. Grillo, seeking special consideration on behalf of the defendant.

8. On July 19, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Robert Gerlach* as a result of a written communication he received from Justice Joseph Pyszczyński of the Cheektowaga Town Court, seeking special consideration on behalf of the defendant.

9. On August 10, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Joseph Ingolia* as a result of a written communication he received from James R. Burke, Town and Village Court Case Screener for the Monroe County District Attorney's office, seeking special consideration on behalf of the defendant.

10. On August 28, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Margaret Bennison* as a result of a written communication he received from Judge William Bennison of Municipal Court No. 6 of Dallas, Texas, seeking special consideration on behalf of the defendant, his daughter.

11. On September 26, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Robert Holt* as a result of a written communication he received from Judge Donald Gutbrodt of the Poestenkill Town Court, seeking special consideration on behalf of the defendant.

12. On September 26, 1973, respondent imposed an unconditional discharge in *People v. Myles Kittner* as a result of a written communication he received from officers who were not the arresting officers, seeking special consideration on behalf of the defendant.

13. On September 26, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Melvin L. Lieberman* as a result of a communication he received seeking special consideration on behalf of the defendant.

14. On October 31, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Paul Babitz* as a result of a written communication he received from James Burke, Town and Village Court Case Screener for the Monroe County District Attorney's office, seeking special consideration on behalf of the defendant.

15. On December 15, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Carlton Squier* as a result of a written communication he received from Investigator Rick Flis of the New York State Police, seeking special consideration on behalf of the defendant.

16. On December 19, 1973, respondent reduced a charge of speeding to failure to keep right in *People v. Edward Lockwood* as a result of a written communication he received from James R. Burke, Town and Village Court Case Screener for the Monroe County District Attorney's office, seeking special consideration on behalf of the defendant.

17. On March 13, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Edward J. Smith* as a result of a written communication he received from Justice Joseph Polonsky of the Wawarsing Town Court, seeking special consideration on behalf of the defendant.

18. On June 26, 1974, respondent reduced a charge of speeding to illegal parking in *People v. Jeffrey Stengel* as a result of a written communication he received from Justice Charles Schohl of the Orchard Park Town Court, seeking special consideration on behalf of the defendant.

19. On September 20, 1974, respondent reduced a charge of speeding to illegal parking in *People v. Frederick Rueger* as a result of a written communication he received from James R. Burke, Town and Village Court Case Screener for the Monroe County District Attorney's office, seeking special consideration on behalf of the defendant.

20. On September 25, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Larry Manges* as a result of a written communication he received from Justice Donald Mills of the Oakfield Town Court, seeking special consideration on behalf of the defendant.

21. On September 26, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Michael G. Whisker* as a result of a written communication he received, seeking special consideration on behalf of the defendant.

22. On September 27, 1974, respondent reduced a charge of speeding to illegal parking in *People v. Florence Maugere* as a result of a written communication he received from Justice Sylvester Albano of

the Coeymans Town Court, seeking special consideration on behalf of the defendant.

23. On September 30, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Ida Ruscitti* as a result of a written communication he received from Justice Harry Mills of the Montgomery Town Court, seeking special consideration on behalf of the defendant.

24. On December 10, 1974, respondent reduced a charge of speeding to illegal parking in *People v. Robert Campbell* as a result of a written communication he received from Justice Sebastian Lombardi of the Lewiston Town Court, seeking special consideration on behalf of the defendant.

25. On December 17, 1974, respondent reduced a charge of speeding to illegal parking in *People v. Samuel D'Angelo* as a result of a written communication he received from Trooper J. R. Loncher, seeking special consideration on behalf of the defendant.

26. On February 19, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Salvatore V. DiMeo* as a result of a communication he received, seeking special consideration on behalf of the defendant.

27. On February 28, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. David Mand* as a result of a communication he received from Trooper R. W. Maines, seeking special consideration on behalf of the defendant.

28. On April 14, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Joseph Castlevetere* as a result of a written communication he received from Justice John Modder of the Tuxedo Town Court seeking special consideration on behalf of the defendant.

29. On August 26, 1975, respondent reduced a charge of speeding to failure to keep right in *People v. Francesco Verrelli* as a result of a written communication he received from Patrolman F. DiTullio, seeking special consideration on behalf of the defendant.

30. On September 15, 1975, respondent reduced a charge of speeding to failure to keep right in *People v. James Conway* as a result of a written communication he received from Justice Carlton Chase of the Chittenango Village Court, seeking special consideration on behalf of the defendant.

31. On September 19, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. George Tonas* as a result of a written communication he received from James R. Burke, Town and Village Court Case Screener for the Monroe County District Attorney's office, seeking special consideration on behalf of the defendant.

32. On September 23, 1975, respondent, who is not an attorney, personally appeared before Judge Lawrence Schultz of the Batavia City Court and requested that the charge of speeding against the defendant be dismissed in *People v. Robin Haberneck*, a case then pending before Judge Schultz.

33. On October 15, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. James Winterhalt* as a result of a written communication he received from Justice William Sivec of the Alden Town Court, seeking special consideration on behalf of the defendant.

34. On January 22, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. James Wagner* as a result of a written communication he received from Trooper T. J. Schultz, seeking special consideration on behalf of the defendant.

35. On January 28, 1976, respondent reduced a charge of speeding to failure to keep right in *People v. William Scoville* as a result of a written communication he received from Justice William Farr of the Avon Town and Village Courts, seeking special consideration on behalf of the defendant.

36. On January 28, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Antonio L. Simao, Jr.*, as a result of a written communication he received from Justice James Jerome of the Geddes Town Court, seeking special consideration on behalf of the defendant.

37. On February 3, 1976, respondent reduced a charge of unsafe starting to driving with unsafe tires in *People v. Dorothy Schrub* as a result of a communication he received from Amherst Town Court Clerk Frank Grillo, seeking special consideration on behalf of the defendant.

38. On February 13, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Meyer Tubin* as a result of a written communication he received from Trooper R. F. Szczepanski, seeking special consideration on behalf of the defendant.

39. On February 17, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Anthony L. Panzarella* as a result of a written communication he received from Ed Cayless, seeking special consideration on behalf of the defendant.

40. On March 17, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. George Mruk, Jr.*, as a result of a written communication he received from Senior Investigator V. A. Tobia of the New York State Police, seeking special consideration on behalf of the defendant.

41. On March 20, 1976, respondent imposed an unconditional discharge in *People v. Helen M. Bartosek* as a result of a written communication he received from officers who were not the arresting officers, seeking special consideration on behalf of the defendant.

42. On March 26, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Franklin Zophy* as a result of a written communication he received from Justice Robert Forsythe of the Vernon Town Court, seeking special consideration on behalf of the defendant.

43. On April 7, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Walter Klein* as a result of a communication he received, seeking special consideration on behalf of the defendant.

44. On April 20, 1976, respondent reduced a charge of speeding to failure to obey a traffic control device in *People v. Charles J. Francemone, Jr.*, as a result of a written communication he received from Justice Robert Smolinski of the Solvay Village Court, seeking special consideration on behalf of the defendant.

45. On May 27, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Dennis Bamberg* as a result of a written communication he received from Trooper R. F. Szczepanski, seeking special consideration on behalf of the defendant.

46. On August 19, 1976, respondent reduced a charge of speeding to failure to keep right in *People v. John H. Horton, Jr.*, as a result of a written communication he received from Justice Michael Taddonio of the Irondequoit Town Court, seeking special consideration on behalf of the defendant.

47. On August 24, 1976, respondent reduced a charge of speeding to driving with unsafe tires and then dismissed the charge in *People v. Luigi Maltese* as a result of a written communication he received from

Trooper Sam Thorpe, seeking special consideration on behalf of the defendant.

48. On September 9, 1976, respondent reduced a charge of speeding to illegal parking in *People v. Gilles Vaillancourt* as a result of a written communication he received from Justice Anthony Ellis of the Tupper Lake Village Court, seeking special consideration on behalf of the defendant.

49. On November 30, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. John J. Markwica* as a result of a written communication from Walt Lemza, seeking special consideration on behalf of the defendant.

50. On February 16, 1977, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Joseph Penque* as a result of a written communication he received from Justice George Harris of the Angelica Town and Village Courts, seeking special consideration on behalf of the defendant.

51. On April 21, 1977, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Arlene M. Polowy* as a result of a communication he received, seeking special consideration on behalf of the defendant.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3A of the Code of Judicial Conduct, and Canons 4, 5, 13, 14, 17 and 34 of the Canons of Judicial Ethics. Charges I through LI of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making a request of another judge and by granting *ex parte* requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a “judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge’s court is guilty of *malum in se* misconduct constituting cause for discipline.” In that case, ticket-fixing was equated with favoritism, which the court stated was “wrong and has always been wrong.” *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 10, 1979
New York, New York

Mr. Kirsch's concurring opinion follows.

It appears to me appropriate to make some observations regarding the particularly high number of "ticket-fixing" incidents (51) with respect to which respondent is guilty.

The essence of the wrongdoing in ticket-fixing, of course, is not the number of times a judge has done it but that he has done it at all. The applicable Rules Governing Judicial Conduct are violated the first time a ticket is fixed, and every time thereafter.

There is no dispute that a judge who is guilty of misconduct by virtue of asserting or acceding to special influence in traffic cases should be punished, and in many instances, public censure is appropriate. Nevertheless, when a judge engages in ticket-fixing so often that his actions evince a continuing pattern of misconduct, the sanction imposed should be more severe.

In the instant matter, by engaging in a continuous pattern of misconduct, respondent exhibited something more serious than poor judgment in a limited number of incidents. He has given the impression that the prestige of his office may readily be lent to advance the private interests of others, merely for the asking. He has aggravated the impropriety inherent in even a single incident of ticket-fixing by engaging in it so frequently as to amount to a flagrant, repeated disregard of the applicable ethical standards. As such, respondent's conduct is particularly unacceptable.

In determining the sanctions to be imposed in earlier ticket-fixing cases, both the State Commission on Judicial Conduct and the Court on the Judiciary have given considerable thought to the appropriate weight to ascribe to the number of ticket-fixing incidents committed by a particular judge. The Commission has censured judges for as few as two and as many as 24 incidents (*Matter of Aurigemma*, N.Y.L.J. Feb. 20, 1979, p. 14, col. 3, and *Matter of Vines*, March 31, 1978, unreported), and the Court has censured judges for as few as eight and as many as 98 incidents (*Matter of Wittenburg* and *Matter of Thomson*, N.Y.L.J. Nov. 13, 1978, p. 6, col. 1). Indeed, the Court stated in *Matter of Kuehnel et al.*, that "numbers alone should not determine the sanction to be imposed" (N.Y.L.J. Nov. 13, 1978, p. 6, col. 1).

Numbers, however, should not be discounted in the determination of an appropriate sanction. They serve to distinguish between the

judge who made an isolated mistake and the judge whose misconduct is flagrant and continuous. To render the same sanction on both the judge who is guilty of 51 ticket-fixing incidents and the judge who is guilty of two, might give the erroneous impression that if a judge intends to fix one ticket, he may as well fix a hundred, because the penalty will be the same. Certainly that is not the position of either the Court on the Judiciary or this Commission.

I have voted with the majority for censure in the instant case, in part to be consistent with the standards set by the Commission and the Court on the Judiciary in earlier ticket-fixing cases, and in part because of the difficulty in determining the threshold number between censure and removal. (For example, do 50 incidents of ticket-fixing misconduct justify removal while 49 justify censure?) Unfortunately, the Constitution and the Judiciary Law do not provide for any sanction in between.

My vote for censure in this case should be viewed in the foregoing context.

Dated: July 10, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JAMES S. JEROME,

a Justice of the Geddes Town Court, Onondaga County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Bruce O. Jacobs for
Respondent.
Gerald Stern for the
Commission.

The respondent, James S. Jerome, a justice of the Town Court of Geddes, Onondaga County, was served with a Formal Written Complaint, setting forth 36 charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated November 30, 1978, respondent admitted the factual allegations but denied violating the ethical standards cited in the charges.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on March 9, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts, as submitted, on March 21, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator

submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum.

The Commission considered the record in this proceeding on May 22, 1979, and upon that record finds the following facts:

1. On March 6, 1973, respondent, or someone at his request, communicated with Justice James Hopeck of the Halfmoon Town Court, seeking special consideration on behalf of the defendant in *People v. John J. Scambati, Jr.*, a case then pending before Judge Hopeck.

2. On November 4, 1974, respondent sent a letter to Justice Jack Schultz of the DeWitt Town Court, seeking special consideration on behalf of the defendant in *People v. George D. Yost, Jr.*, a case then pending before Judge Schultz.

3. On January 23, 1976, respondent sent a letter to Justice Thomas Haberneck of the Newstead Town Court, seeking special consideration on behalf of the defendant in *People v. Antonio L. Simao, Jr.*, a case then pending before Judge Haberneck.

4. On August 20, 1976, respondent sent a letter to Justice Jack Schultz of the DeWitt Town Court, seeking special consideration on behalf of the defendant in *People v. Manuel M. Martinez*, a case then pending before Judge Schultz.

5. On November 4, 1976, respondent sent a letter to Justice Thomas O'Connell of the Brutus Town Court, seeking special consideration on behalf of the defendant in *People v. Edward Funda*, a case then pending before Judge O'Connell.

6. On February 5, 1973, respondent reduced a charge of failure to keep right to driving with insufficient head lamps in *People v. Lynn E. Smith* as a result of a communication he received from Trooper Visco, or someone at Trooper Visco's request, seeking special consideration on behalf of the defendant.

7. On April 16, 1973, respondent imposed an unconditional discharge in *People v. Ludwig Steigerwald* as a result of a written communication he received from Justice Helen Burnham of the Salina Town Court, seeking special consideration on behalf of the defendant.

8. On July 16, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. William J. O'Neill, Jr.*, as a result of a written communication he received, seeking special consideration on behalf of the defendant.

9. On October 1, 1973, respondent reduced a charge of passing a red light to driving with an inadequate muffler in *People v. Ronald K. Sollars* as a result of a communication he received from Trooper Jeffery, or someone at Trooper Jeffery's request, seeking special consideration on behalf of the defendant.

10. On October 15, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Cheryl A. Brenner* as a result of a communication he received from Trooper Donnelly, or someone at Trooper Donnelly's request, seeking special consideration on behalf of the defendant.

11. On October 29, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Ronald R. Spadafora* as a result of a communication he received seeking special consideration on behalf of the defendant.

12. On September 17, 1973, respondent reduced a charge of failing to stop for a school bus to driving with an unsafe tire in *People v. Donald Gridley* as a result of a communication he received from Justice J. H. Richardson of the Waterloo Village Court, or someone at Judge Richardson's request, seeking special consideration on behalf of the defendant.

13. On December 3, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Ronald Sullivan* as a result of a communication he received from Justice Harry Heath of the Clay Town Court, or someone at Judge Heath's request, seeking special consideration on behalf of the defendant.

14. On December 17, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Donna L. Barry* as a result of a communication he received from Trooper Kelley, or someone at Trooper Kelley's request, seeking special consideration on behalf of the defendant.

15. On September 9, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Gerald L. Wall* as a result of a written communication he received from Trooper "Jeff", seeking special consideration on behalf of the defendant.

16. On September 16, 1974, respondent imposed an unconditional discharge in *People v. Mary A. Miller* as a result of a communication he received from Matt Holms, or someone at Mr. Holms' request, seeking special consideration on behalf of the defendant.

17. On October 28, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Thomas Cordaro* as a result of a written communication he received from James Burke, Village and Town Court Case Screener in the Monroe County District Attorney's office, seeking special consideration on behalf of the defendant.

18. On August 11, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Norene A. McClurg* as a result of a written communication he received from Trooper Longtin, seeking special consideration on behalf of the defendant.

19. On November 17, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Milton Klarsfeld* as a result of a written communication he received from Marie Oakes, Clerk of the Bethlehem Town Court, seeking special consideration on behalf of the defendant.

20. On January 5, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Jack Sansone* as a result of a written communication he received from Barbara Rinaldo, seeking special consideration on behalf of the defendant.

21. On February 16, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Paul S. Miller* as a result of a written communication he received from Bob Howe, seeking special consideration on behalf of the defendant.

22. On February 20, 1976, respondent reduced a charge of failure to obey a stop sign to driving with an inadequate muffler in *People v. Janice J. Bellucci* as a result of a communication he received, seeking special consideration on behalf of the defendant.

23. On February 23, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Joseph Cannestra* as a result of a written communication he received from Justice Melvin Sitterly of the German Flatts Town Court, seeking special consideration on behalf of the defendant.

24. On February 23, 1976, respondent imposed an unconditional discharge in *People v. John W. Nichols, Jr.*, as a result of a communication he received from Jim Reidy, the New York State Fair Business Manager, seeking special consideration on behalf of the defendant.

25. On March 1, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. James Barry* as a result of a communication he received from Judge James Fahey of the Syracuse City Court, or someone at Judge Fahey's request, seeking special consideration on behalf of the defendant.

26. On March 1, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Richard C. Palmer* as a result of a communication he received from Trooper Angyle, or someone at Trooper Angyle's request, seeking special consideration on behalf of the defendant.

27. On March 15, 1976, respondent imposed an unconditional discharge in *People v. Thomas R. Clere* as a result of a communication he received from Bill Welch, seeking special consideration on behalf of the defendant.

28. On March 22, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Ralph Mohr* as a result of a written communication he received from State Senator Dale Volker, seeking special consideration on behalf of the defendant.

29. On March 26, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. William P. Com-misso* as a result of a written communication he received from Sergeant Chura, seeking special consideration on behalf of the defendant.

30. On August 2, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. James W. Hull* as a result of a communication he received from Trooper Kelly, or someone at Trooper Kelly's request, seeking special consideration on behalf of the defendant.

31. On September 13, 1976, respondent reduced a charge of failure to obey a stop sign to driving with an inadequate muffler in *People v. Robert T. Campagnoni* as a result of a communication he received from Deputy Richards, or someone at Deputy Richards' request, seeking special consideration on behalf of the defendant.

32. On November 1, 1976, respondent imposed an unconditional discharge in *People v. Kenneth Williams* as a result of a written communication he received from Judge Patrick Cunningham of the Onondaga County Court, seeking special consideration on behalf of the defendant.

33. On November 29, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Richard S.*

Miceli as a result of a communication he received from James Burke, Village and Town Court Case Screener in the Monroe County District Attorney's office, seeking special consideration on behalf of the defendant.

34. On November 29, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. William J. Ring, Jr.*, as a result of a communication he received from Sergeant Quinn, or someone at Sergeant Quinn's request, seeking special consideration on behalf of the defendant.

35. On December 27, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Sanford Kline* as a result of a communication he received from Justice F. A. Josef of the Manlius Town Court, or someone at Judge Josef's request, seeking special consideration on behalf of the defendant.

36. On January 13, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Mary J. Foster* as a result of a written communication he received from Onondaga County Commissioner of Elections Frederick Buchanan, seeking special consideration on behalf of the defendant.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3A of the Code of Judicial Conduct, and Canons 4, 5, 13, 14, 17 and 34 of the Canons of Judicial Ethics. Charges I through XXXVI of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Mr. Kirsch concurs in accordance with the views expressed in his concurring opinion in the Commission's determination in *Matter of*

Haberneck, filed in the Court of Appeals together with the determination in the instant proceeding.

Dated: July 10, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JOHN O'CONNOR,

a Justice of the Wawayanda Town Court, Orange County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: Gurda, Gurda & Tatz
(By Michael A. Gurda)
for Respondent.
Gerald Stern for the
Commission.

The respondent, John O'Connor, a justice of the Town Court of Wawayanda, Orange County, was served with a Formal Written Complaint dated August 3, 1978, setting forth ten charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated August 22, 1978, respondent denied all the charges.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on February 15, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination upon the pleadings and the facts as agreed upon. At the same time, respondent withdrew his answer which denied all the charges set forth in the Formal Written Complaint.

The Commission approved the agreed statement of facts on February 27, 1979, determined that no outstanding issue of fact re-

mained, and set a date for oral argument to determine (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda.

The Commission heard oral argument on May 21, 1979, thereafter considered the record in this proceeding, and upon that record finds the following facts:

1. On November 2, 1974, respondent sent a letter to Justice Charles Shaughnessy of the Chester Town Court, seeking special consideration on behalf of the defendant, in *People v. Norma Moshinski*, a case then pending before Judge Shaughnessy.

2. On November 15, 1974, respondent sent a letter to Justice Earl H. Houghtaling of the Walden Village Court, seeking special consideration on behalf of the defendant in *People v. Dean Kross*, a case then pending before Judge Houghtaling.

3. On September 5, 1974, respondent communicated with Justice Horace C. Sawyer of the Goshen Town Court, seeking special consideration on behalf of the defendant in *People v. Robert E. Neilly*, a case then pending before Judge Sawyer.

4. On March 11, 1975, respondent communicated with Justice James McMahon of the Wallkill Town Court, seeking special consideration on behalf of the defendant in *People v. Peter Vriesema*, a case then pending before Judge McMahon.

5. On July 30, 1976, respondent sent a letter to the Justice of the Town Court of Thompson, seeking special consideration on behalf of the defendant in *People v. Shoioch*, a case then pending in the Town Court of Thompson.

6. On March 29, 1974, respondent reduced a charge of driving while intoxicated to speeding in *People v. Stanley Smith* as a result of a written communication he received from Justice Albert Lockwood of the Livingston Town Court, seeking special consideration on behalf of the defendant.

7. On April 24, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Richard E. Burns* as a result of a communication he received from someone at the Poughkeepsie City Court, seeking special consideration on behalf of the defendant.

8. On December 18, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Valerie G. Gaer* as a result of a communication he received from Justice John Ehre of the

Deerpark Town Court, or someone at Judge Ehre's request, seeking special consideration on behalf of the defendant.

9. On September 10, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Henry Leak III*, as a result of a request for special consideration on behalf of the defendant.

10. Charge IX of the Formal Written Complaint is dismissed upon consideration of paragraph 7 in the agreed statement of facts.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through VIII and X of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of misconduct, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by acceding to such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 10, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

HORACE C. SAWYER,

a Justice of the Goshen Village Court, and the Goshen
Town Court, Orange County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Robert T. Hartmann for
Respondent.
Gerald Stern for the
Commission.

The respondent, Horace C. Sawyer, a justice of the Town and Village Courts of Goshen, Orange County, was served with a Formal Written Complaint dated October 10, 1978, setting forth 11 charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, filed on February 5, 1979, respondent (i) admitted the factual allegations set forth in the Formal Written Complaint by his failure to deny same, pursuant to Section 7000.6(b) of the Commission's Rules (22 NYCRR 7000.6[b]) and (ii) denied violating the ethical standards cited in the Formal Written Complaint.

The administrator of the Commission moved for summary determination on March 29, 1979, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). The Commission granted the motion on April 17, 1979, finding respondent guilty of judicial misconduct with respect to all 11 charges, and setting a date for oral

argument on the issue of an appropriate sanction. The administrator submitted a memorandum prior to oral argument.

The Commission heard oral argument on sanction on May 22, 1979, thereafter considered the record in this proceeding, and upon that record finds the following facts:

1. On June 18, 1974, respondent sent a letter to Justice Charles J. Shaughnessy of the Chester Town Court, seeking special consideration on behalf of the defendant in *People v. Robert B. Walker*, a case then pending before Judge Shaughnessy.

2. On June 7, 1975, respondent communicated with Justice John O'Connor of the Wawayanda Town Court, seeking special consideration on behalf of the niece of respondent's wife, the defendant in *People v. Rae Ann Fleming*, a case then pending before Judge O'Connor.

3. On April 13, 1976, respondent sent a letter to Justice Thomas J. Byrne of the Newburgh Town Court, seeking special consideration on behalf of the defendant in *People v. Douglas R. Crana*, a case then pending before Judge Byrne.

4. On a date unknown, respondent sent a letter to Justice Thomas J. Byrne of the Newburgh Town Court, seeking special consideration on behalf of a defendant in a case pending before Judge Byrne.

5. On September 5, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Robert E. Neilly* as a result of a communication he received from Justice John O'Connor of the Wawayanda Town Court, seeking special consideration on behalf of the defendant.

6. On September 25, 1974, respondent imposed an unconditional discharge in *People v. Moses L. Smith* as a result of an oral communication that he received from Justice Joseph W. Dally of the Monroe Town Court, seeking special consideration on behalf of the defendant.

7. On July 28, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Philip A. Bellino, Jr.*, as a result of a communication he received from Justice Edmund V. Caplicki of the LaGrange Town Court, seeking special consideration on behalf of the defendant.

8. On February 15, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Thomas Muscarella* as a result of a communication he received from Justice Edward A. Lahey

of the New Windsor Town Court, seeking special consideration on behalf of the defendant.

9. On June 23, 1976, respondent reduced a charge of speeding to failure to keep right in *People v. Carol Diamond* as a result of a communication he received from Justice Robert J. Bronner of the Mamakating Town Court, seeking special consideration on behalf of the defendant.

10. On February 9, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Joseph Torrisi* as a result of a communication he received from Justice George L. Mapes of the Chester Town Court, seeking special consideration on behalf of the defendant.

11. On February 14, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Robert A. Cromie* as a result of a communication he received from Justice Lyle McDowell of the Mount Hope Town Court, seeking special consideration on behalf of the defendant.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through XI of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of misconduct, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by acceding to such requests from other judges, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 10, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

STANLEY C. WOLANIN,

a Justice of the Town Court of Whitestown, Oneida County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Mrs. Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Evans, Severn, Bankert &
Peet (By Anthony T. Panzone)
for Respondent.
Gerald Stone for the
Commission.

The respondent, Stanley C. Wolanin, a justice of the Town Court of Whitestown, Oneida County, was served with a Formal Written Complaint dated October 10, 1978, setting forth eight charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer, dated November 16, 1978, respondent admitted the factual allegations set forth in the Formal Written Complaint.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts dated March 27, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon.

The Commission approved the agreed statement as submitted on April 18, 1979, determined that no outstanding issue of fact remained,

and set a date for oral argument to determine (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum.

The Commission considered the record in this proceeding on May 22, 1979, and upon that record finds the following facts:

1. On June 24, 1973, respondent sent a letter to Judge James E. Morris of the Brighton Town Court, seeking special consideration on behalf of the defendant in *People v. Donald Adamczyk*, a case then pending before Judge Morris.

2. On February 24, 1975, respondent sent a letter to Judge Joseph Schwertfeger of the Floyd Town Court, seeking special consideration on behalf of the defendant in *People v. Steven W. Citrin*, a case then pending before Judge Schwertfeger.

3. On March 3, 1975, respondent sent a letter to Judge Lawrence F. Finley of the Oneida City Court, seeking special consideration on behalf of the defendant in *People v. John Sroka*, a case then pending before Judge Finley.

4. On July 12, 1975, respondent communicated with Justice Jack Schultz of the DeWitt Town Court, seeking special consideration on behalf of the defendant in *People v. Louis LaFrance*, a case then pending before Judge Schultz.

5. On November 24, 1975, respondent communicated with Judge Joseph Serino of the Rome City Court, seeking special consideration on behalf of the defendant in *People v. Stanley Trzepakz*, a case then pending before Judge Serino.

6. On February 16, 1976, respondent sent a letter to Justice Vincent Scholl of the Kirkland Town Court, seeking special consideration on behalf of the defendant in *People v. Matt Sobieraj*, a case then pending before Judge Scholl.

7. On September 27, 1976, respondent sent a letter to Justice Charles D. Persons, Jr., of the Florida Town Court, seeking special consideration on behalf of the defendant in *People v. Ronald S. Miga*, a case then pending before Judge Persons.

8. On January 25, 1977, respondent sent a letter to Justice Michael Perretta of the Lenox Town Court, seeking special consideration on behalf of the defendant in *People v. William Winstanley*, a case then pending before Judge Perretta.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through VIII of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who makes such a request is guilty of favoritism, as is the judge who accedes to the request. By making requests for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 10, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

J. DOUGLAS TROST,

a Judge of the Family Court, Erie County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Boreanaz, NeMoyer & Baker
(By Harold J. Boreanaz) for
Respondent.
Gerald Stern for the
Commission (Lester Goodchild,
John W. Dorn, Of Counsel).

The respondent, J. Douglas Trost, a judge of the Family Court, Erie County, was served with a Formal Written Complaint dated August 10, 1978, alleging that (i) respondent's conduct was injudicious, intemperate and discourteous in five separate Family Court proceedings between 1974 and 1976, and (ii) respondent signed an order in May 1975, committing an individual to the Erie County Correctional Facility, knowing that the information in the order was false and that the proceeding upon which it was based was fictitious. Respondent filed an answer dated September 15, 1978.

By order dated November 16, 1978, the Commission appointed the Honorable Carman F. Ball as referee to hear and report to the Commission with respect to the issues herein. A hearing was conducted

before the referee on December 5, 1978, and December 21, 1978, and the referee's report, dated March 16, 1979, was filed with the Commission.

The administrator of the Commission moved on April 23, 1979, to confirm in part and disaffirm in part the report of the referee, and for a determination that respondent be removed from office. Respondent opposed the administrator's motion and cross-moved to confirm in part and disaffirm in part the report of the referee and to dismiss the Formal Written Complaint.

The Commission heard oral argument by the administrator, respondent and respondent's counsel on June 21, 1979, thereafter considered the record in this proceeding and upon that record makes the findings of fact and conclusions of law set forth below.

Charge I of the Formal Written Complaint is not sustained and therefore is dismissed.

With respect to Charges II through V of the Formal Written Complaint, the Commission finds as follows:

1. On January 31, 1975, in an Erie County Family Court proceeding entitled D_____ v. D_____,* respondent was injudicious, intemperate and discourteous, in that he made the following remarks from the bench:

(a) The Court: [Referring to the litigants] As a matter of fact, these two people ought to get shotguns and get themselves in a room and kill each other. They are doing it and wasting everybody's time doing it. They are wasting the Court's and everybody's. (Tr. 5).**

(b) The Court: [Speaking to Mr. D] But let me say this to you, [witness' first name], you know I'm not going to let you off the hook, honest, I am not. . . Look, your wife is a pain in the butt to me. All right. But she—look, you didn't ask me whether you should marry her or not. She was your choice, right? Right. . . So you're stuck with her. (Tr. 8).

Mr. D: Ten years ago she threw me out.

The Court: Wait a minute—you should have bounced out.

* In view of the confidential nature of proceedings in Family Court, the names of the parties have been deleted from this determination and record.

**"Tr." refers to the appropriate page in the transcript of the proceeding in Family Court.

(c) The Court: [Referring to amount of support payments] But, Counsel, Let me say this: A reasonable figure that we should talk about here is me putting back to forty-five. [Witness' first name]—he's just one of those stubborn Italian guys, he is not going to give up. He is not going to give up. (Tr. 9).

Mr. D: I don't have the money to pay it. (Tr. 9).

The Court: Wait a minute, wait a minute. You had plenty of money to pay her. (Tr. 9-10).

Mr. D: I spent it. (Tr. 10).

The Court: Certainly you did. Why the hell didn't you save it? You knew you had an order here, didn't you? You didn't spend it, either. You know as well as I do you've got it tucked away. You know, you don't change your life style overnight, [witness' first name]. You never spent \$4,000.00 in eighteen months in your lifetime—period. . . I should put you in jail for lying, you know what. I should get your brother, put him in jail too for lying. (Tr. 10).

(d) The Court: [Referring to Mrs. D] Why don't you divorce this guy and get yourself a man? (Tr. 12).

(e) The Court: And again, you know, [witness' first name] is a pain in the butt to me—put it on the record—okay?. . . You are a pain in the ass to me, [witness' first name]. That is what you are. (Tr. 13).

2. On November 3, 1975, in an Erie County Family Court support proceeding entitled P_____ v. P_____, the respondent was injudicious, intemperate and discourteous, in that he made the following remarks from the bench:

(a) The Court: [Speaking to Mrs. P] I'm going to make some allowance for this man today. I'm not going to let it go. You've got two big lummoxes living there, and twenty bucks a week is not enough, no question about it. (Tr. 5-6).

(b) The Court: [Speaking to Mrs. P] Well, some night you ought to hit him on the head with an axe and it will be all over. (Tr. 8).

3. On April 4, 1976, in an Erie County Family Court support proceeding entitled H_____ v. H_____, respondent was injudicious, intemperate and discourteous, in that he made the following remarks from the bench:

- (a) The Court: [Speaking to Mr. H] Well, why don't you do that until you get squared around. Because, [witness' first name], I don't want to bend you out of shape. (Tr. 4).
- (b) The Court: [Speaking to Mr. H] The fairness is, you pay according to the Order, now, whether you steal it or whatever you do with it. (Tr. 5).

4. On April 9, 1976, in an Erie County Family Court support proceeding entitled S_____ v. J_____, respondent was injudicious, intemperate and discourteous, in that he made the following remarks from the bench:

- (a) The Court: [Speaking to counsel for petitioner] Why don't you give each of them a gun?
- [Counsel]: Each had a gun.
- The Court: Let them use it. (Tr. 5).
- (b) The Court: [Speaking to Mr. J] Don't you understand something? You're still fighting; why the hell don't you give up? Don't you know when you're beat? . . . You're a man, aren't you? . . . Why don't you just lie back and forget about it, instead of pushing. Come on—I'm giving you good advice. . . Not that I agree with the law—don't get me wrong. (Tr. 9-10).

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1 and 33.3(a)(3) of the Rules Governing Judicial Conduct and Canons 1 and 3A(3) of the Code of Judicial Conduct. Charges II through V of the Formal Written Complaint are sustained and respondent is thereby guilty of misconduct.

With respect to Charge VI of the Formal Written Complaint, the Commission finds as follows:

5. In May 1975, Raymond C. Hill, a reporter for the Buffalo Evening News, was preparing a series of news articles on the effectiveness of sentencing convicted defendants to serve their jail terms on weekends only. Without respondent's knowledge, Mr. Hill requested permission of the administrative judge of the eighth judicial district to do a weekend term in the Erie County Correctional Facility, and was refused. Mr. Hill then sought respondent's assistance. Mr. Hill and respondent are friends.

6. Respondent introduced Mr. Hill to Frank Festa, superintendent of the Erie County Correctional Facility. Respondent thereafter had

an order prepared, committing Mr. Hill to the correctional facility so that Mr. Hill might pursue his news story without it being disclosed to the inmates that he was a reporter. Respondent signed the order in his capacity as a judge of the Family Court and caused the court's seal to be affixed thereto, with knowledge that there had been no legal proceedings upon which to base the order and that the information thereon was false. Such order was signed without authority in law or basis in fact.

7. On May 16, 1975, Mr. Hill surrendered himself at the Erie County Correctional Facility. The commitment order signed by respondent was entered as a public record; Mr. Hill was fingerprinted and committed to the facility, and he thereby received a criminal history record.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1 and 33.2(a), (b) and (c) of the Rules Governing Judicial Conduct, and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charge VI of the Formal Written Complaint is sustained and respondent is thereby guilty of misconduct.

It is improper for a judge to speak to litigants in the injudicious, intemperate and discourteous manner respondent did in the cases cited in paragraphs 1 through 4 above. Section 33.3(a)(3) of the Rules Governing Judicial Conduct requires a judge to be "patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity. . ."

There is no justification for a judge to tell the people before him, as respondent did, to "get shotguns. . . and kill each other," or to call someone "a pain in the ass" in open court, or to advise one party "to hit [the other party] over the head with an axe." Such conduct demeans the judiciary and diminishes public confidence in the integrity of the legal system. It aggravates heightened emotions and issues in a judicial forum where emotions should be tempered and issues resolved.

"Breaches of judicial temperament are of the utmost gravity," as noted by the Appellate Division, "[and] impair the public's image of the dignity and impartiality of courts, which is essential to. . . the court's role in society." *Matter of Mertens*, 56 A.D.2d 456 (1st Dept. 1977).

The Commission rejects respondent's explanation that it is "effective at times [for a judge] to meet people at their own level and to use

language and convey ideas that they would not understand if presented in any other fashion” (Hr. 27).^{*} Although respondent describes the setting of his court as “informal” (Hr. 28), his conduct fails to comport with reasonable standards of decorum and taste, appropriate even to an informal setting. He appears to have used the informality of his court to justify the denigration of those who appear in that court.

With respect to his signing of the false commitment order without authorization in law, so that a friend could write a news story, respondent violated those standards of conduct which require a judge to “respect and comply with the law” and which prohibit a judge from “allow[ing] his family, social, or other relationships to influence his judicial conduct or judgment” (Sections 33.2[a] and [b] of the Rules Governing Judicial Conduct). Regardless of the ultimate purpose, judicial office should not be used to advance a private interest (Section 33.2[c] of the Rules).

By reason of the foregoing, the Commission unanimously determines that the appropriate sanction is censure.

Judge Alexander and Mr. Bromberg dissent with respect to Charge I and vote to sustain the charge.

Mr. Kirsch dissents with respect to Charge II and votes to dismiss the charge.

Mr. Wainwright abstains with respect to Charge II.

Mr. Kirsch and Mr. Wainwright dissent with respect to Charges III, IV and V and vote to dismiss the charges.

Mrs. Robb and Mr. Kovner dissent with respect to Charge VI and vote to dismiss the charge.

Dated: August 13, 1979
Albany, New York

^{*} “Hr.” refers to the appropriate page in the transcript of the hearing before the referee.

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

WILLIAM FARR,

a Justice of the Avon Town and Village Court,
Livingston County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: Jones and Jones (By J. Michael
Jones) for Respondent.
Gerald Stern for the
Commission.

The respondent, William Farr, a justice of the Town and Village Courts of Avon, Livingston County, was served with a Formal Written Complaint dated July 27, 1978, setting forth 12 charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated September 7, 1978.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on June 4, 1979, pursuant to section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts, as submitted, on June 21, 1979, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any.

The administrator submitted a memorandum in lieu of oral argument. Respondent waived both oral argument and a memorandum.

The Commission considered the record in this proceeding on July 19, 1979, and upon that record finds the following facts.

1. On July 24, 1975, respondent sent a letter to Justice Gordon Larson of the Town Court of Livonia, seeking special consideration on behalf of the defendant in *People v. Thomas Costella*, a case then pending before Judge Larson.

2. On January 24, 1976, respondent sent a letter to Justice Thomas Haberneck of the Town Court of Newstead, seeking special consideration on behalf of the defendant in *People v. William Scoville*, a case then pending before Judge Haberneck.

3. On September 24, 1976, and October 20, 1976, respondent sent letters to Judge Lawrence Schultz of the Batavia City Court, seeking special consideration on behalf of the defendant in *People v. Samuel Carrick*, a case then pending before Judge Schultz.

4. On June 20, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Bernard Yokes*, as a result of a written communication he received from Justice John L. Johnson of the Town Court of Henrietta, seeking special consideration on behalf of the defendant.

5. On May 7, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Peter Samiec*, as a result of a communication he received from Justice Roger Barnoski of the Town Court of Hope, seeking special consideration on behalf of the defendant.

6. On July 31, 1975, respondent reduced a charge of speeding to passing in a no passing zone in *People v. Anna Ferrari*, as a result of a communication that he received from Justice Michael Cerretto of the Town Court of Gates, seeking special consideration on behalf of the defendant.

7. On September 29, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Thomas Plant*, as a result of a communication he received from Judge Steele, seeking special consideration on behalf of the defendant.

8. On October 23, 1975, respondent reduced a charge of failing to stop for a stop sign to driving with an inadequate muffler in *People v. Virginia Bracchi*, as a result of a written communication he received

from Justice Carmen Battaglia of the Village Court of Geneseo, seeking special consideration on behalf of the defendant.

9. On February 18, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Nicholas Desiderio*, as a result of a written communication he received from Justice Carmen Battaglia of the Village Court of Geneseo, seeking special consideration on behalf of the defendant.

10. On September 7, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of charges of invalid inspection and driving with unsafe tires in *People v. Frank Zdunzyk*, as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

11. On May 28, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People v. Louis Hoffman*, as a result of a written communication he received from Justice Walter Sipple of the Town Court of Fremont, seeking special consideration on behalf of the defendant.

12. On February 19, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People v. Aldo Mannoni*, as a result of a written communication he received from James Burke, Town and Village Court Case Screener of the Monroe County District Attorney's Office, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through XII of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge . . . shall himself observe,
high standards of conduct so that the in-

tegrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur.

Dated: September 6, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

RICHARD FOLMSBEE,

a Justice of the Princeton Town Court, Schenectady County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Grasso and Grasso (By Frank
N. Grasso) for Respondent.
Gerald Stern for the
Commission.

The respondent, Richard Folmsbee, a justice of the Princeton Town Court, Schenectady County, was served with a Formal Written Complaint dated July 27, 1978, setting forth eight charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated September 7, 1978.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on May 7, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts, as submitted, on May 21, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. The administrator

submitted a memorandum in lieu of oral argument. Respondent waived both oral argument and a memorandum.

The Commission considered the record in this proceeding on June 21, 1979, and upon that record makes the findings of fact and conclusions of law set forth below.

Charges I, III, VII and VIII of the Formal Written Complaint are not sustained and therefore are dismissed.

With respect to Charges II, IV, V and VI of the Formal Written Complaint, the Commission finds as follows:

1. On March 18, 1974, respondent sent a letter to a justice of the Town Court of Colonie, seeking special consideration on behalf of the defendant in *People v. Thomas Long*, a case then pending in that court.

2. On December 4, 1972, respondent sent a letter to a justice of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant in *People v. Walter Rapoport*, a case then pending in that court.

3. On April 14, 1976, respondent sent a letter to Justice Charles D. Persons of the Town Court of Florida, seeking special consideration on behalf of the defendant in *People v. Wayne Sparre*, a case then pending before Judge Persons.

4. On July 24, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Richard M. Teller* as a result of a communication he received from Justice Thomas Nethaway of the Town Court of Glen, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges II, IV, V and VI of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such a request from another judge, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission unanimously determines that the appropriate sanction is censure.

All concur.

Dated: September 6, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ROBERT C. FORSYTHE,
a Justice of the Vernon Town Court, Oneida County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Richard Wiles for Respondent.
Gerald Stern for the
Commission.

The respondent, Robert C. Forsythe, a justice of the Town Court of Vernon, Oneida County, was served with a Formal Written Complaint dated November 13, 1978, setting forth 11 charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an amended answer dated February 15, 1979.

The administrator of the Commission moved for summary determination on May 14, 1979, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent submitted papers dated April 10, 1979, in response to the administrator's motion. The Commission granted the motion on May 21, 1979, found respondent guilty of misconduct with respect to all 11 charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum on sanction.

The Commission considered the record in this proceeding on June 21, 1979, and upon that record finds the following facts:

1. On June 23, 1973, respondent sent a letter to the presiding magistrate of the Town Court of Kirkland, seeking special consideration on behalf of the defendant in *People v. Norman R. Snider*, a case then pending in that court.

2. On March 26, 1976, respondent sent a letter to a justice of the Town Court of Newstead, seeking special consideration on behalf of the defendant in *People v. Franklin G. Zophy*, a case then pending in that court.

3. On July 14, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. John A. Seamon*, as a result of a communication he received from Trooper Burgdoff, or someone at the trooper's request, seeking special consideration on behalf of the defendant.

4. On October 26, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Mary L. Seeley* as a result of a communication he received from his co-justice, John W. Orr, of the town Court of Vernon, or someone at Judge Orr's request, seeking special consideration on behalf of the defendant.

5. On January 18, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Philip Wenzel* as a result of a communication he received from Trooper Burgdoff, seeking special consideration on behalf of the defendant.

6. On February 28, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. James E. Mason* as a result of a communication he received from a judge of the Town Court of Lincoln, seeking special consideration on behalf of the defendant.

7. On February 26, 1977, respondent reduced a charge of passing a red light to driving with an unsafe tire in *People v. Basil H. Smith* as a result of a communication he received from someone at the Oneida Police Department, seeking special consideration on behalf of the defendant.

8. On May 7, 1976, respondent reduced a charge of failing to stop at a stop sign to driving with an unsafe tire in *People v. James A. Walker* as a result of a written communication he received from Trooper L. J. Brown, seeking special consideration on behalf of the defendant.

9. On June 18, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Eric J. Burgdoff* as a result of a communication he received from Trooper Burgdoff, seeking special consideration on behalf of the defendant, who is Trooper Burgdoff's son.

10. On June 18, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. David F. Dunn* as a result of a communication he received from Justice J. P. Comstock of the Town Court of Westmoreland, or someone at Judge Comstock's request, seeking special consideration on behalf of the defendant.

11. On November 12, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Peter E. Kinslow* as a result of a communication he received from Justice Melvin Sitterly of the Town Court of German Flatts, or someone at Judge Sitterly's request, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through XI of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his

judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission unanimously determines that the appropriate sanction is censure.

All concur.

Dated: September 6, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

HAROLD A. HENNESSY,

a Justice of the Lima Town and Village Courts, Livingston County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Harold Hennessey, Respondent
Pro Se.
Gerald Stern for the
Commission.

The respondent, Harold A. Hennessey, a justice of the Town and Village Courts of Lima, Livingston County, was served with a Formal Written Complaint dated February 5, 1979, setting forth nine charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated March 8, 1979.

The administrator of the Commission moved for summary determination on May 7, 1979, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent opposed the motion, and, in a letter submitted to the Commission, waived the hearing provided for by Section 44, subdivision 4, of the Judiciary Law. The Commission granted the motion on May 21, 1979, dismissed Charge I of the Formal Written Complaint, found respondent guilty of misconduct with respect to the remaining eight charges, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument.

Respondent waived oral argument and submitted a letter to the Commission. A letter from the Assistant District Attorney of Livingston County was also submitted on respondent's behalf.

The Commission considered the record in this proceeding on June 21, 1979, and upon that record makes the findings of fact and conclusions of law set forth below.

Charge I of the Formal Written Complaint is not sustained and therefore is dismissed.

With respect to Charges II through IX of the Formal Written Complaint, the Commission finds as follows:

1. On February 6, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Robert W. Childs* as a result of a communication he received from Justice Sullivan of the Town Court of Henrietta, or someone at Justice Sullivan's request, seeking special consideration on behalf of the defendant.

2. On June 26, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Kenneth E. Cassidy* as a result of a communication he received from Livingston County Deputy Sheriff William Bastian, or someone at Deputy Bastian's request, seeking special consideration on behalf of the defendant.

3. On December 1, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Richard P. Davis* as a result of a communication he received from Justice Donald L. Boughner of the town Court of Riga, or someone at Judge Boughner's request, seeking special consideration on behalf of the defendant.

4. On February 22, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Donald G. Gerould* as a result of a communication he received from Trooper Recktenwald, or someone at Trooper Recktenwald's request, seeking special consideration on behalf of the defendant.

5. On March 14, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Beryl N. Conklin* as a result of a communication he received from Judge Barr, seeking special consideration on behalf of the defendant.

6. On June 4, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Edward W. O'Hara* as a result of a communication he received from former District Attorney Secora, or someone at Mr. Secora's request, seeking special consideration on behalf of the defendant.

7. On December 21, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Randy O. Wightman* as a result of a communication he received from Livingston County Deputy Sheriff D. Haskins, seeking special consideration on behalf of the defendant.

8. On March 22, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Earl A. Tieppo* as a result of a written communication he received from State Trooper J.J. Orszulak, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3A of the Code of Judicial Conduct, and Canons 4, 5, 13, 17 and 34 of the Canons of Judicial Ethics. Charges II through IX of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By granting such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Judge Cardamone, Judge Rubin and Mr. Wainwright dissent only with respect to the sanction and vote that the appropriate sanction is admonition.

Dated: September 6, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

NORMAN E. KUEHNEL,

a Justice of the Village Court of Blasdell and the Town Court
of Hamburg, Erie County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Cunningham, Pares & Renda
(By William J. Cunningham,
Jr.) for Respondent.
Gerald Stern for the
Commission (John W. Dorn,
Of Counsel).

The respondent, Norman E. Kuehnel, a justice of the Village Court of Blasdell and the Town Court of Hamburg, Erie County, was served with a Formal Written Complaint dated November 13, 1978. Respondent filed an answer dated December 8, 1978.

By order dated December 14, 1978, the Commission appointed the Honorable Harold A. Felix as referee to hear and report with respect to the issues herein. The referee conducted a hearing on February 28, 1979, and thereafter filed his report with the Commission.

Counsel for the Commission moved on June 28, 1979, to confirm the referee's report and to render a determination. The Commission heard oral argument on the motion on July 20, 1979, and thereafter,

in executive session, considered the record in this proceeding, and upon that record finds the following facts.

1. On the night of May 5, 1978, as the respondent was leaving a tavern in the Village of Blasdell between the hours of 10 and 11 o'clock, he saw four youths, Steven Lewis, age 14, Patti Kolodziejczak, age 14, Patrick Michael Burke, age 13, and Richard Harmon, age 15, crossing the parking lot of Carlin's Grocery-Delicatessen Store, located at 107 Lake Avenue, Blasdell, New York. Respondent called upon them to stop, which they did. Respondent walked over from the tavern parking lot and asked which one of them had just broken glass or a glass bottle. The youths denied the accusation and, except for one of the youths, refused to reveal their identities. Respondent thereupon ordered them into the store. Although respondent did not identify himself as a judge, the youths recognized respondent and knew him to be justice of the Village Court of Blasdell.

2. As he ushered the youths through the outer and inner doors of the vestibule leading into the store, respondent struck one of the youths, Michael Burke, on the back of the head, causing the youth to fall forward and hit his head on a door frame ahead of him.

3. Respondent telephoned the police, and a Blasdell Village Police Patrolman, Lindsay Dunne, arrived shortly thereafter in a patrol car. Respondent told officer Dunne that he had caught the four youths breaking glass in the parking lot at Carlin's and he requested that the officer take the youths to the Blasdell Village Police Station so that he could file a complaint against them. There was testimony at the hearing by Officer Dunne that he detected alcohol on respondent's breath, that respondent's speech was slurred and that in his opinion respondent was under the influence of alcohol, which observations were entered in his police log and report; respondent himself testified to having had "one or two" glasses of beer prior to entering the parking lot at Carlin's (Tr. 219).*

4. Prior to escorting the youths to the police station, Officer Dunne searched the lot with his flashlight at the direction of respondent, but found no evidence of broken glass. In the patrol car the officer asked the youths what they had done and their response was that they had done nothing.

5. Officer Dunne drove all four youths to the local police station. Respondent walked the short distance from Carlin's to the police station.

6. At the police station, the four youths were at a bench opposite the counter. Respondent, on his arrival, walked behind the counter to the office of Lt. Eugene Carberry to speak to that officer.

7. Respondent, upon leaving Lt. Carberry's office, stood behind the counter with Officer Dunne while that officer was in the process of obtaining information from the youths. Respondent then spoke to the youths in a hostile, taunting and derogatory manner, equating them to "black hoodlums" and "niggers" (Tr. 95, 126-27, 189). In his testimony at the hearing, respondent did not deny using the word "nigger." He stated "I don't think I did. I don't usually use that word" (Tr. 235-36).

8. At the police station, respondent identified himself as a judge to the youths.

9. On his way out of the police station, and as he passed in front of the youths, respondent intentionally struck Richard Harmon on the right side of his face, causing Mr. Harmon's nose to bleed. Respondent stated that the youth had stuck his tongue out at him.

10. Following the striking, respondent proceeded to leave the police station without reporting the incident at that time or at any time thereafter.

11. Officer Dunne did not see respondent strike Richard Harmon but heard the sound of the striking, saw Richard Harmon's nose bleed, saw Mr. Harmon's reaction to the blow and heard respondent say: "That's for sticking out your tongue at me" (Tr. 157).

12. Approximately two or three weeks thereafter, Richard Harmon's father, H. Leroy Harmon, met with respondent at the Village Hall. The two men planned a second meeting at which Richard Harmon would be present. At the second meeting, respondent, addressing the matter of his having struck Richard Harmon at the police station, stated that he believed he had been tripped and that the striking had been accidental. He apologized to Richard Harmon and offered to allow Richard to punch him. Respondent proposed that the three parties enter into a general release, and the Harmons agreed to accept the sum of \$100 in consideration for the release.

13. Respondent prepared the release, and on June 2, 1978, at a bank in the Village of Blasdell, respondent paid Richard Harmon \$100 in cash, and Richard Harmon and his father signed the general release before a notary public, purportedly relieving respondent both individually and as a village justice from any liability arising out of the

incident in the Blasdell Village Police Station on May 5, 1978. The release alleged that respondent accidentally struck Richard N. Harmon after having been tripped.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1 and 33.2(a) of the Rules Governing Judicial Conduct and Canons 1 and 2A of the Code of Judicial Conduct. The report of the referee is confirmed. The charge set forth in the Formal Written Complaint is sustained, and respondent is therefore guilty of misconduct.

A judge's obligation to avoid both impropriety and the appearance of impropriety is fundamental to the fair and proper administration of justice. Respondent's conduct in the instant matter was both improper and appeared to be improper and as such undermined the integrity of the judiciary.

It was improper for respondent to have engaged in an angry verbal confrontation with the four youths on the evening of May 5, 1978, in the vicinity of Carlin's Grocery-Delicatessen. It was wrong for him to have struck in anger one of those youths, a 13-year old boy. It was improper for respondent to have taunted the four youths subsequently with derogatory and offensive remarks when they were in police custody at the Blasdell Police Station. It was wrong for respondent to have intentionally struck a second of the youths, a 15-year old boy in police custody in the Blasdell Police Station. Whatever verbal insolence by the youths may have motivated his acts, respondent's conduct far exceeded the provocation.

At the least, it is unseemly and injudicious for a judge to engage in such a fray with juveniles and to assault two of them physically. Indeed, having been recognized by the youths to be a judge and further having identified himself as a judge, respondent was obligated to set a dignified example for these youths and the community. Instead, his conduct diminished confidence in and respect for the judiciary and violated the applicable sections of the Rules Governing Judicial Conduct which require a judge to "himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved" (Section 33.1 of the Rules).

Even were the Commission to attribute respondent's conduct at Carlin's to a reflexive, spur-of-the-moment confrontation, no such explanation would apply to respondent's subsequent conduct at the police station. In resuming the confrontation by taunting the youths at the police station, after some time had elapsed and after having had

ample opportunity to reflect on his conduct at Carlin's and to temper his emotions, respondent exhibited exceedingly poor judgment.

In any event, respondent's striking of the two youths is indefensible. His offer several weeks later to allow one of the youths to punch him in retaliation was irresponsible and unworthy of a judge.

Respondent's conduct is not mitigated by the argument that he was not on the bench at the time of the incidents and was acting in a private capacity. As expressed by the learned referee, himself a former judge of the Family Court, "respondent although off the bench remained cloaked figuratively, with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others. Public confidence in the judiciary is diminished by actions that are suggestive of impropriety and resort to abusive language whether in or out of the courtroom, and may well demonstrate a lack of judicial temperament prejudicial to the administration of justice." Indeed, respondent himself appears to have recognized this concept, inasmuch as the general release he drew for signature by the Harmons sought to relieve him of liability not only as an individual but also as village justice of Blasdell.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office.

Judge Alexander, Mr. Bromberg, Mrs. DelBello, Mr. Kirsch, Mr. Kovner, Mr. Maggipinto, Mrs. Robb and Judge Shea concur.

Judge Cardamone, Judge Rubin and Mr. Wainwright concur in the views expressed herein and dissent only with respect to the determined sanction, noting that respondent's lengthy tenure of 22 years on the bench would make censure a more appropriate sanction.

Dated: September 6, 1979
Albany, New York

* "Tr." refers to the transcript of the hearing before the referee.

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ANDREW L. LANG,

a Justice of the Pembroke Town Court, Genesee County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Clark J. Zimmerman for
Respondent.
Gerald Stern for the
Commission.

The respondent, Andrew L. Lang, a justice of the Town Court of Pembroke, Genesee County, was served with a Formal Written Complaint dated January 29, 1979, setting forth 22 charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an amended answer dated March 15, 1979.

The administrator of the Commission moved for summary determination on May 7, 1979, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent filed an answering affidavit dated April 30, 1979. The Commission granted the motion on May 21, 1979, found respondent guilty of misconduct with respect to all 22 charges, and set a date for oral argument on the issue of an appropriate sanction. Both the administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on June 21, 1979, and upon that record finds the following facts:

1. On November 11, 1975, respondent sent a letter to Justice Eugene Leigh of the Town Court of Gaines, seeking special consideration on behalf of the defendant in *People v. Myron Chittenden*, a case then pending before Judge Leigh.
2. On June 11, 1976, respondent sent a letter to the presiding magistrate of the Town Court of Cheektowaga, seeking special consideration on behalf of the defendant in *People v. Paul F. Smith*, a case then pending in that court.
3. On June 19, 1976, respondent sent a letter to a justice of the Town Court of Cheektowaga, seeking special consideration on behalf of the defendant in *People v. Norman Newton, Jr.*, a case then pending in that court.
4. On May 22, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Peter P. Pilittere* as a result of a written communication he received from Justice Michael Cerretto of the Town Court of Gates, seeking special consideration on behalf of the defendant.
5. On April 3, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Robert J. Garus* as a result of a written communication he received from Trooper Jim Cackett, seeking special consideration on behalf of the defendant.
6. On October 21, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Richard J. Comiskey* as a result of a written communication he received from a justice of the Town Court of Alden, seeking special consideration on behalf of the defendant.
7. On November 29, 1975, respondent reduced a charge of speeding to driving with an inadequate exhaust in *People v. James M. Ryan* as a result of a written communication he received from Justice Rudolph Halicki of the Town Court of Dunkirk, seeking special consideration on behalf of the defendant.
8. On November 29, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Richard C. Weiler* as a result of a written communication he received from Trooper R.F. Szczepanski, seeking special consideration on behalf of the defendant.
9. On December 10, 1975, respondent reduced a charge of speeding to failure to keep right in *People v. Myron W. Culver* as a result of a written communication he received from Justice John L. Johnson of the Town Court of Henrietta, seeking special consideration on behalf of the defendant.

10. On December 10, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Sidney Bronstein* as a result of a written communication he received from Justice Jack Schultz of the Town Court of DeWitt, seeking special consideration on behalf of the defendant.

11. On January 8, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Raymond Bragahola* as a result of a written communication he received from Justice George Field of the Town Court of Lafayette, seeking special consideration on behalf of the defendant.

12. On February 12, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Samuel A. Vallerian* as a result of a written communication he received from Justice Anthony P. Errico of the Town Court of Gates, or someone at Judge Errico's request, seeking special consideration on behalf of the defendant.

13. On April 1, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Richard A. D'Imperio* as a result of a written communication he received from Deputy Fire Commissioner Thomas L. DiMaria of the City of Rochester, seeking special consideration on behalf of the defendant.

14. On April 7, 1976, respondent reduced a charge of speeding to driving without a valid inspection in *People v. Christopher J. Polito* as a result of a communication he received from Trooper G. E. Wood, seeking special consideration on behalf of the defendant.

15. C July 7, 1976, respondent reduced a charge of failing to comply with a sign to driving with an unsafe tire in *People v. Bruce L. Dent* as a result of a written communication he received from Trooper Ed Cayple, seeking special consideration on behalf of the defendant.

16. On October 30, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Hazel Little* as a result of a written communication he received from Trooper Ed Cayple, seeking special consideration on behalf of the defendant.

17. On December 9, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Shirley A. Fanara* as a result of a written communication he received from Trooper Jim Cackett, seeking special consideration on behalf of the defendant, Trooper Cackett's sister-in-law.

18. On March 31, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Thomas J. Ennis* as a result

of a written communication he received from Investigator W.J. Tumulty of the New York State Police, seeking special consideration on behalf of the defendant.

19. On May 5, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Susan E. Batty* as a result of a written communication he received from Justice H. Andrew Batty of the Town Court of Tyre, seeking special consideration on behalf of the defendant, Judge Batty's daughter.

20. On June 9, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Ernest G. Homokay* as a result of a written communication he received from Trooper M.E. Thorpe, seeking special consideration on behalf of the defendant.

21. On June 15, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Helene L. Klein* as a result of a written communication he received from someone at the request of Justice Joseph L. Thomson of the Town Court of Cornwall, seeking special consideration on behalf of the defendant.

22. On June 15, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Robert O. Ruch* as a result of a written communication he received from Trooper T.M. Campbell, seeking special consideration on behalf of the defendant, Trooper Campbell's brother-in-law.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through XXII of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of misconduct, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by acceding to such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission unanimously determines that the appropriate sanction is censure.

All concur.

Dated: September 6, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

FRANK J. McDONALD,

a Justice of the Village Court of Catskill, Greene County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Alex Wiltse, Jr., for
Respondent.
Gerald Stern for the
Commission.

The respondent, Frank J. McDonald, a justice of the Village Court of Catskill, Greene County, was served with a Formal Written Complaint dated July 27, 1978, setting forth 22 charges of misconduct relating to the improper assertion of influence in traffic cases. In his answer dated October 5, 1978, respondent admitted in part and denied in part the factual allegations, denied having violated the ethical standards cited in the Formal Written Complaint, and asserted certain affirmative defenses.

The administrator of the Commission moved for summary determination on March 8, 1979, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). The Commission granted the motion on April 17, 1979, finding respondent guilty of misconduct with respect to Charge I and Charges IV through XXII, dismissing Charges II and III on motion of the administrator, and setting a date

for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived both oral argument and a memorandum.

The Commission considered the record in this proceeding on June 21, 1979, and upon that record makes the findings of fact and conclusions of law set forth below.

Charges II and III of the Formal Written Complaint are dismissed.

With respect to Charge I and Charges IV through XXII, the Commission finds as follows:

1. On December 13, 1975, respondent sent a letter to Justice Charles Crommie of the Town Court of Catskill, seeking special consideration on behalf of the defendant in *People v. George H. Rogers*, a case then pending before Judge Crommie.

2. On January 3, 1973, respondent reduced a charge of driving while intoxicated to speeding in *People v. Joseph Suto* as a result of written communications he received from Judge John E. Holt-Harris, Jr., of the Albany City Traffic Court, seeking special consideration on behalf of the defendant.

3. On March 3, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Michael Hodor* as a result of a written communication he received from Justice Charles Crommie of the Town Court of Catskill, seeking special consideration on behalf of the defendant.

4. On June 15, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Werner Berge* as a result of a written communication he received from Justice Judson Wright of the Town Court of Coxsackie, seeking special consideration on behalf of the defendant.

5. On August 7, 1973, respondent (i) reduced a charge of driving while intoxicated to speeding, (ii) reduced a charge of speeding to driving with an unsafe tire and (iii) dismissed a charge of failure to keep right in *People v. Henry Schaefer*, as a result of a communication he received from Justice George Carl of the Town Court of Catskill, or someone at Judge Carl's request, seeking special consideration on behalf of the defendant.

6. On August 17, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Alberti E. Clyde* as a result of a written communication he received from Justice Charles Crommie

of the Town Court of Catskill, seeking special consideration on behalf of the defendant.

7. On August 21, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Dyann Filinger* as a result of a communication he received from Justice Nicholas Bier of the Town Court of Cairo and Justice George Carl of the Town Court of Catskill, or someone at their request, seeking special consideration on behalf of the defendant.

8. On August 28, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Nicholas Olivetti* as a result of a communication he received from Justice George Carl of the Catskill Town Court, or someone at Judge Carl's request, seeking special consideration on behalf of the defendant.

9. On December 24, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Delores Smith* as a result of a written communication he received from Judge Harold Liebman of the Hudson City Court, seeking special consideration on behalf of the defendant.

10. On March 11, 1974, respondent reduced a charge of speeding to driving with a faulty muffler in *People v. Thomas Brownlie* as a result of a written communication he received from Justice Robert Diamond of the Town Court of Marbletown, seeking special consideration on behalf of the defendant.

11. On May 14, 1974, respondent imposed an unconditional discharge in *People v. Kenneth Dudley* as a result of a written communication he received from Justice Edward F. Jones of the Town Court of Coeymans, or someone at Judge Jones' request, seeking special consideration on behalf of the defendant.

12. On July 15, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Esther Tozzi* as a result of a written communication he received from Justice Nicholas Bier of the Town Court of Cairo, seeking special consideration on behalf of the defendant.

13. On November 8, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Jade J. Hawthorne* as a result of a written communication he received from Justice Charles Crommie of the Town Court of Catskill, seeking special consideration on behalf of the defendant.

14. On March 21, 1975, respondent imposed an unconditional discharge in *People v. Leila June* as a result of a written communication he received from Justice George Carl of the Town Court of Catskill, or someone at Judge Carl's request, seeking special consideration on behalf of the defendant.

15. On April 28, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Francis Burden* as a result of a written communication from Peter Savago, Chairman of the Ulster County Legislature, seeking special consideration on behalf of the defendant.

16. On June 17, 1975, respondent imposed an unconditional discharge in *People v. John Kneer* as a result of a written communication he received from Justice Joseph Reich of the Village Court of Tannersville, or someone at Judge Reich's request, seeking special consideration on behalf of the defendant.

17. On July 8, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Johanne Larsen* as a result of a written communication he received from Justice Nicholas Bier of the Town Court of Cairo, seeking special consideration on behalf of the defendant.

18. On July 30, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Rosemary German* as a result of a written communication he received from Justice Charles Crommie of the Town Court of Catskill, seeking special consideration on behalf of the defendant.

19. On September 3, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Richard Swartout* as a result of a written communication he received from Neal Brandow, Greene County Clerk, seeking special consideration on behalf of the defendant.

20. On August 9, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Katherine Haines* as a result of a written communication he received from Justice Charles Crommie of the Town Court of Catskill seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct, and Canons 1, 2 and 3A of the Code of Judicial Conduct, and Canons 4, 5, 13, 14,

17 and 34 of the Canons of Judicial Ethics. Charges I and IV through XXII of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct. The Commissioner finds that the affirmative defense to Charges VIII and X is not sustained, and that, under the facts herein, the consent of the arresting officers to reductions of the respective charges is no defense.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making an *ex parte* request of another judge for a favorable disposition for the defendant in a traffic case, and by granting such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur.

Dated: September 6, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

GEORGE BAROODY,

a Justice of the Manchester Town Court, Ontario County.

Before: Mrs. Gene Robb, Chairwoman
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Thomas J. Gilmore, Jr.,
for Respondent.
Gerald Stern for the
Commission.

The respondent, George Baroody, a justice of the Town Court of Manchester, Ontario County, was served with a Formal Written Complaint dated April 20, 1979, setting forth three charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated May 2, 1979.

By notice of motion dated July 5, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on July 19, 1979, found respondent guilty of misconduct with respect to all three charges in the Formal Written Complaint, and set a date for oral argument on the issues of an appropriate sanction.

At oral argument on August 16, 1979, respondent's counsel introduced exhibits not already in the record before the Commission, which were received by the Commission with the consent of the administrator. Thereafter the Commission considered the record in this proceeding, and upon that record finds the following facts.

1. As to Charge I, on June 11, 1973, respondent communicated with Justice James E. Morris of the Town Court of Brighton, seeking special consideration on behalf of the defendant in *People v. Philip Caruso*, a case then pending before Judge Morris.

2. As to Charge II, on March 27, 1973, respondent, or someone at his request, communicated with Justice J. Kelsey Webster of the Town Court of Newstead, seeking special consideration on behalf of the defendant in *People v. Noria S. Frasca*, a case then pending before Judge Webster.

3. As to Charge III, on January 9, 1975, respondent, or someone at his request, communicated with Justice Willis D. MacKenzie of the Town Court of LeRoy, seeking special consideration on behalf of the defendant in *People v. Victoria A. Frasca*, a case then pending before Judge MacKenzie.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the Rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

By reason of the foregoing, the Commission determines by vote of 6 to 2 that the appropriate sanction is admonition. Mrs. Robb and Judge Rubin dissent only with respect to sanction and vote that there be no public sanction.

Dated: October 11, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ROY J. BURLEY,

a Justice of the Ogden Town Court, Monroe County.

Before: Mrs. Gene Robb, Chairwoman
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Roy Burley, Respondent
Pro Se.
Gerald Stern for the
Commission.

The respondent, Roy Burley, a justice of the Town Court of Ogden, Monroe County, was served with a Formal Written Complaint dated May 2, 1979, setting forth five charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated May 15, 1979.

By notice of motion dated July 5, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on July 19, 1979, found respondent guilty of misconduct with respect to all five charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum on sanction.

The Commission considered the record in this proceeding on August 16, 1979, and upon that record finds the following facts.

1. As to Charge I, on January 9, 1973, respondent reduced a charge of failing to stop for a stop sign to driving with an inadequate muffler in *People v. Paul A. Carlo* as a result of a communication he received from Justice Bob Hall of the Town Court of Sweden, or someone at Judge Hall's request, seeking special consideration on behalf of the defendant.

2. As to Charge II, on March 22, 1973, respondent sent a letter to the Justice of the Town Court of Greece, seeking special consideration on behalf of the defendant in *People v. Vera Fishbaugh*, a case then pending in that court.

3. As to Charge III, on May 6, 1974, respondent sent a letter to the Justice of the Town Court of Riga, seeking special consideration on behalf of the defendant in *People v. John E. Kerekavich*, a case then pending in that court.

4. As to Charge IV, on May 7, 1974, respondent sent a letter to Justice Claude Barclay of the Town Court of Palma, seeking special consideration on behalf of the defendant in *People v. Douglas F. Taylor*, a case then pending before Judge Barclay.

5. As to Charge V, on March 9, 1976, respondent sent a letter to the Justice of the Town Court of Alden seeking special consideration on behalf of the defendant in *People v. Harold W. Way*, a case then pending in that court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines by vote of 7 to 1 that the appropriate sanction is censure. Judge Rubin dissents only with respect to sanction and votes that the appropriate sanction is admonition.

Dated: October 11, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

KARL J. GRIEBSCH,

a Justice of the Harrietstown Town Court, Franklin County.

Before: Mrs. Gene Robb, Chairwoman
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Joseph F. Duffy for
Respondent.
Gerald Stern for the
Commission.

The respondent, Karl J. Griebisch, a justice of the Harrietstown Town Court, Franklin County, was served with an amended Formal Written Complaint dated December 11, 1978, setting forth eight charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated January 2, 1979.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on June 28, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts, as submitted, on July 19, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum on the issues herein. The Commission heard oral argument on August 16, 1979, thereafter considered the record in this proceeding, and upon that record finds the following facts.

1. As to Charge I, on August 29, 1974, respondent sent a letter to Justice James Lamb of the Town Court of Nassau, seeking special consideration on behalf of the defendant in *People v. Joseph Gnocci*, a case then pending before Judge Lamb.

2. As to Charge II, on August 27, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. William C. Dietrich*, as a result of a written communication he received from Justice Thomas Byrne of the Town Court of Newburgh, seeking special consideration on behalf of the defendant.

3. As to Charge III, on April 16, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Benjamin King*, as a result of a communication he received from Justice Philip Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on April 12, 1975, respondent dismissed a misdemeanor charge of leaving the scene of an accident in *People v. Francis Bourdage, Jr.*, as a result of a written communication he received from Justice Anthony Ellis of the Town Court of Altamont, seeking special consideration on behalf of the defendant.

5. As to Charge V, on August 21, 1975, respondent reduced a charge of following too closely to driving with unsafe tires in *People v. Patricia Vanucchi*, as a result of a written communication he received from Justice Joseph Vanucchi of the Town Court of Owego, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on September 2, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Germain D. Carriere*, as a result of a written communication he received from Justice Anthony Ellis of the Town Court of Altamont, seeking special consideration on behalf of the defendant.

7. As to Charge VII, on April 13, 1973, respondent reduced a charge of speeding to improper passing in *People v. Michael O. Wells*, as a result of a written communication he received from Justice Armand Favreau of the Town Court of Champlain, seeking special consideration on behalf of the defendant, who is Judge Favreau's grandson.

8. As to Charge VIII, on February 16, 1973, respondent reduced a charge of driving while impaired to speeding in *People v. Paul M. Turner*, as a result of a written communication he received from Justice John LaMalfa of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through VIII of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making an *ex parte* request of another judge for a favorable disposition for the defendant in a traffic case, and by granting such requests from other judges, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines by vote of 7 to 1 that the appropriate sanction is censure. Judge Rubin dissents only with respect to sanction and votes that the appropriate sanction is admonition.

Dated: October 11, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

EDWIN W. SANFORD

a Justice of the Altamont Village Court, Albany County.

Before: Mrs. Gene Robb, Chairwoman
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: DeGraff, Foy, Conway &
Holt-Harris (By John Carter
Rice) for Respondent.
Gerald Stern for the
Commission.

The respondent, Edwin W. Sanford, a justice of the Village Court of Altamont, Albany County, was served with a Formal Written Complaint dated July 27, 1978, setting forth 15 charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated September 1, 1978.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on February 26, 1979, pursuant to section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts, as submitted, on July 19, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum on the issues herein. At oral argument on August 16, 1979, respondent's counsel introduced

additional factual data in the record before the Commission, which was received by the Commission with the consent of the administrator. Thereafter, the Commission considered the record in this proceeding, and upon that record makes the following findings of fact.

1. As to Charge I, on February 11, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Emilio Salvatore*, as a result of a written communication he received from Justice Edward Longo of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant.

2. As to Charge II, on August 25, 1976, respondent reduced a charge of speeding to illegal parking in *People v. W. Bednarowski, Jr.*, as a result of a written communication he received from Justice Edward Longo of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant.

3. As to Charge III, on December 17, 1976, respondent reduced a charge of speeding to illegal parking, then dismissed the charge, in *People v. Louis F. Martin*, as a result of a written communication he received from Justice Edward Longo of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on April 7, 1976, respondent reduced a charge of speeding to driving with unsafe tires, then dismissed the charge, in *People v. Peter M. Bolton*, as a result of a written communication he received from Justice Matthew Mattaraso of the Town Court of Guilderland, seeking special consideration on behalf of the defendant.

5. As to Charge V, on August 31, 1976, respondent reduced a charge of speeding to illegal parking in *People v. Edward H. Beck*, as a result of a written communication he received from Justice Edward F. Jones of the Town Court of Coeymans, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on April 27, 1976, respondent reduced a charge of speeding to illegal parking in *People v. Kathleen M. Ruecker*, as a result of a written communication he received from Justice Harold Schultz of the Town Court of New Scotland, seeking special consideration on behalf of the defendant.

7. As to Charge VII, on September 28, 1976, respondent reduced a charge of speeding to illegal parking in *People v. David H. Bulman*, as a result of a written communication he received from Justice Richard Lips of the Town Court of Clifton Park, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on February 19, 1976, respondent reduced a charge of speeding to illegal parking in *People v. Charles E. Lockrow*, as a result of a written communication he received from Justice Robert E. Murphy of the Village Court of Voorheesville, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on April 18, 1975, respondent imposed an unconditional discharge in *People v. Vincent F. Stramiello*, as a result of a written communication he received from Justice Harry D'Agostino of the Town Court of Colonie, seeking special consideration on behalf of the defendant.

10. As to Charge X, on July 5, 1976, respondent imposed an unconditional discharge in *People v. Eugene Audi*, as a result of a communication he received from Justice Harold Schultz of the Town Court of New Scotland, or someone at Judge Schultz's request, seeking special consideration on behalf of the defendant.

11. As to Charge XI, on May 4, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Linda Knopp*, as a result of a communication he received from Justice Duncan MacAffer of the Village Court of Menands, or someone at Judge MacAffer's request, seeking special consideration on behalf of the defendant.

12. As to Charge XII, on July 21, 1976, respondent imposed an unconditional discharge in *People v. Donald Albright*, as a result of a communication he received from Acting Village Justice John Welsh of the Village Court of Altamont, or someone at Judge Welsh's request, seeking special consideration on behalf of the defendant.

13. As to Charge XIII, on April 14, 1976, respondent dismissed a charge of driving with ability impaired in *People v. Gary J. DiCocco*, as a result of a communication he received from Justice Edward Longo of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant, who is Judge Longo's nephew.

14. As to Charge XIV, on December 20, 1975, respondent dismissed a charge of speeding in *People v. C.A. Tessitore*, as a result of a communication he received from Joe Frangella, or someone at Mr. Frangella's request, on behalf of the defendant.

15. As to Charge XV, on June 9, 1976, respondent reduced a charge of speeding to illegal parking in *People v. George Spiliotis*, as a result of a communication he received, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through XV of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By granting *ex parte* requests from other judges for favorable dispositions for the defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur.

Dated: October 11, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

VINCENT P. SCHOLL,

a Justice of the Kirkland Town Court, Oneida County.

Before: Mrs. Gene Robb, Chairwoman
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Evans, Severn, Bankert &
Peet (By Anthony T. Panzone)
for Respondent.
Gerald Stern for the
Commission.

The respondent, Vincent P. Scholl, a justice of the Town Court of Kirkland, Oneida County, was served with a Formal Written Complaint dated February 27, 1979, setting forth 13 charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer received March 23, 1979.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on July 3, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts, as submitted, on July 19, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum in lieu of oral argument. Respondent submitted a letter in lieu of oral argument.

The Commission considered the record in this proceeding on August 16, 1979, and upon that record finds the following facts.

1. As to Charge I, on September 9, 1974, respondent sent a letter to Justice Michael Cienava of the Village Court of New York Mills, seeking special consideration on behalf of the defendant in *People v. Arthur R. Mann, Jr.*, a case then pending before Judge Cienava.

2. As to Charge II, on July 14, 1976, respondent sent a letter to Justice Lee Armstrong of the Village Court of West Winfield, seeking special consideration on behalf of the defendant in *People v. Steven Shaut*, a case then pending before Judge Armstrong.

3. As to Charge III, on June 26, 1973, respondent reduced a charge of speeding to failure to keep right in *People v. Norman R. Snider* as a result of a written communication he received from Justice Robert Forsythe of the Town Court of Vernon, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on April 22, 1975, respondent reduced a charge of speeding to driving with an unsafe tire and imposed an unconditional discharge in *People v. Carol M. Vangura* as a result of a communication he received from Investigator Vangura, seeking special consideration on behalf of the defendant.

5. As to Charge V, on February 24, 1976, respondent reduced a charge of failure to stop at a stop sign to failure to obey traffic laws in *People v. Matthew Sobieraj*, as a result of a written communication he received from Justice Stanley C. Wolanin of the Town Court of Whitestown, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on October 12, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Edwin C. Evans* as a result of a written communication he received from Justice Joseph C. Schwertfeger of the Town Court of Floyd, seeking special consideration on behalf of the defendant.

7. As to Charge VII, on May 13, 1975, respondent reduced a charge of driving to the left of pavement markings to failure to obey traffic laws in *People v. Charles H. Stahl* as a result of a written communication he received, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on September 23, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Judith Holmes* as a result of a communication he received from Trooper Marino, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on August 3, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler and imposed an unconditional discharge in *People v. Donald C. Tully* as a result of a communication he received, seeking special consideration on behalf of the defendant.

10. As to Charge X, on April 24, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Margaret A. Riley* as a result of a communication he received from Trooper Wayland Smith, seeking special consideration on behalf of the defendant.

11. As to Charge XI, on August 21, 1973, respondent reduced a charge of driving with an unsafe tire in *People v. Julie A. DiToma* as a result of a written communication he received from Trooper Al Lonsberry, seeking special consideration on behalf of the defendant.

12. As to Charge XII, on April 8, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. William J. Rowlands* as a result of a communication he received from Justice Michael Cienava of the Town Court of New York Mills, seeking special consideration on behalf of the defendant.

13. As to Charge XIII, on April 16, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. Anthony Farouche* as a result of a communication he received from Justice George Murtaugh of the Town Court of Frankfort, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through XIII of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* request of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe,
high standards of conduct so that the in-

tegrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur.

Dated: October 11, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ANTONIO S. FIGUEROA,

a Judge of the Criminal Court of the City of New York,
New York County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Emilio Nunez for Respondent.
Gerald Stern for the
Commission (Robert H. Straus,
Jeanne O'Connor, Of Counsel).

The respondent, Antonio S. Figueroa, a judge of the Criminal Court of the City of New York, was served with a Formal Written Complaint dated June 20, 1978, alleging in two charges of misconduct that respondent improperly intervened in a felony proceeding in which the defendant was his great grandnephew. Respondent filed an answer dated September 12, 1978, denying in substantial part the material allegations.

By order dated November 16, 1978, the Commission appointed Henry J. Smith, Esq., as referee to hear and report to the Commission with respect to the issues herein. A hearing was conducted on February 21 and 22, 1979, and the referee's report dated July 25, 1979, was filed with the Commission. The referee, *inter alia*, recommended dismissing Charge I of the Formal Written Complaint and sustaining Charge II. The referee also reached conclusions with respect to the veracity of respondent's testimony.

By notice dated August 27, 1979, the administrator of the Commission moved to disaffirm the referee's report as to Charge I, to confirm as to Charge II, and to render a determination that respondent be censured. Respondent opposed the administrator's motion and moved to confirm the referee's report as to Charge I, to disaffirm as to Charge II, and to dismiss the Formal Written Complaint.

The Commission received memoranda and entertained oral argument with respect to these motions on September 26, 1979, thereafter considered the record of this proceeding, and upon that record makes the findings and conclusions below.

Charge I is not sustained and therefore is dismissed.

With respect to Charge II, the Commission finds the following facts.

1. On February 25, 1977, the grand jury of New York County indicted Frank Acosta on the felony charge of criminal possession of a weapon.

2. Frank Acosta and respondent are related by consanguinity in that Mr. Acosta is respondent's great grandnephew.

3. On March 24, 1977, Mr. Acosta was arraigned in Supreme Court and entered a plea of not guilty. *People v. Frank Acosta* was thereupon assigned to the Honorable E. Leo Milonas, then a judge of the New York City Criminal Court assigned to Supreme Court, and the case was adjourned to April 5, 1977.

4. On April 5, 1977, after Judge Milonas, defendant's counsel and an assistant district attorney discussed a possible reduction of the charge to a misdemeanor, the assistant district attorney advised Judge Milonas that such a plea was not satisfactory. The case was then adjourned to April 12, 1977.

5. Respondent knew that the *Acosta* case was before Judge Milonas.

6. On April 10, 1977, respondent initiated an *ex parte* telephone conversation with Judge Milonas, with whom he was acquainted, and spoke to him about the *Acosta* case. Respondent told Judge Milonas that the defendant was his nephew, a college student and of good character who had done "something stupid" in carrying a gun (Ref. 43).*

*"Ref." notations refer to the appropriate page in the referee's report.

7. At the close of his telephone conversation with respondent, Judge Milonas concluded (i) that respondent's call had been "improper" and (ii) that he must disqualify himself from presiding further in the *Acosta* case (Ref. 44).

8. On April 12, 1977, at the call of the court calendar, Judge Milonas announced the transfer of *People v. Frank Acosta* to another judge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.2(b), 33.2(c) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2A, 2B and 3A(4) of the Code of Judicial Conduct. Charge II is sustained and respondent's misconduct is established.

The referee has reported, and the Commission so concludes, that upon learning that the *Acosta* case was before Judge Milonas, with whom he had previously served as a New York City Criminal Court judge, respondent "decided to call Judge Milonas. . . in the hope that his formerly close relationship with Judge Milonas might result in some advantage toward the disposition of the case" (Ref. 46).

While respondent was obviously motivated by an understandable concern for the plight of his great grandnephew, it was clearly improper for him to have telephoned Judge Milonas, *ex parte*, in what amounted to an assertion of special influence. In so doing, respondent violated the applicable sections of the Rules Governing Judicial Conduct, which require a judge to "conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (Section 33.2), and which prohibit a judge from allowing a family relationship to influence his judicial conduct or judgment (Section 33.2[b]), lending the prestige of his office to advance the private interests of others (Section 33.2[c]) and initiating *ex parte* or other communications in a pending proceeding, except as authorized by law (Section 33.3[a][4]).

While respondent's misconduct in this regard, standing alone, is serious and would in any event require public discipline, the Commission considered respondent's motivation in mitigation of his misconduct, with respect to determining the appropriate sanction. Although high standards of conduct are expected and required of all judges because of their special place in this society, those who hold judicial office are subject to the same fallibilities of human nature as anyone else. It is not difficult for the Commission to understand how deep concern for a troubled member of his family may have affected respondent's judgment as to the impropriety of calling Judge Milonas

to assert special influence. Judge Milonas properly did not accede to the influence and conducted himself with propriety and decorum.

Respondent's misconduct in this case is exacerbated by his conduct during the proceedings before the Commission. The referee has found, and the Commission concludes, that "respondent testified falsely in all important respects as to Charge II" (Ref. 42). Specifically, the Commission concludes that (i) at the hearing, respondent testified falsely with respect to his intention in placing the telephone call to Judge Milonas (Ref. 45-47) and (ii) in testimony before the Commission on October 12, 1977 (Hearing Exhibit 5), respondent testified falsely in denying that he spoke to any judge with respect to the *Acosta* case and specifically denying recollection of speaking to Judge Milonas about it (Ref. 48-50).

While respondent's telephone call to Judge Milonas may be attributed to a lapse of good judgment engendered by concern for the plight of his great grandnephew, no such inference may be made with respect to false testimony in the course of a disciplinary proceeding conducted well after the *Acosta* case had been concluded in the courts. The defendant's plight was no longer at issue when respondent appeared before the Commission. In *Matter of Perry*, the court held that "the giving of false testimony, particularly by a member of the judiciary, is inexcusable. Such conduct on the part of a judicial officer, whose responsibility is to seek out the truth and evaluate the credibility of those who appear before him is not conducive to the efficacy of our judicial process and is destructive of his usefulness on the bench." *Matter of Perry*, 53 AD2d 882 (2d Dept. 1976; judge removed from office).

In consideration of the appropriate sanction, the Commission notes that respondent is scheduled to retire from the bench on December 31, 1979.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur, except for Judge Rubin, who dissents only with respect to sanction, and votes that the appropriate sanction is admonition.

Dated: November 1, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ANTHONY J. DE ROSE,
a Judge of the Olean City Court, Cattaraugus County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Robert E. Murrin for
Respondent.
Gerald Stern for the
Commission (John W. Dorn,
Of Counsel).

The respondent, Anthony J. DeRose, a judge of the City Court of Olean, Cattaraugus County, was served with a Formal Written Complaint dated August 7, 1978, alleging violations of enumerated ethical standards with respect to his conduct in *People v. George K. Leonard*, a case over which he presided on January 3, 1978. Respondent filed an answer dated August 31, 1978.

By order dated November 20, 1978, the Commission appointed George M. Zimmermann, Esq., as referee to hear and report with respect to the issues herein. A hearing was held before the referee on January 29, 1979, and his report dated June 18, 1979, was filed with the Commission.

By notice dated August 29, 1979, the administrator of the Commission moved to confirm the referee's findings of fact and to render a determination of censure. Respondent opposed the motion by memorandum filed September 10, 1979. The administrator replied by

memorandum dated September 13, 1979. The parties waived oral argument on the motion.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. Respondent, an attorney, assumed judicial office for the first time on January 1, 1978, upon becoming a judge of the City Court of Olean.

2. Testimony and evidence adduced at the hearing established by a preponderance of the evidence that, prior to assuming the bench, respondent had decided to dismiss the first case over which he would preside.

3. Respondent held court for the first time on January 3, 1978. The only case to come before him was *People v. George K. Leonard*. The defendant was charged with speeding (a violation), driving while intoxicated ("DWI"—a misdemeanor) and unlawful possession of marijuana (a misdemeanor).

4. In connection with the *Leonard* case, respondent had before him

(a) a simplified traffic information and copy of the police blotter in the speeding matter,

(b) a simplified traffic information, a copy of the police blotter and a "breathalyzer" report in the DWI matter and

(c) an information/complaint and a copy of the police blotter in the marijuana matter.

5. At his arraignment, the defendant pled guilty to the speeding and marijuana charges and not guilty to the DWI charge.

6. Respondent told the defendant in open court that he had decided to dismiss the first case he would hear. Respondent thereafter dismissed the charges and told the defendant in open court that he had "hit the jackpot." No trial was held and there was no consent to the dismissal by the prosecutor. In granting this dismissal, respondent did not comply with the requirements of sections 170.40 and 210.45 of the Criminal Procedure Law, which require (i) disclosure on the record by the court of "compelling" circumstances requiring dismissal in the interest of justice and (ii) reasonable written notice to the prosecution to afford it an opportunity to file a response.

7. Respondent thereupon wrote notes on the three police blotters, recording the defendant's pleas to the three charges and noting "Dismissed On Judge's Motion" on each blotter.

8. Respondent subsequently repeated to a newspaper reporter his remark that the defendant had "hit the jackpot."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated sections 33.1, 33.2(a), 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained and respondent's misconduct is therefore established.

Respondent's discretion to dismiss the charges in *People v. George K. Leonard*, or render any other disposition consistent with law, is not at issue. Respondent's *conduct*, however, violated the applicable ethical standards cited above. His decision, made in advance, to dismiss the first case to come before him upon his ascending the bench, before he even knew the nature and merits of that case, was improper. In failing to comply with the appropriate sections of the CPL, he violated his duty to "be faithful to the law" and to "accord to every person who is legally interested in a proceeding. . . full right to be heard according to law. . ." (sections 33.3[a][1] and [4] of the Rules Governing Judicial Conduct). Furthermore, respondent's public declarations to the defendant and several witnesses that the defendant had "hit the jackpot" were ill-considered and inappropriate. Such remarks diminish public confidence in the integrity and impartiality of the judiciary.

The Commission considers by way of mitigation respondent's acknowledgement that his conduct was wrong and his assurances that "it will not occur again."

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

All concur.

Dated: November 13, 1979
New York, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

HAROLD SASHIN,

a Justice of the Town Court of Wawarsing, Ulster County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
H. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Kalter & Gottlieb (By Jeffrey
Kaplan) for Respondent.
Gerald Stern for the
Commission (Alan Friedberg,
Of Counsel).

The respondent, Harold Sashin, was a justice of the Town Court of Wawarsing, Ulster County. He was served with a Formal Written Complaint dated August 3, 1979, alleging in two charges of misconduct that respondent failed to cooperate with an inquiry of the Ulster County Grand Jury in April and May 1979 and was subsequently convicted of perjury. Respondent admitted in part and denied in part the allegations in his answer dated August 29, 1979.

By order dated September 10, 1979, the Commission appointed the Honorable Harold A. Felix as referee to hear and report to the Commission with respect to the issues herein. A hearing was conducted on October 10, 1979, and the referee filed his report dated October 27, 1979.

By notice dated October 30, 1979, the administrator of the Commission moved for a determination that the referee's report be confirmed

and that respondent be removed from office. Respondent opposed the motion in papers dated November 6, 1979, and waived oral argument before the Commission.

On November 14, 1979, the Commission considered the record in this proceeding, and upon that record makes the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent, a part-time justice of the Town Court of Wawarsing, is a poultry farmer.

2. For approximately a two-year period ending in October 1978, respondent purchased substantial quantities of eggs for resale from William Palomaki of Van Etten, New York (Chemung County).

3. In October 1978, respondent owed Mr. Palomaki approximately \$29,000 for eggs and for dishonored checks in the amount of \$8,800.

4. On October 26, 1978, respondent met with Mr. Palomaki and gave him a list of respondent's accounts receivable. The list included 11 institutions or businesses which were listed as owing respondent \$8,000 to \$10,000. In truth, however, these institutions and businesses owed respondent \$1,100 to \$1,200.

5. Respondent told Mr. Palomaki that he would pay him the amounts received from the accounts receivable.

6. On April 10, 1979, respondent appeared before the April 1979 term of the Ulster County Grand Jury and testified (i) that the list he had given Mr. Palomaki represented a list of accounts receivable due Sashin Poultry Farm, (ii) that Sashin Poultry Farm was owed between \$17,000 and \$20,000 on October 26, 1978, and (iii) that the 11 institutions and businesses listed on the bottom of that list collectively owed him \$8,000 to \$10,000 on October 26, 1978. In fact, respondent knew such statements to be false. Respondent thereby failed to cooperate with the Grand Jury.

7. In his appearance before the Grand Jury on April 10, 1979, respondent further testified that he had informed Mr. Palomaki of his accounts receivable so that the latter would continue to deliver eggs to him.

8. On June 20, 1979, after a jury trial in County Court, Ulster County, respondent was convicted of one count of perjury in the third degree (Penal Law Section 210.05) for making the statements referred to in paragraph 6 above.

As to Charge II of the Formal Written Complaint:

9. On May 3, 1979, at a second appearance before the Grand Jury, respondent testified that when he gave Mr. Palomaki the list on October 26, 1978, he never stated that it was a list of monies owed to him. Respondent testified that he had told Mr. Palomaki the list was a "customer list."

10. On May 3, 1979, respondent further testified before the Grand Jury that he had not informed Mr. Palomaki that the 11 institutions and businesses listed on the bottom of the document on October 26, 1978, owed him between \$8,000 and \$10,000.

11. On June 20, 1979, after a jury trial in County Court, Ulster County, respondent was convicted of one count of perjury in the third degree (Penal Law Section 210.05) for giving inconsistent statements which he knew to be false to the Grand Jury of Ulster County on April 10, 1979, and May 3, 1979.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2 and 33.3(a)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

There is no dispute in this case that portions of respondent's Grand Jury testimony were false. At the hearing before the referee appointed by the Commission, respondent was read portions of his testimony of April 10, 1979, and when asked if that testimony had been correct or false, replied: "Part of it was right and part of it was false. That's the reason I went back in May" (Tr. 54). The colloquy continued as follows:

Q. Was it false that the eleven businesses listed on the bottom of the list owed you eight to ten thousand dollars? Was that false or correct?

A. That was false.

Q. Was it false when you said that you represented to Mr. Palomaki that fact?

A. I never represented that to Mr. Palomaki.

Q. Was it false when you said you represented it to Mr. Palomaki at the grand jury?

A. You want to repeat that again?

Q. Let me read you the question, lines 11 and 12, page 20 from that transcript. "Question: And you represented to Mr. Palomaki that fact, right? Answer: Right."

A. That was wrong [Tr. 54].

Respondent failed to cooperate with a grand jury, and testified falsely while under oath before the grand jury. Such conduct violates his obligations to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety, and to be faithful to the law (Sections 33.1, 33.2 and 33.3[a][1] of the Rules Governing Judicial Conduct). Even in the absence of promulgated ethical standards, a judge would have an obligation to be truthful under oath. The very essence of judicial office in the administration of justice is corrupted by a judge who lies under oath. The consequent ebb of public confidence in the integrity of the judicial system is immeasurable. As the Appellate Division held in *Matter of Perry*:

[T]he giving of false testimony, particularly by a member of the judiciary, is inexcusable. Such conduct on the part of a judicial officer, whose responsibility is to seek out the truth and evaluate the credibility of those who appear before him is not conducive to the efficacy of our judicial process and is destructive of his usefulness on the bench. *Matter of Perry*, 53 AD 2d 882 (2d Dept. 1976).

The Commission makes its determination upon the found misconduct, independent of respondent's two convictions for perjury.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office. This determination is filed pursuant to Section 47 of the Judiciary Law, in view of respondent's resignation from judicial office effective July 31, 1979.

All concur.

Dated: November 20, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

CHARLES W. BARRETT,

a Justice of the Batavia Town Court, Genesee County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: Charles W. Barrett,
Respondent Pro Se.
Gerald Stern for the
Commission.

Respondent, Charles W. Barrett, a Justice of the Town Court of Batavia, Genesee County, was served with a Formal Written Complaint dated May 31, 1979, setting forth four charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated June 7, 1979.

By notice of motion dated July 16, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on August 16, 1979, dismissed Charge II of the Formal Written Complaint, deemed respondent's misconduct established with respect to the remaining three charges, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum on sanction.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. As to Charge I, on June 14, 1976, respondent sent a letter to Judge Lawrence H. Schultz, Jr., of the City Court of Batavia, seeking special consideration on behalf of the defendant in *People v. David G. Merlin*, a case then pending before Judge Schultz.

2. As to Charge III, on October 24, 1975, respondent communicated with Judge Lawrence H. Schultz, Jr., of the City Court of Batavia, seeking special consideration on behalf of the defendant in *People v. Carol L. Wells*, a case then pending before Judge Schultz.

3. As to Charge IV, on December 8, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Richard S. Massaro* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I, III and IV of the Formal Written Complaint are sustained, and respondent's misconduct is thereby established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests from judges, respondent violated the rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

By reason of the foregoing, the Commission unanimously determines that the appropriate sanction is admonition.

Dated: December 12, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ANDRE BERGERON,

a Justice of the Lewis Town Court, Essex County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: John T. Manning for
Respondent.
Gerald Stern for the
Commission.

The respondent, Andre Bergeron, a justice of the Town Court of Lewis, Essex County, was served with a Formal Written Complaint dated January 29, 1979, setting forth 16 charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated February 22, 1979.

By notice of motion dated May 23, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on June 21, 1979, deemed respondent's misconduct established with respect to all 16 charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted a letter on sanction.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. As to Charge I, on March 2, 1977, respondent sent a letter to Judge John Holt-Harris of the Albany Traffic Court, seeking special consideration on behalf of the defendant in *People v. Gilles Dumont*, a case then pending before Judge Holt-Harris.

2. As to Charge II, on October 6, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Sandra T. Dressel* as a result of a written communication he received from Justice Floyd Lashway of the Town Court of Ellenburg, seeking special consideration on behalf of the defendant, Judge Lashway's daughter.

3. As to Charge III, on October 20, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Mary O. Lord* as a result of a written communication he received from Justice Philip H. Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on April 6, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Edmour K. Steady* as a result of a written communication he received from Justice Philip H. Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

5. As to Charge V, on February 4, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Nathan M. Turk* as a result of a written communication he received from Justice Frank E. Berean of the Town Court of Plattekill, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on December 6, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Rita A. Wilson* as a result of a written communication he received from Justice Donald Miner of the Town Court of Saranac, seeking special consideration on behalf of the defendant.

7. As to Charge VII, on September 15, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Douglas Chidester* as a result of a written communication he received from Ted Chidester, Town of Greenport Chief of Police, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on December 26, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Anthony D. Gisondi* as a result of a written communication he received from Justice Fred H. Schrader of the Town Court of Canajoharie, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on March 4, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Terry B. Elia* as a result of a written communication he received from Justice Lewis C. Di Stasi of the Town Court of Lloyd, seeking special consideration on behalf of the defendant.

10. As to Charge X, on September 30, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Francis R. Dambrosy* as a result of a written communication he received from Justice Robert E. Murphy of the Village Court of Voorheesville, seeking special consideration on behalf of the defendant.

11. As to Charge XI, on December 22, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Joseph F. Martin* as a result of a written communication he received from Justice Fred Sears of the Town Court of Beekmantown, seeking special consideration on behalf of the defendant.

12. As to Charge XII, on May 10, 1977, respondent reduced a charge of speeding to failure to keep right in *People v. Robert F. Flacke* as a result of a written communication he received from Ralph E. Brown, Court Clerk of the Lake George Town Court, seeking special consideration on behalf of the defendant.

13. As to Charge XIII, on March 16, 1977, respondent reduced a charge of speeding to driving with unsafe tires in *People v. E.J. La-Fountain, Jr.* as a result of a written communication he received from Justice Davison Pratt of the Town Court of Mooers, seeking special consideration on behalf of the defendant.

14. As to Charge XIV, on December 15, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Everett J. Ammerman* as a result of a written communication he received from Justice Ronald V. Bailey of the Town Court of Chesterfield, seeking special consideration on behalf of the defendant.

15. As to Charge XV, on November 28, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Anthony A. Renna* as a result of a communication he received from Trooper Bill Courlis, seeking special consideration on behalf of the defendant.

16. As to Charge XVI, on March 21, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Herbert E. Rhoades* as a result of a communication he received from Justice Joseph B. Johnson of the Town Court of North Hudson, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through XVI of the Formal Written Complaint are sustained, and respondent's misconduct is thereby established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* request of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission unanimously determines that the appropriate sanction is censure.

Dated: December 12, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ALLAN T. BROWN,

a Justice of the Halfmoon Town Court, Saratoga County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: David L. Riebel for
Respondent.
Gerald Stern for the
Commission.

Respondent, Allan T. Brown, a justice of the Town Court of Halfmoon, Saratoga County, was served with a Formal Written Complaint dated January 30, 1979, setting forth ten charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated March 8, 1970.

By notice of motion dated July 31, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on August 16, 1979, deemed respondent's misconduct established with respect to all ten charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum on sanction.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. As to Charge I, on March 6, 1975, respondent sent a letter to Justice James A. Davidson of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in *People v. Ada Henderson*, a case then pending before Judge Davidson.

2. As to Charge II, on March 2, 1976, respondent sent a note to Justice Richard Lips of the Town Court of Clifton Park, seeking special consideration on behalf of the defendant in *People v. Johannes Bierma*, a case then pending before Judge Lips.

3. As to Charge III, on October 14, 1975, respondent sent a letter to Justice George E. Carl of the Town Court of Catskill, seeking special consideration on behalf of the defendant in *People v. Sylvester Yates*, a case then pending before Judge Carl.

4. As to Charge IV, on September 27, 1976, respondent sent a letter to Justice John S. Carusone of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in *People v. Bruce A. McVey*, a case then pending before Judge Carusone.

5. As to Charge V, on September 16, 1976, respondent sent a letter to Justice Walter E. Burke of the Cohoes Police Court, seeking special consideration on behalf of the defendant in *People v. Ronald Mowry*, a case then pending before Judge Burke.

6. As to Charge VI, on August 28, 1974, respondent sent a letter to Justice John Carusone of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in *People v. Donald A. Goodrich*, a case then pending before Judge Carusone.

7. As to Charge VII, on February 10, 1976, respondent sent a letter to Justice Raymond Galarneau of the Town Court of Waterford, seeking special consideration on behalf of the defendant in *People v. Nina DeRossi*, a case then pending before Judge Galarneau.

8. As to Charge VIII, on March 24, 1976, respondent, or someone at his request, communicated with Justice Richard Lips of the Town Court of Clifton Park, seeking special consideration on behalf of the defendant in *People v. Virginia M. Fuehrer*, a case then pending before Judge Lips.

9. As to Charge IX, on May 13, 1975, respondent, or someone at his request, communicated with Justice Richard Lips of the Town Court of Clifton Park, seeking special consideration on behalf of the defendant in *People v. Frank E. Flanigan*, a case then pending before Judge Lips.

10. As to Charge X, on November 1, 1975, respondent, or someone at his request, communicated with Justice James Brookman of the Town Court of Glen, seeking special consideration on behalf of the defendant in *People v. Joseph Harrington*, a case then pending before Judge Brookman.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through X of the Formal Written Complaint are sustained, and respondent's misconduct is thereby established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . .
[Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission unanimously determines that the appropriate sanction is censure.

Dated: December 12, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

WALTER T. CMAYLO,

a Justice of the Verona Town Court, Oneida County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Francis P. Valone
for Respondent.
Gerald Stern for the
Commission.

Respondent, a justice of the Town Court of Verona, was served with a Formal Written Complaint dated May 4, 1979, setting forth two charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated May 31, 1979.

By notice of motion dated July 31, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on August 16, 1979, deemed respondent's misconduct established with respect to both charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted a memorandum on sanction.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. As to Charge I, on February 25, 1973, respondent sent a letter to Justice Clarence Jones of the Village Court of Oriskany, seeking special consideration on behalf of the defendant in *People v. Donald C. Carver*, a case then pending before Judge Jones.

2. As to Charge II, on March 13, 1977, respondent sent a letter to the Henrietta Town Court, seeking special consideration on behalf of the defendant in *People v. Theodore C. Murphy*, a case then pending in that court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is thereby established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

By reason of the foregoing, the Commission unanimously determines that the appropriate sanction is admonition.

Dated: December 12, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

PHILIP DROLLETTE,

a Justice of the Plattsburgh Town Court, Clinton County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Holcombe & Dame (By Kenneth
H. Holcombe) for Respondent.
Gerald Stern for the
Commission.

Respondent, Philip Drollette, a justice of the Town Court of Plattsburgh, Clinton County, was served with a Formal Written Complaint dated January 26, 1979, setting forth 12 charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an amended answer dated April 17, 1979.

By notice of motion dated July 31, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on August 16, 1979, deemed respondent's misconduct established with respect to all 12 charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted a letter on sanction.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. As to Charge I, on September 29, 1975, respondent sent a letter to Justice Andre Bergeron of the Town Court of Lewis, seeking special consideration on behalf of the defendant in *People v. Mary O. Lord*, a case then pending before Judge Bergeron.

2. As to Charge II, on April 5, 1976, respondent sent a letter to Justice Andre Bergeron of the Town Court of Lewis, seeking special consideration on behalf of the defendant in *People v. Edmour K. Steady*, a case then pending before Judge Bergeron.

3. As to Charge III, on April 4, 1974, respondent sent a letter to Justice Robert Radloff of the Town Court of Lake George, seeking special consideration on behalf of the defendant in *People v. Raymond A. Rabideau*, a case then pending before Judge Radloff.

4. As to Charge IV, on July 8, 1975, respondent sent a letter to Justice Robert Radloff of the Town Court of Lake George, seeking special consideration on behalf of the defendant in *People v. Robert V. St. Louis*, a case then pending before Judge Radloff.

5. As to Charge V, on October 12, 1976, respondent sent a letter to Justice Robert Radloff of the Town Court of Lake George, seeking special consideration on behalf of the defendant in *People v. Wayne M. Bressette*, a case then pending before Judge Radloff.

6. As to Charge VI, on December 2, 1974, respondent sent a letter to Justice James Davidson of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in *People v. Hubert S. Senecal*, a case then pending before Judge Davidson.

7. As to Charge VII, on January 23, 1975, respondent sent a letter to Justice James Davidson of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in *People v. Robert F. Moore*, a case then pending before Judge Davidson.

8. As to Charge VIII, on December 1, 1975, respondent sent a letter to Justice James Davidson of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in *People v. William A. Oswald*, a case then pending before Judge Davidson.

9. As to Charge IX, on June 14, 1975, respondent sent a letter to Justice James Corkland of the Town Court of Lake George, seeking special consideration on behalf of the defendant in *People v. Roland Saucier*, a case then pending before Judge Corkland.

10. As to Charge X, on February 10, 1976, respondent sent a letter to Justice James Corkland of the Town Court of Lake George, seek-

ing special consideration on behalf of the defendant in *People v. Leonard O'Sullivan*, a case then pending before Judge Corkland.

11. As to Charge XI, on December 21, 1974, respondent sent a letter to Justice John Carusone of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in *People v. Ralph J. Garrow*, a case then pending before Judge Carusone.

12. As to Charge XII, on March 31, 1975, respondent, or someone at his request, communicated with Justice Karl Griebisch of the Village Court of Saranac Lake, seeking special consideration on behalf of the defendant in *People v. Benjamin King*, a case then pending before Judge Griebisch.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through XII of the Formal Written Complaint are sustained, and respondent's misconduct is thereby established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they

are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission unanimously determines that the appropriate sanction is censure.

Dated: December 12, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JOSEPH B.D. JOHNSON,

a Justice of the North Hudson Town Court, Essex County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Holcombe & Dame (By
Kenneth H. Holcombe)
for Respondent.
Gerald Stern for the
Commission.

Respondent, Joseph B.D. Johnson, a justice of the Town Court of North Hudson, Essex County, was served with a Formal Written Complaint dated October 10, 1978, setting forth five charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an amended answer dated April 16, 1979.

By notice of motion dated August 2, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on August 16, 1979, deemed respondent's misconduct established with respect to all five charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted a letter on sanction.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. As to Charge I, on January 22, 1977, respondent sent a letter to Justice Angelo Root of the Town Court of Bolton, seeking special consideration on behalf of the defendant in *People v. Robert M. Garrow*, a case then pending before Judge Root.

2. As to Charge II, on October 12, 1976, respondent, or someone at his request, communicated with Justice Robert W. Radloff of the Town Court of Lake George, seeking special consideration on behalf of the defendant in *People v. Wayne M. Bressette*, a case then pending before Judge Radloff.

3. As to Charge III, on December 12, 1975, respondent, or someone at his request, communicated with Justice James H. Corkland of the Town Court of Lake George, seeking special consideration on behalf of the defendant in *People v. Truman B. Davis*, a case then pending before Judge Corkland.

4. As to Charge IV, on March 31, 1976, respondent, or someone at his request, communicated with Justice Andre Bergeron of the Town Court of Lewis, seeking special consideration on behalf of the defendant in *People v. Herbert E. Rhoades*, a case then pending before Judge Bergeron.

5. As to Charge V, on March 26, 1973, respondent reduced a charge of speeding to turning without signalling in *People v. Harry W. Wright* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained, and respondent's misconduct is thereby established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such a request from a judge, respondent violated the rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

By reason of the foregoing, the Commission unanimously determines that the appropriate sanction is admonition.

Dated: December 12, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JAMES L. KANE,
a Justice of the Supreme Court, Erie County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: Harold J. Boreanaz for
Respondent.
Gerald Stern for the
Commission (Christopher
Ashton, John W. Dorn,
Of Counsel).

The respondent, James L. Kane, a justice of the Supreme Court, Eighth Judicial District (Erie County), was served with a Formal Written Complaint dated September 27, 1978, setting forth ten charges of misconduct arising from certain activities during the period respondent was a judge of the County Court, Erie County. The charges alleged misconduct in that respondent (i) appointed his son Timothy J. Kane, Esq., as a referee in three cases, (ii) appointed two attorneys, associated in the practice of law with his son Timothy J. Kane, as a referee or receiver in four cases, (iii) appointed John J. Heffron, Esq., the brother of another judge of the Erie County Court, Judge William G. Heffron, as a referee or guardian ad litem in 19 cases, during a period that Judge Heffron appointed respondent's son Timothy J. Kane as a referee in 16 cases and (iv) improperly participated in several cases in that he confirmed and ratified the reports as referee, receiver

or guardian filed by his son Timothy J. Kane, the associates of Timothy J. Kane, and Mr. Heffron.

Respondent filed an answer dated November 16, 1978, admitting in part and denying in part the allegations set forth in the Formal Written Complaint.

By order dated February 28, 1979, the Commission appointed the Honorable Harold A. Felix as referee to hear and report with respect to the facts herein. Hearings were conducted on March 14, 1979, and May 8, 1979, and the report of the referee dated July 13, 1979, was filed with the Commission.

By notice dated August 23, 1979, the administrator of the Commission moved for a determination that the referee's report be confirmed and respondent be removed from office. Respondent filed papers dated October 11, 1979, which opposed the motion, and the administrator filed a reply dated October 18, 1979.

Oral argument was heard on October 25, 1979.

Preliminarily, the Commission finds that respondent is presently a justice of the Supreme Court, and that the actions herein occurred while respondent was a judge of the County Court, Erie County.

As to Charges I through IV of the Formal Written Complaint, the Commission makes the following findings of fact.

1. On June 5, 1974, respondent appointed his son Timothy J. Kane as referee to compute in *Buffalo Savings Bank v. Foley*, an action to foreclose a mortgage on real property.

2. On June 13, 1974, respondent ratified and confirmed the report of his son Timothy J. Kane as referee to compute in *Buffalo Savings Bank v. Foley*, and, on the same date, appointed Timothy J. Kane as referee to sell the foreclosed premises in the same case.

3. On March 24, 1977, respondent ratified and confirmed the report of his son Timothy J. Kane as referee to compute in *Niagara Permanent Savings & Loan Association v. Greco*, an action to foreclose a mortgage on real property, and, on the same date, appointed Timothy J. Kane as referee to sell the foreclosed premises in the same case.

4. On June 2, 1977, respondent ratified and confirmed the report of his son Timothy J. Kane as referee to compute in *Buffalo Savings Bank v. McCrary*, an action to foreclose a mortgage on real property, and, on the same date, appointed Timothy J. Kane as referee to sell the foreclosed premises in the same case.

5. On February 28, 1977, respondent ratified and confirmed the report of his son Timothy J. Kane as referee to compute in *Izzo v. Manlil Management Corp.*, an action to foreclose a mortgage on real property.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(b)(4) and 33.3(c)(1) of the Rules Governing Judicial Conduct, and Canons 1, 2, 3A(1) and 3B(4) and 3C(1) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

As to Charges V and VI of the Formal Written Complaint, the Commission makes the following findings of fact.

6. On January 1, 1975, respondent's son Timothy J. Kane became a partner of Charles E. Weston, Jr., Esq., engaged in the practice of law under the firm name of Weber, Weston & Kane, and continued as a partner with Mr. Weston until the latter's death on March 12, 1978.

7. On June 16, 1975, respondent appointed Charles E. Weston, Jr., as receiver in *Liechtung v. Colonie Apartments of Amherst, Inc.*, an action to foreclose a mortgage on real property, after having declined to appoint a person recommended by the plaintiff in that action.

8. For his services as receiver in the *Liechtung* case, Mr. Weston was allowed fees of \$17,218.68 in 1976 and \$33,638.27 in 1977, which were deposited in the account and general funds of the law firm of Weber, Weston & Kane. Pursuant to the partnership agreements of Weber, Weston & Kane, respondent's son Timothy J. Kane received 37.5% of the net profits of the law firm including the 1976 fee and 40% of the net profits of the firm including the 1977 fee.

9. On July 24, 1975, respondent appointed Charles E. Weston, Jr., as receiver in *Stewart v. Swiss Estates, Inc.*, an action to foreclose a mortgage on real property.

10. On November 26, 1975, respondent settled, approved and confirmed the report of Charles E. Weston, Jr., as receiver in the *Stewart* case, allowed him a fee of \$842.25 in the matter and discharged him as receiver.

11. Pursuant to the partnership agreement of Weber, Weston & Kane, respondent's son Timothy J. Kane received 35% of the net profits from the fee in the *Stewart* case.

12. At the time respondent made the appointments in the *Liechtung* and *Stewart* cases, he knew that his son Timothy J. Kane was associated in the practice of law with Charles E. Weston, Jr., and knew, or should have known, that his son and Weston were, in fact, partners practicing law under the firm name of Weber, Weston & Kane.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(b)(4) and 33.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3B(4) and 3C(1) of the Code of Judicial Conduct. Charges V and VI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Charges VII and VIII of the Formal Written Complaint are not sustained and therefore are dismissed.

As to Charges IX and X, the Commission makes the following findings of fact.

13. From November 17, 1975, through June 23, 1977, while respondent was a judge of the County Court, Erie County, Judge William G. Heffron was also a judge of that court.

14. John J. Heffron, Esq., is the brother of Judge William G. Heffron. Judge Heffron is now retired.

15. From November 17, 1975 through June 23, 1977, in the 18 cases and on the dates listed below, respondent appointed John J. Heffron as referee to compute in actions to foreclose mortgages on real property.

- (a) *The Western New York Savings Bank v. Collins*, November 17, 1975;
- (b) *Josephine DiMaria v. Thomas R. Answeeney*, January 8, 1976;
- (c) *Joseph B. Gladysz v. Myron Rose*, January 14, 1976;
- (d) *Liberty National Bank and Trust Corporation v. Moran*, November 19, 1976;
- (e) *The Niagara Permanent Savings and Loan Association v. Kuhlmeier*, January 27, 1976;
- (f) *Buffalo Savings Bank v. Motif Construction Corporation*, January 30, 1976;
- (g) *Buffalo Savings Bank v. Santarsiero*, April 13, 1976;
- (h) *Liebeskind v. Abco Realty, Inc.*, June 29, 1976;

- (i) *Erie County Savings Bank v. Kearney*, November 5, 1976;
- (j) *Buffalo Savings Bank v. Vinson*, November 8, 1976;
- (k) *The Home Purchasing Corp. v. Burroughs*, November 8, 1976;
- (l) *Hamburg Savings and Loan Association v. Lauricella*, December 3, 1976;
- (m) *John Hancock Mutual Life Insurance Company v. Seventeenth Colonie Corp.*, January 6, 1977;
- (n) *Buffalo Savings Bank v. Johnson*, March 2, 1977;
- (o) *Manufacturers and Traders Trust Company v. Swartwood*, April 1, 1977;
- (p) *The Western New York Savings Bank v. Ludwig*, June 6, 1977;
- (q) *The Western New York Savings Bank v. Misnik*, June 14, 1977; and
- (r) *The Western New York Savings Bank v. Garmian Farms Ltd.*, June 23, 1977.

16. From January 20, 1976, through May 18, 1977, in the 14 cases and on the dates listed below, respondent (i) confirmed and ratified the reports of John J. Heffron as referee to compute in actions to foreclose mortgages on real property and (ii) appointed Mr. Heffron as referee to sell the foreclosed premises.

- (a) *Joseph B. Gladysz v. Myron Rose*, January 20, 1976;
- (b) *Josephine DiMaria v. Thomas E. Answeeney*, February 6, 1976;
- (c) *Liberty National Bank and Trust Company v. Paul T. Moran*, February 9, 1976;
- (d) *The Niagara Permanent Savings and Loan Association v. Kuhlmeier*, February 24, 1976;
- (e) *Buffalo Savings Bank v. Santarsiero*, April 26, 1976;
- (f) *Liebeskind v. Abco Realty, Inc.*, July 9, 1976;
- (g) *Erie County Savings Bank v. Kearney*, November 22, 1976;
- (h) *Buffalo Savings Bank v. Vinson*, December 1, 1976;
- (i) *John Hancock Mutual Life Insurance Company v. Seventeenth Colonie Corporation*, January 7, 1977;
- (j) *The Home Purchasing Corporation v. Burroughs*, March 2, 1977;
- (k) *Hamburg Savings and Loan Association v. Lauricella*, March 4, 1977;

- (l) *Buffalo Savings Bank v. Johnson*, March 16, 1977;
- (m) *The Western New York Savings Bank v. Misnik*, June 10, 1977; and
- (n) *The Western New York Savings Bank v. Ludwig*, June 23, 1977.

17. On April 6, 1976, respondent appointed John J. Heffron as guardian ad litem in *Matter of Walz*.

18. The total number of appointments by respondent of Mr. Heffron November 17, 1975, through June 23, 1977, was 33.

19. From November 20, 1975, through May 18, 1977, in the 16 cases and on the dates listed below, Judge Heffron appointed respondent's son Timothy J. Kane as referee to compute in actions to foreclose mortgages on real property.

- (a) *Homestead Savings and Loan Association v. Kenneth D. Swan Demolition and Excavating, Inc.*, November 20, 1975;
- (b) *Erie County Savings Bank v. Hiller*, February 11, 1976;
- (c) *Martin v. Martin*, February 19, 1976;
- (d) *Niagara First Savings and Loan Association v. Tudor*, February 23, 1976;
- (e) *Niagara Permanent Savings and Loan Association v. Country Estate Builders, Inc.*, February 24, 1976;
- (f) *Buffalo Savings Bank v. Lenahan*, April 19, 1976;
- (g) *Beckley v. Anzalone*, June 8, 1976;
- (h) *Western New York Savings Bank v. Land Girth Corp.*, June 23, 1976;
- (i) *Niagara Permanent Savings and Loan Association v. S.H.C. Construction Co., Inc.*, December 14, 1976;
- (j) *Izzo v. Manlil Management Corp.*, January 7, 1977;
- (k) *Niagara Permanent Savings and Loan Association v. Greco*, February 10, 1977;
- (l) *Buffalo Savings Bank v. Dillon*, February 18, 1977;
- (m) *Buffalo Savings Bank v. Hughes*, February 22, 1977;
- (n) *Niagara First Savings and Loan Association v. Moore*, April 19, 1977;
- (o) *Buffalo Savings Bank v. Davis*, May 9, 1977; and
- (p) *Buffalo Savings Bank v. McCrary*, May 18, 1977.

20. From December 8, 1975, through May 18, 1977, in the nine cases and on the dates listed below, Judge Heffron (i) confirmed and ratified the reports of respondent's son Timothy J. Kane as referee to compute in actions to foreclose mortgages on real property and (ii) appointed Mr. Kane as referee to sell the foreclosed premises.

- (a) *Homestead Savings Bank and Loan Association v. Kenneth D. Swan Demolition and Excavating, Inc.*, December 8, 1975;
- (b) *Niagara First Savings and Loan Association v. Tudor*, February 27, 1976;
- (c) *Western New York Savings Bank v. Land Girth Corp.*, June 28, 1976;
- (d) *Niagara Permanent Savings and Loan Association v. S.H.C. Construction Co., Inc.*, December 16, 1976;
- (e) *Izzo v. Manlil Management Corp.*, January 19, 1977;
- (f) *Buffalo Savings Bank v. Dillon*, March 14, 1977;
- (g) *Buffalo Savings Bank v. Hughes*, March 15, 1977;
- (h) *Niagara First Savings and Loan Association v. Moore*, April 20, 1977; and
- (i) *Buffalo Savings Bank v. Davis*, May 18, 1977.

21. The total number of appointments awarded by Judge Heffron to respondent's son Timothy J. Kane from November 20, 1975, through May 18, 1977, was 25.

22. At the time respondent was making the 33 appointments of John J. Heffron listed above, he was aware that Judge Heffron was contemporaneously appointing his son Timothy J. Kane in similar proceedings.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(b)(4) and 33.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3B(4) and 3C(1) of the Code of Judicial Conduct. Charges IX and X of the Formal Written Complaint are sustained and respondent's misconduct is established.

Respondent's judicial appointments in this matter fall into three categories: (i) the appointments of his son, (ii) the appointments of his son's law partner and (iii) the appointments of the brother of another County Court judge while respondent was aware that the same judge was contemporaneously appointing respondent's son.

By appointing his son as a referee on four occasions, respondent engaged in conduct which the Rules Governing Judicial Conduct specifically prohibit. Section 33.3(b)(4) of the Rules Governing Judicial Conduct states that a “judge shall not appoint or vote for the appointment of any person. . . as an appointee in a judicial proceeding, who is within the sixth degree of relationship of either the judge or the judge’s spouse.”

By ratifying and confirming the reports of his son as referee in four cases, respondent created the appearance of impropriety and failed to comply with that provision of the Rules which requires a judge to disqualify himself in a proceeding in which a person within the sixth degree of relationship to him is acting as a lawyer in the proceeding (Section 33.3[c][1][iv][b]).

By appointing his son’s law partner, Mr. Weston, as a receiver in two cases, with knowledge that his son and Mr. Weston were partners in the same law firm, respondent violated that provision of the Rules which requires a judge to disqualify himself in a proceeding in which a person within the sixth degree of relationship to him “is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding” (Section 33.3[c][1][iv][c]). The fees awarded to Mr. Weston, amounting to \$50,000, were shared according to partnership percentages by respondent’s son in these two cases. Clearly the fees involved are substantial interests within the meaning of the Rules. Yet had the fees in these cases been nominal, the fact that respondent appointed his son’s law partner was improper, since it violated the applicable Rules Governing Judicial Conduct with respect to a judge’s obligation to promote public confidence in the integrity and impartiality of the judiciary and not to permit family, social and other relationships to influence his judicial conduct or judgment (Section 33.2).

By making 33 judicial appointments to the brother of another judge of the same court during the same 19-month period that the other judge was making 25 judicial appointments of a similar nature to respondent’s son, with knowledge that the appointments at issue were being made contemporaneously, respondent created the appearance of serious impropriety and evinced an intention to circumvent the outright prohibition against nepotism with a disguised alternative. Respondent’s conduct in making these cross appointments was improper.

The issues in the instant matter were addressed by the Court of Appeals in *Spector v. State Commission on Judicial Conduct*, 47 NY2d 462 (1979):

First, nepotism is to be condemned, and disguised nepotism imports an additional component of evil because, implicitly conceding that evident nepotism would be unacceptable, the actor seeks to conceal what he is really accomplishing. Second, and this is peculiar to the judiciary, even if it cannot be said that there is proof of the fact of disguised nepotism, an appearance of such impropriety is no less to be condemned than is the impropriety itself. [*Id.*, at 466.]

* * * * *

The appointment of his son by any Judge would be both unthinkable and intolerable whatever might be the son's character and fitness or his father's peculiar qualification in the circumstances to assess such character and fitness. The enlarged evil in this instance is that an arrangement for cross appointments would not only offend the antinepotism principle; it would go a step further, seeking to accomplish the objectives of nepotism while obscuring the fact thereof. [*Id.*, at 467-68.]

With respect to the cases involving the appointments of respondent's son, the Commission has considered respondent's argument that "[n]epotism, at the time of events in question, was not considered in the same light as it is now regarded" (Resp. 9).^{*} The Commission has also considered respondent's arguments that he was unaware of the promulgated rules prohibiting nepotism at the time of one of the appointments at issue (Resp. 3), that the signing of appointment orders was "ministerial in nature" (Resp. 4) and that some of his awards of appointments followed a "uniform practice" of the County Court "to uniformly appoint as Referee to sell the same individual as appointed to compute" (Resp. 3).

The Commission rejects these arguments as in any way excusing or mitigating respondent's conduct.

Even in the absence of a specific rule prohibiting nepotism, a judge should know that nepotism is wrong. Indeed, as the Court noted in *Spector*, the practice of nepotism in the western world has been "repeatedly condemned" since the eighth century, and is "regarded as a form of misuse of authority, associated with corruption." *Spector, supra*, n.2 at 466-67. Respondent's alleged unfamiliarity with the specific rule is not persuasive. The first Canons of Judicial Ethics, adopted in 1909 by the New York Bar Association, more than 70 years ago, outrightly condemned nepotism. Respondent was obliged to know that nepotism is wrong.

*"Resp." refers to the appropriate page in respondent's brief to the Commission.

In reaching its determination, the Commission has not overlooked the fact that respondent is currently an elected justice of the Supreme Court and that the conduct condemned herein occurred while he held a different judicial office. A judge may be removed from office, for cause, for misconduct prejudicial to the administration of justice (N.Y. State Const. Art. VI, Sec. 22, subd. a; Jud. Law, Sec. 44, subd. 1). Cause has been defined as an "inclusive, not a narrowly limited term" (*Matter of Osterman*, 13 NY2d [a], [p], cert. den. 376 U.S. 914), and the fact that respondent's misconduct in this matter occurred before he assumed his present judicial office is of no moment. "It matters not that the misconduct charge occurred prior to the Judge's ascension to the Bench. (See *Matter of Sarisohn*, 26 AD2d 388, 389, mot. for lv. to app. den. 19 NY2d 689, cert. den. 393 U.S. 1116, *supra*; see, also, *Friedman v. State of New York*, 24 NY2d 528, 539, *supra*; *State v. Redman*, 183 Ind. 332, 339-340; Ann., 42 ALR3d 691, 712-719, *supra*.) 'A judicial officer is nonetheless unfit to hold office and the interests of the public are nonetheless injuriously affected,' the court wrote in the *Sarisohn* case (26 AD2d, at p. 389), 'even if the misdeeds which portray his unfitness occurred prior to assuming such office' " (*Matter of Pfingst*, 33 NY2d [a], [kk]).

Respondent's misconduct is so prejudicial to the administration of justice that the Commission concludes that respondent lacks the requisite fitness to serve and does not possess the moral qualities required of a judicial officer. His conduct and insensitivity to the egregiousness of his transgressions strike at the very heart of his fitness for high judicial office and require his removal.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office.

All concur.

Dated: December 12, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ISAAC KANTROWITZ,

a Justice of the Woodridge Village Court, Sullivan County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Orseck for
Respondent.
Gerald Stern for the
Commission.

Respondent, Isaac Kantrowitz, a justice of the Village Court of Woodridge, Sullivan County, was served with a Formal Written Complaint dated April 16, 1979, setting forth three charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated April 25, 1979.

By notice of motion dated July 16, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent submitted papers in response to the administrator's motion. The Commission granted the motion on August 16, 1979, deemed respondent's misconduct established with respect to all three charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted a letter on sanction.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. As to Charge I, on July 15, 1974, respondent sent a letter to Justice Michael Altman of the Town Court of Fallsburg, seeking special consideration on behalf of the defendant in *People v. Frederick Hazelnis*, a case then pending before Judge Altman.

2. As to Charge II, on December 8, 1975, respondent sent a letter to Mrs. Rita Balbirer, Clerk of the Fallsburg Town Court, seeking special consideration on behalf of the defendant in *People v. Frederick Hazelnis*, a case then pending in the Fallsburg Town Court.

3. As to Charge III, on March 11, 1974, respondent sent a letter to Justice Michael Altman of the Town Court of Fallsburg, seeking special consideration on behalf of the defendant in *People v. Dolores Gadshian*, a case then pending before Judge Altman.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is thereby established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges or a court clerk for favorable dispositions for the defendants in traffic cases, respondent violated the rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

By reason of the foregoing, the Commission unanimously determines that the appropriate sanction is admonition.

Dated: December 12, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

DONALD REED,

a Justice of the Malta Town Court, Saratoga County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipingo, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: David L. Riebel for
Respondent.
Gerald Stern for the
Commission.

The respondent, Donald Reed, a justice of the Town Court of Malta, Saratoga County, was served with a Formal Written Complaint dated April 20, 1979, setting forth three charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated May 7, 1979.

By notice of motion dated July 31, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on August 16, 1979, deemed respondent's misconduct established with respect to all three charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum on sanction.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. As to Charge I, on November 9, 1976, respondent sent a letter to Justice Richard Lips of the Town Court of Clifton Park, seeking special consideration on behalf of the defendant in *People v. Georgia Davey*, a case then pending before Judge Lips.

2. As to Charge II, on January 11, 1977, respondent sent a letter to Justice Richard Lips of the Town Court of Clifton Park, seeking special consideration on behalf of the defendant in *People v. Rita McFarland*, a case then pending before Judge Lips.

3. As to Charge III, on March 16, 1976, respondent, or someone at his request, communicated with Justice Richard Lips of the Town Court of Clifton Park, seeking special consideration on behalf of the defendant in *People v. Evelyn Tillman*, a case then pending before Judge Lips.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is thereby established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

By reason of the foregoing, the Commission unanimously determined that the appropriate sanction is admonition.

Dated: December 12, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JOSEPH REICH,

a Justice of the Tannersville Village Court, Greene County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Alex Wiltse, Jr., for
Respondent.
Gerald Stern for the
Commission.

Respondent, Joseph Reich, a justice of the Village Court of Tannersville, Greene County, was served with a Formal Written Complaint dated April 24, 1979, setting forth three charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated May 11, 1979.

By notice of motion dated July 31, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on August 16, 1979, deemed respondent's misconduct established with respect to all three charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum on sanction.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. As to Charge I, on April 18, 1974, respondent sent a letter to Justice Joseph Thomson of the Town Court of Cornwall, seeking special consideration on behalf of the defendant in *People v. Fritz Carlson*, a case then pending before Judge Thomson.

2. As to Charge II, on June 13, 1975, respondent sent a letter to Justice Frank McDonald of the Village Court of Catskill, seeking special consideration on behalf of the defendant in *People v. John L. Kneer*, a case then pending before Judge McDonald.

3. As to Charge III, on August 8, 1975, respondent, or someone at his request, communicated with Justice Charles Crommie of the Town Court of Catskill, seeking special consideration on behalf of the defendant in *People v. Michael LaFalce*, a case then pending before Judge Crommie.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is thereby established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

By reason of the foregoing, the Commission unanimously determines that the appropriate sanction is admonition.

Dated: December 12, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ROLLIN L. FANCHER,

a Justice of the Dunkirk Town Court, Chautauqua County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Carroll L. Wainwright, Jr., Esq.

Appearances: Rollin L. Fancher, Respondent
Pro Se.
Gerald Stern for the
Commission.

Respondent, Rollin L. Fancher, a justice of the Town Court of Dunkirk, Chautauqua County, was served with a Formal Written Complaint dated June 1, 1979, setting forth four charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an amended answer dated July 30, 1979.

By notice of motion dated August 29, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on September 26, 1979, deemed respondent's misconduct established with respect to all four charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent did not submit a memorandum and did not appear for oral argument.

The Commission considered the record of this proceeding on October 26, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on May 15, 1975, respondent sent a letter to Justice Norman E. Kuehnel of the Town Court of Hamburg, seeking special consideration on behalf of the defendant in *People v. Edward L. Johnson*, a case then pending in that court.

2. As to Charge II, on December 9, 1974, respondent sent a letter to Justice John S. Abramo of the Town Court of Brant, seeking special consideration on behalf of the defendant in *People v. William M. Roberts*, a case then pending before Judge Abramo.

3. As to Charge III, on January 22, 1974, respondent sent a letter to Justice Norman E. Kuehnel of the Town Court of Hamburg, seeking special consideration on behalf of the defendant in *People v. John O. Wrigley*, a case then pending before Judge Kuehnel.

4. As to Charge IV, on March 5, 1975, respondent communicated with Justice Morten Morrison of the Town Court of Pomfret, seeking special consideration on behalf of the defendant in *People v. Lester E. Bennett*, a case then pending before Judge Morrison.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur.

Dated: December 19, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ROBERT J. KEDDIE,

a Justice of the Sheridan Town Court, Chautauqua County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Foley & Foley (By Jeffrey G.
Passafaro) for Respondent.
Gerald Stern for the
Commission.

Respondent, a justice of the Town Court of Sheridan, Chautauqua County, was served with a Formal Written Complaint dated May 31, 1979, alleging eight charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an amended answer dated July 6, 1979.

By notice of motion dated August 2, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent submitted an affidavit in opposition to the motion dated September 1, 1979. The Commission granted the motion on September 26, 1979, deemed respondent's misconduct established with respect to all eight charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted a memorandum on sanction.

The Commission considered the record in this proceeding on October 26 and November 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on December 15, 1976, respondent sent a letter to Justice Norman E. Kuehnel of the Town Court of Hamburg, seeking special consideration on behalf of the defendant in *People v. Marcia E. Fabritius*, a case then pending before Judge Kuehnel.

2. As to Charge II, on March 21, 1973, respondent reduced a charge of speeding to failing to stop for a stop sign in *People v. Angel L. Carreras*, as a result of a communication he received from Trooper Purcell, or someone at Trooper Purcell's request, seeking special consideration on behalf of the defendant.

3. As to Charge III, on April 5, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Marilyn V. Colari*, as a result of a communication he received from Deputy Kall of the Chautauqua County Sheriff's Department, or someone at Deputy Kall's request, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on April 22, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Gordon D. Gould*, as a result of a communication he received from Patrolman Wisniewski of the Dunkirk Police Department, or someone at Patrolman Wisniewski's request, seeking special consideration on behalf of the defendant.

5. As to Charge V, on March 19, 1973, respondent reduced a charge of speeding to illegal parking in *People v. John T. Heiyen*, as a result of a communication he received from Patrolman Prince of the Sheridan Police Department, or someone at Patrolman Prince's request, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on November 18, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Phillip N. Lamantia*, as a result of a communication he received from Trooper Gumhalter, or someone at Trooper Gumhalter's request, seeking special consideration on behalf of the defendant.

7. As to Charge VII, on March 9, 1973, respondent reduced a charge of passing in a no passing zone to illegal parking in *People v. Lawrence Haynes* because of the defendant's status as a Federal Narcotics Agent.

8. As to Charge VIII, on May 1, 1973, respondent reduced a charge of speeding to an equipment violation in *People v. Warren R. Skinner*, as a result of a communication he received from Trooper Kovacs, or someone at Trooper Kovacs' request, seeking special consideration on behalf of the defendant.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through VIII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making an *ex parte* request of another judge for a favorable disposition for a defendant in a traffic case, and by granting such requests from law enforcement officers, respondent violated the Rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

All concur.

Dated: December 19, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JOSEPH SCHWERTFEGER,

a Justice of the Floyd Town Court, Oneida County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Capecelatro, DelBuono,
Vaughn (By Salvatore J.
Capecelatro, Jr.) for
Respondent.
Gerald Stern for the
Commission.

Respondent, a justice of the Town Court of Floyd, Oneida County, was served with a Formal Written Complaint dated May 31, 1979, setting forth four charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated July 6, 1979.

By notice of motion dated August 29, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on September 26, 1979, deemed respondent's misconduct established with respect to all four charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument.

Respondent waived oral argument and did not submit a memorandum on sanction.

The Commission considered the record in this proceeding on October 26, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on October 5, 1975, respondent sent a letter to the Cheektowaga Town Court, seeking special consideration on behalf of the defendant in *People v. James J. Piluso*, a case then pending in the Cheektowaga Town Court.

2. As to Charge II, on October 12, 1976, respondent sent a letter to Justice Vincent Scholl of the Town Court of Kirkland, seeking special consideration on behalf of the defendant in *People v. Edwin C. Evans*, a case then pending before Judge Scholl.

3. As to Charge III, on February 24, 1975, respondent reduced a charge of speeding to failure to keep right in *People v. Steven W. Citrin* as a result of a written communication he received from Justice Stanley Wolanin of the Town Court of Whitestown, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on September 13, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People v. John Malorzo* as a result of a written communication he received, seeking special consideration on behalf of the defendant.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests, respondent violated the Rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

All concur.

Dated: December 19, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

VERNON E. WILLIAMS,

a Justice of the Palatine Town Court, Montgomery County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: William B. MacKenzie
for Respondent.
Gerald Stern for the
Commission.

Respondent, a justice of the Town Court of Palatine, Montgomery County, was served with a Formal Written Complaint dated February 26, 1979, alleging nine charges of misconduct relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated March 23, 1979.

By notice of motion dated August 2, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on September 26, 1979, deemed respondent's misconduct established with respect to all nine charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted a letter on sanction.

The Commission considered the record in this proceeding on October 26 and November 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on May 4, 1974, respondent sent a letter to Justice Robert Radloff of the Town Court of Lake George, seeking special consideration on behalf of the defendant, the respondent's son, in *People v. Vernon G. Williams*, a case then pending before Judge Radloff.

2. As to Charge II, on April 22, 1974, respondent reduced a charge of speeding to driving with unsafe tires and imposed an unconditional discharge in *People v. Waldo E. Chestnut, Jr.*, as a result of a written communication he received seeking special consideration on behalf of the defendant.

3. As to Charge III, on April 16, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Frank C. Danna*, as a result of a communication he received from Justice John J. Palma of the Town Court of St. Johnsville, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on April 16, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Franklin Kretser*, as a result of a communication he received from Justice John J. Palma of the Town Court of St. Johnsville, seeking special consideration on behalf of the defendant.

5. As to Charge V, on August 16, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Henry H. Wilson*, as a result of a communication he received from Justice John J. Palma of the Town Court of St. Johnsville, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on November 19, 1974, respondent reduced a charge of speeding to driving with unsafe tires and imposed an unconditional discharge in *People v. Edward R. Paton*, as a result of a communication he received seeking special consideration on behalf of the defendant.

7. As to Charge VII, on June 4, 1977, respondent reduced a charge of speeding to driving with unsafe tires in *People v. Alexander Klymkow*, as a result of a communication he received, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on April 26, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in *People v. Alica*

Galusha, as a result of a communication he received from Chief of Police Gisondi, or someone at his request, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on May 27, 1974, respondent reduced a charge of speeding to driving with an unsafe tire and imposed an unconditional discharge in *People v. Gwendolyn Getman*, as a result of a communication he received seeking special consideration on behalf of the defendant.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through IX of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making an *ex parte* request of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests from other judges and persons with influence, respondent violated the Rules enumerated above, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, N.Y.L.J. April 20, 1978, p. 5 (Ct. on the Judiciary, April 18, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur.

Dated: December 19, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ARTHUR W. LONSCHEIN,

a Justice of the Supreme Court, Queens County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Albert E. Silbowitz for
Respondent.
Gerald Stern for the
Commission (Robert H. Straus,
Jeanne O'Connor, Of Counsel).

The respondent, Arthur W. Lonschein, a justice of the Supreme Court, Eleventh Judicial District (Queens County), was served with a Formal Written Complaint dated October 26, 1978, alleging misconduct in that in three instances respondent improperly used the prestige of his office on behalf of a personal friend who had applied for a lease and licenses from various New York City government authorities. Respondent filed an answer dated November 27, 1978, denying the material allegations.

By order dated January 30, 1979, the Commission appointed the Honorable Bertram Harnett as referee to hear and report to the Commission with respect to the facts herein. Hearings were held on April 9, 10, 11 and 19, 1979, and the report of the referee, dated August 31, 1979, was filed with the Commission.

By notice dated September 28, 1979, the administrator of the Commission moved to confirm the report of the referee, determine misconduct and render a sanction. By notice dated October 16, 1979, respondent cross-moved to confirm in part and disaffirm in part the report of the referee and to dismiss the Formal Written Complaint. The administrator filed a reply dated October 18, 1979.

The Commission heard oral argument with respect to the motions on October 26, 1979, thereafter considered the record in this proceeding, and upon that record makes the findings and conclusions below.

With respect to Charge I of the Formal Written Complaint, the Commission makes the following findings of fact.

1. Respondent was a judge of the Civil Court of the City of New York in 1975.

2. John Mazzuka was a principal of a private car service named KOOP City Private Car Service in 1975 (hereinafter "KOOP City").

3. Respondent and John Mazzuka are intimate personal friends who have known each other for at least 20 years, who consider themselves as brothers, and whose families are also intimate.

4. In the spring of 1975, Mr. Mazzuka told respondent he was having a problem with respect to an application by KOOP City to the New York City Department of Real Estate to lease a limousine base station under the Pelham Bay Park subway station.

5. Respondent suggested to Mr. Mazzuka that the latter speak to New York City Councilman Matthew Troy for assistance in resolving the problem. Mr. Mazzuka was a constituent of Mr. Troy.

6. Mr. Mazzuka asked respondent to speak to Mr. Troy on his behalf, and asked respondent to arrange a meeting between him and Mr. Troy.

7. Respondent has known Matthew Troy for approximately 20 years, as a fellow lawyer, through various political activities and affiliations, and as a personal friend. Mr. Troy was a political sponsor of respondent for election to the Civil Court in 1975 and in fact knew respondent to be a judge of the Civil Court in 1975.

8. On an unspecified date in April 1975, respondent spoke in person to Mr. Troy on behalf of Mr. Mazzuka. Respondent referred to Mr. Mazzuka as a friend, acquainted Mr. Troy with KOOP City's lease application and asked Mr. Troy to meet with Mr. Mazzuka.

9. The foregoing conversation constituted a request by respondent that Mr. Troy assist Mr. Mazzuka as a favor to respondent.

10. As a favor to respondent, Mr. Troy thereafter met Mr. Mazzuka in the former's office in April 1975, and Mr. Troy wrote on Mr. Mazzuka's behalf to the Commissioner of the New York City Department of Real Estate and to the Metropolitan Transportation Authority.

11. KOOP City subsequently entered into the sought-after lease. There is no evidence of any causal connection between the foregoing conduct and the actual granting of the lease.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.2(c) of the Rules Governing Judicial Conduct and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

With respect to Charge II, subdivisions (a) and (b), of the Formal Written Complaint, the Commission makes the following findings of fact.

12. In June 1975, Stanley Katz was Deputy Commissioner and General Counsel of the New York City Taxi and Limousine Commission.

13. Respondent and Mr. Katz were longstanding acquaintances but it does not appear their relationship was close. Mr. Katz knew respondent to be a judge of the Civil Court, and respondent knew Mr. Katz to be Deputy Commissioner and General Counsel of the Taxi and Limousine Commission.

14. On an unspecified date between June 1, 1975, and June 19, 1975, Mr. Mazzuka and his partner, Louis Moyett, spoke with Mr. Katz at the latter's New York City office with respect to certain vehicle license applications filed by KOOP City with the Taxi and Limousine Commission.

15. Mr. Katz referred Mr. Mazzuka and Mr. Moyett to Rose Nikas, a clerk responsible for processing license applications. Mr. Mazzuka and Mr. Moyett met with Ms. Nikas and her supervisor, Jose Basora, then Deputy Director of Licensing. The applicants expressed a need for immediate licensing. Mr. Basora advised the applicants that their license applications required two to four weeks for processing.

16. On June 20, 1975, Mr. Mazzuka and Mr. Moyett returned to Mr. Basora's office and advised him that they had obtained a contract from the Veterans Administration and required vehicle licensing from the Taxi and Limousine Commission in connection therewith.

17. Thereafter, Mr. Mazzuka discussed his Veterans Administration contract with respondent and told respondent of his belief that the Taxi and Limousine Commission was unduly delaying KOOP City's licensing application. Mr. Mazzuka also advised respondent of the monetary importance of the Veterans Administration contract and stated that he would lose that contract unless the Taxi and Limousine Commission licenses were granted expeditiously. Mr. Mazzuka told respondent that he had spoken to Mr. Katz.

18. On an unspecified date between June 20, 1975, and June 24, 1975, respondent telephoned Mr. Katz and asked him to assist in expediting the matter of KOOP City's licensing.

19. On June 25, 1975, while driving his car, respondent observed Mr. Katz driving alongside in a separate vehicle. He attracted Mr. Katz's attention by signaling several times with his horn and motioned Mr. Katz to stop. Both thereupon parked their cars on the shoulder of the road and got out of their cars.

20. Respondent then initiated a conversation to the effect that Mr. Mazzuka was still troubled about delay in processing his licensing application. Respondent told Mr. Katz that both Mr. Mazzuka and Mr. Moyett were friends and former clients of his and that he considered the requests of Mr. Mazzuka and Mr. Moyett to be meritorious, and he asked Mr. Katz to inquire into the matter.

21. Respondent's conversation with Mr. Katz on June 25, 1975, was motivated by a desire to help Mr. Mazzuka and to expedite KOOP City's licensing application. Respondent conveyed to Mr. Katz his desire for Mr. Katz to help Mr. Mazzuka. Respondent knew or should have known that his judicial position would affect Mr. Katz's conduct.

22. Thereafter Mr. Mazzuka visited Mr. Katz again and was introduced by him to First Deputy Commissioner Joseph Cerbone, who summoned Mr. Basora to join them. Mr. Katz suggested that "conditional licenses" be issued to KOOP City.

23. On June 27, 1975, the requested licenses were in fact issued to KOOP City.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.2(c) of the Rules Governing Judicial Conduct and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charge II, subdivisions (a) and (b), of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Charge II, subdivision (c), is not sustained and therefore is dismissed.

A judge is required by the Rules Governing Judicial Conduct to conduct himself "at all times" in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Section 33.2[a]). His obligation to observe the applicable ethical standards may not be left behind in the robing room. Indeed, the very manner in which jurists are addressed as "Judge" and "Your Honor", off the bench as well as on, in private as well as in public, bespeaks of the public's perception of their high position and requires that judges be ever mindful of the manner in which their actions may be viewed. They must assiduously avoid conduct that may create even the appearance of impropriety. While this may often seem a difficult and burdensome responsibility, its faithful discharge is indispensable to the promotion of public confidence in the integrity and impartiality of the judiciary. The diligence required to discharge that responsibility cannot be relaxed.

In the instant matter, respondent sought from two public officials what amounted to special consideration on behalf of a close personal friend. Although respondent never expressly asserted his judicial office in seeking special consideration, the two public officials in fact knew him to be a judge, and his requests were undeniably accorded greater weight than they would have been had respondent not been a judge. Respondent knew or should have known that such would be the case.

The Code of Judicial Conduct and the Rules Governing Judicial Conduct specifically prohibit a judge from "allow[ing] his family, social, or other relationships to influence his judicial conduct or judgment" (Canon 2B of the Code, Section 33.2[b] of the Rules). The Rules also prohibit a judge from "lend[ing] the prestige of his office to advance the private interests of others. . ." (Section 33.2[c]). Respondent's conduct in the instant matter violated the applicable standards.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Mr. Kirsch, Judge Rubin, Judge Shea and Mr. Wainwright dissent only with respect to sanction and vote that the appropriate sanction is admonition.

Dated: December 28, 1979
Albany, New York

APPENDIX



Public Discipline By The Former State Commission on Judicial Conduct

The first judicial disciplinary commission in New York, created in 1974 by legislative enactment, was the Temporary State Commission on Judicial Conduct. It was made permanent by constitutional amendment effective September 1, 1976. In a second constitutional amendment effective April 1, 1978, the current State Commission on Judicial Conduct was created, superseding the jurisdiction of its predecessor.

The predecessor Commission had the authority to privately admonish, publicly censure or suspend a judge without pay for up to six months. It also had the authority to convene disciplinary proceedings in a special Court on the Judiciary (which was abolished as of April 1, 1978).

Following are the 15 public censure determinations and one suspension decision effected by the former Commission.

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter
- of -

JOHN W. TRACY

a Justice of the Town of Spafford, County of Onondaga.

Before: The State Commission
on Judicial Conduct:
Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Report and Recommendation of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law.

JUSTICE TRACY'S FAILURE TO
ATTAIN ADVANCED TRAINING CERTIFICATION

John W. Tracy is a justice of the Town Court of the Town of Spafford in Onondaga County. He is not an attorney. He first took office in August 1974, and pursuant to Section 30.6(a) of the Rules of the Administrative Board of the Judicial Conference, attended a basic training program required of newly-selected justices who are not members of the bar. Justice Tracy received his basic training certificate on December 18, 1974. Justice Tracy's current term of office commenced on January 1, 1975, and is due to expire on December 31, 1977.

The present investigation of Justice Tracy commenced after the Commission received a letter, dated November 3, 1976, from the Of-

Office of Court Administration, Fourth Judicial Department. The letter indicated that Justice Tracy had not complied with Section 30.6(b) of the Rules of the Administrative Board of the Judicial Conference, requiring successful completion of an advanced training course by non-attorney justices within one year after entering a new term of office. The Commission also received from the Office of Court Administration a copy of a letter to Justice Tracy, dated June 11, 1976, calling attention to the Administrative Board's Rules and advising the justice that he "must attend one of the three remaining advanced training courses for 1976." Justice Tracy did not attend such a course.

The Commission contacted Justice Tracy in a letter dated January 14, 1977, seeking his explanation for not enrolling in the required advanced training program. No reply was received from the justice. On April 25, 1977, pursuant to Judiciary Law Section 43, subdivision 5, a Notice of Hearing and Complaint was mailed to Justice Tracy advising him to appear on May 11, 1977. Justice Tracy did not appear on May 11, 1977, but advised the Commission that he intended to register for the advanced training program scheduled in Rochester, New York, on June 10 and 11, 1977. Justice Tracy did, in fact, attend the program, but he failed the course and consequently did not receive recertification.

CONCLUSION

Article VI, Section 20(c), of the Constitution of the State of New York, states in part that

a course of training and education [is] to be completed by justices of town and village courts. . . who have not been admitted to practice law in this state.

Section 30.6(b) of the Rules of the Administrative Board of the Judicial Conference states as follows:

Every incumbent justice heretofore certified pursuant to this section shall, *within one year after entering upon a new term of office*, be required to *successfully* complete an advanced course of training, after each of which he shall be recertified. (Emphasis added.)

Justice Tracy did not register for an advanced training program within one year after entering a new term of office in January 1975. He did not, in fact, register for such a course until June 1977, nearly two and a half years after the commencement of his new term. Furthermore, he did not successfully complete the course in which he enrolled. Therefore, Justice Tracy was and is in violation of Article

VI, Section 20(c), of the Constitution of the State of New York, and Section 30.6(b) of the Rules of the Administrative Board of the Judicial Conference.

The failure of a non-attorney town justice to obtain a certificate of completion for a required judicial training program has been held to constitute cause for removal from office. *Bartlett v. Bedient*, 47 App. Div. 2d 389 (4th Dept. 1975).

RECOMMENDATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 8, of the Judiciary Law, the State Commission on Judicial Conduct recommends that the Court on the Judiciary be convened to hear and determine appropriate charges in the matter of John W. Tracy, Justice of the Town Court of the Town of Spafford, New York, who failed to successfully complete an advanced training course of training within one year of entering a new term of office on January 1, 1975, as required of justices not admitted to the bar of the State of New York, in violation of Article VI, Section 20(c), of the Constitution of the State of New York, and Section 30.6(b) of the Rules of the Administrative Board of the Judicial Conference.

Dated: August 3, 1977
New York, New York

[NOTE: The foregoing report and recommendation to convene a Court on the Judiciary for disciplinary proceedings was filed pursuant to statute with the Chief Judge of the Court of Appeals. Justice Tracy thereupon advised the Chief Judge that his term of office expired on December 31, 1977, and that he did not intend to seek re-election. The matter was thereupon remanded to the Commission, which suspended Justice Tracy for the remainder of his term upon completion of the applicable due process requirements.]

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter

- of -

EDMUND QUINONES,

a Justice of the Town of Lockport, County of Niagara.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Report and Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to Edmund Quinones, a justice of the Town Court of Lockport in Niagara County.

JUSTICE QUINONES' GRANTING OF EIGHT REQUESTS
FOR FAVORABLE DISPOSITIONS IN TRAFFIC CASES

Edmund Quinones is a justice of the Town Court of Lockport in Niagara County. He is not an attorney. He first took office on January 1, 1974. His current four-year term of office expires on December 31, 1977. Judge Quinones was defeated for re-election on November 8, 1977, and will not succeed himself as Town Court justice of Lockport.

Pursuant to Section 43, subdivision 2, of the Judiciary Law, the present investigation of Judge Quinones commenced on June 29, 1977, after the Commission, in the course of another investigation, discovered a letter to Judge Quinones dated March 11, 1974, from Sebastian Lombardi, a justice of the Town Court of Lewiston in

Niagara County. The letter from Judge Lombardi indicated that the following had been agreed upon by the two judges in a prior conversation:

- A summons for Permitting Operation of an Inadequately Equipped Vehicle, issued to Donald F. Landers and returnable on February 2, 1974, before Judge Quinones, would be dismissed.
- A summons for Operating an Inadequately Equipped Vehicle, issued to Nelson E. Landers and returnable on February 2, 1974, before Judge Quinones, would carry a fine of five dollars. A check for five dollars to Judge Quinones from Judge Lombardi was enclosed.

On or about March 16, 1974, Judge Quinones did, in fact, dismiss the charge in *People v. Donald F. Landers* and impose a fine of five dollars in *People v. Nelson E. Landers*, as requested by Judge Lombardi.

In the course of its investigation, the Commission discovered seven other instances in which Judge Quinones granted favorable dispositions to defendants in traffic cases, as follows.

On or about August 28, 1976, Judge Quinones reduced a charge of Failure to Keep Right to Unsafe Tires in *People v. John Foster* as a result of a communication he received on behalf of the defendant from New York Supreme Court Justice Frank J. Kronenberg or someone at Judge Kronenberg's request.

On or about December 7, 1974, Judge Quinones reduced a charge of Unsafe Lane Changes to Unsafe Tires in *People v. Robert Bradley* as a result of a communication he received on behalf of the defendant from Ms. R. Bower of the County Treasurer's Office or someone at Ms. Bower's request.

On or about January 11, 1975, Judge Quinones reduced a charge of Failure to Stop for a Stop Sign to Unsafe Tires in *People v. Joan Mulvey* as a result of a communication he received on behalf of the defendant from "Bill Ryan" or someone at Bill Ryan's request.

On or about March 22, 1975, Judge Quinones reduced a charge of Driving to the Left on a Curve to Inadequate Muffler in *People v. David Sabbas* as a result of a communication he received on behalf of the defendant from "E. Crowe" or someone at E. Crowe's request.

On or about March 2, 1974, Judge Quinones dismissed charges of No Insurance and No Valid Inspection in *People v. Kurt LaRoach* as a

result of a communication he received on behalf of the defendant from "Woji" or someone at "Woji's" request.

On or about September 6, 1975, Judge Quinones reduced a charge of Unsafe Start to Inadequate Muffler in *People v. Paul Eglin* as a result of a communication he received from a third party on behalf of the defendant.

On or about October 18, 1975, Judge Quinones reduced a charge of Failure to Stop for a Stop Sign to Inadequate Muffler in *People v. Judith Dockery* as a result of a communication he received on behalf of the defendant from "John Cole" or someone at John Cole's request.

JUSTICE QUINONES' FAILURE TO COOPERATE WITH THE COMMISSION

The Commission sent Judge Quinones a letter dated July 20, 1977, asking him to explain the circumstances behind his dispositions of *People v. Donald F. Landers* and *People v. Nelson E. Landers*. Judge Quinones failed to reply to the Commission's inquiry. The Commission sent three additional letters, respectively dated August 3, 1977, August 12, 1977, and September 12, 1977, seeking the judge's response to its original letter of inquiry dated July 20, 1977. Judge Quinones failed to respond to the three subsequent letters as well.

Pursuant to Section 43, subdivision 3, of the Judiciary Law, the Commission requested that Judge Quinones appear before a panel of its members in New York City on October 25, 1977. Judge Quinones appeared as scheduled, with counsel, but refused to answer any questions pertaining to *People v. Donald F. Landers*, *People v. Nelson E. Landers* and the seven other cases noted above. In response to each question on these cases, the judge invoked his right under the Fifth Amendment to the United States Constitution, declining to answer on the grounds that his responses may tend to incriminate him.

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with respect to the judge's apparent misconduct in the cases noted above. On October 31, 1977, Judge Quinones was personally served with a Notice of Hearing scheduled on November 16, 1977, a Formal Written Complaint and a Transcript of the Proceedings of October 25, 1977.

Judge Quinones, by his attorney, submitted an Answer dated November 7, 1977, to the Charges included in the Formal Written Complaint. The Answer neither denies nor admits the Charges per-

taining to his granting favorable dispositions in traffic cases at the request of third parties, and it invokes the Fifth Amendment to the United States Constitution as to the Charge that the judge failed to respond to four Commission letters of inquiry.

Judge Quinones did not appear before the Commission as scheduled on November 16, 1977.

CONCLUSION

By granting favorable dispositions to defendants in traffic cases, at the request of third parties, Judge Quinones was in violation of Sections 33.1, 33.2 of the Rules of the Administrative Board of the Judicial Conference, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

By failing to respond to Commission inquiries into his apparent misconduct, and by failing to appear at a duly scheduled hearing before the Commission, Judge Quinones was in violation of Section 43, subdivision 3, and Section 43, subdivision 5 of the Judiciary Law, which read in part as follows:

In the course of an investigation, the commission may require the appearance of the judge involved before it. . . [subdivision 3.]

If in the course of an investigation, the commission determines that a hearing is warranted it shall direct. . . that a hearing be held. . . [subdivision 5.]

PUBLIC CENSURE

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined to issue the following public censure.

It is the determination of the State Commission on Judicial Conduct that Lockport Town Justice Edmond Quinones be publicly censured for granting *ex-parte* requests for special consideration and favorable dispositions in traffic cases by judges and other people who were in a position to influence him. Justice Quinones' conduct in this regard violated his ethical obligations to establish, maintain and observe "high standards of conduct so that the integrity and independence of the judiciary may be observed" (Section 33.1 of the Rules Governing Judicial Conduct). Similarly, he did not follow the mandate of Section 33.2 of the Rules Governing Judicial Conduct requiring him to "respect and comply with the law and. . . conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." By using this high office to grant favors, he also violated the following ethical standards (Section 33.2[b] and [c]).

(b) No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment.

(c) No judge shall lend the prestige of his office to advance the private interests of others; nor shall any judge convey or permit others to convey the impression that they are in a special position to influence him.

Ticket-fixing has created two systems of justice—one for those with special influence and another for most people. It has adversely affected the criminal justice system by injecting favoritism into it, by suggesting to the police, lawyers, prosecutors, judges and the public at large that special influence will lead to special results.

Unfortunately, Judge Quinones has contributed to these conditions by granting favors. Moreover, by not responding to four Commission letters, he failed in his obligation to cooperate with the Commission.

The Commission served Judge Quinones with eight charges dealing with granting of requests for special consideration. The judge chose not to appear at a hearing to contest the charges.

Because he has only a limited time remaining in his term of office, which expires on December 31, 1977, the Commission believes it is impractical and unnecessary to consider other sanctions.

This public censure is issued by the Commission pursuant to Section 43, subdivision 7 of the Judiciary Law, in accordance with its findings on file in its offices.

Dated: November 30, 1977
New York, New York

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of

JOSEPH PILATO,

a Judge of the Family Court, County of Monroe.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article IV, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law for transmittal by the Chief Judge of the Court of Appeals to Joseph Pilato, a judge of the Family Court, County of Monroe.

JUDGE PILATO'S INTEMPERATE AND INJUDICIOUS
CONDUCT

Joseph Pilato is a judge of the Family Court of Monroe County. He first took office on January 1, 1970. His term of office expires on December 31, 1979.

Pursuant to Section 43, subdivision 1, of the Judiciary Law, the present investigation of Judge Pilato commenced in July 1975, after a letter of complaint based on court observations by the Church Women United of Rochester was forwarded to the Temporary State Commission on Judicial Conduct. The complaint alleged that Judge Pilato called persons before him by their first names, lectured in a derogatory manner to juveniles, exhibited anger in the courtroom, and was impatient, temperamental and unfair. In the course of the investigation, the temporary Commission ascertained that in one case Judge Pilato deliberately made conflicting rulings simultaneously.

Pursuant to Section 43, subdivision 3, of the Judiciary Law, Judge Pilato appeared with counsel before a panel of the members of the temporary Commission in New York City on January 30, 1976. Subsequently he was served with a Formal Written Complaint and waived his right to a hearing, stipulating that his testimony of January 30, 1976, could be considered by the Commission.

In his testimony of January 30, 1976, and in a subsequent affidavit dated February 19, 1976, Judge Pilato acknowledged several of the allegations. The Commission has sustained the following charges of the Formal Written Complaint:

From November 15, 1973 to March 6, 1975, in the case of *Salinas v. Colunio*, Judge Pilato deliberately made conflicting rulings simultaneously.

During 1974, Judge Pilato exhibited anger and impatience at attorneys in his courtroom during various proceedings before him.

On or about April 14, 1975, and on other occasions, Judge Pilato improperly addressed respondents appearing before him referring to them by informal names and nicknames and made undignified remarks to respondents in court.

CONCLUSION *

By his conduct in court, Judge Pilato was in violation of Sections 33.1, 33.2 and 33.3 of the Rules of the Administrative Board of the Judicial Conference which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity. . . [Section 33.3(a)(3)]

PUBLIC CENSURE

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge Pilato be publicly censured.

Dated: January 25, 1978

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of
EDMUND V. CAPLICKI, JR.,
a Justice of the Town of LaGrange, County of Dutchess.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to the Honorable Edmund V. Caplicki, Jr.

Edmund V. Caplicki, Jr., is a justice of the Town Court of La Grange in Dutchess County. He is an attorney. He first took office in January 1975. His current term of office expires on December 31, 1979.

Pursuant to Section 43, subdivision 2, of the Judiciary Law, the present investigation of Judge Caplicki commenced on May 25, 1977. In the course of its investigation, the Commission discovered seven instances in which Judge Caplicki made *ex parte* requests for other judges for favorable dispositions for defendants in traffic cases, as follows.

JUDGE CAPLICKI'S REQUESTS FOR FAVORABLE
DISPOSITIONS FOR DEFENDANTS
IN SEVEN TRAFFIC CASES

On or about October 15, 1974, Judge Caplicki sent a letter, in which he identifies himself as a judge, to the Town Court of Claverack, re-

questing favorable treatment for the defendant, who was charged with speeding, in *People v. Walter T. Blank*, a case then pending in the Town Court of Claverack.

On or about November 13, 1974, Judge Caplicki sent a letter, in which he identifies himself as a judge, to Judge Richard A. Folmsbee of the Town Court of Princetown, on behalf of the defendant, who was charged with speeding, in *People v. Paul H. Wilbur*, a case then pending before Judge Folmsbee. Judge Caplicki referred in his letter to a prior telephone conversation he had held with Judge Folmsbee regarding the *Wilbur* case, and he enclosed a check for \$25.00 in payment of the fine to be levied by Judge Folmsbee on the defendant for the reduced charge of driving with unsafe tires.

On or about April 30, 1975, Judge Caplicki sent a letter, in which he identifies himself as a judge, to Judge William J. Bulger of the Town Court of Wappinger, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. Frank DeMarco*, a case then pending before Judge Bulger. Judge Caplicki referred in his letter to a prior telephone conversation he had held with Judge Bulger regarding the *DeMarco* case, and he enclosed a check for \$15.00 in payment of the fine to be levied by Judge Bulger on the defendant for the reduced charge of failing to keep right.

On or about July 28, 1975, Judge Caplicki communicated with Judge Horace C. Sawyer of the Town Court of Goshen on behalf of the defendant, who was charged with speeding, in *People v. Phillip A. Bellino, Jr.*, a case then pending before Judge Sawyer.

On or about February 9, 1976, Judge Caplicki sent a letter on official court stationery to Judge Joseph L. Thomson of the Town Court of Cornwall, on behalf of the defendant, who was charged with speeding, in *People v. Daniel Schulman*, a case then pending before Judge Thomson. Judge Caplicki referred in his letter to a prior telephone conversation he had held with Judge Thomson regarding the *Schulman* case, and he enclosed a check for \$10.00 in payment of a fine to be imposed by Judge Thomson on the defendant for the reduced charge of failing to obey a posted highway sign.

On or about March 12, 1976, Judge Caplicki sent a letter on official court stationery to one Mrs. Johnson of the Town Court of Clarkstown, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. John B. Juliano*, a case then pending in the Town Court of Clarkstown. In his letter Judge Caplicki referred to a prior telephone conversation with Mrs. Johnson regarding the *Juliano* case.

On or about March 29, 1976, Judge Caplicki sent a letter on official court stationery to Judge Thomas Byrne of the Town Court of Newburgh, on behalf of the defendant, who was charged with speeding, in *People v. Christine C. Ansorge*, a case then pending before Judge Byrne. Judge Caplicki referred in his letter to a prior telephone conversation he had held with Judge Byrne regarding the *Ansorge* case, and he enclosed a check for \$10.00 in payment of the fine to be levied by Judge Byrne on the defendant for the reduced charge of driving with a bald tire.

JUSTICE CAPLICKI'S WAIVER OF A SCHEDULED HEARING BEFORE THE COMMISSION

The Commission sent Judge Caplicki letters dated July 12, 1977, and August 9, 1977, asking him to comment on his requests for favorable treatment in the *Blank, DeMarco, Bellino, Schulman, Juliano* and *Ansorge* cases. In letters dated July 26, 1977, and August 23, 1977, Judge Caplicki acknowledged making the requests in these cases.

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with respect to the judge's apparent conduct in the cases noted above and in the *Wilbur* case. On November 29, 1977, Judge Caplicki was served with a Notice of Hearing and a Formal Written Complaint detailing the factual allegations in the seven cases noted above. In an Answer dated December 7, 1977, Judge Caplicki admitted all the factual allegations while denying upon information and belief that the conduct was improper. In an accompanying letter of the same date, the judge waived his right to the scheduled hearing.

CONCLUSION

By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, Judge Caplicki was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge Caplicki should be publicly censured.

Dated: February 16, 1978
New York, New York

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of
MICHAEL CERRETTO,
a Justice of the Town of Gates, County of Monroe.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to the Honorable Michael Cerretto.

Michael Cerretto is a justice of the Town Court of Gates in Monroe County. He is not an attorney. He first took office on February 4, 1974. His current term of office expires on December 31, 1979.

Pursuant to Section 43, subdivision 2, of the Judiciary Law, the present investigation of Judge Cerretto was commenced on August 27, 1976, by the Temporary State Commission on Judicial Conduct and was continued when the Commission became permanent on September 1, 1976. In the course of its investigation, the Commission discovered eight instances in which Judge Cerretto made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and nine instances in which Judge Cerretto granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties.

JUSTICE CERRETTO'S REQUESTS FOR FAVORABLE DISPOSITIONS IN TRAFFIC CASES

On or about February 25, 1974, Judge Cerretto sent a letter to Judge David A. Brown of the Town Court of Henrietta, requesting favorable treatment for the defendant, who was involved in a traffic accident and was charged with operating a motor vehicle with inadequate brakes, in *People v. Charles M. Trask*, a case then pending before Judge Brown.

On or about May 21, 1974, Judge Cerretto sent a letter on official court stationery to Judge Andrew Lang of the Town Court of Pembroke, on behalf of the defendant, who was charged with speeding in *People v. Peter Pilittere*, a case then pending before Judge Lang. Judge Cerretto referred in his letter to a prior telephone conversation he had held with Judge Lang regarding the *Pilittere* case, and he enclosed a money order for \$35.00 in payment of the fine to be levied on the defendant for the reduced charge of driving with a faulty muffler.

On or about July 24, 1975, and on or about August 7, 1975, Judge Cerretto sent two letters, in which he identifies himself as a judge, to Judge William Farr of the Town Court of Avon, on behalf of the defendant, who was charged with speeding in *People v. Anna Marie Ferrari*, a case then pending before Judge Farr. Judge Cerretto referred in both letters to a prior telephone conversation he had held with Judge Farr regarding the *Ferrari* case, and he enclosed with the letter of July 24, 1975, a check for \$10.00.

On or about September 5, 1975, and on or about September 11, 1975, Judge Cerretto sent two letters on official court stationery to Judge Joseph Pyszczynski of the Town Court of Cheektowaga, requesting favorable treatment for the defendant, who was charged with speeding in *People v. Albert Caschette*, a case then pending before Judge Pyszczynski. Judge Cerretto refers in his letter of September 5, 1975, to a prior telephone conversation he had held with the Cheektowaga Town Court Clerk regarding the *Caschette* case, and he enclosed with his letter of September 11, 1975, a check for \$15.00 in payment of the fine to be levied by Judge Pyszczynski on the defendant for the reduced charge of a parking violation.

On or about September 29, 1975, Judge Cerretto sent a letter on official court stationery to Judge James Morris of the Town Court of Brighton, on behalf of the defendant, who was charged with speeding in *People v. Sheryl Nicosia*, a case then pending before Judge Morris.

Judge Cerretto referred in his letter to a prior telephone conversation he had held with Judge Morris regarding the *Nicosia* case.

On or about March 17, 1976, Judge Cerretto sent a letter on official court stationery to Judge J.M. Kelleher of the Town Court of Lancaster, on behalf of the defendant, who was charged with speeding in *People v. Joseph N. Nucci*, a case then pending before Judge Kelleher. Judge Cerretto referred in his letter to a prior telephone conversation he had held with Judge Kelleher regarding the *Nucci* case, and he enclosed a check for \$10.00 in payment of the fine to be levied by Judge Kelleher on the defendant for the reduced charge of failure to keep right.

On or about March 24, 1976, Judge Cerretto sent a letter on official court stationery to Judge Wesley T. Wooden of the Town Court of Greece, on behalf of the defendant, who was charged with speeding in *People v. Samuel T. Brongo*, a case then pending before Judge Leroy Ramsey, also a justice of the Town Court of Greece. Judge Cerretto enclosed with his letter \$15.00 in payment of bail which he noted that Judge Wooden had "requested for Sam Brongo."

On or about October 18, 1976, Judge Cerretto or someone at Judge Cerretto's request sent a letter on official court stationery to Judge Neil Cramer of the Town Court of Chili, on behalf of the defendant, who was charged with speeding in *People v. George Giordano*, a case then pending before Judge Cramer. Judge Cerretto referred in his letter to a prior telephone conversation he had held with Judge Cramer regarding the *Giordano* case, and he enclosed a check for \$20.00 in payment of bail.

JUSTICE CERRETTO'S GRANTING OF REQUESTS FOR FAVORABLE DISPOSITIONS IN TRAFFIC CASES

On or about February 5, 1974, Judge Cerretto dismissed a charge of speeding in *People v. Delio De Cesare* as a result of a communication he received on behalf of the defendant from Judge Anthony Errico of the town Court of Gates, or someone at Judge Errico's request.

On or about February 5, 1974, Judge Cerretto reduced a charge of driving without insurance to failure to keep right and imposed an unconditional discharge in *People v. Joseph Nesser* as a result of a communication he received on behalf of the defendant from Judge Anthony Errico of the Town Court of Gates, or someone at Judge Errico's request.

On or about February 6, 1974, Judge Cerretto dismissed a charge of speeding in *People v. Audrey Fritz* as a result of a communication he received on behalf of the defendant from Judge Anthony Errico of the Town Court of Gates, or someone at Judge Errico's request.

On or about March 19, 1974, Judge Cerretto dismissed charges of driving with an unsafe tire and driving an uninsured vehicle in *People v. Gray Gardner* as a result of a communication he received on behalf of the defendant from Judge Anthony Errico of the Town Court of Gates, or someone at Judge Errico's request.

On or about March 26, 1974, Judge Cerretto reduced a charge of speeding to passing a red light in *People v. Joseph Martin* as a result of a communication he received from Judge Anthony Errico of the Town Court of Gates, or someone at Judge Errico's request.

On or about April 30, 1974, Judge Cerretto imposed an unconditional discharge on a charge of passing a red light in *People v. Lorraine Brigandi* as a result of a communication he received on behalf of the defendant from Judge Anthony Errico of the Town Court of Gates.

On or about April 30, 1974, Judge Cerretto imposed an unconditional discharge on a charge of failing to stop at a red light in *People v. Robert Curry* as a result of a communication he received on behalf of the defendant.

On or about June 11, 1974, Judge Cerretto dismissed a charge of failure to display an inspection sticker in *People v. Emma Bauer* as a result of a communication he received on behalf of the defendant from Judge Anthony Errico of the Town Court of Gates, or someone at Judge Errico's request.

On or about August 13, 1974, Judge Cerretto imposed an unconditional discharge on a charge of driving without a valid inspection sticker in *People v. Daniel Sponn* as a result of a communication he received on behalf of the defendant from Mr. Jim Burke, the Town Court Case Screener for the Monroe County District Attorney.

JUSTICE CERRETTO'S WAIVER OF A SCHEDULED HEARING BEFORE THE COMMISSION

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with respect to Judge Cerretto's apparent conduct in the 17 cases noted above. On December 3, 1977, Judge Cerretto was served with a Notice

of Hearing and a Formal Written Complaint detailing the factual allegations in the 17 cases noted above. On December 13, 1977, Judge Cerretto submitted an Answer in the form of a letter to the Commission, admitting the factual allegations in all but two of the cases. In the *Curry* case, Judge Cerretto denies "any independent recollection of events. . . so as to enable him to either admit or deny the factual basis" of the charge. In the *Nicosia* case, Judge Cerretto "does not admit the factual basis of the charge, and does not in fact remember requesting special consideration. . ." In his Answer, Judge Cerretto waived his right to the scheduled hearing.

CONCLUSION

By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting favorable dispositions to defendants at the request of third parties, Judge Cerretto was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3(A) of the Code of Judicial Conduct, which state in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . .
[Section 33.3(a)(4)]

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge Cerretto should be publicly censured.

Dated: February 16, 1978
New York, New York

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of
DONALD L. CHASE,
a Justice of the Town of New Scotland, County of Albany.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to the Honorable Donald L. Chase.

Donald L. Chase is a justice of the Town Court of New Scotland in Albany County. He is not an attorney. He first took office in January 1967. His current term of office expires on December 31, 1981.

Pursuant to Section 43, subdivision 2, of the Judiciary Law, the present investigation of Judge Chase commenced on May 25, 1977. In the course of its investigation, the Commission discovered two instances in which Judge Chase made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases and five instances in which Judge Chase granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties.

JUSTICE CHASE'S REQUESTS FOR FAVORABLE
DISPOSITIONS FOR DEFENDANTS IN TRAFFIC CASES

On or about October 24, 1974, Judge Chase sent a letter on official court stationery to Judge Wayne G. Smith of the Town Court of Plattekill on behalf of the defendant, who was charged with speeding, in

People v. Robert E. Dietz, Sr., a case then pending before Judge Smith. Judge Chase referred in his letter to a prior telephone conversation he had held with Judge Smith regarding the *Dietz* case, and he enclosed a check in payment of the fine to be levied by Judge Smith on the defendant for the reduction to a non-moving violation.

Or or about August 7, 1975, Judge Chase or someone at his request communicated with Judge Harold Schultz of the Town Court of New Scotland on behalf of the defendant, who was charged with driving with a faulty exhaust system, in *People v. Eldridge S. Bushnell*, a case then pending before Judge Schultz.

JUSTICE CHASE'S GRANTS OF FAVORABLE DISPOSITIONS TO DEFENDANTS IN TRAFFIC CASES

On or about May 3, 1976, Judge Chase reduced a charge of failure to stop at a stop sign to illegal parking in *People v. Gerald E. Gunlach* as a result of a communication he received on behalf of the defendant from Ms. Marie E. Oakes, Court Clerk of the Town of Bethlehem.

On or about June 13, 1976, Judge Chase reduced a charge of turning illegally on a grade to illegal parking in *People v. Robert A. DeSantis* as a result of a communication he received on behalf of the defendant from Judge Patrick Maney of the Town Court of East Greenbush. Judge Maney's communication was addressed to another justice of the Town of New Scotland, Harold Schultz, who forwarded it to Judge Chase.

On or about August 26, 1976, Judge Chase reduced a charge of speeding to illegal parking in *People v. George F. Miller, Jr.*, as a result of a communication he received on behalf of the defendant from Ms. Marie E. Oakes, Court Clerk of the Town of Bethlehem.

On or about September 16, 1976, Judge Chase reduced a charge of speeding to illegal parking in *People v. Gregory W. Goetsch* as a result of a communication he received on behalf of the defendant from Judge Raymond Galarneau of the Town Court of Waterford.

On or about December 3, 1976, Judge Chase reduced a charge of speeding to illegal parking in *People v. John C. Leyden* as a result of a communication he received on behalf of the defendant from Judge Robert H. Rice of the Town Court of Bethlehem.

JUSTICE CHASE'S WAIVER OF A SCHEDULED HEARING BEFORE THE COMMISSION

The Commission sent Judge Chase letters dated July 15, 1977, and October 21, 1977, asking him to comment on his requests for favorable treatment in the *Deitz* and *Bushnell* cases and his granting of favorable treatment in the *Gunlach*, *DeSantis*, *Miller* and *Goetsch* cases. In letters dated July 18, 1977, and October 31, 1977, Judge Chase acknowledged making the requests and granting the dispositions in these cases.

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with respect to the judge's apparent conduct in the cases noted above and in the *Leyden* case. On November 25, 1977, Judge Chase was served with a Notice of Hearing and a Formal Written Complaint detailing the factual allegations in the seven cases noted above. In an Answer dated December 23, 1977, Judge Chase admitted all the factual allegations while denying any knowledge that his conduct was improper. On the same date, in an accompanying letter from his attorney, the judge waived his right to the scheduled hearing.

CONCLUSION

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases and by granting favorable dispositions to defendants in traffic cases at the request of third parties, Judge Chase was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3(A) of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge . . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge Chase should be publicly censured.

Dated: February 16, 1978
New York, New York

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of
VINCENT A. CLARK,
a Justice of the Town of Stony Point, County of Rockland.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to the Honorable Vincent A. Clark.

Vincent A. Clark is a justice of the Town Court of Stony Point in Rockland County. He is not an attorney. He first took office in January, 1935. His current term of office expires on December 31, 1981.

Pursuant to Section 43, subdivision 2, of the Judiciary Law, the present investigation of Judge Clark commenced on June 29, 1977. In the course of its investigation, the Commission discovered twelve instances in which Judge Clark granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties.

JUSTICE CLARK'S GRANTS OF FAVORABLE
DISPOSITIONS TO DEFENDANTS IN TRAFFIC CASES

On or about February 19, 1974, Judge Clark imposed an unconditional discharge on a charge of speeding in *People v. Kenneth Finochiaro* as a result of a letter he received on behalf of the defendant.

On or about March 5, 1974, Judge Clark dismissed a charge of speeding in *People v. Richard Abrams* as a result of a letter he received on behalf of the defendant from Judge Harry A. Fox of the Town Court of Stony Point.

On or about May 11, 1974, Judge Clark reduced a charge of speeding to illegal parking in *People v. Salvatore Marro* as a result of a letter he received on behalf of the defendant from Judge Harry A. Fox of the Town Court of Stony Point.

On or about May 14, 1974, Judge Clark dismissed a charge of speeding in *People v. Carol Maloney* as a result of a letter he received on behalf of the defendant.

On or about May 14, 1974, Judge Clark reduced a charge of speeding to illegal parking in *People v. Carmelo Nigro* as a result of a letter he received on behalf of the defendant.

On or about May 14, 1974, Judge Clark reduced a charge of speeding to illegal parking and dismissed the charge in *People v Andrew Katz* as a result of a letter he received on behalf of the defendant.

On or about May 28, 1974, Judge Clark reduced a charge of speeding to illegal parking in *People v. Joan Cappiello* as a result of a letter he received on behalf of the defendant from Judge Leo Fassberg of the Town Court of Ramapo.

On or about May 28, 1974, Judge Clark imposed an unconditional discharge on a charge of speeding in *People v. Stefano Tomeo* as a result of a letter he received on behalf of the defendant from Detective Matthew McMenammin of the Palisades Parkway Police, or someone at Detective McMenammin's request.

On or about July 16, 1974, Judge Clark reduced a charge of excessive speed to illegal parking in *People v. Richard J. King* as a result of a letter he received on behalf of the defendant from Judge George S. Cobb of the Town Court of Haverstraw.

On or about July 16, 1974, Judge Clark reduced a charge of speeding to illegal parking in *People v. Richard Walch* as a result of a letter he received on behalf of the defendant from Judge Joseph Thomson of the Town of Cornwall.

On or about January 14, 1975, Judge Clark reduced a charge of speeding to driving an unregistered motor vehicle in *People v. Dorothy Santoro* as a result of a letter he received on behalf of the defendant from Sheriff Raymond A. Lindemann of the County of Rockland.

On or about March 18, 1975, Judge Clark reduced a charge of speeding to driving with unsafe tires in *People v. Albert V. Abdo* as a result of a letter he received on behalf of the defendant from Judge Joseph Thomson of the Town Court of Cornwall.

JUSTICE CLARK'S WAIVER OF A SCHEDULED HEARING BEFORE THE COMMISSION

Pursuant to Section 43, subdivision 3, of the Judiciary Law, the Commission requested Judge Clark's appearance before a panel of Commission members, by letter dated July 12, 1977. On August 10, 1977, Judge Clark testified before the Commission on his granting of favorable treatment in the *Finochiaro, Abrams, Marro, Maloney, Nigro, Katz, Cappiello, Tomeo, King, Walch, Santoro* and *Abdo* cases. In his testimony, Judge Clark acknowledged granting the dispositions in these cases.

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with respect to the judge's apparent conduct in the previously cited cases. On November 25, 1977, Judge Clark was served with a Notice of Hearing and a Formal Written Complaint detailing the factual allegations in the twelve cases noted above. In an Answer dated December 2, 1977, Judge Clark admitted that in all twelve cases the defendants' charges were reduced and denied that the conduct was improper. In a letter dated December 28, 1977, written by Judge Clark's attorney and counter-signed by the judge, acknowledgment is made of the receipt of the communications referred to in the Formal Written Complaint and recognition is given that the facts recited in the Complaint give an appearance of impropriety. In this letter the judge waived his right to the scheduled hearing.

CONCLUSION

By granting favorable dispositions to defendants in traffic cases at the request of third parties, Judge Clark was in violation of Sections 33.1, 33.2, 33.3(a)(1), and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge . . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge Clark should be publicly censured.

Dated: February 16, 1978
New York, New York

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of

JAMES W. COLEMAN,

a Justice of the Town of Greenfield, Saratoga County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to the Honorable James W. Coleman.

James W. Coleman is a justice of the Town Court of Greenfield in Saratoga County. He is not an attorney. He first took office in August 1973. His current term of office expires on December 31, 1981.

Pursuant to Section 43, subdivision 2, of the Judiciary Law, the present investigation of Judge Coleman commenced on May 25, 1977. In the course of its investigation, the Commission discovered one instance in which Judge Coleman made an *ex parte* request of another judge for a favorable disposition for a defendant in a traffic case and nine instances in which Judge Coleman granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties.

JUSTICE COLEMAN'S REQUEST FOR A FAVORABLE
DISPOSITION FOR A DEFENDANT IN A TRAFFIC CASE

On or about August 22, 1974, Judge Coleman sent a letter, in which he identifies himself as a judge, to Judge Robert Vines of the Town Court of Moreau on behalf of the defendant, who was charged with

speeding in *People v. Charles Sommers*, a case then pending before Judge Vines.

JUSTICE COLEMAN'S GRANTS OF FAVORABLE DISPOSITIONS TO DEFENDANTS IN TRAFFIC CASES

On or about October 31, 1973, Judge Coleman reduced a charge of speeding to driving with an inadequate muffler in *People v. Vincent L. Smero* as a result of a communication he received on behalf of the defendant from the Sheriff's Department of Saratoga County.

On or about February 20, 1974, Judge Coleman reduced a charge of speeding to driving with unsafe tires in *People v. Robert C. Shaw* as a result of a communication he received on behalf of the defendant from the Sheriff's Department of Saratoga County.

On or about January 15, 1975, Judge Coleman reduced a charge of speeding to driving with unsafe tires in *People v. Anthony Spinelli* as a result of a communication he received on behalf of the defendant from the Sheriff's Department of Saratoga County.

On or about July 2, 1975, Judge Coleman reduced a charge of speeding to driving with unsafe tires in *People v. Jeanette A. Bradley* as a result of a communication he received on behalf of the defendant.

On or about August 13, 1975, Judge Coleman reduced a charge of speeding to driving with unsafe tires in *People v. James L. Daily* as a result of a communication he received on behalf of the defendant from Judge George J. Breigle of the Town Court of Sand Lake.

On or about March 24, 1976, Judge Coleman reduced a charge of speeding to driving with unsafe tires in *People v. Brenda Lee* as a result of a communication he received on behalf of the defendant.

On or about April 14, 1976, Judge Coleman reduced a charge of speeding to parking on a highway in *People v. Janice Jeffords* as a result of a communication he received on behalf of the defendant from the Sheriff's Department of Saratoga County.

On or about May 5, 1976, Judge Coleman reduced a charge of failure to stop for a stop sign to driving with unsafe tires in *People v. Robert E. Plummer* as a result of a communication he received on behalf of the defendant from the Sheriff's Department of Saratoga County.

On or about August 24, 1976, Judge Coleman reduced a charge of speeding to driving with unsafe tires in *People v. Robert J. Thrasher*

as a result of a communication he received on behalf of the defendant from Judge George J. Breigle of the Town Court of Sand Lake.

JUSTICE COLEMAN'S WAIVER OF A SCHEDULED HEARING BEFORE THE COMMISSION

The Commission sent Judge Coleman a letter dated July 14, 1977, asking him to comment on his grants of favorable dispositions in the *Smero, Spinelli, Daily, Lee, Jeffords, Plummer* and *Thrasher* cases. In a letter dated July 20, 1977, Judge Coleman acknowledged granting the dispositions in these cases.

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with respect to the judge's apparent conduct in the cases noted above and in the *Sommers, Shaw* and *Bradley* cases. On November 26, 1977, Judge Coleman was served with a Notice of Hearing and a Formal Written Complaint detailing the factual allegations in the ten cases noted above. Judge Coleman did not respond to the Formal Written Complaint. On December 9, 1977, the Commission sent Judge Coleman a letter, return receipt requested, informing him that his failure to submit an Answer to the Formal Written Complaint constituted an admission of the allegations against him.

CONCLUSION

By making an *ex parte* request of another judge for a favorable disposition for a defendant in a traffic case and by granting favorable dispositions to defendants in traffic cases at the request of third parties, Judge Coleman was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3(A) of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge Coleman should be publicly censured.

Dated: February 16, 1978
New York, New York

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of
C.H. DU MOND,
a Justice of the Town of Hurley, County of Ulster

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to the Honorable C.H. DuMond.

Judge DuMond is a justice of the Town Court of Hurley in Ulster County. He is not an attorney. He first took office in January 1970. His current term of office expires on December 31, 1981.

Pursuant to Section 43, subdivision 2, of the Judiciary Law, the present investigation of Judge DuMond commenced on May 25, 1977. In the course of its investigation, the Commission discovered six instances in which Judge DuMond made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and one instance in which Judge DuMond granted a favorable disposition to a defendant in a traffic case pursuant to a request from a third party.

JUSTICE DuMOND'S REQUESTS FOR FAVORABLE
DISPOSITIONS FOR DEFENDANTS IN TRAFFIC CASES

On or about December 17, 1974, Judge DuMond, or someone at his request, communicated with Judge Wayne Smith of the Town Court

of Plattekill on behalf of the defendant, who was charged with speeding in *People v. Leland E. Johnson*, a case then pending before Judge Smith.

On or about April 2, 1975, Judge DuMond, or someone at his request, communicated with Judge Arthur A. Reilly of the Town Court of Ulster on behalf of the defendant, who was charged with speeding, in *People v. Charles J. Maltese*, a case then pending before Judge Reilly.

On or about May 24, 1976, Judge DuMond, or someone at his request, communicated with Judge Arthur A. Reilly of the Town Court of Ulster on behalf of the defendant, who was charged with driving with studded tires, in *People v. Marvel J. Priest*, a case then pending before Judge Reilly.

On or about June 9, 1976, Judge DuMond, or someone at his request, communicated with Judge Arthur A. Reilly of the Town Court of Ulster on behalf of the defendant, who was charged with speeding, in *People v. Charles J. Maltese*, a case then pending before Judge Reilly.

On or about November 22, 1976, Judge DuMond, or someone at his request, communicated with Judge Joseph Polonsky of the Town Court of Wawarsing on behalf of the defendant, who was charged with speeding, in *People v. Herbert F. Schuler*, a case then pending before Judge Polonsky.

On or about January 19, 1977, Judge DuMond, or someone at his request, communicated with Judge Arthur A. Reilly of the Town Court of Ulster on behalf of the defendant, who was charged with speeding, in *People v. Wilson Stokes*, a case then pending before Judge Reilly.

JUSTICE DuMOND'S GRANT OF A FAVORABLE DISPOSITION FOR THE DEFENDANT IN A TRAFFIC CASE

On or about December 22, 1976, Judge DuMond reduced a charge of speeding to driving with an inadequate muffler in *People v. Ernest M. Davis* as a result of a letter he received on behalf of the defendant from Judge Joseph Polonsky of the Town Court of Wawarsing.

JUSTICE DuMOND'S WAIVER OF A SCHEDULED HEARING BEFORE THE COMMISSION

Pursuant to Section 43, subdivision 3, of the Judiciary Law, the Commission requested that Judge DuMond appear before a panel of

its members. Judge DuMond replied with an affidavit dated July 28, 1977. In the affidavit Judge DuMond acknowledged making the requests in the *Johnson, Schuler*, and the two *Maltese* cases, as well as granting Judge Polonsky's request in the *Davis* case. Judge DuMond denied any independent recollection of the *Stokes* and *Priest* cases.

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with respect to the judge's apparent conduct in all of the cases noted above. On November 25, 1977, Judge DuMond was served with a Notice of Hearing and a Formal Written Complaint detailing the factual allegations in the seven cases. In an Answer dated December 2, 1977, Judge DuMond admitted all the factual allegations but stated he had had no intention of committing improper conduct. In a letter from his attorney dated December 27, 1977, Judge DuMond waived his right to the scheduled hearing.

CONCLUSION

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by granting a favorable disposition to a defendant in a traffic case at the request of a third party, Judge DuMond was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3(A) of the Code of Judicial Conduct which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge DuMond should be publicly censured.

Dated: February 16, 1978
New York, New York

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of
JOSEPH M. HENDERSON,
a Justice of the Town of Parish, County of Oswego.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to the Honorable Joseph M. Henderson.

Joseph M. Henderson is a justice of the Town Court of Parish in Oswego County. He is not an attorney. He first took office in January 1967. His current term of office expires on December 31, 1979.

Pursuant to Section 43, subdivision 1, a complaint was filed with the Commission alleging matters unrelated to this Determination. The investigation commenced on August 25, 1976. In the course of the investigation the Commission discovered ten instances in which Judge Henderson granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties and one instance in which Judge Henderson made an *ex parte* request of another judge for a favorable disposition for a defendant in a traffic case.

JUSTICE HENDERSON'S REQUEST FOR A FAVORABLE
DISPOSITION FOR A DEFENDANT IN A TRAFFIC CASE

On or about November 12, 1974, Judge Henderson sent a letter, in which he identified himself as a judge, to Judge Helen Burnham of the

Town Court of Salina, requesting favorable treatment for the defendant, who was charged with an unsafe lane change, in *People v. Jeffrey Rhinehart*, a case then pending before Judge Burnham.

JUSTICE HENDERSON'S GRANTING OF FAVORABLE DISPOSITIONS FOR DEFENDANTS IN TRAFFIC CASES

On or about November 29, 1972, Judge Henderson reduced a charge of speeding to failure to keep right in *People v. Darrell Weston* as a result of a letter he received from Judge Burnham of the Town Court of Salina.

On or about April 3, 1974, Judge Henderson reduced a charge of speeding to driving with an inadequate muffler in *People v. N.A. Pinsonnault* as a result of a communication he received on behalf of the defendant from State Senator H. Douglas Barclay, or someone at Senator Barclay's request.

Sometime between April 5, 1974, and April 17, 1974, Judge Henderson reduced a charge of speeding to driving with an inadequate muffler in *People v. John Doldo* as a result of a communication he received on behalf of the defendant from State Senator H. Douglas Barclay, or someone at Senator Barclay's request.

On or about April 16, 1974, Judge Henderson reduced a charge of speeding to driving with an inadequate muffler in *People v. Lansing Baker* as a result of a communication he received on behalf of the defendant from Investigator "Chucky" Nellis of the New York State Police.

On or about April 17, 1974, Judge Henderson reduced a charge of speeding to driving with an inadequate muffler in *People v. Robert L. Coffin* as a result of a communication he received on behalf of the defendant from Judge Murrill Henry of the Town Court of Otisco, or someone at Judge Henry's request.

On or about November 7, 1974, Judge Henderson reduced a charge of speeding to failure to keep right in *People v. Joseph DeFazio* as a result of a letter he received on behalf of the defendant from Judge Michael Perretta of the Town Court of Lenox.

On or about March 24, 1975, Judge Henderson reduced a charge of speeding to driving with an inadequate muffler in *People v. Gregory K. Sullivan* as a result of a letter he received on behalf of the defendant from Judge Leroy T. Ramsey of the Town Court of Greece.

On or about June 13, 1975, Judge Henderson reduced a charge of speeding to driving with an inadequate exhaust in *People v. Thomas Lesage* as a result of a letter he received on behalf of the defendant from Judge John Schott of the Town Court of Bergen.

On or about December 5, 1975, Judge Henderson reduced a charge of speeding to driving with an inadequate muffler in *People v. Thomas Maass* as a result of a letter he received on behalf of the defendant from Judge Robert F. Kiener of the Town Court of West Seneca.

On or about September 4, 1976, Judge Henderson reduced a charge of speeding to failure to keep right in *People v. Robert Campbell* as a result of a communication he received on behalf of the defendant from Senator H. Douglas Barclay, or someone at Senator Barclay's request.

JUSTICE HENDERSON'S WAIVER OF A SCHEDULED HEARING BEFORE THE COMMISSION

Pursuant to Section 43, subdivision 3, of the Judiciary Law, the Commission requested that Judge Henderson appear before a panel of its members on March 18, 1977. In his testimony, Judge Henderson acknowledged granting favorable dispositions in the ten cases noted above.

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with respect to the judge's apparent conduct in all of the cases noted above. Judge Henderson was served with a Notice of Hearing and a Formal Written Complaint detailing the factual allegations in the eleven cases. In his Answer dated December 7, 1977, Judge Henderson made a general denial. In a subsequent letter dated January 6, 1978, Judge Henderson waived his right to the scheduled hearing and admitted all the factual allegations, adding he believed at the time he was acting properly.

CONCLUSION

By making an *ex parte* request of another judge for a favorable disposition for the defendant in a traffic case, and by granting favorable dispositions to defendants at the request of third parties, Judge Henderson was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3(A) of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge Henderson should be publicly censured.

Dated: February 16, 1978
New York, New York

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of
MURRILL HENRY,
a Justice of the Town of Otisco, County of Onondaga.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to the Honorable Murrill Henry.

Murrill Henry is a justice of the Town Court of Otisco in Onondaga County. He is not an attorney. He first took office in January 1969. His current term of office expires on December 31, 1981.

Pursuant to Section 43, subdivision 2, of the Judiciary Law, the present investigation of Judge Henry commenced on January 26, 1977. In the course of its investigation, the Commission discovered four instances in which Judge Henry made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases.

JUSTICE HENRY'S REQUESTS FOR FAVORABLE
DISPOSITIONS FOR DEFENDANTS IN TRAFFIC CASES

On or about March 29, 1974, Judge Henry communicated with Judge Joseph M. Henderson of the Town Court of Parish on behalf of the defendant, who was charged with speeding, in *People v. Robert L. Coffin*, a case then pending before Judge Henderson.

On or about January 17, 1975, Judge Henry sent a letter, on stationery which identifies him as a judge, to Judge Joseph M. Henderson of the Town Court of Parish, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. Robert E. Coffin*, a case then pending before Judge Henderson.

On or about June 23, 1976, Judge Henry sent a letter, on stationery which identifies him as a judge, to the Justice of the Town Court of Thompson, requesting favorable treatment for the defendant, his son, who was charged with speeding, in *People v. John A. Henry*, a case then pending before the Thompson Town Court.

On or about August 6, 1976, Judge Henry sent a letter on stationery which identifies him as a judge, to the Justice of the Town Court of Liberty, requesting favorable treatment for the defendant, his son, who was charged with driving a truck without a valid tax mileage ticket, in *People v. John A. Henry*, a case then pending before the Liberty Town Court.

JUSTICE HENRY'S WAIVER OF A SCHEDULED HEARING BEFORE THE COMMISSION

The Commission sent Judge Henry a letter dated July 14, 1977, asking him to comment on his requests for favorable treatment in the *Robert L. Coffin* case and the *Henry* case before Liberty Town Justice Hering. In a letter dated July 28, 1977, Judge Henry acknowledged making the requests in these cases.

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with respect to the judge's apparent conduct in the cases noted above, and in the *Robert E. Coffin* case and the remaining *Henry* case. On November 25, 1977, Judge Henry was served with a Notice of Hearing and a Formal Written Complaint detailing the factual allegations in the four cases noted above. In an Answer dated December 6, 1977, Judge Henry's attorney admitted all the factual allegations and submitted an affidavit from Judge Henry setting forth his lack of knowledge of the Canons of the Code of Judicial Conduct at the time he made the requests. In a letter dated December 27, 1977, Judge Henry's attorney confirmed a telephone conversation in which the judge waived his right to the scheduled hearing.

CONCLUSION

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, Judge Henry was in violation of

Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3(A) of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge Henry should be publicly censured.

Dated: February 16, 1978
New York, New York

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of
KENNETH PETZOLD,
a Justice of the Village of Maybrook, County of Orange.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to the Honorable Kenneth Petzold.

Kenneth Petzold is a justice of the Village Court of Maybrook in Orange County. He first took office in December 1972. His current term expires in April 1980.

Pursuant to Section 43, subdivision 2, of the Judiciary Law, the present investigation of Judge Petzold commenced on June 29, 1977. In the course of its investigation, the Commission discovered four instances in which Judge Petzold made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases and three instances in which Judge Petzold granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties.

JUSTICE PETZOLD'S REQUESTS FOR FAVORABLE
DISPOSITIONS FOR DEFENDANTS IN TRAFFIC CASES

On or about April 11, 1974, Judge Petzold sent a letter to Judge Angelo Darrigo of the Town Court of Newburgh on behalf of the defendant, who was charged with speeding, in *People v. Edward W.*

Diller, a case then pending before Judge Darrigo. Judge Petzold referred in his letter to a prior telephone conversation he had held with Judge Darrigo regarding the *Diller* case in which he requested the charge be reduced to failure to signal.

On or about July 11, 1974, Judge Petzold sent a letter on official court stationery to the Wappingers Falls Village Court, requesting favorable treatment for the defendant, who was charged with passing a red light, in *People v. Thomas A. Cheshard*, a case then pending in the Village Court of Wappingers Falls.

On or about February 17, 1976, Judge Petzold, or someone at his request, communicated with Judge Joseph Owen of the Town Court of Wallkill on behalf of the defendant, who was charged with speeding, in *People v. Paul J. Amodio*, a case then pending before Judge Owen.

On or about November 16, 1976, Judge Petzold, or someone at his request, communicated with Judge Edward Lahey of the Town Court of Windsor on behalf of the defendant, Judge Petzold's son-in-law, who was charged with driving without a valid inspection certificate, in *People v. Lawrence R. Marshall*, a case then pending before Judge Lahey.

JUSTICE PETZOLD'S GRANTS OF FAVORABLE DISPOSITIONS TO DEFENDANTS IN TRAFFIC CASES

On or about September 19, 1973, Judge Petzold reduced a charge of speeding to driving with a bald tire in *People v. Theodore Dunn* as a result of a letter he received on behalf of the defendant from Judge John R. Farley of the Town Court of Hamptonburgh.

On or about June 8, 1976, Judge Petzold dismissed a charge of speeding in *People v. Florence Greenwald* as a result of a letter he received on behalf of the defendant from someone at Bennett Enterprises of Fishkill, New York.

On or about July 13, 1976, Judge Petzold reduced a charge of speeding to driving with unsafe tires in *People v. Margaret M. Gurda* as a result of a letter he received on behalf of the defendant from one "Al."

JUSTICE PETZOLD'S WAIVER OF A SCHEDULED HEARING BEFORE THE COMMISSION

The Commission sent Judge Petzold letters dated July 8, 1977, and August 9, 1977, asking him to comment on his requests for favorable

treatment in the *Amodio* and *Marshall* cases and his granting of favorable treatment in the *Dunn*, *Greenwald* and *Gurda* cases. In letters dated July 22, 1977, and September 14, 1977, Judge Petzold acknowledged making the requests and granting the dispositions in these cases.

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with respect to the judge's apparent conduct in the cases noted above and on his requests for favorable treatment in the *Diller* and *Cheshard* cases. On November 28, 1977, Judge Petzold was served with a Notice of Hearing and a Formal Written Complaint detailing the factual allegations in the seven cases noted above. In an Answer dated December 18, 1977, which was in the form of a letter to the Commission, Judge Petzold admitted all the factual allegations with the modification that in the *Dunn* case the reduction was made at the request of Maybrook Police Camptain Shields and in the *Greenwald* and *Gurda* cases the reductions were made at the request of the Maybrook Chief of Police. In a telephone conversation with a Commission staff attorney on December 15, 1977, Judge Petzold waived his right to the scheduled hearing and confirmed his waiver by letter dated January 16, 1978, to the Commission.

CONCLUSION

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases and by granting favorable dispositions to defendants in traffic cases at the request of third parties, Judge Petzold was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge . . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge Petzold should be publicly censured.

Dated: February 16, 1978
New York, New York

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of
REXFORD SCHNEIDER,
a Justice of the Town of New Paltz, County of Ulster.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to the Honorable Rexford Schneider.

Rexford Schneider is a justice of the Town Court of New Paltz, Ulster County. He first took office in March 1965. His current term of office expires in December 1979.

Pursuant to Section 43, subdivision 2, of the Judiciary Law, the present investigation of Judge Schneider commenced on May 25, 1977. In the course of its investigation, the Commission discovered eight instances in which Judge Schneider made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases and one instance in which Judge Schneider granted a favorable disposition to a defendant in a traffic case pursuant to a request from a third party.

JUSTICE SCHNEIDER'S REQUESTS FOR FAVORABLE
DISPOSITIONS FOR DEFENDANTS IN TRAFFIC CASES

Sometime between September 5, 1971 and May 14, 1974, Judge Schneider or someone under his control sent a letter to Judge Wayne

Smith of the Town Court of Plattekill, requesting favorable treatment for the defendant, who was charged with failure to yield the right of way, in *People v. Leroy A. Smith*, a case then pending before Judge Smith.

On or about May 10, 1973, Judge Schneider or someone under his control sent a letter on official court stationery to the Town Court of East Fishkill, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. Signorino Longhitano*, a case then pending in the Town Court of East Fishkill.

On or about May 10, 1973, Judge Schneider or someone under his control sent a letter on official court stationery to the Town Court of Newburgh, requesting favorable treatment for the defendant, who was charged with driving with unapproved goggles, in *People v. Terry Smith*, a case then pending in the Town Court of Newburgh.

On or about May 10, 1973, Judge Schneider or someone under his control sent a letter on official court stationery to Judge Joseph Thomson of the Town Court of Cornwall, requesting favorable treatment for a defendant in a case then pending before Judge Thomson.

Sometime between February 15, 1974, and April 18, 1974, Judge Schneider sent a letter on official court stationery to the Town Court of New Windsor, requesting favorable treatment for the defendant, who was charged with passing a red light, in *People v. David J. Havranek*, a case then pending in the Town Court of New Windsor.

Sometime between July 1, 1975, and March 17, 1977, Judge Schneider sent a letter on official court stationery to Judge Joseph Thomson of the Town Court of Cornwall, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. Lois A. Amendola*, a case then pending before Judge Thomson.

On or about March 15, 1976, Judge Schneider or someone under his control sent a letter on official court stationery to Judge Harold Lipton of the Town Court of Rochester on behalf of the defendant, who was charged with speeding, in *People v. John C. Buonamano*, a case then pending before Judge Lipton. In the letter reference was made to a prior communication regarding the *Buonamano* case requesting Judge Lipton to impose an unconditional discharge for the defendant.

On or about August 9, 1974, Judge Schneider or someone under his control sent a letter on official court stationery to Judge Wayne Smith of the Town Court of Plattekill, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. Ferdinand Croce*, a case then pending before Judge Smith.

JUSTICE SCHNEIDER'S GRANT OF A FAVORABLE DISPOSITION TO A DEFENDANT IN A TRAFFIC CASE

On or about August 15, 1974, Judge Schneider or someone under his control reduced a charge of speeding to driving with unsafe tires in *People v. Henry Leak* as a result of a letter he received on behalf of the defendant from New York State Assemblyman H. Clark Bell.

JUSTICE SCHNEIDER'S WAIVER OF A SCHEDULED HEARING BEFORE THE COMMISSION

The Commission sent Judge Schneider a letter dated July 8, 1977, asking him to comment on his requests for favorable treatment in the *Longhitano* and *T. Smith* cases. Pursuant to Section 43, subdivision 3, of the Judiciary Law, the Commission requested Judge Schneider's appearance before a panel of Commission members, by letter dated August 15, 1977, to testify on these and other cases. On August 24, 1977, Judge Schneider testified before the Commission on his requests for favorable treatment in the cases noted above, in one case where the defendant is unknown, and in the *L. Smith*, *Havranek*, *Amendola*, *Buonamano* and *Croce* cases. Judge Schneider further testified on his granting of favorable treatment in the *Leak* case. Judge Schneider acknowledged making the requests in the *Havranek* and *Amendola* cases but denied both making requests in the other six cases and granting the disposition in the *Leak* case. Judge Schneider stated that he "assumes" that the six denied requests were written and signed without his authority by his daughter, Cynthia Schneider, who at the time was employed as his clerk. According to the judge's testimony, the one grant appears to have been similarly disposed of by his daughter. In his testimony, Judge Schneider acknowledged having made three additional requests, which were not the subject of charges, to town justices on behalf of traffic offenders.

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with respect to the judge's apparent conduct in the previously cited cases. On November 25, 1977, Judge Schneider was served with a Notice of Hearing and a Formal Written Complaint detailing the factual allegations in the nine cases noted above. In a reply letter dated December 1, 1977, to the Commission, Judge Schneider admitted having made requests in the *Havranek* and *Amendola* cases, but denied the seven other charges. In a subsequent letter dated January 9, 1978, to the Commission, Judge Schneider waived his right to a hearing and requested that the transcript of his August 24, 1977, testimony be considered as part of his Answer.

CONCLUSION

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases and by granting a favorable disposition to a defendant in a traffic case at the request of a third party, Judge Schneider was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43,

subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge Schneider should be publicly censured.

Dated: February 16, 1978
New York, New York

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of
HAROLD SCHULTZ,
a Justice of the Town of New Scotland, County of Albany.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to the Honorable Harold Schultz.

Harold Schultz is a justice of the Town Court of New Scotland in Albany County. He is not an attorney. He has been the New Scotland Town Justice since 1963. His current term of office expires on December 31, 1979.

Pursuant to Section 43, subdivision 2, of the Judiciary Law, the present investigation of Judge Schultz commenced on December 17, 1976. In the course of its investigation, the Commission discovered eight instances in which Judge Schultz made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases and eleven instances in which Judge Schultz granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties.

JUSTICE SCHULTZ'S REQUESTS FOR FAVORABLE
DISPOSITIONS FOR DEFENDANTS IN TRAFFIC CASES

On or about May 7, 1974, Judge Schultz sent a letter on official court stationery to Judge John Holt-Harris, Jr. of the Albany City

Traffic Court, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. Jane P. Salvatore*, a case then pending before Judge Holt-Harris, Jr.

On or about October 7, 1974, Judge Schultz sent a letter on official court stationery to Judge Joseph Thomson of the Town Court of Cornwall, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. William Agan*, a case then pending before Judge Thomson.

On or about June 24, 1975, Judge Schultz sent a letter on official court stationery to Judge Lee Armstrong of the Village Court of West Winfield, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. Willard Schanz*, a case then pending before Judge Armstrong.

On or about April 10, 1976, Judge Schultz sent a letter on official court stationery to Judge Edwin W. Sanford, Jr. of the Village Court of Altamont, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. K.M. Ruecker*, a case then pending before Judge Sanford.

On or about April 28, 1976, Judge Schultz sent a letter on official court stationery to the "Presiding Magistrate" of the Town Court of Clifton Park, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. William Shave*, a case then pending in the Town Court of Clifton Park.

On or about May 11, 1976, Justice Schultz sent a letter on official court stationery to Judge Theodore Reinhard of the Town Court of Niskayuna, on behalf of the defendant, who was charged with speeding, in *People v. Howard Acker*, a case then pending before Judge Reinhard. Judge Schultz referred in his letter to a prior telephone conversation he had held with Judge Reinhard regarding the *Acker* case, and he enclosed payment of the fine levied by Judge Reinhard on the defendant for the reduced charge of an equipment violation.

On or about July 5, 1976, Judge Schultz or someone at his request, communicated with the Village Court of Altamont, on behalf of the defendant, who was charged with driving without a certificate of inspection, in *People v. Eugene Audi*, a case then pending in the Village Court of Altamont.

On or about November 22, 1976, Judge Schultz sent a letter on official court stationery to the Town Court of Colonie, requesting

favorable treatment for the defendant, Judge Schultz's nephew, who was charged with speeding, in *People v. Christian Schaible*, a case then pending in the Town Court of Colonie.

JUSTICE SCHULTZ'S GRANTS OF FAVORABLE DISPOSITIONS TO DEFENDANTS IN TRAFFIC CASES

On or about November 1, 1973, Judge Schultz reduced a charge of speeding to driving with unsafe tires in *People v. Louis Symansky* as a result of a letter he received on behalf of the defendant from Judge John Holt-Harris, Jr. of the Albany City Traffic Court.

On or about February 14, 1974, Judge Schultz reduced a charge of speeding to driving with an inadequate muffler in *People v. Laverne Tubbs* as a result of a communication he received on behalf of the defendant from Judge Robert Murphy of the Village Court of Voorheesville or someone at Judge Murphy's request.

On or about July 24, 1976, Judge Schultz reduced a charge of speeding to driving with an inadequate muffler in *People v. Raymond Kretzler* as a result of a communication he received on behalf of the defendant from Judge Robert Murphy of the Village Court of Voorheesville or someone at Judge Murphy's request.

On or about December 2, 1974, Judge Schultz reduced a charge of speeding to driving with unsafe tires in *People v. William E. Hart* as a result of a communication he received on behalf of the defendant from Judge Robert Murphy of the Village Court of Voorheesville or someone at Judge Murphy's request.

On or about October 9, 1975, Judge Schultz reduced a charge of speeding to driving with unsafe tires in *People v. William J. Magin* as a result of a communication he received on behalf of the defendant.

On or about December 11, 1975, Judge Schultz reduced a charge of speeding to driving with an inadequate muffler in *People v. William Hofelich* as a result of a communication he received on behalf of the defendant from Judge John Sellnow of the Town Court of Berne or someone at Judge Sellnow's request.

On or about June 3, 1976, Judge Schultz reduced a charge of speeding to driving with unsafe tires in *People v. Brian Goff* as a result of a communication he received on behalf of the defendant from Judge Ted Wordon of the Town Court of Durham or someone at Judge Wordon's request.

On or about June 10, 1976, Judge Schultz reduced a charge of speeding to driving with an inadequate muffler in *People v. Debora Roberts* as a result of a communication he received on behalf of the defendant from Judge Robert Murphy of the Village Court of Voorheesville or someone at Judge Murphy's request.

On or about July 1, 1976, Judge Schultz reduced a charge of speeding to driving with unsafe tires in *People v. Joseph Statile* as a result of a communication he received on behalf of the defendant from Judge Robert Murphy of the Village Court of Voorheesville or someone at Judge Murphy's request.

On or about September 2, 1976, Judge Schultz reduced a charge of failure to keep right to driving with unsafe tires in *People v. Joseph Sheehan* as a result of a communication he received on behalf of the defendant from Judge Robert Murphy of the Village Court of Voorheesville or someone at Judge Murphy's request.

On or about November 12, 1976, Judge Schultz reduced a charge of speeding to driving with an inadequate muffler in *People v. Munior T. Jabbur* as a result of a communication he received on behalf of the defendant from one Michael Tepedino.

JUSTICE SCHULTZ'S WAIVER OF A SCHEDULED HEARING BEFORE THE COMMISSION

Pursuant to Section 43, subdivision 3, of the Judiciary Law, the Commission requested Judge Schultz's appearance before a panel of its members. On February 24, 1977, Judge Schultz testified before the Commission on his requests for favorable treatment in the *Ruecker*, *Acker* and *Audi* cases. In his testimony, Judge Schultz acknowledged making the requests in all but the *Audi* case. The Commission sent Judge Schultz a letter dated October 21, 1977, asking him to comment on his requests for favorable treatment in the *Salvatore*, *Schanz*, *Shave* and *Schaible* cases and his granting of favorable treatment in the *Tubbs*, *Kretzler*, *Hart*, *Magin*, *Hofelich*, *Goff*, *Roberts*, *Statile*, *Sheehan* and *Jabbur* cases. In a letter dated October 29, 1977, Judge Schultz acknowledged making the requests and granting the dispositions in these cases.

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with regard to the judge's apparent conduct in the cases noted above, his request for favorable disposition in the *Agan* case and his granting of a favorable disposition in the *Symansky* case. On December 2, 1977,

Judge Schultz was served with a Notice of Hearing and a Formal Written Complaint detailing the factual allegations in the 19 cases noted above. In an Answer dated December 23, 1977, Judge Schultz admitted all the factual allegations while denying upon information and belief that the conduct was improper. On the same date, in an accompanying letter from his attorney, the judge waived his right to the scheduled hearing.

CONCLUSION

By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases and by granting favorable dispositions to defendants in traffic cases at the request of third parties, Judge Schultz was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3(A) of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a

pending or impending proceedings. . .
[Section 33.3(a)(4)]

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge Schultz should be publicly censured.

Dated: February 16, 1978
New York, New York

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of
CHARLES J. SHAUGHNESSY,
a Justice of the Town of Chester, County of Orange.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to the Honorable Charles Shaughnessy.

Charles Shaughnessy is a justice of the Town Court of Chester in Orange County. He is not an attorney. He first took office in January 1963. His current term of office expires on December 31, 1979.

Pursuant to Section 43, subdivision 2, of the Judiciary Law, the present investigation of Judge Shaughnessy commenced on May 25, 1977. In the course of its investigation, the Commission discovered one instance in which Judge Shaughnessy made an *ex parte* request of another judge for a favorable disposition for the defendant in a traffic case, and 18 instances in which he granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties.

JUSTICE SHAUGHNESSY'S REQUEST FOR A FAVORABLE
DISPOSITION FOR THE DEFENDANT IN A TRAFFIC CASE

On or about January 8, 1976, Judge Shaughnessy sent a letter to Judge Joseph Thomson of the Town Court of Cornwall, requesting a

favorable disposition for the defendant, who was charged with speeding, in *People v. John J. Gray, Jr.*, a case then pending before Judge Thomson. Judge Shaughnessy referred in his letter to a prior telephone conversation he had held with Judge Thomson regarding the Gray case.

JUSTICE SHAUGHNESSY'S GRANTS OF FAVORABLE DISPOSITIONS TO DEFENDANTS IN TRAFFIC CASES

On or about January 24, 1974, Judge Shaughnessy reduced a charge of speeding to parking on the highway in *People v. Michael D. Altman* as a result of a letter he received from the defendant, who is a justice of the Town of Fallsburg, on the official stationery of the Town Court of Fallsburg.

On or about February 4, 1974, Judge Shaughnessy reduced a charge of speeding to driving with unsafe tires in *People v. Bernard L. Levine* as a result of a letter he received on behalf of the defendant from Judge Kenneth F. Fisk of the Town Court of Liberty.

On or about June 18, 1974, Judge Shaughnessy reduced a charge of speeding to driving with unsafe tires in *People v. Robert B. Walker* as a result of a letter he received on behalf of the defendant from Judge Horace Sawyer of the Town Court of Goshen.

On or about July 15, 1974, Judge Shaughnessy reduced a charge of speeding to parking on the highway in *People v. Michael F. Craft* as a result of a letter he received on behalf of the defendant from Judge Joseph Polonsky of the Town Court of Wawarsing.

On or about September 30, 1974, Judge Shaughnessy reduced a charge of speeding to parking on the highway in *People v. Michael Freiser* as a result of a letter he received on behalf of the defendant from Judge Robert Van Etten of the Town Court of Woodbury.

On or about October 7, 1974, Judge Shaughnessy reduced a charge of speeding to parking on the highway in *People v. James C. Van Etten* as a result of a letter he received from Judge Edward Lahey of the Town Court of New Windsor.

On or about November 7, 1974, Judge Shaughnessy reduced a charge of speeding to driving with unsafe tires in *People v. Norma E. Moshinski* as a result of a letter he received on behalf of the defendant from Judge John O'Connor of the Town Court of Wawayanda.

On or about November 18, 1974, Judge Shaughnessy reduced a charge of speeding to driving with an inadequate muffler in *People v.*

Westley J. Williamson as a result of a letter he received on behalf of the defendant from Judge Joseph Owen of the Town Court of Wallkill, or someone at Judge Owen's request.

On or about November 26, 1974, Judge Shaughnessy reduced a charge of speeding to parking on the highway in *People v. Michael J. Guarino* as a result of a letter he received on behalf of the defendant from Mr. Dick Mender of the Motor Vehicle Bureau in Orange County.

On or about December 4, 1974, Judge Shaughnessy reduced a charge of speeding to parking on the highway in *People v. Daniel Aversano* as a result of a letter he received on behalf of the defendant from Judge Harold Lipton of the Town Court of Rochester.

On or about December 27, 1974, Judge Shaughnessy reduced a charge of speeding to driving with unsafe tires in *People v. Victor Einhorn* as a result of a letter he received on behalf of the defendant from Judge Robert Bronner of the Town Court of Mamakating.

On or about January 28, 1975, Judge Shaughnessy reduced a charge of speeding to driving with unsafe tires in *People v. Alan B. Sullivan* as a result of a letter he received on behalf of the defendant from Judge P.H. McFarlane of the Town Court of Rockland.

On or about February 11, 1976, Judge Shaughnessy reduced a charge of speeding to failure to keep right in *People v. Richard I. Zimmerman* as a result of a letter he received on behalf of the defendant from Judge Robert Bronner of the Town Court of Mamakating.

On or about April 23, 1976, Judge Shaughnessy reduced a charge of speeding to parking on the highway in *People v. Camille T. Dabenigno* as a result of a letter he received on behalf of the defendant from Judge Lyle McDowell of the Town Court of Otisville.

On or about April 26, 1976, Judge Shaughnessy reduced a charge of speeding to driving with unsafe tires in *People v. Menche B. Jensen* as a result of a letter he received on behalf of the defendant from Mr. Al Paules, chairman of the Orange County Democratic Committee.

On or about May 6, 1976, Judge Shaughnessy reduced a charge of speeding to driving with unsafe tires in *People v. John A. Quidone* as a result of a letter he received on behalf of the defendant from Judge Frank Giza of the Town Court of Wawayanda.

On or about September 23, 1976, Judge Shaughnessy reduced a charge of speeding to driving with unsafe tires in *People v. Irving Tut-*

telman as a result of a letter he received on behalf of the defendant from Judge Isidore Wittenberg of the Town Court of Crawford.

On or about April 6, 1977, Judge Shaughnessy imposed an unconditional discharge on a charge of speeding in *People v. Anthony T. Frasca* as a result of a letter he received on behalf of the defendant from Judge Michael A. Pascale of the Town Court of Marlborough, or someone at Judge Pascale's request.

JUSTICE SHAUGHNESSY'S WAIVER OF A SCHEDULED HEARING BEFORE THE COMMISSION

The Commission sent Judge Shaughnessy letters dated July 12, 1977, and August 8, 1977, asking him to comment on his grants of favorable dispositions in the *Levine, Walker, Craft, Freiser, Van Ethen, Moshinski, Williamson, Guarino, Aversano, Einhorn, Zimmerman, Dabenigno, Jensen, Quidone* and *Tuttelman* cases. In letters dated August 3, 1977, and August 8, 1977, Judge Shaughnessy stated that he could not "recall the facts or specifics" of the cases noted above, adding that the "dispositions of these cases were not made because of correspondence which I received on behalf of the defendants."

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with respect to the judge's apparent conduct in the cases noted above and in the *Gray, Altman, Sullivan* and *Frasca* cases. On November 25, 1977, Judge Shaughnessy was served with a Notice of Hearing and a Formal Written Complaint detailing the factual allegations in the 19 cases noted above. In a Verified Answer dated December 15, 1977, Judge Shaughnessy admitted the factual allegations in the *Gray* case, in which he was alleged to have made an *ex parte* request for a favorable disposition for the defendant, but denied any impropriety in so doing. Judge Shaughnessy also acknowledged having received the requests for favorable dispositions in the remaining 18 cases and acknowledged having disposed of the 18 cases as alleged, but he denied that the letters denoted in the Formal Written Complaint "resulted in" the dispositions that were made. Judge Shaughnessy's Verified Answer also stated as follows:

[I]t has always been Respondent's professional practice as a Judge to consider all information that is brought to his attention by the defendant or by anyone else in any case that comes before him. In considering such information, the Respondent considers and gives weight

to the source of the information, as well as its substance.

In a letter from his attorney dated January 4, 1978, Judge Shaughnessy waived his right to the scheduled hearing, submitted an affidavit in lieu of the hearing, and stipulated that the exhibits appended to the Formal Written Complaint should be submitted to the Commission as exhibits along with the judge's Answer.

CONCLUSION

By making an *ex parte* request of another judge for a favorable disposition for the defendant in a traffic case, and by granting favorable dispositions to defendants in traffic cases at the request of third parties, Judge Shaughnessy was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3A of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider *ex parte*

or other communications concerning a
pending or impending proceedings. . .
[Section 33.3(a)(4)]

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge Shaughnessy should be publicly censured.

Dated: February 16, 1978
New York, New York

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

In the Matter of
ROBERT S. VINES,
a Justice of the Town of Moreau, County of Saratoga.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Dolores DelBello
Hon. Louis M. Greenblott
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Ann T. Mikoll
Carroll L. Wainwright, Jr., Esq.

PRELIMINARY STATEMENT

This Determination of the State Commission on Judicial Conduct (hereinafter the "Commission") is submitted in accordance with Article VI, Section 22k, of the Constitution of the State of New York, Article 2-A of the Judiciary Law, for transmittal by the Chief Judge of the Court of Appeals to the Honorable Robert S. Vines.

Robert S. Vines is a justice of the Town Court of Moreau in Saratoga County. He is not an attorney. He first took office in January 1968. His current term of office expires on December 31, 1979.

Pursuant to Section 43, subdivision 2, of the Judiciary Law, the present investigation of Judge Vines commenced on May 25, 1977. In the course of its investigation, the Commission discovered three instances in which Judge Vines made *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases and 21 instances in which Judge Vines granted favorable dispositions to defendants in traffic cases pursuant to requests from third parties.

JUSTICE VINES' REQUESTS FOR FAVORABLE
DISPOSITIONS FOR DEFENDANTS IN TRAFFIC CASES

On or about March 1, 1975, Judge Vines sent a letter on official court stationery to Judge Richard Lips of the Town Court of Clifton

Park, requesting favorable treatment for the defendant, who was charged with speeding, in *People v. Joan Tedesco*, a case then pending before Judge Lips. Judge Vines referred in his letter to a prior telephone conversation he had held with Judge Lips regarding the *Tedesco* case.

On or about August 22, 1975, Judge Vines sent a letter in which he identified himself as a judge, to Judge Richard A. Lips of the Town Court of Clifton Park on behalf of the defendant who was charged with speeding, in *People v. Paul L. Aarons*, a case then pending before Judge Lips. Judge Vines referred in his letter to a prior telephone conversation he had held with Judge Lips regarding the *Aarons* case.

On or about January 31, 1977, Judge Vines communicated with Judge James H. Corkland of Lake George Town Court on behalf of the defendant, who was charged with speeding, in *People v. Walter D. Doyle* a case then pending before Judge Corkland.

JUSTICE VINES' GRANTING OF FAVORABLE DISPOSITIONS TO DEFENDANTS IN TRAFFIC CASES

On or about May 16, 1973, Judge Vines reduced a charge of speeding to driving with an inadequate muffler in *People v. William J. Quinn* as a result of a letter he received from the defendant, Judge William J. Quinn of the Supreme Court, Fourth Judicial Department.

On or about April 22, 1974, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Leslie J. Richmond* as a result of a letter he received on behalf of the defendant from Bethlehem Town Justice Court Clerk Marie Oakes. Enclosed in the letter was a money order for \$25.00 in payment of the fine.

On or about August 15, 1974, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Edward Johnson* as a result of a communication he received on behalf of the defendant from Judge Joseph Teshan of the Wilton Town Court, or someone at Judge Teshan's request.

On or about August 26, 1974, Judge Vines imposed an unconditional discharge on a charge of speeding in *People v. Charles Sommer* as a result of a letter he received on behalf of the defendant from Judge James A. Coleman of the Town Court of Greenfield.

On or about December 2, 1974, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Francis Dambrosy* as

a result of a letter he received on behalf of the defendant from Judge Robert Murphy of the Police Court of Voorheesville.

On or about January 30, 1975, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Leon C. Rose* as a result of a communication he received from the defendant, and from the defendant's superior, on Department of Social Services stationery.

On or about May 29, 1975, Judge Vines imposed an unconditional discharge on a charge of driving with an unsafe tire in *People v. Michael Tate* as a result of a letter he received from Judge Frank Tate of the Town Court of Colonie on behalf of the defendant, his son.

On or about August 11, 1975, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Todd Earl* as a result of a letter he received from Judge Wayde Earl of the Village Court of Lake George on behalf of the defendant, his son.

On or about September 4, 1975, Judge Vines reduced a charge of speeding to illegal parking in *People v. Jeffrey DiStefano* as a result of a letter he received on behalf of the defendant from Judge Philip Caponera of the Town Court of Colonie. In the letter Judge Caponera refers to a prior telephone conversation he had held with Judge Vines concerning the *DiStefano* case, and a check for \$50.00 in payment for the fine.

On or about October 23, 1975, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Werner Knopp* as a result of a letter he received on behalf of the defendant from Judge Duncan MacAffer of the Village Court of Menands.

On or about October 31, 1975, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Joachim Schoen* as a result of a letter he received on behalf of the defendant from Judge Stanley Moore of the Village Court of Rouses Point.

On or about February 12, 1976, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Patrick McMannis* as a result of a letter he received on behalf of the defendant from Judge Edward Longo of the Town Court of Rotterdam, or someone at Judge Longo's request.

On or about February 27, 1976, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Thomas Hanaway* as a result of a letter he received on behalf of the defendant from Judge Joseph Geiger of the Town Court of Waterford. In the letter, Judge Geiger refers to a prior phone conversation he had held with Judge

Vines concerning the *Hanaway* case and to a money order for \$25.00 in payment for the fine.

On or about March 4, 1976, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Mark Orsini* as a result of a letter he received on behalf of the defendant from Judge Clarence Hallenback of the Village Court of Hudson Falls, or someone at Judge Hallenback's request.

On or about April 23, 1976, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Charles L. Blakesley* as a result of a letter he received on behalf of the defendant from Judge Edward J. Jones of the Town Court of Coeymans.

On or about August 12, 1976, Judge Vines imposed an unconditional discharge on a charge of consumption of an alcoholic beverage in a motor vehicle, in *People v. Ellen Hoffman* as a result of a letter he received on behalf of the defendant from Judge John LaMalfa of the Town Court of Rotterdam.

On or about October 14, 1976, Judge Vines reduced a charge of speeding to illegal parking in *People v. James E. Town* as a result of a letter he received on behalf of the defendant from New York State Assemblyman Gerald B. Solomon. In the letter Assemblyman Solomon refers to a prior conversation he had held with Judge Vines concerning the *Town* case.

On or about October 21, 1976, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Joseph Abinanti* as a result of a letter he received on behalf of the defendant from "Clarence" on stationery of the Village of Hudson Falls. In the letter there is a reference to a phone conversation with Judge Vines about the *Abinanti* case and to a check for \$25.00 in payment of a fine.

On or about August 28, 1976, Judge Vines reduced a charge of speeding to illegal parking in *People v. Arthur Stevens* as a result of a letter he received on behalf of the defendant Judge Robert Van Etten of the Town Court of Woodbury.

On or about December 6, 1976, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Robert F. Talbot* as a result of a letter he received on behalf of the defendant from Jim Foley. In the letter Mr. Foley refers to a prior telephone conversation he had held with Judge Vines concerning the *Talbot* case and to an enclosed check.

On or about February 24, 1977, Judge Vines reduced a charge of speeding to driving with unsafe tires in *People v. Edward Kuder* as a result of a letter he received on behalf of the defendant from Judge Edward Longo of the Town Court of Rotterdam.

JUSTICE VINES' WAIVER OF A SCHEDULED HEARING BEFORE THE COMMISSION

The Commission sent Judge Vines a letter dated July 14, 1977, asking him to comment on his requests for favorable treatment in the *Tedesco* and *Aarons* cases and his granting of favorable treatment in the *Quinn* case. Judge Vines acknowledged his actions in each case, but admitted no impropriety.

Pursuant to Section 43, subdivision 5, of the Judiciary Law, the Commission determined that cause existed to conduct a hearing with respect to the judge's apparent conduct in the cases noted above and all the remaining cases. On November 30, 1977, Judge Vines was served with a Notice of Hearing and a Formal Written Complaint detailing the factual allegations in the 24 cases noted above. In an Answer dated December 5, 1977, Judge Vines admitted all the factual allegations while demanding that the Complaint be dismissed on the ground that the facts do not state acts of judicial misconduct. In an accompanying letter dated December 6, 1977, James A. Davidson, attorney for Judge Vines, waived the judge's right to the scheduled hearing.

CONCLUSION

By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting favorable dispositions to defendants in traffic cases at the request of third parties, Judge Vines was in violation of Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct of the Administrative Board of the Judicial Conference, and Canons 1, 2 and 3(A) of the Code of Judicial Conduct, which read in part as follows:

Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confi-

dence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

DETERMINATION

By reason of the foregoing, in accordance with Article VI, Section 22k, of the Constitution of the State of New York, and Section 43, subdivision 7, of the Judiciary Law, the State Commission on Judicial Conduct has determined that Judge Vines should be publicly censured.

Dated: February 16, 1978
New York, New York

INDEX OF DETERMINATIONS

INDEX OF DETERMINATIONS

(Alphabetical, By Name of Respondent)

Adams, Paul W.	3
Algire, Duane	5
Aurigemma, Andrew	10
Baroody, George	198
Barrett, Charles W.	227
Bergeron, Andre	229
Brown, Allan T.	234
Bulger, William J.	14
Burke, Henry R.	78
Burley, Roy	200
Burnham, Helen	19
Chase, Carlton M.	123
Cmaylo, Walter T.	238
D'Apice, John D.	109
DeLollo, Warren C.	112
DeRose, Anthony J.	220
Dier, John G.	126
DiStasi, Lewis C.	24
Dixon, George C.	29
Doolittle, Wilfred	33
Drollette, Philip.	240
Dudley, John H.	51
Dunbar, Walter C.	115
Fancher, Rollin L.	263
Farr, William	167
Figuroa, Antonio S.	216
Folmsbee, Richard	171
Forsythe, Robert C.	174
Griebisch, Karl J.	203
Galarneau, Raymond	58
Green, Edward U., Jr.	76
Haberneck, Thomas	130
Hallock, Franklin	62
Hammond, Willis R.	80
Hennessy, Harold A.	178
Jerome, James S.	141

Johnson, Joseph B.D.	244
Kane, James L.	247
Kane, James O.	54
Kaplan, Louis I.	120
Kantrowitz, Isaac	257
Keddie, Robert J.	267
Kuehnel, Norman E.	182
Lang, Andrew L.	187
Levine, Jack	84
Lonschein, Arthur W.	277
Maney, Patrick	88
Manion, Frank	66
McDonald, Frank J.	192
McDowell, Lyle	38
Modder, John J.	91
O'Connor, John	149
Pascale, Michael A.	68
Ralston, Richard	101
Reed, Donald	259
Reedy, James H.	95
Reich, Joseph	261
Sanford, Edwin W.	207
Sashin, Harold	223
Sawyer, Horace C.	153
Scholl, Vincent P.	212
Schultz, Harold H.	98
Schwertfeger, Joseph	270
Sobeck, Francis R.	105
Spector, Morris	43
Trost, J. Douglas	161
Williams, Vernon E.	273
Wolanin, Stanley C.	157
Wordon, Theodore	72

Index of Decisions By The Former State	
Commission on Judicial Conduct	284
Matter of John W. Tracy	285
Matter of Edmund Quinones	288
Matter of Joseph Pilato	294
Matter of Edmund V. Caplicki, Jr.	297
Matter of Michael Cerretto	301
Matter of Donald L. Chase	307
Matter of Vincent A. Clark	311
Matter of James W. Coleman	315
Matter of C.H. DuMond	319
Matter of Joseph M. Henderson	323
Matter of Murrill Henry	327
Matter of Kenneth Petzold	330
Matter of Rexford Schneider	334
Matter of Harold Schultz	339
Matter of Charles Shaughnessy	345
Matter of Robert S. Vines	351