

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

MARIO M. ALBANESE,

a Judge of the County Court,
Fulton County

Determination

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

Respondent, a judge of the Fulton County Court, was served with a Formal Written Complaint dated December 12, 1978, setting forth five charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated January 5, 1979.

By order dated January 30, 1979, the Commission appointed the Honorable Simon Liebowitz to hear and report to the Commission with respect to the facts in this proceeding. The hearing was conducted on March 6 and April 24, 1979, and the report of the referee was filed with the Commission on September 20, 1979.

On December 12, 1979, the Commission heard oral argument on a motion and cross-motion to confirm in part and disaffirm in

part the report of the referee. Thereafter, in letters dated January 8, January 21 and January 25, 1980, respondent requested that the record be opened and that the Commission consider an affidavit not theretofore a part of the record. The motion is considered and is denied.

On February 26, 1980, the Commission, in executive session, considered the record of this proceeding, and upon that record makes the findings of fact and conclusions of law herein.

Charge II of the Formal Written Complaint is not sustained and therefore is dismissed.

With respect to Charges I, III, IV and V of the Formal Written Complaint, the Commission makes the following findings of fact.

1. As to Charge I, on July 19, 1974, respondent sent a letter to Justice Richard Willis of the Village Court of Addison, improperly intervening on behalf of the defendant in People v. Patricia Albanese, a case then pending before Judge Willis.

2. As to Charge III, on May 30, 1975, respondent improperly intervened in the case of People v. Daniel Rooney, by sending a letter to Justice Michael Riccio of the Amsterdam City Court.

3. As to Charge IV, on September 7, 1976, respondent improperly intervened in the case of People v. Carl Albanese, a case pending in the Gloversville City Court, by requesting an adjournment from the court clerk.

4. As to Charge V, on March 4, 1975, respondent improperly intervened in the case of People v. Jennifer Rooney, a case pending in the Gloversville City Court, by requesting an adjournment from the court clerk.

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, 3A and 5F of the Code of Judicial Conduct. Charges I, III, IV and V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to intervene in a proceeding before another judge or court clerk, on the basis of personal interest. By making ex parte requests of other judges or their court clerks for information or adjournments for the defendants in traffic cases, respondent violated the rules enumerated above.

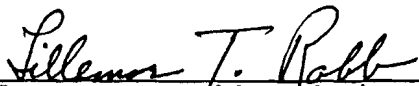
Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

All concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law



Lillemor T. Robb, Chairwoman
New York State Commission on
Judicial Conduct

Dated: March 19, 1980
Albany, New York

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission

Michael Geraghty for Respondent