

STATE OF NEW YORK
STATE COMMISSION ON JUDICIAL CONDUCT

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: In the Matter :
: - of - :
: Michael Cerretto, : DETERMINATION
: a Justice of the Town of Gates, :
: County of Monroe. :
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STATE COMMISSION ON
JUDICIAL CONDUCT

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DETERMINATION OF THE
STATE COMMISSION ON JUDICIAL CONDUCT
IN THE MATTER OF GATES
TOWN JUSTICE MICHAEL CERRETTO

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 Spohn 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 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.

Respectfully submitted,

State Commission on Judicial
Conduct

Dated: February 16, 1978
New York, New York

APPEARANCES:

Gerald Stern (Lester C. Goodchild, Of Counsel) for the Commission
Presutti & Leonardo (By Anthony F. Leonardo, Jr.) for Respondent