

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. CERTO,

a Judge of the Niagara Falls  
City Court, Niagara County.

---

## Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman  
Honorable Fritz W. Alexander, II  
John J. Bower, Esq.  
David Bromberg, Esq.  
E. Garrett Cleary, Esq.  
Dolores DelBello  
Victor A. Kovner, Esq.  
Honorable William J. Ostrowski  
Honorable Isaac Rubin  
Honorable Felice K. Shea  
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Cody B. Bartlett, Of  
Counsel) for the Commission

John P. Bartolomei for Respondent

The respondent, Anthony J. Certo, who is Chief Judge of the Niagara Falls City Court, was served with a Formal Written Complaint dated February 17, 1981, alleging misconduct with respect to a fund-raising event held in March 1980. Respondent filed an answer dated March 19, 1981, and an amended answer dated July 7, 1981.

By order dated April 30, 1981, the Commission designated the Honorable Harry D. Goldman as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 24 and October 1, 2, 5, 6, 9, 13, 20 and 21, 1981, and the referee filed his report with the Commission on December 29, 1981.

By motion dated September 16, 1982, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a determination that respondent be censured. Respondent opposed the motion on October 20, 1982. The Commission heard oral argument on the motion on October 29, 1982, at which respondent appeared with counsel, thereafter considered the record of this proceeding and made the following findings of fact.

As to paragraph (a) of Charge I of the Formal Written Complaint:

1. On March 6, 1980, a fund-raising event was held for respondent in Niagara Falls. The event was referred to as a testimonial. Respondent knew that the purpose of the event was to raise funds for himself.

2. Three hundred and five tickets at \$50 each were sold for the fund-raising event. The gross income from such sales was \$15,250.

3. Sometime after the fund-raising event, respondent received \$6,564.28 in checks and \$4,070.56 in cash from the

money collected for the event. Respondent used these funds, totaling \$10,634.84, for personal purposes and expenditures.

4. An additional \$2,000 from the money collected for the fund-raising event was deposited into the account of respondent's re-election committee.

As to paragraph (b) of Charge I of the Formal Written Complaint:

5. Angelo J. Morinello is respondent's nephew. He and respondent have a close relationship. Mr. Morinello was the treasurer for respondent's 1980 re-election campaign. He is an attorney who from 1976 through 1979 practiced in partnership with John Mattio in Niagara Falls. In numerous cases in this period Mr. Morinello and Mr. Mattio appeared as counsel before respondent.

6. Mr. Morinello was one of the principal organizers of the fund-raising testimonial held for respondent on March 6, 1980. He acted as treasurer of the funds raised from the event.

7. A special bank account was opened to handle the funds from the testimonial. Mr. Morinello wrote all of the checks drawn on this account, including the \$2,000 paid to respondent's re-election committee and the \$10,684.34 in checks and withdrawn cash paid directly to respondent for his personal use.

As to paragraph (c) of Charge I of the Formal Written Complaint:

8. Persons who had litigation before respondent prior to the fund-raising event on March 6, 1980, purchased tickets to and attended the event.

9. Numerous attorneys who had practiced law before respondent prior to March 6, 1980, purchased tickets to and attended the event.

Additional finding:

10. Between the date of the referee's report in this matter and the date of oral argument before the Commission, respondent repaid to the contributing individuals all the money collected from the fund-raising event.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.5(b) and 100.5(c)(3) of the Rules Governing Judicial Conduct (formerly Sections 33.1, 33.2[a], 33.5[b] and 33.5[c][3]), Canons 1, 2A, 5B and 5C(4) of the Code of Judicial Conduct, and Section 20.4 of the Rules of the Chief Judge and Chief Administrator of the Courts (formerly the General Rules of the Administrative Board of the Judicial Conference). The charge in the Formal Written Complaint (Charge I, paragraphs a, b and c) is sustained and respondent's misconduct is established.

By accepting money for his personal use from contributions by attorneys and litigants who appear in his court, respondent undermined public confidence in the integrity and impartiality of the judiciary. His conduct both was improper and created an appearance of impropriety (Sections 100.1, 100.2[a] and 100.5[b] of the Rules Governing Judicial Conduct). Respondent also violated the specific prohibition against a judge accepting a "gift from any attorney or from any person having or likely to have any official transaction with the court" (Section 20.4 of the Rules of the Chief Judge). Though the particular fund-raising event at issue was called a "testimonial", respondent knew in advance that its proceeds would be given to him. The amount of money actually given to respondent, after the event, for his personal use -- over \$10,000 -- cannot reasonably be considered a "gift incident to a public testimonial" (Section 100.5[c][3] of the Rules Governing Judicial Conduct; emphasis added).

The Commission notes that respondent repaid the money collected from those who contributed to the fund-raising event.

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

Mrs. Robb, Judge Alexander, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Rubin and Mr. Wainwright concur.

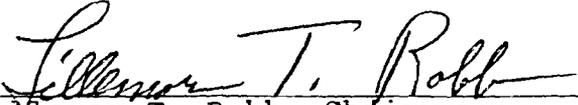
Mr. Bower, Mr. Bromberg and Mrs. DelBello dissent only as to sanction and vote that respondent should be censured.

Judge Shea was not present.

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.

Dated: December 28, 1982

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