

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

WARREN C. DeLOLLO, :
a Judge of the Watervliet City :
Court, Albany County. :

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

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 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 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 permitted 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 requests 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

APPEARANCES:

Warren C. Delollo, Respondent *Pro Se*

Gerald Stern for the Commission (John K. Sharkey, Of Counsel)