

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

Determination

FRANK P. DeLUCA,

a Justice of the Supreme Court, Suffolk
County.

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
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Robert Straus and Jean M. Savanyu, Of
Counsel) for the Commission

Domenick A. Pelle for Respondent

The respondent, Frank P. DeLuca, a justice of the
Supreme Court, Tenth Judicial District, was served with a Formal
Written Complaint dated August 15, 1983, alleging, inter alia,
that he improperly intervened in a felony proceeding before

another judge. Respondent filed an answer dated September 16, 1983.

By order dated September 29, 1983, the Commission designated Robert MacCrate, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on November 21, 1983, and the referee filed his report with the Commission on February 27, 1984.

By motion dated March 9, 1984, the administrator of the Commission moved to adopt findings of fact proposed by the administrator, to confirm the referee's conclusions of law and for a finding that respondent be censured. Respondent opposed the motion by cross motion on April 16, 1984. On May 11, 1984, the Commission heard oral argument on the motions, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Supreme Court and has been since 1971.

2. Respondent has known socially for a number of years Nancy Ambrosio and members of her family, including her son, John.

3. On May 15, 1978, John Ambrosio pleaded guilty in Supreme Court before Justice Paul T. D'Amaro to Promoting Gambling, First Degree.

4. On January 4, 1979, Judge D'Amaro sentenced Mr. Ambrosio to a \$1,000 fine and four months in jail and stayed execution of the sentence until February 8, 1979.

5. Judge D'Amaro extended the stay of execution to March 8, 1979, April 9, 1979, and May 3, 1979, because Mr. Ambrosio's mother was dying of cancer.

6. On April 9, 1979, one of the members of the Ambrosio family called respondent and indicated that Judge D'Amaro did not believe that Mrs. Ambrosio was dying. The family member asked respondent to speak with Judge D'Amaro.

7. Respondent and Judge D'Amaro had been acquainted for more than 20 years.

8. On April 10, 1979, from his chambers in Riverhead, respondent called Judge D'Amaro's chambers in the same courthouse.

9. Respondent spoke to Judge D'Amaro, indicated that he wanted to see him privately about something and suggested that they meet at Exit 52 of the Long Island Expressway on their way to their respective homes.

10. The judges met as planned. Respondent told Judge D'Amaro that Mrs. Ambrosio was dying of cancer and that it was a good family.

11. Judge D'Amaro told respondent that he knew of Mrs. Ambrosio's illness and suggested that respondent could have told him this information over the telephone.

12. Respondent testified that he did not believe at the time that it was improper for him to speak to Judge D'Amaro and that he still thinks that it was not improper.

13. Mrs. Ambrosio died on April 27, 1979.

14. On May 3, 1979, Judge D'Amaro adjourned the Ambrosio case to May 17, 1979.

15. On May 17, 1979, Mr. Ambrosio's attorney asked Judge D'Amaro to consider an intermittent sentence. Judge D'Amaro told defense counsel to put his motion in writing and accorded the district attorney an opportunity to answer. He adjourned the matter to May 31, 1979, and then to June 14, 1979, the latter at the district attorney's request.

16. On June 14, 1979, Judge D'Amaro modified the sentence from a definite sentence of four months and a \$1,000 fine to an intermittent sentence of ten months to be served on weekends. The district attorney interposed no objection to this modification.

As to Charge II of the Formal Written Complaint:

17. The charge is not sustained and is, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.2(b), 100.2(c) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2A, 2B and 3A(4) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established. Respondent's cross motion is denied.

On behalf of the Ambrosio family, respondent met with Judge D'Amaro to convey to him that the Ambrosios were a "good" family and that the defendant's mother was dying. This message could have had only one purpose: to influence Judge D'Amaro to give special consideration to the defendant. Whether respondent's concern was for the defendant or, as he asserts, the family, is of no moment. The benefit to the family could not be had without benefit to the defendant.

That the defendant had already been sentenced does not absolve respondent. Obviously, the matter was still before Judge D'Amaro. If it were not, there would have been no reason for respondent to communicate with Judge D'Amaro. The defendant was still in jeopardy in some way, and his fate was still in Judge D'Amaro's hands. The execution of sentence had been stayed, and the sentence was subject to modification.

Requests by one judge to another for special consideration for any person are "wrong and always ha[ve] been

wrong" (Matter of Byrne, 47 NY2d [b] [Ct. on the Judiciary, 1978]), whether for favorable treatment as to sentence (Matter of Dixon v. State Commission on Judicial Conduct, 47 NY2d 523 [1979]; Matter of Bulger v. State Commission on Judicial Conduct, 48 NY2d 32 [1979]), or for lesser matters (Matter of Kaplan, N.Y.L.J., May 20, 1983, p. 7, col. 1 [Com. on Jud. Conduct, May 17, 1983]; Matter of Calabretta, unreported [Com. on Jud. Conduct, April 11, 1984]; Matter of Hansel L. McGee, unreported [Com. on Jud. Conduct, April 12, 1984]).

Despite this well-settled law, respondent fails to recognize that his conversation with Judge D'Amaro was improper.

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Rubin concur.

Judge Shea and Mr. Sheehy dissent as to sanction only and vote that the appropriate disposition would be to issue a letter of dismissal and caution.

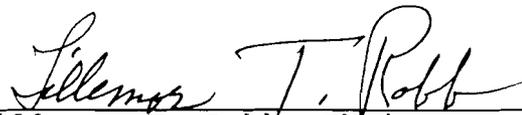
Judge Alexander was not present.

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: July 2, 1984

A handwritten signature in cursive script, reading "Lillemor T. Robb". The signature is written in black ink and is positioned above a horizontal line.

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