

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 P. ERRICO,

a Justice of the Town Court of Gates,
Monroe County.

Determination

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

APPEARANCES:

Gerald Stern (Lester C. Goodchild and
John W. Dorn, of Counsel) for the Commission

DiPasquale and Speranza (Donn A. DiPasquale)
for Respondent

The respondent, Anthony P. Errico, a justice of the
Town Court of Gates, Monroe County, was served with a Formal
Written Complaint dated March 22, 1979, setting forth 11 charges
of improper influence in motor vehicle and other cases. Respon-
dent filed an answer dated May 9, 1979.

By order dated June 14, 1979, the Commission designated
the Honorable Harry D. Goldman referee to hear and report proposed
findings of fact and conclusions of law. The hearing was held on

December 4, 5, 20 and 21, 1979. The referee filed his report to the Commission on March 27, 1980.

By motion dated June 5, 1980, the administrator of the Commission moved to confirm the report of the referee, and for a determination that respondent be admonished. Respondent cross-moved for a determination that the Formal Written Complaint be dismissed. Both the administrator and respondent submitted memoranda on the motions and waived oral argument.

The Commission considered the record of this proceeding in executive session on July 24, 1980, and upon that record makes the determination herein.

Charges III through VIII and Charge X of the Formal Written Complaint are dismissed. As to the remaining charges, the Commission makes the following findings of fact.

1. Charge I: On March 2, 1973, respondent sent a letter to Justice Robert W. Northrup of the Town Court of Sweden, seeking special consideration on behalf of the defendant, who was charged with loitering, in People v. John T. Valenti, a case then pending before Judge Northrup. Thereafter, respondent discussed the Valenti case with Judge Northrup. On March 12, 1973, the return date of the charge, respondent accompanied the defendant to Judge Northrup's court and was observed and recognized by Judge Northrup.

2. Charge II: On November 19, 1975, respondent sent a letter to Justice Andrew L. Lang of the Town Court of Pembroke, seeking special consideration on behalf of the defendant, who was

charged with speeding, in People v. Samuel A. Vallerian, a case then pending before Judge Lang.

3. Charge IX: On April 2, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. Herbert C. Reiter as a result of written communications he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

4. Charge XI: On May 12, 1976, respondent reduced a charge of speeding to failing to keep right in People v. Evelyn V. Megali as a result of a communication he received from Justice Saverio C. Alesi of the Town Court of Perinton, seeking special consideration on behalf of the defendant.

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, Canons 1, 2 and 3A of the Code of Judicial Conduct and Canons 4, 5, 13, 14, 17 and 34 of the Canons of Judicial Ethics. Charges I, II, IX and XI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

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. A judge who accedes to such a request is guilty of favoritism, as is the judge who makes the request. By making ex parte requests of other judges for favorable dispositions for defendants in traffic cases, and by acceding to such requests from other judges, respondent violated the Rules and Canons enumerated above.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

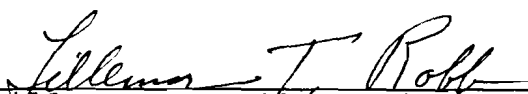
By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

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.

Dated: September 18, 1980
Buffalo, New York


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