

**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

ANTHONY P. LORUSSO,

a Judge of the Buffalo City Court,  
Erie County.

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**Determination**

THE COMMISSION:

Mrs. Gene Robb, Chairwoman  
John J. Bower, Esq.  
David Bromberg, Esq.  
Honorable Carmen Beauchamp Ciparick  
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 (John J. Postel, Of Counsel) for the  
Commission

Moot & Sprague (By Joseph V. Sedita) for  
Respondent

The respondent, Anthony P. LoRusso, a judge of the Buffalo City Court, Erie County, was served with a Formal Written Complaint dated March 21, 1986, alleging that he intervened with the police on behalf of the son of a former court employee. Respondent filed an answer dated April 9, 1986.

By order dated May 1, 1986, the Commission designated the Honorable John S. Marsh as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 19 and 20, 1986, and the referee filed his report with the Commission on January 28, 1987.

By motion dated March 23, 1987, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent opposed the motion by cross motion on April 20, 1987. The administrator filed a reply on May 1, 1987.

On May 22, 1987, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a judge of the Buffalo City Court and has been since 1976.

2. On August 8, 1985, Mark A. DeNisco was arrested in the Town of Evans, Erie County, on a charge of Disorderly Conduct. Mr. DeNisco was jailed by the Evans Town Police, who scheduled his release for 8:00 A.M. on the grounds that he was intoxicated and might cause further trouble.

3. Mr. DeNisco's father, Joseph, is a retired employee of the City of Buffalo who had worked with respondent over a period of several years in housing court.

4. At about 1:30 A.M. on August 8, 1985, the elder Mr. DeNisco called respondent by telephone at home and asked him to contact an Evans town justice to secure the son's immediate release from jail.

5. The elder Mr. DeNisco was emotional and expressed concern for his 17-year-old son's safety at the jail. Respondent was aware that the elder Mr. DeNisco suffered from cancer.

6. Respondent refused to call another judge to obtain Mark DeNisco's release but consented to call the Evans Town Police to request that the defendant be allowed to post station house bail or be released at 6:00 A.M. so that he could attend summer school.

7. At 1:43 A.M., respondent called Dispatcher Robert D. Stoessel, Jr., of the Evans Town Police.

8. Respondent identified himself as a judge of the Buffalo City Court, said that he was calling on behalf of the elder Mr. DeNisco, asked why the defendant was not being released, expressed concern about the defendant's health and requested that station house bail be set or that the defendant be released earlier than scheduled.

9. Respondent expressed irritation and indignation with Dispatcher Stoessel, questioned police practices and chastised him when he failed to reply immediately to respondent's questions. Respondent told Dispatcher Stoessel to

summon Lt. Kevin M. Walters, the officer in charge and the arresting officer in the DeNisco case, and have him contact respondent.

10. At about 2:00 A.M., respondent spoke by telephone with Lieutenant Walters. Respondent identified himself as a Buffalo City Court judge, expressed concern about the defendant's condition and requested that \$250 bail be set or that the defendant be released at 6:00 A.M.

11. When Lieutenant Walters refused the requests, respondent twice stated that they would have to "do it the hard way" and expressed anger and indignation at the decision.

12. When Lieutenant Walters referred to respondent as "Mr. LoRusso," respondent reminded him to address him as judge.

13. Respondent testified at the hearing in this proceeding that he is now embarrassed by the tone and tenor of his conversations with the police and acknowledged that it was improper for him to request the early release of Mr. DeNisco. However, in a similar situation in the future, he would still call the police, vouch for a parent's credibility and ask the police to allay the parent's anxiety, respondent testified.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2 of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established. Respondent's cross motion is denied.

Respondent used the prestige of his judicial office to advance the private interests of a professional acquaintance, Mr. DeNisco, by seeking his son's release from jail earlier than scheduled. Such misconduct clearly violates Section 100.2 of the Rules Governing Judicial Conduct and has repeatedly been held to warrant public sanction, even when the consideration sought is not intended to reach the final disposition of a case. Matter of Lonschein v. State Commission on Judicial Conduct, 50 NY2d 569 (1980); Matter of Calabretta, 1985 Annual Report 112 (Com. on Jud. Conduct, Apr. 11, 1984); Matter of Hansel L. McGee, 1985 Annual Report 176 (Com. on Jud. Conduct, Apr. 12, 1984); Matter of Gassman, 1987 Annual Report 89 (Com. on Jud. Conduct, Mar. 25, 1986). This is so regardless of respondent's motives. Lonschein, supra; Matter of Figueroa, 1980 Annual Report 159 (Com. on Jud. Conduct, Nov. 1, 1979); Matter of DeLuca, 1985 Annual Report 119 (Com. on Jud. Conduct, July 2, 1984).

Respondent's persistence with the police in attempting to secure Mr. DeNisco's release, his repeated mention of his judicial office and his failure to fully recognize that he should not have made the call and should not do so again indicate that a strong sanction is warranted. Matter of Shilling v. State Commission on Judicial Conduct, 51 NY2d 397 (1980); Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349 (1984); Matter of Agresta v. State Commission on Judicial Conduct, 64 NY2d 327 (1985).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mrs. DelBello, Judge Rubin and Mr. Sheehy concur.

Judge Ciparick and Judge Shea dissent as to sanction only and vote that respondent be admonished.

Judge Ostrowski did not participate.

Mr. Cleary and Mr. Kovner were 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: June 29, 1987

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