

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

CARL R. SCACCHETTI, JR.,

Determination

a Judge of the Rochester City Court,
Monroe County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern for the Commission
Charles A. Schiano for Respondent

The respondent, Carl R. Scacchetti, Jr., a judge of the City Court of Rochester, Monroe County, was served with a Formal Written Complaint dated April 15, 1981, alleging misconduct with respect to his presiding over two criminal proceedings in which the defendant was a close friend from whom respondent contemporaneously (i) accepted a loan or gift of \$262.10 and (ii) solicited and accepted a camera and accessories. Respondent filed an answer

dated May 5, 1981.

By order dated June 8, 1981, the Commission designated the Honorable Carman F. Ball referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 22, 27, 28 and 28, 1981, and the referee filed his report to the Commission on September 25, 1981.

By motion dated October 1, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent did not file opposing papers. On October 22, 1981, the Commission heard oral argument on the administrator's motion. Respondent appeared by counsel for oral argument. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact:

1. Respondent has known Albert Tantalo since 1976 and the two have been close friends since 1978. As early as 1979, respondent and Mr. Tantalo discussed certain business and Internal Revenue Service problems Mr. Tantalo had.
2. On March 20, 1978, respondent presided at a criminal proceeding in which Mr. Tantalo was the defendant. The case was dismissed upon Mr. Tantalo's promise to make restitution to the complaining witness and upon the recommendation of the District Attorney. In accordance with law, the case file was sealed by the court clerk.
3. On January 30, 1979, respondent went to Mr. Tantalo's place of business and accepted a check which was signed by Mr. Tantalo but which in all other respects was blank. Respondent sub-

sequently filled in the check in the amount of \$262.10 to pay for a 35mm camera he purchased at LeBeau Photo Shop.

4. Respondent considered the \$262.10 to be a loan from Mr. Tantalo which he testified was repaid in cash installments, the last installment being paid in late May or early June of 1979.

5. There is no record of the loan or respondent's repayment of it. Respondent did not report the loan to the clerk of the Rochester City Court, as required by Sections 33.5(c)(3)(iii) and 33.6(c) of the Rules Governing Judicial Conduct.

6. On March 1, 1979, while Mr. Tantalo's purported loan to respondent was still outstanding, respondent presided over the case of Svatek v. World Wide Tire, Inc. Respondent knew at the time that the defendant corporation was controlled and operated by Mr. Tantalo. On April 11, 1979, while Mr. Tantalo's purported loan to respondent was still outstanding, respondent dismissed the plaintiff's complaint in the Svatek case for lack of a cause of action.

7. On December 6, 7, 10, 11, 13 and 17, 1979, respondent and Mr. Tantalo had conversations by telephone and in person, concerning inter alia, People v. Wesley Hutchinson, a case then pending before respondent. The conversation of December 13 took place in Florida, where both men happened to be at the time. The conversation of December 17 took place at respondent's home. The others were over the telephone, with respondent in chambers. During these conversations, the following occurred:

- (a) Mr. Tantalo requested special consideration from respondent on behalf of the defendant in People v. Wesley Hutchinson.
- (b) Mr. Tantalo convinced respondent that Wesley Hutchinson's employer was interested in the outcome of the case.
- (c) Respondent assured Mr. Tantalo that he would consider the latter's request for special consideration.
- (d) Respondent recommended to Mr. Tantalo a specific attorney to represent Mr. Hutchinson.
- (e) While discussing the Hutchinson case, respondent advised Mr. Tantalo that he needed a 35mm camera. Respondent told Mr. Tantalo to obtain a good Minolta camera for him.
- (f) Mr. Tantalo advised respondent that Wesley Hutchinson's employer would buy the camera for respondent.
- (g) It was apparent to respondent that he would not pay for the camera, that Mr. Hutchinson's employer would pay for the camera and that respondent would receive it as a gift. Respondent asked Mr. Tantalo to ask Mr. Hutchinson's employer for a motor drive accessory to the camera.

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), 33.3(c)(1), 33.5(c)(3)(iii) and 33.6(c) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3C(1), 5C(4)(c) and 6 of the Code of Judicial Conduct. Charge I of the Formal Written Complaint dated April 15, 1981, is sustained and respondent's misconduct is established.

By presiding over cases involving a close friend, and

by accepting a loan from that friend and presiding over an action against him while the loan was outstanding, respondent violated those rules which require a judge's disqualification from cases in which his impartiality might reasonably be questioned (Section 33.3[c]). His conduct impaired public confidence in the integrity and impartiality of the judiciary (Sections 33.1 and 33.2). A judge may not accept loans from persons whose interests have been or are likely to come before him, and any loan in excess of \$100 must be reported to the clerk of the court (Sections 33.5[c][3][iii] and 33.6[c]). Respondent violated the applicable rules.

By entertaining a request for special consideration on behalf of the defendant in a criminal case before him and soliciting a gift in return, respondent engaged in egregious misconduct. Respondent's actions prejudiced the administration of justice, compromised the integrity of his court and irreparably impaired his effectiveness as a judge. Respondent has demonstrated his willingness to use judicial office to advance the private interests of his friends and those who would reward him for his services.

Respondent's misconduct in this matter, as well as with regard to the determination dated June 10, 1981, appended hereto, demonstrates that he lacks the moral qualities required of a judge and therefore is unfit to serve.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

Appended hereto is the determination of the Commission dated June 10, 1981, with respect to the earlier, unrelated proceeding

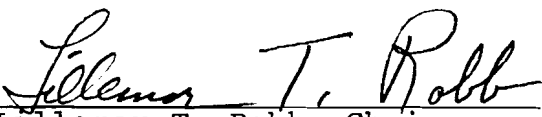
against respondent. In that proceeding, the Commission (i) found that respondent's misconduct was established and (ii) deferred consideration of sanction until the instant matter was determined.

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: November 25, 1981


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

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Commission on Judicial Conduct

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Victor A. Kovner, Esq.
William V. Maggipinto, Esq.*
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (John W. Dorn, Of Counsel)
for the Commission
Charles A. Schiano for Respondent

The respondent, Carl R. Scacchetti, a judge of the City Court of Rochester, Monroe County, was served with a Formal Written Complaint dated June 1, 1979, alleging that he failed to disqualify himself and improperly participated in eight cases in June 1978. Respondent filed an answer dated July 13, 1979.

By order dated November 5, 1979, the Commission designated William F. FitzPatrick, Esq., referee to hear and report proposed

*Mr. Maggipinto's term as a member of the Commission expired on March 31, 1981. The vote on this determination was rendered on March 10, 1981.

findings of fact and conclusions of law. The hearing was held on March 11, 12 and 13, 1980, and the referee filed his report to the Commission on September 12, 1980.

By motion dated December 3, 1980, the administrator of the Commission moved to confirm the referee's report, and for a finding that respondent had engaged in misconduct. Respondent opposed the motion on February 23, 1981. Oral argument was waived.

The Commission considered the record of the proceeding on March 10, 1981, and makes the determination herein.

With respect to Charge I of the Formal Written Complaint, the Commission makes the following findings of fact.

1. Respondent's brother, Anthony Scacchetti, at all times mentioned in the Formal Written Complaint, was a Sergeant in the Rochester Police Department assigned to the "Lake Section", which includes Ontario Beach Park.

2. Charles J. Cortese and Wayne Hadley at all times mentioned in the Formal Written Complaint were members of the Rochester Police Department assigned to the Lake Section.

3. On the evening of June 20, 1978, Officers Cortese and Hadley were on duty between 3 p.m. and 11 p.m. under the supervision of Sergeant Scacchetti.

4. On that night, Sergeant Scacchetti drove his police vehicle to respondent's home and asked respondent if he wanted to visit their mother, who resided at the Senior Citizens' Tower on Lake Avenue, which is approximately one quarter mile south of Ontario Beach Park. Respondent accepted and accompanied Sergeant Scacchetti in the police vehicle.

5. On the way to his mother's home, Sergeant Scacchetti drove through Ontario Beach Park on patrol.

6. Between 9:45 p.m. and 10:00 p.m., respondent was present in his brother's police car at Ontario Beach Park where Officers Cortese and Hadley arrested Peter Saxe, Patrick Muldoon, Thomas Monna, David Magee, Dennis Betetti, Bruce Mitchell, Kevin Bordonaro and James Gately.

7. Respondent arrived in the area of the park pavilion subsequent to the arrest of the defendants Magee, Mitchell and Betetti. While at the place of arrest, he observed:

a. two police cars about 50-70 feet away, and Officers Cortese and Hadley making out their arrest reports for the defendants;

b. beer bottles and cans in and around the pavilion where the youths were arrested;

c. Dennis Betetti, one of the defendants, with a beer in his hand; and

d. people in the pavilion.

8. Respondent was present in the police car when Dennis Betetti, one of the defendants, discussed his arrest with Sergeant Scacchetti.

9. Dennis Betetti, after being advised by Sergeant Scacchetti that a judge was in the police car, asked respondent if respondent could do something about his arrest for drinking in the park.

10. Respondent observed a group of people sitting and standing in and near the pavilion, subsequent to the arrest of Magee, Mitchell and Betetti.

11. The remaining defendants were arrested at the lavatory area of the park.

12. Respondent was assigned to Part I of the Rochester City Court to preside over arraignments during the period from June 20 to June 28, 1978.

13. Between June 21 and June 28, 1978, respondent presided over the arraignments of Peter Saxe, Patrick Muldoon, Thomas Monna, David Magee, Dennis Betetti, Bruce Mitchell, Kevin J. Bordonaro and James Gately and, except as hereafter noted with respect to defendant Betetti, failed to disqualify himself from handling any and all parts of the proceedings involving the defendants named above.

14. Respondent accepted a plea of guilty at Dennis Betetti's arraignment on June 21, 1978, and upon being made aware that Betetti was the individual who had approached the car on the previous evening, stated that he disputed a factual assertion made by Mr. Betetti, as follows:

You made a statement to this court that you were not drinking beer. You had no beer in your hand, and Mr. Betetti, I saw with my own eyes beer in your hand. Therefore, I am going to disqualify myself... [Ex. 1A(6-7)]

15. Respondent thereafter disqualified himself from handling further proceedings in regard to defendant Betetti.

With respect to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact.

16. During the course of the arraignment proceedings held on June 21, 1978, in the cases of People v. David Magee, Dennis Betetti and Bruce Mitchell, respondent improperly participated in those proceedings by:

(a) Making the following remarks from the bench concerning Officer Wayne Hadley, one of the arresting officers:

MR. BETETTI: Yes. Can I just ask one more question. The officer that arrested us, he stated that he thought he was doing wrong and he felt that the arrest was wrong, but he had to do it because you were in the car behind him.

THE COURT: He said that?

MR. MAGEE: That's right.

THE COURT: You gentlemen stay right in the court. He is going to say that on the record. You heard him say that?

MR. BETETTI: He said -- I said the officer --

THE COURT: He said that. Let him say that on the record. It doesn't make any difference. He will be suspended from the force saying that. You sit right here in the courtroom while he gets called in and says that on the record. He will be suspended from the force. There is no question. You will be here Friday?

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THE COURT: Jack, I want Officer Wayne Hadley called in immediately. Immediately.

(Arr. Tr. 3-5, June 21, 1978)

(b) Initiating an ex parte conversation with Officer Wayne Hadley, in respondent's chambers during a recess of the proceedings, concerning Mr. Betetti's statement to the court set forth in paragraph 16(a) above and thereafter resolved the issue raised by the defendant Betetti against his interest;

(c) Making the following remarks from the bench which were based upon his presence and observations at the place of the arrest:

MR. MAGEE: Didn't your brother say that the signs were torn down in the--

THE COURT: Some of the signs.

MR. MAGEE: We didn't know.

THE COURT: Mr. Magee, you are going to help us put them back up. June 28th for sentencing, Mr. Magee. Your case will be transferred to Judge Cassetti, Mr. Betetti.

MR. MAGEE: When you came up to the group there was at least five or six other people, right? They just walked away and went away; is that fair?

THE COURT: No, I didn't see that, Mr. Magee.

MR. MAGEE: You didn't see that?

THE COURT: No.

MR. MAGEE: You didn't see the beer sitting around then?

THE COURT: Oh yes. I did see that. I did see that. You are right. I did see that.

MR. MAGEE: How?

THE COURT: Mr. Magee, I am telling you I didn't see it. Now, if you want me to say I saw it, I will say I saw it. If you want me to say it. Would it make you happy if I say--

MR. MAGEE: Not unless you really didn't see it.

THE COURT: Then I didn't see it. Mr. Magee, is it that you don't want to ---

MR. MAGEE: That is it is not -- I can't ---

THE COURT: I didn't see it because I was not looking for it.

MR. MAGEE: You saw---

THE COURT: I didn't see you at all, Mr. Magee. I never saw you. You understand that?

MR. MAGEE: All right.

THE COURT: He is the only one I ever saw. That is why I disqualified myself. I never saw you, Mr. Magee. You could have been there I don't remember you at all.

(Arr. Tr. 8-10, June 21, 1978)

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.3(c)(1), 33.3(c)(1)(i), 33.3(c)(1)(ii), and 33.3(c)(1)(iv)(d) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3C(1), 3C(1)(a), 3C(1)(b) and 3C(1)(d)(iv) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

Charge III of the Formal Written Complaint is not sustained and therefore is dismissed.

A judge is required to disqualify himself from presiding over any proceeding in which he has personal knowledge of disputed evidentiary facts, has been a material witness to the matter at bar is related within six degrees of relationship to a material witness or in which his impartiality might otherwise be reasonably questioned (Section 33.3[c] of the Rules).

Because he had been present with his police sergeant brother at the scene of the arrests of eight defendants on June 20, 1978, was a witness to some of the arrests, was related to a witness thereto and himself had personal knowledge of evidentiary facts, respondent was obliged under the Rules to recuse himself from any participation in the cases when they appeared on the court calendar. Instead of immediately stepping down, however, respondent conducted the arraignments and, from the bench, engaged in disagreements over the facts in the case at issue with two of the defendants. Such conduct, apart from violating the rules on disqualification, was injudicious.

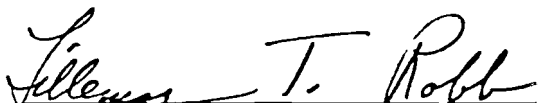
The matter of an appropriate sanction is not now before us. Written and oral argument on sanction shall be scheduled by the clerk of the Commission upon application of counsel.

All concur.

CERTIFICATION

This is to certify that the foregoing is the determination of the Commission with respect to the administrator's motion of December 3, 1980, and respondent's opposition thereto.

Dated: June 10, 1981


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