

**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**

HERBERT O. THERRIAN, JR.,

a Justice of the Altona Town Court,  
Clinton County.

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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 (Cathleen S. Cenci, Of Counsel) for the  
Commission

Holcombe & Dame (By Kenneth H. Holcombe) for  
Respondent

The respondent, Herbert O. Therrian, Jr., a justice of  
the Altona Town Court, Clinton County, was served with a Formal  
Written Complaint dated September 10, 1985, alleging that he  
gave money to prospective voters to induce them to vote for him

and other candidates of his party. Respondent filed an answer dated September 26, 1985.

By order dated October 17, 1985, the Commission designated H. Wayne Judge, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on December 3, 1985, and the referee filed his report with the Commission on January 27, 1986.

By motion dated February 21, 1986, the administrator of the Commission moved to confirm the referee's report, to adopt additional findings of fact and for a finding that respondent be removed from office. Respondent replied by letter of March 7, 1986. Oral argument was waived.

On March 20, 1986, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of Altona Town Court and has been since January 1, 1984.

2. Respondent campaigned for judicial office in the fall of 1983.

3. Respondent campaigned door to door with his party's candidate for town supervisor, Cecil Gero, so that Mr. Gero, an incumbent, could introduce respondent to prospective voters.

4. Respondent contributed \$50 to a fund that he and Mr. Gero used to pay prospective voters that they visited.

5. Respondent and Mr. Gero gave \$5 each to Leah LaBarge, Alden LaBarge, Sr., David LaBarge, Wanda LaBarge, Alden LaBarge, Jr., Melvin Boyd, Emma Boyd and Robert Lucia to induce them to vote for respondent, Mr. Gero and other candidates of their party.

6. The payments were made to induce voters to come to the polls and to vote for a particular person or persons, in violation of Section 17-142 of the Election Law.

7. Respondent was aware that it was improper to pay someone, directly or indirectly, to vote in an election.

8. Respondent won the election by 13 votes.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(a) of the Rules Governing Judicial Conduct and Canons 1, 2A and 7 of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent was prohibited from campaigning with another candidate for public office by Canon 7 of the Code of Judicial Conduct which provides that a judicial candidate should not publicly endorse another candidate.

More significantly, respondent violated Section 17-142 of the Election Law by giving money to voters to influence their votes. Such conduct constitutes a felony and, when committed by a judicial candidate, impairs public confidence in the integrity of the judiciary.

We are not persuaded by respondent's suggestion during his testimony before a member of the Commission that voters were paid only expenses, pursuant to Section 17-140(2) of the Election Law then in effect. The \$5 respondent and Mr. Gero uniformly handed out does not appear to be the "reasonable, bona fide and customary" value of travel expenses then permitted by the statute.

Rather, it is clear that respondent was attempting to buy votes, a practice that he knew was contrary to law.

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


Mrs. Robb, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

Mr. Bromberg, Judge Rubin and Mr. Sheehy 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: May 1, 1986



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Victor A. Kovner, Esq., Member  
New York State  
Commission on Judicial Conduct