

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

MICHAEL V. TEPEDINO,

a Judge of the Family Court,
Albany County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
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 (Jack J. Pivar, Of Counsel) for the
Commission

O'Connell & Aronowitz (By Stephen R. Coffey) for
Respondent

The respondent, Michael V. Tepedino, a judge of the
Family Court, Albany County, was served with a Formal Written
Complaint dated July 18, 1979, alleging misconduct in two traffic
cases. Respondent filed an answer dated August 23, 1979.

By order dated November 19, 1979, the Commission design-
nated the Honorable Joseph F. Hawkins as referee to hear and

report proposed findings of fact and conclusions of law. The hearing was conducted on May 5, 1980, and the report of the referee was filed on June 12, 1980.

By motion dated November 3, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the administrator's motion and cross-moved to disaffirm the referee's report and to dismiss the Formal Written Complaint.

The Commission heard oral argument by opposing counsel on the motions on January 21, 1981, thereafter considered the record of this proceeding and now makes the following findings of fact.

Charge I: On April 30, 1976, respondent telephoned Clifton Park Town Court Justice Richard Lips, seeking special consideration on behalf of the defendant in People v. Olive E. Monticup, a traffic case then pending before Judge Lips. The defendant, who was charged with failure to stop at a stop sign, is a cousin by marriage of respondent's daughter. On May 1, 1976, respondent sent Judge Lips a letter on official court stationery, confirming the conversation. On May 4, 1976, the charge consequently was changed to driving with an inadequate muffler and the defendant was fined \$10.00

Charge II: On or about November 2, 1976, respondent spoke with New Scotland Town Court Justice Harold Schultz, seeking special consideration on behalf of the defendant in People v. Munir T. Jabbur, a traffic case then pending before Judge Schultz. The defendant, who was charged with speeding, was a former neighbor and

former client of respondent's. The charge consequently was changed to driving with an inadequate muffler and the defendant was granted an unconditional discharge.

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 and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I and II 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. Respondent is a judge who sits full-time in a court of record and was obliged to know that his conduct was improper. The inevitable result of such an ex parte communication from one judge to another is to convey the requesting judge's special interest in the outcome of the case. Courts in this and other states have found that seeking favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

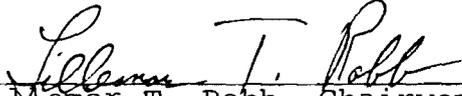
By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

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: April 21, 1981
Albany, New York


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