

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**

MICHAEL L. D'AMICO,

a Judge of the County Court, Erie  
County.

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THE COMMISSION:

Henry T. Berger, Esq., Chair  
Helaine M. Barnett, Esq.  
E. Garrett Cleary, Esq.  
Stephen R. Coffey, Esq.  
Mary Ann Crotty  
Lawrence S. Goldman, Esq.  
Honorable Daniel F. Luciano  
Honorable Juanita Bing Newton  
Honorable Eugene W. Salisbury  
Barry C. Sample  
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Connors & Vilaro (By Terrence M. Connors) for  
Respondent

The respondent, Michael L. D'Amico, a judge of the  
County Court, Erie County, was served with a Formal Written  
Complaint dated December 21, 1995, alleging that he was arrested  
and that he mentioned his judicial office to police. Respondent  
did not answer the Formal Written Complaint.

On December 30, 1995, the administrator of the  
Commission, respondent and respondent's counsel entered into an  
agreed statement of facts pursuant to Judiciary Law §44(5),

waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based upon the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On January 11, 1996, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Erie County Court since January 1, 1987.

2. On June 14, 1994, at about 8:15 P.M., respondent entered the Island Park in Amherst in order to determine whether it had suitable facilities for a family picnic.

3. Respondent stepped off a roadway into some bushes and, while standing next to a large tree, raised the shorts that he was wearing and exposed his penis.

4. As he was leaving the park, he was arrested by two Amherst police officers, one of whom had observed him in the bushes. Respondent asked why he was being arrested and told the officers that he was an Erie County Court judge. He had not been asked about his occupation.

5. Respondent was taken to police headquarters by two other police officers. En route, he advised those officers that he was an Erie County Court judge, even though he had not been asked about his occupation.

6. At the police station, respondent spoke to a lieutenant and stated that his arrest would be devastating because of his judicial position.

7. On July 6, 1994, respondent pleaded guilty in the Amherst Town Court to Disorderly Conduct and was fined \$100, plus a \$45 mandatory state surcharge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1 and 100.2(a), and Canons 1 and 2A of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

"A Judge must conduct his everyday affairs in a manner beyond reproach. Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function." (Matter of Kuehnel v State Commission on Judicial Conduct, 49 NY2d 465, 469; see also, Matter of Quinn v State Commission on Judicial Conduct, 54 NY2d 386). A judge is "governed by exacting standards of honor and propriety" and is obligated to act at all times with "respect for the letter and spirit of the law." (Matter of Backal v State Commission on Judicial Conduct, \_\_\_ NY2d \_\_\_, \_\_\_ (unreported, No. 283, Nov. 30, 1995).

Not only did respondent plead guilty to Disorderly Conduct following his arrest, respondent's repeated references to his judicial position during his arrest constituted an obvious attempt to gain special consideration. Such conduct by a judge is wrong, even in the absence of a specific request for a favor (see, Matter of Edwards v State Commission on Judicial Conduct, 67 NY2d 153, 155) and even though there was no threat or other abuse of the police (see, Matter of Henderson, 1995 Ann Report of NY Commn on Jud Conduct, at 118).

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

Mr. Berger, Ms. Barnett, Mr. Cleary, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Newton, Judge Salisbury and Judge Thompson concur.

Mr. Sample was not present.

Judge Luciano was not a member of the Commission when the vote in this matter was taken.

#### 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: March 21, 1996

~~Henry T. Berger~~  
Henry T. Berger, Esq., Chair  
New York State  
Commission on Judicial Conduct