

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

LOUIS KAPLAN,

a Judge of the Civil Court of the
City of New York, New York County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.*

APPEARANCES:

Gerald Stern for the Commission
John H. Doyle, III, for Respondent

The respondent, Louis Kaplan, a judge of the New York City
Civil Court, was served with a Formal Written Complaint dated
July 19, 1982, alleging that he assisted his wife in obtaining charitable

* Mr. Wainwright's term as a member of the Commission expired on March 31, 1983.
This determination was rendered pursuant to a vote on March 24, 1983.

contributions from lawyers who appeared before him and that he obtained an adjournment in another court for a friend. Respondent did not file an answer.

On January 3, 1983, the administrator of the Commission, respondent and respondent's counsel, entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, stipulating that the agreed statement be executed in lieu of respondent's answer and further stipulating that the Commission make its determination upon the pleadings and the agreed upon facts.

The Commission approved the agreed statement on January 18, 1983, and, on March 24, 1983, heard oral argument on the issues herein. Respondent's counsel appeared for oral argument. Thereafter the Commission considered the record of the proceeding and made the following findings of fact:

As to Charge I of the Formal Written Complaint:

1. In the summer and fall of 1980, respondent assisted his wife in connection with advertisements she had solicited for the Park Avenue Synagogue Dedication Journal, in that respondent on several occasions in chambers gave journal contract forms to attorneys

and received such forms from attorneys for delivery to his wife.

2. These attorneys had been previously solicited for advertisements to the journal by respondent's wife.

3. The journal was to be published as part of a fund-raising effort to defray the costs of the synagogue's newly-constructed religious school.

4. Respondent's wife received journal contracts from 46 persons. Twenty-seven of the contracts were received from attorneys or law firms.

5. Four of these attorneys or law firms appeared once before respondent in the fall of 1980. Fifteen of them appeared more than once before respondent in the fall of 1980. Eight did not appear before respondent at all.

6. Some solicitations to attorneys were made at the request of respondent's wife by Jack Feder, a person who regularly appears in respondent's court.

As to Charge II of the Formal Written Complaint:

7. On January 5, 1981, a friend of respondent who was the manager of a clothing store called respondent and told him that the clothing store was the defendant in a case pending in the Small Claims Part of the Civil Court in New York County. The case was on the court calendar for January 6, 1981.

8. Respondent asked the clerk in the Small Claims Part about obtaining an adjournment in the case. As a result of the conversation, the case was adjourned from January 6, 1981, to January 13, 1981.

9. The adjournment was not approved by a judge presiding in the Small Claims Part. The adjourned date was recorded on the Small Claims calendar prior to the court session of January 6, 1981.

10. At respondent's suggestion, the defendant advised the plaintiff of the adjournment by telegram. The plaintiff received the telegram on January 6, 1981, prior to the time the case was scheduled to be heard.

11. Respondent also suggested to the store manager that he request that a judge rather than an arbitrator try the case. On January 13, 1981, the case was tried before an arbitrator. A verdict and judgment in the plaintiff's favor was entered, and the defendant's counterclaim was dismissed. The defendant paid the judgment in full.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.5(b)(2) of the Rules Governing Judicial Conduct and Canons 1, 2 and 5B(2) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A judge may not "solicit funds for any educational, religious, charitable, fraternal or civic organization or use or permit the use of the prestige of the office for that purpose...." Section 100.5(b)(2) of the Rules Governing Judicial Conduct. Although the funds were solicited by his wife, respondent, by distributing and collecting the advertising contracts, used the prestige of his office to assist her fund-raising activities. That he did so in his chambers to lawyers exacerbates his violation of the rule. Lawyers with matters pending before respondent or who regularly appeared in his court could not help feeling pressured to cooperate in his wife's efforts in order to maintain good relations with respondent.

By intervening in a case in another court to obtain an adjournment for a friend, respondent lent "the prestige of his... office to advance the private interests of others...." See Section 100.2(c) of the Rules Governing Judicial Conduct. Respondent took advantage of his position to get from a court clerk what his friend or any other person could only have obtained from a judge for good cause shown: an adjournment of a case scheduled for the following day. Such interventions by a judge cloaked in the authority of his office have in the past met with public sanction, even when done for understandable reasons. See Lonschein v. State Commission on Judicial Conduct, 50 N.Y.2d 569 (1980); Shilling v. State Commission on Judicial Conduct, 51 N.Y.2d 397 (1980); Matter of Figueroa, N.Y.L.J., Nov. 28,

1979, p. 11, col. 1 (Com. on Jud. Conduct, Nov. 1, 1979). We note that respondent used his office only to seek an adjournment, not to influence the outcome of his friend's case.

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

Judge Alexander, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mr. Bower did not participate.

Mrs. Robb and Judge Rubin 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 17, 1983



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