

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

ARTHUR W. LONSCHEIN,

a Justice of the Supreme Court,
Queens County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Arthur W. Lonschein, a justice of the Supreme Court, Eleventh Judicial District (Queens County), was served with a Formal Written Complaint dated October 26, 1978, alleging misconduct in that in three instances respondent improperly used the prestige of his office on behalf of a personal friend who had applied for a lease and licenses from various New York City government authorities. Respondent filed an answer dated November 27, 1978, denying the material allegations.

By order dated January 30, 1979, the Commission appointed the Honorable Bertram Harnett as referee to hear and report to the Commission with respect to the facts herein. Hearings were

held on April 9, 10, 11 and 19, 1979, and the report of the referee, dated August 31, 1979, was filed with the Commission.

By notice dated September 28, 1979, the administrator of the Commission moved to confirm the report of the referee, determine misconduct and render a sanction. By notice dated October 16, 1979, respondent cross-moved to confirm in part and disaffirm in part the report of the referee and to dismiss the Formal Written Complaint. The administrator filed a reply dated October 18, 1979.

The Commission heard oral argument with respect to the motions on October 26, 1979, thereafter considered the record in this proceeding, and upon that record makes the findings and conclusions below.

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

1. Respondent was a judge of the Civil Court of the City of New York in 1975.

2. John Mazzuka was a principal of a private car service named KOOP City Private Car Service in 1975 (hereinafter "KOOP City").

3. Respondent and John Mazzuka are intimate personal friends who have known each other for at least 20 years, who consider themselves as brothers, and whose families are also intimate.

4. In the spring of 1975, Mr. Mazzuka told respondent he was having a problem with respect to an application by KOOP City to the New York City Department of Real Estate to lease a limousine base station under the Pelham Bay Park subway station.

5. Respondent suggested to Mr. Mazzuka that the latter speak to New York City Councilman Matthew Troy for assistance in resolving the problem. Mr. Mazzuka was a constituent of Mr. Troy.

6. Mr. Mazzuka asked respondent to speak to Mr. Troy on his behalf, and asked respondent to arrange a meeting between him and Mr. Troy.

7. Respondent has known Matthew Troy for approximately 20 years, as a fellow lawyer, through various political activities and affiliations, and as a personal friend. Mr. Troy was a political sponsor of respondent for election to the Civil Court in 1975 and in fact knew respondent to be a judge of the Civil Court in 1975.

8. On an unspecified date in April 1975, respondent spoke in person to Mr. Troy on behalf of Mr. Mazzuka. Respondent referred to Mr. Mazzuka as a friend, acquainted Mr. Troy with KOOP City's lease application and asked Mr. Troy to meet with Mr. Mazzuka.

9. The foregoing conversation constituted a request by respondent that Mr. Troy assist Mr. Mazzuka as a favor to respondent.

10. As a favor to respondent, Mr. Troy thereafter met Mr. Mazzuka in the former's office in April 1975, and Mr. Troy

wrote on Mr. Mazzuka's behalf to the Commissioner of the New York City Department of Real Estate and to the Metropolitan Transportation Authority.

11. KOOP City subsequently entered into the sought-after lease. There is no evidence of any causal connection between the foregoing conduct and the actual granting of the lease.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.2(c) of the Rules Governing Judicial Conduct and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

With respect to Charge II, subdivisions (a) and (b), of the Formal Written Complaint, the Commission makes the following findings of fact.

12. In June 1975, Stanley Katz was Deputy Commissioner and General Counsel of the New York City Taxi and Limousine Commission.

13. Respondent and Mr. Katz were longstanding acquaintances but it does not appear their relationship was close. Mr. Katz knew respondent to be a judge of the Civil Court, and respondent knew Mr. Katz to be Deputy Commissioner and General Counsel of the Taxi and Limousine Commission.

14. On an unspecified date between June 1, 1975, and June 19, 1975, Mr. Mazzuka and his partner, Louis Moyett, spoke with Mr. Katz at the latter's New York City office with

respect to certain vehicle license applications filed by KOOP City with the Taxi and Limousine Commission.

15. Mr. Katz referred Mr. Mazzuka and Mr. Moyett to Rose Nikas, a clerk responsible for processing license applications. Mr. Mazzuka and Mr. Moyett met with Ms. Nikas and her supervisor, Jose Basora, then Deputy Director of Licensing. The applicants expressed a need for immediate licensing. Mr. Basora advised the applicants that their license applications required two to four weeks for processing.

16. On June 20, 1975, Mr. Mazzuka and Mr. Moyett returned to Mr. Basora's office and advised him that they had obtained a contract from the Veterans Administration and required vehicle licensing from the Taxi and Limousine Commission in connection therewith.

17. Thereafter, Mr. Mazzuka discussed his Veterans Administration contract with respondent and told respondent of his belief that the Taxi and Limousine Commission was unduly delaying KOOP City's licensing application. Mr. Mazzuka also advised respondent of the monetary importance of the Veterans Administration contract and stated that he would lose that contract unless the Taxi and Limousine Commission licenses were granted expeditiously. Mr. Mazzuka told respondent that he had spoken to Mr. Katz.

18. On an unspecified date between June 20, 1975, and June 24, 1975, respondent telephoned Mr. Katz and asked him to assist in expediting the matter of KOOP City's licensing.

19. On June 25, 1975, while driving his car, respondent observed Mr. Katz driving alongside in a separate vehicle. He attracted Mr. Katz's attention by signaling several times with his horn and motioned Mr. Katz to stop. Both thereupon parked their cars on the shoulder of the road and got out of their cars.

20. Respondent then initiated a conversation to the effect that Mr. Mazzuka was still troubled about delay in processing his licensing application. Respondent told Mr. Katz that both Mr. Mazzuka and Mr. Moyett were friends and former clients of his and that he considered the requests of Mr. Mazzuka and Mr. Moyett to be meritorious, and he asked Mr. Katz to inquire into the matter.

21. Respondent's conversation with Mr. Katz on June 25, 1975, was motivated by a desire to help Mr. Mazzuka and to expedite KOOP City's licensing application. Respondent conveyed to Mr. Katz his desire for Mr. Katz to help Mr. Mazzuka. Respondent knew or should have known that his judicial position would affect Mr. Katz's conduct.

22. Thereafter Mr. Mazzuka visited Mr. Katz again and was introduced by him to First Deputy Commissioner Joseph Cerbone, who summoned Mr. Basora to join them. Mr. Katz suggested that "conditional licenses" be issued to KOOP City.

23. On June 27, 1975, the requested licenses were in fact issued to KOOP City.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.2(c) of the Rules Governing Judicial Conduct and Canons 1, 2A and 2B of the Code of Judicial Conduct, Charge II, subdivisions

(a) and (b), of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Charge II, subdivision (c), is not sustained and therefore is dismissed.

A judge is required by the Rules Governing Judicial Conduct to conduct himself "at all times" in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Section 33.2[a]). His obligation to observe the applicable ethical standards may not be left behind in the robing room. Indeed, the very manner in which jurists are addressed as "Judge" and "Your Honor", off the bench as well as on, in private as well as in public, bespeaks of the public's perception of their high position and requires that judges be ever mindful of the manner in which their actions may be viewed. They must assiduously avoid conduct that may create even the appearance of impropriety. While this may often seem a difficult and burdensome responsibility, its faithful discharge is indispensable to the promotion of public confidence in the integrity and impartiality of the judiciary. The diligence required to discharge that responsibility cannot be relaxed.

In the instant matter, respondent sought from two public officials what amounted to special consideration on behalf of a close personal friend. Although respondent never expressly asserted his judicial office in seeking special consideration, the two public officials in fact knew him to be a judge, and his requests were undeniably accorded greater weight

than they would have been had respondent not been a judge.

Respondent knew or should have known that such would be the case.

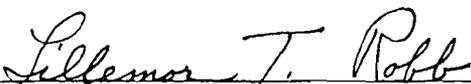
The Code of Judicial Conduct and the Rules Governing Judicial Conduct specifically prohibit a judge from "allow[ing] his family, social, or other relationships to influence his judicial conduct or judgment" (Canon 2B of the Code, Section 33.2 [b] of the Rules). The Rules also prohibit a judge from "lend[ing] the prestige of his office to advance the private interests of others..." (Section 33.2[c]). Respondent's conduct in the instant matter violated the applicable standards.

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

Mr. Kirsch, Judge Rubin, Judge Shea and Mr. Wainwright dissent only with respect to sanction and vote that the appropriate sanction is admonition.

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.


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

Dated: December 28, 1979
Albany, New York

APPEARANCES:

Albert E. Silbowitz for Respondent

Gerald Stern for the Commission (Robert H. Straus, Jeanne
O'Connor, Of Counsel)