

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4, : DETERMINATION
of the Judiciary Law in Relation to :

JOHN D. D'APICE, :

a Judge of the City Court of :
Yonkers, Westchester County. :

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PRESENT: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.
Dolores DelBello -- Not Participating

The respondent, John D. D'Apice, a judge of the City Court of Yonkers, Westchester County, was served with a Formal Written Complaint dated October 26, 1978, alleging in two charges of misconduct that respondent (i) improperly used stationery identifying him as a judge in a private dispute with an attorney and (ii) improperly threatened the attorney with filing a professional grievance against him if the dispute were not resolved by the attorney in respondent's favor. In his answer, dated November 18, 1979, respondent denied the material allegations set forth in the Formal Written Complaint, asserted certain affirmative defenses and moved for dismissal of the Formal Written Complaint.

On December 14, 1978, the Commission denied respondent's motion to dismiss the Formal Written Complaint, with a determination dated January 3, 1979, and appointed Michael A. Cardozo, Esq., as referee to hear and report to the Commission with respect to the issues herein. A hearing was conducted before the referee on February 15, 1979, and the referee's report, dated April 17, 1979, was filed with the Commission on April 18, 1979.

The administrator of the Commission moved on May 15, 1979, to confirm in part and disaffirm in part the report of the referee, and for a determination that respondent be censured. Respondent submitted a memorandum in opposition to the administrator's motion on May 14, 1979.

The Commission heard oral argument by the administrator and respondent's counsel on May 22, 1979, thereafter considered the record in this proceeding and makes the findings and conclusions set forth below.

Charge I of the Formal Written Complaint is dismissed.

With respect to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact:

1. There was a private dispute between respondent and Frank Mangiatordi, Esq., concerning the amount of attorney's fees allegedly owed to respondent by Mr. Mangiatordi, for legal services rendered by respondent in Palumberi v. Shayne, prior to respondent's becoming a judge.

2. Respondent, in an effort to coerce Mr. Mangiatordi to pay him the amount of the aforesaid disputed claim, stated in his letter of December 29, 1976, to Mr. Mangiatordi that he would

file a grievance against Mr. Mangiatordi with the Judicial Conference [sic] and would request that he be censured for professional misconduct unless Mr. Mangiatordi fulfilled the alleged financial obligation he owed respondent by January 10, 1977.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.5(c)(1) of the Rules Governing Judicial Conduct, Canons 1, 2A and 5C of the Code of Judicial Conduct, and DR1-103(A) of the Code of Professional Responsibility. Accordingly, Charge II is sustained and respondent is thereby guilty of misconduct.

Respondent's attempt to coerce Mr. Mangiatordi to pay the disputed claim, by threatening to file a professional grievance against him, was improper. Grievance proceedings are to determine matters of alleged professional misconduct and are not meant to be used as leverage by one party over another in a private dispute. Indeed, if respondent in fact believed Mr. Mangiatordi was guilty of professional misconduct, as he stated in his letter of December 29, 1976, then he was under an obligation to report this fact to an appropriate disciplinary panel, whether or not the disputed amount was paid. For respondent to have acted otherwise would have meant that if a settlement had been reached, a matter of professional misconduct would have remained unreported and unexamined. As noted by the referee, respondent's contention that, since his letter of complaint is dated January 7, 1977, he would have reported Mr. Mangiatordi's conduct whether or not the

disputed amount had been paid, is not supported by the evidence. While respondent's letter is dated January 7, it was not sent until January 11, one day after the expiration of the deadline set by respondent in his letter of December 29.

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

Mrs. Robb and Mr. Maggipinto dissent with respect to Charge I and vote to sustain the charge.

Judge Rubin and Judge Shea dissent with respect to Charge II and vote to dismiss the charge and impose no sanction.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: July 3, 1979

APPEARANCES:

Wekstein & Fulfree (By Morton N. Wekstein) for Respondent

Gerald Stern for the Commission (Stanley A. Bass, Of Counsel)