

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

Determination

JOSEPH DiFEDE,

a Justice of the Supreme Court,
First Judicial District.

BEFORE: 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 Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Raymond S. Hack and
Barry M. Vucker, Of Counsel)
for the Commission

Julien, Schlesinger & Finz (By Alfred S.
Julien and David I. Weprin) for
Respondent

The respondent, Joseph DiFede, a justice of the Supreme Court, First Judicial District (in Bronx County), was served with a Formal Written Complaint dated February 29, 1980, alleging misconduct in that he received financial benefits with respect to four vacation trips arranged by a man who, inter alia, was actively

soliciting and receiving receivership appointments by respondent and other judges of respondent's court. Respondent filed an answer dated September 16, 1980.

The Commission designated the Honorable James Gibson referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on September 16 and 17 and October 2, 5, 6, 7 and 9, 1981. The referee filed his report with the Commission on January 21, 1982.

By motion dated February 26, 1982, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion and moved for dismissal of the Formal Written Complaint. The administrator filed a reply memorandum. The Commission having heard oral argument and an oral statement from respondent on April 21, 1982, thereafter considered the record of the proceeding and made the determination herein.

Preliminarily the Commission makes the following findings of fact:

1. Between 1974 and 1978, Bernard Lange was actively soliciting judicial appointments from justices of the Supreme Court as a receiver in real property mortgage foreclosure proceedings and received more than 150 such appointments. Mr. Lange informed respondent that he would like to receive such appointments in the future.

2. From 1974 through 1978, the primary source of Mr. Lange's income was fees awarded by justices of the Supreme Court in connection with his appointments as a receiver.

3. Almost all such appointments of Mr. Lange were in New York City and more were received in Bronx County than any other county.

4. Mr. Lange was first appointed by respondent as a receiver on or about January 6, 1975, while respondent was presiding in Special Term of the Supreme Court, Bronx County.

5. Prior to July 1976 respondent knew that he and other justices of the Supreme Court were appointing Mr. Lange as a receiver and therefore that Mr. Lange had interests which had come and were likely to continue to come before respondent and other justices of the Supreme Court.

6. Mr. Lange did not hold himself out to the general public as a person engaged in the travel business.

7. Mr. Lange could obtain preferential treatment and reservations for guests at Princess Hotels, which included obtaining accommodations at rates less than what was available to the general public.

8. Sometime between April 14, and April 18, 1976, during a time when respondent was vacationing at the Southampton Princess Hotel, Mr. Lange informed respondent of his special relationship with the Princess Hotel chain. Mr. Lange informed respondent that by reason of such special relationship, he was able to obtain accommodations for guests at rates less than what was available to the general public.

9. During the April 1976 trip to the Southampton Princess Hotel, respondent received a deluxe room for \$45 per night for two persons, including breakfast and dinner. The rate charged to the general public for a deluxe room in April 1976 was \$120 per night for two, including breakfast and dinner.

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

10. Sometime between April 18 and July 1, 1976, respondent requested Adele D'Addario, an employee of Mr. Lange's, to arrange a vacation for himself, his wife, daughter and three grandchildren, at the Southampton Princess Hotel in Bermuda for the period July 1 to July 14, 1976.

11. Respondent approached Mr. Lange's travel agency to arrange the July 1976 trip (i) with knowledge of Mr. Lange's connections and influence in obtaining favorable rates and (ii) with knowledge that Mr. Lange had arranged for respondent a "good price", indeed an astonishingly low rate, as to respondent's April 1976 trip to the Southampton Princess Hotel.

12. From July 1 to July 14, 1976, respondent vacationed with his family at the Southampton Princess Hotel in Bermuda. Transportation, hotel accommodations and hotel rates for the trip were arranged by or through Bernard Lange.

13. Under the arrangements made through Mr. Lange, a superior room was provided at a rate of \$45 per night for three

persons, including breakfast and dinner. The rate available to the general public for such accommodations was \$122.50. As a result, respondent paid a rate reduced by \$77.50 per night.

14. The value of the rooms, food and other services received by respondent and his family based upon the rate available to the general public was \$3230.60. Respondent paid for such accommodations the sum of \$2223.10.

15. Respondent accepted and was the beneficiary of a gift or favor from or through Mr. Lange worth \$1007.50.

16. Prior to the July 1976 trip, respondent had appointed Mr. Lange as a receiver in six proceedings which resulted in \$7311.80 in judicially approved fees to Mr. Lange.

17. Subsequent to the July 1976 trip, respondent appointed Mr. Lange as receiver in 20 real property mortgage foreclosure proceedings which resulted in \$31,300.72 in judicially approved fees to Mr. Lange.

18. Subsequent to the July 1976 trip, respondent approved fees to Mr. Lange in connection with Mr. Lange's appointments as a receiver in 17 instances resulting in a total of \$48,300.30.

19. From 1975 to 1978, respondent frequently ruled on motions concerning properties for which Mr. Lange served as a receiver.

As to Charge III of the Formal Written Complaint, the Commission makes the following findings of fact:

20. In December 1976, respondent requested Mr. Lange to arrange a vacation for him and his wife at the Bahamas Princess

Tower Hotel in Freeport, the Bahamas, for the period from January 8 to 22, 1977.

21. From January 8 to January 22, 1977, respondent and his wife vacationed at the Bahamas Princess Tower Hotel; transportation, hotel accommodations and hotel rates for the trip were arranged by or through Mr. Lange.

22. Under the arrangements made through Mr. Lange, a deluxe room was provided to respondent at the rate of \$20 per night for two, without meals. The rate available to the general public for such accommodations was \$71 per night. As a result, respondent paid a rate reduced by \$51 per night.

23. The rate arranged through Mr. Lange on behalf of respondent was known as a special airline rate which was available only to airline personnel and travel agents, and not to guests whose reservations had been made by travel agents.

24. The value of the room, food and services received by respondent and his wife based upon the rates available to the general public was \$1628.80. Respondent paid for such accommodations the sum of \$912.80.

25. Based upon the foregoing, including the caliber and quality of the hotel, the accommodations and the services he received in relation to the price he was charged, respondent knew that he had received a benefit of financial significance by or through Mr. Lange as described above.

26. Respondent accepted and was the beneficiary of a gift or favor from or through Mr. Lange worth \$714.

27. Prior to the January 1977 trip, respondent had appointed Mr. Lange as a receiver in 22 proceedings which resulted in \$34,708.96 in judicially approved fees to Mr. Lange.

28. Subsequent to the January 1977 trip, respondent appointed Mr. Lange as a receiver in four real property mortgage foreclosure proceedings which resulted in \$3,903.56 in judicially approved fees to Mr. Lange.

29. Prior to the January 1977 trip, respondent approved fees to Mr. Lange in connection with Mr. Lange's appointments as a receiver in eight instances totalling \$26,342.04.

30. Subsequent to the January 1977 trip, respondent approved fees to Mr. Lange in connection with Mr. Lange's appointments as a receiver in nine instances totalling \$21,958.26.

31. From 1975 to 1978 respondent frequently ruled on motions concerning property for which Mr. Lange was the receiver.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2 and 33.5(c)(3)(iii) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2 and 100.5[c][3][iii]), Canons 1, 2 and 5C(4) of the Code of Judicial Conduct and Section 20.4 of the General Rules of the Administrative Board of the Judicial Conference. Charges II and III of the Formal Written Complaint are sustained to the extent indicated in the findings and conclusions herein, and respondent's misconduct is established. Charges I, IV, V and VI of the Formal Written Complaint are not

sustained and therefore are dismissed.

By his conduct, respondent created at least an appearance of impropriety. He knew that Mr. Lange was soliciting and receiving receivership appointments from Supreme Court justices. Respondent had himself awarded Mr. Lange such appointments. During the same period, respondent accepted financial benefits arranged through Mr. Lange in the form of significant reductions in hotel rates.

By accepting the hotel rate reductions arranged by Mr. Lange, respondent violated the rule which prohibits a judge from receiving "any gratuity or gift from any attorney or any person having or likely to have any official transaction with the court" (Section 20.4 of the General Rules). Respondent was further obliged to refrain "from financial and business dealings that...involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves" (Section 33.5[c][3][iii] of the Rules Governing Judicial Conduct). While a judge may not know all the people who are likely to come before the court on which he serves, in this case respondent was fully aware of Mr. Lange's business with the court and indeed had himself awarded Mr. Lange appointments of the court.

That the foregoing knowledge, appointments and vacation trips were contemporaneous gives rise to an appearance of impropriety in that respondent appeared to have benefitted from Mr. Lange's hotel connections in return for having furthered Mr. Lange's business

with the court.

By reason of the foregoing, the Commission determines that respondent should be admonished.

The Commission records the following votes.

As to Charge I, all concur that it is dismissed.

As to Charges II and III, all concur that it is sustained, except Judge Alexander, Mr. Kovner and Mr. Wainwright, who dissent and vote that the charges be dismissed.

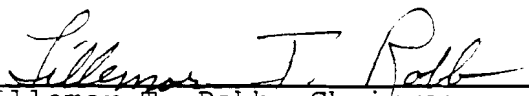
As to Charges IV, V and VI, all concur that they are dismissed, except Mrs. DelBello, who dissents and votes that they be sustained.

As to sanction, all concur that respondent should be admonished, except that (i) Mr. Cleary votes that respondent be sent a letter of dismissal and caution and (ii) Judge Alexander, Mr. Kovner and Mr. Wainwright, having voted to dismiss all charges, vote to dismiss the Formal Written Complaint without sanction.

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: June 8, 1982


Lillemor T. Robb, Chairwoman
New York State 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

JOSEPH DiFEDE,

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Bronx County.

DISSENTING OPINION
BY JUDGE ALEXANDER,
MR. KOVNER AND MR.
WAINWRIGHT

The misconduct found by the majority depends on respondent's knowledge or awareness, allegedly acquired in April 1976, that Lange had obtained for him the favorable price not available to other members of the public. This finding, we submit, was simply not established by the evidence.

It was uncontroverted that respondent was not an experienced traveler; indeed, he had not traveled abroad for many years. His trip to Bermuda in April 1976 was occasioned by a last minute change in the schedules of attorneys then before him in a lengthy contested hearing. He did not learn, until he arrived in Bermuda, that Lange had arranged the trip.* He testified that he never focused on the price charged by the hotel at any time, but merely relied on the fact that reasonable arrangements had been made by others. When respondent called Lange's secretary to arrange the July trip, Lange's office was the only travel agency that occurred to him.

*At no time in question did respondent learn that the primary source of Lange's income in this period was receivership fees. Although multiple appointments of the same receiver are not to be encouraged, at the time many judges in that court placed great reliance upon the recommendation of the mortgagee in foreclosure proceedings.

The referee, in finding that respondent must have been aware of the details of the favorable rate from the information set forth at the foot of the bill, made an inference supported neither by the facts nor by contemporary custom. Large numbers of experienced travelers do not study the details of their hotel bills, especially where the arrangements are made by others, and especially where the charges were grouped with charges for other accommodations (as they were in the July 1976 bill). Respondent's testimony that he was unaware of any financial benefit (other than his acknowledgment that he had received a "good" price) is both credible and uncontroverted by other testimony. The bills themselves did not constitute notice to such an inexperienced traveler that he was in receipt of some special favor.

In the absence of knowledge or awareness of receipt of such a "gift" or "benefit," there was no impropriety; nor could there be sufficient appearance of impropriety, if the recipient of the "gift" was unaware of its existence.

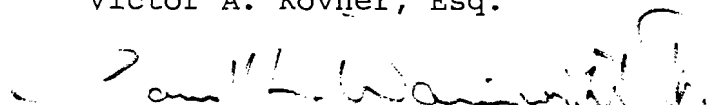
Respondent's reputation as one of the First Department's most distinguished and respected judges is unquestioned. Weighing his credibility against the strained inference proffered from the receipt of the bills alone leaves this essential element of the charges unproved.

In our view, all charges should have been dismissed.

Dated: June 8, 1982


Hon. Fritz W. Alexander, II


Victor A. Kovner, Esq.


Carroll L. Wainwright, Jr., Esq.