

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

ALVIN F. KLEIN,

a Justice of the Supreme Court,
First Judicial District.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
E. Garrett Cleary, Esq.
Dolores DelBello
Honorable Isaac Rubin
Honorable Felice K. Shea

APPEARANCES:

Gerald Stern (Raymond S. Hack, Barry M. Vucker
and Seth A. Halpern, Of Counsel) for the
Commission
Stroock & Stroock & Lavan (By Charles G. Moerdler,
Burton Lipshie and William R. Kutner) for
Respondent

The respondent, Alvin F. Klein, a justice of the Supreme Court, First Judicial District, was served with a Formal Written Complaint dated February 29, 1980, alleging misconduct in that he received financial benefits with respect to three vacation trips arranged by a man who was actively soliciting and being appointed to receiverships by other justices of respondent's court, who was receiving fees with respect thereto, and who was appearing before other justices of respondent's court. Respondent filed an answer

dated April 28, 1980.

By order dated May 20, 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 October 20, 21, 22, 23, 28 and 29, 1980, and the report of the referee was filed on January 15, 1981.

By motion dated March 9, 1981, the administrator of the Commission moved to confirm the referee's report, for a finding that respondent's misconduct was established and for a determination that respondent be censured. By cross-motion dated March 30, 1981, respondent moved to confirm in part and disaffirm in part the referee's report and for dismissal of the Formal Written Complaint.

The Commission heard oral argument on the motions on May 26, 1981. Respondent appeared with counsel. Thereafter the Commission considered the record of this proceeding and makes the determination herein.

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

1. From 1974 through 1978, Bernard Lange actively solicited justices of the Supreme Court for appointments as a receiver in real property mortgage foreclosure proceedings. He received more than 150 such appointments in that period.

2. From 1974 through 1978, the primary source of Mr. Lange's income was from fees awarded by justices of the Supreme Court in connection with his appointments as a receiver. Mr. Lange was awarded more than \$500,000 in such fees in that period.

3. By 1974 respondent knew that Mr. Lange had received appointments as a receiver and therefore that Mr. Lange had interests which had come and were likely to come before the Supreme Court.

4. Respondent had introduced Mr. Lange, at the latter's request, to other judges for the purpose of enhancing Mr. Lange's prospects for obtaining receivership appointments.

5. Prior to October 24, 1975, respondent requested Mr. Lange to arrange a trip for respondent and his wife to the Americana Aruba Hotel in Aruba for the forthcoming Christmas and New Year's holiday.

6. Mr. Lange was not a member of the International Association of Travel Agents and did not hold himself out to the general public as a person engaged in the travel business.

7. Mr. Lange could obtain from various hotels preferential treatment and reservations not otherwise available to the general public. He had informed respondent that he could obtain for respondent reduced rates at the Americana Aruba Hotel.

8. Mr. Lange arranged for respondent's transportation and hotel accommodations at reduced rates for respondent's trip to the Americana Aruba Hotel from December 20, 1975, to January 4, 1976.

9. After a communication between Mr. Lange and the general manager of the hotel, the rate respondent was to be charged was reduced by 50 percent. A direction that the bill be charged to Mr. Lange was endorsed upon the bill.

10. Respondent and his wife were guests at the Americana Aruba Hotel from December 20, 1975, to January 4, 1976, during which

time the value of the room, food and other services they received, based upon the rates available to the general public, was approximately \$1,549.40.

11. At the conclusion of his stay at the Americana Aruba, respondent was presented with the bill which set forth the daily posting of room charges, meal charges and incidentals and which specified that the rate was to be reduced 50 percent and that Mr. Lange was to be charged.

12. Respondent paid \$776.15 for all of the services he and his wife received at the Americana Aruba Hotel.

13. Respondent knew that the sum he paid the Americana Aruba Hotel was substantially less than the charges listed on the bill.

14. Respondent knew that he had received a reduced rate at the Americana Aruba Hotel.

15. At the time of his departure from the hotel, respondent was presented with a bill which contained a direction that the bill be charged to Mr. Lange.

16. Respondent accepted and was the beneficiary of a gift and favor from or through Mr. Lange worth approximately \$773.25.

17. Respondent took no steps to avoid receiving the benefits noted above related to his stay at the Americana Aruba Hotel, notwithstanding that he had ample notice that he was receiving or was about to receive such benefits.

18. Some time prior to May 1977, Mr. Lange informed respondent that he could obtain for respondent reduced rates at the Southampton Princess Hotel in Bermuda.

19. Prior to May 27, 1977, respondent requested Mr. Lange to arrange a trip for respondent and his wife to the Southampton Princess Hotel for the forthcoming Memorial Day weekend.

20. Mr. Lange made reservations for respondent and his wife at the Southampton Princess Hotel for May 27 to May 30, 1977. In so doing Mr. Lange arranged for respondent to receive a "deluxe" room for \$40 less per night than the price charged to the general public for such a room.

21. Respondent and his wife stayed in a deluxe room at the Southampton Princess Hotel from May 27 to May 30, 1977, and were charged \$40 less per night than the price charged to the general public for such a room.

22. The value of the room, food and other services received by respondent and his wife, based upon the rates available to the general public, was \$442.20.

23. Respondent paid a total of \$335.85 for the room, food and other services received from the hotel.

24. Respondent knew he had received a reduced rate at the Southampton Princess Hotel.

25. Respondent accepted and was the beneficiary of a gift and favor from or through Mr. Lange worth approximately \$106.35.

26. Respondent took no steps to avoid receiving the benefits described above related to his stay at the Southampton Princess Hotel, notwithstanding that he had ample notice that he was receiving or about to receive such benefits.

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, Section 20.4 of the General Rules of the Administrative Board of the Judicial Conference and Canons 1, 2 and 5C(4)(c) of the Code of Judicial Conduct. Charges I and III of the Formal Written Complaint are sustained, the referee's report with respect thereto is confirmed and respondent's misconduct is established.

Charge II of the Formal Written Complaint is not sustained and therefore is dismissed. The referee's report with respect thereto is confirmed.

By his conduct, respondent created an appearance of impropriety. He introduced Bernard Lange to judges and others, in furtherance of Mr. Lange's solicitation of court-appointed receiverships, and during the same period accepted financial benefits arranged through Mr. Lange in the form of significant reductions in hotel rates. By introducing Mr. Lange to other judges, respondent appeared to be lending the prestige of his judicial office to advance a private interest, in violation of the Rules Governing Judicial Conduct (Section 33.2). By accepting hotel rate reductions arranged by Mr. Lange, respondent violated that provision of the General Rules of the Administrative Board of the Judicial Conference which prohibits a judge from receiving "any gratuity or gift from any attorney or from any person having or likely to have any official transaction with the court" (Section 20.4). That the foregoing acts and events 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 assisted in the furtherance of Mr. Lange's business with the court.

Although respondent himself neither awarded appointments to Mr. Lange nor approved the fees Mr. Lange received for his services to the court, respondent was nevertheless obliged to refrain from business transactions with Mr. Lange in light of the applicable ethical standard which prohibits a judge "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][iii] of the Rules). 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 introduced Mr. Lange to other judges in furtherance of that business.

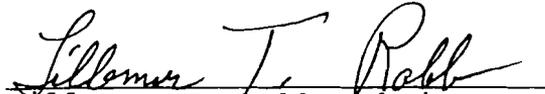
By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

All concur, except Judge Rubin and Judge Shea, who dissent in a separate opinion and vote that the appropriate disposition is a letter of dismissal and caution.

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: July 6, 1981


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

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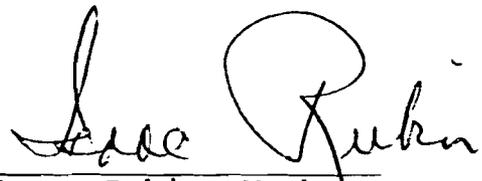
ALVIN F. KLEIN,
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DISSENTING OPINION
BY JUDGE RUBIN AND
JUDGE SHEA

We respectfully dissent and vote that the appropriate disposition is a letter of dismissal and caution.

In our view, Charges I and III of the Formal Written Complaint have not been sustained by a preponderance of the evidence. A causal connection between respondent's receipt of lowered hotel room rates and his alleged introduction of Bernard Lange to other judges for Mr. Lange's financial benefit has not been established to our satisfaction. We note that respondent neither awarded judicial appointments to Mr. Lange nor set fees for his services. We are not persuaded that respondent's conduct created an appearance of impropriety.

Dated: July 6, 1981



Hon. Isaac Rubin, Member
State Commission on Judicial
Conduct



Hon. Felice K. Shea, Member
State Commission on Judicial
Conduct