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

LOUIS D. LAURINO,

Surrogate, Queens County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
John J. Bower, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission

Nathan R. Sobel for Respondent

The respondent, Louis D. Laurino, judge of the Surrogate's Court, Queens County, was served with a Formal Written Complaint dated March 11, 1987, alleging improper business dealings and improper political contributions. Respondent filed an answer dated March 23, 1987.

By order dated April 8, 1987, the Commission designated the Honorable Matthew J. Jasen as referee to hear and report proposed findings of fact and conclusions of law.

By motion dated June 1, 1987, respondent moved for summary determination and dismissal of the Formal Written Complaint. The administrator of the Commission opposed the motion on June 10, 1987. By determination and order dated June 19, 1987, the Commission denied respondent's motion.

A hearing was held on July 20, 1987, and the referee filed his report with the Commission on October 30, 1987.

By motion dated December 26, 1987, respondent moved to disaffirm the referee's report and dismiss the Formal Written Complaint. The administrator opposed the motion on January 7, 1988, by cross motion to confirm the referee's report and for a finding that respondent be censured.

On February 19, 1988, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to paragraph 4 of Charge I of the Formal Written Complaint:

1. Respondent is judge of the Queens County Surrogate's Court and has been since August 1971.

2. From January 1, 1972, to June 30, 1986, respondent engaged in substantial financial and business dealings with three attorneys who served successively as counsel to the Public Administrator of Queens County, as denominated in Schedule A of the Formal Written Complaint. Respondent rented to each attorney an office building, office equipment, furniture, furnishings and a law library at 150-26 Hillside Avenue, Jamaica.

3. Each of the successive tenants hand-delivered rent checks each month to respondent at his chambers before regular business hours commenced.

4. During the period in which they rented his building, respondent appointed each of the attorneys as counsel to the public administrator, pursuant to statutory authority. Respondent had the authority to fix and approve their legal fees and could terminate their employment at will.

5. From January 1, 1972, to December 31, 1978, each counsel was a month-to-month tenant. On January 9, 1979, respondent and Michael K. Feigenbaum, who was then serving as counsel to the public administrator, entered into a lease at Mr. Feigenbaum's request. The original lease covered the period January 1, 1979, to December 31, 1983. On December 27, 1983, again at Mr. Feigenbaum's request, the lease was extended to December 31, 1985. From January 1 to June 30, 1986, Mr. Feigenbaum was a month-to-month tenant.

6. From January 1, 1981, to March 31, 1986, respondent awarded Mr. Feigenbaum legal fees as counsel to the public administrator of approximately $450,000 to $500,000 per year. From these gross legal fees, Mr. Feigenbaum was required to pay staff salaries, rent and office expenses, which amounted to approximately 50 percent of the gross fees. Mr. Feigenbaum also received additional fees set by respondent in probate proceedings and wrongful death actions.

As to paragraph 5 of Charge I of the Formal Written Complaint:

7. In 1979, respondent informed the public administrator, George L. Memmen, that respondent's son, Louis M. Laurino, was seeking summer employment as a law clerk and asked Mr. Memmen if he could employ the son. Mr. Memmen agreed to employ him, but Mr. Feigenbaum later advised respondent that he would put the younger Mr. Laurino on the private payroll of counsel to the public administrator rather than have his name appear on the public payroll of the public administrator.

8. Mr. Laurino worked exclusively in Mr. Memmen's office during summers and school recesses between 1979 and 1984. He was paid by Mr. Feigenbaum throughout the period in amounts ranging from $1,376 to $3,070 annually.

9. Also in 1979, respondent asked Mr. Feigenbaum whether he would be interested in employing respondent's nephew,

Arthur Stein, as a paralegal. Mr. Feigenbaum subsequently hired Mr. Stein, who worked in Mr. Feigenbaum's office from 1979 to 1986.

As to Charge II of the Formal Written Complaint:

10. On May 13, 1985, respondent sent a personal check from his own funds for $2,000 to Citizens for Donald R. Manes. The check was in the amount of a ticket for a fund-raising dinner for Mr. Manes, who was running for Queens Borough President in 1985, although the dinner had been held on April 23, 1985. Respondent had not attended the dinner.

11. Respondent was a candidate for reelection in 1985.

12. As to the other contributions alleged in Charge II, the proof is not sufficient to establish that the amounts paid by respondent were not in aid of his own campaign for elective judicial office. Paragraphs 7(a), (b), (d) and (e) of Charge II of the Formal Written Complaint are, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.5(c)(1) and 100.7 of the Rules Governing Judicial Conduct and Canons 1, 2, 5C(1) and 7A of the Code of Judicial Conduct. Charges I and II of the Formal Written

Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

Ethical mandates have long cautioned against personal business practices by judges which would create an appearance of impropriety and impugn the integrity of judicial office. Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74, 80 (1980). Expressly prohibited are business transactions between a judge and those who appear or are likely to appear before the judge. Section 100.5(c)(1) of the Rules Governing Judicial Conduct; Matter of Orloff, 1988 Annual Report 199 (Com. on Jud. Conduct, May 28, 1987); Matter of Straite, 1988 Annual Report 226, 233 (Com. on Jud. Conduct, Apr. 16, 1987); Matter of Latremore, 1987 Annual Report 97 (Com. on Jud. Conduct, May 30, 1986). A judge must refrain from business dealings that exploit judicial position. Section 100.5(c)(1) of the Rules.

The relationship between respondent and counsel to the public administrator is an unusual one. Respondent has authority to hire and fire and establish fees for an attorney with matters before him. Sections 1108(2)(a) and 1123(2)(j)(v) of the Surrogate's Court Procedure Act. Thus, respondent should have taken great care to avoid improper personal business dealings with counsel.

Because of his control over counsel's position and the substantial fees awarded to him, respondent had a distinct advantage over counsel in the rental negotiations for respondent's private building. It was, as the referee found, inherently coercive for respondent to suggest that counsel rent his building.

In addition, the private business relationship between respondent and counsel cast a shadow on their public dealings. A reasonable person might question whether counsel's appointment or retention in office was based on merit or respondent's self-interest in the rents he would receive. A similar question could be raised as to the fees awarded by respondent to counsel and any decisions made by respondent in disputed matters involving counsel.

Respondent's suggestions to the public administrator and his counsel that they employ respondent's relatives were also inherently coercive. Given their respective positions, it was not necessary for respondent to do more than inquire of Mr. Memmen and Mr. Feigenbaum to ensure jobs for his son and nephew.

Respondent's payment to the Manes campaign, coming after the dinner, was clearly a political contribution to another candidate and, as such, was prohibited by ethical standards now and at the time.

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

Mrs. Robb, Mr. Bower, Judge Ciparick, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Rubin and Judge Shea concur.

Mrs. DelBello dissents as to Charge II and votes to sustain the charge in toto and dissents as to sanction and votes that respondent be removed from office.

Mr. Sheehy did not participate.

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: March 25, 1988

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

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LOUIS D. LAURINO,

DISSENTING OPINION
BY MRS. DELBELLO

Surrogate, Queens County.

I find it very difficult to understand how so learned a judge could be so insensitive to the appearance of impropriety conveyed by his conduct. Even if the lawyers who rented his office space were not compelled to do so in order to collect their substantial fees (in recent years totaling one-half million dollars per year), the negative appearance of the arrangement should have signaled grave concern. Any reasonable person--lawyer or non-lawyer--would sense something inherently wrong with such financial transactions.

For many years, respondent engaged in a substantial landlord/tenant relationship while engaging the tenants in lucrative public positions within respondent's judicial jurisdiction and while approving their enormous fees. To compound this activity, his son and nephew were employed by these lawyers when advised by him of their availability.

The arrangement can only be viewed as a cozy quid pro quo, even if the express terms were not discussed. How can such an apparent quid pro quo be condoned?

How can a judge of such a high court be oblivious to the wrongful use of his office and position?

How can a judge then pass judgment on people when his own activity is tainted by such highly improper practices and abuses? In my opinion there is a basic syndrome here, and that is: "Do as I say--not as I do."

I do not believe it is unrealistic to ask that judges, of whom the highest standards of conduct and trust are expected, should be persons of the highest standards. I find respondent's actions insidious and the explanations for his actions disingenuous and unreflective of those high standards and principles. He has demonstrated his lack of fitness for judicial office by his conduct and by his total failure to recognize that his conduct was wrong. Therefore, I believe removal is the appropriate sanction.

Although my vote, standing alone, is nothing more than a symbolic gesture, I feel compelled to vote for removal because there is no better way to express my sense of condemnation for respondent's conduct. The fact that he in no way feels a sense of remorse or contrition confirms my judgment that he lacks fitness to be a judge. The majority's determination of censure does not, in my opinion, reflect the true measure of the judge's misconduct.

Dated: March 25, 1988

Dolores DelBello

Dolores DelBello, Member
New York State
Commission on Judicial Conduct