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

JEROME L. STEINBERG,

a Judge of the Civil Court of the City of New York, Kings 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.

Respondent, Jerome L. Steinberg, a judge of the Civil Court of the City of New York, was served with a Formal Written Complaint dated February 1, 1979, setting forth seven charges of misconduct. Respondent filed an answer dated March 11, 1979.

By notice of motion dated May 10, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). Respondent opposed the motion in papers served on June 19, 1979, and cross moved for the Commission (i) to appoint a referee to hear and report findings of fact and conclusions of law or, in the alternative, (ii) to dismiss the Formal Written Complaint or

determine that respondent be "privately 'admonished'." The administrator opposed respondent's cross motions in an affirmation dated June 19, 1979.

On June 26, 1979, the Commission denied the motion as well as the cross motion and ordered that the matter be referred to a referee to hear and report with respect to findings of fact. On the same date, the Commission appointed the Honorable Bertram Harnett as referee to hear and report. The hearing was held on July 23, 24 and 26, 1979, and Judge Harnett submitted his report to the Commission on September 12, 1979.

By notice of motion dated October 10, 1979, the administrator moved to confirm the referee's report and to render a determination. Respondent cross moved on December 4, 1979, to dismiss the Formal Written Complaint.

The Commission heard oral argument with respect to the issues herein on December 12, 1979. The Commission considered the record of this proceeding, in executive session, and upon that record makes the determination herein.

Preliminarily, the Commission finds that respondent assumed office as a judge of the Civil Court of the City of New York in January 1970, that respondent was admitted to the bar of the State of New York in 1955, practiced law in this state and held a number of public positions prior to becoming a judge.

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

1. While in private practice, respondent had arranged and serviced loans for Toshi Miyazaki and businesses controlled by Mr. Miyazaki. Mr. Miyazaki is a travel agent whose clientele are primarily people from Japan and those of Japanese descent. (Throughout these findings, Mr. Miyazaki and his various companies are referred to as "Miyazaki.")

2. As young men, respondent and Miyazaki had been fellow Olympic class wrestling competitors. They have been friends for 30 years.

3. Respondent was friendly with Jerome Silverman, a CPA who was Miyazaki's accountant. Before coming to the bench, respondent had arranged loans with which Silverman was familiar.

4. Silverman approached respondent in June 1970 and asked respondent to assist Miyazaki in refinancing some loans.

5. In response to Silverman's request, respondent spoke to Melvin Ditkowitch on Miyazaki's behalf. Prior to coming to the bench, respondent had arranged loans between Miyazaki and Ditkowich. Respondent and Ditkowich were neighbors and were friends since about 1954.

6. Respondent caused Ditkowich to make a $90,000 loan to Miyazaki with an interest rate of 24 per cent per annum.

7. At respondent's request, Vincent Pizzuto, respondent's law secretary, prepared security, collateral, and guarantee agreements and other documents relating to a transaction in which

Ditkowich and Jack Volk lent $90,000 to two Miyazaki corporations. These sums were to be repaid at an annual interest rate of 24 per cent.

8. Mr. Pizzuto acted as attorney for Ditkowich and Volk in closing the loan transaction.

9. The closing took place on or about June 5, 1970, in respondent's chambers or in a room adjoining his chambers, in respondent's presence. The documents pertaining to the loan were there signed and witnessed.

10. At the closing, approximately $90,000, including checks payable to the order of respondent, "as attorney," and endorsed by respondent, or with his authority, were transferred between the loan parties. In this context, it is found, "attorney" denominated the status of "attorney-in-fact."

11. At the closing, respondent's law secretary, Pizzuto, received principal and interest payments delivered by Miyazaki and turned them over to respondent.

12. Respondent from time to time, while he was a judge of the Civil Court, collected principal and interest payments on the loan at Miyazaki's place of business and in chambers and delivered them to Ditkowich at the latter's home.

13. From time to time Pizzuto, while still respondent's law secretary and at respondent's request, also went to Miyazaki's place of business to receive principal and interest payments which he delivered to respondent in the courthouse.

14. Respondent maintained the written records relied upon by the parties to the loan.

15. As compensation for his participation in the transaction, respondent received one-eighth of the 24 per cent annual interest paid. This sum was expressed as "3%."

16. Prior to the signing of the loan agreement in June 1970, respondent was aware that there were statutory provisions fixing the maximum rate of interest for certain loans at 25 percent.

17. Following the discussions with Silverman and Miyazaki, initiated by Silverman, the interest on the loan was subsequently increased to 27 per cent per year.

18. After the interest rate was increased to 27 per cent, respondent continued to participate in the transaction by receiving and delivering loan and interest payments and by maintaining the written records pertaining to the loan.

19. Respondent continued to receive payments, now one-ninth the interest (still "3%") as compensation for his participation in the transaction.

20. The compensation to respondent was known to Miyazaki and was in fact considered by Miyazaki as his payment to respondent for his initial role in originating the loans and for his activities in servicing them.

21. During 1970, respondent earned income from his participation in the loan transaction which he failed to report in 1971 on his 1970 federal, state, and city income tax returns.

22. During 1971, respondent earned income from his participation in the loan transaction which he failed to report in 1972 on his 1971 federal, state, and city income tax returns.

23. During 1972, respondent earned income from his participation in the loan transaction which he failed to report in 1973 on his 1972 federal, state, and city income tax returns.

24. It is found that respondent's failure to report income from the loan transactions on his 1970, 1971, and 1972 federal, state, and city income tax returns was intentional.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4, 24, 25 and 34 of the Canons of Judicial Ethics. Charge I, subdivisions (a) through (j) and subdivisions (l) through (p) are sustained and respondent's misconduct is established. As to subdivision (k) of Charge I, insofar as it is found that a gross charge of 27 per cent was paid by the borrower, Miyazaki, that portion of the subdivision so alleging is sustained. It cannot be determined upon this record, however, whether the loan transactions recited were, in fact, legally usurious as defined under the Penal Law. Requisite elements of intent and collateral circumstances were not developed. That portion of subdivision (k) of Charge I alleging that the interest on the loan exceeded the maximum permissible legal rate of 25 per cent per year is not sustained and it therefore is dismissed.

Also dismissed are those portions of Charge I alleging that the loan transaction constituted the practice of law by respondent (Formal Written Complaint, par. 6, reference to Canon 31 and the Constitution).

With respect to Charge II, the Commission finds that the charge is not sustained and therefore is dismissed.

With respect to Charge III, the Commission makes the following findings of fact.

25. In 1971, and in response to Miyazaki's request for additional financial assistance, respondent communicated with Daniel Bukantz, a dentist who had treated respondent, and arranged for Dr. Bukantz to lend $5,000 to Miyazaki, which was to be repaid at an annual interest rate of 27 per cent.

26. Before arranging this loan transaction, respondent had knowledge of legal provisions fixing the permissible rates of interest.

27. Respondent received principal and interest payments, usually in cash, at Miyazaki's place of business and at chambers. Respondent thereafter wrote personal checks payable to the order of Dr. Bukantz which represented principal and interest payments to Dr. Bukantz by Miyazaki.

28. Respondent kept the written records relied upon by the parties to the loan.

29. Respondent received 9 per cent (i.e. one-third) of the interest sum per annum as payment for his participation in the transaction.

30. During 1971, respondent earned income from his participation in the loan transaction which he failed to report in 1972 on his 1971 federal, state and city income tax returns.

31. During 1972, respondent earned income from his participation in the loan transaction which he failed to report in 1973 on his 1972 federal, state and city income tax returns.

32. In 1972, on his 1971 federal, state and city income tax returns, respondent listed as personal medical or dental expenses the principal and interest payments paid by Miyazaki to respondent, usually in cash, and forwarded by respondent by his personal checks to Dr. Bukantz.

33. In 1973, respondent listed on his 1972 federal, state and city income tax returns as medical or dental expenses principal and interest payments made by Miyazaki which respondent had forwarded to Dr. Bukantz.

34. Respondent's failure to report income from the loan transaction on his 1971 and 1972 federal, state and city income tax returns, and respondent's treatment of principal and interest payments as dental expenses on his 1971 and 1972 federal, state and city income tax returns were intentional.

35. Respondent's participation in the loan transaction constituted the business practice of arranging for loans and servicing the payments.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4, 24, 25 and 34 of the Canons of Judicial Ethics. Charge III, subdivisions (b) through (i), is sustained and respondent's misconduct is established, except as to that portion of the

charge alleging that respondent's acts constituted the practice of law (Formal Written Complaint, par. 10, reference to Canon 31 and the Constitution), which is dismissed. Subdivision (a) of Charge III is sustained, insofar as it is alleged that a gross charge of 27 per cent was paid by the borrower, Miyazaki. It cannot be determined from the record, however, whether the loan transaction recited was, in fact, legally usurious as defined under the Penal Law. Requisite elements of intent and collateral circumstances were not developed. Therefore, that portion of subdivision (a) of Charge III alleging that the interest on the loan exceeded the maximum permissible legal rate of 25 per cent per year is not sustained and it therefore is dismissed.

With respect to Charge IV, the Commission makes the following findings of fact.

36. In the spring of 1973, Jerome Silberman, a good friend of respondent's, asked respondent on behalf of Silverman's client, Merrick Harbor Drugs, Inc., for help with a loan.

37. Respondent communicated with his neighbor, David Gilman, and arranged for Mr. Gilman and his wife, Lynn Gilman, to lend $10,000 to Merrick Harbor which was to be repaid at an annual interest rate of 24 per cent.

38. On or about April 1, 1973, respondent personally drafted and typed the Merrick Harbor loan documents, which included two corporate powers of attorney and a stock power.

39. Respondent personally guaranteed this Gilman loan.

40. Respondent delivered the $10,000 principal in cash to Merrick Harbor at its place of business.

41. While delivering the $10,000 to Merrick Harbor, with the intent of concealing his identity as a judge and without the prior authorization of his law secretary, respondent represented himself as "V. Pizzuto".

42. Respondent received principal and interest payments on the loan from Merrick Harbor at its place of business on a monthly basis, retained 1 per cent per month of the 2 per cent interest paid for himself, and delivered the remaining portion to the Gilmans.

43. When receiving principal and interest payments on the loan from Merrick Harbor, respondent, with the intent of concealing his identity and without the prior authorization of his law secretary, Vincent Pizzuto, represented himself as "Vincent Pizzuto" or "V. Pizzuto" and signed receipts as "V. Pizzuto" or "Vincent Pizzuto".

44. In 1973, respondent earned approximately $600 from his participation in this loan transaction. He failed to report this amount on his federal, state and city income tax returns for 1973.

45. Respondent's failure to report this income on his 1973 income tax returns was intentional.

46. The Merrick Harbor transaction was a loan transaction entered into for profit in which respondent was an active and managing participant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4, 24, 25 and 34 of the Canons of Judicial Ethics, Canons 1, 2 and 6C of the Code of Judicial Conduct, and Sections 33.1, 33.2(a), 33.2(c), 33.5(c)(1) and 33.5(c)(2) of the Rules Governing Judicial Conduct. Charge IV of the Formal Written Complaint is sustained and respondent's misconduct is established, except as to those portions of the charge alleging that respondent engaged in the practice of law (Formal Written Complaint, par. 12, reference to Canon 31 of the Canons, Canon 5F of the Code, and the Constitution), and involving failure to report to the clerk of his court certain compensation and income (Formal Written Complaint, par. 12, reference to Section 33.6[c] of the Rules), which is dismissed.

With respect to Charge V, the Commission makes the following findings of fact.

47. In response to a request in 1973 from Silverman on behalf of his accounting client Logitek, respondent communicated with Ditkowich and Gilman for the purpose of arranging financial assistance for Logitek.

48. At respondent's request, Gilman agreed to lend $15,000 to Logitek.

49. At respondent's request, Ditkowich agreed to lend $65,000 to Logitek.

50. At respondent's request, his law secretary, Vincent Pizzuto, prepared loan, security, guarantee and collateral documents pertaining to the transaction.

51. In the loan papers, the lender was shown as Sandra Steinberg "as agent for undisclosed principals." Sandra Steinberg is respondent's wife.

52. On or about January 5, 1974, in respondent's presence, documents pertaining to the loan were signed and witnessed and approximately $80,000 was transferred to Logitek, who was to repay the loan at an interest rate of 20 per cent.

53. In response to a further request by Silverman, respondent communicated with Ditkowich for the purpose of arranging an additional loan to Logitek.

54. At respondent's request, Ditkowich agreed to lend an additional $20,000 to Logitek.

55. Either Logitek would deliver principal and interest payments to respondent's home or to respondent, or respondent and his wife would drive to Suffolk County to pick up the payments.

56. Respondent and his wife received a portion of the interest paid to both Gilman and Ditkowich as payment for their participation in the transaction.

57. By his participation in the loan interest, respondent engaged in a business transaction for profit.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4, 24, 25, and 34 of the Canons of Judicial Ethics, Canons 1, 2 and 6C of the Code of Judicial Conduct, and Sections 33.1, 33.2(a), 33.2(c), 33.5(c)(1) and 33.5(c)(2) of the Rules Governing Judicial Conduct. Charge V of the Formal Written Complaint is sustained, and respondent's misconduct is established, except as to those portions of the charge alleging that respondent engaged in the practice of law (Formal Written Complaint, par. 14, reference to Canon 31 of the Canons, Canon 5F of the Code, and the Constitution), and involving failure to report to the clerk of his court certain compensation and income (Formal Written Complaint, par. 14, reference to Section 33.6[c] of the Rules), which are dismissed.

With respect to Charge VI, the Commission finds the charge is not sustained and therefore is dismissed.

With respect to Charge VII, the Commission makes the following findings of fact.

58. In 1971, respondent received a $5,545.50 forwarding fee from Nishman & DeMarco, from his terminated legal practice, which fee he failed to report in 1972 on his 1971 federal, state and city income tax returns.

59. On at least two other occasions, forwarding fees came to respondent from referrals apparently predating his ascending the bench, which were reported on his income tax.

60. Respondent's failure to report the $5,545.50 fee in his 1971 tax returns was intentional.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4 and 34 of the Canons of Judicial Ethics. Charge VII is sustained, and respondent's misconduct is established.

The obligation to avoid both impropriety and the appearance of impropriety is fundamental to the fair and proper administration of justice. The canons and rules of ethical behavior cited above state that obligation. They propound the requirement of propriety by judges in conduct both on and off the bench. They also express standards as to the avoidance of business and other activities, which do in fact or may appear to conflict with the judge's exercise of judicial responsibilities.

Canon 4 of the Canons, for example, states that a judge's "official conduct should be free from impropriety and the appearance of impropriety," that "he should avoid infractions of law," and that his personal behavior on the bench and "also in his every-day life, should be beyond reproach."

Canon 24 of the Canons states that a judge should neither accept inconsistent duties nor incur pecuniary or other obligations "which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official duties."

Canon 25 of the Canons states that a judge should avoid the appearance of lending the prestige of his office to persuade others to contribute to private business ventures, and that a judge therefore should not enter into such private business or pursue a course of conduct that would create such an appearance or could reasonably be expected to bring his personal interests in conflict with his official duties.

Canon 34 of the Canons states that a judge should not administer his office "for the purpose of advancing his personal ambitions...."

The corresponding sections of the Rules Governing Judicial Conduct and the Code of Judicial Conduct also express these standards and in some instances are more explicit. For example, Section 33.6(c)(2) of the Rules, states that "[n]o judge...of...the Civil Court of the City of New York...shall be a managing or active participant in any form of business enterprise organized for profit...."

By participating in the various loan transactions recited above, respondent violated the applicable canons and rules which prohibit judges from direct and active participation in business activity.

By conducting such private business in his chambers and by enlisting the participation of his law secretary in private business matters which respondent knew would enure to his own financial benefit, respondent violated the applicable canons and rules which caution a judge against using the prestige of his office in the pursuit of private business ventures, and which caution a judge against administering his office "for the purpose of advancing his personal ambitions."

By concealing his own identity at numerous business meetings and using his law secretary's name instead of his own, respondent violated the applicable canons and rules that require a judge to conduct himself in a manner beyond reproach and in a way that avoids impropriety and the appearance of impropriety. While a definition of "beyond reproach" concededly will vary with differing circumstances, it is clear to us that by masquerading as his law secretary, respondent acted improperly and brought discredit to the integrity of the judiciary.

By intentionally failing to report his business income, and by misstating certain transactions as personal dental or medical deductions, respondent violated the canons and rules that require a judge to respect and comply with the law at all times. The Commission finds patently implausible respondent's assertion before the referee that he "simply forgot" to report his income. These business dealings were extensive and time consuming, the amounts of money involved were great, the nature of the business dealings were complicated and the concealment of his identity and calling himself "Pizzuto" was too significant for this Commission to believe that somehow, in several years at income tax time, respondent "simply forgot."

The Commission notes that it sustains four charges in which it was alleged that respondent failed to report income on his tax returns, and finds that all of the omissions were intentional. The referee had recommended a finding of intentional omission as to three charges and unintentional omission as to the fourth (Charge VII). Charge VII involves a $5,545.50 forwarding fee received by

respondent in 1971 from his terminated legal practice. The record shows (i) that respondent bought a used Cadillac with the money, (ii) that the forwarding fee was a substantial part of his income in 1971, and (iii) when asked why he did not report it for tax purposes, respondent replied that he "obviously" forgot the check when reporting his income and that "[i]t wasn't there to remind me" (Tr. 464-66).*

We do not believe it credible that respondent could forget so substantial a fee. The check itself may not have been "there to remind" him, as respondent asserts, but the Cadillac surely was reminder enough that respondent had recently received a large amount of reportable income. We also find it significant that respondent made similar omissions of income as alleged with respect to Charges I, III and IV.

The referee regarded as a "persuasive factor" in this case "[r]espondent's manifest driving force to make more money[,]... his preoccupation with making supplementary money, and his constant characterization of his activity as business income..." (Rep. 26).** Not only was respondent's devotion to these business activities time consuming, some of his private business was conducted in chambers and, at respondent's request, involved his law secretary in services that respondent well knew would enure to his own profit.

*"Tr." refers to the transcript of the hearing before the referee.

**"Rep." refers to the report of the referee to the Commission.

Respondent emerges as one whose pursuit of private business and profit compromised the administration of his office and the obligation to report income from such activities on his tax returns according to law. Furthermore, as evidence that perhaps he himself was aware of the impropriety of a judge acting in this fashion, but nevertheless motivated by the "driving force to make more money," respondent on numerous occasions concealed his identity.

Such conduct establishes respondent's lack of moral fitness to serve as a judicial officer.

A judge is obliged to conduct himself "at all times" in a manner that promotes public confidence in the integrity of the judiciary (Section 33.2[a] of the Rules). The applicable ethical standards do not apply only to those periods a judge is on the bench. Public confidence in the judiciary, and the entire legal system as well, may be affected adversely as much by what a judge does off the bench as what he does on it. By his conduct herein, respondent has shown he is neither willing nor able to discharge this obligation which is indispensible to the promotion of public confidence in our courts and the integrity and impartiality of the administration of justice.

The Commission concludes that cause exists for disciplining respondent according to Article VI, Section 22, of the Constitution and Article 2-A of the Judiciary Law. The Commission also concludes that respondent has evinced an utter disregard for the sanctity of the trust reposed in him as a judicial officer.

Although the misconduct found herein was for conduct engaged in while respondent was off the bench, such circumstance is not a bar to removing respondent from office, considering the serious and substantial breach of the applicable canons and rules. Article VI, Section 22, of the Constitution. See also: Matter of Sobeck, N.Y.L.J., Aug. 8, 1979, p. 8, col. 5 (Comm. on Jud. Conduct, July 2, 1979); Matter of Kuehnel, NYLJ, Sept. 26, 1979, p. 12, col. 5 (Com. on Jud. Conduct, Sept. 6, 1979); Matter of Friedman, 12 NY2d(a)(d) (Ct. on the Judiciary 1963); Matter of Pfingst, 33 NY2d(a)(ii) (Ct. on the Judiciary 1973); and Matter of Sarisohn, 26 AD2d 388 (2d Dept. 1966).

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

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: March 21, 1980
New York, New York

APPEARANCES:
Gerald Stern (Robert Straus and Emily Needle, Of Counsel) for the Commission
Nathan R. Sobel for Respondent