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

RAYMOND E. ALDRICH, JR.,

a Judge of the County Court, Dutchess County.

# Determination

---

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 Isaac Rubin--Not Participating
Honorable Felice K. Shea--Not Participating
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Raymond S. Hack (Alan W. Friedberg, Of Counsel) for the Commission

Peter L. Maroulis for Respondent

The respondent, Raymond E. Aldrich, Jr., a judge of the County Court, Dutchess County, was served with a Formal Written Complaint dated June 16, 1981, alleging that he presided over two sessions of court while under the influence of alcohol. Respondent filed an answer dated July 9, 1981.

By order dated July 10, 1981, the Commission designated the Honorable Raymond Reisler referee to hear and report proposed findings

of fact and conclusions of law. The hearing was held on September 15, 22, 23 and 24 and October 6, 1981, and the referee filed his report on March 11, 1982.

By motion dated April 19, 1982, the deputy administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion on May 11, 1982, and, in mitigation, asserted respondent's status as a recovering alcoholic. The deputy administrator filed a reply on May 14, 1982.

The Commission heard oral argument on May 20, 1982, at which respondent appeared with counsel. Thereafter, the Commission requested additional memoranda and reargument, which was held on June 29, 1982. Respondent appeared with counsel for reargument. Thereafter the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a judge of the County Court, Dutchess County, continuously since 1969.

2. On June 13, 1980, respondent, sitting as an acting judge of the Family Court, presided at the disposition in the juvenile delinquency proceeding involving Donald G. (Docket No. D-254-80) and Michael O. (Docket No. D-255-80).

3. Prior to the commencement of the proceeding on June 13, 1980, respondent had consumed alcoholic drinks.

4. While presiding over the proceeding on June 13, 1980, respondent was under the influence of alcohol.

5. During the course of the proceeding on June 13, 1980, at which juveniles and their parents were present, respondent used profane, improper and menacing language, made inappropriate racial references and otherwise behaved in an inappropriate and degrading manner, such as noted below.

(a) Respondent addressed the juveniles before him with respect to their prospective experience in the custody of the Department of Correction by stating, inter alia:

> You are in with the blacks from New York City, and you don't dare go to sleep because if you do you will probably be raped, and not one, there may be five.... When they get you behind those cell bars they will rape the shit out of you.... You are going to be with the blacks in New York. You understand that?

(b) Respondent engaged in a verbal altercation with one of the juveniles before him, insisting that the juvenile have a shorter haircut. Respondent threatened "to bring down two deputies and a barber, and we will give Mr. O. a hair cut." Respondent then held up a pair of scissors. Respondent also told the juvenile: "Look, I am tough, Mike. I love a challenge. I love a kid who wants to bullshit a judge."

6. During the course of a conference in chambers on June 13, 1980, with the attorneys in the proceeding involving Donald G. and Michael O., respondent referred to, described and characterized Dutchess County

Executive Lucille Pattison in profane, obscene and vulgar terms, such as "cunt" and "pussy." In a telephone conversation with Ms. Pattison on that same date, respondent was hostile and incoherent.

As to Charge II of the Formal Written Complaint:

7. On March 19, 1981, respondent was assigned to conduct hearings at the Mid-Hudson Psychiatric Center involving persons detained therein. The hearings were scheduled to commence at 10:00 a.m.

8. Prior to his arrival at the Mid-Hudson facility, respondent had consumed alcoholic drinks. He arrived at the facility at 11:00 a.m. and was under the influence of alcohol.

9. Respondent arrived at the facility driving his automobile. At the entrance gate, respondent addressed Michael Weymer, the security guard on duty, and demanded to be allowed to drive his car into the facility. After Mr. Weymer consulted a superior and received permission to allow respondent to drive into the facility, respondent held the point of a large hunting knife against Mr. Weymer's body, frightening Mr. Weymer. While thus brandishing the knife, respondent addressed remarks of a racial character to Mr. Weymer, who is white.

10. When respondent appeared at the facility hearing room to preside over the scheduled hearings, his speech was slurred and rambling, his face florid, his eyes bloodshot and his equilibrium unsteady. While on the bench respondent conducted himself in a bizarre and inappropriate manner, without due regard for the nature

of the proceedings. Respondent was incapable of presiding properly.

11. As a result of respondent's incapacity, the attorneys, doctors and court personnel present for the hearings agreed upon adjournments.

Additional findings:

12. On November 23, 1980, five months after his conduct in the delinquency proceeding underlying Charge I of the Formal Written Complaint, respondent entered Highwatch Farms in Kent, Connecticut, for treatment for alcoholism. He abstained from the use of alcohol from then until February 20, 1981, one month before his conduct at the Mid-Hudson facility underlying Charge II of the Formal Written Complaint.

13. From April 6, 1981, to date, respondent has been a member of Alcoholics Anonymous, which holds meetings every day at locations near respondent's residence. Respondent attends approximately 70% of those meetings. Since April 2, 1981, respondent has abstained from the use of alcohol.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(a)(1) through (5) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2[a] and 100.3[a][1] through [5]) and Canons 1, 2A and 3A(1) through (5) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

Respondent has acted in a manner that renders him unfit to continue as a judge.

Twice respondent was intoxicated while on the bench. Twice he presided and attempted to render decisions while his capacity to do so was significantly diminished.

The particular conduct respondent exhibited on these occasions was egregious. In the first incident, he used profane, vulgar language in the presence of juveniles and their parents, engaged in a verbal altercation with one of the juveniles and made offensive references of a racist character about black people from New York City. Later in chambers, in a conference with attorneys, he made obscene and vulgar references of a sexist character about the Dutchess County Executive, whom he then addressed in a hostile and incoherent manner over the telephone.

In the second incident, while en route to a hearing at the Mid-Hudson Psychiatric Center, respondent brandished a weapon and threatened a security guard on duty at the facility and again made public remarks of a racial character. Thereafter he appeared at the hearing but was unable to preside properly.

Respondent's acts of misconduct, standing alone, are of sufficient gravity to warrant termination of his service as a judge. His racist, sexist, vulgar remarks, publicly uttered during the performance of his official duties, diminished the esteem of the court and the dignity of judicial office. His repeated use of racist remarks and his threatening a security officer with a hunting knife were shocking and outrageous.

Respondent is an alcoholic. His misconduct was stimulated by his drinking. Respondent's alcoholism, however, does not relieve him of responsibility for his misconduct, nor does it exempt him from discipline. However sympathetic we are to his circumstances, and however hopeful we are that he will successfully rehabilitate himself, the effect of respondent's alcoholism has been to cast grave doubt on his efficacy as a judicial officer.

It is simply intolerable for a judge to act in his official capacity while under the influence of alcohol. The very presence on the bench of an intoxicated judge, whose ability to reason is thus impaired, undermines a system of law requiring sound, reasoned, dispassionate judgments. Moreover, respondent's insistence at the hearing that, apart from intoxication, his actions were not improper, demonstrates that he fails to appreciate the gravity of his misconduct and reflects adversely on both his judgment and appreciation of his role and responsibility as a judge.

In determining the appropriate sanction to be imposed upon a judge whose misconduct is established, the Commission must balance its responsibility to ensure to the public a judiciary beyond reproach and its responsibility to deal humanely and fairly with the individual judge. As we have observed previously, where "the misconduct is so serious and so clearly reflects a lack of fitness that public confidence in the integrity of the individual judge is irretrievably lost...the public interest can adequately be protected...only by removal of the judge from office" (cf, Matter of Culver Barr, unreported Determination, October 3, 1980; judge

censured for off-the-bench conduct).

The Constitution empowers the Commission to render one of four determinations when misconduct or disability is established: admonition, censure or removal for cause, or retirement for disability (Article VI, Section 22). Respondent and two of our dissenters suggest that the Commission should engraft upon this constitutional provision a new determination, the essence of which would be to discipline respondent conditionally while monitoring his recovery from alcoholism. Respondent suggests that he would accept such a determination and stipulate to a term that would make his removal automatic should another alcohol-related incident occur. Respondent's suggested determination is outside the Commission's constitutional authority.

The overriding need for public confidence in the judiciary does not justify conditional discipline in this case. The integrity of respondent's court would be hopelessly compromised if those who stood before him were reasonably to question his sobriety or wonder with anxiety if another alcohol-related incident was imminent. Placing such a burden on the court would be of particularly dubious merit, particularly since respondent's record of rehabilitation is already blemished. After the first alcohol-related incident, respondent sought treatment, then stopped. Shortly thereafter the second alcohol-related incident occurred. Under these circumstances, the risk to the public of leaving respondent on the bench is not warranted.

Moreover, the suggested disposition proposed by respondent and the dissenters would necessarily involve the abdication by this Commission of its responsibility and would be an improper delegation of its authority. To repose in the hands of others the power to effect the removal of a judge from office clearly violates the constitutional and statutory judicial disciplinary structure, which authorizes the Commission to determine that a judge should be removed and carefully reposes in the Court of Appeals the actual power to do so.

In Quinn v. State Commission on Judicial Conduct, 54 NY2d 386 (1981) the Court of Appeals held that there is cause for terminating the services of an unfit judge whose alcoholism results in misconduct unrelated to the judicial function. In the instant case, the misconduct stimulated by respondent's alcoholism occurred on the bench and directly impaired the judicial function. Respondent's conduct prejudiced the administration of justice and brought the judiciary into disrepute. Public confidence in the integrity of his court is irretrievably lost.

For the reasons heretofore noted, termination of respondent's judicial services is appropriate. The question remains, however, as to the appropriate manner of effecting that termination: removal or retirement.

In Quinn, the Court of Appeals noted: "When misconduct is the result of alcoholism, retirement for disability may be most appropriate in cases where discretion is called for." 54 NY2d at 393.

In oral argument before the Commission, in addition to arguing against removal and in favor of the conditional discipline noted above, respondent steadfastly maintained that he was not disabled and therefore that retirement would be an inappropriate determination. As evidence of his capacity to serve, respondent pointed to his membership in Alcoholics Anonymous, his status as a "recovering alcoholic" and his effective discharge of judicial duties since the second alcohol-related incident.

The essence of this matter involves not respondent's alcoholism but the nature of the misconduct he exhibited while under its influence, the consequent loss of public confidence in the integrity of his court, and his failure to understand that, whether or not he was intoxicated, his conduct was egregiously wrong. While respondent's alcoholism was a stimulus for his misconduct, it is not for alcoholism that he must be disciplined. Respondent must be relieved of office because the totality of his conduct renders him unfit to be a judge. In these circumstances, retirement for disability would not be appropriate.

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

All concur, except for Mr. Bower, Mr. Cleary and Judge Ostrowski, who dissent only with respect to sanction in separate opinions.

CERTIFICATION

This is to certify that the foregoing is the determination of the State Commission on Judicial Conduct, containing findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: September 17, 1982

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

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

RAYMOND E. ALDRICH, JR.,

a Judge of the County Court, Dutchess County.

DISSENTING OPINION BY MR. BOWER IN WHICH JUDGE OSTROWSKI JOINS

---

I dissent from the majority on the issue of sanctions.

While misconduct has been amply established, to remove the respondent from judicial office is an act of judicial overkill. The harshness of the punishment simply does not fit the crime. Additionally, the majority failed to take into consideration the report of the referee in its essential findings of fact that the respondent is an alcoholic who qualifies for the legal definition of a "recovered alcoholic" and whose misconduct was deeply rooted in his disease.

The facts are virtually uncontested. Respondent has been a County Court judge since 1969. For some three years prior to that, he had been a Family Court judge. He has been assigned at various times to the Supreme Court, the County Court, the Family Court and the Surrogate's Court. His reputation for ability, integrity and veracity has been high, both as a judge and as a practicing lawyer. He has led

a useful and unblemished life and has discharged the responsibilities of his judicial office more than adequately.

Both charges of misconduct arise from two isolated acts committed when respondent was inebriated. The first one occurred on June 13, 1980, when he used regrettable language in Family Court. Without condoning such grossly improper tactics, it is easy to see that respondent, in his inebriated state, thought this could be an effective deterrent. His use of a mild expletive while on the bench and his reference to a public official in four-letter words off the bench in a conference with attorneys, while in bad taste, do not rise above the trivial. His phone call to the public official during the same incident is but an example of drunken rambling. It is clear that the respondent's conduct on that day was indeed the result of his having been inebriated. To infer that he is either a racist or a sexist from such conduct is unwarranted.

The second act of misconduct took place some nine months later. In the intervening period, respondent had undergone some treatment for alcoholism but reverted to drinking and eventually, some nine months after the first incident, while at the Mid-Hudson Psychiatric Institute, he engaged in further misconduct. He was unable to preside on that day in a rational and judicial manner and his acts toward the personnel of the hospital, counsel, etc., were clearly those of someone who had had too much to drink.

While such behavior is unbecoming a judge and certainly reflects poorly on the judiciary, it certainly does not rise to the gravity where it would justify removal. The same is true of the first group of incidents. Yet, in some curious fashion, two incidents of moderate misconduct, while committed in an inebriated state, neither one of which would be grounds for removal, in the minds of the majority somehow are sufficient for the imposition of the gravest sanction against a judge.

The defense of mitigation has been extensively litigated and argued. It seems well established, and the referee so found, that after the second incident respondent engaged in an effort of the most stringent nature to cure himself of his alcoholic habit. The record is uncontradicted that in the past 15 months the judge has religiously attended the Alcoholics Anonymous meetings on an average of five to six times a week. He has requested and received the aid of the New York State Bar Association Committee on Alcoholism and has someone from that committee monitoring his performance both directly and through the AA program. His judicial performance merited praise from the administrative judge of his district, who testified as a witness before the referee. He has sat by assignment in the Supreme Court as well as in his other courts and has discharged his duties better than many of his colleagues. He established that he is indeed a "recovered alcoholic" as defined by the Mental Hygiene Law

Section 1.03 (15). Parenthetically, the same statute (Section 19.07, subdivision 17) discusses the remedy accorded to recovered alcoholics with respect to rights or privileges impaired or forfeited as a result of their former disease and discusses the applications and benefits of anti-discrimination laws.

The focus of the majority's position is that the quality of misconduct on those two isolated occasions requires that respondent be removed from judicial office. Indeed, the majority adopted the position taken by counsel for the Commission during oral argument, which urged that because the quality of the acts clearly established that respondent, on those two isolated occasions, was unfit to perform his office as a judge because of impairment due to alcohol, he must be removed from office. This, of course, infers that there are degrees of objectionable behavior, from the mildly reprehensible to the odious, punishable on a scale of absolutes. What this argument, of course, leaves unanswered is that a lifetime of honorable, competent service on the bar and the bench can be disregarded in an able and honest judge who then suffered of a disease of which he managed to cure himself. This is especially so since neither of the acts, taken alone, shock the conscience, brought public disgrace on the judiciary in general and were deemed by participants and observers as the foolish ramblings of someone who got drunk in spite of a

performance of capability and sobriety in the past. The stress of the Commission counsel adopted by the majority was that such "on the bench" as opposed to "off the bench" peccadilloes made two arguably reprehensible instances so odious as to be fatal to respondent's career.

In agreeing with this facile solution, the majority of the Commission feels that there is a scale of behavior which, when proven, requires us to administer sanctions without regard to the human worth of the respondent or the nature of mitigation offered. I should think that such absolutist view of punishment vanished with the coming of the Age of Enlightenment. We are not judging conduct which is akin to airline pilots subject to dizzy spells or surgeons with hand tremors. Respondent's situation is more akin to the case of a patient diagnosed as suffering from schizophrenia with its irrational behavior only to find that indeed, it is a brain tumor that is at the bottom of his symptoms and, upon its removal, recovery occurs. The majority's view implies that judges who drink must cure their affliction before becoming judges. This, of course, is hardly possible. It further infers that respondent's acts of misconduct are similar to volitional acts of intoxication recognized in the criminal law as being no excuse for the commission of a crime. It urges that to protect the public from the likes of respondent, he must be removed as one cannot "take a chance" that he might fall off the wagon again.

I cannot share this draconian view. While I do not condone the off-color flavor of the judge's remarks to either the two young defendants or about the county executive, they compare with the salty language used by former Presidents of the United States and pale in comparison with the remarks of certain respected judges whose discussions were publicly reported during the airing of the Judge Leff assignment controversy. It seems that the only serious charge that this record established is respondent's threatening a guard at the hospital and his obviously impaired performance on the bench which was but one instance of public inebriation while performing judicial functions. This can be distinguished from Matter of Kuehnel, 49 NY2d 465, as there, the judge failed to recognize his problems with alcohol, engaged in public fights, had received a prior censure which he disregarded and showed total lack of remorse and candor. It is also distinguishable from Matter of Quinn, 54 NY2d 386, as there, the judge had on four occasions been found in public in an intoxicated condition, had been formally admonished for his drinking, had been convicted of driving while his ability was impaired and finally, had been convicted of a misdemeanor, driving while intoxicated. As an aggravating factor, there was a continuation of the drinking problem after the admonition had been administered to him.

We must squarely face the problem of alcoholism in the judiciary as well as in the bar. Other states have dealt with this problem by not removing judges suffering from the

disease but by allowing them a probationary period, under supervision, provided their recovery is well underway. Lawyers who have committed egregious acts of breach of faith as well as neglect of clients' trust, upon being found to have suffered from alcoholism, were allowed to recover while practicing law. (See Matter of Corbett, ___ AD2d ___, 1st Dept. June 3, 1982.) Respondent's conduct cannot be compared with the type of behavior which requires removal. Venality, tyranny, cruelty and the total conscious disregard of established legal rights are all sins that should bar one from judicial office. Being an alcoholic with but two isolated instances of aberrant behavior in 13 years does not fall within this category. One who is an alcoholic may wallow in the depths of the illness for many years without a public incident. His judgment will be poor, his performance mediocre at best, his vision clouded and his private life a shambles. This, if one understands the majority view, is acceptable in a judge. Should he, however, engage but twice in 13 years in two temporally close public displays of alcoholic distemper, the wrath of the community should expel him from the ranks of the judiciary. Even more curiously, the majority holding means that if these two isolated instances of inebriation are successfully fought and remedied by 15 months of great effort and more than competent and able official and private behavior, the horrendous nature of these acts will make all efforts that followed, meaningless and hollow.

There are two rational ways to judge respondent: First, he could be censured with a clear mandate that recurrence will result in removal. Second, in a more enlightened way, the Commission could impose any sanction short of removal and stay its execution for an additional period during which attendance in a regulated program of Alcoholics Anonymous and other supervision and monitoring would be required. Nothing in Article 2-A of the Judiciary Law (Sections 41 through 48) impairs the Commission's power to do so. Indeed, many times the Board of Regents of the State of New York, in dealing with disciplining physicians and other professionals, imposes precisely that type of sanction. Revocations of licenses are enacted and stayed for five years during which the respondents must submit monthly or quarterly reports of compliance with monitoring and supervision. I cannot but feel that judges have at least the same right.

Appended to this dissent is a stipulation filed in the highest Court of Minnesota, its Supreme Court. In that matter, the judge's conduct was far more egregious than anything remotely resembling the case at bar. He frequently drank heavily at noon and was observed to be habitually inebriated in court. His behavior at public places was noted to be offensive and embarrassing. He attended bar association meetings while intoxicated. He had been repeatedly reprimanded for failing to discharge his judicial duties in a timely fashion. He

sexually harassed and embarrassed female employees of the court as well as female attorneys by making suggestive and off-color remarks and at times, touching their bodies or attempting to kiss them. There is no need to detail all of the charges as the foregoing represent but just a part. It is sufficient to say that such behavior was rooted in alcoholism and the judge did not, unlike respondent in our case, have a period of sustained recovery with resultant discharge of judicial duties.

Yet, the Supreme Court of Minnesota entered the stipulation between the judge and the Board of Judicial Standards which calls for supervised probation, censure and conditional removal.

Accordingly, I dissent from the determination and vote that (i) respondent be severely censured, (ii) that for a period of two years he be subject to monthly reports that he has faithfully attended the Alcoholics Anonymous program and that his judicial performance meets with his superior's requirements, and (iii) that he be removed upon his failure to meet any of these conditions.

Dated: Sept. 17 1982

JOHN J. BOWER

STATE OF MINNESOTA

IN SUPREME COURT

In re Complaint Concerning the
Honorable Darrell M. Sears, Judge
of County Court for Crow Wing and
Aitkin Counties, Minnesota.

STIPULATION BETWEEN THE BOARD OF JUDICIAL STANDARDS OF THE STATE OF MINNESOTA AND THE HONORABLE DARRELL M. SEARS

AND

RECOMMENDATION OF THE BOARD ON JUDICIAL STANDARDS TO THE SUPREME COURT OF THE STATE OF MINNESOTA

IT IS HEREBY STIPULATED AND AGREED by and between the Board on Judicial Standards (hereinafter designated petitioner) and Darrell M. Sears (hereinafter designated respondent) as follows:

1. Petitioner has filed a Complaint concerning the Honorable Darrell M. Sears, Judge of County Court for Crow Wing and Aitkin Counties in Minnesota, respondent, with the Supreme Court of the State of Minnesota asking for the appointment of a referee to hear evidence in the matter pursuant to Rule 9(a)(2) of the Rules of the Board on Judicial Standards.

2. That on December 7, 1981, Chief Justice Robert J. Sheran appointed the Honorable Clarence A. Rolloff, retired, formerly Judge of the District Court of the Eighth Judicial District of the State of Minnesota, as the referee to hear evidence presented in the matter and to submit his Findings and recommendation along with the record and transcript to the Board on Judicial Standards for review, pursuant to Rule 10(a) of the Rules of the Board on Judicial Standards.

3. That respondent filed with the Board on Judicial Standards, an Answer to the Complaint filed with the Supreme Court and also requested the opportunity to appear personally before the Board on Judicial Standards acting as a fact finder, which appearance before the Board

on Judicial Standards was granted to the respondent on December 17, 1981 at 10:00 a.m.

4. That on December 17, 1981, and by this document, for the purpose of resolving this proceeding and for the purpose of this Stipulation only, the respondent herein,

a) Admits the truth of all matters contained within the Complaint dated the 24th day of November, 1981, and served upon him on the 24 day of November, 1981.

b) To the extent inconsistent with such admissions, respondent withdraws all prior Answers and statements to the petitioner.

c) States that although respondent's behavior as described in paragraphs M, N and O of petitioner's Complaint could have been interpreted by others as described in said Complaint, such conduct was caused by respondent's chemical dependency and was not motivated by a desire to gain improper favors from such persons.

5. That the respondent is 56 years of age, married and resides in Brainerd, Minnesota, and is a judge of the County Courts of Crow Wing and Aitkin Counties.

6. That the respondent is, and has for a number of years been an alcoholic, and has now recognized his chemical dependency and submitted to chemical dependency evaluation as shown by the portions of the report hereto attached and marked Exhibit "A".

7. That the respondent has commenced regular attendance at Alcoholics Anonymous and that on or about the 3rd day of January, 1982, the respondent will enter a facility of his selection for in-patient treatment for chemical dependency as recommended by the chemical dependency reports.

8. That respondent hereby agrees and understands the Complaint, respondent's Answer, and any findings of the Referee, any recommendations of The Board on Judicial Standards and this Stipulation shall be filed with the Supreme Court

in accordance with the rules of the Minnesota Supreme Court applicable to The Board on Judicial Standards.

9. That respondent further agrees that if in the future he engages in the use of alcohol, his conduct would constitute grounds for removal from his judicial office under Minnesota Statutes §490.16, Subd. 3. Therefore, should he again indulge in the use of alcohol, he agrees that he shall be subject to removal from his office as Judge pursuant to the terms hereof.

10. That the respondent, by this Stipulation, agrees to a probation by the Supreme Court upon the following terms and conditions:

a) That the respondent shall refrain totally from all use of alcoholic beverages during the duration of his service as a judge.

b) That the respondent will complete successfully the in-patient chemical dependency treatment recommended to him.

c) That the respondent will continue with faithful attendance at Alcoholics Anonymous and such other after care as is recommended to him by the in-patient treatment facility or by his chemical dependency evaluators and counsellors.

d) That the respondent agrees that without notice to respondent, the petitioner may at any time contact and obtain reports from all treatment facilitity personnel, chemical dependency counsellors and evaluators and respondent's AA group, all such reports to be confidential to the Board on Judicial Standards.

e) Respondent further agrees, as a condition of his probation, that he waives forever, any further right to hearing before the Board on Judicial Standards on the matter of his chemical dependency and that in the event the Board finds after ten (10) days written

notice to respondent and by a fair preponderance of the evidence (which may be by affidavit, hearing or other acceptable evidence) that the respondent has violated the terms of this Stipulation in some material particular and/or that respondent has resumed the use of alcoholic beverages, said Board by certifying such finding to the Supreme Court, may request an immediate removal of the respondent from his position as Judge of the County Courts of Crow Wing and Aitkin Counties, and respondent, by executing this Stipulation, hereby agrees in advance to such removal forthwith by the Supreme Court of the State of Minnesota without further hearing, notice, or any proceeding whatsoever.

f) Respondent further agrees that he will not in any manner whatsoever retaliate against persons who have given statements to the Board on Judicial Standards or who have cooperated with said Board in the investigation of respondent, and that he will remove himself from any case in which he cannot conscientiously be impartial because of information sought by or received by the Board on Judicial Standards regarding the past chemical dependency and related conduct of the respondent.

g) Respondent agrees to accept a public reprimand from the Supreme Court for his conduct set forth in the Complaint filed with the Supreme Court as set forth above.

11. Respondent agrees that he will remain on probation subject to the terms of this Stipulation for the duration of his service as a judge in the State of Minnesota.

12. Based upon the foregoing, it is stipulated and agreed between the petitioner and respondent that the Supreme Court of the State of Minnesota, in its discretion, may make its Order as follows:

a) Ordering the respondent to adhere to the following conditions:

1) That the respondent totally abstain from the use of alcohol;

2) That the respondent seek immediate and effective in-patient treatment for alcoholism and such other out-patient treatment including regular attendance at Alcoholics Anonymous as are recommended to respondent by his physicians and chemical dependency evaluations;

3) That the respondent enter into such agreements with petitioner for supervision and communication as will enable petitioner to effectively monitor the respondent on his total abstinence from all use of alcohol and his regular attendance at Alcoholics Anonymous and such other after care requirements as may be recommended to the respondent by the treatment facility and/or chemical counsellors.

3) That the respondent refrain from any retaliation of any kind directed towards persons cooperating with the Board on Judicial Standards.

4) That upon a finding of the Board on Judicial Standards on 10 days written notice to the respondent by a fair preponderance of the evidence (which may be by affidavit, hearing or otherwise), that the respondent has violated the terms of this Order in any material respect, and upon certification by the Board on Judicial Standards to the Supreme Court of such finding, the

respondent may forthwith, and without further hearing, be removed by the Supreme Court from his position as a Judge of the County Courts of Crow Wing and Aitkin Counties in the State of Minnesota.

5) Issuing a public reprimand to the respondent.

IN WITNESS WHEREOF, the parties to this Stipulation have hereunto set their hands this 26 day of January, 198 7.

GENE HALVERSON, CHAIRMAN,
BOARD ON JUDICIAL STANDARDS

THEODORE J. COLLINS, ATTORNEY
FOR BOARD ON JUDICIAL STANDARDS

HONORABLE DARRELL R. SEARS,
RESPONDENT

ROBERT R. ALDERMAN, ATTORNEY
FOR RESPONDENT

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

RAYMOND E. ALDRICH, JR.,

a Judge of the County Court, Dutchess County.

DISSENTING OPINION BY MR. CLEARY

---

I dissent as to sanction only and vote that respondent be censured.

Respondent's misconduct occurred while he was suffering from "alcoholism", which has been defined by the legislature of this state as "a chronic illness in which the ingestion of alcohol usually results in the further compulsive ingestion of alcohol beyond the control of the sick person to a degree which impairs or destroys his capacity to function normally within his social and economic environment and to meet his civic responsibilities." (Mental Hygiene Law, §1.03, subd. 13). I feel that he is now a "recovered alcoholic", which has been defined as "a person with a history of alcoholism whose course of conduct over a sufficient period of time reasonably justifies a determination that the person's capacity to function normally within his social and economic environment is not likely to be destroyed or impaired by alcohol." Ibid, subd. 15.

While the respondent's conduct was intolerable, I feel

his alcoholism at the time may be given consideration in determining the appropriate sanction, especially when he has taken the necessary steps to cure himself of the illness.

This result would apparently not be inconsistent with the thinking of the Court of Appeals, which has recently told us that the proper legal response to alcoholism "is still subject to debate and adjustment." (Matter of Quinn v. State Commission on Judicial Conduct, 54 NY2d 386, 393).

I am not convinced that removal is essential, and because of this uncertainty, I vote that respondent, whose record of disposition of cases compares "very favorably" with other County Judges in the Ninth Judicial District, should be censured. I also note that during World War II, respondent participated in the invasions of Africa, Sicily, Salerno, Anzio and Normandy.

Dated: September 17, 1982

E. Garrett Cleary, Esq.