

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

LORRAINE BACKAL,

a Judge of the Civil Court of the City
of New York, Bronx County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
Honorable Evelyn L. Braun
E. Garrett Cleary, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
Barry C. Sample
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission
Michael Kennedy for Respondent

This proceeding was initiated by a letter of complaint dated September 2, 1994, from the Chief of the Criminal Division of the Office of the U.S. Attorney for the Southern District of New York. Respondent was served with a Formal Written Complaint dated October 24, 1994. She did not answer the charges.

By motion dated November 28, 1994, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct be deemed established. Respondent

opposed the motion by cross motion on December 13, 1994. The administrator filed a reply on December 20, 1994. Respondent filed a sur-reply dated December 21, 1994. By determination and order dated January 13, 1995, the Commission granted the administrator's motion.

Both sides submitted papers as to sanction.

On March 2, 1995, the Commission heard oral argument, at which respondent and her by counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent was a judge of the New York City Civil Court from January 1, 1989, until November 21, 1994.

2. In the early Fall of 1990, respondent spoke with Selwyn Wilson. Mr. Wilson said that he planned to do "another" drug deal and planned to launder money for unnamed drug dealers.

3. On November 10, 1990, respondent met with Mr. Wilson at her home. Respondent told Mr. Wilson that:

a) he was being sought by the F.B.I.;

b) when the F.B.I. asks her for information about him, she will advise the F.B.I. that she knows nothing about his whereabouts and that she sees him only occasionally when he comes to visit her;

c) she would "never" tell the F.B.I. where he is and will not give the F.B.I. exact dates as to when she has seen him; and,

d) she will destroy her telephone book records that contain his address or telephone number.

4. She then destroyed the records.

5. Respondent told Mr. Wilson to give vague and untruthful answers to F.B.I. questions concerning information that he had obtained from his employment as respondent's driver. Respondent told Mr. Wilson:

a) to tell the F.B.I. that he is unable to recall the identities of certain passengers whom he drove as respondent's chauffeur;

b) not to mention that he drove certain persons, including a certain judge, to the "Inner Circle" and to tell the F.B.I. only that it was "possible" that that certain judge was a passenger, even though Mr. Wilson indicated that he clearly recalled having driven that certain judge; and,

c) to "keep it very loose without pinpointing dates."

6. After Mr. Wilson told respondent that he had been involved in illegal drug and money laundering activities and that he and an associate named "Lance" recently had "brought in...300 kilos" of cocaine, respondent said to "make sure [Lance] lays low," and that Mr. Wilson had a "duty to tell Lance" about news articles concerning a pending F.B.I. investigation.

7. Mr. Wilson asked respondent how she was "set for money" and whether she was "O.K. for now." When she replied affirmatively, he said, "I'll take care of you next weekend anyway."

As to Charge II of the Formal Written Complaint:

8. On November 29, 1990, respondent met with Mr. Wilson at her home. Respondent accepted for safekeeping from Mr. Wilson a large sum of cash which he told her was \$10,000. A week or two later, respondent returned the money to him. From that sum, respondent accepted \$1,500.

9. Mr. Wilson told respondent that he had plans to go to Vermont "to do the money thing...the money laundering thing," and that he needed her assistance and advice in handling \$700,000.

10. Respondent failed to report the \$1,500 that she received from Mr. Wilson:

a) to the clerk of her court, as required by the Rules Governing Judicial Conduct, 22 NYCRR 100.5(c)(3)(iii) and 100.6(c), and by Canons 5C(4)(c) and 6C of the Code of Judicial Conduct; and,

b) on her financial disclosure statement for 1990, as required by Judiciary Law §211 and the Rules of the Chief Judge, 22 NYCRR 40.2.

As to Charge III of the Formal Written Complaint:

11. On December 5, 1990, respondent met with Mr. Wilson at her home. When Mr. Wilson said that he and certain associates were about to obtain 300 kilos of cocaine, respondent replied that he should "wait" and "lay low" because of a pending F.B.I. investigation.

12. Mr. Wilson told respondent that persons from Rhode Island were considering placing \$3 million "into the money laundering thing."

13. When Mr. Wilson said that he had replaced one of his associates in the money-laundering scheme, respondent replied, "I'm not saying don't trust him. It's not the right time to do it now. I'd rather you stuck it in a tin box and buried it somewhere." She added, "Don't do it now. I'd rather see you with the cash than with nothing."

14. Respondent reminded Mr. Wilson of the financial "beatings" that he had taken in certain dealings with two financial institutions.

15. Respondent said that she was "worried" about the \$700,000: "We gotta think of something else."

16. Respondent told Mr. Wilson not to keep the funds in a "box" in his neighborhood because "they'll check every single bank, every box." She said that he should not place the funds in "the corporate box" and should not bury the funds in his mother's yard because "it's hot."

17. Respondent asked Mr. Wilson whether "the Reverend's place" had ever been searched. When he replied that it was safe, respondent warned that authorities might "start ripping paneling."

18. Mr. Wilson reminded respondent that she had previously warned him that rats eat money. She replied that rats do eat money and, "You gotta put it in tin." When Mr. Wilson

assured her that he had followed her advice, respondent said, "Good. O.K.," and repeated that, if money is in tin, "the rats don't get to it then."

19. Several times, Mr. Wilson asked respondent to help him plan what to do with the \$700,000. Respondent asked whether one of Mr. Wilson's associates had any ideas.

20. When Mr. Wilson said that he would put the money in a Samsonite suitcase, respondent replied, "O.K.," and again warned that he should be "careful with that money."

21. Respondent advised Mr. Wilson to be careful in making telephone calls, particularly on his car phone, and, when using a public telephone, not to "put it on a credit card."

22. Respondent told Mr. Wilson to destroy a list that she had given him.

23. Respondent told Mr. Wilson that, if asked where he had obtained so much cash, he should tell the F.B.I. that he had always saved money in a shoe box, that his mother had given him money when he was in school and he had saved it, that he saved from "odd jobs" and that he always saved cash "for a rainy day."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1 and 100.2, and Canons 1 and 2 of the Code of Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent met with a man known by her to be involved in illegal drug dealing and money laundering and counselled him as to how to safeguard the money and how to mislead F.B.I. investigators. She also accepted for safekeeping a large sum of money and accepted \$1,500 of it when Mr. Wilson returned for the cash.

Such venal conduct is inconsistent with the role of a judge and the proper administration of justice. A judge may be removed for cause, including "conduct, on or off the bench, prejudicial to the administration of justice...." (NY Const, art VI, §22[a]; see also, Matter of Mazzei v State Commission on Judicial Conduct, 81 NY2d 568, 572). "Cause" has also been defined as including "corruption, general neglect of duty, delinquency affecting general character and fitness for office, acts violative of law inspired by interest, oppressive and arbitrary conduct, reckless disregard of litigants' rights, and acts justifying 'the finding that his [or her] future retention in office is inconsistent with the fair and proper administration of justice,' [citations omitted]." (Kane v Rudich, 256 AD 586, 587 [2d Dept]). Respondent has clearly departed from the high standards of conduct required of a judge and has damaged public confidence in the integrity of the judiciary.

Respondent's constitutional arguments concerning the basis for the Commission's investigation and the admissibility of her tape-recorded statements are not properly before us at this time. Nor is her argument that Judiciary Law §47 is

unconstitutional, since an "administrative agency lack[s] both the power and competence to pass on the constitutionality of its own actions and procedures," (Hurlbut v Whalen, 58 AD2d 311, 317 [4th Dept]; accord, Finnerty v Cowen, 508 F2d 979, 982 [2d Cir]). Only when the constitutional issue hinges on factual determinations must it first be reviewed by an administrative agency in order to establish a record. (Corcella v Seifert, 181 AD2d 677 [2d Dept]; Roberts v Coughlin, 165 AD2d 964 [3d Dept]). Otherwise, the constitutionality of legislative acts must be raised in the courts. (See, Y.M.C.A. v Rochester Pure Waters District, 37 NY2d 371, 375; Lyons & Co. v Corsi, 3 NY2d 60, 67).

This determination is rendered pursuant to Judiciary Law §47 in view of respondent's resignation from the bench.

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

Mr. Berger, Ms. Barnett, Judge Braun, Mr. Cleary, Ms. Crotty, Mr. Goldman, Judge Newton, Judge Salisbury, Mr. Sheehy and Judge Thompson concur.

Mr. Sample was not present.

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 7, 1995

Henry T. Berger
Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct