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

SALVADOR COLLAZO,

a Judge of the Civil Court of the City of New York and an Acting Justice of the Supreme Court, New York County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Alan J. Pope, Esq.
Honorable Eugene W. Salisbury
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission

Marvin Ray Raskin for Respondent

The respondent, Salvador Collazo, a judge of the Civil Court of the City of New York and an acting justice of the Supreme Court, 1st Judicial District, was served with a Formal Written Complaint dated October 17, 1995, alleging five charges of misconduct. Respondent filed an answer dated December 22, 1995.

By order dated January 17, 1996, the Commission designated the Honorable Leon D. Lazer as referee to hear and report proposed findings of fact and conclusions of law. A hearing was commenced on July 17 and 18, August 30 and October 4, 1996. By motion dated October 18, 1996, respondent moved to stay further hearing dates, for a hearing on confidentiality pursuant to Judiciary Law §§ 45 and 46, and to dismiss the Formal Written Complaint. The administrator of the Commission opposed the motion by affirmation and memorandum dated October 28, 1996. By letter dated October 31, 1996, the Commission declined to stay the hearing. The hearing was concluded on November 4, 1996. By determination and order dated February 6, 1997, the Commission denied respondent's motion in all respects.

The referee filed his report with the Commission on March 10, 1997. By motion dated April 2, 1997, the administrator moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion on April 17, 1997. The administrator filed a reply dated April 24, 1997. Respondent submitted a sur-reply on May 5, 1997, and the administrator responded on May 6, 1997.

On May 22, 1997, 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 Charge I of the Formal Written Complaint:

1. Respondent has been a judge of the Civil Court of the City of New York since January 1991. Since February 1993, he has served by designation as an acting justice of the Supreme Court.

2. In April or May 1993, while in a robing room, respondent passed a note to his court attorney which referred to a female law intern who was also in the room. The note read, "Ralph S - She has some knockers - Look at those nipples sticking out."

3. Shortly thereafter, the law intern remarked that it was hot in the room. Respondent suggested that she remove her jacket. The woman replied, "Have you lost your mind? I don't have anything on underneath my jacket." Respondent then said, "Why don't you take it off anyway?"

As to Charge II of the Formal Written Complaint:

4. On March 15, 1995, respondent testified during the course of the investigation in this matter. Under oath, respondent said:

a) that he had written the note in response to a Penthouse magazine that he found on his bench when he returned from a recess on a day in 1991; respondent suggested that the magazine had been placed there by a court officer in reference to a case against Penthouse and its publisher that was being tried at the time in another courtroom; and,

b) that he never suggested to the law intern that she disrobe in any fashion.

5. At the hearing in this matter on November 4, 1996, respondent gave a different version of the events concerning the note. He said that the magazine was handed to him in a

folder by the court attorney, Ralph Silverman, while they were on the bench during a court proceeding. Respondent testified that he wrote the note in answer to one handed to him by Mr. Silverman, referring to a model in the magazine and attached to her picture.

6. The allegations in Paragraphs 6C, 6D, 6E, 6F, 6G and 6H of Charge II are not sustained and are, therefore, dismissed.

As to Charge III of the Formal Written Complaint:

7. In 1995, respondent was nominated by Governor Pataki for appointment to a vacancy on the Supreme Court. Prior to his nomination, respondent was asked by the Governor's Judicial Screening Committee to complete a questionnaire. One of the questions, under the heading, "Investigatory Actions," asked, "Have you ever been the subject of any inquiry or investigation by a federal, state or local agency (other than for routine background investigations for employment purposes)?" On May 15, 1995, respondent answered, "No," even though he had given testimony in connection with the Commission's investigation two months earlier and knew that he was the subject of a pending investigation. In signing the questionnaire, respondent certified that "to the best of my knowledge the information I have supplied is complete, true and accurate."

As to Charge IV of the Formal Written Complaint:

8. After his nomination by the Governor, respondent's name was put before the State Senate for confirmation. Respondent was asked by the Senate Judiciary Committee to sign a

waiver authorizing the Commission to provide "any and all records and documents relating to me in its possession...."

9. When respondent failed to execute the waiver in a timely fashion, Amy Karp, counsel to the Judiciary Committee, attempted to reach respondent by telephone at least once a day from June 1 to June 6, 1995. On June 6, Ms. Karp spoke to respondent and asked him, in connection with the waiver, whether there were any "complaints," "admonitions" or other "problems with this." Respondent replied, "No," even though he knew that he was the subject of a pending investigation by the Commission.

10. Respondent executed the waiver and returned it to Ms. Karp on June 7, 1995, a day before he was to be considered for confirmation. The waiver was presented to Commission staff, which forwarded a copy of the complaint against respondent.

11. Ms. Karp advised the Governor's Office of the complaint, and respondent's nomination for the Supreme Court was withdrawn.

As to Charge V of the Formal Written Complaint:

12. On August 22, 1995, respondent again testified in connection with the Commission's investigation. Under oath, respondent falsely said that Ms. Karp had never asked him whether he had any disciplinary problems or complaints before the Commission.

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(a), and Canons 1 and 2A of the Code of Judicial Conduct. Charge I, Paragraphs 6A and 6B of

Charge II, Charge III, Charge IV and Charge V of the Formal Written Complaint are sustained, and respondent's misconduct is established. Paragraphs 6C, 6D, 6E, 6F, 6G and 6H of Charge II are dismissed.

Respondent's remark to a female law intern was unprofessional and inappropriate. Even outside of the hearing of the general public, remarks that demean women lack the courtesy, dignity and respect expected of a judge at all times. (Matter of Doolittle, 1986 Ann Report of NY Commn on Jud Conduct, at 87, 88).

As he acknowledges, it was also improper for respondent to write to his court attorney a note which the referee has described as "lurid" and which respondent characterizes as containing "locker-room banter."

Compounding these transgressions are respondent's far-more-serious subsequent series of untruths and deceptive tactics.

In his own testimony, respondent swore during the investigation that he never suggested that the law intern disrobe in any fashion, despite the contrary testimony of the other two persons in the room at the time. He also advanced, under oath, varying versions of the circumstances surrounding the note, both at odds with the testimony of the court attorney. And respondent denied that counsel to the Senate Judiciary Committee ever spoke with him about complaints before the Commission, despite her disinterested and credible testimony to the contrary. Thus, we conclude that respondent has given "patently false explanations to the Commission despite contrary objective proof." (See, Matter of Kiley v State Commission on Judicial Conduct, 74 NY2d 364, at 370).

Moreover, at a time when he knew the Commission was investigating his conduct, respondent advised the Governor's Judicial Screening Committee that he was not under investigation by any "federal, state or local agency...." Although the question did not specifically mention the Commission, a law-trained judge surely would understand this language to encompass an investigation of his judicial conduct by a state commission. Respondent also delayed executing the release of Commission records to the Senate Judiciary Committee and misled its counsel in hopes that the waiver would come too late to derail his confirmation to the Supreme Court.

Respondent attempted to deceive the Governor and the Senate in order to secure a promotion, as well as this Commission in its pursuit of its lawful mandate. "Such deception is antithetical to the role of a Judge who is sworn to uphold the law and seek the truth." (Matter of Myers v State Commission on Judicial Conduct, 67 NY2d 550, at 554; see also, Matter of Mazzei v State Commission on Judicial Conduct, 81 NY2d 568, 572). A judge who has so little regard for the truth "is not a fit person to administer oaths and cannot be trusted to faithfully uphold the laws." (Matter of Heburn v State Commission on Judicial Conduct, 84 NY2d 168, at 171).

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

Mr. Berger, Mr. Coffey, Mr. Goldman, Judge Luciano, Judge Marshall, Mr. Pope and Judge Salisbury concur.

Judge Newton dissents as to Paragraph 6A of Charge II, Charge IV and Charge V and votes that those allegations be dismissed and dissents as to sanction and votes that respondent be censured.

Ms. Crotty and Judge Thompson were 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: July 18, 1997

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

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DISSENTING OPINION BY JUDGE NEWTON

I concur with the majority that Charge I, Paragraph 6B of Charge II and Charge III are sustained. But I vote that the remaining allegations in the Formal Written Complaint be dismissed, and I feel that censure is the appropriate sanction.

In my view, staff counsel has not established misconduct by a preponderance of the evidence with respect to Paragraph 6A of Charge II, Charge IV and Charge V, and the majority of the Commission has overlooked its own precedent and some significant mitigating circumstances in determining sanction.

Respondent has acknowledged writing the note in question and has conceded that to do so was inappropriate. His different versions--given on occasions 20 months apart and years after the note was written--concerning where and why he wrote it are insignificant details that in no way affect our analysis of whether writing it in a work setting was misconduct. To write the note was unprofessional, inappropriate and improper judicial conduct. Therefore, whether respondent lied about the circumstances does not obstruct the Commission's discharge of its lawful mandate (see, majority opinion, p. 7).

The Court of Appeals has warned that the Commission should not base lack of candor findings "upon inadvertent factual misstatements, testimonial inconsistencies or even poor judgment in responding to searching, unanticipated questions." (Matter of Kiley v State Commission on Judicial Conduct, 74 NY2d 364, at 371). "While a Judge's dishonesty or evasiveness before Commission investigators is not to be condoned, the use of a Judge's 'lack of candor' as an aggravating circumstance should be approached cautiously to minimize the risk that the investigative process itself will be used to generate more serious sanctions." (Kiley, supra). The Commission, like the courts in criminal cases alleging Perjury, should be careful not to use misstatements concerning immaterial, collateral facts as the basis for a finding of false testimony. (See, People v Tyler, 46 NY2d 251).

Therefore, while I credit Mr. Silverman's version of the circumstances surrounding the passing of the note with "some doubt," as did the distinguished referee (Referee's Report, p. 9), I would not go so far as to say that respondent was lying when he testified that he remembered it differently. Accordingly, I vote that Paragraph 6A of Charge II be dismissed.

I also believe that the evidence concerning respondent's conversation with Ms. Karp about his confirmation by the State Senate is too weak to support findings that he deceived her, then lied to the Commission about what was said. We have only Ms. Karp's memory of a brief, unrecorded, oral conversation to establish a misrepresentation and the context in which the question was posed and the answer given. Ms. Karp admits that she

did not memorialize the conversation until sometime later, after she was questioned about it by Commission staff. On such a slim record, I find it impossible to conclude that respondent's different memory of his conversation with Ms. Karp amounted to "patently false explanations to the Commission despite contrary objective proof." (See, Matter of Kiley, supra, at 370). Thus, I conclude that Charges IV and V were not established by a preponderance of the evidence.

We are left with the findings that respondent engaged in two types of misconduct: 1) that he made inappropriate remarks in the workplace; and, 2) his lack of candor with the Commission and the Governor's Judicial Screening Committee.

I concur with the majority that the inappropriate note and remark, standing alone, would not be cause for removal.

Respondent's misstatement under oath that he did not suggest that the law intern disrobe in any fashion cannot be considered more serious than the misconduct in Matter of Bloom (1996 Ann Report of NY Commn on Jud Conduct, at 65). Judge Bloom was censured for deliberately and repeatedly misleading, under oath, an attorney grievance committee that was investigating the conduct of his law clerk. Although I dissented in Bloom and voted for removal, I believe that the majority's censure in that case establishes a precedent and fairness dictates that Judge Collazo's behavior be judged consistently with the Bloom holding.

Respondent's most troubling conduct concerns his obfuscation to the Governor's committee. However, it must be examined in context. While he did answer, "No," to the question about investigations, he also, in the same 28-page document, authorized the Governor to obtain all records of any investigative bodies, and he released all such agencies from liability for providing them (Ex. 5, p. 28). Furthermore, his inaccurate answer to the committee's questionnaire was not made under oath and could not form the basis for the crimes of Perjury (see, Penal Law §§ 210.05, 210.10, 210.15; O'Reilly v People, 86 NY 154; Case v People, 76 NY 242; see also, People v Tyler, supra, at 259), Making An Apparently Sworn False Statement (see, Penal Law §§ 210.35, 210.40) or Offering A False Instrument For Filing (see, Penal Law §§ 175.30, 175.35; People v Kirk, 62 Misc2d 1078, 1083-84 [Rockland Co Ct] [a job application for public employment containing a false statement concerning the applicant's qualifications is not an "instrument" for the purposes of the statute]). The majority's opinion fails to examine these significant mitigating factors.

> Removal is an extreme sanction and should be imposed only in the event of truly egregious circumstances [citation omitted]. Indeed, we have indicated that removal should not be ordered for conduct that amounts simply to poor judgment, or even extremely poor judgment [citations omitted].
>
> Matter of Cunningham v State Commission on Judicial Conduct, 57 NY2d 270, at 275

Respondent's lack of complete candor in dealing with the Commission and the Governor's committee was wrong. But I do not believe that this serious lack of judgment destroys his effectiveness as a judicial officer, and I vote that he be censured.

Dated: July 18, 1997

Honorable Juanita Bing Newton, Member
New York State
Commission on Judicial Conduct