

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

ALANA J. LINDELL-CLOUD,

a Justice of the Great Valley Town Court,
Cattaraugus County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
E. Garrett Cleary, Esq.
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the
Commission

Jerry A. Fowler for Respondent

The respondent, Alana J. Lindell-Cloud, a justice of the Great Valley Town Court, Cattaraugus County, was served with a Formal Written Complaint dated July 7, 1994, alleging that she based a fine in a traffic case on the fact that the defendant had been responsible for terminating respondent's private employment. Respondent filed an answer dated August 18, 1994.

By order dated August 31, 1994, the Commission designated Patrick J. Berrigan, Esq., as referee to hear and

report proposed findings of fact and conclusions of law. A hearing was held on November 7, 1994, and the referee filed his report with the Commission on January 13, 1995.

By motion dated February 15, 1995, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent neither filed any papers in response thereto nor requested oral argument.

On April 27, 1995, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Great Valley Town Court during the time herein noted.

2. In May 1992, respondent, a part-time judge, was also employed as a registered nurse at the Salamanca Health Care Complex. Karen A. Gross was her supervisor.

3. Ms. Gross participated in the decision to fire respondent from her job at the health care facility and was present when respondent was told of the decision.

4. On June 11, 1993, Ms. Gross was charged with Speeding in the Town of Great Valley. The ticket was returnable before respondent.

5. On June 23, 1993, Ms. Gross pleaded guilty by mail.

6. Respondent received the plea and considered disqualifying herself because of her prior relationship with the defendant. Instead, respondent decided to impose sentence in the

case in order to retaliate against Ms. Gross for her role in respondent's firing.

7. Respondent fined Ms. Gross \$150 plus a \$25 mandatory state surcharge, twice the highest fine that respondent had previously imposed for Speeding. She had no knowledge of the defendant's prior driving record.

8. On August 1, 1993, respondent sent Ms. Gross notice of the fine and ordered her to pay it by August 5, 1993, even though her practice was to allow defendants 30 days in which to pay their fines.

9. Respondent's decisions as to the amount of the fine and the four-day deadline to pay it were motivated by a desire to retaliate against Ms. Gross for her role in respondent's firing.

10. After Ms. Gross spoke to the prosecutor in respondent's court and he requested that respondent disqualify herself, she transferred the case to another judge.

11. During the investigation of this matter, respondent candidly admitted that she based her decisions in Gross on a desire to retaliate against the defendant for her role in respondent's firing from the health care facility.

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, 100.2(a), 100.2(b), 100.3(a)(3) and 100.3(c)(1), and Canons 1, 2A, 2B, 3A(3) and 3C(1)(a) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

Respondent used her power as a judge to satisfy a personal vendetta rather than disqualifying herself as she knew was appropriate. (See, Matter of Hopeck, 54 AD2d 35 [3d Dept]). She admits that she imposed a high fine and gave Ms. Gross only four days to pay it as a means of retaliating for the defendant's role in respondent's firing from her nursing job. Neither justice nor public confidence in the integrity of the judiciary is served when a judge acts from personal irritation with one of the parties. (Matter of Miller, 1981 Ann Report of NY Commn on Jud Conduct, at 121, 122; see also, Matter of Dier, 1994 Ann Report of NY Commn on Jud Conduct, at 60). Even creating the appearance of using judicial office for retaliation is serious misconduct. (Matter of Schiff v State Commission on Judicial Conduct, 83 NY2d 689, 693-94).

Although respondent's misuse of her office is extremely serious, respondent's conduct represents an isolated incidence of wrongdoing (see, Matter of Ain, 1993 Ann Report of NY Commn on Jud Conduct, at 51, 53), and she has candidly acknowledged her improper motivation (see, Matter of Kelso v State Commission on Judicial Conduct, 61 NY2d 82, 87). We conclude that her removal is not necessary.

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

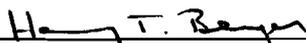
Mr. Berger, Ms. Barnett, Mr. Cleary, Ms. Crotty, Mr. Goldman, Judge Newton, Judge Salisbury and Mr. Sample concur.

Mr. Coffey 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 14, 1995


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