

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

DONNA M. MILLS,

a Justice of the Supreme Court,
Bronx County.

THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Raoul Lionel Felder, Esq.
Christina Hernandez, M.S.W.
Honorable Thomas A. Klonick
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Alan W. Friedberg and Vickie Ma, Of Counsel)
for the Commission

Paul T. Gentile for Respondent

The respondent, Donna M. Mills, a justice of the Supreme Court, Bronx
County, was served with a Formal Written Complaint dated March 1, 2005, containing

one charge.

On July 26, 2005, the administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On August 11, 2005, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Supreme Court since January 2000. Respondent previously served as a judge of the Civil Court of the City of New York from 1993 to 1999.
2. On the evening of July 22, 2002, respondent was arrested and charged with Driving While Intoxicated, Driving Under the Influence of Alcohol and Resisting Arrest.
3. On April 1, 2004, at the end of a jury trial held in Bronx County Criminal Court, respondent was acquitted of all charges.
4. Prior to the arrest, respondent and an acquaintance, Tracey Mendelsohn, had drinks and dinner at a restaurant and subsequently visited a tavern in the Bronx.
5. Respondent consumed numerous alcoholic beverages during the course of the evening.
6. Thereafter, at approximately 11:00 P.M., respondent got into her car, a

Rolls Royce, which was parked in the parking lot of the Loehmann's department store in the Bronx, across the street from the 50th precinct, and attempted to exit the parking lot. In attempting a U-turn, respondent's vehicle became wedged between two parked cars. After police officers intervened, respondent was placed under arrest.

7. At the trial, police officers testified that respondent had a strong odor of alcohol, was unsteady on her feet and was incoherent. Later that evening, respondent refused to take a breathalyzer test. A videotape containing respondent's appearance and speech was introduced in evidence at the trial.

8. Respondent acknowledges that it was inappropriate for her to drive after consuming as much alcohol as she did that evening.

9. As Officer Jackson was escorting respondent to the police car, respondent flailed her arms. Later that evening, she accused the officers of arresting her because she was African-American, notwithstanding that the arresting officers were themselves persons of color. Respondent did not utter profanities, epithets or other words that would have been offensive *per se*. Respondent did not invoke her judicial office or assert the influence of her judicial office in order to avoid arrest or influence the officers from performing their duties.

10. Respondent acknowledges that her accusations were offensive to the police officers and inconsistent with her lifelong respect for police officers.

11. After her arrest, respondent entered and completed an alcohol treatment plan in order to restore her driver's license.

12. Respondent has fully cooperated with the Commission's investigation and has voluntarily provided confidential medical records regarding her physical and psychological treatment and recovery.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.4(A)(2) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above facts, and respondent's misconduct is established.

It is the responsibility of every judge to act at all times in a manner that promotes public confidence in the integrity of the judiciary and to avoid conduct that detracts from the dignity of judicial office (Sections 100.2[A] and 100.4[A][2] of the Rules Governing Judicial Conduct). Respondent violated these standards by engaging in conduct that resulted in her arrest for Driving While Intoxicated, Driving Under the Influence of Alcohol and Resisting Arrest. As respondent has frankly acknowledged, it was inappropriate for her to drive after consuming as much alcohol as she did that evening.

The Commission has publicly disciplined numerous judges who have been convicted of alcohol-related driving infractions. *See, e.g., Matter of Barr*, 1981 Annual Report 139 (Comm. on Judicial Conduct); *Matter of Siebert*, 1994 Annual Report 103

(Comm. on Judicial Conduct); *Matter of Henderson*, 1995 Annual Report 118 (Comm. on Judicial Conduct); *Matter of Pajak*, 2005 Annual Report 195 (Comm. on Judicial Conduct). In the wake of increased recognition of the dangers of driving while under the influence of alcohol and the toll it exacts on society, alcohol-related driving misbehavior must be regarded with particular severity -- even, as here, where respondent was not convicted of any offense.

Respondent has also acknowledged that, after her arrest, she accused the officers (who were themselves persons of color) of arresting her because she was African-American and that her accusations were offensive to the officers and otherwise inappropriate. See, *Matter of Richardson*, 1982 Annual Report 129 (Comm. on Judicial Conduct) (village justice, charged with Driving While Intoxicated, made derogatory comments to the officers who effected his arrest). Throughout the incident, respondent, “although off the bench remained cloaked figuratively, with [her] black robe of office devolving upon [her] standards of conduct more stringent than those acceptable to others” (*Matter of Kuehnel*, 49 NY2d 465, 469 [1980]). Respondent’s remarks to the police officers were inconsistent with the high standards of dignity and respect required of judges at all times, and her inappropriate behavior undermines public confidence in the judiciary as a whole. *Matter of Richardson*, *supra*; *Matter of Canary*, 2003 Annual Report 77 (Comm. on Judicial Conduct).

Respondent has acknowledged that her conduct was improper and has stipulated that the appropriate sanction is censure. This sanction reflects the seriousness

of such misconduct and underscores that judges, who hold a high position of public trust, are held to the highest standards of conduct both on and off the bench (Section 100.2[A] of the Rules).

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

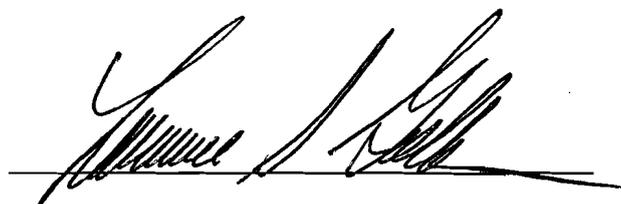
Mr. Goldman, Mr. Coffey, Ms. DiPirro, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Klonick, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: August 17, 2005

A handwritten signature in black ink, appearing to read 'Lawrence S. Goldman', is written over a horizontal line.

Lawrence S. Goldman, Esq., Chair
New York State
Commission on Judicial Conduct