

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

JAMES R. PASTRICK,

a Justice of the Corning Town Court,
Steuben 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 (John J. Postel, Of Counsel) for the Commission
Richard W. Rich, Jr. for Respondent

The respondent, James R. Pastrick, a justice of the Corning Town Court,
Steuben County, was served with a Formal Written Complaint dated July 15, 2004,

containing two charges. Respondent filed an answer dated August 10, 2004.

By Order dated September 15, 2004, the Commission designated David M. Garber, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on December 14, 2004, in Bath, New York, and the referee filed his report with the Commission dated April 20, 2005.

The parties submitted briefs with respect to the referee's report. On June 23, 2005, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Corning Town Court, Steuben County, and has served in that position since 1990. Respondent, a retired police officer, is not an attorney.

As to Charge I of the Formal Written Complaint:

2. Debora Kephart is employed by the Corning Food-Mart as a bookkeeper/office manager. In the summer of 2002, she performed general office management and human resource duties, which included accepting employment applications.

3. In about late July 2002, respondent met with Ms. Kephart in her office to discuss procedures in a bad check case involving Food-Mart that had been commenced in his court. Ms. Kephart knew that respondent was a justice of the Corning Town Court.

4. During this same visit, while conferring with Ms. Kephart on judicial business, respondent indicated to Ms. Kephart that his daughter Stephanie, then a high school senior, was seeking part-time employment and asked Ms. Kephart whether there were any positions available. Ms. Kephart said that Stephanie should submit an application, and respondent picked up an application for his daughter.

5. Subsequently, after respondent's daughter had filled out the employment application, respondent returned to Food-Mart and delivered the application to Ms. Kephart. Respondent again inquired whether Food-Mart was hiring people.

6. On or about August 26, 2002, Food-Mart hired respondent's daughter. Ms. Pastrick worked at the store for about 18 months.

As to Charge II of the Formal Written Complaint:

7. The charge is not sustained and is, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B) and 100.2(C) 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 is sustained insofar as it is consistent with the above findings and conclusions, and respondent's misconduct is established. Charge II is not sustained and is therefore dismissed.

The ethical standards prohibit a judge from lending the prestige of judicial office to advance the private interests of the judge or others and to avoid even the appearance of impropriety (Sections 100.2 and 100.2[C] of the Rules Governing Judicial Conduct). Respondent violated these provisions by his admitted conduct when, while visiting the Food-Mart to discuss procedures in a bad check case involving the store, he asked a store employee whether there were any positions available, said that his daughter was looking for a job and picked up an application for her. Later, respondent personally delivered the completed application to the store.

While attempting to help his daughter find employment, respondent should have been especially careful to avoid any conduct that might convey that he was using his judicial status to further private interests. Instead, by raising the subject of his daughter's employment during a conversation with a store employee about court business, respondent appeared to be trading on his judicial office to benefit his daughter's interests. In that context, respondent's discussion of procedures in a bad check case involving the store could easily be perceived as an explicit reminder of his judicial power, intended to intimidate or influence the store's hiring decision.

Regardless of respondent's intent, he should have realized that his actions on his daughter's behalf, in which he mixed judicial and personal matters, could be construed as trading on the prestige of the judiciary to advance private interests, in violation of the ethical standards. As the Court of Appeals has stated, judges must recognize that "any actions taken in the public sphere reflect, whether designedly or not,

upon the prestige of the judiciary” and “must assiduously avoid those contacts which might create even the appearance of impropriety.” *Matter of Lonschein*, 50 NY2d 569, 572, 573 (1980). *See also, Matter of McKeon*, 1999 Annual Report 117 (Comm. on Judicial Conduct) (judge improperly used the prestige of judicial office to advance private interests by writing a letter on judicial stationery to the corporation counsel of the City of New York, a frequent litigant in his court, seeking to expedite the hiring of a former court employee with whom he had a personal relationship). While respondent’s judgment may have been clouded by a desire to help his daughter, that does not excuse his ethical transgressions.

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

Mr. Goldman, Mr. Coffey, Ms. DiPirro, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Klonick, Judge Luciano, Mr. Pope and Judge Ruderman concur except as follows.

As to Charge II, Judge Klonick and Judge Ruderman dissent and vote to sustain the charge.

As to sanction, Judge Klonick dissents and votes that the appropriate disposition is censure.

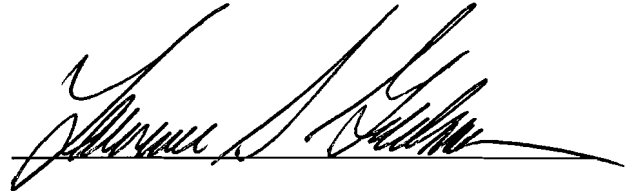
Judge Peters was not present.

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", written over a horizontal line.

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