

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

CHARLES A. PENNINGTON,

a Justice of the Alexandria Bay Village Court,
Jefferson 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
Capone Law Firm (by Andrew N. Capone) for Respondent

The respondent, Charles A. Pennington, a justice of the Alexandria Bay
Village Court, Jefferson County, was served with a Formal Written Complaint dated

December 13, 2004, containing two charges. Respondent filed a verified answer dated January 3, 2005.

By Order dated January 21, 2005, the Commission designated Philip C. Pinsky, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on May 11, 2005, in Syracuse. Respondent and his counsel did not appear at the hearing. The referee filed his report with the Commission dated July 21, 2005.

By letter dated August 18, 2005, respondent's counsel declined to appear for oral argument, which was waived. Commission counsel filed a brief with respect to the referee's report. On September 7, 2005, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent was a justice of the Alexandria Bay Village Court, Jefferson County, from 1982 until his resignation on May 9, 2005. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. Eric Bailey was charged with Disorderly Conduct on October 4, 2003, a violation of an Alexandria Bay village ordinance, for allegedly having punched Eugene Sikora in front of a local nightclub. The defendant pleaded not guilty, and trial was scheduled and held before respondent on November 19, 2003.

3. No record was made of the trial. The defendant at the trial proceeded without counsel.

4. As a witness for the prosecution, Eugene Sikora was asked, "Do you see the gentleman here in the courtroom today that struck you outside of... [the] night club?" Mr. Sikora replied, "Yes, it would be that colored man right there," indicating the defendant.

5. The defendant, Eric Bailey, was African-American.

6. Mr. Bailey objected to the witness identifying him as a "colored man," saying either that such testimony was "racial" or "racist."

7. Respondent overruled Mr. Bailey's objection, stating:

I don't perceive that as racial. I could understand it if he would have called you a Negro or a nigger, that would be racial. For years we had no colored people here, with the influx of Fort Drum, now we do.

8. Respondent convicted Mr. Bailey and fined him \$200.

As to Charge II of the Formal Written Complaint:

9. During the afternoon of November 16, 2003, Ms. R., a 17-year old female, was arrested at the home of her mother on a charge of Harassment, Second Degree, for allegedly throwing a cup at her mother's boyfriend.

10. Ms. R. was brought before respondent for arraignment that day at approximately 2:30 PM.

11. Ms. R. pleaded not guilty and was released on her own recognizance.

12. Respondent informed Ms. R. during the arraignment that she "can't go home," and told Ms. R. to call someone to "come get her."

13. Respondent did not sign an Order of Protection prohibiting Ms. R. from returning to her mother's home.

14. Ms. R., using a telephone near the judge's desk, attempted without success to reach her grandmother.

15. After being informed by Ms. R. that she did not have a place to go at that time, respondent told Ms. R. and a police officer in the courtroom that respondent was going to take Ms. R. home with him and that Ms. R. could make some calls from his home, presumably to locate a place for her to stay.

16. Respondent did not ask the police to locate an appropriate place for Ms. R. to stay. There was a women's shelter and a County social services agency that could have been contacted.

17. Following the arraignment, respondent brought Ms. R. to his home.

18. While at respondent's home, Ms. R. telephoned her mother and asked her to bring some items. Shortly thereafter, Ms. R.'s mother came to respondent's home. When Ms. R.'s mother arrived, Ms. R., respondent and another man were present. Ms. R.'s mother asked her daughter to come home. Respondent said, "No," and Ms. R. said she was not going home. Ms. R. and her mother argued, and Ms. R.'s mother left.

19. Ms. R. arranged with the parents of a friend to stay at their home and left respondent's home after being there for about an hour.

20. There is no evidence that respondent made any improper advances to Ms. R. while she was at his home.

21. The Harassment charge against Ms. R. was adjourned in contemplation of dismissal. Respondent presided over the disposition.

Supplemental finding:

22. Respondent transmitted his letter of resignation to the Chief Administrative Judge of the Courts, who received respondent's letter on May 11, 2005.

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(C), 100.3(B)(3) and 100.3(B)(4) 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. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

As this Commission has stated: "Public confidence in the integrity and impartiality of the judiciary is indispensable to the fair and proper administration of justice. A judge's conduct must be and appear to be beyond reproach if respect for the court is to be maintained." *Matter of Friess*, 1982 Annual Report 109 (Comm. on Judicial Conduct).

Respondent's gratuitous comments about a defendant's race were manifestly inappropriate. In ruling on the defendant's objection to a witness' use of the word "colored," respondent made a speech about his own views on racially-charged language, in the course of which he unnecessarily and repeatedly used racial language

that was inappropriate and far exceeded the witness' single, objectionable term. Regardless of whether respondent's remarks were knowingly racist or simply ill-considered, the use of such language by a judicial officer serves to undermine public confidence in the integrity and impartiality of the judiciary. *See Matter of Mulroy*, 94 NY2d 652 (2000); *Matter of Agresta*, 64 NY2d 327 (1985).

It was also improper for respondent to bring a young, female defendant to his home after an arraignment. *See Matter of Friess, supra*. Respondent exhibited extraordinarily poor judgment in bringing the young woman to his home, where she made telephone calls and remained for about an hour. Although there is no evidence that he made improper advances toward the woman, respondent's conduct compromised his impartiality and conveyed an appearance of impropriety.

Respondent's disciplinary history, including a prior censure and two letters of dismissal and caution, bolsters the conclusion that he lacks sensitivity to the special ethical obligations of judges (*see* Commission counsel's brief, Appendix 1-3; *Matter of Pennington*, 2004 Annual Report 139 [Comm. on Judicial Conduct]) (*Matter of Cerbone*, 2 NY3d 479 [2004]). Significantly, the two incidents in this case occurred only a few days after respondent's prior censure. The improprieties throughout respondent's disciplinary history include a variety of activities, indicating an apparent inability or unwillingness to recognize and avoid misconduct and demonstrating that he is unfit to serve as a judge.

“[T]he purpose of judicial disciplinary proceedings is ‘not punishment but

the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents.” *Matter of Reeves*, 63 NY2d 105, 111 (1984), quoting *Matter of Waltemade*, 37 NY2d (a), (lll) (Ct on the Jud 1975). In light of respondent’s resignation, the sanction of removal is necessary to ensure that he is ineligible for judicial office in the future (NY Const Art 6 §22[h]). Removal is warranted here by respondent’s misconduct and his prior disciplinary history.

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

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

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

Judge Luciano and Mr. Pope were not present.

CERTIFICATION

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

Dated: September 7, 2005

A handwritten signature in cursive script, reading "Lawrence S. Goldman", is written over a horizontal line.

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