

**State of New York**  
**Commission on Judicial Conduct**

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

BARBARA M. SIMS,

a Judge of the Buffalo City Court,  
Erie County.

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**Determination**

THE COMMISSION:

Mrs. Gene Robb, Chairwoman  
Honorable Fritz W. Alexander, II  
John J. Bower, Esq.  
David Bromberg, Esq.  
E. Garrett Cleary, Esq.  
Dolores DelBello  
Victor A. Kovner, Esq.  
Honorable William J. Ostrowski  
Honorable Isaac Rubin  
Honorable Felice K. Shea  
Carroll L. Wainwright, Jr., Esq.\*

APPEARANCES:

Gerald Stern (Cody B. Bartlett, Of Counsel)  
for the Commission

William Sims and George Hairston for Respondent

The respondent, Barbara M. Sims, a judge of the Buffalo  
City Court, was served with a Formal Written Complaint dated  
February 2, 1981, alleging, inter alia, that she signed orders in

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\* Mr. Wainwright's term as a member of the Commission expired on March 31, 1983.  
This determination was rendered pursuant to a vote on March 24, 1983.

ten cases in which the defendants were clients or former clients of her or her husband. Respondent filed an answer dated March 13, 1981.

By order dated April 30, 1981, the Commission designated Shelia L. Birnbaum, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on March 1, 1982, and the referee filed her report with the Commission on October 5, 1982.

By motion dated November 24, 1982, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a determination that respondent be censured. Respondent opposed the motion in papers dated December 31, 1982, and cross-moved for, inter alia, dismissal of the charges. The Commission heard oral argument on the motion on March 24, 1983, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. One judge of the Buffalo City Court is assigned to preside over weekend arraignments at the courthouse. The judge is not obligated to consider at home or in the evening a request for bail or release.

2. Respondent's husband, William Sims, often assisted her in the preparation of orders for the release of defendants on

bail or on their own recognizance. Generally, Mr. Sims would do whatever respondent asked in the preparation of a release order. When a request was received, respondent would either call the jail to ask for information about the defendant or ask her husband to do so. Respondent would either prepare the release herself or ask her husband to prepare it for her signature. Even when respondent herself obtained the information and prepared the release order, Mr. Sims would "know what was going on."

3. Mr. Sims is an attorney who practices in Buffalo. He holds no position in the Buffalo City Court. He and respondent practiced law in the same office until she took the bench on December 27, 1977.

As to Charge I of the Formal Written Complaint:

4. The charge is not sustained and is therefore dismissed.

As to Charge II of the Formal Written Complaint:

5. On the evening of January 25, 1979, respondent received at her home a telephone call from a former client, Patricia Jones, requesting the release of her husband, Walter, from jail. Respondent had also represented Mr. Jones when she was in private practice.

6. Mr. Jones was charged with Assault, Third Degree, and Menacing, both misdemeanors.

7. Respondent signed an order releasing Mr. Jones from custody without the requirement of cash bail or bond.

8. Respondent's husband talked to Mr. Jones at the Sims' home shortly after he was released from jail pursuant to respondent's order.

9. On January 26, 1979, respondent's husband appeared before another judge in the Buffalo City Court representing Mr. Jones in the same case in which he had been released from jail by respondent.

10. Mr. Sims charged a fee of \$1,350 for his representation of Mr. Jones in this case, although he collected only \$50 from him.

As to Charge III of the Formal Written Complaint:

11. On May 2, 1978, respondent received a telephone call at her political campaign headquarters from the daughter of James Grant, requesting Mr. Grant's release from jail. Mr. Grant was a former client of respondent's husband.

12. Mr. Grant was charged with Criminal Possession Of A Weapon, Third Degree, a felony.

13. Respondent's husband left campaign headquarters, went to his home to obtain a release form and returned to campaign headquarters where respondent signed an order releasing Mr. Grant from custody without the requirement of cash bail or bond.

14. Respondent's husband prepared the body of the release order for her signature. Mr. Sims testified that he could not

remember whether the body of the release order was completed before or after respondent signed it. He also testified, "[I]t does not matter whether it was on before or after, as long as it was prepared for a signature at her direction...."

15. Before preparing the release, Mr. Sims called the Buffalo City Police to find out whether there were papers holding the defendant, what the charge was and what the circumstances were. He did not contact any particular person at police headquarters but talked to someone in "central booking."

16. On May 3, 1978, Mr. Sims appeared before another judge in the Buffalo City Court with Mr. Grant.

17. Mr. Sims charged a fee for his legal service in this matter.

18. Respondent knew or should have known that signing the release order outside of court when she was not obligated to do so would lead the defendant to seek Mr. Sims' representation in court the following day.

As to Charge IV of the Formal Written Complaint:

19. On May 12, 1978, respondent signed at her home an order releasing Maurice Gaines from custody without the requirement of cash bail or bond.

20. Mr. Gaines was charged with Criminal Possession of Stolen Property, a misdemeanor, and with Disorderly Conduct and

Harassment, both violations.

21. Respondent's husband prepared the body of the release order for her signature. Mr. Sims testified that he could not remember whether the body of the release order was completed before or after respondent signed it.

22. On May 13, 1978, Mr. Sims' appeared before another judge in the Buffalo City Court with Mr. Gaines.

23. Respondent knew or should have known that signing the release order outside of court when she was not obligated to do so would lead the defendant to seek Mr. Sims' representation in court the following day.

As to Charge V of the Formal Written Complaint:

24. On the evening of November 29, 1978, respondent's husband received a telephone call from the sister of Lawrence Grant, requesting Mr. Grant's release from jail.

25. Mr. Grant was charged with Assault, First Degree, a felony.

26. Mr. Sims had previously represented Mr. Grant and members of his family.

27. Mr. Sims called respondent after receiving the call from Mr. Grant's sister. Mr. Sims or Ms. Grant conveyed to respondent the request to release Mr. Grant.

28. Respondent called the Buffalo City Police central

booking with respect to the Grant case and then signed an order releasing Mr. Grant from custody without the requirement of cash bail or bond.

29. Respondent's husband represented Mr. Grant at the time respondent signed the release order. His representation had begun the same day the release order was signed.

30. On November 30, 1978, Mr. Sims appeared before another judge in the Buffalo City Court with Mr. Grant.

31. Respondent knew or should have known that at the time she signed the release her husband represented the defendant.

As to Charge VI of the Formal Written Complaint:

32. On the evening of January 17, 1979, respondent received a telephone call at her home from the mother of Emory Jackson, requesting Mr. Jackson's release from jail.

33. Mr. Jackson was charged with Assault, First Degree, a felony.

34. Respondent's husband had previously represented Mr. Jackson and members of his family.

35. Respondent called the Buffalo City Police central booking with respect to the Jackson case and then signed an order releasing Mr. Jackson from custody without the requirement of cash bail or bond.

36. On January 18, 1979, respondent's husband appeared before another judge in the Buffalo City Court with Mr. Grant.

37. Respondent knew or should have known that signing the release order outside of court when she was not obligated to do so would lead Mr. Jackson to seek Mr. Sims' representation in court the following day.

As to Charge VII of the Formal Written Complaint:

38. On Sunday, March 18, 1979, respondent received a telephone call at her home from the wife of Cecil Frame, requesting Mr. Frame's release from jail.

39. Mr. Frame was charged with Leaving The Scene Of An Accident and Driving While Intoxicated.

40. Mr. Frame was an acquaintance of respondent's husband. When she called, Ms. Frame told respondent that she knew Mr. Sims.

41. Respondent asked her husband whether he knew Ms. Frame. Mr. Sims said that he did.

42. Respondent then signed an order releasing Mr. Frame from custody without the requirement of cash bail or bond.

43. Respondent gave the order to her husband, who then delivered it to Ms. Frame.

44. On March 19, 1979, Mr. Sims appeared before another judge in the Buffalo City Court with Mr. Frame.

45. Respondent knew or should have known that signing the release outside of court when she was not obligated to do so would lead Mr. Frame to seek Mr. Sims' representation in court the



following day.

As to Charge VIII of the Formal Written Complaint:

46. On the night of April 5, 1979, respondent received a telephone call at her home from a Reverend Jones and from Theodore Williams requesting the release from jail of Mr. Williams' sons, Reginald and Dwayne.

47. Reginald Williams was charged with Reckless Endangerment, First Degree, and Criminal Possession Of A Weapon, Third Degree, both felonies. Dwayne Williams was charged with Criminal Mischief, Fourth Degree, and Assault, Third Degree, both misdemeanors.

48. Mr. Jones was a former client of respondent's husband.

49. Mr. Jones first spoke to respondent, and she agreed to release the defendants. Theodore Williams then spoke to respondent's husband and asked him to represent the defendants. Mr. Williams asked Mr. Sims, "Is your wife going to let them out?"

50. Respondent then signed orders releasing the defendants from custody without the requirement of cash bail or bond.

51. Mr. Jones and Mr. Williams then came to the Sims' home and picked up the release orders.

52. On April 6, 1979, Mr. Sims appeared before another judge in the Buffalo City Court with Reginald and Dwayne Williams.

53. Mr. Sims collected a fee for his legal services in this matter.

54. Respondent knew or should have known that agreeing to sign release orders outside of court when she was not obligated to do so would lead the defendants to seek Mr. Sims' representation in court.

As to Charge IX of the Formal Written Complaint:

55. On December 27, 1979, respondent received a telephone call at her home from Augustine Olivencia, a community leader, requesting the release of Benjamin Rivera from jail.

56. Mr. Rivera was charged with Assault, Second Degree, a felony.

57. Respondent signed an order releasing Mr. Rivera from custody without the requirement of cash bail or bond.

58. On December 28, 1979, respondent's husband appeared before another judge in the Buffalo City Court with Mr. Rivera. Mr. Sims had agreed to represent Mr. Rivera only until his attorney, Loren Lobban, returned from out of town.

59. Respondent knew or should have known that signing the release outside of court when she was not obligated to do so would lead Mr. Rivera to seek Mr. Sims' representation in court the following day.

As to Charge X of the Formal Written Complaint:

60. On December 29, 1979, respondent, at the request

of her husband, signed an order releasing Jetrone Jones from custody without the requirement of cash bail or bond.

61. Mr. Jones was charged with Menacing, a misdemeanor, and Harassment, a violation.

62. On December 31, 1979, Mr. Sims appeared before another judge in the Buffalo City Court with Mr. Jones. Mr. Sims had agreed to represent Mr. Jones until his attorney, Loren Lobban, returned from out of town.

63. Mr. Sims intended to collect a fee for his legal services in this matter.

64. Respondent knew or should have known that signing the release order would lead Mr. Jones to seek Mr. Sims' representation in court the following day.

As to Charge XI of the Formal Written Complaint:

65. On December 30, 1979, at approximately 2:00 A.M., respondent's husband received a telephone call at home from the mother of O'Connor Bowman, requesting his release from jail. Mr. Sims identified the caller and gave the call to respondent.

66. Mr. Bowman was charged with Criminal Possession Of A Weapon, Fourth Degree, a misdemeanor.

67. Respondent signed an order releasing Mr. Bowman from custody without the requirement of cash bail or bond. Mr. Sims prepared the body of the release for respondent's signature.

68. On December 31, 1979, Mr. Sims appeared before another judge in the Buffalo City Court with Mr. Bowman.

69. Mr. Sims intended to collect a fee for his legal services in the matter.

70. Respondent knew or should have known that signing the release order would lead Mr. Bowman to seek Mr. Sims' representation in court the following day.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1) and 100.3(c)(1)(iv) [formerly Sections 33.1, 33.2, 33.3(a)(1) and 33.3(c)(1)(iv)] of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3C(1)(d) of the Code of Judicial Conduct. Charges II through XI of the Formal Written Complaint are sustained, and respondent's misconduct is established. Respondent's cross-motion is denied.

Respondent released from jail a former client, a client and two former clients of her husband, an acquaintance of her husband and a defendant whose release was sought by a former client of her husband. In one other case, respondent released a defendant from jail at her husband's request. In still two other cases, respondent signed release orders delivered to her and prepared for her by her husband. In these nine cases and in one other in which respondent ordered the release of a defendant, respondent's husband was later retained by the defendants to represent them in court.

In most of the ten cases, he appeared in court the very next day with defendants released by respondent.

This pattern created the unmistakable impression that respondent and her husband were acting in concert to free defendants and advocate their positions in court. It appeared that by a single telephone call, a defendant could obtain his release and retain a lawyer to represent him. By retaining Mr. Sims, a defendant could also obtain his release from custody. In the case of Reginald and Dwayne Williams, for example, Mr. Jones, a former client of respondent's husband, elicited respondent's promise to release the defendants, and in the same phone call their father retained Mr. Sims.

The way in which respondent and her husband mingled her judicial functions with his practice of law contributed to the perception that they acted as a team. He prepared release orders at her request; she signed orders for his client and former clients, at his request, and upon his assurance that he was acquainted with a defendant.

Respondent was not obligated to consider the bail applications, contrary to her contentions. Other judges who had no association with her husband were available to consider the applications, and five of the defendants were charged with felonies, for which the law does not require bail or release. By considering their applications outside of court when she was not obligated to do so, she was encouraging the defendants to retain her husband to represent them in

later stages of the proceedings. This was especially so in the seven cases in which the applications were made on behalf of or by former clients of respondent or her husband or by persons with some other connection with her husband.

Such encouragement seriously undermined the integrity and independence of the judiciary in that it created the appearance that respondent was using her judicial office to favor and benefit her husband's law practice. See Sections 100.1, 100.2 and 100.3(a)(1) of the Rules Governing Judicial Conduct.

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

Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Shea and Mr. Wainwright concur, except that Mrs. DelBello dissents as to Charge I only and votes to sustain the charge, and Mr. Kovner dissents as to Charges II and IX and votes to dismiss the charges, and dissents as to sanction and votes that respondent be admonished.

Judge Ostrowski abstained.

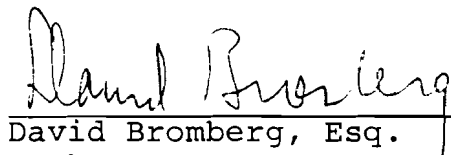
Mrs. Robb, Judge Alexander and Judge Rubin were not present.

#### 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: May 16, 1983

A handwritten signature in cursive script, reading "David Bromberg". The signature is written in dark ink and is positioned above a horizontal line.

David Bromberg, Esq.  
Member  
New York State  
Commission on Judicial Conduct

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DISSENTING OPINION  
BY MRS. DEL BELLO

I concur with the majority's findings that Charges II through XI of the Formal Written Complaint are sustained and that Judge Sims should be censured. I respectfully dissent as to the majority's dismissal of Charge I, however, and vote that the charge be sustained.

Regarding Charge I, respondent signed a "Jane Doe" warrant of arrest in People v. Jeane Ambroselli, notwithstanding that the complainant witness in the case, Frank Sims, was her son.

Frank Sims lives at home with respondent. The name "Frank Sims" is clearly listed on the supporting information which accompanied the warrant that respondent signed. Frank Sims' address is clearly listed on the information, immediately below his name, as "101 Depew". 101 Depew is the respondent's address.

Respondent asserted that she was unaware that her son was the complainant because she always referred to him by the nickname "Billy" and did not call him by his given name "Frank". This defense is incredible.



It is unconvincing that a mother would not recognize the name she gave her own son when it was placed before her in connection with a summons she was about to sign, and it is also incredible that she would not recognize her own address.

Even if respondent's defense is accepted at face value, she has at least violated those sections of the Rules Governing Judicial Conduct which require a judge to be diligent in the discharge of her duties. She failed to observe those standards by not realizing that she was signing a warrant requested by her son, and that such an act would violate the prohibition on a judge's participation in a case involving relatives. Sections 100.3(a)(1), 100.3(b)(1) and 100.3(c)(1)(iv) of the Rules. Indeed, respondent herself acknowledged that she was obliged to review carefully the supporting information before signing an arrest warrant, and that in this case she actually checked to see that Frank Sims has signed it.

For these reasons I vote that Charge I of the Formal Written Complaint be sustained.

Dated: May 16, 1983

  
Dolores DelBello

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DISSENTING OPINION  
BY MR. KOVNER

I dissent as to Charges II and IX and find no misconduct. The essence of the misconduct in the other charges was the involvement of Judge Sims' husband, an active practitioner, in her judicial responsibilities where the defendants or their families had been previously represented by respondent's husband.

There was no evidence that Mr. Sims had represented the defendants in Charges II and IX until after the release executed by respondent. Nor was there evidence in those cases that he had called police central booking, prepared the body of the release order, or delivered the release to the defendant. Indeed, in Charge II, the defendant had been subjected to an illegal arrest. Given the limited number of attorneys and judges in the minority community, the mere fact that respondent's husband was engaged to represent these defendants on the day following release by respondent would not necessarily, standing alone, constitute misconduct.

I believe the sanction of admonition would be appropriate.

Dated: May 16, 1983

  
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Victor A. Kovner, Esq.