

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

KAREN M. UPLINGER,

a Judge of the Syracuse City Court,
Onondaga County.

THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Alan J. Pope, Esq., Vice 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
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the Commission

Emil M. Rossi for the Respondent

The respondent, Karen M. Uplinger, a judge of the Syracuse City Court,
Onondaga County, was served with a Formal Written Complaint dated August 17, 2005,

containing two charges. Respondent filed an answer dated October 17, 2005.

On March 3, 2006, 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 March 9, 2006, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Syracuse City Court, Onondaga County since January 1, 2002.

As to Charge I of the Formal Written Complaint:

2. On or about June 2, 2004, respondent presided over *People v. Frederick H. Lawton*, in which the defendant was charged with Petit Larceny. Onondaga County Assistant District Attorney Christy Caratozzolo was the prosecutor. Tylan Bozeman was defense counsel.

3. The proceeding in *People v. Frederick H. Lawton* began at about 9:30 A.M. with discussions between respondent, Ms. Caratozzolo and Mr. Bozeman. *Voir dire* and jury selection concluded around 11:00 A.M.

4. The proceeding continued with instructions to the jury by respondent and opening statements by the Assistant District Attorney and defense counsel.

5. Prior to the testimony of the first witness, respondent stated that she preferred that the proceeding progress until 1:00 P.M. before taking a break. Respondent asked Ms. Caratozzolo if she was prepared to proceed, and Ms. Caratozzolo said that she had one witness whose testimony would be quick. Respondent told Ms. Caratozzolo, "...lets see how it goes" and "we'll play it by ear." Ms. Caratozzolo sent Michael Bosak and David Nolan, her second and third witnesses, to lunch, advising them to return by 1:30 P.M. Ms. Caratozzolo did not tell this to respondent.

6. At the conclusion of the first witness's testimony at about 11:45 A.M., Ms. Caratozzolo checked to see if her next witnesses were available. The witnesses were not available and respondent learned that they were not in the building. Ms. Caratozzolo advised respondent that the witnesses had been present at 10:00 A.M. Respondent recessed the proceeding for a few minutes, and at about 12:10 P.M., after a short discussion with counsel, she recessed again for lunch and to handle other court matters until 3:00 P.M.

7. Proceedings reconvened at 3:00 P.M. Mr. Bosak and Mr. Nolan appeared before respondent and the following ensued:

THE COURT: I don't know what happened this morning, and I'm going to ask you a couple questions, but I'll tell you, I can hold you in contempt of court right now, and you don't have permission to go anywhere until I excuse you, that means to the bathroom. If I have to get a deputy down here to watch the witness room, I will. I want to know where both of you were this morning, and why you left this building?

MR. BOSAK: Your Honor, my name is Mike Bosak. I did 26 years in law enforcement.

THE COURT: I appreciate that.

MR. BOSAK: The DA advised us that we wouldn't be heard before noon.

THE COURT: Who at the DA's office?

MR. BOSAK: Right here.

THE COURT: She said you could go to lunch.

MS. CARATOZZOLO: I said I didn't believe we would be going past noon.

THE COURT: All right, and then you said you were three blocks away, and it took you 45 minutes to get back.

MR. BOSAK: We were having lunch.

THE COURT: I ask where?

MR. BOSAK: It was an Irish restaurant over here by the Armory.

MS. CARATOZZOLO: Judge, they are not from the area.

MR. BOSAK: I'm from New York City, your Honor.

THE COURT: But I am really not happy. This cost me – don't argue with me. If you have been in law enforcement that long, you know how trials go. You know they can go one way or the other, and I cannot imagine that you would be that far away from this building and not get back here in at least 45 minutes or an hour.

MR. BOSAK: I'm sorry if we offended the Court.

THE COURT: I appreciate your apology.

MR. NOLAN: I apologize to the Court.

THE COURT: You sit out there in the witness room until called. You don't go to the bathroom without permission, understand?

MR. BOSAK: We won't, your Honor.

8. The witnesses were escorted by Ms. Caratozzolo to the witness room where they waited to be called. After about 30 minutes, the witnesses were advised that they could leave because a mistrial had been granted on grounds having nothing to do with them. The witnesses were not actually denied the use of bathroom facilities, and they never asked to use such facilities.

9. Respondent acknowledges that her actions toward the witnesses were impatient, undignified and discourteous.

As to Charge II of the Formal Written Complaint:

10. On or about October 13, 2004, respondent presided over *People v. Artis Bey*. The defendant had been convicted of Assault, Third Degree, and was before respondent for sentencing. Onondaga County Assistant District Attorney Darlene Donald was the prosecutor. Oscar McKenzie was defense counsel.

11. Pursuant to the regular practice in Syracuse City Court, Mr. Nushwat, the victim, began reading a statement to the court. Respondent repeatedly interrupted Mr. Nushwat. At one point, as Mr. Nushwat was reading his statement, respondent said to him in a loud, angry voice, "I don't believe half of anything you said so I'd appreciate it if you'd sit down."

12. At another point, as Mr. Nushwat was reading his statement, respondent said to the defendant: "You don't have to listen to this if you don't want to."

13. When Mr. Nushwat concluded his statement, respondent ordered him to leave the courtroom. When Ms. Donald objected, respondent sharply told Mr.

Nushwat to sit in the back of the courtroom, stating: “Please leave the courtroom...

Please get away from here. Get away from this bench. Sit in the back.”

14. During her discussion of the defendant’s sentence, respondent compared Mr. Nushwat to “Tommy Flanagan,” a fictitious pathological liar played by Jon Lovitz on the television program “Saturday Night Live,” by stating in a mocking voice that was intended to be an impression of the “Tommy Flanagan” character:

[T]his man testified *first* that he did not follow him into the elevator. *Oh yes*, then he testified that he did follow him into the elevator. *Then* he testified to something else, and *then* he testified to some – I thought I was watching Saturday Night Live.

* * *

I think if you listen to Jon Lovitz, you might get an impression of how I felt when I was listening to this testimony.

15. Respondent acknowledges that her treatment of Mr. Nushwat was insulting and demeaning. Respondent understands that it does not excuse her behavior and actions but wishes the Commission to know that at the time of the *Bey* sentencing proceeding she had been under stress stemming from the care that she was providing to her 94 year old mother for the two prior days resulting from an accidental fall and hospitalization.

16. After the proceeding, respondent recognized that her actions were inappropriate. Respondent immediately sought counsel from a superior court judge. In December 2004 respondent was contacted on Mr. Nushwat’s behalf by Charles Keller, Esq., who discussed Mr. Nushwat’s objection to the proceeding, and that all he wanted

was an apology. Respondent agreed to apologize to Mr. Nushwat, but Mr. Nushwat did not thereafter have further contact with Mr. Keller and respondent had no further contact with Mr. Nushwat. Respondent on her own volition attended an educational session designed by OCA for dealing with control in the courtroom.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.3(B)(3) of the Rules Governing Judicial Conduct (“Rules”) 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 insofar as they are consistent with the above findings, and respondent’s misconduct is established.

Every judge is required to be “patient, dignified and courteous” to litigants and others with whom the judge deals in an official capacity (Rules, §100.3[B][3]). The record here establishes that on two occasions respondent exhibited rude and demeaning conduct toward witnesses in proceedings before her.

In June 2004 respondent sternly admonished two witnesses who had been unavailable to testify earlier that day. Unbeknownst to the judge, the witnesses had left after being told by the prosecutor that they could go to lunch. Angry at the delay occasioned by the witnesses’ absence, respondent threatened to hold the witnesses in contempt, ordered the witnesses to be confined in a witness room until they testified, and

forbade them from using the bathroom facilities without her permission. Even after learning that the witnesses had been absent with the prosecutor's permission, respondent reiterated her order confining them to the witness room and prohibiting them from using the bathroom without permission. Whether or not respondent meant her statements about not going to the bathroom without permission to be taken literally, her comments were undignified and discourteous, as respondent has acknowledged.

In another case four months later, respondent demeaned and mocked the victim of an Assault, who was delivering a statement prior to the sentencing. Respondent repeatedly attempted to curtail the victim's statement, mockingly compared him to a comedic character, and directed him to leave the courtroom when he finished speaking although he had a right to remain for the sentencing; she permitted him to stay after the ADA objected. While a judge has considerable leeway at sentencing to explain the reasons for the sentence imposed, respondent's insulting, demeaning comments to and about the victim in the case were completely gratuitous. *See, Matter of Hanophy*, 1998 Annual Report 135 (Comm. on Judicial Conduct) (judge was censured for making inappropriate statements at sentencing in a highly publicized case, including discourteous remarks about the defendant's parents and gratuitous comments about the British legal system).

In mitigation, we note that respondent has acknowledged that her comments were inappropriate and that, subsequent to the events described above, she voluntarily attended an educational session sponsored by the courts for dealing with control in the

courtroom.

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

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

Mr. Coffey and Mr. Emery dissent and vote to reject the Agreed Statement on the basis that the proposed disposition is too harsh and that respondent should be admonished.

Ms. DiPirro and Judge Luciano were not present.

CERTIFICATION

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

Dated: March 15, 2006

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

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