

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

PENNY M. WOLFGANG,

a Justice of the Supreme Court,
Eighth Judicial District, Erie County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
John J. Bower, Esq.
David Bromberg, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Henry S. Stewart, Of Counsel) for the
Commission

Goldstein Goldman Kessler & Underberg (Harry D.
Goldman, Of Counsel) for Respondent

The respondent, Penny M. Wolfgang, a justice of the
Supreme Court, 8th Judicial District, was served with a Formal
Written Complaint dated October 24, 1986, alleging that she lent
the prestige of her judicial office to advance certain business

interests and charitable activities. Respondent filed an answer dated November 26, 1986.

On August 18, 1987, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement on August 28, 1987.

The administrator and respondent submitted memoranda as to sanction. Oral argument was waived.

On October 22, 1987, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Supreme Court and has been since January 1, 1986. She was a judge of the Erie County Court from January 1, 1979, to December 31, 1985.

2. In May 1983, respondent allowed herself to be featured in a commercial broadcast on radio station WJYE-FM, in which she identified herself as a judge and solicited support

for the Buffalo Stallions, a professional soccer team doing business for profit.

3. In the commercial, respondent stated:

Hi, I'm Judge Penny Wolfgang, Erie County Court Judge. I'd like to think I'm also a judge of what's good for the community. Like you, I'm a big fan of the Buffalo Stallions, and I know what they mean to Western New York. Right now the Stallions need our help. Support them. It's good for Buffalo.

4. Immediately after respondent's statement, an announcer stated, "Order Stallion season tickets now. Call 845-6200. Let's keep our Stallions...", whereupon singers continued, "...live and kicking at the Aud."

5. Respondent had no financial interest in the Buffalo Stallions and received no remuneration of any kind for the announcement.

6. As a result of a Commission investigation of her participation in the radio commercial, respondent was issued and received a letter of dismissal and caution dated January 18, 1984, advising her not to solicit funds for charitable or civic organizations or permit the use of the prestige of her office for that purpose and not to promote the private business interests of others.

As to Charge II of the Formal Written Complaint:

7. From 1984 to at least April 1986, respondent served as a member of the Board of Directors of the Western New York Chapter of the Cystic Fibrosis Foundation.

8. In November 1985, respondent participated in a fund-raising event of the Cystic Fibrosis Foundation by serving on a panel that chose the winner of "Buffalo's Sexiest Baldy Contest," sponsored by the organization.

9. The event was publicized in advance by poster advertisements and newspaper announcements, which noted that it was a fund-raiser and described judges of the contest as "celebrities" and "celebrity judges" but did not name respondent or any of the other members of the panel.

10. Prior to the contest, notices of the event were sent to members of the board of directors, noting that it was a fund-raiser and describing the contest judges as "celebrity judges." Prior to attending the event, respondent knew that it was to be a fund-raiser.

11. The event was held on November 14, 1985, at a restaurant in Williamsville. The panel of judges included respondent, a local television news anchor, an executive of a local newspaper, a town supervisor, an announcer for a local professional sports franchise and an administrator of a local college.

12. Respondent allowed herself to be photographed for publicity about the event by posing as she kissed the bald head of the winner of the contest.

13. The event raised approximately \$1,000 for the Cystic Fibrosis Foundation.

14. Prior to her participation in the event, respondent had received from the Commission a letter of dismissal and caution dated January 18, 1984, advising her not to solicit funds for charitable or civic organizations or permit the use of the prestige of her office for that purpose.

As to Charge III of the Formal Written Complaint:

15. In March 1986, respondent permitted her name, judicial title and photographic likeness to be used in the "Buffalo Home and Garden Show '86" in an exhibit entitled the "Judge Penny Wolfgang Interior Design Room."

16. The home and garden show was sponsored by the Niagara Frontier Builders' Association, the Western New York Nurserymen's Association and the Niagara Frontier Chapter of the National Spa and Pool Institute, three organizations promoting commercial interests. The show was held from March 15 to March 23, 1986, at the Buffalo Convention Center.

17. Respondent received no remuneration for her participation. She had no financial or social connections with the sponsors of the show.

18. In February 1986, respondent, her husband and their daughter met with the owner and operator of Creative Interiors, an interior design firm which was to design the "celebrity room." They discussed their decorating tastes and provided various personal items for display in the room, including respondent's sneakers, photographs of respondent and her family, a photograph of respondent in her judicial robe, law books belonging to respondent's husband and a gavel.

19. A week before the opening of the home and garden show respondent taped a segment of a weekly television show known as "Dimension," which she hosted on a local public television station. Respondent interviewed the owner and operator of Creative Interiors about home decorating and the creation of the "celebrity room." The show was aired on the day the home and garden show opened. A videotape of the segment was also played as part of the exhibit.

20. The "celebrity room" adjoined an exhibit of Creative Interiors at the home and garden show. A representative of Creative Interiors was present to provide visitors with a brochure about the business.

21. The "celebrity room" was labeled, "Judge Penny Wolfgang Interior Design Room. Designed and Decorated by Lorna Czarnota of Creative Interiors, Buffalo, New York." A placard listed each of the commercial exhibitors that had provided furnishings for the room.

22. In addition to their personal items, the room included life-size photographic posters of respondent, her husband, their daughter and their dog.

23. The official guide of the home and garden show highlighted the location of the "Judge Penny Wolfgang Interior Design Room" and indicated that the room was designed to respondent's tastes and that of her family by Creative Interiors.

24. The home and garden show was publicized in several newspaper advertisements that included references to "Penny Wolfgang's Family Room by Creative Interiors."

25. Respondent visited the exhibit three or four times before and during the show.

26. Prior to her participation, respondent had received from the Commission a letter of dismissal and caution dated January 18, 1984, advising her not to promote private business interests.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.5(a), 100.5(b)(2) and 100.5(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 5A, 5B(2) and 5C(1) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

By her radio commercial and her participation in the home and garden show, respondent lent the prestige of her judicial office to advance private business interests. This is prohibited by three sections of the Rules Governing Judicial Conduct. Section 100.2(c) provides, "No judge shall lend the prestige of his or her office to advance the private interests of others...." Section 100.5(a) permits a judge to engage only in avocational activities that "do not detract from the dignity of the office...." Section 100.5(c)(1) compels a judge to "refrain from financial and business dealings that tend to ... exploit judicial position...."

Respondent's participation in "Buffalo's Sexiest Baldy Contest" also detracted from the dignity of her office and violated Section 100.5(b)(2) of the Rules which prohibits the use of the prestige of judicial office for charitable fund-raising. See also, Matter of Kaplan, 1984 Annual Report 112 (Com. on Jud. Conduct, May 17, 1983); Matter of Turner, unreported (Com. on Jud. Conduct, Mar. 23, 1987).

A judge is permitted to engage in civic and charitable activities, such as respondent's leadership in the Cystic Fibrosis Foundation. The Code of Judicial Conduct encourages participation in community affairs: "Complete separation of a judge from extra-judicial activities is neither possible nor wise; he [or she] should not become isolated from the society in

which he [or she] lives." Commentary to Canon 5, ABA Code of Judicial Conduct.

However, a judge may not participate in charitable fund-raising. Nor may a judge trade on judicial office to aid commercial ventures, whether or not she has a personal or financial stake in them.

Respondent's misconduct is exacerbated by the fact that her participation in two of these events occurred after she was explicitly advised by the Commission not to exploit her position for such purposes. See, Matter of Quinn v. State Commission on Judicial Conduct, 54 NY2d 386, 392 (1981).

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

Mrs. Robb, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

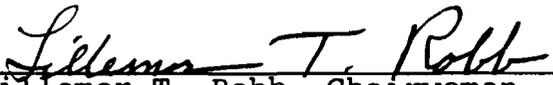
Mr. Bower, Mr. Bromberg and Mr. Sheehy dissent as to sanction only and vote that respondent be censured.

Judge Rubin was 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: November 19, 1987


Lillemor T. Robb, Chairwoman
New York State
Commission on Judicial Conduct

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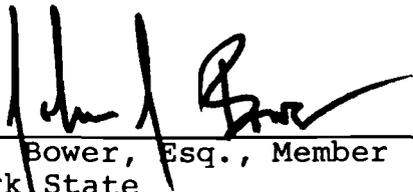
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I dissent from the sanction of admonition which is the mildest form of public discipline.

Respondent seems to suffer from incurable eczema of publicity seeking. It is not an excuse that judges should participate in charitable events. Generally, philanthropists perform their good deeds in anonymity. Respondent, however, in spite of having been previously cautioned, basks in the limelight of the media. From popularity to notoriety is but one short step. This is even more so where the conduct advances business interests.

Since admonition is but a reminder to do the right thing, it accomplishes little more than the previous caution, which was blithely disregarded. Accordingly, I vote for censure to show my deep sense of disapproval.

Dated: November 19, 1987



John J. Bower, Esq., Member
New York State
Commission on Judicial Conduct