

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

LINDA C. GRIFFIN,

a Judge of the Family Court,
Rensselaer County.

DETERMINATION

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Jill S. Polk, Of Counsel)
for the Commission

Larry J. Rosen for the Respondent

The respondent, Linda C. Griffin, a Judge of the Family Court, Rensselaer
County, was served with a Formal Written Complaint dated August 21, 2007, containing

three charges. The Formal Written Complaint alleged that in three cases respondent held litigants in summary contempt in contravention of statutory requirements. Respondent filed an answer dated September 7, 2007.

On April 29, 2008, 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 May 7, 2008, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent was admitted to the practice of law in New York in 1978 and has been a Judge of the Family Court, Rensselaer County, since 1994. Respondent has been an Acting Justice of the Supreme Court since 2001. Her current term expires in 2013.

As to Charge I of the Formal Written Complaint:

2. On July 21, 2005, respondent presided over *Vesna Russo v. Scott Russo*, a custody matter which was scheduled for trial on that date. The parties shared joint legal and physical custody of their eight-year-old son. In addition to respondent, the following were present: Ms. Russo and her attorney Robert E. Molloy, Mr. Russo and his attorney Andrew S. Jacobs, the child's law guardian Eugene P. Grimmick, and court

reporter Shannon Swart.

3. Ms. Russo testified on direct, *inter alia*, that she was an immigrant from Croatia, that she had been gainfully employed for years and that, after her estrangement from Mr. Russo, he made a complaint about her to the FBI alleging that she was a murderer, arsonist and terrorist who planned to kidnap their son. As a result, the FBI interviewed her twice at her place of employment, but no charges were ever brought against her.

4. During Ms. Russo's testimony, the attorneys for both parties agreed to play in open court recordings of certain conversations between Ms. Russo and Mr. Russo that Ms. Russo had made.

A. *Background:* The child alternated residing with his two parents. When he was with Mr. Russo, Ms. Russo was permitted to speak with him on the telephone between 7:30 PM and 8:00 PM. Ms. Russo testified that it was not unusual for her to call Mr. Russo's home during those hours and either leave a message that was not returned or speak to Mr. Russo but not her son.

B. *Recording of March 26, 2005:* The recording was played without interruption. It purports to be a phone conversation initiated by Ms. Russo for the purpose of speaking with her son. Ms. Russo repeatedly asks to speak with the child, and Mr. Russo appears to insist that she listen to his proposal for modifying the custody arrangement. Ms. Russo agrees to listen to the proposal, which Mr. Russo appears to read aloud. The two then argue over the proposal, and Ms. Russo continues to ask to speak to

the child, says she will call the police if Mr. Russo does not put the boy on the phone, then hangs up without the child having been given the phone.

C. *Recording of March 29, 2005*: The recording purports to be a conversation outside Mr. Russo's apartment, where Ms. Russo had gone to pick up things belonging to her son that had not been sent with him when he returned to her home from Mr. Russo's. The child was at Ms. Russo's apartment and was not present for the conversation. Ms. Russo repeatedly indicates she wants to pick up the boy's belongings and go home. Mr. Russo repeatedly asks her to talk. He says *inter alia* that she is "savage" and that she "killed" somebody, which she denies. She repeatedly asks to be let go. The following colloquy then occurs on the recording:

Mr. Russo: I'm going to tell you something right now, and this isn't a threat, I want to tell you something --

Ms. Russo: I just want to go home.

Mr. Russo: -- because these are my last words to you ever, and I intend to have my son taken away from you because you are indeed a savage, but I want to tell you and I want you to worry about it and to suffer the way that you and -- me and my son have suffered without you, you remember this, you told me something, I gave them as much information as I can because if you're going to do this to my son and me and my family --

Ms. Russo: Your family?

Mr. Russo: Then you deserve to get what you have coming to you, hon. I'm going to make sure the FBI locks you up --

Ms. Russo: Okay.

Mr. Russo: -- or removes you from this country, I promise you, and I will not stop until that's done. And at the same time, if you want to stop this charade of calling me a bad guy when you know that you are no angel, hon. I love you, and that's how bad I want you. I want you so bad --

5. At that point, respondent interrupted the recording and the following occurred:

Respondent: Excuse me. Stop the tape. I'm going to send Mr. Russo for a psychiatric evaluation --

Mr. Jacobs: I'm going to object. This is something that --

Respondent: That's fine. You can object. I've had some questions about his mental stability for some time now, and this about seals the deal. That we're several months after the divorce making -- and he still doesn't get it. He's making these kinds of accusations --

6. When Mr. Jacobs objected to the evaluation and indicated that there was a good faith basis for his client's allegations against the petitioner, respondent said she would not reconsider ordering the evaluation. When Mr. Russo interjected, respondent stated, "No sir, I'm not asking you to say anything," and, "Mr. Russo, if you don't shut your mouth right now, you'll be leaving in handcuffs with the court officer." When Mr. Russo twice again interrupted respondent and attempted to speak on his own behalf, respondent summarily held him in contempt of court, without explicitly warning him of a summary citation for criminal contempt or giving him an opportunity to defend himself against the charge by making a statement. Respondent then sentenced Mr. Russo to one day in the Rensselaer County Correctional Facility.

7. After Mr. Jacobs asked to be heard on the issue of contempt, respondent replied that a hearing was not necessary because the contempt “occurred in the presence of the Court.”

8. Respondent issued a commitment order, improperly indicating that Mr. Russo was found in “civil” contempt. Respondent failed to comply with Sections 752 and 755 of the Judiciary Law, which provide that the court must prepare an order “stating the facts which constitute the offense” thus enabling judicial review.

9. Respondent never ordered a psychiatric examination of Mr. Russo, although she did order an update to a previous mental health evaluation of the family members. Mr. Russo later moved for respondent’s recusal from the custody matter, alleging that she was biased because of her actions on July 21, 2005, and respondent denied the motion. The parties later settled the matter.

10. Mr. Russo spent less than one hour at the jail. After he was booked and processed, he was released due to the computation of time off for good behavior.

11. Respondent recognizes the impropriety of her conduct.

As to Charge II of the Formal Written Complaint:

12. On October 13, 2004, respondent presided over *Rensselaer County DSS SCU o/b/o* [Department of Social Services Support Collection Unit on behalf of] *Victoria Danish v. Dee E. Bowen*, a child support matter. In addition to respondent, the following were present: Ms. Danish, Timothy Connell of the Rensselaer County DSS, Carol Collier of the SCU, Mr. Bowen (the child’s father), his attorney Charles W. Thomas of the

Rensselaer County Public Defender's Office, and court reporter Shannon Swart.

13. The proceeding was a confirmation hearing on a support magistrate's determination that Mr. Bowen had failed to pay support in the amounts ordered by the court. The support magistrate had recommended a sentence of 60 days incarceration. Mr. Bowen disputed the amount of child support payments purportedly made. After the various participants tallied Mr. Bowen's recent payments, his lawyer stated that Mr. Bowen now owed \$2,400 in child support and was prepared to make regular payments of \$73 a week.

14. Respondent asked the petitioner, Ms. Danish, if she wanted to give Mr. Bowen "more time to see if he comes up with more money, or are you at the end of your rope?" When Mr. Connell of DSS said he was "at the end of [his] rope," respondent began to hear testimony from Ms. Collier, the SCU representative. Mr. Bowen's attorney interrupted the testimony to ask if the court would be willing to reduce Mr. Bowen's sentence if he were to admit without a hearing, to which respondent proposed a jail sentence of 45 days. Mr. Bowen then said, "I really don't understand. I'm not a lawyer. I'm sorry. I'm in the dark."

15. Respondent then allowed Mr. Bowen to speak with his attorney off the record. Respondent went back on the record to issue a warning to Mr. Bowen, stating, "You're going to be in contempt of Court if you open your mouth. You expect to come in and pretend you don't have the faintest idea what's going on when you're practically a professional respondent in the support part? You've been here repeatedly, been told

repeatedly over a period of years you need to make payments on time, in full.”

16. Mr. Bowen and his attorney again spoke to each other off the record. When respondent resumed the proceeding, Mr. Bowen immediately stated, “That was wrong, your Honor. I calculated myself --”, at which point respondent cut him off and said, “Take him into custody.”

17. Respondent then sentenced Mr. Bowen to seven days in the county jail for contempt of court without giving him an opportunity to defend himself against the charge by making a statement. She did ask Mr. Thomas, his attorney, whether he had “any alternative thoughts on this,” to which he replied “no.” Respondent adjourned the confirmation hearing for the parties to appear after Mr. Bowen completed his sentence.

18. Respondent issued a commitment order, improperly indicating that Mr. Bowen was found in “civil” contempt. Respondent failed to comply with Sections 752 and 755 of the Judiciary Law, which provide that the court must prepare an order “stating the facts which constitute the offense” thus enabling judicial review.

19. On October 20, 2004, after serving his sentence for contempt, Mr. Bowen reappeared before respondent with his attorney and agreed to pay at least \$1,000 toward the arrears by December 22, 2004, the adjourned date.

20. Respondent recognizes the impropriety of her conduct.

As to Charge III of the Formal Written Complaint:

21. On June 8, 2004, Cecelia Snyder, a 16-year-old appearing on a Person In Need of Supervision (PINS) petition, was brought before respondent, in

custody, for having run away from the Wynantskill juvenile detention facility. In addition to respondent, the following were present: an assistant county attorney (whose appearance was not noted on the transcript), Ms. Snyder, her law guardian Arthur G. Dunn (who was substituting for Ms. Snyder's regularly assigned law guardian), her mother and court reporter John W. Koletas. Ms. Snyder had appeared before respondent on numerous prior PINS and Juvenile Delinquency matters, dating back to 2001. Respondent had issued two prior warrants for Ms. Snyder, one of which was outstanding until May 19, 2004, when it was vacated and she was remanded to non-secure detention. Respondent issued a warrant the following day, on May 20, 2004, after Ms. Snyder ran away. It was this warrant that brought Ms. Snyder before respondent on June 8, 2004.

22. On June 8, 2004, the assistant county attorney was requesting that Ms. Snyder be remanded to the Wynantskill juvenile facility. Ms. Snyder stated at the beginning of the hearing that "I ain't going back" to Wynantskill again, and she asked to be sent "someplace else." Respondent replied by warning her twice that if she caused a disruption in the building or courthouse, she would be held in contempt and remanded to jail rather than returned to the juvenile facility.

23. Respondent spoke very bluntly to Ms. Snyder, telling her to "close your mouth," not say anything and "listen to me." Respondent explained to Ms. Snyder that she could go to jail for escaping from a juvenile detention facility and urged her to "follow the rules and then you could be picking out where you'd like to go to college instead of where you'd like to be detained."

24. Respondent then ordered Ms. Snyder remanded to the Wynantskill juvenile detention facility and said “we’ll see you on the 22nd,” referring to the next scheduled court appearance in the matter.

25. As she was led away, Ms. Snyder replied, “maybe” and, addressing her mother, “Bye, Mom.”

26. Respondent heard Ms. Snyder’s remark, and said the following.

Respondent: Okay. Bring her back. [Ms. Snyder] has been previously warned that any outburst or misbehavior would be followed by a finding of contempt. She’s held in contempt of court and is remanded to the Rensselaer County Jail for 14 days, at which point the Rensselaer County Sheriff is directed to transport her back to the Family Court Center for an appearance at 11:00 in the morning. 14 days.

Ms. Snyder’s Mother: Thank you, Judge. Thank you.

Respondent: The record should reflect that the last outburst by [Ms. Snyder] was in a loud and disruptive tone of voice, nearing a shout. Thank you.

27. Respondent issued a commitment order that failed to state the facts constituting the offense, as required by Sections 752 and 755 of the Judiciary Law.

28. Ms. Snyder served seven days of her jail sentence at the Rensselaer County Jail before respondent ordered her produced in court on June 14, 2004. On that date, respondent signed an order for Ms. Snyder’s transport from the jail to the Wynantskill juvenile detention facility on the following day.

29. The contempt did not result in any additional incarceration of Ms. Snyder; even if she had not been remanded to jail for contempt, she would have spent

those seven days in custody at the juvenile detention facility.

30. Respondent recognizes the impropriety of her conduct.

Supplemental Findings:

31. Respondent acknowledges that she was impatient with the litigants in the above cases, that she did not properly warn them that they faced contempt, that she did not offer them the opportunity to make a statement on their own behalf before she executed the contempt rulings, and that she sentenced them without a proper mandate of commitment that specifically set forth the circumstances of their contempt so as to enable appellate review.

32. In January 2006, respondent attended a program on criminal contempt sponsored by the Office of Court Administration and asserts that she has a better understanding of the laws and rules pertinent to contempt.

33. Respondent is remorseful and assures the Commission that lapses such as occurred in the cases here will not recur.

34. Respondent has been cooperative with the Commission throughout its investigative and adjudicative proceedings in this matter.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(3) and 100.3(B)(6) 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 through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The exercise of the enormous power of summary contempt for an offense that occurs in the judge's presence requires strict compliance with mandated safeguards, including giving the accused an appropriate warning and an opportunity to desist from the supposedly contumacious conduct and requiring the court to prepare an order "stating the facts which constitute the offense" and "specifically prescribing the punishment," thus enabling appellate review (Jud Law §§752, 755; *Doyle v. Aison*, 216 AD2d 634 [3d Dept 1995], *lv den* 87 NY2d 807 [1996]). Respondent did not comply with these procedural safeguards in the three cases depicted herein.

As the Court of Appeals has stated, "It is the need for the preservation of the immediate order in the courtroom which justifies the summary procedure..." (*Katz v. Murtagh*, 28 NY2d 234, 238 [1971]). In *Doyle*, the Third Department in 1995 held that the standards adopted by Rule in the First and Second Departments, limiting the exercise of the summary contempt power to "exceptional and necessitous circumstances" (22 NYCRR §§604.2[a][1]; 701.2[a]) when the court "reasonably believes that a prompt summary adjudication of contempt may aid in maintaining or restoring and maintaining proper order and decorum" (22 NYCRR §§604.2 [a][1][ii]; 701.2[a][2]), were "consistent with and required by the holding in *Matter of Katz v Murtagh*" (*supra*, 216 AD2d at 635). In applying this extraordinary remedy, every judge must scrupulously observe the procedural safeguards.

Regardless of whether the parties' initial behavior provided sufficient basis for a contempt holding, it was respondent's obligation to warn them explicitly that the conduct could result in a summary citation for criminal contempt resulting in incarceration and to give an opportunity to desist from the conduct. Respondent was also required to prepare an order stating the facts justifying the contempt citation, which is required for purposes of enabling appellate review. Although she issued a temporary commitment order in the cases, none of the orders specified the facts justifying the contempt citation.

While the litigants in these cases may have been contentious to varying degrees, it is clear that respondent abused the contempt power by failing to observe these mandated procedures, which resulted in the litigants' incarceration. One litigant was held in jail for an hour as a result of the contempt citation; the other two were held for seven days at the jail.

Respondent's failure to adhere to mandated contempt procedures constitutes misconduct warranting public discipline. *See, e.g., Matter of Van Slyke*, 2007 Annual Report 151 (Comm on Judicial Conduct); *Matter of Lawrence*, 2006 Annual Report 206 (Comm. on Judicial Conduct); *Matter of Mills*, 2005 Annual Report 185 (Comm on Judicial Conduct); *Matter of Teresi*, 2002 Annual Report 163 (Comm on Judicial Conduct); *Matter of Recant*, 2002 Annual Report 139 (Comm on Judicial Conduct).

In mitigation, we note that respondent is contrite and has acknowledged that she was impatient with the litigants and did not comply with statutory mandates. We also

note that she has been cooperative throughout the proceedings and has assured the Commission that such lapses will not recur.

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

Judge Klonick, Mr. Coffey, Mr. Belluck, Mr. Emery, Mr. Harding, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

Ms. DiPirro was not present.

CERTIFICATION

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

Dated: May 16, 2008

A handwritten signature in cursive script that reads "Jean M. Savanyu". The signature is written over a solid horizontal line.

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct