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

LORRAINE S. MILLER,

a Justice of the Supreme Court, 2nd Judicial District, Kings County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
E. Garrett Cleary, Esq.
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Lankenau Kovner & Kurtz (Richard D. Emery, Of Counsel) for Respondent

The respondent, Lorraine S. Miller, a justice of the Supreme Court, 2d Judicial District, was served with a Formal Written Complaint dated May 31, 1996, alleging two charges of misconduct. Respondent did not answer the Formal Written Complaint.

On May 31, 1996, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the

hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On June 6, 1996, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Supreme Court since January 1991. She was a judge of the Civil Court of the City of New York from January 1, 1980, to December 31, 1990.

2. Respondent and Supreme Court Justice S. Barrett Hickman had a close, personal and intimate relationship from July 1987 until early 1992.

3. In January 1992, Judge Hickman met Valerie Abroms; they were married later in 1992.

4. Respondent had confidential records from Valerie Abroms Hickman's New York matrimonial proceeding, including the divorce papers and an unsigned draft of a property settlement agreement.

5. Between January 1992 and December 1992, respondent made numerous inquiries concerning Valerie Hickman's travel plans, her home, her pending divorce proceeding and her prior marriages.

6. Between January 1, 1992, and March 3, 1993, respondent sent approximately 60 anonymous and harassing,

annoying and offensive mailings to various newspapers, businesses and individuals, including Judge and Ms. Hickman and their relatives, friends and neighbors. The mailings contained characterizations of Judge and Ms. Hickman which were malicious, vituperative and derisive. Some of the mailings included Valerie Hickman's New York divorce papers and characterizations of her that had been alleged in divorce papers from proceedings in New York and South Africa.

7. Respondent's conduct was motivated by anguish over her break-up with Judge Hickman. She now regrets it and agrees that she will not engage in similar or other harassing conduct toward the Hickmans.

As to Charge II of the Formal Written Complaint:

8. In late August and early September of 1992, respondent presided over the jury trial of Wilfredo Sorrentino, who was charged with Criminal Possession Of A Weapon. While the jury was deliberating, respondent and the attorneys discussed a plea offer.

9. On September 3, 1992, while the defendant was considering the offer, the jury submitted a note to respondent. While defense counsel was outside the courtroom, respondent told Assistant District Attorney Jeffrey Mueller inside the courtroom to proceed with the guilty pleas.

10. Respondent did not advise Wayne Wiseman, defense counsel, of the jury's note.

11. Respondent accepted the defendant's pleas to two counts of Criminal Possession Of A Weapon in satisfaction of the charge on trial and one in another criminal case involving him. The defendant was subsequently incarcerated.

12. As they were leaving the courthouse, Mr. Mueller told Mr. Wiseman about the note. Mr. Wiseman has indicated that he was satisfied with the result; he did not seek to withdraw the guilty pleas.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1, 100.2(a) and 100.3(a)(4)*, and Canons 1, 2A and 3A(4) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

On or off the bench, a judge is held to exacting standards of honor and propriety. (Matter of Backal v State Commission on Judicial Conduct, 87 NY2d 1, 7; see, Matter of Kuehnel v State Commission on Judicial Conduct, 49 NY2d 465, 469). Even wholly personal conduct by a judge has resulted in discipline. (See, Matter of Benjamin v State Commission on Judicial Conduct, 77 NY2d 296 [judge removed for sexual and physical abuse of an unwilling victim]; Matter of Bailey v State

*Now Section 100.3(B)(6)

Commission on Judicial Conduct, 67 NY2d 61 [judge removed for engaging in a fraudulent scheme to obtain hunting licenses]; Matter of Smith, 1995 Ann Report of NY Commn on Jud Conduct, at 137 [judge censured for, inter alia, engaging in an angry confrontation at a street fair]; Matter of Gloss, 1994 Ann Report of NY Commn on Jud Conduct, at 67 [judge removed who used a shotgun, physical threats, vulgarities and verbal intimidation in personal, property dispute]; Matter of Siebert, 1994 Ann Report of NY Commn on Jud Conduct, at 103, and Matter of Innes, 1985 Ann Report of NY Commn on Jud Conduct, at 152 [judges admonished for driving while highly intoxicated and causing accidents]; Matter of Dudzinski, 1986 Ann Report of NY Commn on Jud Conduct, at 93 [judge removed for accepting unlawful gratuities in connection with his private employment]). Such conduct affects public confidence in the integrity of the judiciary, even if it is removed from court proceedings and judicial duties, does not obstruct justice or does not involve the use of the prestige of judicial office.

It was especially inappropriate for respondent to use confidential court documents to which she had access in order to further her campaign of personal vengeance.

In the Sorrentino matter, it was improper for respondent to fail to advise both counsel of the jury's note and to accept a bargained guilty plea from the defendant, knowing that he was not aware of the note. Her conduct constituted an

improper ex parte communication (see, Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.3[a][4], renumbered Section 100.3[B][6] effective Jan. 1, 1996), compromised her impartiality and impaired confidence in her integrity and independence. "The critical consideration is that a fair trial be afforded to both parties, and, thus, high ethical standards must be observed...." (Matter of Rider, 1988 Ann Report of NY Commn on Jud Conduct, at 212, 215; see also, Matter of Klein, 1985 Ann Report of NY Commn on Jud Conduct, at 167).

Although serious and extensive, respondent's malicious harassment of the Hickmans does not constitute conduct that destroys her effectiveness on the bench. This is so, in part, because it was personal in nature and did not involve misuse of her administrative powers or her influence as a judge. (See, contra, Matter of Gelfand v State Commission on Judicial Conduct, 70 NY2d 211; Matter of Lo Russo, 1994 Ann Report of NY Commn on Jud Conduct, at 73). "Although high standards of conduct are expected and required of all judges because of their special place in this society, those who hold judicial office are subject to the same fallibilities of human nature as anyone else." (Matter of Figueroa, 1980 Ann Report of NY Commn on Jud Conduct, at 159, 161).

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

Mr. Berger, Mr. Cleary, Mr. Coffey, Ms. Crotty, Judge Luciano, Judge Marshall, Judge Newton, Mr. Sample and Judge Thompson concur.

Mr. Goldman and Judge Salisbury dissent for the reasons set forth in the appended opinion.

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: August 14, 1996

Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct

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OPINION BY MR. GOLDMAN IN WHICH JUDGE SALISBURY JOINS

I concur in the finding of misconduct as to Charge I and agree that respondent should be censured. I dissent, however, as to Charge II (the Sorrentino matter) because of what I believe to be the inadequacy of the agreed-upon record as it pertains to that charge. I therefore vote to reject the proposed statement of facts and would refer the matter for a full hearing on the complaint before a referee.

I ordinarily give considerable deference to an agreement between the Commission staff and a respondent judge since I believe that such agreements are necessary for the efficient and expeditious processing of cases by the Commission, especially in view of the severe budget cuts over the years that have decimated the Commission staff. I am unable to do so in this instance, however, because the proposed statement of facts with regard to Charge II fails to resolve critical points concerning respondent's conduct.

The agreed statement of facts (which, if accepted, would constitute the entire record in this matter) provides that during the jury deliberations the defendant was considering a plea offer. The jury submitted a note to respondent, the existence of which

respondent concealed from defense counsel and, in the absence of defense counsel, told the prosecutor to go forward with the guilty plea. The defendant, apparently unaware of the note, pleaded guilty and was subsequently sentenced to a term of imprisonment.

The agreed statement fails to address, first, whether respondent was aware of the contents of the note, and, second, what the contents were. If the note was innocuous, seeking, for instance, information about when the judge planned to allow the jurors to break for a meal, respondent's failure to notify the defendant and his counsel of the note would have been of little moment and, in my view, not misconduct. If, in the other extreme, respondent knew that the note disclosed that the jury had reached a verdict and deliberately concealed that fact from the defendant and his counsel, that act would have constituted serious misconduct. For such misconduct, censure might well be too lenient a sanction.

With such major omissions from the proposed statement of facts as to Charge II, I am unable to vote to approve the statement. The crucial issues discussed above should be resolved at a hearing, and the Commission should make its determination on a full record.

Dated: August 14, 1996

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