

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

VINCENT BARRINGER,

a Justice of the Olive Town Court,
Ulster County.

THE COMMISSION:

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

APPEARANCES:

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

David Lenefsky for the Respondent

The respondent, Vincent Barringer, a justice of the Olive Town Court,

Ulster County, was served with a Formal Written Complaint dated June 28, 2005,

containing three charges.

On August 1, 2005, 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 August 11, 2005, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Olive Town Court from 1970 to 1973, and from 1985 to the present. His present term of office expires on December 31, 2005. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. On or about April 9, 2002, respondent signed a letter on court stationery, a copy of which is annexed as Exhibit 1 to the Agreed Statement of Facts, which he sent to the Town of Olive Police, the New York State Police, the New York State Department of Environmental Conservation, the Ulster County Sheriff's Department and the New York City Department of Environmental Protection Police. Respondent stated in the letter that the Olive Town Court would "no longer enforce the 35 mph speed zone along Route 28A and Reservoir Road," and that "[a]ny tickets written for a speed under 55 mph [would] be dismissed," because "these speed zones [were]

illegally posted.”

3. Between April 1, 2002 and November 2004, respondent dismissed several charges issued to defendants for Speeding on Route 28A or Reservoir Road, including *People v. Danielle Barrie*, in which the defendant had pled guilty in writing; *People v. Thomas Huppert*, in which the defendant’s driver’s license had previously been suspended for failure to appear on the ticket; and *People v. L. W. Anderson*, which respondent dismissed in the interest of justice without setting forth on the record the reasons therefor as required by Section 170.40(2) of the Criminal Procedure Law.

4. On or about April 6, 2004, respondent stated at a meeting of the Olive Town Board that he and his co-judge had discussed the speed limit on Route 28A and felt it should be 45 miles per hour.

As to Charge II of the Formal Written Complaint:

5. From in or about July 2003 to in or about May 2004, in connection with his activities in opposition to the closure of the road across the Ashokan Reservoir by the New York City Department of Environmental Protection (DEP), respondent engaged in the following extra-judicial activities.

6. On or about July 1, 2003, at an Olive Town Board meeting, respondent suggested that the town board send New York City a notice that if any person was injured on the detour section of Route 28A, New York City would be held responsible.

7. On or about September 12, 2003, respondent acted as master of

ceremonies at an organized public protest against the closure of the road across the Ashokan Reservoir by the DEP, and made statements critical of the DEP and of its police chief, Ed Welch, notwithstanding that respondent presided over cases filed in his court by the DEP.

8. On September 12, 2003, at the organized public protest, respondent made statements that could be interpreted as publicly advocating (a) blowing up barriers across the closed road, (b) lying down in front of paving machines scheduled to work on the detour road (Route 28A) and (c) polluting the Ashokan Reservoir.

9. At the organized public protest on September 12, 2003, respondent publicly discussed a DEP case that was pending in the Olive Town Court, made statements prejudicial to the DEP, and referred to his judicial position.

10. At the organized public protest on September 12, 2003, respondent, who was not a candidate for election, introduced individuals whom he identified as candidates for elective office in the November 2003 elections and urged voters not to support those candidates who did not attend the protest.

11. On or about October 11, 2003, respondent told a reporter for the *Kingston Daily Freeman* that the death of a motorcyclist on the detour road around the Ashokan Reservoir, at a location within respondent's jurisdiction, was the sole fault of the DEP Police Chief Ed Welch, who had ordered the main road across the reservoir closed. Respondent's statement was reported in the *Daily Freeman* on October 12, 2003.

12. On or about October 12, 2003, respondent acted as master of

ceremonies at an organized public protest of the DEP's closure of the road across the Ashokan Reservoir and stated to the assemblage that he did not respect DEP Police Chief Ed Welch, who respondent said made his officers look like "idiots." Respondent also stated in reference to Chief Welch, "We know he lies; it's not the first time he's lied to us."

13. On or about April 6, 2004, at a meeting of the Olive Town Board, respondent *inter alia* made the following statements:

A. Respondent asked the board for a "commitment" regarding filing an Article 78 action against the City of New York for its alleged failure to adhere to the 1905 Watershed Act;

B. Respondent stated that he had spoken with Peter Graham, the Assistant District Attorney assigned to his court, and that Mr. Graham felt the Article 78 action "could be viable"; and

C. Respondent asked the members of the town board whether they were willing to pay \$1,000 toward attorney fees in an Article 78 action.

14. On or about May 4, 2004, at a meeting of the Olive Town Board, respondent *inter alia* made the following statements:

A. Respondent attempted to poll the members on the question of whether they would support a lawsuit against New York City;

B. Respondent stated that he had spoken with attorney Richard Riseley about representing the town in such an action;

C. Respondent asked whether the board would commit to paying an attorney \$15,000 for such a lawsuit; and

D. Respondent suggested making the lawsuit a referendum issue on the November 2004 ballot.

15. On or about May 5, 2004, just before a scheduled session of the Olive Town Court, respondent met with his co-judge Ronald Wright, several Olive Town Board members and attorney Peter Graham, who was scheduled to appear in a case before respondent that night, and discussed the possibility of legal action against the City of New York over the Ashokan Reservoir road closure.

As to Charge III of the Formal Written Complaint:

16. From on or about January 1, 2004, to the present, in cases involving charges filed by DEP Police against alleged trespassers at the Ashokan Reservoir, respondent has rendered dispositions favorable to the defendants and contrary to law, in that he has granted adjournments in contemplation of dismissal without the consent of the prosecution and imposed fines lower than the minimum required by law.

17. From on or about March 27, 2004, to on or about August 23, 2004, in six Trespass cases brought by DEP Police as specified on Schedule A annexed to the Agreed Statement of Facts, respondent granted adjournments in contemplation of dismissal without the consent of the prosecution, as required by Section 170.55 of the Criminal Procedure Law.

18. Between May 2004 and February 2005, in 21 cases filed by DEP

Police against alleged trespassers for violations of Environmental Conservation Law Section 11-2113, *i.e.* Posted Land Violations, as specified on Schedule B annexed to the Agreed Statement of Facts, respondent imposed fines of \$20, notwithstanding that the minimum penalty for this violation was \$25 pursuant to Environmental Conservation Law Section 71-0925.

19. Respondent's conduct set forth in paragraphs 17 and 18 above appeared to be the result of his bias against the DEP and the DEP Police, stemming from respondent's disagreement with the DEP over its decision to close the road over the Ashokan Reservoir.

Additional findings:

20. Respondent affirms that he will not remain in office beyond the expiration of his term on December 31, 2005.

21. Respondent affirms that he will neither seek nor accept judicial office at any time in the future.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(B)(1), 100.3(B)(3), 100.3(B)(6), 100.3(B)(8), 100.4(A)(1), 100.4(A)(2), 100.4(A)(3), 100.5(A)(1)(c) and 100.5(A)(1)(e) of the Rules Governing Judicial Conduct 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 ethical standards require a judge to avoid extra-judicial conduct that casts doubt on the judge's impartiality, interferes with the proper performance of judicial duties or detracts from the dignity of judicial office (Rules Governing Judicial Conduct, §§100.4[A][1], [2], [3]). Respondent's public advocacy against a local road closure by the New York City Department of Environmental Protection (DEP) violated these standards by demonstrating that he no longer had the ability to be and appear to be impartial in matters involving the DEP.

Upon assuming the bench, a judge surrenders certain rights and must refrain from certain conduct that may be permissible for others. Even otherwise laudable conduct must be avoided if it creates the appearance that a judge is lending the prestige of judicial office to advance private interests or impairs public confidence in judicial impartiality and independence. Respondent's highly visible public role on this local issue – as master of ceremonies at several organized public protests and as an outspoken critic of the DEP – was political in nature and inconsistent with the role of a judge. He spoke at the protests, introduced candidates for elective office and encouraged the audience to remember the missing candidates on Election Day. Respondent's advocacy on this issue extended to making statements in which he appeared to be promoting civil disobedience, including statements that could be interpreted as advocating the audience to blow up barriers across the closed road, lie down in front of paving machines scheduled to work

on the detour road and pollute the reservoir. Respondent's highly inflammatory statements about the DEP Chief of Police included an accusation to a reporter that the police chief was responsible for the death of a motorist on the alternate route. He also urged the town board to bring a lawsuit against the City of New York, consulted with the ADA in his the court about the lawsuit, and suggested to the town board that a referendum on the matter be placed on the November ballot. As respondent has acknowledged, such conduct was improper and inconsistent with his judicial role.

It was also improper for respondent to announce, in a letter signed by respondent and his co-judge and sent to law enforcement agencies, that in future cases he will not enforce the speed limit on a particular road because the speed limit signs were illegally posted. In the absence of a definitive ruling on the issue, such a pronouncement is inconsistent with the role of a judge in our legal system, which is to apply the law in each case in an impartial manner, regardless of the judge's personal views (Sections 100.2[A] and 100.3[B][1] of the Rules). *See Matter of Tracy*, 2002 Annual Report 167 (Comm. on Judicial Conduct); *see also, Matter of Wright* (determination issued today). Respondent's dismissal of charges in several such cases, including one case in which the defendant had pled guilty and another in which the defendant failed to appear, indicate that his decisions were based on prejudgment, consistent with his announced intent, not the individual merits of the cases.

In numerous cases brought by the DEP, respondent rendered dispositions contrary to law, in that he granted adjournments in contemplation of dismissal (ACDs)

without the consent of the prosecution as required (Crim. Proc. Law §170.55) and imposed fines lower than the minimum required by law. As a judge for more than two decades, respondent was presumably aware of the statutory requirements. His conduct not only was contrary to law but appeared to be the result of respondent's bias against the DEP and the DEP Police. *See, e.g., Matter of More*, 1996 Annual Report 99 (Comm. on Judicial Conduct) (judge dismissed cases without notice to the prosecution).

In imposing a sanction less than removal, we note that respondent has affirmed that he will neither seek nor accept judicial office beyond the expiration of his current term of office at the end of this year.

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

Mr. Goldman, Mr. Coffey, Ms. DiPirro, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Klonick, Mr. Pope and Judge Ruderman concur.

Judge Peters did not participate.

Judge Luciano was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State

Commission on Judicial Conduct.

Dated: October 11, 2005

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

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