

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

RUDOLPH L. MAZZEI,

a Judge of the County Court,
Suffolk County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Myriam J. Altman
Helaine M. Barnett, Esq.
Herbert L. Bellamy, Sr.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Lawrence S. Goldman, Esq.
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the
Commission

Giaimo & Vreeburg, P.C. (By Joseph O. Giaimo) for
Respondent

The respondent, Rudolph L. Mazzei, a judge of the
County Court, Suffolk County, was served with a Superceding
Formal Written Complaint dated December 26, 1991, alleging that
he signed his deceased mother's name to two applications for
credit cards and obtained and used an authorized user's card in
his own name. Respondent filed an amended answer dated February
21, 1992.

By order dated February 20, 1992, the Commission designated Walter Gellhorn, Esq., as referee to hear and report proposed findings of fact and conclusions of law.

On February 24, 1992, respondent moved to dismiss that portion of the charge that alleged a violation of the Code of Professional Responsibility. The administrator of the Commission opposed the motion by affirmation dated March 9, 1992. Respondent filed a memorandum of law on March 13, 1992, and the administrator replied on March 19, 1992. By determination and order dated April 14, 1992, the Commission denied respondent's motion.

A hearing was held on May 20, 21 and 27, June 16, 22 and 23 and July 16, 1992, and the referee filed his report with the Commission on August 31, 1992.

By motion dated September 28, 1992, the administrator moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion by cross motion dated October 27, 1992.

On October 29, 1992, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent, a lawyer, has been a judge of the Suffolk County Court since January 1983. His term expires December 31, 1992, and he was not nominated for re-election. He

was a judge of the Suffolk County District Court from 1974 to 1982.

2. In the Spring of 1989, respondent received at his home a "pre-approved" application for a Visa Gold credit card with a \$5,000 line of credit. The application was addressed to his mother, Carmela, who had lived with respondent before she died on April 3, 1989.

3. Respondent completed the application form and signed his mother's name to resemble her signature. He requested a second card for himself as authorized user and mailed the application to Chemical Bank. The application bore only one purported signature, that of Carmela Mazzei.

4. The bank rejected the application; it was received after May 19, 1989, the expiration date of the offer.

5. In the Fall of 1989, respondent received at his home another credit card application from Chemical Bank. It was also addressed to his mother and included a pre-approved, \$5,000 line of credit on a Visa Gold card.

6. Respondent again completed the form, signed his mother's name to resemble her signature, requested a user's card for himself and mailed the application to Chemical Bank. The application bore only one purported signature, that of Carmela Mazzei.

7. Respondent put false information on the credit card applications: he listed his mother's birth date as 1909, even though she was born 10 years earlier; he listed her occupation as

retired when she was dead; he included in what he labelled "family income" the income that she had received from social security, even though her social security payments had ceased when she died.

8. Respondent testified that his purpose in signing his mother's name was to obtain a line of credit available to him that would not be known to his wife. At the time, respondent and his wife were having marital difficulties that centered around financial matters. Since respondent's wife did not open mail that came to their home addressed to Carmela Mazzei, respondent saw the credit card as a means of concealing from his wife that he was spending money, he testified.

9. On December 4, 1989, Chemical Bank issued a Visa Gold card to Carmela Mazzei and an authorized user's card to respondent and sent the cards to respondent's home.

10. On December 11, 1989, at 6:55 P.M., respondent used the card bearing his name to obtain a \$2,000 cash advance at an Atlantic City casino cash machine.

11. Between 9:51 P.M. and 10:11 P.M., respondent attempted fourteen times to use the card to obtain another \$2,000 cash advance and once to obtain \$1,000, but the bank rejected the requests.

12. At 11:31 P.M., a bank employee, Sanjay Mukhi, ordered the account held so that no cards could be used.

13. On December 12, 1989, respondent spoke by telephone with Mr. Mukhi and said that he wanted the matter cleared up so that his "wife" could use the card.

14. On December 13, 1989, respondent again spoke with Mr. Mukhi. Respondent said that Carmela Mazzei was his mother and wanted to use her card.

15. On December 14, 1989, respondent spoke by telephone to another Chemical Bank employee, Paul Capobianco. Respondent told Mr. Capobianco that he wanted the matter cleared up so that his mother could use her card and urged the bank employee not to call Carmela Mazzei because it would upset her. When Mr. Capobianco said that he had learned that Carmela Mazzei's social security number had been used to file a death claim in April 1989, respondent replied that his mother must have mistakenly used the social security number of his father on her credit card application.

16. Respondent's statements to the bank employees were dishonest, deceitful, false and misleading, in violation of DR1-102(A)(4) of the Code of Professional Responsibility.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1 and 100.2, and Canons 1 and 2 of the Code of Judicial Conduct. The charge in the Superceding Formal Written Complaint is sustained insofar as it

is consistent with the findings herein, and respondent's misconduct is established.

Over a period of several months, respondent engaged in a pattern of deceptive behavior which violated his ethical obligations as a lawyer and a judge. A lawyer should not engage in dishonesty, fraud, deceit or misrepresentation (DR1-102[A][4] of the Code of Professional Responsibility), and a judge should act "at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary," (Rules Governing Judicial Conduct, 22 NYCRR 100.2[a]).

On or off the bench, a judge is "cloaked figuratively, with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others." (Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465, 469). Deception "is antithetical to the role of a Judge who is sworn to uphold the law and seek the truth," (Matter of Myers v. State Commission on Judicial Conduct, 67 NY2d 550, 554) and "cannot be condoned..." (Matter of Intemann v. State Commission on Judicial Conduct, 73 NY2d 580, 582). This is true for behavior on or off the bench, sworn or unsworn. (See, e.g., Matter of Levine v. State Commission on Judicial Conduct, 74 NY2d 294; Matter of Gelfand v. State Commission on Judicial Conduct, 70 NY2d 211; Matter of Reeves v. State Commission on Judicial Conduct, 63 NY2d 105; Matter of Steinberg v. State

Commission on Judicial Conduct, 51 NY2d 74; Matter of Mossman, 1992 Ann Report of NY Commn on Jud Conduct, at 59).

During a seven-month period, respondent engaged in unlawful and serious acts of deception. On two occasions, he signed his dead mother's name to a credit card application in order to procure a user's card for himself.

The reason for this, he contends, was to deceive his wife; he did not want her to know that he had another credit card. In the process, he also deceived the bank which issued the card. By making his deceased mother appear to be alive and a good credit risk, he willfully and maliciously provided the bank with false information about her age and income.

He was discovered using his falsely obtained credit card while gambling in Atlantic City. The bank became suspicious when he attempted to obtain more cash. Questioned by investigators, he repeatedly misled them by implying his mother was alive.

It is unconscionable for a lawyer and judge to engage in such actions for any reason. By perpetrating a fraud and then lying to conceal his actions, respondent disgraced himself, compromising the integrity of his office in the process.

Respondent's duplicity in this case clearly demonstrates that he fails to meet the standards for office as set forth by the Court of Appeals:

"Standards of conduct on a plane much higher than for those of society as a whole, must be observed by judicial officers so that the integrity and independence of the judiciary will be preserved. A Judge must conduct his everyday affairs in a manner beyond reproach." (Kuehnel, supra).

By his conduct, respondent has demonstrated that he is unfit to serve as a judge.

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mrs. Del Bello, Judge Salisbury and Judge Thompson concur.

Mr. Goldman dissents as to sanction only and votes that respondent be censured.

Mr. Cleary and Mr. Sheehy were 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: December 23, 1992

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

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

RUDOLPH L. MAZZEI,

DISSENTING
OPINION BY
MR. GOLDMAN

a Judge of the County Court,
Suffolk County. -----

I fully concur with the majority's finding that respondent committed serious misconduct. However, I believe that the appropriate sanction should be censure and therefore respectfully dissent from the majority's determination that respondent be removed from office.

The sanction of removal is an extreme one and should be reserved for "truly egregious circumstances" and not instances of "poor judgment, or even extremely poor judgment." (Matter of Cunningham v. State Commission on Judicial Conduct, 57 NY2d 270, 275). Respondent asserts that his primary purpose in using his deceased mother's name to get an additional credit card was to conceal his spending from his wife, with whom he had marital problems centered around financial difficulties, and the evidence tends to support that assertion. Indeed, it appears that at the time respondent used the credit card to obtain the \$2,000 cash advance, he had borrowing power on other credit cards well in excess of that amount. Significantly, the credit card respondent used to borrow the money was the card issued in his name, and further, it appears he repaid the advance promptly.

Although respondent's conduct constituted, as the majority correctly states, "deception," the deception was designed to receive a credit card without the knowledge of his wife and not to defraud the bank of money. While such behavior shows extremely poor judgment and is inexcusable, it should not be considered as serious as an effort to deprive the bank of funds.

Lastly, and perhaps most importantly, respondent's conduct was entirely removed from his judicial duties. While "a Judge must conduct his everyday affairs in a manner beyond reproach," (Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465, 469), and off-the-bench misconduct by a judge may certainly in some instances provide grounds for removal (see, e.g., Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74), such behavior does not ordinarily call for as serious a sanction as it would if it were related to a judge's official responsibilities.

Respondent has served as a judge with competence for nineteen years; nine in the District Court, ten in the County Court. His misconduct here, while serious, is not so egregious that it requires his removal from office.

Dated: December 23, 1992


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