

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

THOMAS M. DIMILLO,

a Judge of the Lockport City Court,
Niagara County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of Counsel),
for the Commission

Joel Daniels for respondent

Respondent, Thomas M. DiMillo, a Judge of the Lockport City Court, Niagara
County, was served with a Formal Written Complaint dated August 1, 2019, containing
two charges. Charge I of the Formal Written Complaint alleged that from November

2005 through December 2016, respondent presided as the judge of record for more than 2,500 civil matters involving Cornerstone Community Federal Credit Union (“CCFCU”), notwithstanding that his brother was an officer and board member of CCFCU. Charge II of the Formal Written Complaint alleged that from December 2016 through May 2017, respondent presided over the small claims matter of *Salvatore Angelo DBA Angelo’s Snowplowing v. Cornerstone CFCU DBA Cornerstone Community Federal Credit Union* (i.e. CCFCU), notwithstanding that his brother was at the time a member of the board and an officer of CCFCU.

On August 22, 2019, the Administrator, respondent’s counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, 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 September 12, 2019, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent was admitted to the practice of law in New York in 1999. In November 2005, he was appointed to serve as a part-time judge of the Lockport City Court, Niagara County; he was re-appointed in 2011. In 2017, after the position became elective rather than appointive, respondent was elected as a Lockport City Court Judge. His current term expires on December 31, 2027. By designation of the Administrative Judge of the Eighth Judicial District, respondent has served as an Acting Family Court Judge, Niagara County, since 2014.

2. Respondent's brother, A. Angelo DiMillo, is an attorney whose law office is in Lockport, New York. Since 1989, Mr. DiMillo has been a member of the Board of Directors of the Cornerstone Community Federal Credit Union, a credit union in Lockport, New York. Mr. DiMillo served as Vice President of the CCFCU Board from 1992 to June 1994, as President from June 1994 to March 1995, and as First Vice Chairman since April 1995. He also sits on the board's Executive Committee. Mr. DiMillo's positions with the CCFCU are uncompensated.

3. Upon becoming a judge, respondent advised court staff that cases involving his brother's law firm should be assigned to a judge other than himself. Respondent did not issue such an instruction regarding CCFCU cases.

4. Respondent avers that, until the Commission's inquiry in this matter, he was unaware of the rule disqualifying a judge from cases where a person he knows to be within the sixth degree of relationship to him is an officer of a party.¹

As to Charge I of the Formal Written Complaint

5. Beginning in November 2005, respondent began handling nearly all of the civil, building-code, landlord-tenant and small claims cases, and other matters involving minor violations, that were filed in the Lockport City Court.

6. From November 2005 through December 2016, respondent was the judge of record for 2,548 cases in which CCFCU was the plaintiff, notwithstanding that, at the time, his brother was a board member and officer of the CCFCU. All of the defendants

¹ Section 100.3(E)(1)(d)(ii) of the Rules Governing Judicial Conduct.

in these cases either defaulted or otherwise did not contest the claim; consequently, there were no trials. A schedule of these cases is appended to the Agreed Statement.

7. At no time during the pendency of these cases did respondent offer to recuse himself or disclose that his brother was affiliated with CCFCU, nor had he taken measures to ensure that cases involving CCFCU be assigned to another judge.

As to Charge II of the Formal Written Complaint

8. On February 9, 2017, respondent presided over the small claims hearing in Lockport City Court in the matter of *Salvatore Angelo DBA Angelo's Snowplowing v. Cornerstone CFCU DBA Cornerstone Community Federal Credit Union*, notwithstanding that, at the time, his brother was a board member and officer of the CCFCU. Plaintiff Salvatore Angelo appeared *pro se* before respondent, seeking \$5,000 on a multi-month contract that CCFCU had terminated on December 13, 2016, after his truck allegedly leaked fluid at and onto a CCFCU parking lot.

9. Mr. Angelo presented evidence at the small claims hearing concerning several factual issues. Counsel for CCFCU presented evidence of multiple alleged contract breaches by Mr. Angelo.

10. In a decision dated March 13, 2017, respondent found that CCFCU had lawfully terminated the contract. He also found that Mr. Angelo was entitled to compensation for work that he had performed for CCFCU in December 2016. Respondent ordered judgment in favor of Mr. Angelo for \$200 and \$20 for court costs.

11. On May 9, 2017, a satisfaction of judgment was received by the Lockport City Court, attesting that the judgment was fully paid to Mr. Angelo on March 20, 2017.

12. At no time during the pendency of the *Angelo* case did respondent offer to recuse himself or disclose that his brother was affiliated with CCFCU.

Additional Factors

13. Respondent has presided as the judge of record for approximately 65,000 cases in the Lockport City Court.

14. Respondent avers, and the Administrator has no evidence to the contrary, that prior to this matter, respondent never spoke with his brother about his voluntary and uncompensated membership on the CCFCU board.

15. Respondent has now advised court staff that he should not be assigned to or preside over any CCFCU matter. Given his brother's affiliation with CCFCU, respondent recognizes the importance of avoiding even the appearance of a conflict in being the judge of record in CCFCU cases, even where a party-defendant defaults rather than tries the case. Respondent appreciates that he should have instituted such safeguards at the outset of his tenure as a judge.

16. Respondent has been cooperative with the Commission throughout its inquiry and regrets his failure to abide by the Rules in this matter. He pledges to conduct himself in accordance with the Rules for the remainder of his tenure as a judge.

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) and Section 100.3(E)(1)(d)(ii) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause pursuant to Article 6, Section 22, subdivision (a) of the Constitution and Section 44, subdivision 1 of the Judiciary Law. Charges I and II of the Formal

Written Complaint are sustained and respondent's misconduct is established.

A judge's disqualification is required in matters "in which the judge's impartiality might reasonably be questioned" including where a relative within the sixth degree of relationship to the judge "is an officer, director or trustee of a party." (Rules, §100.3(E)(1)(d)(ii)) A judge must avoid the appearance of impropriety and must disqualify himself or herself in matters in which his or her "impartiality might reasonably be questioned." (Rules, §§100.2(A), 100.3(E)(1)) Pursuant to the plain language of Section 100.3(E)(1)(d)(ii) of the Rules, respondent was required to disqualify himself from matters involving the CCFCU because his brother was an officer and board member of the CCFCU during the relevant time period. By being the judge of record for over 2,548 uncontested matters in which the CCFCU was the plaintiff (as set forth in Exhibit A to the Agreed Statement) and presiding over a contested matter in which the CCFCU was the defendant, respondent violated these clear requirements.

By failing to disqualify himself in numerous matters as the Rules specifically mandated, respondent created an appearance of impropriety and acted in a manner that was inconsistent with his obligation to maintain high standards of conduct in order to promote public confidence in the integrity of the judiciary. (Rules, §§100.1, 100.2(A), 100.3(E)(1)(d)(ii)) By his conduct, respondent undermined public confidence in the impartiality of the judiciary. *See, Matter of Little*, 1988 NYSCJC Ann. Report 191, 193 ("A reasonable person might question respondent's ability to be impartial in a case in which a principal of the corporate plaintiff was also an officer of a long-standing client of respondent's law firm."); *Matter of Wait*, 67 N.Y.2d 15, 18 (1986) (in removing a judge

who presided over six matters involving family members, the Court stated, “The handling by a judge of a case to which a family member is a party creates an appearance of impropriety as well as a very obvious potential for abuse, and threatens to undermine the public’s confidence in the impartiality of the judiciary.”)

While 2,548 of the CCFCU matters for which respondent was the judge of record were uncontested, that has no bearing on whether respondent’s failure to disqualify was improper.² In another matter involving a judge’s failure to disqualify, the Court of Appeals held,

The Rules Governing Judicial Conduct create no distinction between contested and uncontested/ministerial matters. The perception that these attorneys were in a position to be accorded preferential treatment is based on their relationships to the judge, not the type of proceedings.

Matter of Doyle, 23 N.Y.3d 656, 661 (2014) (citations omitted)

In addition to the 2,548 uncontested matters, respondent also presided over a contested matter in which the CCFCU was the defendant and the plaintiff was *pro se*. Respondent presided over a small claims hearing in that matter during which counsel for the CCFCU presented evidence as did the plaintiff. After the hearing, respondent issued a decision in the matter finding that the CCFCU had lawfully terminated the contract with plaintiff’s company and plaintiff was entitled to compensation for work performed. A reasonable person might question respondent’s ability to be impartial in such a matter in light of his brother’s relationship with the CCFCU. Respondent, an

² That those matters were uncontested was considered in determining the appropriate sanction for respondent’s misconduct.

experienced attorney, who has been a judge since 2005, should have understood that disqualification was necessary given his brother's position as an officer of the CCFCU.³

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent was cooperative with the Commission and there was no indication that respondent gave preferential treatment to the CCFCU. Respondent acknowledged that his conduct was improper and that he should have taken steps to ensure that he did not preside over CCFCU matters at the outset of his tenure as a judge. We also note that respondent has expressed remorse for his conduct. We trust that respondent has learned from this experience and in the future will act in accordance with his obligation to abide by the Rules Governing Judicial Conduct.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Mazzairelli, Judge Miller and Mr. Raskin concur.

Judge Leach and Ms. Yeboah were not present.

³ Respondent claimed that until the Commission's inquiry began, he was unaware of the subsection of the Rules requiring mandatory disqualification where a person he knows to be within the sixth degree of relationship to him is an officer of a party. It is well-settled that this is no excuse. *Matter of VonderHeide*, 72 N.Y. 2d 658, 660 (1988) ("Ignorance and lack of competence do not excuse violations of ethical standards. As a Judge, petitioner had an obligation to learn about and obey the Rules Governing Judicial Conduct." (citation omitted)); *Matter of Edwards*, 2008 NYSCJC Ann. Report 119 (2007). Moreover, it should have been apparent to respondent that, given his brother's longstanding role at the CCFCU, presiding over matters in which the CCFCU was a party created the appearance of impropriety.

CERTIFICATION

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

Dated: October 1, 2019



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct