

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

PENNY M. WOLFGANG,

DETERMINATION

a Justice of the Supreme Court, Eighth
Judicial District, Erie County.

THE COMMISSION:

Honorable Eugene W. Salisbury, Chairman
Henry T. Berger, Esq.
Jeremy Ann Brown, C.A.S.A.C.
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel W. Joy
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission

Connors & Vilaro (By Terrence M. Connors) for Respondent

The respondent, Penny M. Wolfgang, a justice of the Supreme Court, Eighth
Judicial District, Erie County, was served with a Formal Written Complaint dated January
19, 2000, alleging that respondent engaged in improper business activity and lent the

prestige of judicial office to advance private interests by playing the role of a judge in a commercial motion picture.

On May 10, 2000, the Administrator of the Commission, respondent and respondent's counsel 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, jointly recommending that a sanction no more severe than admonition be determined, and waiving further submissions and oral argument.

On May 11, 2000, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Supreme Court, Eighth Judicial District since 1986.
2. In or about April 1998, respondent played the role of a judge in the commercial motion picture "Buffalo 66". Respondent appeared in the movie in one brief scene, wearing her judicial robe and presiding in court over a sentencing proceeding. Her nameplate, visible in the scene, identified her by name. The scene was filmed on a Saturday.
3. For her appearance in the movie, respondent received compensation of \$466.00. Respondent subsequently donated the remuneration to charity.
4. Prior to her appearance in the movie, respondent did not request an opinion from the Advisory Committee on Judicial Ethics and was not aware of Advisory

Opinion 96-134 (1996), which states that a full-time judge should not be an actor in a commercial motion picture.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.2(C) and 100.4(D)(3) of the Rules Governing Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

By her appearance in a commercial movie, in which she played the role of a judge, wore her judicial robe and was identified by name, respondent lent the prestige of judicial office to advance private interests. Such conduct is prohibited by Section 100.2(C) of the Rules Governing Judicial Conduct and detracts from the dignity of judicial office.

Respondent, who was compensated for her appearance in the movie, also violated the ethical standards which prohibit a full-time judge from engaging in business activity or accepting private employment from any entity organized for profit. The movie was a commercial enterprise, and by participating in the movie, respondent contributed to that enterprise, in violation of Section 100.4(D)(3) of the Rules Governing Judicial Conduct.

While this misconduct, standing alone, might otherwise warrant a confidential disposition, we note that respondent has previously been disciplined for engaging in improper extra-judicial activities. In 1987, respondent was admonished for lending the prestige of her judicial office to advance certain business interests and charitable activities.

(See Matter of Wolfgang, 1988 Ann Report of NY Commn on Jud Conduct, at 245.) In that matter, two of the three instances of misconduct occurred after respondent had received a Letter of Dismissal and Caution, explicitly advising her not to use her judicial position to promote private business interests. Thus, respondent should have been especially sensitive to the ethical restrictions concerning extra-judicial activities.

We also note that, notwithstanding these concerns, respondent did not seek advice from the Advisory Committee on Judicial Ethics prior to her appearance in the movie. Had respondent done so, she would have been aware of Advisory Opinion 96-134 (1996), which specifically states that a full-time judge should not be an actor in a commercial motion picture.

In view of the numerous warnings respondent has received concerning her improper extra-judicial activities, any future conduct which violates the ethical rules concerning such conduct may well be met with a more severe sanction.

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

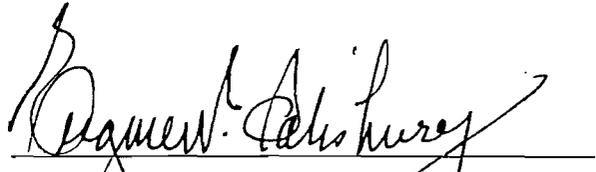
Judge Salisbury, Mr. Berger, Mr. Coffey, Mr. Goldman, Judge Joy, Judge Marshall, Mr. Pope and Judge Ruderman concur.

Ms. Brown, Ms. Hernandez and Judge Luciano were not present.

CERTIFICATION

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

Dated: July 5, 2000

A handwritten signature in black ink, appearing to read "Eugene W. Salisbury", written over a horizontal line.

Hon. Eugene W. Salisbury, Chairman
New York State
Commission on Judicial Conduct