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

BRUCE McM. WRIGHT,

a Justice of the Supreme Court, New York County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Myriam J. Altman
Henry T. Berger, Esq.
John J. Bower, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
John J. Sheehy, Esq.

APPEARANCES:

For the Commission:

Gerald Stern (Robert H. Tembeckjian, Of Counsel)

For the Respondent:

Center for Constitutional Rights (Morton Stavis and Stephanie Y. Moore, Of Counsel)

Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C. (By Judith Levin)

Mayerson, Zorn, Perez & Kandel, P.C. (By Harold A. Mayerson)

Victor M. Goode

The respondent, Bruce McM. Wright, a justice of the Supreme Court, 1st Judicial District, was served with a Formal Written Complaint dated July 28, 1987, alleging that he lent the prestige of his office to advance private interests and improperly failed to disqualify himself. Respondent filed an answer dated October 20, 1987.

By order dated October 19, 1987, the Commission designated the Honorable Morton B. Silberman as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on December 21 and 22, 1987, and the referee filed his report with the Commission on March 7, 1988.

By motion dated April 6, 1988, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a finding that respondent be censured. Respondent opposed the motion by cross motion on May 2, 1988. The administrator filed a reply on May 4, 1988.

On May 13, 1988, 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.

Preliminary findings:

1. Respondent is a justice of the Supreme Court and has been since January 1, 1983. He was a judge of Civil Court

of the City of New York from 1980 to 1982 and was a judge of the Criminal Court of the City of New York from 1970 to 1979.

2. In 1975, Mia Lancaster appeared before respondent in a small claims proceeding. Thereafter, respondent spoke with Ms. Lancaster on occasion in the halls of the courthouse or in his chambers. On one occasion in 1979, Ms. Lancaster invited respondent and his wife to dinner at her home, and they accepted.

As to paragraphs 4(a) and 4(b) of Charge I of the Formal Written Complaint:

3. On August 22, 1975, Ms. Lancaster came to respondent and complained that she had lost a modeling job after she had been arrested on a charge brought by a former boyfriend. Ms. Lancaster presented respondent with court documents that indicated that the case had been adjourned in contemplation of dismissal.

4. Respondent drafted and typed on stationery of the criminal court two letters to a modeling agency and a fur company, beseeching them to reinstate Ms. Lancaster as a model.

5. In the letter to the modeling agency, respondent said the charges against Ms. Lancaster "had no basis in fact and constituted an act of vindictiveness" on the part of the boyfriend. Respondent said that Ms. Lancaster was "blameless."

6. In the letter to the fur company, respondent indicated that it appeared that Ms. Lancaster "was falsely and

unjustifiably charged" and that the charges arose from "personal bias and vindictiveness." He referred to the boyfriend's "unpraiseworthy conduct."

7. Respondent had not presided over the case against Ms. Lancaster and had no knowledge of the facts of the case other than her representations and the court records that she supplied.

As to paragraphs 4(c), 4(d) and 4(g) of Charge I of the Formal Written Complaint:

8. On December 29, 1980, respondent granted Ms. Lancaster leave to prosecute as a poor person in Mia Lancaster v. R&D Realty et al., based on an affidavit sworn to by Ms. Lancaster.

9. On May 9, 1983, and September 19, 1983, respondent decided motions in Mia Lancaster v. R&D Realty et al.

As to paragraphs 4(e) and 4(f) of Charge I of the Formal Written Complaint:

10. In 1981, Ms. Lancaster brought a suit against the modeling agency that she alleged had terminated her employment in 1975 because of her arrest.

11. On June 3, 1983, motions in the case, Lancaster v. McGill, came before respondent for oral argument.

12. Ms. Lancaster appeared on her own behalf. The defendants were represented by Victor Machcinski. Ms. Lancaster and respondent engaged in friendly conversation at the bench for two or three minutes before the motions were argued. Mr. Machcinski felt "uncomfortable" about the conversation and knew that respondent had written a letter on behalf of Ms. Lancaster to his client. He did not ask respondent to disqualify himself.

13. Respondent did not disclose that he had written letters to Mr. Machcinski's client on behalf of Ms. Lancaster and did not offer to disqualify himself.

14. On August 10, 1983, respondent issued a written order, granting the defendants' motion in part and granting Ms. Lancaster's cross motion in part.

As to paragraphs 4(h) and 4(i) of Charge I of the Formal Written Complaint:

15. On November 20, 1985, Ms. Lancaster came to respondent's chambers and requested that he give her an affidavit to be used in a court case pending before another judge in which her credibility was at issue.

16. Respondent composed, typed and signed an affidavit bearing the caption Mia Lancaster v. Tyrone Kindor and turned it over to Ms. Lancaster. He placed no limits on its use.

17. The affidavit stated:

> I have known the plaintiff for upwards of seven years. She has appeared before me in litigation representing herself. I know her as a young woman of impressive competence and legal knowledge. She is also known to me as a person of honor who has great respect for and pays allegiance to truth. She is a person who shows unswerving attention to and care for candor and the solemnity of her oath.
>
> With respect to her reputation for truth and honesty, I vouch for those characteristics without any reservation whatsoever.

18. On August 15, 1986, Ms. Lancaster again came to respondent's chambers and indicated that she intended to make a motion to exonerate bail in a pending criminal case against her before another judge. She asked respondent to prepare an affidavit that she could use in support of her motion.

19. Respondent prepared and signed an affidavit with the caption People v. Mia Lancaster. He placed no limits on its use.

20. In the affidavit, respondent recounted that he had been called by Ms. Lancaster after her arrest on January 16, 1986, and that he went to the Manhattan District Attorney's Office and took possession of her valuables "[a]s she had been unable to reach my son, Geoffrey Wright, who has been her attorney on occasion...." Respondent attested to Ms. Lancaster's "long and constant residence" in New York, her "firm roots in the Manhattan community," and her "dedication to founding a museum for cats here in Manhattan." Respondent concluded, "She has also conducted litigation in the

Manhattan courts, representing her own causes and I vouch for her as an acceptable risk for release without bond or bail of any kind."

21. Respondent made the statements in support of Ms. Lancaster in each affidavit based solely on his conversations with her, without any independent knowledge of her reputation or her roots in the community.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3C(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established. Respondent's cross motion is denied.

In four written documents, respondent lent the prestige of his judicial office to advance the private interests of Mia Lancaster. He also decided a number of motions in cases in which Ms. Lancaster was a party.

By his own testimony, respondent knew Ms. Lancaster only from a brief court appearance when she appealed to him to write letters on her behalf in 1975. Although he knew of the circumstances only from his conversations with Ms. Lancaster, respondent prepared the letters on his judicial stationery

without explaining to the addressees that he had had no official involvement in or knowledge of the case. The letters exonerated Ms. Lancaster and vilified the man who had brought the charges against her. These letters were not job references, recommendations to law school or character references. They were attempts to influence employers to rehire Ms. Lancaster, backed by the prestige of judicial office.

Eight years later, respondent presided over an oral argument and decided a motion in a lawsuit brought by Ms. Lancaster against one of the employers to whom respondent had written on her behalf. The issue in the lawsuit was whether Ms. Lancaster was wrongfully discharged in 1975. Since respondent had implored the employer to take her back, his impartiality in the matter might reasonably be questioned, and he should have disqualified himself. Section 100.3(c)(1) of the Rules Governing Judicial Conduct.

Respondent also decided motions in a housing dispute brought by Ms. Lancaster against another party. Although this was less serious than his involvement in the employer's case, the majority of the Commission concludes that respondent should have disqualified himself in this matter as well, because of the nature of his earlier contacts with Ms. Lancaster.

Respondent seriously exacerbated this misconduct by his execution of the affidavits in 1985 and 1986. Knowing that

they would be used in his own court in pending litigation on Ms. Lancaster's behalf, respondent encouraged a judge to believe her in one instance and urged a judge to release her without bail in another. Respondent had no assurances as to how these affidavits would be used. That he did not know to whom they would be given and that he did not present them directly is not mitigating. He clearly attempted to use the prestige of his office to advance Ms. Lancaster's interests in pending litigation before other judges, in violation of Section 100.2(c) of the Rules Governing Judicial Conduct.

> Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved [citation omitted]. There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary. Thus, any communication from a Judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office.
>
> Matter of Lonschein v. State Commission on Judicial Conduct, 50 NY2d 569, 572 (1980).

A judge who used court stationery for the business of his private law practice has been found to have employed judicial office "to further wholly private ends." Matter of Vasser, 75 NJ 357, 382 A2d 1114, 1117 (N.J. 1978). See also Matter of Anastasi, 76 NJ 510, 388 A2d 620 (N.J. 1978). It follows that the same is true for a judge who used his judicial office and title to further another's interests in employment and in pending litigation.

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

Mrs. Robb, Mr. Bower, Mrs. Del Bello, Judge Ostrowski, Judge Rubin and Mr. Sheehy concur.

Judge Altman, Judge Ciparick, Mr. Cleary and Mr. Kovner dissent as to Charge I and vote that misconduct is established as to paragraphs 4(h) and 4(i) only and dissent as to sanction and vote that respondent be admonished.

Mr. Berger did not participate.

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: June 20, 1988

Lillemor T. Robb

Lillemor T. Robb, Chairwoman
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

BRUCE McM. WRIGHT,

a Justice of the Supreme Court, New York County.

DISSENTING OPINION BY MR. KOVNER IN WHICH JUDGE ALTMAN, JUDGE CIPARICK AND MR. CLEARY JOIN

Consistent with the thorough report of the distinguished referee, one does not have to approve the judgment reflected in the decision to write the 1975 letters to find that they do not rise to the level of misconduct. The letters are thirteen years old and the circumstances sufficiently private that, standing alone, they do not constitute an abuse of judicial office. Nor is the relationship of these letters to the subsequent events sufficiently substantial to support the imposition of public discipline however unfortunate the use of judicial stationery and some of the language may now be viewed.

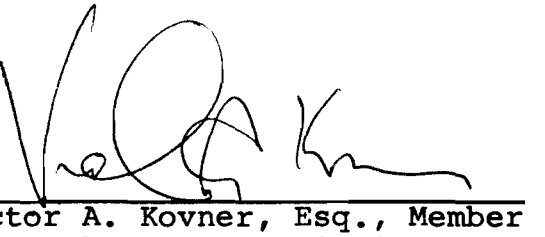
Nor do the discovery motions decided in 1983 warrant public discipline. The motion in Lancaster v. R&D Realty preceded the adoption of the individual assignment system and was routine at most. Though the better practice would have been for respondent to disqualify himself in Lancaster v. McGill, such action would have unnecessarily prolonged the case over minor issues and inevitably would have been determined in defendant's favor. The failure to recuse does not rise to the level of

misconduct. The two matters involving a motion to correct an index number and a motion to sue as a poor person are plainly de mimimis.

None of these mitigating factors nor the absence of a venal motive excuses respondent's decision to execute the affidavits in 1985 and 1986. I agree with the majority in finding a clear violation of Section 100.2(c) of the Rules Governing Judicial Conduct.

Based on the foregoing, and in view of respondent's fine judicial record, I believe that admonition is the appropriate sanction.

Dated: June 20, 1988



Victor A. Kovner, Esq., Member
New York State Commission
on Judicial Conduct