

Decision and Order on Petition To Vacate (2d Dep't July 17, 1990)  
[pp. A5-A6]

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

7690W  
B/ep

(NOT TO BE PUBLISHED)

GUY JAMES MANGANO, P.J.  
WILLIAM C. THOMPSON  
LAWRENCE J. BRACKEN  
RICHARD A. BROWN  
VINCENT R. BALLETTA, JR., JJ.

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Motion No. 571 Atty.

DECISION & ORDER

In the Matter of the Application of  
Elizabeth Holtzman, petitioner,  
To Vacate a Letter of Reprimand  
Pursuant to Section 691.6(a) of  
the Rules of the Appellate Division,  
Second Department,

Grievance Committee for the Tenth  
Judicial District, respondent.

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Petition, pursuant to § 691.6(a) of the rules of this court, by Elizabeth Holtzman to vacate a Letter of Reprimand dated October 19, 1989, issued by the Grievance Committee for the Tenth Judicial District. Petitioner Holtzman is an attorney admitted to the practice of law by this Court on March 16, 1966 and was at the time of the alleged misconduct the District Attorney of Kings County.

At a meeting held on June 8, 1988, the Grievance Committee for the Tenth Judicial District voted to admonish Ms. Holtzman for making public a letter containing specific allegations of misconduct by a judge without first determining the certainty of the merit of those accusations; for requiring that the complaining witness be brought to Ms. Holtzman's office, questioned, and videotaped under oath; and thereafter, releasing the audio of that tape to the media, despite Ms. Holtzman's knowledge that this witness would be a necessary witness in the two independent investigations of this incident which Ms. Holtzman's letters had triggered. In addition, the Committee disapproved of Ms. Holtzman's press release of December 22, 1987, which, rather than alleviating the situation, further demeaned the judge by referring to other allegations of misconduct by the judge known to Ms. Holtzman, in violation of DR 8-102(B), DR 1-102(A)(5)(6) and EC 8-6 of the Code of Professional Responsibility. The Letter of Admonition was issued on June 17, 1988.

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On July 15, 1988, Ms. Holtzman requested a subcommittee hearing pursuant to § 691.6 of the rules of this court, which request was granted. The petitioner was served with a notice of hearing and statement of charges dated October 19, 1988, alleging three charges of professional misconduct generally stated as follows: (1) releasing a copy of a letter to the public, written by Ms. Holtzman as District Attorney to Judge Kathryn McDonald, accusing Judge Irving Levine of misconduct without first determining the certainty of the merit of the accusations; (2) causing a witness to be summoned and interrogated without a valid public purpose; and (3) issuing a press release on December 22, 1987, stating that she had knowledge of other allegations of misconduct by the judge after a report was issued by Judge Keating, which stated that the accusations in Ms. Holtzman's letter to Judge McDonald were unfounded.

Hearings were held on December 7 and 16, 1988; January 17, February 1, March 7 and 8, April 28, May 26, June 9 and September 13, 1989. The findings of the subcommittee were presented to the Grievance Committee on October 4, 1989. The Committee sustained only two charges and voted to issue Ms. Holtzman a Letter of Reprimand.

The Letter of Reprimand dated October 19, 1989 was based upon Ms. Holtzman's releasing a letter written to Judge McDonald to the public (Charge One) and for issuing a press release on December 22, 1987, which stated that Ms. Holtzman had knowledge of other allegations of misconduct involving Judge Levine (Charge Three). The Committee found petitioner's conduct prejudicial to the administration of justice and adversely reflected on her fitness to practice law.

Ms. Holtzman now petitions this court to vacate the Letter of Reprimand.

We have considered the entire record in this matter and find that petitioner Holtzman is guilty only of Charge One in the Statement of Charges, which alleged, *inter alia*, that Ms. Holtzman, as District Attorney of Kings County, made public accusations of misconduct against a judge without first determining the certainty of the merits of the accusations in violation of DR 8-102 and DR 1-102(A)(6).

Upon the papers filed in support of the petition and the papers filed in opposition thereto, it is

ORDERED that the petitioner's motion to vacate the Letter of Reprimand dated October 19, 1989 is denied; and it is further,

ORDERED that the Letter of Reprimand be modified to reflect that it is based only upon the first charge; and it is further,

ORDERED that the petitioner's request for oral argument is denied.

MANGANO, P.J., THOMPSON, BRACKEN, BROWN and BALLETTA, JJ., concur.

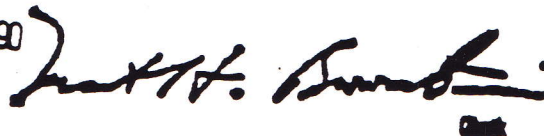
SUPREME COURT, STATE OF NEW YORK  
APPELLATE DIVISION, SECOND DEPT.

ENTER:

I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on JUL 17 1990 and that this copy is a correct transcription of said original.

Martin H. Brownstein  
Clerk

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on JUL 17 1990



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