

State of New York  
Commission on Judicial Conduct

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

WARREN L. BOULANGER,

a Justice of the Cold Spring Village  
Court, Putnam County.

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**Determination**

THE COMMISSION:

Mrs. Gene Robb, Chairwoman  
Honorable Fritz W. Alexander, II  
John J. Bower, Esq.  
David Bromberg, Esq.  
E. Garrett Cleary, Esq.  
Dolores DelBello  
Victor A. Kovner, Esq.  
Honorable William J. Ostrowski  
Honorable Isaac Rubin  
Honorable Felice K. Shea  
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Robert Straus, Of Counsel)  
for the Commission

Shulman, Boulanger & Carlo, P.C. (By Louis G. Carlo)  
for Respondent

The respondent, Warren L. Boulanger, an attorney, is  
a justice of the Cold Spring Village Court, Putnam County. Re-  
spondent was served with a Formal Written Complaint dated

November 10, 1982, alleging, inter alia, that he transferred to himself certain assets of a client of his private law practice. Respondent filed an answer dated January 14, 1983.

By order dated December 17, 1982, the Commission designated William V. Maggipinto, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on January 19, 1983, and the referee filed his report with the Commission on May 2, 1983.

By motion dated May 16, 1983, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion on June 3, 1983. The Commission heard oral argument on the motion on June 16, 1983, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. In January 1975, respondent prepared a document giving him a general power of attorney for Fred H. M. Dunseith and naming him Mr. Dunseith's attorney-in-fact. The power of attorney was signed by Mr. Dunseith on January 7, 1975, in the presence of respondent with no witnesses. Respondent notarized Mr. Dunseith's signature.

2. At the time, Mr. Dunseith was 95 years old, legally blind, partially deaf and lived in a nursing home. The execution of the power of attorney took place in Mr. Dunseith's room at the nursing home.

3. In April 1975, respondent used his power of attorney to sell Mr. Dunseith's home to a third party. Respondent deposited the proceeds of the sale, approximately \$48,300, in a bank account maintained and controlled by respondent. He used the proceeds of the sale to pay his personal bills and expenses.

4. In or about November 1975, respondent used his power of attorney to sell certain stock of Mr. Dunseith for \$8,524.25. The proceeds of the sale were initially deposited in a brokerage account in the name of respondent as attorney for Mr. Dunseith. They were later withdrawn by respondent and deposited in respondent's savings account. Respondent used the money for his personal needs.

5. In January 1976, Mr. Dunseith gave respondent a special power of attorney for a Dime Savings Bank account. Respondent made two withdrawals from this account in January 1976, one of \$7,500 and the other of \$24,888.88. Respondent deposited the \$7,500 in his personal checking account and used the money for his personal bills and living expenses. He deposited the \$24,888.88 in his personal savings account.

6. In October 1976, using his power of attorney, respondent withdrew a total of \$6,000 from Mr. Dunseith's checking and savings accounts. Respondent kept the money for himself as a retainer for his legal work on behalf of Mr. Dunseith.

7. In January 1977, using his power of attorney, respondent sold for \$72,000 other stock owned by Mr. Dunseith. Approximately one-half of the proceeds of the sale was used by respondent to purchase new stock in Mr. Dunseith's name. The balance was deposited in the stockbroker's cash reserve management account in the name of Mr. Dunseith. Respondent later drew two checks against that account, one for \$10,000 and one for \$2,500, and the broker sent respondent a check for the balance of \$23,650. Respondent deposited the \$2,500 in his personal checking account and used it to pay personal bills and expenses. He deposited the \$10,000 and the \$23,650 in his personal savings account.

8. In the spring of 1977, respondent closed a bank account of Mr. Dunseith in a Scranton, Pennsylvania, bank. Respondent used the \$3,928 from the account for his personal needs.

9. On May 28, 1976, respondent wrote two letters to the Newburgh Savings Bank, falsely stating that Mr. Dunseith had died and requesting that several accounts in respondent's name "in trust" for Mr. Dunseith be changed to respondent's

name alone. Respondent wrote these letters to avoid the imposition of penalties in requesting changes in the titles of the account. He wrote them shortly after a matrimonial action brought by his former wife had been settled.

10. On March 5, 1976, respondent filed a false and fraudulent financial affidavit in the matrimonial action for the purpose of concealing his property and financial assets from his former wife.

11. In August 1981, at a time when he knew that he was under criminal investigation, respondent filed late gift tax returns for 1975, 1976, and 1977, on behalf of Mr. Dunseith, causing his estate to pay \$15,000 in penalties and taxes.

As to Charge II of the Formal Written Complaint:

12. On November 18, 1982, respondent was sentenced to federal prison by the United States District Court for the Southern District of New York, having been found guilty by a jury of three counts of violating Section 7201 of Title 26 of the United States Code, a felony, by unlawfully, knowingly and willfully attempting to evade income taxes by means of filing false and fraudulent income tax returns.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections

100.1 and 100.2(a) of the Rules Governing Judicial Conduct and Canons 1 and 2A of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

As attorney-in-fact for Mr. Dunseith, respondent acted as a fiduciary for his client. McMahon v. Pfister, 39 AD2d 691 (1st Dept. 1972). He was, thus, required to handle his client's money in the best interests of the client. Nonetheless, respondent transferred to himself \$135,000 of Mr. Dunseith's money. As the referee found, respondent's position that this money was given by Mr. Dunseith as gifts is "uncorroborated, incredible and inherently unreliable, since it is self-serving...." Even assuming that Mr. Dunseith had repeatedly told respondent to take vast sums of money, such transfers were of dubious benefit to Mr. Dunseith, and, given his age and infirmities, respondent should have questioned whether they were in the client's best interests.

This gross abuse of the trust placed in him by his client and by the state that licenses him to practice law is exacerbated by a series of deliberate deceptions on the part of respondent. He admits that he falsely reported the death of Mr. Dunseith to a bank in order to avoid paying interest penalties and that he filed a false and fraudulent financial affidavit in

a divorce proceeding in order to conceal assets from his former wife. There is also evidence that he filed false income tax returns for the purpose of avoiding payment of taxes. Furthermore, his testimony before the Commission and at his federal court trial, the transcript of which is part of the record of this proceeding, "lack[s] the ring of truth." Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74, 81 (1980).

The judiciary cannot accommodate one who so consistently abandons his ethical obligations. "[A] Judge cannot simply cordon off his public role from his private life and assume safely that the former will have no impact on the latter." Matter of Steinberg, supra. By his unprincipled conduct as an attorney, respondent has brought the judiciary into disrepute and has demonstrated that he is unfit for judicial office.

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

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

Mr. Cleary and Judge Rubin were not present.

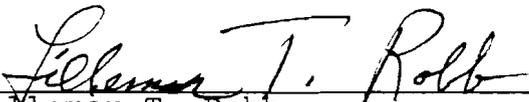
Mr. Sheehy was not a member of the Commission at the time the vote in this proceeding was taken.

#### 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: August 10, 1983

  
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Lillemor T. Robb  
Chairwoman  
New York State  
Commission on Judicial Conduct