

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

BERNARD BURSTEIN,

Determination

a Judge of the Civil Court of the City
of New York and Acting Supreme Court
Justice, 12th Judicial District,
Bronx County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Myriam J. Altman
Helaine M. Barnett, Esq.
Herbert L. Bellamy, Sr.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Lawrence S. Goldman, Esq.
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel)
for the Commission

Scoppetta & Seiff (By Eric A. Seiff)
for Respondent

The respondent, Bernard Burstein, a judge of the Civil Court of the City of New York, Bronx County, was served with a Formal Written Complaint dated July 2, 1992, alleging that he failed to file in a timely manner a financial disclosure statement and that he failed to cooperate in the Commission's investigation. Respondent did not answer the Formal Written Complaint.

On February 11, 1993, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided in Judiciary Law §44(4) and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement by letter dated March 5, 1993.

Both counsel submitted memoranda as to sanction. On June 3, 1993, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a judge of the Civil Court of the City of New York since February 1980. He also sits by designation in the Supreme Court, Bronx County.
2. Respondent was required to file a financial disclosure statement for 1990 with the Ethics Commission for the Unified Court System by May 15, 1991, pursuant to Judiciary Law §211(4) and the Rules of the Chief Judge, 22 NYCRR 40.2.
3. Respondent did not file his financial-disclosure statement until March 10, 1992, even though he received from the Ethics Commission a Notice to Cure, dated July 24, 1991, and a Notice of Delinquency, dated November 14, 1991.

4. Also on March 10, 1992, respondent filed his 1991 financial disclosure statement, which was due on May 15, 1992. By letter dated March 18, 1992, the Ethics Commission advised respondent that certain sections of the 1991 statement had not been completed and requested that he do so within 15 days. Respondent failed to do so, and, on May 26, 1992, the Ethics Commission sent a second notice. The Ethics Commission sent a Notice to Cure, dated July 31, 1992, which respondent failed to accept. A second Notice to Cure, dated September 18, 1992, and a Notice of Delinquency, dated October 26, 1992, were received by respondent.

5. Even though he knew that he was under investigation by the Commission for failing to timely file his 1990 statement and even though the Formal Written Complaint in this matter was served on July 2, 1992, respondent did not respond to the Ethics Commission and did not file a properly completed 1991 statement until November 17, 1992.

As to Charge II of the Formal Written Complaint:

6. In connection with a duly-authorized investigation, Commission staff asked respondent to respond to allegations that he had failed to file his financial disclosure statement for 1990. Respondent received letters from Commission staff dated December 30, 1991, and January 24, 1992, but did not respond.

7. By letter dated February 14, 1992, respondent was asked to appear for the purpose of giving testimony before a member of the Commission in connection with the investigation. Respondent received the letter but did not open it. Consequently, he did not appear as requested on February 27, 1992.

8. After a second request, respondent appeared on March 5 and March 10, 1992, and gave testimony before a member of the Commission concerning his failure to file his 1990 financial disclosure statement.

As to Charge III of the Formal Written Complaint:

9. Between February 5, 1990, and March 10, 1992, respondent failed to open nine letters received in his chambers from attorneys, litigants and witnesses concerning matters pending before him. Respondent also failed to have his staff open the letters.

10. Respondent and members of his staff had had telephone conversations with attorneys concerning these matters. Respondent concedes that the information in the letters should have been considered by him.

11. Respondent has since instituted a procedure whereby his staff will open mail daily and respond within one week of receipt.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Judiciary Law §211(4); the Rules of the Chief Judge, 22 NYCRR 40.2; the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a) and 100.3(b)(1), and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's failure to open and reply promptly to court-related mail over a period of years resulted in serious administrative failures and ethical breaches.

By his ten-month delay in filing his 1990 financial disclosure statement, he failed to comply with the law. Because he did not open and reply to mail, he failed to respond to staff inquiries and did not appear on one occasion for the purpose of giving testimony before a Commission member. The failure to cooperate in a Commission investigation is a significant factor in determining sanction. (Matter of Cooley v State Commission on Judicial Conduct, 53 NY2d 64, 66). Respondent did not consider information in matters pending before him because of his failure to open nine letters for as long as two years. Neglecting to open mail is "inexcusable". (Matter of Joedicke, 1982 Ann Report of NY Commn on Jud Conduct at 73, 76).

This wrongdoing is compounded by respondent's delay in remedying the omissions in his 1991 financial disclosure statement, even when he knew that his administrative failures were the subject of, first, a Commission investigation and, later, formal charges. (See, Matter of Sims v State Commission on Judicial Conduct, 61 NY2d 349, 357).

We accept respondent's assertions that he was not attempting to conceal information from the Ethics Commission and that there was nothing improper or questionable in the reports that he eventually filed. However, the Legislature and the Chief Judge have determined that financial disclosure by judges serves an important public function, and one of the duties of a judge is to file these reports promptly. A judge who is sworn to uphold the law should not fail to comply with its mandates when it is applied to him personally. (See, Matter of Myers v State Commission on Judicial Conduct, 67 NY2d 550, 554; Matter of Barr, 1981 Ann Report of NY Commn on Jud Conduct, at 139, 142). Although this behavior does not reflect on respondent's performance on the bench, it is misconduct that warrants public sanction.

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

Mr. Berger, Mr. Bellamy, Mr. Cleary, Mrs. Del Bello, Mr. Goldman, Judge Salisbury and Judge Thompson concur.

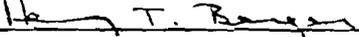
Judge Altman, Judge Ciparick and Mr. Sheehy dissent as to sanction only and vote that respondent be issued a confidential letter of dismissal and caution.

Ms. Barnett was not present.

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: July 27, 1993


Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct