

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

Determination

JUDITH A. CARNEY,

a Justice of the Dansville Town Court,
Steuben County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

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

The respondent, Judith A. Carney, a justice of the Dansville Town Court, Steuben County, was served with a Formal Written Complaint dated April 1, 1996, alleging that she failed to remit court funds promptly to the state comptroller and that she failed to cooperate in the Commission's investigation. Respondent did not answer the Formal Written Complaint.

By motion dated July 5, 1996, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct be deemed established. Respondent did

not oppose the motion or file any papers in response thereto. By determination and order dated August 8, 1996, the Commission granted the motion.

The administrator filed a memorandum as to sanction. Respondent did not file any papers and did not request oral argument.

On September 12, 1996, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Dansville Town Court during the time herein noted.

2. Between April 1995 and August 1995, respondent failed to report cases and remit court funds to the state comptroller by the tenth day of the month following collection, as required by UJCA 2021(1), Town Law §27(1) and Vehicle and Traffic Law §1803(8). Respondent's reports for April through August 1995 were submitted on September 27, 1995. The April 1995 report was 140 days late; the May 1995 report was 109 days late; the June 1995 report was 79 days late; the July 1995 report was 48 days late; the August 1995 report was 17 days late.

As to Charge II of the Formal Written Complaint:

3. Respondent failed to cooperate in the Commission's investigation of her conduct in that she:

a) failed to respond to letters sent by staff counsel on October 25, 1995, November 15, 1995, and December 9, 1995; and,

b) failed to appear on January 31, 1996, for the purpose of giving testimony in connection with the investigation, even though she was directed to do so by letter sent certified mail by staff counsel on January 22, 1996.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 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 and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A town justice is required to remit court funds to the state comptroller by the tenth day of the month following collection. (UJCA 2021[1]; Town Law §27[1]; Vehicle and Traffic Law §1803[8]). The mishandling of public funds by a judge is misconduct, even when not done for personal profit. (Bartlett v Flynn, 50 AD2d 401, 404 [4th Dept]). The failure to remit funds to the comptroller constitutes neglect of administrative duties, even if the money is accounted for and on deposit. (Matter of Ranke, 1992 Ann Report of NY Commn on Jud Conduct, at 64, 65).

*Now Section 100.3(C)(1)

Such misconduct generally warrants admonition or censure. (See, Matter of Ranke, supra; Matter of Goebel, 1990 Ann Report of NY Commn on Jud Conduct, at 101).

However, respondent's failure to cooperate in the investigation of her conduct by refusing to answer inquiries and to appear for the purpose of giving testimony shows contumacious disregard for the responsibilities of her judicial office. The underlying misconduct, with her failure to cooperate, warrants her removal. (See, Matter of Driscoll, unreported, NY Commn on Jud Conduct, Mar. 20, 1996; Matter of Miller, unreported, NY Commn on Jud Conduct, Jan. 19, 1996).

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

Mr. Berger, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Judge Salisbury and Judge Thompson concur.

Mr. Sample 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: September 19, 1996

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