

**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

**Determination**

JEROME D. COHEN,

a Justice of the Supreme Court,  
2nd Judicial District, Kings County.

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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:

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

Jerome Karp (Mitchell K. Friedman, Of Counsel) for  
Respondent

The respondent, Jerome D. Cohen, a justice of the  
Supreme Court, 2d Judicial District, was served with a Formal  
Written Complaint dated July 3, 1987, alleging that he received  
personal loans without interest and ordered infants' funds  
deposited in the same lending institution pursuant to an

understanding with the institution. Respondent filed an answer dated July 27, 1987.

By order dated August 6, 1987, the Commission designated the Honorable Donald J. Sullivan as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 7, 8, 9 and 30, November 5, 6 and 13 and December 1, 1987, and the referee filed his report with the Commission on August 10, 1988.

By motion dated August 19, 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 removed from office. Respondent opposed the motion by cross motion on September 12, 1988. The administrator filed a reply dated September 20, 1988.

On September 23, 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.

As to Charge I of the Formal Written Complaint:

1. The charge is not sustained and is, therefore, dismissed.

As to Charges II and III of the Formal Written  
Complaint:

2. Respondent is a justice of the Supreme Court and has been since January 1, 1985. He was a judge of the Civil Court of the City of New York from January 1, 1980, to December 31, 1984.

3. On June 14, 1979, respondent met with Edmund Lee, treasurer and chief executive officer of the HYFIN Credit Union, for the purpose of obtaining a loan to finance his campaign for civil court.

4. Mr. Lee thereafter approved and HYFIN granted the following loans to respondent at the following specified interest rates:

<u>Date</u>	<u>Amount</u>	<u>Specified Rate</u>
June 14, 1979	\$ 5,000	12%
August 8, 1979	10,000	12%
August 31, 1979	10,000	12%
November 18, 1981	5,000	12%
January 26, 1983	7,500	6%
April 16, 1984	15,000	6%
January 30, 1985	25,000	10%
January 30, 1985	50,000	10%

5. During 1979 and after September 30, 1985, respondent paid interest on his loans at the specified rate.

6. Between January 1, 1980, and September 30, 1985, respondent paid no interest on any of the loans. HYFIN waived \$14,889.70 in interest payments on respondent's loans during that period.

7. Respondent took income tax deductions for interest paid on the loans in 1979 and 1985 but not for the period 1980 through 1984.

8. On four of respondent's checks in May and June 1985, he wrote on the face of each check a balance that would match the balance of his loan had each payment been applied exclusively to reduce the principal.

9. In March 1985, after respondent made a payment, he was sent a receipt indicating that the payment had been apportioned to interest only. Respondent wrote on the receipt, "Should be \$12,099.89," next to the statement of the loan balance, indicating the balance had the payment been applied to reduce the principal only.

10. On May 10, 1983, a transfer was made from respondent's HYFIN savings account to make a loan payment of \$1,072.98, of which \$771.91 was apportioned to pay principal on the then-outstanding loan, and \$301.07 was apportioned to interest. On May 26, 1983, an adjustment was made to apply the full amount to principal.

11. Two payments totaling \$789.99 made by respondent on January 10, 1985, were credited in full to interest. On January 18, 1985, an adjustment was made to credit the payments in full to principal rather than interest.

12. Three payments totaling \$1,452.65 on March 6, 1985, were apportioned in part to principal and in part to interest. On April 16, 1985, the interest payment of \$1,409.27 was applied to reduce the principal of the loan.

13. On May 28, 1985, a \$357.66 payment made by respondent was credited to principal in the amount of \$282.59 and to interest in the amount of \$75.07. An adjustment was subsequently made to credit the full amount to reduce the principal of the loan.

14. At least some of the adjustments were made as the result of complaints by respondent that a portion of the payments had been applied to interest.

15. Respondent was aware that he was paying no interest on the loans from January 1, 1980, to September 30, 1985.

16. Respondent was aware that the specified interest rate of 6 percent on the January 26, 1983, and April 16, 1984, loans was substantially below the rates then ranging from 15 to 21 percent for most other borrowers at HYFIN and was lower than the prime interest rate of 11 percent in January 1983 and 12 percent in April 1984.

17. Between February 4, 1980, and May 1, 1984, respondent designated the HYFIN Credit Union as a depository for infants' funds in 56 cases totaling \$244,503.14 in deposits, as denominated in Schedule A appended hereto.

18. Respondent designated HYFIN notwithstanding that: (a) no other judge had previously done so; (b) he never designated any other credit union as a depository; and, (c) he

was receiving loans from HYFIN on terms not available to most other borrowers.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.5(c) of the Rules Governing Judicial Conduct and Canons 1, 2 and 5C of the Code of Judicial Conduct. Charges II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established. Charge I is dismissed. Respondent's cross motion is denied.

Over a five-year period, respondent was granted the extraordinary privilege of paying no interest on a series of personal loans, which resulted in a savings to him of nearly \$15,000. At the same time, he ordered that nearly \$250,000 be deposited in the same institution that awarded him those interest-free loans.

Respondent's contention that he was unaware that he was not paying interest was appropriately rejected by the referee.

By knowingly accepting the loan terms, respondent violated the express provisions of Section 100.5(c)(3) of the Rules Governing Judicial Conduct which requires that a judge borrow money on the same terms generally available to others.

This was not simply a matter of obtaining reduced interest rates; for five years, no interest was charged at all. He also conveyed the impression that he was engaging in financial dealings that exploited his judicial position, contrary to Sections 100.5(c) (1) and 100.2 of the Rules.

By depositing money subject to the jurisdiction of the court in the same institution that was giving him interest-free loans, respondent created the appearance that his judicial decisions were being influenced by the favorable treatment he was receiving. Such appearance is no less to be condemned than an actual impropriety. Matter of Spector v. State Commission on Judicial Conduct, 47 NY2d 462, 466 (1979). A reasonable person would question whether there was an explicit or tacit understanding between respondent and the lending institution or, at the very least, whether respondent, in selecting HYFIN as a depository, was hoping to continue an arrangement that benefited him personally.

Such an appearance diminishes public confidence in the integrity of the judiciary and destroys respondent's usefulness on the bench. Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465, 469 (1980).

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

Mrs. Robb, Judge Altman, Mr. Berger, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mr. Kovner, Judge Ostrowski and

Judge Rubin concur, except that Mrs. Robb, Mr. Berger, Mrs. Del Bello and Mr. Kovner dissent as to Charge I only and vote that the charge be sustained.

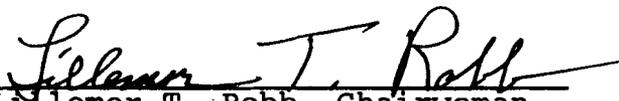
Mr. Bower dissents as to sanction only and votes that respondent be censured.

Mr. Sheehy 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: October 28, 1988

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

APPENDIX A

<u>Date of Order</u>	<u>Name of Case</u>	<u>Amount</u>
2/04/80	Gabbay	\$ 4,334.00
2/06/80	Weinstein	1,400.00
2/20/80	Biviano	1,575.00
5/19/80	Maddalena	4,244.00
5/22/80	Trinagel	6,334.00
5/22/80	Nicastro	4,000.00
5/22/80	Wintner	5,000.00
5/23/80	Barnes	2,617.00
5/23/80	Whyte	2,617.00
5/24/80	Covington	2,783.00
8/14/80	Rene	1,333.00
12/10/80	Salas	1,950.00
12/29/80	DeLiso	1,368.00
1/21/81	Abikzer	2,939.00
1/29/81	Douglas	850.00
3/27/81	Musella	6,333.00
3/27/81	Dietrich	2,334.00
5/8/81	Able	3,334.00
6/3/81	Falkowitz	800.00
6/17/81	O'Connor	6,000.00
6/18/81	Geller	9,667.00
9/21/81	Carmichael	3,000.00
9/28/81	Britton	6,491.67
12/11/81	King	6,667.00
1/08/82	DeLuzio	3,500.00
1/08/82	Mirando	5,910.00
3/31/82	Clark	990.00
5/10/82	Hodge	5,422.00
6/04/82	Deerr	7,333.34
6/08/82	Greene	6,667.00
6/08/82	Cathcart	2,334.00
6/11/82	Larocca	6,670.00
6/24/82	Gelbstein	5,000.00
7/01/82	Duprey	834.00
7/01/82	Duprey	2,500.00
7/08/82	Green	995.00
8/11/82	Fisher	3,965.00
8/16/82	McGinness	1,600.00
8/17/82	Johnson	4,666.67
8/18/82	Weinstein	4,000.00
10/07/82	Kruzhanovska	6,666.67
11/18/82	Simmons	1,900.00
2/24/83	Bilpuh	3,334.00
4/04/83	Lazarowitz	10,000.00
4/07/83	Cohen	4,666.66

<u>Date of Order</u>	<u>Name of Case</u>	<u>Amount</u>
4/08/83	Perez	5,300.00
4/25/83	Duggins	10,000.00
9/83	Dimino	1,333.00
9/16/83	Dimino	4,666.00
11/12/83	Cucksey	2,000.00
11/16/83	Ellis	2,310.13
11/28/83	Vargas	14,150.00
11/28/83	Mandes	3,000.00
11/28/83	Jex	2,135.00
12/16/83	Johnson	500.00
12/19/83	Lovell	2,184.00
5/01/84	Creer	<u>20,000.00</u>
	Total	\$244,503.14