

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

PETER E. CORNING,

a Judge of the County Court and Family
Court, Cayuga 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 (John J. Postel, Of Counsel) for the
Commission

John P. McLane and Emil M. Rossi for Respondent

The respondent, Peter E. Corning, a judge of the County Court and Family Court, Cayuga County, was served with a Formal Written Complaint dated January 14, 1992, alleging that he falsely certified a bail bond and released a criminal defendant. Respondent filed an answer dated February 5, 1992. On August 6, 1992, respondent was served with a Supplemental Formal Written Complaint. He filed an answer to that complaint on August 19, 1992.

On September 4, 1992, 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), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts and on an agreed sanction of admonition and waiving further submissions and oral argument.

On September 18, 1992, the Commission approved the agreed statement and made the following determination.

Preliminary findings:

1. Respondent has been a judge of the Cayuga County Court and Family Court since 1979.
2. From October 27, 1955, to December 21, 1981, Theodore Cheche was an insurance agent and a partner in the Matthew P. Cheche Insurance Agency. Both Theodore Cheche and the partnership were licensed by the state insurance department. Theodore Cheche and the Matthew P. Cheche Insurance Agency ceased doing business on December 21, 1981.
3. Theodore Cheche is the father of Matthew P. Cheche. Matthew Cheche was licensed as a bail bondsman and an agent of Peerless Insurance Company on September 27, 1983. He used the business name "Matty Cheche Bail Bonds." Matthew Cheche was never a partner or sublicensee of the Matthew P. Cheche Insurance Agency.

4. Theodore Cheche has never been licensed as a bail bondsman and has never been authorized by the Peerless Insurance Company to appear as its agent or attorney-in-fact.

As to Charge I of the Supplemental Formal Written Complaint:

5. On May 12, 1988, Theodore Cheche appeared before respondent and asked him to approve a \$25,000 bail bond for Tony Frazier, who had been charged with Rape, First Degree.

6. The Undertaking of Bail was on an official form of the Peerless Insurance Company and bore the official company seal but had not been sworn to by Matthew Cheche or by any other agent or attorney-in-fact for the Peerless Insurance Company, as required by CPL 520.20(2).

7. Respondent signed the Undertaking of Bail, and Mr. Frazier was subsequently released from jail.

8. On September 29, 1988, Theodore Cheche appeared before respondent and asked him to approve a \$10,000 bail bond for Nancy Oliver, who had been charged with Criminal Possession Of A Controlled Substance, Fourth Degree.

9. The Undertaking of Bail was on an official form of the Peerless Insurance Company and bore the official company seal but had not been sworn to by Matthew Cheche or any other agent or attorney-in-fact for the company.

10. Respondent signed the Undertaking of Bail and a Certificate of Release for Ms. Oliver.

11. The bail bond for Ms. Oliver did not include a Justifying Affidavit, as required by CPL 520.20(1), (4).

As to Charge I of the Formal Written Complaint:

12. On January 26, 1989, Theodore Cheche appeared at respondent's home and asked him to review and approve a \$250,000 bail bond for Albert J. Brunner, IV, who had been charged with Criminal Possession Of A Controlled Substance, First Degree, and Criminal Sale Of A Controlled Substance, First Degree.

13. The Undertaking of Bail was on an official form of the Peerless Insurance Company and bore the official company seal but had not been sworn to by Matthew Cheche or any other agent or attorney-in-fact for the company.

14. Respondent examined the papers and questioned Theodore Cheche about the collateral posted as security for the bail bond. Theodore Cheche told respondent that \$50,000 cash, the residence and business of Mr. Brunner's parents and certain property of the defendant's uncle had been pledged as collateral.

15. Respondent signed the Undertaking of Bail and a Certificate of Release. He told Theodore Cheche to file the bail bond with the Auburn City Court, where Mr. Brunner had been arraigned.

16. The bail bond for Mr. Brunner did not include a Justifying Affidavit, as required by CPL 520.20(1), (4).

17. At the time that he signed it, the \$250,000 bail bond constituted the highest undertaking ever approved by respondent.

18. Mr. Brunner was released on January 26, 1989, on the authority of respondent's Certificate of Release.

19. On June 16, 1989, Mr. Brunner failed to appear for a suppression hearing in Cayuga County Court. On June 19, 1989, he failed to appear for trial.

20. On July 14, 1989, Theodore Cheche appeared before respondent and surrendered the bail bond for Mr. Brunner which had never been filed in the Auburn City Court. Theodore Cheche acknowledged that the bail bond had been issued without the authorization of the Peerless Insurance Company and was a forged instrument.

21. On August 3, 1989, respondent issued an order forfeiting the \$250,000 bail bond. Cayuga County subsequently collected \$250,000 from Theodore Cheche.

22. On November 2, 1989, Mr. Brunner was convicted, in absentia. He was apprehended on November 8, 1989, and is serving an indeterminate term of 25 years to life in prison.

23. On May 20, 1991, Theodore Cheche was convicted in Cayuga County Court of Offering A False Instrument for Filing, First Degree, and two counts of Forgery, Second Degree, in connection with the Brunner bail bond.

Additional findings:

24. Respondent acknowledges that, by signing the bail bonds in Frazier, Oliver and Brunner, he wrongly and negligently certified that Matthew Cheche had personally appeared before him, was sworn and had stated under oath that he was attorney-in-fact for the Peerless Insurance Company, even though Matthew Cheche had not appeared in connection with these bonds.

25. Respondent acknowledges that he did not, but should have, completely read the certifications at the bottom of the undertakings of bail in Frazier, Oliver and Brunner and that he did not, but should have, seen that the certifications bore Matthew Cheche's name. Respondent acknowledges that these failures constitute negligence in the performance of his duties as a judge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1 and 100.2, and Canons 1 and 2 of the Code of Judicial Conduct. Charge I of the Formal Written Complaint and Charge I of the Supplemental Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

A judge is required to review and approve bail bonds to ensure that they comply with the court's order fixing bail. (CPL 510.40[3]). The judge must also determine that the bonds conform with the provisions of law and provide adequate security that a defendant will return to court. (See, CPL 520.20[1], [2]).

Respondent failed to fully review bail bonds presented to him by Theodore Cheche. As a result, respondent approved bail bonds presented by someone who was not authorized to do so. He inaccurately certified that an authorized bondsman had appeared, and he ordered the release of defendants on bonds that could not be used to secure their appearance in court. In the Brunner case, respondent should have been especially conscientious since the \$250,000 bond represented the highest undertaking he had ever approved to that point. Nevertheless, he approved an unsworn bond and authorized the release of a defendant who subsequently failed to return to court for trial.

A judge's failure to properly review court papers does not relieve the judge from responsibility for any resulting consequences and constitutes a lack of diligence in performing judicial duties. (See, Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349, 354-55; Matter of Klein, 1985 Ann Report of NY Commn on Jud Conduct, at 167, 170).

Respondent's conduct is mitigated by the fact that he has acknowledged his negligence. (See, Matter of Rath, 1990 Ann Report of NY Commn on Jud Conduct, at 150, 152; Matter of Turner,

1988 Ann Report of NY Commn on Jud Conduct, at 235, 236; Matter of Doolittle, 1986 Ann Report of NY Commn on Jud Conduct, at 87, 89).

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

Mr. Berger, Ms. Barnett, Judge Ciparick, Mr. Cleary, Mr. Goldman and Judge Thompson concur.

Judge Altman, Mrs. Del Bello and Judge Salisbury dissent and would reject the agreed statement because they believe the appropriate sanction is censure.

Mr. Bellamy and Mr. Sheehy were 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: November 4, 1992

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