

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

ROBERT M. CORNING, SR.,

Determination

a Justice of the Ovid Town Court, Seneca County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown, C.A.S.A.C.
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel W. Joy
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman
Honorable Eugene W. Salisbury

APPEARANCES:

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

Marris & Bartholomae (By William R. Bartholomae) for Respondent

The respondent, Robert M. Corning, Sr., a justice of the Ovid Town Court,
Seneca County, was served with a Formal Written Complaint dated March 10, 1998,
alleging financial improprieties and improper demeanor. Respondent filed an answer
dated April 8, 1998.

By Order dated May 1, 1998, the Commission designated Bruno Colapietro, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 19, 1998, and the referee filed his report with the Commission on December 9, 1998.

Both parties submitted papers with respect to the referee's report and the issue of misconduct. Oral argument was waived.

On February 25, 1999, the Commission considered the record of the proceeding and made findings of fact 1 through 21 below. Consideration of sanction was deferred.

On February 26, 1999, respondent was served with a second Formal Written Complaint, alleging that he improperly ordered the suspension of a defendant's driver's license. Respondent answered this complaint by letter dated April 23, 1999.

By Order dated April 28, 1999, the Commission designated Michael J. Hutter, Esq., as referee to hear this matter. A hearing was held on June 18, 1999, and the referee filed his report with the Commission on October 20, 1999.

The parties then submitted memoranda with respect to misconduct on the second matter and appropriate sanction with respect to both matters. Oral argument was waived.

On December 16, 1999, the Commission made findings of fact 22 through 31 below and made the following determination.

As to Charge I of the Formal Written Complaint dated March 10, 1998:

1. Respondent has been a justice of the Ovid Town Court since January 1988.

2. Between August 1996 and December 1996, as set forth in the appended Schedule A, respondent failed to deposit court funds in his official account within 72 hours of receipt, as required by the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.9(a). By the end of the period, respondent's account was deficient in the amount of \$2,886.64.

3. On January 21, 1997, Commission staff advised respondent that it was investigating financial irregularities in his court.

4. Between February 1997 and May 1997, as denominated in the attached Schedule B, respondent again failed to deposit court funds as required by law. By the end of this period, his account was deficient by \$2,842.80.

5. During these periods, respondent was aware that he was required to deposit court funds within 72 hours of receipt.

6. Respondent testified that he kept the money in a briefcase at his home.

As to Charge II of the Formal Written Complaint dated March 10, 1998:

7. Between August 1996 and November 1996, respondent failed to 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).

8. On January 15, 1997, the state comptroller ordered respondent's salary suspended because of his failure to remit monies, and, on January 20, 1997, respondent wrote the comptroller that he had "no reason or alibi" and "no excuse" for failing to remit the funds. On January 21, 1997, Commission staff advised respondent that it was investigating the matter; again, respondent replied, "I have no reason or alibi for being tardy." Respondent filed his reports with the state comptroller about two weeks later.

9. Respondent was aware that he was required to remit funds to the comptroller by the tenth day of the month following collection.

10. Respondent was being treated for depression during 1996 and 1997.

As to Charge III of the Formal Written Complaint dated March 10, 1998:

11. On February 15, 1997, the Wagner Funeral Home sued respondent for burial expenses for his aunt, Mary Corning Rose. Attorney John A. Ward represented the funeral home.

12. On April 14, 1997, respondent called Mr. Ward by telephone to discuss the claim. Respondent told Mr. Ward that he had been a town justice for ten years.

Respondent accused Mr. Ward of being dishonest and said that he would discredit the attorney's reputation.

13. On May 13, 1997, Mr. Ward called respondent and asked him not to contact Mr. Ward's client in the lawsuit, Marshall Downing, the owner of the funeral home. Respondent said that he would take Mr. Ward to county court or to a county judge and that he would not cease calling Mr. Downing unless an Order of Protection was issued.

14. Respondent also said that Mr. Downing had "no balls."

15. The same day, Mr. Ward filed a complaint with the Commission concerning his conversations with respondent.

16. On September 29, 1997, respondent appeared at an investigative appearance for the purpose of giving testimony about Mr. Ward's complaint, as well as other matters.

17. On October 31, 1997, respondent went to Mr. Ward's office and spoke with a paralegal. Waiving a legal-size envelope in front of her, respondent angrily told the paralegal that he was going to sue Mr. Ward for slander. The envelope contained a copy of the complaint that Mr. Ward had filed with the Commission against respondent.

18. Later that day, respondent called the paralegal by telephone and apologized.

As to Charge IV of the Formal Written Complaint dated March 10, 1998:

19. On July 10, 1996, People v Richard Woodard came before respondent.

The defendant was represented by attorney John M. Sipos. Mr. Sipos had previously filed a complaint with the Commission that respondent had improperly requested him to pay \$50 in order to secure a jury trial in another criminal case.

20. Mr. Sipos requested that respondent disqualify himself from the Woodard case because of the complaint to the Commission.

21. Respondent became angry, denied the request and stated, "You should have paid me the \$50. You would have had me by the balls."

As to Charge I of the Formal Written Complaint dated February 26, 1999:

22. On September 18, 1997, Sara L. Hunt was charged with Leaving the Scene of An Accident in the Town of Ovid. The matter was returnable before respondent on October 2, 1997. Ms. Hunt appeared as scheduled on October 2 and 9 and November 6, 1997.

23. In November 1997, Ms. Hunt retained David Lee Foster to represent her. On December 1, 1997, Mr. Foster's paralegal, Stephanie Andrews, spoke with respondent by telephone. Respondent told her that he would recuse himself from the case. Because of past dealings with respondent, Mr. Foster would not have agreed to represent Ms. Hunt if respondent were to preside.

24. On December 4, 1997, Ms. Hunt; her mother, Linda L. Brown, and Mr. Foster appeared before respondent on the scheduled adjourned date. Respondent indicated that he had changed his mind and intended to continue presiding over the case.

25. Mr. Foster objected. He directed Ms. Hunt to leave the courtroom.

26. On December 22, 1997, respondent wrote to Mr. Foster, reiterating that he did not intend to recuse himself.

27. On January 24, 1998, respondent notified the Commissioner of Motor Vehicles that Ms. Hunt had failed to appear before him within 60 days of a scheduled court appearance, even though she had appeared for every scheduled court date.

28. On January 29, 1998, pursuant to respondent's notification, the Commissioner of Motor Vehicles ordered Ms. Hunt's license suspended, to be effective March 6, 1998.

29. Respondent knew that Ms. Hunt's license would be suspended in accordance with his notification. He made the notification out of personal pique with Mr. Foster, whom respondent felt had displayed a "bad attitude," had taken no steps to dispose of Hunt, had left the court "in a huff" and had not called the court to apologize.

30. On March 5, 1998, respondent recused himself from the case.

31. On March 5, 1998, Ms. Hunt appeared before Justice Wayne D. Ewing. Judge Ewing certified that she had appeared, and the suspension order was lifted

before it was to take effect. Judge Ewing adjourned the case in contemplation of dismissal.

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, 100.2(A), 100.3(A), 100.3(B)(1), 100.3(B)(3) and 100.3(C)(1). Charges I, II, III and IV of the Formal Written Complaint dated March 10, 1998, as amended at the hearing on August 19, 1998, and Charge I of the Formal Written Complaint dated February 26, 1999, are sustained, and respondent's misconduct is established.

Respondent has abused the power of his office, exhibited a lack of judicial temperament and mishandled public funds. Such a record of misconduct, both on and off the bench, indicates that he is not fit to be a judge.

Respondent used the prestige of judicial office in connection with a private dispute involving funeral bills for his aunt. He mentioned that he is a judge and threatened the attorney for the funeral home and, on a later date, threatened the lawyer's paralegal.

Respondent also abused his judicial authority when he ordered Ms. Hunt's license suspended out of personal pique with her lawyer, falsely certifying that she had not appeared in court. Regardless of his perception of Mr. Foster's behavior, respondent

should not have attempted to retaliate by punishing Ms. Hunt. (See similarly, Matter of Slavin, 1990 Ann Report of NY Commn on Jud Conduct, at 158; Matter of Sharpe, 1984 Ann Report of NY Commn on Jud Conduct, at 134). Judicial actions should not be based on the judge's irritation with those involved. (Matter of Lindell - Cloud, 1996 Ann Report of NY Commn on Jud Conduct, at 91; Matter of Miller, 1981 Ann Report of NY Commn on Jud Conduct, at 121).

Respondent displayed improper demeanor in connection with the funeral dispute and, in court, in the Woodard case. On or off the bench, a judge is expected to show proper judicial demeanor. (Matter of Kuehnel, 49 NY2d 465, 469). Angry and profane language in connection with judicial duties is especially serious. (Matter of Mahon, 1997 Ann Report of NY Commn on Jud Conduct, at 104, 105).

Furthermore, respondent's inattention to the financial responsibilities of his court constitutes serious misconduct. (See, Bartlett v Flynn, 50 AD2d 401, 404 [4th Dept]). In particular, his failure to promptly deposit court funds raises questions about their interim use; we have only respondent's word that thousands of dollars in public monies were kept in his briefcase. (See, Matter of More, 1990 Ann Report of NY Commn on Jud Conduct, at 140, 141). This conduct continued, even after respondent knew that the Commission was investigating a complaint about his financial practices. (See, Matter of Sims, 61 NY2d 349, 357).

Irrespective of the high regard in which he is held by some members of the legal community (see, Matter of Gelfand, 70 NY2d 211), we conclude that respondent's retention on the bench is inconsistent with the proper administration of justice (see, Matter of Reeves, 63 NY2d 105, 110-11).

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

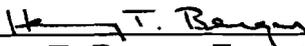
Mr. Berger, Ms. Brown, Ms. Hernandez, Judge Joy, Judge Luciano, Judge Marshall, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Mr. Coffey and Mr. Goldman dissent as to sanction only and vote that respondent be censured.

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: February 10, 2000


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

Schedule A

<u>Date</u>	<u>Amount Received</u>	<u>Amount Deposited</u>	<u>Cumulative Deficiency</u>
8/96	\$3,292	\$1,384.84	-\$1,907.16
9/96	625	0	- 2,532.16
10/96	333	0	- 2,865.16
11/96	15	0	- 2,880.16
12/96	635	628.52	- 2,886.64

Schedule B

<u>Date</u>	<u>Amount Received</u>	<u>Amount Deposited</u>	<u>Cumulative Deficiency</u>
2/97	\$2,887	0	-\$2,887
3/97	990	0	- 3,877
4/97	1, 555	\$2,459.20	- 2,972.80
5/97	960	1,090	- 2,842.80