

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

CLAUDE E. DOUGHERTY,

a Justice of the Clymer Town Court,
Chautauqua County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman*
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Cody B. Bartlett, Of Counsel)
for the Commission

Van Every and Claire (By Robert W. Van Every)
for Respondent

The respondent, Claude E. Dougherty, a justice of
the Clymer Town Court, Chautauqua County, was served with a
Formal Written Complaint dated August 10, 1983, alleging that
he failed for a year to return to a defendant bail money to

*Mrs. Robb's term as a member of the Commission expired on March 31,
1984. This determination was rendered pursuant to a vote on March 8, 1984.

which the defendant was entitled. Respondent did not answer the Formal Written Complaint.

On December 27, 1983, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, stipulating that the agreed statement be executed in lieu of respondent's answer and further stipulating that the Commission make its determination upon the pleadings and the agreed upon facts.

The Commission approved the agreed statement on January 12, 1984. Oral argument was waived. On March 8, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Clymer Town Court, Chautauqua County, and has been since 1978. He also served by designation as a justice of the French Creek Town Court, Chautauqua County, from January 1, 1981, to December 31, 1981.

2. Respondent is not an attorney. He has attended several training courses for judges sponsored by the Office of Court Administration.

3. Between July 3, 1981, and July 6, 1981, respondent received \$1,000 bail posted by James Mylett for Paul S. Asmar,

who was charged with a misdemeanor in the French Creek Town Court.

4. On September 29, 1981, Mr. Asmar duly appeared by counsel, and the matter was adjourned for six months in contemplation of dismissal.

5. Mr. Asmar's attorney, C. Edward Fagan, made a demand for return of the \$1,000 bail, and respondent agreed to return the bail.

6. By memorandum of November 18, 1981, and by letter of March 31, 1982, Mr. Fagan again requested return of the bail. Respondent received each of these communications within five days of the date of each.

7. On November 11, 1981, December 1, 1981, and April 22, 1982, Mr. Fagan, or someone from his law office on his behalf, spoke with respondent by telephone and requested that he return the bail. On November 11 and December 1, respondent promised that he would return the bail promptly.

8. On April 26, 1982, respondent sent a check to James Mylett, mistakenly made out in the amount of \$2,000. Respondent stopped payment on the check after being informed by Mr. Mylett that the bank had dishonored it for insufficient funds.

9. On June 2, 1982, Mr. Fagan, or someone in his law office on his behalf, spoke to respondent by telephone and again requested that he return the \$1,000 bail.

10. On September 23, 1982, Mr. Asmar and Mr. Mylett initiated an action in the Chautauqua County Court, asking that respondent show cause on September 27, 1982, why the bail money should not be returned.

11. On September 27, 1982, one hour before the return time of the order to show cause, respondent appeared in the Chautauqua County Court and produced a check for \$1,000 payable to James Mylett for bail posted for Paul S. Asmar.

12. Respondent turned the check over to a secretary in the Chautauqua County District Attorney's Office after being directed to turn it over to Mr. Fagan.

13. Mr. Fagan received the check on September 30, 1982.

14. Between September 29, 1981, and April 26, 1982, and from April 26, 1982, to September 27, 1982, respondent made no attempt to return the bail money, notwithstanding that Mr. Asmar had duly appeared in court and respondent knew that the bail must be returned according to law.

15. Respondent has no excuse for his failure to return the \$1,000 in a timely fashion.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections

100.1, 100.2(a), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent was required by Section 530.80(3) of the Criminal Procedure Law to return the bail for Mr. Asmar to the person who posted it. Mr. Asmar duly appeared on September 29, 1981; his attorney demanded release of the bail, and respondent promised to return it. However, he did not do so until a year later, on September 27, 1982, after Mr. Asmar's attorney had made numerous demands and had been forced to initiate a lawsuit against respondent.

For this delay of a simple task, respondent has no excuse. He knew that the money should have been returned and repeatedly promised to do so. By failing to promptly dispose of the business of his court, he neglected his adjudicative and administrative responsibilities, in violation of Sections 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct. Respondent acknowledges that for such misconduct public sanction is appropriate.

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


Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Mr. Kovner and Judge Rubin 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: April 16, 1984


John J. Sheehy, Esq., Member
New York State Commission
on Judicial Conduct