

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

JOHN J. ELLIOTT,

Surrogate, Oswego County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

Emil M. Rossi for Respondent

The respondent, John J. Elliott, Surrogate, Oswego County, was served with a Formal Written Complaint dated July 24, 2002, containing one charge. Respondent filed an answer dated August 19, 2002.

On October 30, 2002, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On November 8, 2002, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a Judge of the Surrogate's Court, Oswego County, since June 1, 1988.

2. Respondent failed to file his financial disclosure statement for the year 2000 with the Ethics Commission for the Unified Court System (hereinafter "Ethics Commission") until on or about January 2, 2002, more than seven months after May 15, 2001, the time required by Section 73 of the Public Officers Law and Section 40.2 of the Rules of the Chief Judge, notwithstanding that the Ethics Commission had sent him a Notice To Cure dated June 6, 2001, and a Notice of Delinquency dated June 29, 2001. In his response dated December 8, 2001, to a letter from the Commission dated November 7, 2001, inquiring about the reason for his failure to file his financial disclosure statement within the time required by law, respondent attributed some of his delay to the effect of the September 11, 2001, tragedy and his concern about his daughter who was about "a mile and a half" from the World Trade Center in New York City. Respondent recognizes that the events of September 11, 2001, do not provide an acceptable excuse for his having

failed to file his financial disclosure statement for the year 2000 within the time required by law.

3. Respondent failed to file his 1997 financial disclosure statement by May 15, 1998, as required by Section 73 of the Public Officers Law and Section 40.2 of the Rules of the Chief Judge, until after he had received a Notice To Cure from the Ethics Commission dated June 16, 1998. Respondent filed his 1997 financial disclosure statement on July 1, 1998.

4. Respondent failed to file his 2001 financial disclosure statement by May 15, 2002, as required by Section 73 of the Public Officers Law and Section 40.2 of the Rules of the Chief Judge, until after he had received a Notice To Cure from the Ethics Commission dated June 4, 2002. Respondent filed his 2001 financial disclosure statement on June 11, 2002.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.3(C)(1) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

The Legislature and the Chief Judge have determined that financial disclosure by judges serves an important public function (*see* Jud Law §211[4] and Rules of the Chief Judge §40.2), and it is the duty of every judge to file the required reports promptly. The Ethics Commission has an obligation to review such statements before

they become public records, and any delay in filing violates the law and effectively withholds information from the public.

In three of the past five years, respondent failed to file his financial disclosure statements by the required date and eventually filed the required disclosure only after the Ethics Commission had sent him a Notice To Cure reminding him of his obligation. Respondent's delays in filing the required statements ranged from a few weeks (for the 1997 and 2001 reports) to more than seven months for his 2000 report.

Respondent's tardiness with respect to the 2000 report is particularly noteworthy. After receiving a Notice To Cure dated June 6, 2001, which served notice that his disclosure statement was overdue, respondent still failed to file the required report and was sent a Notice Of Delinquency on June 29, 2001; on November 7, 2001, the Commission also wrote to respondent about the delayed report. Yet, not until the following January, a delay of more than seven months, did respondent comply with the reporting requirement. With respect to respondent's explanation attributing some of his delay to the effect of the September 11, 2001, tragedy, we note that his financial statement was already nearly four months overdue by that date and that respondent has acknowledged that his explanation does not provide an acceptable excuse for a seven-month delay.

Respondent's conduct demonstrates an inattention to his administrative responsibilities, in violation of Section 100.3(C)(1) of the Rules Governing Judicial Conduct. Although this behavior does not reflect on respondent's performance on the

bench, it is misconduct that warrants public discipline. *See Matter of Russell*, 2001 Ann Rep 121 (Comm on Jud Conduct, Oct 31, 2000).

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

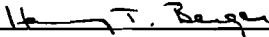
Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

Ms. Moore was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: November 18, 2002


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