

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

HAROLD L. ERWAY,

a Justice of the Roseboom Town Court,
Otsego County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Green & Gibbons (By Lynn E. Green, Jr.) for
Respondent

The respondent, Harold L. Erway, a justice of the Roseboom Town Court, Otsego County, was served with a Formal Written Complaint dated April 26, 1996, alleging that he failed to remit court funds to the state comptroller on a timely basis. Respondent filed an answer dated June 3, 1996.

On July 30, 1996, 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 by Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On September 12, 1996, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Roseboom Town Court since 1973.
2. By letter dated October 24, 1988, the Commission cautioned respondent to report cases and remit funds to the state comptroller on a timely basis.
3. Between January 1995 and January 1996, as set forth in the appended schedule, respondent failed to report dispositions and remit funds to the state comptroller within ten days of the month following collection, as required by UJCA 2020 and 2021(1), Town Law §27(1) and Vehicle and Traffic Law §1803(8).

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1, 100.2(a), 100.3(a)(1)* and 100.3(b)(1)**, and Canons 1, 2A, 3A(1) and 3B(1) of the Code of Judicial Conduct. Charge I of the

*Now Section 100.3(B)(1)

**Now Section 100.3(C)(1)

Formal Written Complaint is sustained, and respondent's misconduct is established.

A town justice is required to remit court funds to the state comptroller by the tenth day of the month following collection. (UJCA 2021[1]; Town Law §27[1]; Vehicle and Traffic Law §1803[8]). The mishandling of public funds by a judge is misconduct, even when not done for personal profit. (Bartlett v Flynn, 50 AD2d 401, 404 [4th Dept]). The failure to remit funds promptly to the state comptroller constitutes neglect of administrative duties, even if the money is accounted for and on deposit. (Matter of Ranke, 1992 Ann Report of NY Commn on Jud Conduct, at 64, 65).

"The failure to heed a Commission warning [to] comply with remitting requirements exacerbates the misconduct." (Matter of Goebel, 1990 Ann Report of NY Commn on Jud Conduct, at 101, 102).

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

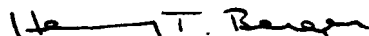
Mr. Berger, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Judge Salisbury and Judge Thompson concur.

Mr. Sample 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: September 17, 1996


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

SCHEDULE A

<u>Month and Year</u>	<u>Date Received</u>	<u>Days Late</u>
1/95	3/29/95	47
2/95	3/29/95	19
3/95	4/10/95	0
4/95	9/20/95	133
5/95	9/20/95	102
6/95	9/20/95	72
7/95	9/20/95	41
8/95	9/20/95	9
9/95	11/08/95	29
10/95	12/26/95	46
11/95	12/26/95	15
12/95	1/17/96	7