

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

ROGER W. GLOSS,

a Justice of the Sheridan Town Court,  
Chautauqua 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

Subjack, Dorey & Benca (By James P. Subjack) and Denman  
& Dorn (By John W. Dorn) for Respondent

The respondent, Roger W. Gloss, a justice of the  
Sheridan Town Court, Chautauqua County, was served with a Formal  
Written Complaint dated April 16, 1992, alleging improper conduct  
in the course of a personal dispute that led to his conviction on  
criminal charges. Respondent filed an answer dated May 8, 1992.

By order dated June 8, 1992, the Commission designated Jacob D. Hyman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on November 10, 12 and 17, 1992, and the referee filed his report with the Commission on April 22, 1993.

By motion dated May 6, 1993, the administrator of the Commission moved to confirm the referee's report, to adopt an additional finding of fact and for a determination that respondent be removed from office. Respondent opposed the motion on May 17, 1993. The administrator filed a reply on May 26, 1993. Oral argument was waived.

On June 3, 1993, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Sheridan Town Court for 11 years.

2. Since the 1960s, respondent has farmed land on Route 20 in the Town of Sheridan, including a 75-acre parcel near respondent's home and once owned by his family.

3. In 1970, respondent entered into a land contract with his mother for the 75 acres. The contract was not recorded. It was cancelled in 1973. Respondent testified that it was renewed in 1974, but he produced no evidence of having made payments. The renewed contract was never recorded, and respondent could not produce an original. Respondent was never given a deed granting him title to the property.

4. Respondent's mother died in 1985, leaving her estate to respondent and his brother. Her husband, Theodore Guenther, claimed elective rights in the estate. Respondent and his brother were named co-executors, but they were removed by the Surrogate's Court for commingling their assets with estate property and other violations of their fiduciary duties. Mr. Guenther was named administrator, C.T.A., on July 30, 1990.

5. On September 18, 1990, Mr. Guenther sold the 75-acre parcel to neighboring farmers, Joel and Cathy Hamlet. The Hamlets posted the property on September 24, 1990, after being told by their attorney that their deed to the land had been recorded.

6. On September 25, 1990, respondent drove onto the land and attempted to stop the Hamlets from cultivating it. He angrily ordered Joel Hamlet to leave, repeatedly calling him and his family "assholes" who were "no fucking good" and referring to Mr. Guenther, who had also come to the scene, as "scum".

7. Ms. Hamlet handed her husband a small tape recorder. Respondent grabbed it from Mr. Hamlet, broke it open, tore out the tape, ran his fingernail along the tape, threw the tape to the ground, put the recorder in his pocket, and said, "A lot of fucking good this will do you." A sheriff's deputy who was called to the scene later retrieved the recorder and returned it to Mr. Hamlet.

8. On September 26, 1990, respondent sent a contractor to the land to harvest grapes. Accompanied by a state trooper, respondent met the Hamlets on the land. The Hamlets produced a certificate of title, and all of the parties left.

9. On September 27, 1990, Mr. Hamlet and a work crew were mechanically harvesting grapes on the property when respondent arrived by car. He drove his car in front of Mr. Hamlet's grape picker in order to block it.

10. Grant Perry, who accompanied respondent, served Mr. Hamlet, at respondent's direction, with an Order to Show Cause why respondent should not be declared owner of the property. Attached to the papers was a copy of the 1970 agreement between respondent and his mother. They did not contain the 1973 cancellation of that agreement.

11. Respondent got out of his car carrying an unloaded shotgun. With the butt of the shotgun, he broke Mr. Hamlet's tractor key in the ignition. He climbed the grape picker, pointed the shotgun at Mr. Hamlet and told him that he had 60 seconds to read the papers and leave the property. Respondent then began counting.

12. As he counted down, respondent threw the shotgun to Mr. Perry, grabbed two metal-tipped fiberglass beater rods that were part of the grape-picking equipment and held them in a threatening manner as he told Mr. Hamlet to leave. Mr. Hamlet eventually succeeded in starting his tractor and left the property with his equipment but without seven tons of harvested grapes.

13. On October 15, 1990, in County Court, the Hamlets were declared owners of the property. Respondent's complaint was dismissed, and the Hamlets were given a judgment for \$8,120 for the grapes that respondent had harvested from their property.

As to Charge II of the Formal Written Complaint:

14. On December 2, 1991, after a jury trial in the Ellicott Town Court, respondent was found guilty of two counts of Criminal Mischief, Fourth Degree; Menacing, and Trespass, in connection with his actions toward Joel Hamlet on September 25, 26 and 27, 1990. Respondent was given a Conditional Discharge.

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. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Over the course of three days, respondent used a shotgun, physical threats, vulgarities and verbal intimidation to try to win the advantage in a personal dispute over property rights. These unseemly confrontations led to his conviction on three misdemeanor charges and a violation.

Peaceable self-help is a recognized remedy by which a creditor may, in certain circumstances, obtain repossession of goods. (See, 32 ALRFed 431). Respondent's course of action cannot be described as peaceable, however. Whether or not respondent thought that he had a legitimate right to the property, the means he chose to assert it, vulgarities, threats, verbal and physical intimidation and the display of a firearm, violated the law and the high standards of conduct expected of judges.

Respondent's failure off the bench to abide by the laws that he is often called upon to apply in court undermines his effectiveness as a judge (see, Matter of Wray, 1992 Ann Report of NY Commn on Jud Conduct, at 77, 80) and subjects the judiciary as a whole to disrespect (see, Matter of Kuehnel v State Commission on Judicial Conduct, 49 NY2d 465, 469). His improper behavior was not the result of a momentary loss of control; it spanned three days and involved repeated displays of anger and abuse.

Respondent was previously censured by this Commission for extensive political activity while a judge. (Matter of Gloss, 1989 Ann Report of NY Commn on Jud Conduct, at 81). That prior censure is a relevant consideration in determining sanction in this matter. (See, Matter of Maney v State Commission on Judicial Conduct, 70 NY2d 27, 31).

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

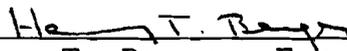
Mr. Berger, Judge Altman, Mr. Bellamy, Judge Ciparick,  
Mr. Cleary, Mrs. Del Bello, Mr. Goldman, Judge Salisbury,  
Mr. Sheehy and Judge Thompson concur.

Ms. Barnett 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: July 27, 1993

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