

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

WILLIAM H. INTEMANN, JR.,

a Judge of the County Court, Family Court
and Surrogate Court, Hamilton County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Myriam J. Altman
Henry T. Berger, Esq.
John J. Bower, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the
Commission

Ainsworth, Sullivan, Tracy, Knauf, Warner and
Ruslander (By Robert K. Ruslander; Lisa A.
Oppedisano, Of Counsel) for Respondent

The respondent, William H. Intemann, Jr., a judge of
the County Court, Family Court and Surrogate's Court, Hamilton
County, was served with a Formal Written Complaint dated March
9, 1987, alleging that he participated in business activity and

practiced law while a full-time judge and that he improperly failed to disqualify himself in certain matters. Respondent filed an answer dated March 25, 1987. A Supplemental Formal Written Complaint dated April 29, 1987, was served, and respondent filed a supplemental answer on May 21, 1987.

By order dated May 19, 1987, the Commission designated Robert E. Helm, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on November 9, 10 and 11, 1987, and the referee filed his report with the Commission on June 8, 1988.

By motion dated July 1, 1988, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion by cross motion on August 29, 1988.* The administrator filed a reply on September 6, 1988.

On September 22, 1988, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

* With his cross motion, respondent submitted affidavits by two individuals relating facts that go to the merits of the charges. The affidavits are not properly a part of the record of this proceeding and were not considered in rendering this determination.

As to Charge I of the Formal Written Complaint:

1. Respondent is a judge of the Hamilton County Court, Family Court and Surrogate's Court and has been since January 1, 1984.

2. From January 1, 1984, to January 1986, while a full-time judge, respondent actively participated in three businesses organized for profit: Spemere Partnership, Spemere Enterprises, Inc., and Sacandaga Lake Estates, Inc.

3. As a manager of Spemere Partnership and as an officer of Spemere Enterprises, Inc., and Sacandaga Lake Estates, Inc., during the above period, respondent executed contracts, wrote checks and handled financial affairs for each of the businesses.

4. Respondent lacked candor when he testified in this proceeding on November 11, 1987, that he took steps to reduce his active participation in Spemere Partnership and Spemere Enterprises, Inc., immediately upon assuming the bench in January 1984.

As to Charges II and III of the Formal Written Complaint and Charges I and II of the Supplemental Formal Written Complaint:

5. Before he took the bench on January 1, 1984, respondent had been retained as a private attorney to represent

the estates of George W. Marthen, F. Jarvis Steber and George E. Bradt.

6. At the end of December 1983, respondent knew that he would not be able to complete work on the three estates before he took the bench.

7. Before he left his practice, respondent did not turn over case files to the representatives of the estates, and he did not advise them that another law firm was taking over his law office.

8. In December 1983, respondent filled out a draft affidavit for the signature of the executrix of the Bradt estate. Respondent inserted as attorney for the estate the name of Andrew S. Kowalczyk, III, the attorney taking over respondent's law office, and dated it January 1984. Respondent gave the affidavit to his secretary, Ellen Alfieri, for typing and instructed her to send the typed affidavit to the executrix.

9. Ms. Alfieri remained in the law office after January 1, 1984, as Mr. Kowalczyk's secretary.

10. Respondent did not inform Mr. Kowalczyk that his name had been used on the affidavit.

11. On January 30, 1984, Ms. Alfieri sent the affidavit to the executrix for signature with a cover letter on respondent's stationery and signed respondent's name and her initials to the letter.

12. On February 15, 1984, pursuant to respondent's instruction, Ms. Alfieri acknowledged the signature of the executrix on the affidavit, which listed Mr. Kowalczyk as attorney for the estate.

13. On February 24, 1984, and February 29, 1984, Ms. Alfieri, pursuant to respondent's instructions, typed letters to the Bradt executrix and signed them with Mr. Kowalczyk's name and her initials. The letters were typed on respondent's law office stationery with respondent's name crossed out and Mr. Kowalczyk's typed in its place.

14. On March 16, 1984, respondent signed and mailed on his own stationery a bill to the executrix of the Bradt estate, charging \$246.50 for professional services rendered on January 27, 1984.

15. Mr. Kowalczyk had no knowledge of the Bradt estate, never performed any services with respect to it and was unaware that his name had been used in connection with it.

16. On January 6, 1984, Ms. Alfieri, at respondent's direction, sent the executrix of the Marthen estate a letter over respondent's signature and her initials. The letter asked the executrix to sign but not date estate tax forms and return them. The letter advised the executrix that the firm taking over respondent's law office would complete the legal work of the estate, notwithstanding that the executrix had never authorized respondent to turn over representation of the estate

to another attorney and notwithstanding that respondent had no agreement with Mr. Kowalczyk to work on the Marthen estate. Respondent advised the executrix to call him at his judicial chambers or at home. The letter asked the executrix for \$6,000 for respondent's work on the estate.

17. The executrix, Elsa W. Marthen, did not sign the returns because she was disturbed over the requested fee and the fact that respondent had asked her not to date the returns.

18. On January 26, 1984, respondent sent Ms. Marthen a letter on his law office stationery, with the words "attorney and counselor at law" crossed out, again requesting that she sign and return the tax forms.

19. On February 13, 1984, Ms. Marthen wrote to respondent at his chambers, objecting to the fee and stating that she would not sign and return the tax forms.

20. On March 4, 1984, respondent signed and sent a letter to Ms. Marthen on his law office stationery, with the words "law office" crossed out. The letter discussed the reasons for the requested fee.

21. In April 1984, Ms. Marthen signed the tax forms and sent them to the law office in care of Mr. Kowalczyk. On April 17, 1984, she sent respondent a check for \$1,000.

22. When Mr. Kowalczyk received Ms. Marthen's letter, he advised her that he was unfamiliar with the estate and had performed no services for it. He returned the tax forms to her.

23. On April 22, 1984, respondent again wrote to Ms. Marthen on his law office stationery, with the words "law office" crossed out and the number of his home substituted for the law office number. The letter asked Ms. Marthen for a balance of \$5,336.49 in fees and expenses and threatened to add "interest at the prevailing bank rate" each month after June 1, 1984, if the balance remained unpaid, notwithstanding that respondent had not previously advised her that interest would be imposed or obtained her consent to impose interest on any unpaid legal fees. Respondent stated, "Since I have to allow the attorneys who are completing this matter their fees in advance, I would like the balance as soon as possible," notwithstanding that he had no agreement with any attorneys to pay them fees in advance to complete the estate.

24. Respondent sent a note to Mr. Kowalczyk, which was received on May 2, 1984, and asked him to forward the Marthen tax forms to respondent.

25. When Ms. Marthen received the tax forms from Mr. Kowalczyk, she forwarded them to respondent's court clerk, who placed them on respondent's desk in chambers.

26. Respondent signed the federal tax return as preparer in April 1984 and dated it December 30, 1983. Respondent acknowledged Ms. Marthen's signature on the state tax return as notary public in April 1984 and dated it December 30,

1983, notwithstanding that respondent's notary public commission had expired.

27. Respondent then took the tax forms to his former law office and instructed Ms. Alfieri as to what must be done to complete the estate.

28. By this time, Mr. Kowalczyk's firm had ended its agreement with respondent and had left the law office. Respondent had entered into an agreement with another firm to take over the office. The agreement, dated April 9, 1984, specified that the attorney taking over the law office, Donald A. Campbell, would complete the Marthen estate for respondent at an hourly rate of \$80, notwithstanding that Ms. Marthen had not been advised of this arrangement nor consented to it.

29. Mr. Campbell subsequently prepared state tax documents for the estate and was paid a total of \$180 in July and October 1984 by respondent.

30. Respondent filed or caused to be filed the federal tax return and on June 25, 1984, wrote a check for the \$300 fee to file the estate in his court. As of May 21, 1984, the Surrogate's Court records still listed respondent as attorney for the estate.

31. On December 30, 1983, using a power of attorney granted him by the executrix of the Steber estate, respondent wrote himself a \$15,000 check on the account of the estate as compensation for legal services performed in 1983. Respondent

did not notify the executrix, Helen A. Greisen, that he intended to do so or obtain her consent to do so. Ms. Greisen was under the belief that respondent's fee would be paid when the estate was concluded and that the power of attorney would be used during her absence from the state to pay relatively small bills.

32. Respondent acknowledged in testimony before a member of the Commission on July 14, 1986, that it was not standard procedure to take his fee before the estate proceeding was concluded. "The only reason I was trying to get up-front money here was because I was going out of practice, and I felt I ought to get what I put in before I left," respondent testified.

33. After January 1, 1984, Ms. Greisen was told by Ms. Alfieri that Mr. Kowalczyk had taken over respondent's law office. In January 1984, Ms. Greisen sent stock certificates related to the estate to the law office addressed to Mr. Kowalczyk.

34. On January 16, 1984, respondent went to the post office next door to his former law office and was given the mail for the law office. He received the letter from Ms. Greisen and signed Mr. Kowalczyk's name to the return receipt, which was returned to Ms. Greisen.

35. Mr. Kowalczyk was vacationing in Florida at the time. He had no knowledge that respondent had signed his name to the return receipt and had never authorized him to do so. Mr. Kowalczyk never received the letter.

36. Respondent took the letter to the law office, where he opened and read the letter or otherwise became familiar with its contents.

37. Respondent sent and signed a letter to Ms. Greisen dated January 16, 1984, on his law office stationery, directing her to execute a document and return it to the law office.

38. On January 19, 1984, at respondent's direction, Ms. Alfieri sent a letter regarding the Steber estate to Keystone Custodian Fund. She signed Mr. Kowalczyk's name, although he had no knowledge of the letter.

39. On February 14, 1984, Ms. Alfieri typed a letter to Ms. Greisen concerning the estate based on information provided by respondent. Ms. Alfieri signed Mr. Kowalczyk's name and her initials to the letter, although Mr. Kowalczyk had no knowledge of the letter or the information contained therein.

40. On March 7, 1984, at respondent's direction, Ms. Alfieri typed another letter to Ms. Greisen and signed Mr. Kowalczyk's name. Mr. Kowalczyk was unaware of the letter.

41. Mr. Kowalczyk never performed any services with respect to the Steber estate, was unaware of its existence and had never discussed it with respondent or Ms. Alfieri.

42. Respondent continued to make deposits in the Steber estate bank account and to write checks on the account through July 1984.

43. Respondent lacked candor when he testified in this proceeding on November 11, 1987, that he did no work in connection with the Bradt, Marthen and Steber estates in 1984 and that all the correspondence was dictated by him prior to the end of 1983 and typed and sent by Ms. Alfieri after respondent took the bench. He also lacked candor when he testified that he did not recall why he advised Ms. Marthen not to date the tax returns and that he did not open or cause to be opened the letter from Ms. Greisen on January 16, 1984.

44. Paragraphs 4, 5 and 9 of Charge I and Paragraph 13 of Charge II of the Supplemental Formal Written Complaint are not sustained and are, therefore, dismissed.

As to Charge IV of the Formal Written Complaint:

45. On April 9, 1984, respondent leased his former law office, equipment and law library with an option to buy to Donald A. Campbell of the law firm of Campbell & White. In May 1986, the firm exercised the option and purchased the property for \$37,500.

46. In the April 9, 1984, agreement, respondent also retained Mr. Campbell to complete the Marthen and Steber estates at the hourly fee of \$80. Respondent paid Mr. Campbell a total of \$180 in July and October 1984 for his work on the Marthen estate. In December 1986, Mr. Campbell received payment of

\$6,000 from the Steber estate for legal fees. From this amount, Mr. Campbell paid respondent \$1,000 for his work on the estate.

47. After April 1984, Mr. Campbell also became attorney for the three businesses in which respondent was a manager or officer: Spemere Partnership, Spemere Enterprises, Inc., and Sacandaga Lake Estates, Inc. On December 21, 1984, respondent, as a partner in Spemere Partnership, paid Mr. Campbell \$606.50 in legal fees, and on August 16, 1985, respondent paid an additional \$600. Mr. Campbell handled a number of closings for Sacandaga Lake Estates, Inc., and was paid by respondent as president of the corporation.

48. From 1984 to 1986, respondent also retained Mr. Campbell to represent him in a number of personal legal matters. Since 1984, Mr. Campbell has represented respondent in negotiations with Chimney Mountain Craftsmen, Inc., concerning the proposed repurchase by the corporation of respondent's stock. The matter was still pending at the date of the hearing in this matter in November 1987. In April 1985, Mr. Campbell brought a real property action, Intemann v. Coe, on behalf of respondent. Mr. Campbell brought an action, Intemann v. Blanchard, on behalf of respondent to collect an unpaid legal fee. Mr. Campbell brought another real property action, Intemann v. Scribner, on respondent's behalf. In December 1985, Intemann v. Raquette Falls Land Co. et al., another real property action, was instituted by Mr. Campbell on respondent's

behalf. In March 1985, Mr. Campbell represented respondent and Edward Taylor when they purchased land together. Respondent paid Mr. Campbell \$599.78 for his services with respect to the land purchase.

49. Between 1984 and 1986, respondent failed to disqualify himself in 21 matters in which Mr. Campbell appeared in his court, as denominated in Schedule A of the Formal Written Complaint, notwithstanding their financial and business relationship.

As to Charge V of the Formal Written Complaint:

50. In June 1983, as an attorney, respondent obtained an appraisal of property in Hamilton County owned by the Estate of Waldo Morgan Allen pursuant to an agreement with the Illinois attorney for the estate. On July 3, 1984, as judge, respondent signed an order granting ancillary letters of administration in the Allen estate.

51. In January 1983, as an attorney, respondent represented Mary Grant Turner in a support proceeding against John Wesley Turner. On July 14, 1983, respondent filed a petition on her behalf claiming a violation of a court order by Mr. Turner. On January 27, 1984, as judge, respondent signed an order in Turner v. Turner terminating support and visitation on the grounds that both parties had left the state.

52. Paragraphs 12(a) and 12(d) of Charge V of the Formal Written Complaint are not sustained and are, therefore, dismissed.

As to Charge VI of the Formal Written Complaint:

53. On May 11, 1984, respondent signed an order exempting from tax the Estate of Dennis T. Dillon, Jr., notwithstanding that the estate was represented by respondent's part-time law assistant, Andrew Halloran.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(c)(1), 100.5(c)(1), 100.5(c)(2), 100.5(d) and 100.6 of the Rules Governing Judicial Conduct; Canons 1, 2, 3C(1), 5C(1), 5C(2), 5C(3), 5D, 5F and 6 of the Code of Judicial Conduct; Article 6, Section 20(b)(4) of the Constitution; Sections 14 and 16 of the Judiciary Law, and Disciplinary Rules 1-102(A)(4) and 2-106(A) of the Code of Professional Responsibility. Charges I through IV, Paragraphs 12(b) and 12(c) of Charge V and Charge VI of the Formal Written Complaint and Paragraphs 6, 7 and 8 of Charge I and Paragraphs 11 and 12 of Charge II of the Supplemental Formal Written Complaint are sustained, and respondent's misconduct is established. Paragraphs 12(a) and 12(d) of Charge V of the Formal Written Complaint, Paragraphs 4, 5 and 9 of Charge I and Paragraph 13 of

Charge II of the Supplemental Formal Written Complaint are dismissed. Respondent's cross motion is denied.

Respondent has engaged in a series of improper acts which clearly violate established ethical standards.

After taking the bench, he actively participated in three businesses organized for profit. See Section 100.5(c)(2) of the Rules Governing Judicial Conduct; Matter of Bayger, 1984 Annual Report 62 (Com. on Jud. Conduct, Jan. 18, 1983); Matter of Feinberg, 39 NY2d(a),(u) (Ct. on the Judiciary 1976). By his participation in these businesses and their representation by an attorney who appeared regularly in respondent's court, respondent engaged in business dealings with a lawyer likely to come before him, in violation of Section 100.5(c)(1) of the Rules. See also Matter of Laurino, unreported (Com. on Jud. Conduct, Mar. 25, 1988); Matter of Orloff, 1988 Annual Report 199 (Com. on Jud. Conduct, May 28, 1987).

Respondent improperly practiced law after taking the bench by continuing to provide legal services for three estates (See Article 6, Section 20[b][4] of the Constitution; Matter of Katz, 1985 Annual Report 157 (Com. on Jud. Conduct, Mar. 30, 1984); Matter of Schwerzmann, 44 NY2d[a],[d] [Ct. on the Judiciary 1978]) and, when his personal performance became unfeasible, by collecting fees for services rendered after he

took the bench and paying another lawyer to complete one of the estates.

Respondent failed to disqualify himself in two matters in which he had performed services as a lawyer in the same case (See Section 14 of the Judiciary Law; Matter of Jacon, 1984 Annual Report 99 [Com. on Jud. Conduct, Nov. 28, 1983]), in one case in which his law secretary was representing a party (See Section 100.3[c][1] of the Rules; Matter of Vaccaro, 42 NY2d[a],[e] [Ct. on the Judiciary 1977]) and in 21 matters in which parties were represented by an attorney with close business and financial ties to respondent (See Matter of Conti v. State Commission on Judicial Conduct, 70 NY2d 416 [1987]; Matter of Roncallo, 1983 Annual Report 169 [Com. on Jud. Conduct, Nov. 12, 1982]).

In determining the proper sanction, we must also consider that the record is riddled with evidence of a pattern of deception which requires respondent's removal.

Respondent attempted to conceal his improper practice of law by backdating documents, by directing that letters and an affidavit be sent over the name of another attorney without permission, by signing another attorney's name to a registered letter and by signing as notary public after his commission had expired and backdating the document. Using a power of attorney, he also paid himself a \$15,000 fee from an estate without the knowledge of the executrix.

Respondent attempted to persuade another client to pay a fee by falsely stating that he had an agreement with other attorneys to complete the case and was required to pay them in advance.

In addition, respondent's testimony in this proceeding lacked candor in several material respects.

Deception is antithetical to the role of a judge who is sworn to uphold the law and seek the truth. Matter of Myers v. State Commission on Judicial Conduct, 67 NY2d 550, 554 (1986). Such conduct is not conducive to the efficacy of the judicial process and is destructive to a judge's usefulness on the bench. Matter of Perry, 53 AD2d 882 (2d Dept. 1976).

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


Mrs. Robb, Judge Altman, Mr. Berger, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mr. Kovner and Judge Ostrowski concur.

Judge Rubin and Mr. Sheehy 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: October 25, 1988


Lillemor T. Robb, Chairwoman
New York State
Commission on Judicial Conduct