

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

KERRY R. LOCKWOOD,

a Justice of the Plainfield Town Court,
Otsego County.

THE COMMISSION:

Raoul Lionel Felder, Esq., Chair
Honorable Thomas A. Klonick, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Marvin E. Jacob, Esq.
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Kathryn J. Blake, Of Counsel) for the Commission

Honorable Kerry R. Lockwood, *pro se*

The respondent, Kerry R. Lockwood, a justice of the Plainfield Town
Court, Otsego County, was served with a Formal Written Complaint dated March 10,
2006, containing two charges.

By motion dated May 24, 2006, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's operating procedures and rules (22 NYCRR §7000.6[c]), based on respondent's failure to answer the formal written complaint. Respondent did not file a response to the motion. By Decision and Order dated June 26, 2006, the Commission granted the administrator's motion and determined that the charges were sustained and that respondent's misconduct was established.

The Commission scheduled oral argument on the issue of sanctions for July 26, 2006. Oral argument was not requested and thereby was waived. Counsel to the Commission filed a memorandum recommending that respondent be removed from office. Respondent filed no papers on the issue of sanctions; an unsigned message was faxed to the Commission on July 28, 2006, stating that respondent would not attend "the Hearing scheduled for today [sic]" and would resign as of August 31, 2006.

On October 30, 2006, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Plainfield Town Court, Otsego County since 2000. She is not a lawyer.
2. Respondent's caseload as a judge is small, averaging fewer than four cases per month.

As to Charge I of the Formal Written Complaint:

3. From January 2004 through December 2005, as set forth on Schedule A of the Formal Written Complaint, respondent failed to report and remit court funds in a timely manner, *i.e.* within the tenth day of the month succeeding collection, as required by Sections 1803 of the Vehicle and Traffic Law, Section 27 of the Town Law and 2021 of the Uniform Justice Court Act. Eleven times in that period, respondent's reports and remittances were late by more than 113 days, and twice they were late by more than 640 days.

4. Respondent's failure to timely report and remit court funds for the months of April 2004, May 2004 and February 2005 resulted in the State Comptroller's office giving notice to the Town of Plainfield, by letters dated May 12, 2005, and December 2, 2005, that respondent's judicial salary should be withheld.

As to Charge II of the Formal Written Complaint:

5. As set forth below, respondent failed to cooperate with the Commission's investigation of her conduct with respect to the matters set forth in Charge I above.

6. On June 27, 2005, the Commission sent respondent a letter requesting her response to the allegation that she had failed to timely report and remit to the state comptroller as required. Respondent failed to respond to the letter.

7. On July 19, 2005, the Commission sent respondent another letter requesting her response to the allegations and enclosing a copy of the June 27, 2005,

letter. Respondent failed to respond to the letter.

8. On August 4, 2005, the Commission sent respondent a third letter requesting her response to the allegations and enclosing a copy of the letters dated June 27, 2005, and July 19, 2005. Respondent failed to respond to the letter.

9. On September 12, 2005, the Commission sent respondent a letter confirming an appointment at the court on September 15th to examine court records. On September 15, 2005, a Commission investigator appeared at respondent's court pursuant to the appointment to examine numerous court records, including case files and bank statements. Respondent had left a letter for the Commission dated September 14, 2005, indicating that she had been unable to locate many of the records the investigator had come to examine but would attempt to do so. Respondent's letter claimed that she had not received the Commission's letters dated June 27, 2005, July 19, 2005, and August 4, 2005.

10. On or about September 15, 2005, respondent's employer, Richard N. Bach, Esq., told Commission staff that he or respondent would communicate with the Commission the following day to arrange for examination of the requested court records that had not been provided. On October 14, 2005, the Commission sent respondent a letter by certified mail, return receipt requested, memorializing the foregoing and requesting that respondent contact the Commission to arrange a date for the court records to be examined. Respondent received this letter on October 17, 2005, and personally signed the return receipt. Respondent failed to respond to the letter and failed to provide

the requested court records.

11. On November 18, 2005, the Commission sent respondent a follow-up letter by certified mail, return receipt requested, seeking to make another appointment to inspect the remainder of respondent's court records and warning respondent that her failure to respond may be viewed as a failure to cooperate. Respondent received this letter on November 21, 2005, and personally signed the return receipt. Respondent failed to respond to the letter and failed to provide the requested court records.

12. On December 9, 2005, the Commission sent a letter to respondent by certified mail, return receipt requested, requesting her appearance on December 22, 2005, to give testimony at the Commission with respect to the matters herein. Respondent received this letter on December 12, 2005, and personally signed the return receipt. Respondent failed to appear on December 22nd and did not contact the Commission or provide an explanation for her failure to appear.

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(B)(1) and 100.3(C)(1) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

All funds received by a town or village justice must be properly documented and remitted to the State Comptroller by the tenth day of the month following collection (UJCA §2021[1]; Town Law §27; Vehicle and Traffic Law §1803). The failure to remit funds promptly to the State Comptroller constitutes neglect of a judge's administrative responsibilities and is improper even if the money is on deposit and even if the amounts are small. *See Matter of Hrycun*, 2002 Annual Report 109 (Comm. on Judicial Conduct); *Matter of Ranke*, 1992 Annual Report 64 (Comm. on Judicial Conduct). 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 1976).

Respondent's negligence with respect to her administrative duties is not excused by the demands of her private employment or other activities. The judicial responsibilities of a judge take precedence over all the judge's other activities (Section 100.3[A] of the Rules Governing Judicial Conduct).

Respondent seriously exacerbated her misconduct by failing to cooperate with the Commission's investigation into the allegations of negligence. *See Matter of Cooley v. Comm. on Judicial Conduct*, 53 NY2d 64 (1981); *Matter of Mason v. Comm. on Judicial Conduct*, 100 NY2d 56 (2003). The Commission is authorized to "request a written response from the judge who is the subject of the complaint" and to require a judge's testimony during the investigation (22 NYCRR §7000.3[c], [e]; Jud. Law §44, subd. 3). By refusing to answer the Commission's written inquiries and refusing to appear for testimony, respondent delayed and impeded the Commission's efforts to obtain

a full record of the relevant facts and thereby obstructed the Commission's discharge of its lawful mandate. Her failure to cooperate demonstrates an unacceptable lack of respect for the process, created by Constitution and statute, under which the Commission is empowered to investigate the conduct of judges.

Although respondent claimed, in her letter dated September 14, 2005, that she had not received the first three letters from the Commission, the record establishes that after that date, she failed to respond to two subsequent letters from the Commission although she personally received them, and that she failed to appear for testimony at the Commission's office although she personally received the letter requesting her appearance. Such behavior establishes convincingly that her failure to cooperate was willful and pervasive.

We note that, in this proceeding, respondent has failed to answer the charges or respond to the motion for summary determination. Her failure to respond throughout the proceeding or to submit any papers on her own behalf may be construed not only as an admission of the allegations but as "an indifference to the attendant consequences." *Matter of Nixon*, 53 AD2d 178, 180 (1st Dept 1976).

In its totality, respondent's conduct shows "contumacious disregard for the responsibilities of her judicial office," which warrants removal from office. *Matter of Carney*, 1997 Annual Report 78, 79 (Comm. on Judicial Conduct).

The sanction of removal bars a judge from holding judicial office in the future (NY Const Art 6 §22[h]). This determination is rendered pursuant to Judiciary

Law Section 47 in view of respondent's resignation from the bench.

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

Mr. Felder, Judge Klonick, Mr. Coffey, Mr. Emery, Mr. Harding, Mr. Jacob, Judge Peters and Judge Ruderman concur.

Ms. DiPirro was not present.

CERTIFICATION

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

Dated: November 7, 2006



Raoul Lionel Felder, Esq., Chair
New York State
Commission on Judicial Conduct