

State of New York  
Commission on Judicial Conduct

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

**Determination**

JOHN W. McMULLEN,

a Justice of the Brutus Town Court,  
Cayuga County.

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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 for the Commission

Frederick R. Westphal for Respondent

The respondent, John W. McMullen, a justice of the Brutus Town Court, Cayuga County, was served with a Formal Written Complaint dated April 21, 1992, alleging that he improperly delegated his authority to review and approve bail bonds. Respondent filed an answer dated May 5, 1992.

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On August 18, 1992, 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 in Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On September 18, 1992, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Brutus Town Court since 1982.

2. On February 11, 1983, respondent signed a resolution passed by the Cayuga County Magistrates' Association in which he delegated to the county sheriff's department the authority to review and approve bail bonds presented by any certified bondsman at the county jail for defendants committed by respondent. The department was also authorized to release defendants on respondent's behalf.

3. Between February 8, 1988, and March 26, 1989, in accordance with the authorization approved by respondent, Sheriff's Lt. Frank Thomas released 13 defendants who had been committed to the jail by respondent, as set forth in Schedule A appended hereto.

4. Respondent had not reviewed and approved the bail bonds, as required by CPL 510.40(3).

5. After the defendants were released, respondent received the bail bonds from the sheriff's department. He did not revoke bail, demand the production of justifying affidavits or take any other corrective action, even though 12 of the bail bonds did not comply with the requirements of CPL 520.20.

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, 100.2, 100.3(a) and 100.3(b), and Canons 1, 2, 3A and 3B of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

The law permits a judge to accept a bond to ensure a criminal defendant's reappearance in court (CPL 520.10) but provides several safeguards to the procedure (CPL 520.20).

Upon posting of bail in any form, a judge must examine it to determine that it complies with the court's order. (CPL 510.40[3]). Bail bonds must be submitted to the court and must contain certain information identifying the person or organization posting the bond on behalf of the defendant and promising to pay the court if the defendant does not appear. (CPL 520.20[1], [2]). The bond application must also include a Justifying Affidavit, containing such information as the amount of the premium paid, security and promises received and any personal and real property pledged as security and its value. (CPL 520.20[4]).

Thus, it is the responsibility of the judge to ensure that a bail bond provides adequate protection that a defendant will return to court. Judicial duties cannot be delegated to jailers or any other non-judicial officers. (See, Matter of Greenfeld v. State Commission on Judicial Conduct, 71 NY2d 389; Matter of Rider, 1988 Ann Report of NY Commn on Jud Conduct, at 212; Matter of Hopeck, 1981 Ann Report of NY Commn on Jud Conduct, at 133).

By authorizing the sheriff's department to perform a judicial function and permitting a jailer to release 13 defendants, respondent was not faithful to the law and did not diligently perform his judicial duties.

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

Mr. Berger, Judge Altman, Ms. Barnett, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Goldman, Judge Salisbury and Judge Thompson concur.

Mr. Bellamy 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: November 4, 1992

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

Schedule A

<u>Defendant</u>	<u>Date of Release</u>
Donald Napolitano	2/8/88
Stanley F. Ferris	4/18/88
Charles Brown	6/18/88
James E. Barber	8/19/88
Charles L. Brown	8/19/88
Charles D. Bisesi	8/24/88
Robert C. Long	10/30/88
James R. Cronin	11/11/88
Kirk W. Burroughs	2/27/89
Matthew T. Mitchell	2/27/89
Robert Malinovsky	3/10/89
Gary L. Keville	3/26/89
Stephen Gyder	3/1/89