

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

FREDERICK H. MUSKOPF,

a Justice of the Stafford Town Court,
Genesee County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel W. Joy
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Alan J. Pope, Esq.
Honorable Eugene W. Salisbury

APPEARANCES:

Gerald Stern for the Commission

Honorable Frederick H. Muskopf, pro se

The respondent, Frederick H. Muskopf, a justice of the Stafford Town Court, Genesee County, was served with a Formal Written Complaint dated March 12, 1999, alleging that he set bail in traffic cases without considering the factors required by law. Respondent answered by letter dated March 22, 1999.

On July 8, 1999, the administrator of the Commission and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On September 9, 1999, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Stafford Town Court since 1967.
2. Between February 1997 and December 1997, in 52 traffic cases, as denominated on the annexed Schedule A, respondent set bail after the defendant had pleaded not guilty during his or her initial court appearance. Respondent made no inquiry into the factors that a judge is required by CPL 510.30 to consider in setting bail.
3. Respondent set bail in each case in an amount that corresponded to, and which he used to secure payment of, a subsequent fine and surcharge.
4. During this period, respondent did not set bail for any traffic defendants who had pleaded not guilty by mail.
5. Respondent was aware that, in its 1991 Annual Report, the Commission had criticized the practice of automatically setting bail in traffic cases.

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(A), 100.3(B)(1) and 100.3(B)(6). Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

A judge who routinely sets bail for every defendant who pleads not guilty fails to follow the law. (Matter of Kelsen, 1998 Ann Report of NY Commn on Jud Conduct, at 145, 146). The Criminal Procedure Law requires consideration of a number of personal factors designed to determine whether an individual is likely to return to court. (See, CPL 510.30[2][a]; Matter of Sardino, 58 NY2d 286, 289). It does not allow a judge to use bail to secure the amount of the fine that he might later impose if the defendant is convicted. Respondent discriminated unfairly against defendants who appeared in court to plead not guilty by automatically requiring them to post bail.

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

Mr. Berger, Ms. Brown, Mr. Goldman, Ms. Hernandez, Judge Joy, Judge Marshall, Judge Newton, Mr. Pope and Judge Salisbury concur.

Mr. Coffey and Judge Luciano 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: September 16, 1999

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

Schedule A

<u>Defendant</u>	<u>Date of Appearance</u>	<u>Amount of Bail</u>
Tina M. Walker	2/20/97	125
Brian J. McMullen	2/27/97	125
Steven M. McGowan	3/13/97	125
Kirstin S. Peltz	3/13/97	125
Jill H. Ruczcyk	3/13/97	125
F. J. Bressette	3/13/97	125
Anthony G. Zeppetello	3/13/97	125
Jeb B. Tyler	4/1/97	125
Jeffrey B. Richardson	4/3/97	125
Orest Napora	4/8/97	125
Richard Kelly	4/10/97	125
Jeremiah J. Poulsen	4/17/97	125
John P. Broderick	4/30/97	150
Laura J. David	4/30/97	125
Eileen J. Brumsted	5/8/97	125
Jason W. Ersing	5/14/97	150
Timothy H. Southard	6/5/97	125
Peter S. Winkelman	6/11/97	125
Xuefeng Li	6/11/97	125
Michael C. Judd	6/11/97	100
Antonia Marino	6/17/97	125
Jonathan M. Furer	6/26/97	150
Tracey L. Welch	6/26/97	125
Henry E. Wilkinson	6/26/97	125
Kevin C. Stone	6/26/97	125
Sarah Baker	6/26/97	225
Michael P. Brady	6/26/97	125
Barbara Colucci	6/26/97	125
Rachel B. Engel	7/24/97	225
Gertie C. Lynch	7/30/97	125
Robert A. Brongo	8/7/97	125
Dale P. Hess	8/12/97	225
William A. Anderson	8/14/97	125
Mark E. Martin	8/14/97	125
John E. Domres	8/21/97	150
Thomas J. Guttuso	8/28/97	125

Schedule A

<u>Defendant</u>	<u>Date of Appearance</u>	<u>Amount of Bail</u>
Wayne G. Hodge	9/4/97	150
Mathew D. Brew	9/18/97	125
Eric W. Rood	9/19/97	125
Nicholas V. Dangelo	9/25/97	125
Gregory F. May	10/9/97	125
Suzanne G. Fessard	10/16/97	125
Timothy L. Pomerville	10/16/97	125
Marlene Trinci	10/30/97	125
Robert W. Brown	10/30/97	75
Ronald W. Moscicki, Jr.	11/13/97	125
Marie Ohearn	11/20/97	125
Jonathan W. Sirkin	11/20/97	125
Scott D. Trapp	11/20/97	125
Frederick D. Jordan	11/20/97	125
Mary A. Liotta	11/20/97	125
Eric M. Kosiorek	12/18/97	125