

**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

**WILLIAM J. REDMOND,**

a Justice of the Whitehall Village Court,  
Washington County.

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**Determination**

**THE COMMISSION:**

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

**APPEARANCES:**

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

McPhillips, Fitzgerald & Meyer, L.L.P. (Joseph R. Brennan, Of Counsel)  
for Respondent

The respondent, William J. Redmond, a justice of the Whitehall Village Court, Washington County, was served with a Formal Written Complaint dated May 3, 1996, alleging two charges of misconduct. Respondent filed an answer dated May 22, 1996.

By order dated June 12, 1996, the Commission designated Laurie Shanks, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was

held on September 10 and 11, 1996, and the referee filed her report with the Commission on January 13, 1997.

By motion dated September 8, 1997, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a determination that respondent be censured. Respondent opposed the motion on October 2, 1997. The administrator filed a reply dated October 14, 1997. Oral argument was waived.

On October 23, 1997, the Commission considered the record of the proceeding and made the following findings of fact.

As to Paragraph 4 of Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Whitehall Village Court since April 1, 1988.
2. On January 22, 1992, respondent imposed a Conditional Discharge of one year upon Kenneth S. Frasier after his conviction on a charge of Petit Larceny. The sentence required Mr. Frasier to complete 100 hours of community service.
3. Respondent notified the Washington County Alternative Sentencing Agency of the disposition. The agency's practice is to notify the sentencing court when the community service has been completed or, if it has not been fulfilled, to advise the court that the defendant should be resentenced.
4. In the summer of 1992, respondent hired Mr. Frasier to paint a portion of his home. Mr. Frasier proposed a sum that he thought was fair for the work, and respondent paid it when the work was done. The sum was paid in cash, and Mr. Frasier gave no receipt.

5. At the time, respondent had received no notice that Mr. Frasier had completed the community service and made no attempt to ascertain whether he had. Mr. Frasier never completed the community service condition of his sentence.

As to Paragraph 5 of Charge I of the Formal Written Complaint:

6. The allegation is not sustained and is, therefore, dismissed.

As to Paragraph 6 of Charge I of the Formal Written Complaint:

7. The allegation is not sustained and is, therefore, dismissed.

As to Paragraph 7 of Charge I of the Formal Written Complaint:

8. On October 20, 1995, respondent testified during the course of the investigation of this matter by Commission staff. Respondent was asked the following questions and gave the following answers.

Q: Did you, after Mr. Frasier finished painting the house, did you have more conversations with him about anything?

A: No....

I may have met him on the street and said hello.

Q: All right. Have you--Can you think of anything substantive you've talked to him about?

A: No.

Q: Any kind of a transaction or some sort of a service that he could get for you or anything else?

A: No.

\* \* \*

Q: Let me ask you: Did you contact Mr. Frasier about the affidavit?

Mr. Brennan [respondent's counsel]: Were you there?

A: No.

Q: Did you have--Did you say anything to him about the affidavit?

A: No.

9. After his testimony, further questions were posed by staff in a letter dated December 20, 1995. Respondent replied by letter dated January 2, 1996. In that letter, he acknowledged that he had had a conversation with Mr. Frasier after being notified on September 13, 1995, of the Commission's investigation. During that conversation, respondent asked Mr. Frasier to go to an attorney's office and give an affidavit concerning the circumstances surrounding the painting of respondent's house.

As to Charge II of the Formal Written Complaint:

10. The charge is not sustained and is, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1, 100.2(a) and 100.5(c)(1)\*, and Canons 1, 2A and 5C(1) of the Code of Judicial Conduct.

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\* Now Section 100.4(D)(1)

Paragraphs 4 and 7 of Charge I of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. Paragraphs 5 and 6 of Charge I and Charge II are dismissed.

The law permits a judge, after a hearing, to revoke a Conditional Discharge and re-sentence a defendant who has been found delinquent in complying with the conditions of the sentence. (CPL 410.70[1], [5]). Thus, until respondent had been notified that Mr. Frasier had completed his community service, the criminal proceeding against him might again have come before respondent's court.

Under these circumstances, respondent should not have hired Mr. Frasier to paint his home at a time when he knew or should have known that the one-year term of his conditional discharge had not expired. A judge is prohibited from engaging in "financial and business dealings that...may reasonably be perceived to exploit the judge's judicial position...[or] involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves." (Rules Governing Judicial Conduct, 22 NYCRR 100.4[D][1][a], [c]). A judge should not accept money or services from persons with matters pending before the court. (See, Matter of Chananau, 1983 Ann Report of NY Commn on Jud Conduct, at 89, 92; Matter of Garvey, 1982 Ann Report of NY Commn on Jud Conduct, at 103, 106).

Furthermore, it is clear that respondent attempted to mislead the Commission when he testified during the investigation and implied that he had had no role in obtaining an affidavit from Mr. Frasier, even though--as he later acknowledged--he had solicited a written statement from him. A judge is "obliged to be candid and cooperative with the Commission." (Matter of Mac Affer, 2 Commission Determinations 347, at 351). However, in

his subsequent letter to Commission staff, respondent provided correct information about his role in obtaining the affidavit from Mr. Frasier.

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Luciano, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur as to sanction.

Judge Newton and Judge Thompson dissent as to Paragraph 7 of Charge I only and vote that that allegation be dismissed.

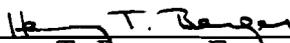
Judge Marshall dissents as to Paragraph 6 of Charge I and votes that that allegation be sustained and dissents as to sanction and votes that respondent be censured.

Ms. Crotty 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: December 17, 1997

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