

**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**

E. WENDELL ROSS,

a Justice of the Chester Town Court,  
Warren County.

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THE COMMISSION:

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

APPEARANCES:

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

James T. Curry for Respondent

The respondent, E. Wendell Ross, a justice of the  
Chester Town Court, Warren County, was served with a Formal  
Written Complaint dated January 25, 1989, alleging that he  
improperly failed to disqualify himself in numerous cases.  
Respondent did not answer the Formal Written Complaint.

On May 17, 1989, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement on July 19, 1989.

The administrator submitted a memorandum as to sanction. Respondent did not submit any papers with respect to sanction.

On August 18, 1989, 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.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Chester Town Court since 1974.
2. Paul Shambo is the nephew of respondent's wife.
3. On January 19, 1984, Mr. Shambo was charged with Driving With One Headlight in the Town of Chester. On February 7, 1984, respondent dismissed the charge on presentation of proof that the headlight had been repaired.

4. On May 3, 1984, Mr. Shambo was charged with Speeding and Inadequate Exhaust in the Town of Chester. On May 15, 1984, respondent dismissed the Inadequate Exhaust charge upon presentation of proof of repair and fined Mr. Shambo \$60 on the Speeding charge.

5. On December 16, 1985, Mr. Shambo was charged with Unlawfully Dealing With A Child in the Town of Chester. Respondent's stepson, Charles "Corky" Roberts, had given a statement to police that was a basis of the charge that Mr. Shambo had given alcohol to minors. Mr. Roberts lived with respondent at the time. His statement was part of the court file of the case. Respondent did not advise the prosecution that Mr. Roberts and Mr. Shambo were his relatives. On January 7, 1986, respondent accepted Mr. Shambo's guilty plea and imposed a fine of \$250.

6. William F. Olden, Jr., is the nephew of respondent's wife.

7. On March 9, 1987, Mr. Olden was charged with Driving With No Inspection in the Town of Chester. On March 24, 1987, respondent granted an Unconditional Discharge and a \$10 surcharge upon presentation of proof of inspection.

As to Charge II of the Formal Written Complaint:

8. Thomas L. Shambo is the nephew of respondent's wife.

9. On August 23, 1988, Thomas Shambo was charged with Criminal Mischief, Fourth Degree, and Harassment in the Town of Chester. On August 23, 1988, respondent arraigned Thomas Shambo, adjourned the matter and released him on his own recognizance. Respondent did not disqualify himself or transfer the matter to another judge until after Commission staff inquired about the case in November 1988.

As to Charge III of the Formal Written Complaint:

10. Respondent is the sole owner and manager of a tax preparation business. At all times between August 1984 and December 1987, Bradford Hayes, Francis Springer and Richard Gagnon were clients of the business.

11. On September 7, 1984, Mr. Hayes was charged with Uncovered Load. On September 18, 1984, respondent dismissed the charge without trial. He did not inform the prosecution that Mr. Hayes was a business client.

12. On December 7, 1986, Mr. Springer was charged with Driving While Intoxicated, Failure To Yield Right Of Way and Failure To Keep Right after an accident in the Town of Chester. On December 30, 1986, respondent dismissed the Driving While Intoxicated charge and fined Mr. Springer a total of \$55

on the other charges. Respondent did not inform the prosecution that Mr. Springer was a business client.

13. On October 31, 1987, Mr. Springer was charged with Unsafe Backing. On November 10, 1987, respondent accepted his guilty plea and fined him \$20.

14. On December 26, 1986, Mr. Gagnon was charged with Harassment. On August 10, 1987, respondent dismissed the charge. Respondent did not inform the prosecution that Mr. Gagnon was a business client.

As to Charge IV of the Formal Written Complaint:

15. On April 30, 1984, respondent discovered that a stream feeding a trout pond on his property was heavily silted. He reported it to the Department of Environmental Conservation, and an officer, Ron Robert, was sent to investigate. The next day, Officer Robert told respondent that he had arrested Gary Hill for a violation of the Environmental Conservation Law in connection with the silting of the stream.

16. On May 1, 1984, respondent failed to disqualify himself and presided over Mr. Hill's case. Mr. Hill pled guilty, and respondent fined him \$90. Respondent did not advise Mr. Hill that he had initiated the complaint.

As to Charge V of the Formal Written Complaint:

17. Frederick Monroe has been respondent's personal attorney since 1981. Since 1981, Mr. Monroe has appeared in respondent's court representing clients, and respondent has disposed of seven of his cases, as denominated in Schedule C appended to the Formal Written Complaint and the Agreed Statement of Facts. Respondent did not inform the parties opposing Mr. Monroe that Mr. Monroe was his personal attorney.

18. On September 1, 1983, Mr. Monroe's son, Shawn, was charged with Failure To Keep Right, Unlicensed Operation and Uninsured Motor Vehicle after a fatal automobile accident. The matter was returnable in respondent's court. Respondent failed to disqualify himself and never docketed or disposed of the case even though Shawn Monroe expressed willingness in September 1985 to plead guilty to Unregistered Motor Vehicle.

As to Charge VI of the Formal Written Complaint:

19. On October 21, 1985, respondent failed to disqualify himself and presided over James McCluskey v. Neil Duell. Respondent awarded Mr. McCluskey a default judgment in the amount claimed. The dispute involved merchandise allegedly purchased by Mr. Duell from McCluskey Hardware. Respondent owned the building in which the business was located, and the

plaintiff was paying rent to respondent at the time. Respondent did not disclose to Mr. Duell his financial relationship with Mr. McCluskey.

20. Before the case was disposed of on October 21, 1985, respondent called Mr. Duell by telephone and told him that he should pay Mr. McCluskey for the merchandise. Mr. Duell denied that he was responsible for the purchase.

21. Mr. Duell never received formal notification of the claim or of a date to appear in court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1), 100.3(a)(5), 100.3(b)(1) and 100.3(c)(1) of the Rules Governing Judicial Conduct; Canons 1, 2, 3A(1), 3A(5), 3B(1) and 3C(1) of the Code of Judicial Conduct and Section 14 of the Judiciary Law. Charges I through VI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A judge must disqualify himself or herself in matters in which his or her impartiality might reasonably be questioned. Section 100.3(c)(1) of the Rules Governing Judicial Conduct. This includes matters in which a party is related within the sixth degree of relationship to the judge or the judge's spouse. Section 100.3(c)(1)(iv)(a) of the Rules; Matter of Wait v.

State Commission on Judicial Conduct, 67 NY2d 15 (1986). It also includes matters in which a judge's relative is a material witness. Section 100.3(c)(1)(iv)(c); Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349 (1984).

A judge must disqualify himself or herself in a proceeding in which he or she has a personal bias concerning a party or the appearance thereof, including a business relationship. Section 100.3(c)(1)(i); Matter of DelPozzo, 1986 Annual Report 77 (Com. on Jud. Conduct, Jan. 25, 1985). A judge may not participate in a proceeding in which he or she is a material witness or has personal knowledge of disputed evidentiary facts. Sections 100.3(c)(1)(i) and 100.3(c)(1)(iv)(c); Matter of Tobey, 1986 Annual Report 163 (Com. on Jud. Conduct, Sept. 19, 1985).

A judge's impartiality might reasonably be questioned in a proceeding in which an attorney is the judge's personal attorney (Matter of Conti v. State Commission on Judicial Conduct, 70 NY2d 416, 418 [1987]; Matter of Sardonía, 2 Commission Determinations 3 [Com. on Jud. Conduct, Jan. 14, 1980]), and in which the judge has a financial relationship with a party (see Section 100.3[c][1][iii]).

By his conduct, respondent violated all of these clear prohibitions and precedents. In mitigation, we note that he has been candid, cooperative and contrite in this proceeding. See Matter of Kelso v. State Commission on Judicial Conduct, 61 NY2d

82, 87 (1984); Matter of Edwards v. State Commission on Judicial Conduct, 67 NY2d 153, 155 (1986).

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

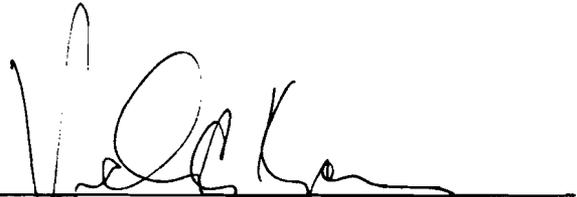
Mr. Kovner, Judge Altman, Mr. Berger, Mr. Bower, Judge Ciparick, Mrs. DelBello, Mrs. Robb, Judge Rubin and Judge Salisbury concur.

Mr. Cleary and Mr. Sheehy dissent as to sanction only and vote that respondent be admonished.

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 29, 1989

  
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Victor A. Kovner, Esq., Chair  
New York State  
Commission on Judicial Conduct