

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

LEE R. SCHWARTING,

a Justice of the Smyrna Town Court,
Chenango County.

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

The respondent, Lee R. Schwarting, a justice of the
Smyrna Town Court, Chenango County, was served with a Formal
Written Complaint dated September 18, 1990, alleging that he
failed to remit court funds promptly to the state comptroller and
that he failed to cooperate with the Commission. Respondent did
not answer the Formal Written Complaint.

By motion dated November 8, 1990, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct be deemed established. Respondent did not file papers in response thereto. By determination and order dated February 6, 1991, the Commission granted the administrator's motion.

The administrator then filed a memorandum as to sanction. Again, respondent neither filed papers nor requested oral argument. On March 8, 1991, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Smyrna Town Court since January 1, 1988.

2. Between January 1988 and January 1989, respondent failed to remit court funds and report cases to the state comptroller by the tenth day of the month following collection, as required by Town Law §27, UJCA 2020 and 2021(1) and Vehicle and Traffic Law §1803. Respondent filed his reports between five and 172 days late during this period, as denominated in Schedule A to the Formal Written Complaint. Respondent reported handling between 0 and 13 cases a month during the period.

3. On August 31, 1989, respondent testified before a member of the Commission. He offered no excuse for failing to remit monies in a timely manner. "I've tried to do them up at the end of the month, but, you know. I don't know. I just

didn't get them mailed out. I just got behind. I don't know what happened," respondent testified.

4. On November 22, 1989, the Commission cautioned respondent to report and remit to the state comptroller within the time required by law.

5. From September 1989 until at least September 25, 1990, respondent failed to report any cases or to remit any court funds to the state comptroller. Bank statements from respondent's court account indicate that he received at least \$1,238.50 during this period.

6. Respondent failed to provide the Commission with case files, dockets, receipts and reports to the state comptroller, notwithstanding requests that he do so from a Commission investigator on April 12, April 25 and May 9, 1990. On April 25 and May 9, 1990, respondent told the investigator that he did not know where to locate the records requested.

7. Respondent failed to respond to letters from a Commission attorney dated May 15, June 1, June 20 and July 24, 1990, requesting that he report the status of numerous cases pending in his court and explain why he had not remitted monies to the state comptroller.

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(a)(5) and 100.3(b)(1), and Canons 1, 2A, 3A(5) and 3B(1) of the Code of

Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Since he took office, respondent has consistently failed to meet legal requirements that he remit court funds promptly to the state comptroller. For at least a year, from September 1989 to September 1990, he failed to remit any money at all, even though his bank statements for the period indicate that he received more than \$1,000.

The careless handling of public monies is misconduct, even when not done for personal profit. (Bartlett v. Flynn, 50 AD2d 401 [4th Dept]). The failure to remit court funds, even without additional evidence of failure to deposit, warrants public discipline. (Matter of Rogers v. State Commission on Judicial Conduct, 51 NY2d 224; Matter of Goebel, 1990 Ann Report of NY Commn on Jud Conduct, at 101, 102).

Respondent exacerbated his mishandling of court funds by failing to heed a Commission warning that he comply with remitting requirements (Matter of Rater v. State Commission on Judicial Conduct, 69 NY2d 208, 209; Matter of Lenney v. State Commission on Judicial Conduct, 71 NY2d 456, 458-59). In addition, respondent failed to cooperate with the Commission, to respond to the charges, to present mitigating circumstances or to explain his conduct. Respondent's conduct warrants his removal from office (Matter of Cooley v. State Commission on Judicial Conduct, 53 NY2d 64, 66).

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

All concur.

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: March 15, 1991

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