

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

JOSEPH P. TORRACA,

DETERMINATION

a Justice of the Supreme Court, Third Judicial
District, Ulster County.

THE COMMISSION:

Honorable Eugene W. Salisbury, Chairman
Henry T. Berger, Esq.
Jeremy Ann Brown, C.A.S.A.C.
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

H. Clark Bell for Respondent

The respondent, Joseph P. Torraca, a justice of the Supreme Court, Third
Judicial District, Ulster County, was served with a Formal Written Complaint dated July
11, 2000, alleging that respondent engaged in improper business activity and presided

over cases in which the attorney for one of the parties was making lease payments or mortgage payments to respondent.

On September 14, 2000, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On September 14, 2000, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Supreme Court, Third Judicial District since 1982.

2. In 1970, respondent and his law partner Phil Schunk formed a corporation, Schunk and Torraca, P.C., which had as its main asset the building containing the corporation's law office at 40 Main Street, New Paltz, New York. Respondent and Mr. Schunk dissolved their law practice in 1980.

3. From January 1982, when respondent assumed the Supreme Court bench, until October 1999, respondent continued to serve as secretary/treasurer and director of Schunk and Torraca, P.C. During that period, the mailing address of the

corporation was respondent's chambers.

As to Charge II of the Formal Written Complaint:

4. From January 1982 to September 1994, Schunk and Torraca, P.C. leased the office building at 40 Main Street in New Paltz to various tenants, including the Ulster County Department of Mental Health. From September 1994 until September 1997, Schunk and Torraca, P.C. leased the building to the law firm of Andrew and Victoria Kossover.

5. In September 1997, Schunk and Torraca, P.C. sold the office building to Andrew and Victoria Kossover. Schunk and Torraca held a mortgage on the property from September 1997 to July 1999.

6. Between 1994 and 1999, Andrew Kossover represented numerous clients in Supreme Court, Ulster County. Respondent presided to disposition over three of Mr. Kossover's cases without disclosing to Mr. Kossover's adversaries the ongoing financial transactions with Mr. Kossover.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(E)(1), 100.4(A)(1), 100.4(D)(1)(c) and 100.4(D)(3) and former Sections 100.3(c)(1), 100.5(c)(1) and 100.5(c)(2) of the Rules Governing Judicial Conduct. Charges I and II of the Formal

Written Complaint are sustained, and respondent's misconduct is established.

After ascending the bench in 1982, respondent continued to serve for nearly two decades as director and secretary/treasurer of Schunk and Torraca, P.C. During this period, the mailing address of Schunk and Torraca, P.C. was respondent's chambers, and respondent, as a principal of the corporation, collected rents from various tenants who leased the building owned by the corporation. Such conduct is clearly prohibited by Section 100.4(D)(3) of the Rules Governing Judicial Conduct (formerly Section 100.5[c][2]), which provides: "No full-time judge shall be a managing or active participant in any form of business enterprise organized for profit, nor shall he or she serve as an officer, director, trustee, partner, advisory board member or employee of any corporation, partnership or other association organized for profit...."

The prohibitions against business activity by judges are "straightforward and unequivocal...." (Matter of Bayger, 1984 Ann Report of NY Commn on Jud Conduct at 62, 66; see also Matter of Bell, 1996 Ann Report of NY Commn on Jud Conduct at 61). Respondent's ongoing business activity clearly violated the ethical standards.

That respondent's business dealings involved an attorney who appeared in respondent's court compounds his misconduct. During a time when attorney Andrew Kossover was making payments to respondent for the lease of the building owned by Schunk and Torraca, and later for the purchase of the building, respondent presided over

Mr. Kossover's cases and did not make disclosure to any of the opposing parties. Such conduct is contrary to the ethical rules which prohibit a judge from engaging in business dealings that cast reasonable doubt on the judge's capacity to act impartially and that involve the judge in frequent transactions or continuous business relationships with lawyers or others likely to come before the judge's court (Sections 100.4[A][1] and 100.4[D][1][c] of the Rules, formerly Section 100.5[c][1]).

Respondent's conduct reveals a lack of sensitivity to the ethical standards for judges and warrants public discipline.

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

Judge Salisbury, Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Marshall and Mr. Pope concur.

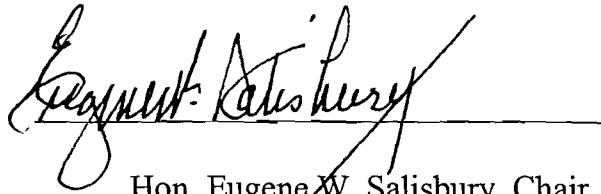
Judge Peters did not participate.

Judge Ruderman was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State
Commission on Judicial Conduct.

Dated: November 7, 2000

A handwritten signature in cursive script, reading "Eugene W. Salisbury", is written over a horizontal line.

Hon. Eugene W. Salisbury, Chair
New York State
Commission on Judicial Conduct