

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

WILLIAM F. WRAY,

a Justice of the Clarkstown Town Court,
Rockland 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 (Robert H. Tembeckjian, Of Counsel) for
the Commission

Birbrower, Montalbano, Condon & Frank, P.C.
(By William Frank) for Respondent

The respondent, William F. Wray, a justice of the
Clarkstown Town Court, Rockland County, was served with a Formal
Written Complaint dated October 9, 1990, alleging that he
borrowed money from a client of his law practice and that he
caused his secretary to alter a car registration and drove an
unregistered car. On November 19, 1990, respondent was served

with a second Formal Written Complaint alleging that he permitted a judge of his court to practice law before him. Respondent filed an answer dated January 7, 1991, to both Formal Written Complaints.

By order dated January 16, 1991, the Commission designated Edward Brodsky, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on March 26 and 27, 1991, and the referee filed his report with the Commission on July 11, 1991.

By motion dated August 8, 1991, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on August 23, 1991. Oral argument was waived.

On September 19, 1991, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint dated October 9, 1990:

1. Respondent was a justice of the Clarkstown Town Court from January 1, 1977, until he notified the Chief Administrator of the Courts of his resignation on September 2, 1991. He was a part-time judge and has practiced law in Orange and Rockland counties since 1965.

2. In 1984, respondent represented Felicia Pesce in connection with a workers' compensation claim.

3. On October 25, 1984, Ms. Pesce was awarded \$18,200 in a lump sum in settlement of her claim. Respondent drove Ms. Pesce to and from an appearance before the Workers' Compensation Board on that date.

4. In the car, they discussed what Ms. Pesce might do with the money. Respondent proposed that she loan some of it to him because he knew that he could get a lower interest rate than he could from a bank or through a credit card.

5. On December 1, 1984, after Ms. Pesce received the award from the Workers' Compensation Board, respondent executed a promissory note, stating that he owed Ms. Pesce \$12,000 at 14 percent interest, that interest would be paid weekly at \$32.30 and that the principal would be paid by December 1, 1989. Ms. Pesce endorsed her check to respondent, who kept \$12,000 and returned the balance.

6. Respondent did not advise Ms. Pesce to seek the advice of independent counsel concerning this transaction, nor did he disclose any actual or potential conflicts of interest, in violation of the Code of Professional Responsibility, DR1-102(A)(4), DR1-102(A)(5) and DR1-102(A)(6) then in effect and DR5-104(A).

7. From December 1984 to December 1989, respondent paid interest on the loan as agreed and repaid \$5,200 of the principal.

8. From December 1, 1989, when the note became due, until March 14, 1991, respondent did not repay the remaining \$6,800 principal on the loan or the interest thereon, in violation of the Code of Professional Responsibility, DR9-102(B)(4) then in effect. Respondent testified that he could not raise the \$6,800 and was angry with Ms. Pesce for complaining to the Commission that he had failed to repay the loan.

9. On March 14, 1991, less than two weeks before the hearing in this proceeding, respondent repaid Ms. Pesce \$6,000 and obtained a release from her as to all remaining claims pertaining to the loan.

As to Charge II of the Formal Written Complaint dated October 9, 1990:

10. In 1986, respondent owned and was the principal driver of a 1980 Ford, which was registered with the Department of Motor Vehicles as bearing license plate "86 SMA." The "SMA" designation indicated that the owner was a member of the State Magistrates Association and, therefore, was an incumbent or former judge.

11. In 1987, respondent took the Ford to a shop for engine repairs. At approximately the same time, he bought a 1986 Mercury and had his "SMA" license plates re-registered and transferred from the Ford to the Mercury. Respondent did not apply for new license plates for the Ford, which was now unregistered and remained in the repair shop without license

plates. In late 1987, the Ford was towed to a second repair shop, where it remained until August 1988.

12. In May 1988, respondent transferred ownership of the Mercury to his daughter, who properly had the car registered in her name and had new license plates issued for it. The "SMA" plates were taken off the Mercury.

13. In August 1988, when respondent retrieved the repaired Ford from the shop, it bore the "SMA" license plates. Respondent had not taken any steps to renew the registration on the Ford or to notify the Department of Motor Vehicles that the "SMA" plates would be placed on the Ford. Respondent did not arrange for the Ford to be inspected.

14. From August 1988 to November 1989, respondent operated the Ford, even though he knew that the car had not been registered and that he was driving a vehicle with plates that had been taken from another car and had not been re-registered to the Ford.

15. In September 1989, respondent handed to Amy Nead, a typist in his law office, a vehicle registration sticker issued to a Buick. Respondent directed Ms. Nead to delete the word "Buick" and type the word "Ford" in its place. She did so. Respondent examined the sticker, indicated that the alteration was not neat and asked Ms. Nead to do it again. After she retyped the word "Ford" on the sticker, respondent took it and left the office.

16. On November 12, 1989, respondent was driving the Ford with the "SMA" plates in the Village of Grand-View-on-Hudson. He was stopped by a police sergeant and charged with Improper Plates, Operating Out of Restriction, Unregistered Motor Vehicle and Operation While Registration Suspended or Revoked.

17. On April 30, 1990, respondent pleaded guilty before Village Justice Deborah Sexter to Operation While Registration Suspended or Revoked, a misdemeanor, in satisfaction of all charges.

18. On June 25, 1990, Judge Sexter imposed a \$100 fine with a \$17 surcharge.

As to Charge I of the Formal Written Complaint dated November 19, 1990:

19. On September 14, 1990, Harry Waitzman was a part-time justice of respondent's court and was also engaged in the private practice of law in Rockland County.

20. On September 14, 1990, Judge Waitzman appeared before respondent and asked him to sign a subpoena duces tecum. The caption on the subpoena indicated that it pertained to a federal proceeding in the Southern District of New York. The subpoena directed the Clarkstown Police Department to turn over records to Judge Waitzman as attorney for two of the parties to the proceeding.

21. Respondent signed the subpoena, even though he knew that he did not have jurisdiction in a federal proceeding.

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) and 100.5(f), and Canons 1 and 2A of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint dated October 9, 1990, and Charge I of the Formal Written Complaint dated November 19, 1990, are sustained, and respondent's misconduct is established.

Respondent has demonstrated a pattern of misconduct in his personal affairs and in his professional roles as lawyer and judge.

Motivated by his own need for money, respondent borrowed \$12,000 from a client who relied upon him for advice. Even though he signed a promissory note, he ignored the best interests of the client and did not ensure that she was protected by independent, disinterested counsel. When the note came due, he did not repay it. A judge's misconduct as a lawyer brings disrepute to the judiciary. (Matter of Boulanger v. State Commission on Judicial Conduct, 61 NY2d 89, 92).

Respondent ordered the alteration of a car registration sticker and operated an unregistered car for 15 months. His failure off the bench to abide by the laws that he is often called upon to apply in court undermines his effectiveness as a judge. (See, Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74, 81; Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465, 469).

As a judge, respondent permitted another lawyer-judge of his own court to appear before him, in clear violation of the Rules of Governing Judicial Conduct, 22 NYCRR 100.5(f). At the request of the other judge, respondent signed a subpoena in a proceeding over which he had no jurisdiction.

Respondent's course of conduct prejudices the fair and proper administration of justice and demonstrates a disregard for the law and for the ethical considerations attendant to the holding of judicial office. Respondent's failure to recognize the legal and ethical obligations imposed upon him as an attorney and a judge renders him unfit to hold judicial office. Respondent should, therefore, be barred from judicial office in the future.

This determination is rendered pursuant to Judiciary Law §47.

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


Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Judge Salisbury and Judge Thompson concur.

Mr. Goldman and Mr. Sheehy 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: November 6, 1991



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