

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

RICHARD E. DRISCOLL,

**Determination**

a Justice of the Farnham Village Court,  
Erie County.

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THE COMMISSION:

Henry T. Berger, Esq., Chair  
Helaine M. Barnett, Esq.  
E. Garrett Cleary, Esq.  
Stephen R. Coffey, Esq.  
Mary Ann Crotty  
Lawrence S. Goldman, Esq.  
Honorable Daniel F. Luciano  
Honorable Juanita Bing Newton  
Honorable Eugene W. Salisbury  
Barry C. Sample  
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the  
Commission

The respondent, Richard E. Driscoll, a justice of the Farnham Village Court, Erie County, was served with a Formal Written Complaint dated July 25, 1995, alleging that he failed to remit court funds in a timely manner to the state comptroller and that he failed to cooperate with the Commission. Respondent did not answer the Formal Written Complaint.

By motion for summary determination dated September 22, 1995, the administrator of the Commission moved for a finding that respondent had engaged in judicial misconduct. Respondent did not file any papers in response thereto. By determination and order dated November 3, 1995, the Commission granted the administrator's motion.

The administrator filed a memorandum on sanction. Respondent neither filed a memorandum nor requested oral argument.

On January 11, 1996, the Commission 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 Farnham Village Court during the time herein noted.

2. Between September 1994 and December 1994, respondent failed to remit court funds to the state comptroller by the tenth day of the month following collection, as required by UJCA 2020 and 2021(1), Vehicle and Traffic Law §1803(8) and Village Law §4-410(1)(b).

3. On February 27, 1995, respondent remitted court funds for the months of September, November and December 1994. The September 1994 report to the comptroller was 140 days late; the November 1994 report was 79 days late; the December 1994 report was 48 days late. On February 28, 1995, respondent remitted court funds for October 1994, 110 days late.

As to Charge II of the Formal Written Complaint:

4. Respondent failed to respond to letters sent certified mail by staff counsel on February 21, March 10 and March 28, 1995, in connection with a duly-authorized investigation. Respondent failed without explanation to appear for the purpose of giving testimony on June 5, 1995, as directed by certified letter dated May 24, 1995.

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 100.3(b)(1)\*, and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

A village justice is required to remit court funds to the state comptroller by the tenth day of the month following collection. (UJCA 2021[1]; Village Law §4-410[1][b]; Vehicle and Traffic Law §1803[8]). The mishandling of public funds by a judge is misconduct, even when not done for personal profit. (Bartlett v Flynn, 50 AD2d 401, 404 [4th Dept]). The failure to remit funds to the comptroller constitutes neglect of administrative duties, even if the money is accounted for and on deposit. (Matter of Ranke, 1992 Ann Report of NY Commn on Jud Conduct, at 64, 65). Such misconduct generally warrants

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\*Now Section 100.3(C)(1)

admonition or censure. (See, Matter of Ranke, supra; Matter of Goebel, 1990 Ann Report of NY Commn on Jud Conduct, at 101).

However, respondent's failure to cooperate in the staff's investigation of this matter by refusing to answer inquiries and to appear for the purpose of giving testimony exacerbates his misconduct and demonstrates unfitness for office. (See, Matter of Reese, 1985 Ann Report of NY Commn on Jud Conduct, at 217, 220). The failure to cooperate with the Commission is conduct prejudicial to the administration of justice that warrants removal. (See, Matter of Miller, unreported, NY Commn on Jud Conduct, Jan. 19, 1996).

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

Mr. Berger, Ms. Barnett, Mr. Cleary, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Newton, Judge Salisbury and Judge Thompson concur.

Mr. Sample was not present.

Judge Luciano was not a member of the Commission when the vote was taken in this matter.

#### 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 20, 1996

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