

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

HOWARD R. GEORGE,

a Justice of the Watertown Town Court,
Jefferson County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frederick M. Marshall, Vice Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

Gary W. Miles for Respondent

The respondent, Howard R. George, a justice of the Watertown Town Court, Jefferson County, was served with a Formal Written Complaint dated March 30, 2000, containing three charges. Respondent filed an amended Answer dated May 12,

2000.

By Order dated June 21, 2000, the Commission designated A. Vincent Buzard, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 6, May 30 and June 25, 2001, and the referee filed his report with the Commission on October 2, 2001.

Commission counsel filed a brief with respect to the referee's report. No brief was filed by respondent's counsel. Oral argument was waived. On December 20, 2001, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge III of the Formal Written Complaint:

1. Respondent has been a justice of the Watertown Town Court, Jefferson County since 1985. He is not a lawyer.
2. Since 1979, respondent has operated a private investigations agency, H. R. George Associates.
3. Sometime in 1994 or 1995 Mark Osmundson became a client of respondent's private investigations business. In connection with his professional relationship with respondent, Mr. Osmundson began working for respondent's private investigations agency in an exchange-for-services arrangement.
4. In or about October 1995, Mr. Osmundson was incarcerated at the

Jefferson County Jail in connection with his violation of an Order of Protection involving his wife.

5. In or about October 1995, Mr. Osmundson sent respondent three second-party checks, totaling \$537.25, and asked respondent to make seven specific payments for him while he was in jail. The three checks, which were payable to Mr. Osmundson, included: an unemployment check for \$300.00 from the State of New York dated September 12, 1995; a check for \$236.50 from the Jefferson County Sheriff's Department dated September 27, 1995; and a check for \$.75 from the Peoples Telephone Company dated September 13, 1995.

6. The seven payments that Mr. Osmundson requested respondent to make on his behalf included: \$52.13 for cable television service; \$18.07 to the Village of Philadelphia for electric service; \$10.00 to Sterling Bank for payment on a credit card; \$210.00 to Sears; \$83.77 to NYNEX for telephone services; \$26.58 to Cellular One for wireless telephone service; and \$50.00 to the Jefferson County Sheriff's Department for deposit into Mr. Osmundson's account at the Jefferson County Jail.

7. The three checks sent by Mr. Osmundson were received at respondent's home/office. Respondent's secretary, Roxanne O'Jeda, gave the three checks to respondent. At respondent's direction, his secretary sent Mr. Osmundson a letter agreeing to accept the checks and to use the proceeds to make the seven specified payments.

8. Respondent endorsed and cashed the three checks totaling \$537.25 that he had received from Mr. Osmundson.

9. Respondent did not make any of the seven specified payments he had agreed to make on Mr. Osmundson's behalf.

10. Respondent never instructed his secretary to make the payments for Mr. Osmundson, and she did not do so. Respondent never returned Mr. Osmundson's checks to his secretary or gave her any of the proceeds.

11. Respondent converted the \$537.25 in proceeds from Mr. Osmundson's three checks to his own personal use.

12. After being released from jail, Mr. Osmundson, upon learning that the specified payments had not been made as he had requested, approached respondent and repeatedly requested that he repay the \$537.25. Respondent refused to return the funds to Mr. Osmundson.

13. On April 10, 1996, Mr. Osmundson commenced a small claims action in the Watertown City Court against respondent seeking damages for respondent's failure to return the \$537.25. On October 31, 1996, a decision was issued in Mr. Osmundson's favor against respondent in the amount of \$543.09. On January 23, 1997, a transcript of judgment was issued, naming Mr. Osmundson as the judgment creditor and respondent as the judgment debtor.

14. Mr. Osmundson sent respondent three letters, dated November 18,

1996, May 1, 1997, and June 30, 1997, requesting that respondent pay the judgment.

Respondent did not respond to Mr. Osmundson's repeated requests to pay the judgment.

15. On March 16, 1998, and March 30, 1998, the Jefferson County Sheriff's department served respondent with an information subpoena from Mr. Osmundson seeking information about respondent's financial assets. Respondent never responded to Mr. Osmundson's information subpoena.

16. On or about April 8, 1998, Mr. Osmundson commenced a contempt proceeding in the Watertown City Court against respondent in connection with respondent's failure to respond to the information subpoena.

17. On or about May 15, 1998, Mr. Osmundson and respondent appeared in the Watertown City Court in connection with the contempt proceeding Mr. Osmundson had commenced. At the proceeding, the presiding judge found respondent to be in contempt of court and indicated that if respondent did not pay Mr. Osmundson's judgment within three days, respondent would be fined \$100 and could be incarcerated. The presiding judge indicated that respondent could purge himself of the contempt findings by paying the judgment within three days.

18. Respondent paid the judgment within three days of the proceeding on May 15, 1998.

19. Respondent's testimony at the hearing concerning his conversion of Mr. Osmundson's money was false and lacked candor in numerous pertinent respects.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(A) of the Rules Governing Judicial Conduct. Charge III of the Formal Written Complaint is sustained, and respondent's misconduct is established. Charges I and II are not sustained and are dismissed.

Respondent's conversion of funds entrusted to his care constitutes egregious misconduct. His behavior violates fundamental ethical standards and is intolerable in one who holds a position of public trust.

After accepting checks totaling \$537.25 from a client and employee of his private investigations business, for the express purpose of using the funds to pay the client's bills while the client was in prison, respondent endorsed and cashed the checks, converted the funds to his personal use, never paid any of the client's bills as requested and refused to return the funds despite the client's repeated requests. Even when the client was compelled to commence legal proceedings in an effort to get his money back, respondent refused to return the funds and engaged in a lengthy campaign of obstruction and delay. He failed to pay the judgment that was entered, failed to respond to three letters asking him to pay the judgment, and failed to respond to an information subpoena that was duly served upon him. Respondent finally repaid the money well over two years after he was first requested to do so, and only after being held in contempt and warned by

the court that he could be incarcerated if he did not pay the judgment.

Respondent's misconduct as depicted in this record clearly transcends the failure to pay a lawful debt or judgment, which might be mitigated by his strained financial circumstances during this period. His acceptance of money from an individual who, from jail, was attempting to meet his financial obligations placed respondent in a relationship of trust, requiring him to exercise particular care in the handling of his fiduciary responsibility. Respondent flagrantly violated that trust.

We agree with the referee that respondent's testimony at the hearing not only demonstrates an utter failure to recognize the injustice to his client, which was amply demonstrated by the documentary evidence, but was false and lacking in candor in material respects. To conceal his misconduct, respondent concocted a patently false story that after accepting and endorsing the checks, he gave the checks to his secretary because he did not want to be involved with the client, whom he repeatedly disparaged. His testimony not only was contradicted by the credible testimony of his secretary, but was illogical, inconsistent and unworthy of belief. Respondent's claims that he never received the client's letters requesting repayment, that he offered to repay the funds, that he returned the completed information subpoena and that he was not held in contempt also indicate a lack of candor, which compounds his misconduct. Matter of Conti v. Comm on Jud Conduct, 70 NY2d 416, 418 (1987); Matter of Murphy v. Comm on Jud Conduct, 82 NY2d 491, 495-96 (1993). As the referee stated, false testimony is an assault on the legal

system. Such conduct is antithetical to the role of a judge, who is sworn to uphold the law and seek the truth. See Matter of Myers v. Comm on Jud Conduct, 67 NY2d 550, 554 (1986).

The public can have no confidence in a judicial officer who engages in such behavior. As the Court of Appeals has stated:

Standards of conduct on a plane much higher than for those of society as whole, must be observed by judicial officers so that the integrity and independence of the judiciary will be preserved. A Judge must conduct his everyday affairs in a manner beyond reproach. Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function.

Matter of Kuehnel v. Comm on Jud
Conduct, 49 NY2d 465, 469 (1980)

By his actions, respondent has demonstrated that he is unfit for judicial office.

This determination is rendered pursuant to Judiciary Law §47 in view of respondent's resignation from the bench.

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

Mr. Berger, Judge Marshall, Judge Ciardullo, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

Mr. Coffey was not present.

CERTIFICATION

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

Dated: February 4, 2002



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