

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

**Determination**

HAROLD GIFFIN,

a Justice of the Clare Town Court,  
St. Lawrence County.

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THE COMMISSION:

Henry T. Berger, Esq., Chair  
Helaine M. Barnett, Esq.  
Herbert L. Bellamy, Sr.  
E. Garrett Cleary, Esq.  
Dolores Del Bello  
Lawrence S. Goldman, Esq.  
Honorable Juanita Bing Newton  
Honorable Eugene W. Salisbury  
John J. Sheehy, Esq.  
Honorable William C. Thompson

APPEARANCES:

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

Honorable Harold Giffin, pro se

The respondent, Harold Giffin, a justice of the Clare Town Court, St. Lawrence County, was served with a Formal Written Complaint dated April 12, 1993, alleging that he failed to deposit and remit court funds in a timely manner and that he failed to cooperate in the Commission investigation. Respondent did not answer the Formal Written Complaint.

By order dated May 21, 1993, the Commission designated William C. Banks, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on September 2, 1993, and the referee filed his report with the Commission on November 3, 1993.

By motion dated December 16, 1993, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent did not file any papers in response thereto and did not request oral argument.

On January 20, 1994, 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 is a judge of the Clare Town Court and was during the time herein noted.

2. Between January and June 1992, as denominated in Schedule A appended hereto, respondent failed to remit court funds promptly to the state comptroller, as required by UJCA 2020 and 2021(1), Town Law §27(1) and Vehicle and Traffic Law §1803(8).

As to Charge II of the Formal Written Complaint:

3. Respondent failed to cooperate in a duly-authorized Commission investigation of his conduct in that he failed to respond to letters sent certified mail by staff counsel on June

29, August 4, August 19 and November 24, 1992, and failed to appear for the purpose of testifying during the investigation on February 16, 1993, as required by Judiciary Law §44(3).

As to Charge III of the Formal Written Complaint:

4. Between February 7, 1992, and July 16, 1992, respondent made no deposits in his official court account, even though he received \$574.50 during this period, as denominated in Schedule B appended hereto. Respondent is required to deposit court funds within 72 hours of receipt, pursuant to the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.9(a).

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 100.3(b)(1), and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's failure to deposit court money promptly constitutes misconduct and raises questions about its interim use. (See, Matter of More, 1990 Ann Report of NY Commn on Jud Conduct, at 140, 141). The failure to remit court funds to the state in a timely manner is also misconduct. (Matter of Ranke, 1992 Ann Report of NY Commn on Jud Conduct, at 64).

His failure to cooperate in the Commission's investigation compounds respondent's wrong-doing. (See, Matter of Cooley v State Commission on Judicial Conduct, 53 NY2d 64, 66).

In mitigation, we have considered the unsworn assertions in respondent's letter to the referee after the hearing, indicating that he was without the services of a court clerk during the period in question (see, Matter of Hamel, 1991 Ann Report of NY Commn on Jud Conduct, at 61, 62) and that he suffered from emotional difficulties which prevented him from doing the work himself and from responding to staff counsel (see, Matter of Kelso v State Commission on Judicial Conduct, 61 NY2d 82, 88).

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

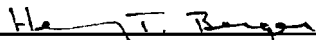
Mr. Berger, Ms. Barnett, Mr. Bellamy, Mr. Cleary, Mrs. Del Bello, Mr. Goldman, Judge Salisbury and Mr. Sheehy concur, except that Judge Salisbury dissents as to Charge II and votes that the charge be dismissed.

Judge Newton and Judge Thompson 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: March 18, 1994

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

Schedule A

<u>Date</u>	<u>Received</u>	<u>Days Late</u>
1/92	7/30/92	171
2/92	8/3/92	146
3/92	7/30/92	111
4/92	7/30/92	81
5/92	7/30/92	50
6/92	7/30/92	20

Schedule B

<u>Received From</u>	<u>Date</u>	<u>Amount</u>
Ivan Bourdeau	2/1/92	\$210
Robert E. Karker	2/25/92	67
Gerald Ashley	3/7/92	10
Wayne Cross	3/8/92	10
Wayne Cross	4/16/92	20
Gerald Ashley	5/8/92	10
Jean La Mere	5/5/92	50
Wayne Cross	6/1/92	20
Gerald Ashley	6/8/92	10
Louis Mac Cue	6/10/92	152.50
Bruce Loveless	6/1/92	15