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

RICHARD W. MURPHY,

a Justice of the Shandaken Town Court, Ulster 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 (Cathleen S. Cenci, Of Counsel) for the Commission

Rusk, Wadlin, Heppner & Martuscello (By Daniel G. Heppner) for Respondent

The respondent, Richard W. Murphy, a justice of the Shandaken Town Court, Ulster County, was served with a Formal Written Complaint dated December 16, 1991, alleging, inter alia, that he failed to deposit $1,173 in court funds and gave false reports of what happened to the money. Respondent filed an answer dated January 4, 1992.

By order dated February 5, 1992, the Commission designated Gerald Harris, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 22 and 23, 1992, and the referee filed his report with the Commission on November 6, 1992.

By motion dated November 19, 1992, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion on December 9, 1992. The administrator filed a reply dated December 11, 1992.

On December 18, 1992, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter 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 Shandaken Town Court for 20 years.

2. On November 28, 1989, respondent took an envelope with $1,173 in cash, checks and money orders for fines and surcharges paid to the court. The cash in the envelope totalled $454.

3. Respondent failed to deposit the money in his official court account, in violation of the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.9(a).

4. About a month later, after speaking with a bank official, respondent's court clerk, Susan McGrath, told respondent that the money had never been deposited. Respondent told Ms. McGrath that he would check his suit jackets to see whether he had left the envelope in them.

5. In the ensuing weeks, Ms. McGrath repeatedly reminded respondent about the missing deposit. Respondent told her that he was still looking for it and that it was possible that he had left the money in the trunk of his car.

6. In September 1990, Gary Holgate, an independent accountant hired to examine the town's finances, reported to the Shandaken Town Board that respondent's official bank account was short because a deposit had never been made.

7. The town board summoned respondent to explain the deficit. Respondent falsely told the board that he had put the deposit envelope in the trunk of his car and had later transferred ownership of the car.

8. In December 1990, respondent gave the same explanation to his fellow justice, Charles Smith, and to members of the Republican town committee attending a Christmas party. The same month, respondent also gave this account of the deposit to Mr. Holgate.

9. Respondent made no timely efforts to recoup the money or rectify the problem. In February 1991, respondent directed Ms. McGrath to advise the defendants who had paid fines and surcharges on November 28, 1989, of the problem and to ask them to submit proof that their checks or money orders had been negotiated or to resubmit payment.

10. Also in 1991, respondent contacted Roy D. Tyson, the man to whom he had given the car that he drove in November 1989, and asked Mr. Tyson for any possessions that might have been left in the trunk. Mr. Tyson located a box of papers and turned it over to respondent.

As to Charge II of the Formal Written Complaint:

11. On June 13, 1991, in connection with a duly-authorized investigation, respondent testified before a member of the Commission. Respondent said, under oath, that, in the summer of 1990, he had stayed with a friend and had not spent any portion of the $500 advanced to him by the town for lodging while attending a judicial training seminar at St. Lawrence University in Canton.

12. At the hearing in this proceeding on June 23, 1992, respondent testified that he had stayed at two or three motels during the conference but could not identify them by name or location.

13. The substantive allegations of Charge II are not sustained and are, therefore, dismissed.

As to Charge III of the Formal Written Complaint:

14. Between 1983 and 1986, respondent borrowed between $400 and $700 from David A. Warfield. The short-term loan was repaid without interest.

15. Between May 12, 1987, and January 9, 1990, respondent presided over and disposed of nine cases in which Mr. Warfield was a party, as set forth in Schedule A appended hereto.

16. Respondent did not disclose to Mr. Warfield's adversaries that respondent had borrowed money from Mr. Warfield.

17. In each of the nine cases, respondent disposed of the matter in favor of Mr. Warfield. In one, Warfield v. Maxim, he also granted a counterclaim to the defendant.

18. Respondent falsely testified that he did not remember the loan at the time that he presided over the nine cases.

19. On June 13, 1991, respondent testified before a member of the Commission that he "absolutely" had not borrowed money from Mr. Warfield.

20. On October 21, 1991, respondent wrote to Commission staff that he "may have" borrowed money from Mr. Warfield but did not have an "unequivocal recollection."

As to Charge IV of the Formal Written Complaint:

21. The charge is not sustained and is, therefore, dismissed.

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), 100.3(b)(1)

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

Whether by carelessness or calculation (as the referee noted), respondent mishandled $1,173 in public money and made no timely effort to notify authorities or rectify the problem. When confronted with the issue of the missing deposit by town officials after an audit had disclosed it, respondent repeatedly gave a false explanation of its loss.

In handling court funds, a judge holds a public trust, much like the duty a lawyer owes a client whose money the lawyer holds. A lawyer commits serious misconduct when he or she withholds clients' funds without placing them in an identifiable bank account (see, Matter of Weisberg, 149 AD2d 58 [1st Dept]) or fails to turn them over to the client on demand (see, Schutrum v. Grievance Committee for the Eighth Judicial District, 70 AD2d 143 [4th Dept]). This is true even when the lawyer did not intend to deprive the client of the money (Weisberg, supra), when the attorney did not use client money to enrich himself (Matter of Harp, 173 AD2d 957 [3d Dept]) or when the failure to safeguard funds was inadvertent (Matter of Rogers, 94 AD2d 121 [1st Dept]) or unintentional (Matter of Harris, 124 AD2d 126 [2d Dept]).

The mishandling of public money by a judge is similarly serious misconduct, even when not done for personal profit. (Bartlett v. Flynn, 50 AD2d 401 [4th Dept]). A judge's failure to deposit court funds in the bank as required by law raises the possibility of improper use of the money. (Matter of Hall, 1992 Ann Report of NY Commn on Jud Conduct, at 46, 47). One of the primary responsibilities of a town or village justice is the depositing and remitting of court funds. A significant amount of money from respondent's court is missing. He took no prompt steps to remedy the situation and has never adequately explained its loss.

It is also wrong for a judge to preside over a case in which his or her impartiality might reasonably be questioned (Rules Governing Judicial Conduct, 22 NYCRR 100.3[c][1]), particularly one in which the judge has had financial dealings with a party (22 NYCRR 100.3[c][1][iii]). Since respondent had borrowed and repaid a loan from Mr. Warfield before presiding over nine cases in which he was a party, respondent should have disclosed the relationship and offered to disqualify himself (see, Matter of Merkel, 1989 Ann Report of NY Commn on Jud Conduct, at 111, 114).

Respondent compounded this misconduct by his repeated lack of candor during the investigation and trial of this matter. He gave varying accounts of his relationship with Mr. Warfield, at first denying the loan unequivocally, later conceding that he "may have" borrowed the money and finally claiming that he didn't

remember any loan. His testimony is unbelievable in view of "contrary objective proof" by Mr. Warfield that the loan had been made and the unlikelihood that respondent would forget borrowing such a substantial amount on such favorable terms. (See, Matter of Kiley v. State Commission on Judicial Conduct, 74 NY2d 364, 370; Matter of Mossman, 1992 Ann Report of NY Commn on Jud Conduct, at 59, 63).

Although we have concluded that Charge II is not sustained, it is clear that respondent's testimony concerning the allegations is contradictory. He said during the investigation that he had stayed with a friend while attending a judicial conference and had not spent any portion of the money advanced him by the town for lodging. A year later, at the hearing, he testified that he had used a portion of the town's $500 for his housing in two or three different motels during the trip. Obviously, one of the versions must have been false. Since the town apparently had no established procedures to require officials to account for their business expenses on such trips however, Charge II must be dismissed, but this does not excuse respondent's patently false testimony.

Deception is "inimical to his role as a judge" (Matter of Gelfand v. State Commission on Judicial Conduct, 70 NY2d 211, 216) and "cannot be condoned," (Matter of Intemann v. State Commission on Judicial Conduct, 73 NY2d 580, 582).

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mrs. Del Bello, Mr. Goldman, Judge Salisbury and Judge Thompson concur as to sanction.

Mr. Goldman dissents as to Charge III only and votes that the charge be dismissed.

Mr. Bellamy, Mrs. Del Bello and Judge Thompson dissent as to Charge IV only and vote that the charge be sustained.

Mr. Cleary 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: January 28, 1993

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

Schedule A

Case	Dated Filed	Date of Disposition
Dave Warfield v. Danny Volpe	5/12/87	1/8/88
Dave Warfield v. Debra Dutcher	5/12/87	1/8/88
David Warfield v. Debbie Dutcher	10/17/89	11/9/89
Dave Warfield v. John Scofield	8/18/87	2/8/88
David Warfield v. Pat Maxim	7/5/88	2/14/89
Dave Warfield v. Dean Carr	1/10/89	2/8/89
David Warfield v. Mary Anders	10/17/89	1/9/90
David Warfield v. Grace Braughman	10/17/89	11/8/89
Town of Shandaken v. Dave Warfield	July 1988	Fall 1989