

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

EVERETT J. MILLER,

a Justice of the Cherry Valley Village
Court, Otsego County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
Honorable Evelyn L. Braun
E. Garrett Cleary, Esq.
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 Everett J. Miller, pro se

The respondent, Everett J. Miller, a justice of the
Cherry Valley Village Court, Otsego County, was served with a
Formal Written Complaint dated February 8, 1993, alleging that he
failed to follow the law on three occasions and that he
improperly served as a peace officer. Respondent filed an answer
dated May 7, 1993.

On March 4, 1994, the administrator of the Commission and respondent entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4) and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. By letter dated March 15, 1994, the Commission approved the agreed statement.

Both parties submitted memoranda as to sanction. Oral argument was waived.

On July 21, 1994, the Commission considered the record of the proceeding and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Cherry Valley Village Court since 1988. He is not a lawyer.

2. On December 1, 1990, respondent arraigned Robert Snyder on a misdemeanor charge of Driving While Intoxicated. Respondent set bail at \$700. The defendant and his father tendered the bail in cash. Respondent refused to accept it and remanded the defendant to jail in lieu of bail, in violation of CPL 510.40(3).

3. On March 29, 1991, William J. Mulder was arrested on a charge of Inadequate Muffler based on respondent's warrant. Respondent arraigned Mr. Mulder and set bail of \$50. When Mr. Mulder tendered the bail in cash, respondent refused to accept it and remanded the defendant to jail in lieu of bail, in violation of CPL 510.40(3).

As to Charge II of the Formal Written Complaint:

4. On March 27, 1991, after soliciting and receiving information from two victims outside the presence of the defendant or his counsel and without holding a hearing, respondent set restitution of approximately \$1,800 in People v Robert Snyder.

5. The defendant subsequently retained counsel, who, by letter dated May 8, 1991, requested a restitution hearing. Respondent refused to hold one, in violation of Penal Law §60.27(2) and CPL 400.30.

As to Charge III of the Formal Written Complaint:

6. From September 10, 1991, until March 7, 1993, respondent was a member of the Cherry Valley Fire Department's fire police. He directed traffic at the scenes of fires and accidents. As such, he served as a peace officer, in violation of UJCA 105(c). He was listed by the fire department as a peace officer with the state Division of Criminal Justice Services, although he never received training or took an oath of office as a peace officer.

Upon the foregoing findings of fact, the Commission concludes a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a), 100.3(a)(1), 100.3(a)(4) and 100.5(h), and Canons 1, 2A, 3A(1) and 3A(4) 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 failed to follow the law when he refused to accept the bail tendered by Mr. Snyder and Mr. Mulder. CPL 510.40(3) provides that, once a judge fixes bail and it is posted:

the court must examine the bail to determine whether it complies with the order. If it does, the court must...approve the bail and must issue a certificate of release, authorizing the principal to be at liberty...(emphasis added).

It makes little practical sense to order a defendant committed to jail, require that he post the bail there and have the money remitted to the court, as respondent argues was his practice. Instead, it appears that respondent was using bail improperly.

It was also wrong for respondent to determine restitution in Snyder based on ex parte information (see, Matter of Mullen, 1987 Ann Report of NY Commn on Jud Conduct, at 129) and to deny the defendant the right to be heard on the issue (see, Matter of Loper, 1985 Ann Report of NY Commn on Jud Conduct, at 172).

In addition, a judge may not serve as a peace officer (UJCA 105[c]; Rules Governing Judicial Conduct, 22 NYCRR 100.5[h]). Such fire police activities as crowd and traffic control are incompatible with judicial office. (Matter of Straite, 1988 Ann Report of NY Commn on Jud Conduct, at 226, 232-33).

While a non-lawyer judge is held to the same standards of conduct as one trained in the law (Matter of Vonder Heide v State Commission on Judicial Conduct, 72 NY2d 658, 660), we have considered, in determining sanction, that the judge is not an attorney. (See, Matter of Meacham, 1994 Ann Report of NY Commn on Jud Conduct, at 87, 91; Matter of Kuehnel et al., 45 NY2d[y], [cc] [Ct on the Judiciary]).

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

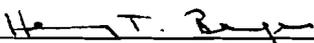
Mr. Berger, Ms. Barnett, Judge Braun, Mr. Cleary, Mr. Goldman, Judge Newton, Judge Salisbury and Mr. Sheehy concur.

Judge Thompson was 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: October 7, 1994


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