

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

PATRICK W. MILLER,

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

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 Juanita Bing Newton
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

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

The respondent, Patrick W. Miller, a justice of the DePeyster Town Court, St. Lawrence County, was served with a Formal Written Complaint dated July 3, 1995, alleging that he failed to remit court funds promptly to the state comptroller and that he failed to cooperate with the Commission. Respondent did not answer the Formal Written Complaint.

By motion dated August 3, 1995, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct had been established. Respondent did not

oppose the motion or file any papers in response thereto. By determination and order dated September 1, 1995, the Commission granted the administrator's motion.

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

On October 30, 1995, 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 DePeyster Town Court during the time herein noted.

2. From December 1993 until May 1995, as denominated in Schedule A appended hereto, respondent failed to remit court funds to the state comptroller by the tenth day of the month following collection, as required by UJCA 2021(1), Town Law §27(1) and Vehicle and Traffic Law §1803(8). With the exception of April 1994, respondent was between five and 158 days late in remitting money during this period, even though he handled an average of only four cases a month.

3. After respondent was notified on January 30, 1995, that the Commission had authorized an investigation into his alleged failure to remit court funds promptly, he continued to turn over money to the state comptroller on a untimely basis.

As to Charge II of the Formal Written Complaint:

4. Respondent failed to respond to letters sent certified mail by staff counsel on January 30, February 16 and March 7, 1995, in connection with a duly-authorized investigation. Respondent failed without explanation to appear for the purpose of giving testimony on May 31, 1995, as directed by certified letter dated May 12, 1995.

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 and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A town justice is required to remit court funds to the state comptroller by the tenth day of the month following collection. (UJCA 2021[1]; Town Law §27[1] and 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 monies 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

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 judicial office. (See, Matter of Reese, 1985 Ann Report of NY Commn on Jud Conduct, at 217, 220). As has been held in the discipline of attorneys, the failure to cooperate in a duly-authorized investigation constitutes serious misconduct, in and of itself (Matter of Burger, 182 AD2d 52, 54 [2d Dept]; Matter of Feit, 156 AD2d 810, 811 [3d Dept]) and is deemed to be conduct prejudicial to the administration of justice (Matter of Weidlich, 200 AD2d 123, 127 [1st Dept]).

In other jurisdictions, courts have considered the failure of a judge to respond to investigative inquiries as the basis for holding the judge in contempt (In re Judge Anonymous, 590 P2d 1181 [Okla]) or as a strong factor in support of a finding that a judge be removed from office (In re Corning, 538 SW2d 46, 51 [Mo]).

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

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

Ms. Barnett and Judge Salisbury 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 19, 1996

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

Schedule A

<u>Date</u>	<u>Remitted</u>	<u>Days Late</u>
December 1993	3/16/94	65
January 1994	3/25/94	43
February 1994	3/25/94	15
March 1994	5/5/94	25
April 1994	5/5/94	0
May 1994	8/18/94	69
June 1994	8/18/94	39
July 1994	8/18/94	8
August 1994	2/15/95	158
September 1994	2/15/95	128
October 1994	2/15/95	97
November 1994	2/15/95	67
December 1994	2/15/95	36
January 1995	2/15/95	5
February 1995	6/13/95	95
March 1995	6/13/95	64
April 1995	7/11/95	62
May 1995	Not received as of 7/19/95	—