

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**

DAVID B. HEBURN,

a Justice of the Remsen Town and Village  
Courts, Oneida County.

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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

Robert Barry for Respondent

The respondent, David B. Heburn, a justice of the  
Remsen Town Court and the Remsen Village Court, Oneida County,  
was served with a Formal Written Complaint dated November 24,  
1992, alleging that he falsely subscribed designating petitions  
during his 1991 election campaign for town justice. Respondent  
filed an amended answer dated April 28, 1993.

By order dated January 19, 1993, the Commission designated David S. Williams, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 4, 1993, and the referee filed his report with the Commission on August 16, 1993.

By motion dated September 24, 1993, 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 October 13, 1993. The administrator filed a reply dated October 14, 1993. Oral argument was waived.

On October 21, 1993, the Commission considered the record of the proceeding and made the following findings of fact:

1. Respondent has been a justice of the Remsen Town Court for twelve years. He ran for re-election in the 1991 general election.

2. In July 1991, respondent caused to be circulated designating petitions as the Republican candidate for town justice on the November ballot.

3. Signatures on the petitions were obtained by and in the presence of either respondent's wife, Priscilla, or by Robert Walter, the Remsen town clerk, at his place of business, Walter's Hardware in Remsen. Respondent was not present when any of the signatories executed the petitions.

4. On July 19, 1991, respondent falsely subscribed on each of the four pages of the designating petitions that the signatories had executed the petitions in his presence, contrary to Election Law §§ 6-132(2) and 17-122(7).

5. On July 19, 1991, respondent filed or caused to be filed with the Oneida County Board of Elections his designating petitions, even though they contained a false material statement, contrary to Penal Law §175.30.

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 and 100.2(a), and Canons 1 and 2A of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

The record establishes that respondent falsely swore that he had witnessed the signatures on his 1991 designating petitions for town justice, even though the signatures had been collected by his wife and the town clerk.

A number of the signatories testified that they did not sign in the presence of respondent. Moreover, during the investigation of this matter, staff counsel wrote to respondent at his official address. Respondent received this letter on September 21, 1992. A signed response bearing respondent's name, title and address was received in reply. In it, respondent

admitted signing the petitions as witness, even though his wife and Mr. Walter had witnessed the signatures. After service of the Formal Written Complaint, respondent signed a verified amended answer. It was established to the satisfaction of the referee, and we accept, that this pleading bears respondent's genuine signature. This signature may be compared with those on the letter and the petitions in order to determine whether respondent signed the petitions. (See, CPLR 4536; Ibanez v Pfeiffer, 76 Misc2d 363 [Civ Ct Queens Co]).

It is not necessary, as respondent suggests, to have expert testimony by a handwriting analyst who compared the signatures. CPLR 4536 does not so provide (Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 4536, at 296-97; Ibanez v Pfeiffer, supra), nor do the cases cited by respondent. Turnure et al. v Breitung et al. (195 AD 200 [1st Dept]) merely stands for the proposition that one of the signatures must be established by a fair preponderance as genuine before it can be compared with signatures in dispute. Freeman Check Cashing, Inc. v State (97 Misc2d 819 [Ct of Claims]) held that the state had not established a forged endorsement on an unemployment check that it refused to honor because it had not produced any evidence of the genuine handwriting of the endorser and, thus, the Uniform Commercial Code's presumption of genuineness in a negotiated instrument had not been rebutted.

Here, we conclude that staff counsel presented a prima facie case that respondent signed and filed the petitions which, in the absence of any contrary proof by respondent, meets the preponderance standard.

Such an act is contrary to law (Election Law §§ 6-132[2] and 17-122[7]). Respondent also violated the law when he filed or caused to be filed the falsely certified petitions. (Penal Law §175.30).

Such conduct is "antithetical to the role of a Judge who is sworn to uphold the law and seek the truth." (Matter of Myers v State Commission on Judicial Conduct, 67 NY2d 550, 554). "Falsification of documents is inimical to the character required of a Judge." (Matter of Mazzei v State Commission on Judicial Conduct, 81 NY2d 568, 572). A judge who swears falsely is not fit to administer oaths and determine the credibility of witnesses in matters before the court.

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mr. Goldman, Mr. Sheehy, and Judge Thompson concur.

Judge Salisbury 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: December 16, 1993

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