

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

WALTER ANDELA,

a Justice of the Exeter Town Court,
Otsego County.

THE COMMISSION:

Victor A. Kovner, Esq., Chair
Honorable Myriam J. Altman
Henry T. Berger, Esq.
John J. Bower, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Mrs. Gene Robb*
Honorable Isaac Rubin
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.

APPEARANCES:

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

Duncan S. MacAffer for Respondent

The respondent, Walter Andela, a justice of the Exeter
Town Court, Otsego County, was served with a Formal Written
Complaint dated June 8, 1988, alleging that he failed to deposit

*Mrs. Robb resigned on October 20, 1989. The vote in this
matter was on October 19, 1989.

and remit court funds and that he neglected certain other adjudicative and administrative responsibilities. Respondent filed an answer dated August 9, 1988.

By order dated July 18, 1988, the Commission designated Eugene E. Napierski, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 31 and November 1, 1988, and the referee filed his report with the Commission on August 24, 1989.

By motion dated September 22, 1989, 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 5, 1989. Oral argument was waived.

On October 19, 1989, 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 Exeter Town Court since 1979.

2. Between May 1984 and March 1988, respondent failed to remit court funds to the state comptroller by the tenth day of the month following collection, as required by Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law and Section 27(1) of the Town Law, and as denominated in Schedule A appended hereto.

As to Charge II of the Formal Written Complaint:

3. From February 1985 to January 1988, respondent failed to deposit court funds in his official account in a timely manner, as required by Section 30.7(a) of the Uniform Justice Court Rules in effect before January 6, 1986, and Section 214.9(a) of the Uniform Civil Rules for the Justice Courts in effect since January 6, 1986, and amended on March 25, 1987. Funds received and deposited by respondent are denominated in Schedule B appended hereto.

4. Respondent kept undeposited court funds in and on a desk at his home. A Commission investigator found \$25 cash and 21 undeposited checks totalling \$510 on top of respondent's desk during an examination of court records on April 24, 1987. On May 6, 1987, the investigator found a \$50 check dated July 10, 1985, paid to the court as restitution. On April 8, 1988, the investigator found a total of \$59 cash in various record books kept by respondent.

5. During this period, respondent's court account was deficient by as much as \$809.50. Respondent made no deposits between June 20, 1986, and January 19, 1987, notwithstanding that he received \$1,586.90 during that seven-month period.

6. Respondent was aware at all times that he was required to promptly deposit court funds. He has no excuse for not doing so.

As to Charge III of the Formal Written Complaint:

7. From October 1983 to the date of the Formal Written Complaint, respondent failed to dispose of 22 cases involving 14 defendants, as denominated in Schedule C appended hereto.

8. Respondent failed to remit a total of \$705 in fines or fees to the state comptroller received in 32 cases involving 29 defendants, as required by law and as denominated in Appendix A to the administrator's motion.

9. Respondent failed to maintain adequate records of the receipt of court funds, as required by Section 31(1)(a) of the Town Law.

10. Respondent failed to maintain complete and adequate records and dockets, as required by Sections 107, 2019 and 2019-a of the Uniform Justice Court Act and Section 31(1)(a) of the Town Law.

11. Between September 1984 and April 1988, respondent failed to maintain a cashbook, as required by Section 105.1 of the Recordkeeping Requirements for Town and Village Courts and Section 30.9 of the Uniform Justice Court Rules in effect before January 6, 1986, and Section 214.11(a)(3) of the Uniform Civil Rules for the Justice Courts in effect since January 6, 1986.

12. Respondent failed to maintain case files and indices of cases, as required by Section 105.1 of the Recordkeeping Requirements for Town and Village Courts and Section 30.9 of the Uniform Justice Court Rules in effect before January 6, 1986; as required by Sections 214.11(a)(1) and

214.11(a)(2) of the Uniform Civil Rules for the Justice Courts in effect since January 6, 1986, and as required by Sections 107, 2019 and 2019-a of the Uniform Justice Court Act.

As to Charge IV of the Formal Written Complaint:

13. Respondent failed to cooperate with the Commission in that he failed to respond to requests by Commission staff that he explain the status of numerous cases pending in his court made in connection with a duly-authorized investigation at respondent's appearance before a member of the Commission on December 15, 1987, and by letters dated October 30, 1987, January 20, 1988, and February 5, 1988.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.3(a)(1), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1), 3A(5) and 3B(1) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established. Respondent's motion that he be retired for physical or mental disability is denied.*

*With his motion to the Commission, respondent included a letter concerning his health. Respondent had ample opportunity to present evidence concerning his physical and mental condition to the referee and failed to do so. Therefore, the letter appended to his motion is not properly before us and was not considered in rendering this determination.

Respondent has neglected nearly every aspect of his adjudicative and administrative duties. He failed to promptly deposit court funds in his official account, leaving checks and cash in a desk at his home--in one instance for nearly two years. He failed to promptly remit court funds to the state comptroller as required by law. He neglected pending cases and did not keep adequate court records. Respondent also failed to cooperate with Commission staff's investigation of his conduct.

A judge's "disregard for statutory recordkeeping requirements and his carelessness in handling public moneys is a serious violation of his official responsibilities." "Such a breach of the public's trust warrants removal." Matter of Petrie v. State Commission on Judicial Conduct, 54 NY2d 807, 808 (1981). See also Matter of Cooley v. State Commission on Judicial Conduct, 53 NY2d 64 (1981); Matter of Hutzky, 1984 Annual Report 94 (Com. on Jud. Conduct, Nov. 4, 1983).

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

Mr. Kovner, Judge Altman, Mr. Berger, Mr. Bower, Judge Ciparick, Mrs. Del Bello, Mrs. Robb, Judge Rubin and Mr. Sheehy concur.

Mr. Cleary 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: December 6, 1989



Victor A. Kovner, Esq., Chair
New York State
Commission on Judicial Conduct

SCHEDULE A

<u>Month and Year of Report</u>	<u>Date Received by Audit and Control</u>	<u>Number of Days Late</u>
5/84	9/4/84	86
6/84	9/4/84	56
7/84	9/4/84	25
8/84	9/4/84	0
9/84	10/9/84	0
10/84	11/19/84	9
11/84	1/28/85	49
12/84	1/28/85	18
1/85	4/23/85	72
2/85	4/23/85	44
3/85	4/23/85	13
4/85	6/26/85	47
5/85	6/26/85	16
6/85	7/16/85	6
7/85	10/31/85	82
8/85	10/31/85	51
9/85	10/31/85	21
10/85	3/14/86	123
11/85	3/14/86	94
12/85	3/14/86	63
1/86	3/14/86	32
2/86	3/14/86	4
3/86	6/25/86	76
4/86	6/23/86	44
5/86	6/23/86	13
6/86	12/15/86	158
7/86	12/15/86	127
8/86	12/15/86	96
9/86	12/15/86	66
10/86	12/15/86	35
11/86	12/15/86	5
12/86	5/14/87	124
1/87	5/14/87	93
2/87	5/14/87	65
3/87	5/14/87	34
4/87	5/14/87	4
5/87	9/14/87	96
6/87	9/14/87	66
7/87	9/14/87	35
8/87	9/14/87	4
9/87	1/20/88	102
10/87	1/20/88	71
11/87	1/20/88	41
12/87	1/21/88	11
1/88	2/18/88	8
2/88	3/16/88	6
2/88 (supplemental)	5/16/88	67
3/88	5/16/88	36

SCHEDULE B

<u>Dates Received</u>	<u>Amount Received</u>	<u>Date of Deposit</u>	<u>Amount of Deposit</u>	<u>Deficiency Or Surplus</u>	<u>Cumulative Deficiency or Surplus</u>
2/12-4/11/85	\$ 427.88	4/12/85	\$ 327.88	\$ -100.00	\$ -100.00
4/12-6/5/85	1,250.00	6/6/85	1,340.00	+ 90.00	- 10.00
6/6-7/11/85	617.50	7/12/85	592.50	- 25.00	- 35.00
7/12-8/21/85	805.00	8/22/85	715.00	- 90.00	-125.00
8/22-10/14/85	847.00	10/15/85	737.00	-110.00	-235.00
10/15/85-4/10/86	647.00	4/11/86	732.00	+ 85.00	-150.00
4/11-6/19/86	4,188.00	6/20/86	4,148.50	- 39.50	-189.50
6/20/86-1/19/87	1,586.90	1/20/87	1,261.90	-325.00	-514.50
1/20-3/11/87	880.00	3/12/87	585.00	-295.00	-809.50
3/12-4/22/87	145.00	4/23/87	145.00	0	-809.50
4/23-4/30/87	45.00	5/1/87	555.00	+510.00	-299.50
5/1-9/9/87	1,740.50	9/10/87	1,825.50	+ 85.00	-214.50
9/10/87-1/14/88	4,075.00	1/15/88	3,740.00	-335.00	-549.50

SCHEDULE C

<u>Defendant</u>	<u>Charge</u>	<u>Date of Arrest</u>
Dennis Brooker	Harassment	6/30/86
Steven Bunn	Criminal Contempt	9/3/84
Sheila Chenel	Uninspected Motor Vehicle	5/10/86
Theodore Fox	Imprudent Speed	5/4/86
Theodore Fox	Leaving The Scene Of An Accident	5/4/86
Theodore Fox	Failure To Keep Right	5/4/86
Alexander Hawkins	Speeding	7/29/85
Patricia Herman	Unregistered Motor Vehicle	8/21/84
William Marquisee	Consumption Of Alcohol In A Motor Vehicle	10/15/83
Russell Schermerhorn	Aggravated Unlicensed Operator	2/25/87
Russell Schermerhorn	Failure To Keep Right	2/25/87
Russell Schermerhorn	Unrestrained Child	2/25/87
Linda Schwartz	Uninspected Motor Vehicle	1/6/87
Tammy Sharlow	Speeding	8/13/87
Peter Wannamaker	Driving While Intoxicated	6/28/86
Peter Wannamaker	Failure To Keep Right	6/28/86
Peter Wannamaker	Criminal Impersonation	6/28/86
Marsha Watson	Uninspected Motor Vehicle	11/1/84
James Wilson	Driving While License Revoked	11/28/85
James Wilson	Driving While Intoxicated	11/28/85
James Wilson	Failure To Keep Right	11/28/85
James Wiltse	Inadequate Headlights	12/20/85
