

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

JAMES W. BURRELL,

a Justice of the Franklinville Town
Court, Cattaraugus County.

THE COMMISSION:

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

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the
Commission

Honorable James W. Burrell, pro se

The respondent, James W. Burrell, a justice of the Franklinville Town Court, Cattaraugus County, was served with a Formal Written Complaint dated April 12, 1989, alleging that he cashed and retained a total of \$610 in court funds and that he failed to deposit court funds promptly for more than a year.

Respondent submitted a letter dated April 28, 1989, in response to the complaint.

By order dated May 24, 1989, the Commission designated Patrick J. Berrigan, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 11 and 12, 1989. Respondent did not appear at the hearing. The referee filed his report with the Commission on October 2, 1989.

By motion dated October 16, 1989, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent did not file any papers in response thereto and did not request oral argument.

On November 17, 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 Franklinville Town Court during the time herein noted.

2. On November 12, 1987, F.W. Johnston Transport, Inc., was charged with Overwidth Vehicle and Overlength Vehicle. The charges were returnable before respondent.

3. The defendant pled guilty by mail to both charges, and respondent fined the defendant a total of \$410.

4. The defendant sent to respondent two money orders for \$200 and \$210 in payment of the fines. The money orders were made payable to "James Burrell, T.J., Town of Franklinville."

5. On January 15, 1988, respondent cashed the money orders at the Cattaraugus County Bank, where he has a personal checking account. When questioned by bank personnel, respondent falsely stated that he had dismissed the cases and needed the cash to return to a truck driver who was waiting at his home.

6. Respondent did not deposit the money in his official court account.

7. Respondent did not enter the Johnston cases in his docket until November 28, 1988, after he was asked to testify before a member of the Commission. He did not issue a receipt for the fines and kept no case file or cashbook record of the cases. Respondent did not advise the arresting officer of the disposition of the cases and did not report the disposition to the Department of Motor Vehicles, as required by Section 91.19 of the Regulations of the Commissioner of Motor Vehicles. Respondent did not remit the \$410 to the state comptroller, 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, until December 4, 1988, after he had been asked to testify before a member of the Commission concerning the cases.

8. On February 8, 1988, Transport Robert was charged with Overwidth Vehicle and Overlength Vehicle. The charges were returnable before respondent.

9. The defendant pled guilty by mail to both charges, and respondent fined the defendant a total of \$410.

10. The defendant sent to respondent two checks for \$200 and \$210 in payment of the fines. The checks were made payable to "James Burrell, T.J."

11. On March 26, 1988, respondent cashed the \$200 check at the Cattaraugus County Bank. He again falsely told a bank teller that he needed the cash to return to a truck driver.

12. Respondent did not deposit the \$200 in his official court account. He deposited the \$210 check on March 28, 1988.

13. Respondent did not enter the Overwidth Vehicle case involving Transport Robert in his docket until November 28, 1988, after being asked to testify before a member of the Commission concerning the matter. He did not issue a receipt for the fines and kept no cashbook record of the Transport Robert cases. Respondent did not advise the arresting officers of the disposition of the cases and did not report the dispositions to the Department of Motor Vehicles. Respondent did not remit the \$200 fine to the state comptroller until December 4, 1988, after he was asked to testify before a member of the Commission concerning the matter.

As to Charge II of the Formal Written Complaint:

14. Between March 6, 1987, and June 8, 1988, respondent failed to deposit court funds promptly into his official account, as required by Section 214.9(a) of the Uniform Civil Rules for the Justice Courts, and as denominated in Exhibit 3 of the evidence admitted at the hearing. By the end of the period, respondent's court account was deficient by more than \$4,000.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) 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.

The preponderance of the evidence establishes that respondent converted a total of \$610 in court funds to his own use by cashing three checks and money orders and did not deposit the money in his court account. The conversion of public funds by a judge entrusted with their care shocks the conscience and warrants removal from office. Matter of Montaneli, 1987 Annual Report 121, 126 (Com. on Jud. Conduct,

Nov. 17, 1986); Matter of Moore, 1984 Annual Report 131, 133 (Com. on Jud. Conduct, Nov. 10, 1983).

Respondent exacerbated this gross misconduct by attempting to conceal his receipt of the money. He issued no receipts and made no records of the cases until after Commission staff inquired about them.

Respondent also failed to deposit promptly other funds received during a 15-month period, raising questions about the interim use of the money. See Matter of Rater, 1987 Annual Report 135, 137 (Com. on Jud. Conduct, July 25, 1986), accepted, 69 NY2d 208 (1987).

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

Judge Altman, Mr. Berger, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Judge Rubin, Judge Salisbury and Mr. Sheehy concur.

Mr. Kovner 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 21, 1989



John J. Bower, Esq.
New York State
Commission on Judicial Conduct