

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

RICHARD W. BURTON,

a Justice of the Schroepel Town Court,
Oswego 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 for the Commission
James K. Eby for Respondent

The respondent, Richard W. Burton, a justice of the Schroepel Town Court, Oswego County, was served with a Formal Written Complaint dated February 22, 1994, alleging that he failed to deposit and remit court funds promptly as required by law. Respondent did not answer the Formal Written Complaint.

On August 17, 1994, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating

that the Commission make its determination based on the Formal Written Complaint and the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On September 23, 1994, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Schroepfel Town Court since August 1984.

2. Respondent has attended all training sessions required by the Office of Court Administration. Since taking office, he has been aware that court funds must be deposited in the official court account within 72 hours of receipt and that court funds must be remitted to the state comptroller by the tenth day of the month following collection.

3. Between February 1990 and March 1991, as denominated in Schedule A appended hereto, respondent failed to deposit court funds in his official account within 72 hours of receipt, as required by the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.9(a). By the end of this period, respondent's court account was deficient by \$31,305.11.

4. Between February 1990 and November 1992, Norma Brooks, then the court clerk, was responsible for marshaling receipts, preparing deposit tickets and depositing court funds.

5. In April 1991, the state Department of Audit and Control audited respondent's court. The audit report revealed undeposited receipts during the period December 21, 1990, to April 18, 1991, advised respondent that court funds should be deposited within 72 hours of receipt and indicated that court staff had repeatedly failed to meet this requirement.

6. Between June 1991 and November 1992, as denominated in Schedule B appended hereto, respondent failed to deposit court funds in his official account within 72 hours of receipt as required by law. By the end of this period, respondent's court account was deficient by \$7,462.58.

7. Between April 1991 and November 1992, respondent failed to properly supervise his court staff or take necessary steps to ensure that his staff deposited court funds as required by law.

As to Charge II of the Formal Written Complaint:

8. Between January 1990 and April 1991, as denominated in Schedule C 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 2020 and 2021(1), Town Law §27(1) and Vehicle and Traffic Law §1803(8).

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), 100.3,

100.3(b)(1) and 100.3(b)(2), and Canons 1, 2A, 3, 3B(1) and 3B(2) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

By failing to deposit court funds in the bank and remit them to the state comptroller in a timely manner, respondent did not comply with the law and mishandled public monies. (See, Matter of Hall, 1992 Ann Report of NY Commn on Jud Conduct, at 46, 47; Matter of Ranke, 1992 Ann Report of NY Commn on Jud Conduct, at 64).

Although the responsibility to deposit funds in respondent's court account was vested in a court clerk, it was respondent's duty to supervise the prompt depositing of money in his name. "A judge shall require his or her court staff and court officials subject to his or her direction and control to observe the standards of fidelity and diligence that apply to the judge." (Rules Governing Judicial Conduct, 22 NYCRR 100.5[b][2]; see, Matter of Reedy, 1982 Ann Report of NY Commn on Jud Conduct, at 135, 136). Even after the serious breaches of respondent's court staff were pointed out to him in an audit, respondent failed for more than a year to take steps to ensure that court money was properly deposited. (Compare, Matter of Lenney v State Commission on Judicial Conduct, 71 NY2d 456).

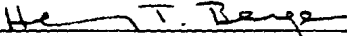
By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

All concur.

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 1, 1994


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

Schedule A

<u>Date</u>	<u>Amount Received</u>	<u>Amount Deposited</u>	<u>Surplus/ Deficiency</u>	<u>Cumulative Deficiency</u>
2/90	\$ 7,257.00	\$ 0	\$ - 7,257.00	\$- 7,257.00
3/90	8,623.00	0	- 8,623.00	-15,880.00
4/90	5,858.50	9,732.75	+ 3,874.25	-12,005.75
5/90	7,238.40	6,111.50	- 1,126.90	-13,132.65
6/90	7,360.90	10,955.00	+ 3,594.10	- 9,538.55
7/90	9,478.00	11,120.50	+ 1,642.50	- 7,896.05
8/90	9,154.00	0	- 9,154.00	-17,050.05
9/90	5,718.70	7,108.40	+ 1,389.70	-15,660.35
10/90	6,527.10	15,466.90	+ 8,939.80	- 6,720.55
11/90	8,822.70	13,321.00	+ 4,498.30	- 2,222.25
12/90	6,673.40	3,411.00	- 3,262.40	- 5,484.65
1/91	8,202.00	0	- 8,202.00	-13,686.65
2/91	11,429.08	0	-11,429.08	-25,115.73
3/91	11,037.08	4,847.70	- 6,189.38	-31,305.11

Schedule B

<u>Date</u>	<u>Amount Received</u>	<u>Amount Deposited</u>	<u>Surplus/ Deficiency</u>	<u>Cumulative Surplus/ Deficiency</u>
6/91	\$11,156.00	\$ 9,742.00	\$ -1,414.00	\$ -1,414.00
7/91	7,243.08	8,545.00	+1,301.92	-112.08
8/91	7,724.08	3,901.08	-3,823.00	-3,935.08
9/91	7,274.00	7,210.00	-64.00	-3,999.08
10/91	5,515.00	6,628.00	+1,113.00	-2,886.08
11/91	9,119.16	3,196.00	-5,923.16	-8,809.24
12/91	6,569.08	15,888.24	+9,319.16	+509.92
1/92	11,412.00	7,992.00	-3,420.00	-2,910.08
2/92	16,128.08	15,629.00	-499.08	-3,409.16
3/92	10,098.16	9,574.74	-523.42	-3,932.58
4/92	5,895.95	10,795.03	+4,899.08	+966.50
5/92	7,897.08	7,767.00	-130.08	+836.42
6/92	12,531.00	6,446.00	-6,085.00	-5,248.58
7/92	5,889.16	11,384.16	+5,495.00	+246.42
8/92	9,492.29	5,892.29	-3,600.00	-3,353.58
9/92	6,204.08	10,464.08	+4,260.00	+906.42
10/92	5,385.82	3,699.82	-1,686.00	-779.58
11/92	9,479.00	2,796.00	-6,683.00	-7,462.58

Schedule C

<u>Date</u>	<u>Date Received</u>	<u>Days Late</u>
1/90	5/30/90	109
2/90	6/19/90	101
3/90	6/19/90	70
4/90	6/18/90	39
5/90	9/26/90	108
6/90	10/19/90	101
7/90	12/10/90	122
8/90	11/6/90	57
9/90	11/8/90	29
10/90	5/6/91	177
11/90	5/9/91	150
12/90	5/8/91	118
1/91	7/19/91	159
2/91	5/9/91	60
3/91	5/10/91	30
4/91	5/20/91	10