

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

HAROLD B. CARPENTER,

Determination

a Justice of the Town Court of
Hounsfield, Jefferson County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel)
for the Commission

Giles, Maloney, Marsh, Swartz & Goodwin
(By Michael W. Schell) for Respondent

The respondent, Harold B. Carpenter, a justice of the
Town Court of Hounsfield, Jefferson County, was served with a
Formal Written Complaint dated May 30, 1980, charging him with
(i) failing to make timely deposits of court funds, (ii) failing
to report or remit to the State Comptroller monies received in
his official capacity and (iii) withdrawing court funds by writing
checks payable to himself. Respondent, in a letter from his counsel

dated June 18, 1980, waived an answer.

By motion dated November 5, 1980, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's operating procedures and rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion, found respondent's misconduct established and set a schedule for memoranda and oral argument with respect to an appropriate sanction. The administrator submitted a memorandum. Respondent submitted a letter. Oral argument was waived.

The Commission considered the record of this proceeding on December 17, 1980, and makes the following findings of fact.

1. On September 7, 1979, the State Department of Audit and Control directed the Supervisor of the Town of Hounsfield to defer payment of respondent's salary, pursuant to Section 27 of the Town Law, for respondent's failure to file with the State Comptroller the financial reports of his court activity for June and July 1979 required by Section 27 of the Town Law.

2. From July 1979 to March 1980, respondent failed to report or remit to the State Comptroller any monies he received in his judicial capacity, in violation of Section 27 of the Town Law, Sections 2020 and 2021(1) of the Uniform Justice Court Act and Section 1803 of the Vehicle and Traffic Law. During this period respondent received \$996 in fines, as detailed in Column 1 of Schedule A appended hereto.

3. From May 1979 to March 1980, respondent received monies in his official capacity totaling \$1,426, as detailed in

Column 1 of Schedule A appended hereto. During this period respondent made only three deposits totaling \$764 into his official court account, as detailed in Column 2 of Schedule A appended hereto. In so doing, respondent violated Section 30.7 of the Uniform Justice Court Rules, which requires the deposit of all official funds within 72 hours of receipt. A total of \$662 was undeposited and remains unaccounted for, as detailed in Column 3 of Schedule A appended hereto.

4. Between March 5, 1978, and February 8, 1980, respondent withdrew a total of \$225 from his official court account by making four checks payable to himself, as detailed in Schedule B appended hereto.

5. In the investigation of this matter prior to service of the Formal Written Complaint, respondent appeared on April 30, 1980, before a member of the Commission to testify with respect to his reporting and remitting deficiencies. At that appearance, respondent refused to answer questions about certain court records or accounts, citing his Fifth Amendment privilege against self-incrimination. Respondent specifically refused to account for the \$662 in undeposited funds noted in paragraph 3 above and for the \$225 in withdrawn funds noted in paragraph 4 above.

6. On April 29, 1980, respondent deposited his personal check for \$843 into his official court account. On April 30, 1980, respondent forwarded to the State Comptroller a check for \$843 from his official court account, representing fines received in his official capacity from August 1979 to March 1980.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1,

33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained and respondent's misconduct is established.

By his persistent failure to make timely deposits of monies received in his official capacity, and by his equally persistent failure to report and remit these monies to the State Comptroller in the time and manner required by law, respondent has exhibited a callous disregard of the financial reporting and remitting responsibilities of his office.

By refusing to account for specific deficiencies amounting to \$887, and by invoking his Fifth Amendment privilege in so doing, respondent has irreparably undermined the integrity of his judicial office. Public confidence in the judiciary requires a full and satisfactory accounting of the public funds entrusted to a judge's care.

Respondent's misconduct is not mitigated by his returning a portion of the missing funds with his personal check more than two years after the irregularities in his court finances began, after notice of the Commission's investigation into this matter and on the same day he appeared to testify on these matters before a member of the Commission. Whether or not we were to conclude that the missing money had been converted to respondent's own use -- and the indications of such a conversion are persuasive -- respondent's conduct has prejudiced the administration of justice and demonstrated his lack of fitness for judicial office.

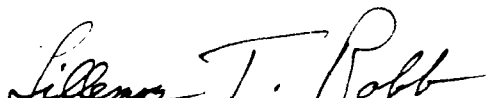
By reason of the foregoing, the Commission determines that the appropriate sanction is removal.

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: February 18, 1981
Albany, New York


Lillemor T. Robb, Chairwoman
New York State Commission on
Judicial Conduct

SCHEDULE A

<u>MONTH</u>	<u>Column 1</u> FINE MONEY RECEIVED BY RESPONDENT	<u>Column 2</u> BANK DEPOSITS ATTRIBUTABLE TO FINE MONEY	<u>Column 3</u> UNACCOUNTED FOR FUNDS
May 1979	\$ 175	\$ 0	\$175
June 1979	255	206	49
July 1979	153	150	3
August 1979	125	0	125
September 1979	55	0	55
October 1979	188	408	(+220)
November 1979	180	0	180
December 1979	15	0	15
January 1980	110	0	110
February 1980	65	0	65
March 1980	<u>105</u> \$1,426	<u>0</u> \$764	<u>105</u> \$662

SCHEDULE B

<u>DATE OF CHECK FROM OFFICIAL COURT ACCOUNT</u>	<u>CHECK NUMBER</u>	<u>AMOUNT OF CHECK</u>	<u>PAYEE</u>
March 5, 1978	133	\$145	Harold B. Carpenter
January 30, 1980	154	30	Harold B. Carpenter
February 6, 1980	155	25	Harold B. Carpenter
February 8, 1980	156	<u>25</u>	Harold B. Carpenter
TOTAL		\$225	