

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

HENRY GOEBEL, JR.,

a Justice of the Nassau Town Court
and Acting Justice of the Nassau
Village Court, Rensselaer 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
Mrs. Gene Robb*
Honorable Isaac Rubin
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern for the Commission
Zweig and Caldes (By Theodore G. Caldes)
for Respondent

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

The respondent, Henry Goebel, Jr., a justice of the Nassau Town Court and the Nassau Village Court, Rensselaer County, was served with a Formal Written Complaint dated May 23, 1989, alleging that he failed to remit court funds to the state comptroller in a timely fashion over an eleven-year period. Respondent did not answer the Formal Written Complaint.

On October 3, 1989, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law, stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On October 19, 1989, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Nassau Town Court since 1968 and acting justice of the Nassau Village Court since 1976. During that time, respondent has been aware of the requirement that he remit court funds to the state comptroller by the tenth day of the month after he receives them. Respondent has never had a court clerk.

2. From January 1978 to December 1978, 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, Section 27(1) of the Town Law and Section 4-410(1)(b) of the Village Law, and as denominated in Schedules A and B appended to the Formal Written Complaint.

3. By letter dated February 1, 1979, respondent was cautioned by the Commission to remit to the comptroller as required by law.

4. From January 1979 to March 1989, respondent again failed to remit court funds to the state comptroller as required by law and as denominated in Schedules A and B appended to the Formal Written Complaint.

5. Between 1978 and May 1989, the comptroller's office sent 96 letters to respondent requesting that he file his reports. On six occasions, the comptroller returned respondent's checks to him because the checks were stale.

6. During these periods, respondent promptly deposited court funds in his official account.

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. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

While respondent promptly deposited his court funds, he did not remit them to the state comptroller in a timely fashion as required by law. He was consistently late in remitting money over an eleven-year period, in some cases by more than three years. Thus, he violated his ethical obligations to comply with the law and to diligently discharge his administrative responsibilities. See Sections 100.2(a) and 100.3(b)(1) of the Rules Governing Judicial Conduct.

The failure to heed a Commission warning that he comply with remitting requirements exacerbates the misconduct. Matter of Rater v. State Commission on Judicial Conduct, 69 NY2d 208, 209 (1987); Matter of Lenney v. State Commission on Judicial Conduct, 71 NY2d 456, 458-59 (1988).

The mishandling of public funds is misconduct, even when not done for a judge's personal profit. Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976). Judges have been disciplined for failure to remit court funds without additional evidence of failure to deposit. Matter of Rogers v. State Commission on Judicial Conduct, 51 NY2d 224 (1980); Matter of Moulton, 1985 Annual Report 200 (Com. on Jud. Conduct, Apr. 13, 1984). The

fact that respondent promptly deposited court funds and, thus, at all times was able to account for money he collected makes a sanction less than removal appropriate in this case.

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

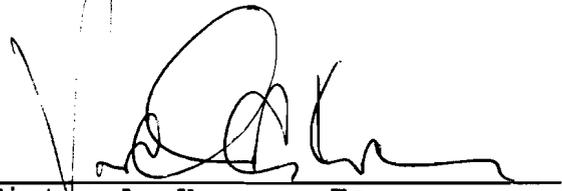
Mr. Kovner, Judge Altman, Mr. Berger, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mrs. Robb, Judge Rubin and Mr. Sheehy concur.

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 26, 1989



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