

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

LESTER C. HAMEL,

a Justice of the Champlain Town and
Village Courts and an Acting Justice
of the Rouses Point Village Court,
Clinton County.

Determination

THE COMMISSION:

John J. Bower, Esq.
Honorable Myriam J. Altman
Helaine M. Barnett, Esq.
Henry T. Berger, 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 (Stephen F. Downs, Of Counsel) for the
Commission

Honorable Lester C. Hamel, pro se

The respondent, Lester C. Hamel, a justice of the
Champlain Town Court, the Champlain Village Court and the Rouses
Point Village Court, Clinton County, was served with a Formal
Written Complaint dated October 20, 1989, alleging that he
failed to promptly deposit and remit court funds as required by

law. Respondent replied to the Formal Written Complaint by letter dated December 4, 1989.

By motion dated December 22, 1989, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct be deemed established. Respondent did not file papers in response thereto. By determination and order dated January 19, 1990, the Commission granted the administrator's motion.

The administrator filed a memorandum as to sanction. Respondent neither filed papers nor requested oral argument. On February 16, 1990, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Champlain Town Court and the Champlain Village Court during the time herein noted. He is also acting justice of the Rouses Point Village Court. He has no court clerk in any of the courts.

2. Between January 1981 and May 1984, as denominated in Schedule C appended hereto, respondent failed to remit Champlain Village 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 4-410(1)(b) of the Village Law.

3. Between September 1983 and June 1984, as denominated in Schedule D appended to the Formal Written Complaint^{*}, respondent failed to deposit Champlain Town Court funds within 72 hours of receipt, as required by Section 30.7(a) of the Uniform Justice Court Rules then in effect.

4. By letter dated November 16, 1984, respondent was cautioned by the Commission to deposit and remit court funds in a timely manner.

5. Between December 1986 and May 1989, as denominated in Schedule B appended hereto, respondent failed to deposit Champlain Village Court funds within the time required by Section 214.9(a) of the Uniform Civil Rules for the Justice Courts. Between July 13, 1988, and March 1, 1989, respondent made no deposits in his village court account, notwithstanding that he received \$725 during this period.

6. Respondent stated that undeposited court funds were kept in a safe at his home.

7. Between December 1986 and May 1989, as denominated in Schedule A appended hereto, respondent failed to remit Champlain Village Court funds to the state comptroller in a timely manner, as required by law.

* The date of receipt on the 13th line of page 1 of Schedule D should read, "1/5/84".

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 and 100.3(b) (1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3 and 3B(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

During an eight-year period, respondent failed to promptly deposit and remit court funds as required by law.

A judge's "disregard for statutory recordkeeping requirements and his carelessness in handling public moneys is a serious violation of his official responsibilities." Matter of Petrie v. State Commission on Judicial Conduct, 54 NY2d 807, 808 (1981). A judge who keeps court funds in his personal possession rather than depositing them in the bank raises questions about the interim use of the money. Matter of Rater, 1987 Annual Report 135, 137 (Com. on Jud. Conduct, July 25, 1986), accepted, 69 NY2d 208 (1987).

The failure to heed a Commission warning to comply with depositing and 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).

Ordinarily, such conduct warrants removal. Petrie, supra. However, we find a lesser sanction appropriate in this case because respondent sits in the three courts without the assistance of a clerk; his records were carefully kept, and, for the most part, the misconduct was confined to one of the courts with a small volume of cases. In addition, respondent has announced that he will not seek reelection in that court when his current term ends. See Matter of Earl, unreported (Com. on Jud. Conduct, Mar. 31, 1989).

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

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

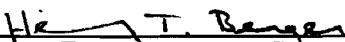
Mr. Cleary was not present.

Ms. Barnett was not a member of the Commission at the time the vote in this proceeding was taken.

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: March 30, 1990


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

Schedule A

<u>Month Of Report</u>	<u>Date Received By Audit And Control</u>	<u>Number Of Days Late</u>
12/86	4/14/87	94
1/87	4/14/87	63
2/87	4/14/87	35
3/87	6/29/87	80
4/87	6/29/87	50
5/87	6/29/87	19
6/87	1/14/88	188
7/87	1/14/88	157
8/87	1/14/88	126
9/87	1/14/88	96
10/87	1/14/88	65
11/87	1/14/88	35
12/87	1/14/88	4
1/88	7/18/88	159
2/88	7/19/88	131
3/88	7/18/88	99
4/88	7/18/88	69
5/88	7/18/88	38
6/88	7/19/88	9
7/88	3/20/89	222
8/88	3/20/89	191
9/88	3/22/89	163
10/88	3/22/89	132
11/88	3/20/89	100
12/88	3/22/89	71
1/89	3/22/89	40
2/89	4/4/89	25
3/89	5/9/89	29
4/89	6/1/89	22
5/89	8/7/89	58

Schedule B

<u>Date of Receipts</u>	<u>Total Receipts</u>	<u>Date of Deposit</u>	<u>Total Deposit</u>	<u>Deficiency or Surplus</u>	<u>Total Deficiency or Surplus</u>
12/15/86-4/5/87	\$1,115	4/06/87	\$1,115	\$ 0	\$ 0
4/06/87-6/24/87	350	6/25/87	330	-20	-20
6/25/87-12/1/87	1,580	12/2/87	1,175	-405	-425
12/2/87-1/10/88	260	1/11/88	430	+170	-255
1/11/88-4/25/88	725	4/26/88	745	+20	-235
4/26/88-7/12/88	930	7/13/88	795	-135	-370
7/13/88-2/28/89	725	3/01/89	835	+110	-260
3/01/89-3/14/89	350	3/15/89	315	-35	-295
3/15/89	110	3/16/89	35	-75	-370
3/16/89-5/07/89	185	5/08/89	295	+110	-260

Schedule C

<u>Date of Report</u>	<u>Date Received</u>	<u>Number of Days Late</u>
1/81	3/24/81	42
2/81	6/11/81	93
3/81	6/11/81	62
4/81	6/11/81	32
5/81	6/11/81	1
6/81	9/10/81	62
7/81	9/10/81	31
8/81	11/6/81	57
9/81	11/6/81	27
10/81	11/24/81	14
11/81	4/13/82	124
12/81	4/13/82	93
1/82	4/13/82	62
2/82	4/13/82	34
3/82	date not available	--
4/82	6/29/82	50
5/82	6/29/82	19
6/82	10/4/82	86
7/82	10/4/82	55
8/82	11/29/82	80
9/82	11/29/82	50
10/82	11/29/82	19
11/82	1/20/83	41
12/82	1/20/83	10
1/83	3/30/83	48
2/83	3/30/83	20
3/83	8/3/83	115
4/83	8/3/83	85
5/83	8/3/83	54
6/83	8/3/83	24
7/83	date not available	--
8/83	11/30/83	81
9/83	11/30/83	51
10/83	1/30/84	81
11/83	1/30/84	51
12/83	1/30/84	20
1/84	2/29/84	19
2/84	5/2/84	53
3/84	5/2/84	22
4/84	5/29/84	19
5/84	6/21/84	11