

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

DAVID L. HOLLEBRANDT,

Determination

A Justice of the Town Court of Sodus,
Wayne County.

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

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel)
for the Commission

Thomas P. Gilmore, Jr., for Respondent

The respondent, David L. Hollebrandt, a justice of the Town Court of Sodus, Wayne County, since 1972, was served with a Formal Written Complaint dated February 11, 1980, (i) alleging numerous financial and reporting deficiencies in his court accounts and records and (ii) alleging that he had pled guilty to Official Misconduct, a misdemeanor, as a result of these deficiencies. Respondent filed an answer dated March 11, 1980, denying all the charges.

By order dated March 21, 1980, the Commission designated the Honorable Morton B. Silberman as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on May 20 and 21, 1980. The referee filed his report to the Commission on July 15, 1980.

By motion dated August 19, 1980, the administrator of the Commission moved to confirm the report of the referee and for a determination that respondent be removed from office. Respondent did not oppose the motion and waived oral argument before the Commission.

The Commission considered the record of this proceeding on September 17, 1980, and upon that record makes the determination herein.

Charges III, IV and X of the Formal Written Complaint are dismissed. As to the remaining charges, the Commission makes the findings of fact and conclusions of law below.

With respect to Charge I, the Commission makes the following findings of fact.

1. As of July 19, 1976, respondent's court account liabilities exceeded his cash on hand and monies in his official bank account by a total of \$635.55. On September 17, 1976, to make up the deficiency, respondent paid \$635.55 into his official bank account.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 2020 of the Uniform Justice Court Act, Section 33.3(b)(1) of the Rules

Governing Judicial Conduct and Canon 3B(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint, as amended at the hearing, is sustained and respondent's misconduct is established.

With respect to Charge II, the Commission makes the following findings of fact.

2. The State Department of Audit and Control audited respondent's records and dockets for the period of July 19, 1976, through October 4, 1979. As of October 4, 1979, respondent's court account liabilities exceeded his cash on hand and monies in his official bank account by the sum of \$8,872.18. This sum included \$3,137.78 which had also been listed as liabilities as of July 19, 1976.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 2020 of the Uniform Justice Court Act, 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. Charge II of the Formal Written Complaint, as amended at the hearing, is sustained and respondent's misconduct is established.

With respect to Charge V, the Commission makes the following findings of fact.

3. From July 19, 1976, through October 4, 1979, respondent failed to deposit monies received in his official capacity into his official bank account within 72 hours of receipt, frequently making such deposits on a monthly basis.

4. An audit by the Department of Audit and Control of respondent's accounts and records up to July 19, 1976, had also cited respondent's failure to deposit official monies within 72 hours of receipt.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 30.7 of the Uniform Justice Court Rules, Section 33.3(b)(1) of the Rules Governing Judicial Conduct and Canon 3B(1) of the Code of Judicial Conduct. Charge V of the Formal Written Complaint is sustained, and respondent's misconduct is established.

With respect to Charge VI, the Commission makes the following findings of fact.

5. From January 1976 to September 1979, except for a brief period in 1976, respondent failed to maintain a cashbook chronologically itemizing all monies received and disbursed in his official capacity. During this period respondent was aware of the directives of the Office of Court Administration and of the Uniform Justice Court Rules requiring a town justice to maintain a cashbook.

6. An audit by the Department of Audit and Control of respondent's accounts and records up to July 19, 1976, had also cited respondent's failure to maintain a cashbook as required by the Rules of the Administrative Board of the Judicial Conference.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 107 and 2019 of the Uniform Justice Court Act, Section 30.9 of the Uniform Justice Court Rules, Section 33.3(b)(1) of the Rules Governing Judicial Conduct and Canon 3B(1) of the Code of Judicial Conduct.

Charge VI of the Formal Written Complaint is sustained, and respondent's misconduct is established.

With respect to Charge VII, the Commission makes the following findings of fact.

7. From January 1, 1976, to October 4, 1979, respondent failed to issue consecutively-numbered receipt forms for all monies received by him as a town justice.

8. Respondent, who serves part-time as town court justice, owns and operates a retail variety store with 12 part-time employees in the Village of Sodus. Between January 1, 1976, and October 4, 1979, various employees of respondent's retail store collected monies due to respondent as town justice. These employees issued unofficial receipts from common receipt form books, pursuant to authority granted by respondent. Respondent thereafter prepared official receipt forms for such monies and made corresponding entries in his official receipt book, but he did not issue the receipts to the persons who had paid such monies and in fact discarded the official receipt forms after having prepared them.

9. In some instances respondent did not issue receipts for monies received.

10. An audit by the Department of Audit and Control of respondent's dockets and records for the period from January 1, 1976, through July 19, 1979, cited respondent's failure to issue receipts to acknowledge collection of monies in various cases.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 99-b

of the General Municipal Law, Section 33.3(b)(1) of the Rules Governing Judicial Conduct and Canon 3B(1) of the Code of Judicial Conduct. Charge VII of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge VIII, the Commission makes the following findings of fact.

11. On May 2, 1977, in the case of People v. Carol Brown, respondent failed to record accurately the fine collected, in that he entered on his docket that a fine of \$80.00 was not paid although it in fact had been paid and received by respondent. The \$80.00 was neither reported nor remitted by respondent to the Department of Audit and Control.

12. On September 13, 1978, in the case of People v. Ensley T. Brooks, respondent failed to record accurately the fine collected, in that he indicated on his docket that a fine of \$25.00 was not paid, although it in fact had been paid. The \$25.00 was neither reported nor remitted by respondent to the Department of Audit and Control.

13. On September 13, 1978, in the case of People v. Sidney A. Miller, respondent failed to record accurately the fine collected, in that he entered on his docket a disposition of conditional discharge although in fact a fine of \$30.00 had been paid by the defendant and received by respondent. The \$30.00 was neither reported nor remitted to the Department of Audit and Control.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 107 and 2019 of the Uniform Justice Court Act, 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. Charge VIII of the Formal Written Complaint as it pertains to the Brown, Brooks and Miller cases, is sustained and respondent's misconduct is established. That part of Charge VIII which pertains to the case of People v. Leon Smith is not sustained and therefore is dismissed.

With respect to Charge IX, the Commission makes the following findings of fact.

14. As of October 4, 1979, respondent had not reported to the State Comptroller the dispositions of 69 cases, dating back to November 1976, which he was required to so report. Twenty-four of those cases involved fines totalling \$1,105.00 collected by respondent but neither reported nor remitted to the State Comptroller.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 27 of the Town Law, Section 2021 of the Uniform Justice Court Act, 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. Charge IX of the Formal Written Complaint is sustained and respondent's misconduct is established as to 69 of the 88 cases listed in the charge. The charge is not sustained and therefore is dismissed as

to the following 19 cases: People v. C.E. McMullen, People v. Edward Lawrenz, People v. Frederick Potter, People v. Randall Derks and People v. Kathy Britt, three cases entitled People v. Harold Farren, two cases entitled People v. James Corlombe, four cases entitled People v. Charles Rogers, two cases entitled People v. Scott Vanderwell and three cases entitled People v. Steven Huff.

With respect to Charge XI, the Commission makes the following findings of fact.

15. Respondent presided over the civil case of James Stow v. William McKinney in 1976 and rendered judgment in favor of the plaintiff in the amount of \$330.77. From February 8, 1976, to March 29, 1976, respondent received from the defendant installment payments totalling \$110.00. In April 1977 respondent received an additional payment of \$10.00 from the defendant. Respondent did not remit the \$120.00 to the plaintiff until April 1979.

16. Respondent's failure to remit the \$120.00 to the plaintiff was due to his faulty record keeping and his having forgotten that he had indeed collected it.

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. Charge XI of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge XII, the Commission makes the following findings of fact.

17. On July 19, 1976, the Department of Audit and Control apprised respondent of the results of its audit of his court accounts and records. Respondent was advised (i) that he had a deficiency of \$630.55, (ii) that in certain instances he had not deposited court monies within 72 hours of receipt, (iii) that in certain instances he had failed to issue proper receipts to acknowledge collection of monies, (iv) that he failed to maintain a required cashbook and (v) that he failed to make monthly reconciliations of his cash on hand with his official liabilities.

18. The Department of Audit and Control conducted a second audit of respondent's court accounts and records, for the period from July 19, 1976, to October 4, 1979. The second audit revealed the same deficiencies as were noted in the audit for the period up to July 19, 1976, as well as additional deficiencies.

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. Charge XII of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge XIII, the Commission makes the following findings of fact.

19. On August 31, 1977, in the case of People v. Albert J. Bennett, on July 19, 1978, in the case of People v. James L. Harris, and on October 25, 1978, in the case of People v. Dennis A. Brown, respondent accepted pleas of guilty to Vehicle and Traffic

Law offenses, imposed monetary fines but did not certify the convictions to the Department of Motor Vehicles.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 514, subdivision 1(a) of the Vehicle and Traffic Law, Section 91.12 of the Regulations of the Commissioner of the Department of Motor Vehicles, 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. Charge XIII of the Formal Written Complaint is sustained and respondent's misconduct is established as to three of the five cases listed in the charge. The charge is not sustained and therefore is dismissed as to the following two cases: People v. Richard D. Bolton and People v. James C. Hartranft.

With respect to Charge XIV, the Commission makes the following findings of fact.

20. On February 14, 1980, in the Town Court of Macedon, respondent pleaded guilty to Official Misconduct, a misdemeanor under Section 195.00 of the Penal Law, in a proceeding predicated on his official court account deficiencies.

21. Respondent was sentenced to probation for three years. One of the terms of his probation was that he make restitution for all his official court account deficiencies as determined by the Department of Audit and Control.

22. By check dated February 14, 1980, respondent deposited \$6,100 into his official court account, and by check dated February 20, 1980, respondent deposited \$2,000 into his official court account.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 195.00 of the Penal Law of the State of New York, Sections 33.1 and 33.2(a) of the Rules Governing Judicial Conduct and Canons 1 and 2A of the Code of Judicial Conduct. Charge XIV of the Formal Written Complaint is sustained and respondent's misconduct is established.

For more than three years, respondent failed (i) to reconcile substantial court account deficits, resulting in a deficiency which at one point exceeded \$8,000.00 in public funds, (ii) to deposit official funds in the manner prescribed by law and (iii) to maintain a cashbook. He improperly authorized the employees of his retail business to collect court monies and issue informal receipts therefor, and he failed to issue proper official receipts thereafter. Respondent failed on numerous occasions for nearly three years to record accurately monies collected in his official capacity and to report properly to the State Comptroller the dispositions of traffic cases.

By his misconduct herein, respondent has demonstrated a gross neglect of the responsibilities of judicial office. By failing to correct his financial and record keeping deficiencies after reports by the Department of Audit and Control and directives from the Office of Court Administration, respondent has exhibited an unwillingness or inability to discharge the administrative and fiduciary obligations of his office. As such, he has engaged in conduct destructive of public confidence in the integrity of his court and prejudicial to the administration of justice. Respondent's conviction on a charge of Official Misconduct has further served to bring the judiciary into disrepute.

That respondent has made restitution for the substantial deficiencies does not mitigate his misconduct. The administration of justice is compromised at the moment public funds entrusted to a judge are handled in a careless and irresponsible manner. When such carelessness involves substantial amounts of money and continues for more than three years, despite reports and directives from official state agencies, the damage to public confidence in that judge and his court is irreparable, even if restitution is made.

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

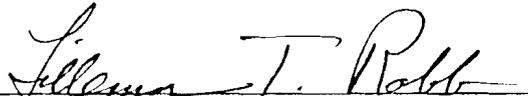
This determination is made pursuant to Section 47 of the Judiciary Law, notwithstanding respondent's resignation from the bench on September 19, 1980.

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: November 12, 1980
Albany, New York


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