

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding : COMMISSION  
Pursuant to Section 44, subdivision 4, : PER CURIAM  
of the Judiciary Law in Relation to : DETERMINATION

JAMES O. KANE, :

a Justice of the Unadilla Village :  
Court, Otsego County. :

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PRESENT: Mrs. Gene Robb, Chairwoman  
David Bromberg  
Hon. Richard J. Cardamone  
Dolores DelBello  
Michael M. Kirsch  
Hon. Isaac Rubin  
Hon. Felice K. Shea  
Carroll L. Wainwright, Jr.

The respondent, James O. Kane, the Justice of the Village Court of Unadilla, Otsego County, was served with a Formal Written Complaint, dated August 7, 1978, alleging 11 charges of misconduct over a 4-year period relating to the failure to keep proper records of proceedings before him, file reports thereof and dispose of official funds as required by law.

In his Verified Answer, dated September 13, 1978, respondent denied all of the substantive factual allegations contained in the Complaint. Pursuant to an order of the Commission dated September 26, 1978, James A. O'Connor, Esq., was appointed as Referee to hear and report to the Commission with respect to the factual issues raised by the pleadings. After hearings held on October 10 and November 10, 1978, the Referee submitted his

Report, dated January 22, 1979, which concluded that Charges I, III, IV-A, V, IX and XI had been substantiated in toto; and that Charges II and IV had been substantiated in part. The Referee made no determination with respect to Charges VI, VII, VIII and X, which were withdrawn by the Administrator of the State Commission on Judicial Conduct ("Administrator").

On February 27, 1979, the Administrator moved for an Order (i) confirming the findings of fact set forth in the Referee's Report and (ii) rendering a determination pursuant to Section 44, subdivision 7, of the Judiciary Law. Respondent, through his counsel, declined to submit a memorandum in opposition to the motion or to argue orally in opposition, although afforded the opportunity to do both.

Upon the record before us, the Commission finds that the Referee's findings of fact are fully supported by the evidence. More specifically, with respect to the various charges against respondent, the Commission finds as follows:

1. During a two and one-half year period ending November 30, 1976, respondent failed to report and remit to the State Comptroller the sum of \$1,140.54 which he had received in his official capacity as a judicial officer, and only after such deficiency had been cited by State auditors did he deposit the monies and report and remit the funds owed to the State Comptroller. During the period from January, 1973 to December 1976: respondent failed to report and to remit to the State Comptroller

an additional \$1,010.00 which he received in 70 other traffic cases involving 57 separate defendants; respondent failed to report and remit an additional \$130.00 which he received in six other criminal proceedings; and respondent failed to maintain and preserve dockets of numerous criminal proceedings held before him and failed to report and remit an additional \$225.00 which he received from some of the defendants in cases in which no dockets were maintained.

2. Respondent falsely certified in a January, 1977 report to the New York State Department of Audit and Control ("Department of Audit and Control") that he had received no money from two youthful offenders, notwithstanding that the defendants each had paid fines of \$150.00 in August, 1976, which respondent failed to report and remit to the State Comptroller.

3. Respondent falsely certified in May, 1976 and January, 1977 reports to the Department of Audit and Control that he received only \$35 in fines from a defendant and granted youthful offender treatment for a charge of operating an uninsured vehicle, when that defendant actually had paid a fine of \$100 on May 9, 1976, for operating an uninsured vehicle. Respondent also made a false entry on a motor vehicle docket that the charge had been dismissed.

4. In a March, 1976 report to the Department of Audit and Control, respondent falsely certified that he had sentenced a defendant to a conditional discharge. The defendant in fact paid

a fine of \$50 on the charge on or about May 5, 1976, which fine was not reported, nor was it remitted to the State Comptroller.

5. During the period from December, 1972 to December, 1976, respondent: (a) failed to deposit on a timely basis monies received in his judicial capacity; (b) maintained personal control over such monies for months at a time; (c) failed to remit to the State Comptroller on a timely basis fines, fees and penalties received by him; (d) failed to record in his official justice court cashbook the receipt of various bail and fine monies received by him in his judicial capacity.

By reason of the foregoing, we conclude that respondent violated the statutory provisions, rules and canons set forth in Charges I, II, III, IV, IV-A, V, IX and XI of the Formal Written Complaint.

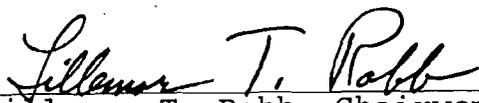
In determining the sanction to be imposed upon respondent, the Commission has considered the nature of the charges made against respondent and the repeated and gross violations by respondent of the legal, administrative and ethical duties imposed upon him. Respondent's behavior, especially with respect to false certification as to the monies received by him in his official capacity and his maintenance of personal control of those monies for an extended period of time, is unacceptable. Moreover, we are not persuaded by the fact that respondent eventually repaid certain of the sums in question. See, Becher v. Case, 277 N.Y.S. 733, 243 App.Div. 375 (2nd Dept. 1935); see

also, Bartlett v. Flynn, 50 A.D. 2d 401, 378 N.Y.S.2d 145 (4th Dept. 1976), app. dismissed 39 N.Y.2d 142, 386 N.Y.S.2d 1029.

Having found that respondent repeatedly violated provisions of the Uniform Justice Court Act, Vehicle and Traffic Law, and Village Law; sections of the Uniform Justice Court Rules (22 NYCRR § 30.1 et. seq.); sections of the Rules Governing Judicial Conduct (22 NYCRR §33.1 et seq.); and Canons of the Code of Judicial Conduct and Canons of Judicial Ethics, the Commission hereby determines that the appropriate sanction is removal. This determination is made notwithstanding respondent's resignation, in view of respondent's acknowledgment on October 30, 1978, that such resignation had not been submitted to the Chief Administrator of the Courts, as required by Section 31(1)(d) of the Public Officers Law, and so is ineffective. Furthermore, respondent waived on that date the time limitations imposed by Section 47 of the Judiciary Law.

The foregoing constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: Albany, New York  
March 5, 1979

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

APPEARANCES:

Van Woert, Dunn, Konstanty & Nydam (By Robert P. Nydam)  
for Respondent

Gerald Stern for the Commission (Edith Holleman, Of Counsel)