

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

ELMER L. LOBDELL,

a Justice of the Fulton Town
Court, Schoharie County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Albert B. Lawrence, Of
Counsel) for the Commission

Roger H. Mallery for Respondent

The respondent, Elmer L. Lobdell, a justice of the
Fulton Town Court, Schoharie County, was served with a Formal
Written Complaint dated April 1, 1982, alleging inter alia that
he continued to preside over cases despite not having been duly
certified to perform the duties of judicial office. Respondent
filed an answer dated April 22, 1982.

By order dated May 3, 1982, the Commission designated Margrethe R. Powers, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on May 19 and 20, 1982, and the referee filed her report with the Commission on October 19, 1982.

By motion dated November 1, 1982, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion in papers dated November 17, 1982. Oral argument was waived. The Commission considered the record of the proceeding on November 29, 1982, and made the following findings of fact.

1. Respondent was first elected to judicial office in November 1979 and commenced his term on January 1, 1980. Respondent serves part-time as a town justice. He is not an attorney.

2. The first available basic training course for non-lawyer town justices after respondent's election was offered in November 1979 by the Office of Court Administration. Respondent failed to complete the course and therefore was not certified to discharge the responsibilities of his judicial office on January 1, 1980.

3. Respondent was granted temporary certification by the Office of Court Administration on April 28, 1980. Prior thereto,

respondent had presided over seven cases, despite not having been certified to do so.

4. In July 1980, respondent attended and successfully completed a basic training course. The basic certificate he received from the Office of Court Administration stated that an advanced training course must be successfully completed within the first year of a town justice's new term.

5. Respondent was informed by the Office of Court Administration, by letter dated November 13, 1980, that he must successfully complete an advanced training course within one year of a new term to retain his certification.

6. Respondent's basic certificate expired on December 30, 1980. He was not issued a temporary certificate thereafter.

7. Respondent was informed by his administrative judge, by letter dated March 13, 1981, that he was not certified, that he must attend an advanced training course and that he could be removed from office for failure to be certified.

8. In March 1981, respondent appeared for an advanced training course but failed to pass the final examination. By letter dated April 2, 1981, respondent was notified by the Office of Court Administration that he had failed the examination and could not assume the functions of his judicial office.

9. Respondent did not attend any of the next five regularly scheduled advanced training courses offered in May, July, September and October 1981 and February 1982.

10. By letter dated October 9, 1981, respondent was notified by the Commission that a complaint had been filed regarding his non-certification.

11. In March 1982 respondent appeared for an advanced training course but again failed to pass the final examination. By letter dated March 23, 1982, respondent was notified by the Office of Court Administration that he had failed the examination and could not assume the functions of his judicial office.

12. Respondent presided over and disposed of 84 cases in 1981, despite not being certified to assume judicial duties. Seventeen of the 84 cases were disposed of after respondent had been notified by the Commission of the complaint against him.

13. There was no town justice in Fulton other than respondent throughout 1981. A second town justice took office in Fulton in January 1982.

14. On February 18, 1982, the town board of Fulton requested that respondent resign from office. Respondent declined.

15. On April 21, 1982, respondent transferred the 14 cases pending on his court calendar to his co-justice.

16. Since the date of the hearing before the referee, respondent attended and successfully completed an advanced training course.

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

Section 20(c), of the Constitution of the State of New York, Section 105 of the Uniform Justice Court Act, Section 31 of the Town Law, Section 17.2 of the Rules of the Chief Judge (formerly Section 30.6 of the Uniform Justice Court Rules), Sections 100.1, 100.2(a), 100.3(a)(1) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1) and 3B(1) of the Code of Judicial Conduct. The Charge in the Formal Written Complaint is sustained and respondent's misconduct is established.

For more than 21 of the first 30 months of his term, respondent was not qualified to discharge the duties of judicial office, because of his failure to meet the certification requirements of the Constitution and state law. Nevertheless, in that period respondent presided over and disposed of 91 cases.

Respondent was fully aware of the applicable requirements and procedures, but for periods during 1980 and 1982, and throughout 1981, he did not endeavor to attend the requisite judicial training programs run by the Office of Court Administration.

That there was no other town justice in Fulton to hear cases in 1981 does not excuse respondent for his conduct. Respondent was obliged to make known to the parties in his court that he was not certified, and he should have disqualified himself from the proceedings, thereby enabling the parties to move in county court for a change of venue under Section 170.15(3) of the Criminal Procedure Law.

Failure to complete judicial certification requirements affects the ability of a judge to preside and is cause for removal from office, "in and of itself." Bartlett v. Bedient, 47 AD2d 389, 390 (4th Dept. 1975). By failing to attend and complete the training and certification program required by law for all non-lawyer town and village justices, despite repeated notice from the Office of Court Administration and his administrative judge, respondent demonstrated a serious disregard of the constitutional and statutory obligations of judicial office. See, Matter of Joedicke, unreported (Com. on Jud. Conduct, July 1, 1981). His conduct in presiding over 91 cases while not certified was prejudicial to the administration of justice and is not mitigated by his eventual completion of the certification requirements.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

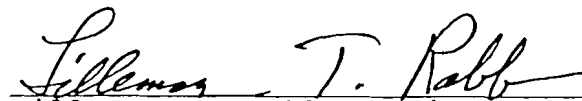
Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Judge Rubin 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: January 18, 1983


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