

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4, : COMMISSION
of the Judiciary Law in Relation to : PER CURIAM
FRANK MANION, : DETERMINATION
a Justice of the Village Court of :
Ilion, Herkimer County. :

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PRESENT: Mrs. Gene Robb, Chairwoman
David Bromberg
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Hon. Isaac Rubin
Hon. Felice K. Shea

The respondent, Frank Manion, a justice of the Village Court of Ilion, Herkimer County, was served with a Formal Written Complaint, dated November 30, 1978, alleging that, during the period from April 1, 1976, through December 30, 1977, respondent's official assets, consisting of monies on deposit in his official bank account plus undeposited cash, were less than respondent's official liabilities by the amount of \$8,819.50, which liabilities included \$7,643 in traffic fines and \$1,111 in parking fines which respondent had failed to report and remit to the State Comptroller.

It was further alleged that respondent has failed to provide satisfactory reasons for the shortage of the \$8,819.50 in his official village account and for neglecting to deposit on

a timely basis all monies received.

In a stipulation dated February 7, 1979, respondent and the administrator of the State Commission on Judicial Conduct stipulated to the foregoing facts and to the fact that all the monies subsequently had been deposited by respondent. Pursuant to the terms of the stipulation, respondent also agreed to withdraw all denials in his answer, dated December 12, 1978, inconsistent with said stipulation, and to withdraw all factual issues asserted in the affirmative defense contained in the answer. Pursuant to Section 7000.6(d) of its Operating Procedures and Rules, 22 NYCRR §7000.6(d), the Commission thus makes its determination based on the stipulation and the pleadings as amended thereby.

Upon the record before us, we conclude that respondent violated: Section 2021(1) of the Uniform Justice Court Act; Section 4-410(1)(d) of the Village Law; Section 30.7(a) of the Uniform Justice Court Rules (22 NYCRR §30.7[a]); Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct (22 NYCRR §§ 33.1, 33.2[a] and 33.3[b][1], respectively); and Canons 1, 2(A) and 3(B)(1) of the Code of Judicial Conduct.

In determining the sanction to be imposed upon respondent, the Commission has considered the nature of the charge made against respondent, the extensive period during which respondent's legal and ethical violations persisted, and the magnitude of the violations. Respondent's behavior in failing to report and remit such a sum is unacceptable. Moreover, the fact that respondent

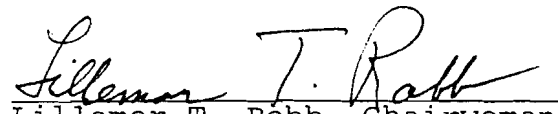
subsequently deposited the sums in question is no defense to the misconduct. See, Becher v. Case, 277 NYS 733, 243 AD 375 (2d Dept. 1935); see also, Bartlett v. Flynn, 58 AD2d 401, 378 NYS2d 145 (4th Dept. 1976), app. dismiss., 39 NY2d 942, 386 NYS2d 1029.

Having found that respondent violated the statutory, administrative and ethical obligations upon him, the Commission hereby determines that the appropriate sanction is removal.

This determination is made pursuant to Section 47 of the Judiciary Law since respondent resigned as village justice effective January 31, 1979.

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 28, 1979


Lillemor T. Robb, Chairwoman
Commission on Judicial Conduct

APPEARANCES:

George F. Aney for Respondent

Gerald Stern for the Commission (Stephen F. Downs, Of Counsel)