

**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

ALBERT MONTANELI,

a Justice of the Ancram Town
Court, Columbia County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
John J. Bower, Esq.
David Bromberg, Esq.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

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

Cade & Saunders, P.C. (By William J. Cade; Allen C.
Miller, Jr., Of Counsel) for Respondent

The respondent, Albert Montaneli, a justice of the
Ancram Town Court, Columbia County, was served with a Formal
Written Complaint dated May 21, 1986, alleging that he
mishandled court funds. Respondent did not answer the Formal
Written Complaint.

By order dated June 4, 1986, the Commission designated Michael Whiteman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 30 and August 1, 1986, and the referee filed his report with the Commission on October 2, 1986.

By motion dated October 7, 1986, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent did not oppose the motion and waived oral argument.

On November 14, 1986, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Ancram Town Court and was during the time herein noted.

2. Respondent personally handles all the recordkeeping for the court, including cashbook, docket book and Audit and Control reports, and personally deposits the court funds.

3. Respondent maintains two bank accounts at Stissing National Bank: a court account and a personal account entitled "Special Account."

4. On April 11, 1983, respondent deposited into his personal bank account a \$2,500 bail check that had been sent to him by the Columbia County Sheriff's Department to hold as bail for Calvin Spence, whose case was pending in respondent's court.

5. At the time of the deposit, there was only \$52.17 in the account.

6. Within 21 days of the deposit of the Spence bail check into respondent's personal account, the balance in that account fell to \$593.33.

7. Respondent disbursed the Spence money from his personal account by writing eleven separate checks to persons and entities unrelated to his court business. None of the checks was payable to the defendant, Calvin Spence, or to Barbara MacIsaac, who had posted the bail on behalf of the defendant.

8. Respondent prepared a false receipt indicating that a \$900 check for Mr. Spence's bail was received on August 2, 1983, and made corresponding entries in his cashbook and docket, notwithstanding that he actually received a \$2,500 bail check on or about April 6, 1983, and deposited the check in his personal account on April 11, 1983.

9. Nine hundred dollars were returned to Mr. Spence by a check dated August 20, 1983, drawn from respondent's court account.

10. No fine or other disposition of the Spence matter was ever reported or remitted to the State Comptroller.

11. On April 24, 1985, respondent deposited into his personal bank account a \$1,000 bail check that had been sent to him by the Columbia County Sheriff's Department to hold as bail for John Waite, III, whose case was pending in respondent's court.

12. At the time of the deposit, respondent's personal account was overdrawn by \$128.54.

13. Within two days of the deposit of the bail check into respondent's personal account, the account was overdrawn by \$197.28.

14. Respondent disbursed the Waite bail from his personal account by writing six separate checks to persons or entities unrelated to court business. None of the checks was payable to the defendant, John Waite, III, or to Emma Dietter, who had posted the bail on behalf of the defendant.

15. Respondent prepared a false receipt indicating that the Waite bail check was received on October 28, 1985, and made corresponding entries in his cashbook and docket, notwithstanding that he actually received the bail check on or about April 22, 1985, and deposited the check into his personal account on April 24, 1985. The false receipt was never given to the defendant or to Emma Dietter.

16. On May 2, 1985, respondent deposited into his personal bank account a \$1,000 bail check which had been sent to him by the Columbia County Sheriff's Department to hold as bail for John Waite, III, whose case was pending in respondent's court.

17. At the time of the deposit, there was a balance in the account of \$2.72.

18. Within one day of the deposit of the bail check into respondent's personal account, the balance in that account fell to \$130.57.

19. Respondent disbursed the Waite bail money from his personal account by writing four separate checks to persons and entities unrelated to court business. None of the checks was payable to the defendant, John Waite, III, or to George Dietter, who had posted the bail on behalf of the defendant.

20. Respondent prepared a false receipt indicating that the Waite bail check was received on November 25, 1985, and made corresponding entries in his cashbook and docket, notwithstanding that he had received the bail check on or about April 29, 1985. The receipt was never given to the defendant or to George Dietter.

21. Twenty-five hundred dollars were returned to the Dietters by two checks, each dated December 8, 1985, and drawn on respondent's court account.

22. On June 3, 1985, respondent deposited into his personal bank account a \$1,000 bail check which had been sent to him by the Columbia County Sheriff's Department to hold as bail for George Hosier, whose case was pending in respondent's court.

23. At the time of the deposit, there was a balance in the account of \$124.77.

24. Within three days of the deposit of the Hosier bail into respondent's personal account, the balance in the account fell to \$164.86.

25. Respondent disbursed the Hosier bail money from his personal account by writing three checks to persons and entities unrelated to court business. None of the checks was payable to the defendant, George Hosier, or to Kenneth Wiseman, who had posted the bail on behalf of the defendant.

26. Respondent prepared a false receipt indicating that the Hosier bail was received on May 10, 1985, and made corresponding entries in his cashbook and docket, notwithstanding that the check sent by the sheriff was dated May 23, 1985, was received by respondent on or about that date, and was deposited by respondent into his personal account on June 3, 1985.

27. On July 3, 1985, respondent deposited into his personal bank account a \$1,000 bail check which had been sent to him by the Columbia County Sheriff's Department to hold as bail for Kenneth Shea, whose case was pending in respondent's court.

28. At the time of the deposit, there was a balance in the account of \$275.93.

29. Within two days of the deposit of the Shea bail check into respondent's personal account, the balance in that account fell to \$11.92.

30. Respondent disbursed the Shea bail money from his personal account by writing three separate checks to persons or entities unrelated to court business. None of the checks was payable to the defendant, Kenneth Shea, or to Kim Shea, who had posted the bail on behalf of the defendant.

31. Respondent prepared false receipts indicating that he received \$500 bail from Kim Shea on November 25, 1985, that he received \$240 bail from Kim Shea on December 9, 1985, and that he received a \$260 fine from Kenneth Shea on December 16, 1985, and made corresponding entries in his cashbook and docket, notwithstanding that he actually received the \$1,000 bail check on or about June 25, 1985, and deposited the check in his personal account on July 3, 1985. The false receipts were never given to Kenneth or Kim Shea.

32. Seven hundred forty dollars were returned to Kim Shea by two checks, each dated December 18, 1985, and drawn on respondent's court account.

33. On October 16, 1985, respondent deposited into his personal bank account two bail checks totaling \$2,500 that had been sent to him by the Columbia County Sheriff's Department

to hold as bail for John MacArthur, whose case was pending in respondent's court.

34. At the time of the deposits, respondent's personal account was overdrawn by \$298.54.

35. Within two days of the deposit of the MacArthur bail check into respondent's personal account, the balance in respondent's account fell to \$866.72

36. Respondent disbursed the MacArthur bail money from his personal account by writing four separate checks to persons or entities unrelated to court business. None of the checks was payable to the defendant, John MacArthur, or to Katherine MacArthur, who had posted bail on behalf of the defendant.

37. Respondent prepared false receipts indicating that the \$900 MacArthur bail was received on December 31, 1985, and made corresponding entries in his cashbook and docket, notwithstanding that he had actually received \$2,500 bail for Mr. MacArthur on or about October 11, 1985, and had deposited the two checks totaling \$2,500 into his personal account on October 16, 1985.

38. Nine hundred dollars were returned to Mr. MacArthur by check dated January 1, 1986, and drawn on respondent's court account.

39. No fine was reported or remitted by respondent to the State Comptroller.

As to Charge II of the Formal Written Complaint:

40. On February 6, 1984, respondent received a fine of \$500 in cash from John Waite, III.

41. Respondent never deposited the \$500 fine money into his court account.

42. Respondent failed to report or remit the \$500 to the State Comptroller.

43. On October 21, 1985, respondent received a fine of \$425 cash from Richard Handlowich.

44. Respondent never deposited the \$425 fine money into his court account.

45. Respondent failed to report or remit the \$425 to the State Comptroller.

46. On December 18, 1985, respondent received a fine of \$260 from Kenneth Shea.

47. Respondent failed to remit the \$260 to the State Comptroller; he reported the Shea case as dismissed in December 1985.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1) and 100.3(b)(1) of the Rules Governing Judicial Conduct; Canons 1, 2, 3A(1) and 3B(1) of the Code of Judicial Conduct; Sections 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act; Section 27(1) of the Town Law;

Sections 1803 and 1809(3) of the Vehicle and Traffic Law; Section 60.35(3) of the Penal Law; Sections 30.7 and 30.9 of the Uniform Justice Court Rules then in effect, and Sections 105.1 and 105.3 of the Recordkeeping Requirements for Town and Village Courts then in effect.* Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The record clearly establishes that respondent converted to his personal use court funds that should have been either returned to defendants or remitted to the State Comptroller. Respondent deposited seven bail checks totaling \$9,000 in his personal account and rapidly spent the money on matters unrelated to court business.

The conversion of public funds by a judge entrusted with their care shocks the conscience and warrants removal from office. Matter of Lemon, 3 Commission Determinations 20 (Mar. 15, 1982); Matter of Lew, 3 Commission Determinations 28 (Apr. 22, 1982).

Respondent exacerbated this gross misconduct by failing to report receipt of the money to the comptroller and

* The Uniform Justice Court Rules and the Recordkeeping Requirements for Town and Village Courts were repealed effective January 6, 1986, and replaced by the Uniform Rules for Trial Courts.

by falsifying court records to conceal the conversion. Matter of Reeves v. State Commission on Judicial Conduct, 63 NY2d 105, 108-09 (1984); Matter of Jones, 47 NY2d (mmmm) (Ct. on the Judiciary 1979); Matter of Godin, 3 Commission Determinations 190 (Jan. 26, 1983); Matter of Moore, 3 Commission Determinations 256 (Nov. 10, 1983).

Respondent did not answer the Formal Written Complaint and, thus, is deemed to have admitted its charges. Section 7000.6(b) of the Commission's Operating Procedures and Rules. In addition, respondent failed to testify or present any defense to the allegations against him. Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299, 302 (1985); Matter of Myers v. State Commission on Judicial Conduct, 67 NY2d 550, 505 NYS2d 48, 50-51 (1986).

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

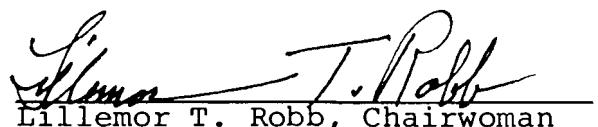
Mrs. Robb, Mr. Bower, Mr. Bromberg, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Mr. Kovner and Judge Rubin were 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: November 17, 1986



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