

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

VIRGINIA NEW,

a Justice of the Philadelphia
Town Court, Jefferson 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

Virginia New, Respondent Pro Se

The respondent, Virginia New, a justice of the Philadelphia Town Court, Jefferson County, was served with a Formal Written Complaint dated April 26, 1982, alleging inter alia that she failed to meet various records keeping and financial reporting, deposit and remittance requirements. Respondent did not answer the Formal Written Complaint.

By notice dated June 1, 1982, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent opposed the motion on June 21, 1982, with what was, in effect, an answer to the Formal Written Complaint. The administrator thereupon withdrew his motion for summary determination.

By order dated July 13, 1982, the Commission designated Saul H. Alderman, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on August 23 through 26, 1982, and the referee filed his report with the Commission on October 19, 1982.

By motion dated October 27, 1982, the administrator moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent did not oppose the motion or request oral argument.

The Commission considered the record of the proceeding on November 29, 1982, and made the following findings of fact.

Preliminary Findings:

1. Respondent has been a justice of the Philadelphia Town Court continuously since 1973. Respondent was a justice of the Philadelphia Village Court from April 1974 to April 1982.

2. Respondent serves as a justice part-time. She has a college degree in accounting. Respondent is self-employed as an accountant and also works nights for the Crosby's Super Duper store in Watertown (Jefferson County), New York.

As to Charge I of the Formal Written Complaint:

3. Between July 1977 and December 1981, as set forth in Schedules A and B appended to the Formal Written Complaint, respondent failed to deposit official monies within 72 hours of receipt, as required by Section 30.7 of the Uniform Justice Court Rules, with the result that her court accounts were deficient. Respondent was aware of the 72-hour deposit requirement.

4. From August 14, 1979, to December 31, 1979, respondent failed to deposit any monies she received in her judicial capacity into her town and village court accounts, notwithstanding that she received \$2,104 during this period.

5. From January 15, 1980, to July 1980, respondent failed to deposit any monies she received in her official capacity into her town and village court accounts, notwithstanding that she received \$637 during this period.

6. In December 1980, John F. McKiernan, an examiner with the Department of Audit and Control, audited respondent's court records and spoke to her about her depositing practices. Respondent offered no explanation for the late deposits and reports.

As to Charge II of the Formal Written Complaint:

7. Between July 1977 and February 1982, as set forth in Schedules C and D appended to the Formal Written Complaint, respondent failed to file reports and remit monies to the State Comptroller within ten days of the month following collection, as required by Section 2021(1) of the Uniform Justice Court Act.

8. In December 1980, John F. McKiernan, an examiner with the Department of Audit and Control, audited respondent's court records and spoke to her about her late reports. Thereafter respondent continued to fail to file reports and remit monies to the State Comptroller in a timely manner.

9. Respondent has filed her monthly reports and remittances as late as 199 days.

10. For 53 of the 56 months between July 1977 and February 1982, as indicated in Schedule C appended to the Formal Written Complaint, respondent was late in filing her town court monthly reports and in remitting official town court monies to the State Comptroller.

11. For 52 of the 56 months between July 1977 and February 1982, as indicated in Schedule D appended to the Formal Written Complaint, respondent was late in filing her village court monthly reports and in remitting official village court monies to the State Comptroller.

As to Charge III of the Formal Written Complaint:

12. From June 1978 to October 1981, as indicated in Schedule E appended to the Formal Written Complaint and Exhibits 16 and 18 accepted into evidence by the referee, respondent:

(a) failed to dispose of 116 cases in her court, notwithstanding that the defendants had pled guilty;

(b) failed to respond at all to the pleas or inquiries of 95 defendants;

(c) failed to return driver's license renewal stubs to 73 defendants who had forwarded the stubs with their pleas of guilty;

(d) failed to make entries in her docket for 74 criminal cases pending in her court;

(e) failed to maintain any records for 25 cases pending in her court; and

(f) failed to keep any case files or indices of cases pending in her court.

13. As of August 26, 1982, the last day of the hearing before the referee in this matter, respondent had in her personal possession 14 checks and money orders totaling \$217, in fines paid by defendants as long ago as January 1980. She had not deposited these funds in her official bank account, issued receipts to the defendants or disposed of the cases.

As to Charge IV of the Formal Written Complaint:

14. Respondent failed to cooperate with the Commission during its investigation of the matters herein, in that she failed on five occasions (September 18, October 28 and December 30, 1981; January 7 and January 15, 1982) to appear to give testimony before a member of the Commission, despite having been duly required to appear pursuant to Section 44, subdivision 3, of the Judiciary Law.

As to Charge V of the Formal Written Complaint:

15. Respondent's term of office as Philadelphia Village Justice, to which she was not re-elected, expired on April 5, 1982. Respondent knew she was required by law to turn over her village court records to the village clerk by April 5, 1982. Notwithstanding repeated requests by the village clerk, the village mayor and her successor as village justice, respondent has failed to turn over her records to the village clerk.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct; Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct; Section 30.7 of the Uniform Justice Court Rules; Sections 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act; Section 1803 of the Vehicle and Traffic Law; Section 27(1) of the Town Law; Section 410(1) of the Village Law; and Sections 105.1 and 105.3 of the Rules of the Chief Administrator of the Courts on Recordkeeping Requirements for Town and Village Courts. Charges I through V of the Formal Written Complaint are sustained and respondent's misconduct is established.

Over a four-year period, respondent has disregarded various statutory records keeping and financial reporting requirements. She has been negligent in her handling of public monies. She has failed to dispose of scores of cases and failed

to respond to citizens' inquiries about the status of their cases. She failed to cooperate with the Commission during its investigation of the matters herein.

The totality of respondent's conduct constitutes a serious violation of her official responsibilities and an irreparable breach of the public's trust in her judicial performance. (See, Matter of Cooley, 53 NY2d 64; Matter of Petrie, 54 NY2d 807.)

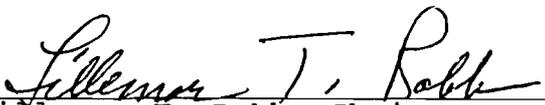
By reason of the foregoing, the Commission determines that respondent should be removed from office.

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: December 8, 1982
Albany, New York


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