

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

Determination

LAWRENCE L. RATER,

a Justice of the Sherman Town
Court, Chautauqua County.

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 (Henry S. Stewart, Of Counsel) for the
Commission

John P. Rice, III, for Respondent

The respondent, Lawrence L. Rater, a justice of the Sherman Town Court, Chautauqua County, was served with a Formal Written Complaint dated May 28, 1985, alleging certain financial depositing, reporting and remitting deficiencies. Respondent answered the Formal Written Complaint by letter received on August 8, 1985.

By order dated August 13, 1985, the Commission designated Patrick J. Berrigan, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 23, 1985, and the referee filed his report with the Commission on January 9, 1986.

By motion dated February 20, 1986, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on April 9, 1986.

On April 18, 1986, the Commission heard oral argument, at which respondent and his counsel appeared. At the request of the Commission, both counsel submitted additional papers after oral argument. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent is a justice of the Sherman Town Court and has been for twelve years.
2. On May 6, 1982, the Commission determined that respondent be censured for, inter alia, failing to make deposits in his official court account and failing to remit and report funds received to the State Comptroller in a timely manner.

As to Charge I of the Formal Written Complaint:

3. From July 1982 to June 1984, respondent failed to deposit in his official court account all monies received within 72 hours of receipt as required by Section 30.7(a) of the Uniform Justice Court Rules then in effect, in that:

a) Respondent's deposits were deficient in 13 of the 24 months of the period, as indicated in Appendix A appended hereto;

b) between July 1982 and January 1983, respondent made only one deposit of \$1,030, notwithstanding that he had received court funds in each of the months during that period and that his court account was deficient by \$1,125.50 by December 1982, as indicated in Appendix A appended hereto;

c) In January 1983, when respondent's account was deficient by \$1,125.50, he deposited only \$100 in court funds, as indicated in Appendix A appended hereto.

4. Respondent was aware at all times during the period that he was then required to deposit court funds in his official court account within 72 hours of receipt.

5. Respondent acknowledged in testimony before a member of the Commission on February 1, 1985, that his depositing practices had not improved since his censure by the Commission.

As to Charge II of the Formal Written Complaint:

6. Between July 1982 and April 1984, respondent failed to report and remit funds to the State Comptroller in a timely manner in 19 of the 22 months of the period, as indicated in Schedule B of the Formal Written Complaint. His reports were between two and 151 days late, for an average of 34 days late.

7. Respondent was sent six letters during the period by the State Comptroller, noting that his reports were overdue.

8. Respondent acknowledged in testimony before a member of the Commission on February 1, 1985, that his reporting and remitting practices had not improved since his censure by the Commission.

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, 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct; Canons 1, 2A, 3, 3A(5) and 3B(1) of the Code of Judicial Conduct; Sections 2020 and 2021(1) of the Uniform Justice Court Act; Section 1803 of the Vehicle and Traffic Law, and Section 27(1) of the Town Law. The charges in the Formal Written Complaint are sustained, and respondent's misconduct is established.

Notwithstanding his censure by this Commission in May 1982 for similar misconduct (Matter of Rater, 3 Commission Determinations 36 [May 6, 1982]), respondent continued in the succeeding months to mishandle court funds. In the seven months after his censure, respondent made deposits in only two months, notwithstanding that he received court funds each month.

Furthermore, respondent failed to promptly remit court funds to the State Comptroller, in spite of his censure.

The failure by a judge to deposit and remit court funds to the proper authorities brings into question how the money was handled and, thus, diminishes public confidence in the judge and the judiciary as a whole. Such mishandling of public monies constitutes serious misconduct, even when there is no evidence that the funds were used for the judge's personal benefit. Bartlett v. Flynn, 50 AD2d 401, 404 (4th Dept. 1976).

That respondent failed to heed a Commission censure based, in part, on similar prior misconduct further erodes public trust in his ability to properly perform his judicial duties. Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299, 302 (1985); Matter of Skramko, unreported (Com. on Jud. Conduct, Aug. 23, 1984).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mr. Kovner and Judge Ostrowski concur.

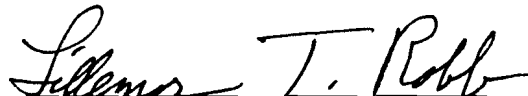
Judge Ciparick and Mr. Sheehy dissent as to sanction only and vote that respondent be censured.

Mrs. DelBello, Judge Rubin and Judge Shea 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: July 25, 1986


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

Appendix A

<u>Month/Year</u>	<u>Fines and Fees</u>	<u>Bail and Restitution</u>	<u>Deposits Should Have Been</u>	<u>Deposits Were</u>	<u>Monthly Difference</u>	<u>Cumulative Difference</u>
June 82	\$ 40.00	\$500.00	\$540.00	\$ 540.00	\$ 0	0
July 82	80.00	320.00	400.00	0	-400.00	-400.00
Aug. 82	280.00	200.00	480.00	0	-480.00	-880.00
Sept. 82	160.50	100.00	260.50	1,030.00	+769.50	-110.50
Oct. 82	30.00	100.00	130.00	0	-130.00	-240.50
Nov. 82	185.00	600.00	785.00	0	-785.00	-1,025.50
Dec. 82	0	100.00	100.00	0	-100.00	-1,125.50
Jan. 83	15.00	0	15.00	100.00	+85.00	-1,040.50
Feb. 83	100.00	37.75	137.75	370.00	+232.25	-808.25
Mar. 83	55.00	0	55.00	0	-55.00	-863.25
Apr. 83	0	0	0	1,099.00	+1,099.00	+235.75
May 83	100.00	50.00	150.00	0	-150.00	+85.75
June 83	320.00	125.00	445.00	570.00	+125.00	+210.75
July 83	10.00	0	10.00	0	-10.00	+200.75
Aug. 83	25.00	0	25.00	31.00	+6.00	+206.75
Sept. 83	25.00	0	25.00	0	-25.00	+181.75
Oct. 83	40.00	0	40.00	0	-40.00	+141.75

Lawrence L. Rater, Appendix A--continued

<u>Month/Year</u>	<u>Fines and Fees</u>	<u>Bail and Restitution</u>	<u>Deposits Should Have Been</u>	<u>Deposits Were</u>	<u>Monthly Difference</u>	<u>Cumulative Difference</u>
Nov. 83	\$ 60.00	\$ 0	\$ 60.00	\$ 0	\$ -60.00	+81.75
Dec. 83	470.00	7.50	477.50	570.00	+92.50	+174.25
Jan. 84	0	0	0	0	0	+174.25
Feb. 84	30.00	0	30.00	30.00	0	+174.25
Mar. 84	70.00	0	70.00	72.00	+2.00	+176.25
Apr. 84	40.00	0	40.00	0	-40.00	+136.25
May 84	510.00	0	510.00	550.00	+40.00	+176.25
June 84	30.00	0	30.00	0	-30.00	+146.25