

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

JOSEPH REICH,

Determination

a Justice of the Village Court
of Tannersville, Greene County.

BEFORE: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Honorable Isaac Rubin
Honorable Felice Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Raymond S. Hack and Jack J.
Pivar, Of Counsel) for the Commission

Alex Wiltse, Jr., for Respondent

The respondent, Joseph Reich, a justice of the Village Court of Tannersville, Greene County, was served with a Formal Written Complaint dated December 8, 1980, alleging that from July 1974 to March 1978 he failed to make proper deposits of monies received in his official capacity. Respondent filed an answer dated January 15, 1981.

By order dated February 17, 1981, the Commission designated Richard L. Baltimore, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on June 4, 1981,

and the referee filed his report on September 18, 1981.

By motion dated October 16, 1981, 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 on November 4, 1981. The Commission heard oral argument on the motion on November 23, 1981, thereafter considered the record of the proceeding and made the following findings of fact:

1. On May 6, 1976, respondent deposited into his personal checking account \$830 in court funds. Respondent testified that this deposit was made by mistake and that he was unaware of it until May 1981.

2. On May 17, 1976, the balance in respondent's personal checking account fell to \$615.78, and on November 18, 1976, it fell to \$74.25. On July 13, 1976, respondent's official court account became overdrawn by \$90. Respondent should have known of the mistaken deposit of \$830 by virtue of this deficiency in his court funds.

3. For 25 of the 45 months from July 1974 to March 1978, respondent deposited less money than he had received in his official capacity. For 20 of those 45 months, he deposited more money than he had received in his official capacity. In this 45-month period respondent's average cumulative deficiency was \$664.11.

4. Respondent's bookkeeping procedures are inadequate in that the transactions in his official bank account are not fully and accurately reflected in his records. Respondent's records of his finances and banking transactions are so inaccurate as to be unreliable. When requested by the Commission in August 1980 to

explain the deficiencies in his court account, respondent was unable to do so.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 30.7 of the Uniform Justice Court Rules, Sections 33.1, 33.2(a), 33.3(a)(5) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

A judge is obliged to segregate and account for the funds he receives in his official capacity (Section 30.7 of the Uniform Justice Court Rules; see also Section 4-410 of the Village Law). By depositing \$830 of court funds into his personal bank account, respondent violated the applicable rules and demonstrated negligence in his handling of public monies. Respondent's misconduct in this regard is exacerbated by his inadequate bookkeeping procedures, which are so unreliable that (i) the mistaken deposit of \$830 was undiscovered for five years, even after the personal account into which it was deposited fell to \$74.25 and the court account into which it should have been deposited was overdrawn by \$90, (ii) for 45 consecutive months respondent's deposits either fell short or exceeded but never equalled the amount of money he actually received, resulting in an average deficit of over \$664, and (iii) respondent himself could not adequately explain his records to the Commission.

The Commission concludes that the cumulative deficiency in respondent's court account relates to the mistaken deposit of \$830 in May 1976. However, in view of the serious disorganization of respondent's records and accounting procedures, such an error cannot be minimized.

Unless respondent's practices are dramatically improved, such mistakes may recur and go undetected.

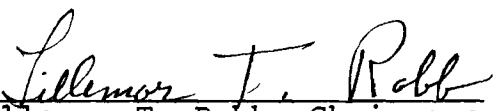
By reason of the foregoing, the Commission concludes that respondent should be censured.

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: January 20, 1982


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