

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

FRANCIS E. ROBBINS,

a Justice of the Saratoga Town Court,
Saratoga 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 (Stephen F. Downs and Henry S. Stewart,
Of Counsel) for the Commission

Victor A. Caponera, Jr., for Respondent

The respondent, Francis E. Robbins, a justice of the Saratoga Town Court, Saratoga County, was served with a Formal Written Complaint dated February 28, 1985, alleging certain administrative and financial depositing and remitting failures. Respondent filed an answer dated March 19, 1985.

On August 16, 1985, the administrator of the Commission, respondent and respondent's counsel entered into an

agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement on September 12, 1985.

The administrator and respondent submitted memoranda as to sanction. Oral argument was waived.

On October 10, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent is a justice of the Saratoga Town Court and has been since January 1982.

2. Respondent is not an attorney. He is a college graduate who manages a large dairy farm and works part-time as a lobbyist for farming interests.

3. He has attended all training sessions for non-lawyer judges required by the Office of Court Administration since becoming a judge.

As to Charge I of the Formal Written Complaint:

4. Between July, 1982 and December, 1984, respondent failed to deposit in his official court account within 72 hours of receipt court funds totaling \$1,059, received in connection

with 20 cases, as denominated in Schedule A of the agreed statement of facts.

5. Respondent kept undeposited money in a filing cabinet at his home.

6. The bank in which respondent maintained his official court account was three miles from his home.

7. As of April 11, 1985, respondent had not reported or remitted to the State Comptroller \$707 in court funds received in connection with the following cases:

<u>Received From</u>	<u>Approximate Date Received</u>
Robert Sigouin	12/6/82
Dale E. Charbonneau	3/25/83
Robert L. Ray, Jr.	3/4/83
Jeffrey S. Underwood	5/2/83
Terri Jeanne DeVoe	5/17/83
Patricia R. Shatley	6/17/83
Gerald Bren	7/6/83
Beatrice Rochette	7/6/83
Mary E. Skorupski	7/12/83
E.K. Bolton Pinke	8/6/83
Janet E. Brown	9/16/83
Daniel Mahoney, Esq.	10/6/83
Jones and Mills	11/8/83
William Backus, Esq.	11/16/83
Hazel M. Ross	4/10/84
Debbie and Gary Little	4/30/84

8. Respondent has no record of charging instruments having been before him in the cases of Terri Jeanne DeVoe, Patricia R. Shatley, Beatrice Rochette, Janet E. Brown and Hazel M. Ross. Respondent believes that Ms. Rochette's case was returnable before his predecessor in the court.

As to Charge II of the Formal Written Complaint:

9. Between January 1982 and October 1984, respondent failed to perform properly his administrative and judicial duties in that he:

a) failed to maintain criminal, civil and motor vehicle dockets;

b) failed to maintain a cashbook until July 1984;

c) failed to notify law enforcement agencies of the disposition of cases;

d) failed to submit certificates of conviction to the Department of Motor Vehicles;

e) failed to maintain indices of cases;

f) failed to return driver's license renewal stubs to defendants in 23 cases, as denominated in Schedule B of the agreed statement of facts;

g) failed to open 56 pieces of correspondence, including that marked as from attorneys, banks, the Department of Motor Vehicles, the Division of Criminal Justice Services and the Office of Court Administration, as denominated in Schedule C of the agreed statement of facts;

h) failed to report cases and remit court funds in a timely manner to the Department of Audit and Control for as long as 312 days, as denominated in Schedule D of the agreed statement of facts; and,

i) failed to dispose of 84 cases pending in his court for as long as 25 months, as denominated in Schedule E of the agreed statement of facts.

10. Respondent's only excuse for his failures was that he did not have time to perform his duties.

As to Charge III of the Formal Written Complaint:

11. On July 22, 1983, James Coleman was charged with Driving an Uninspected Vehicle. His ticket was returnable in the Schuylerville Village Court, Saratoga County, on August 11, 1983.

12. Norbert Nolte has been the justice of the Schuylerville Village Court since April 4, 1983.

13. Mr. Coleman failed to appear in court on August 11, 1983, and Judge Nolte ordered his driver's license suspended.

14. On February 20, 1984, respondent accepted a guilty plea from Mr. Coleman and imposed a \$10 fine.

15. Respondent signed as Schuylerville Acting Village Justice a certification ordering the reinstatement of Mr. Coleman's driving privileges.

16. Respondent was not authorized to act as a justice of the Schuylerville Village Court.

17. Respondent had no papers in the Coleman case before him when he disposed of the case. The papers were in the possession of Judge Nolte.

As to Charge IV of the Formal Written Complaint:

18. From April 28, 1983, to April 30, 1984, respondent failed to decide a motion to dismiss in Victoria M. Johnson v. George A. Wilson, a small claims case, notwithstanding that the attorneys for the plaintiff and the defendant corresponded with respondent on numerous occasions and requested a decision on the motion.

19. On April 30, 1984, respondent denied the motion.

20. Respondent notified the plaintiff of the decision on or about April 30, 1984, but failed to notify the defendant.

21. Respondent received on or about April 30, 1984, a written request for the decision from the defendant's attorney but failed to respond to it.

22. Respondent's explanation for the one-year delay in deciding the motion was that it was his first small claims case and he was "overwhelmed" by it.

As to Charge V of the Formal Written Complaint:

23. On or about August 3, 1982, respondent found Vernon Dow guilty of Driving While Ability Impaired.

24. On January 16, 1985, respondent submitted to the Department of Motor Vehicles a certificate of conviction indicating that Mr. Dow had been found guilty of Driving While Intoxicated.

25. Respondent's action resulted in the revocation of Mr. Dow's driver's license.

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)(1), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct; Canons 1, 2A, 3A(1), 3A(5) and 3B(1) of the Code of Judicial Conduct; Sections 106(2), 107, 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act; Sections 30.7 and 30.9 of the Uniform Justice Court Rules; Sections 105.1, 105.2 and 105.3 of the Recordkeeping Requirements for Town and Village Courts; Section 1803 of the Vehicle and Traffic Law; Section 27(1) of the Town Law, and Section 91.12 of the Regulations of the Commissioner of the Department of Motor Vehicles. Charges I through V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent has kept in his personal possession for extended periods court funds that should have been deposited promptly in his official court account and remitted to the State Comptroller. Section 30.7 of the Uniform Justice Court Rules; Sections 2020 and 2021(1) of the Uniform Justice Court Act. He failed to dispose promptly of court cases and a motion, failed to maintain proper court records and failed to open court mail.

Such mishandling of funds and neglect of duties constitutes serious misconduct. Matter of Cooley v. State Commission on Judicial Conduct, 53 NY2d 64 (1981); Matter of Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981); Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976); Matter

of Joedicke, 2 Commission Determinations 381 (Com. on Jud. Conduct, July 1, 1981).

Respondent's misconduct is especially egregious in view of the fact that a fellow judge of the same court was removed from office for similar acts. Matter of Hutzky, 3 Commission Determinations 251 (Com. on Jud. Conduct, Nov. 4, 1983).

Respondent compounded his misconduct by improperly disposing of a case before another court without legal authority to do so. In re Sarisohn, 27 AD2d 466, 280 NYS2d 237, 245 (2d Dept. 1967); In re Schmidt, 31 AD2d 214, 296 NYS2d 49, 56 (2d Dept. 1968).

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

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

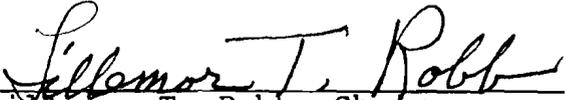
Judge Ciparick did not participate.

Judge Rubin was 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 27, 1985


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