

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

BRENT ROGERS,

Determination

a Justice of the Town Court of
Brookfield, Madison County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Brent Rogers, a justice of the Town Court of Brookfield, Madison County, was served with a Formal Written Complaint dated September 6, 1979, alleging (i) that he had failed to report and remit to the State Comptroller monies received in his judicial capacity from January 1978 to September 6, 1979, and (ii) that he had failed to cooperate with an investigation conducted by this Commission with respect thereto. Respondent filed an unverified answer in the form of a letter dated November 4, 1979. Thereafter, respondent was requested by the Commission's senior attorney to verify his answer pursuant to Section 44, subdivision 4, of the Judiciary Law. To date respondent has not done so.

By notice of motion dated January 2, 1980, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. By determination and order dated January 30, 1980, the Commission granted the motion, finding respondent's misconduct established and setting a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived both oral argument and a memorandum.

On February 24, 1980, in executive session, the Commission considered the record of this proceeding, and upon that record makes the following findings of fact.

1. From January 5, 1978, through August 1, 1979, respondent received at least \$1,896 in fines from his disposition of at least 70 tickets written by the Madison County Sheriff's Department.

2. From June 1978 to September 6, 1979, respondent failed to report or remit to the State Comptroller any monies he received in his judicial capacity, including the \$1,896 heretofore noted, thereby violating Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27 of the Town Law and Section 1803 of the Vehicle and Traffic Law.

3. From June 11, 1979, to September 6, 1979, respondent failed to cooperate with a duly authorized investigation by this Commission with respect to his failure to report and remit monies to the State Comptroller, in that he failed to respond to written

inquiries issued pursuant to Section 42, subdivision 3, of the Judiciary Law on June 11, 1979, June 20, 1979, and June 28, 1979.

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

Section 2021 of the Uniform Justice Court Act requires all justices to report and remit to the State Comptroller all collected fines "on or before the tenth day of the month next succeeding their collection." Failure to do so constitutes serious misconduct, justifying removal of the judge from office. See Bartlett v. Flynn, 50 AD 2d 401 (4th Dept. 1976), app dismiss 39 NY2d 946 (1976).

Failure to cooperate with a Commission investigation is also serious misconduct. In Matter of Robert W. Jordan, NYLJ Aug. 7, 1979, p.5, col. 1, the Court on the Judiciary suspended a judge for four months without pay for failing to appear before the Commission in the course of a duly authorized investigation. The Court stated as follows:

[R]espondent's refusals to cooperate were clearly improper. Although the respondent is not an attorney, as a judicial officer he is charged with knowledge of his responsibilities, which include cooperating with statutorily authorized Commission investigations. Id.

Respondent's failure to cooperate was not limited to the Commission. The record of this proceeding shows that, prior to the Commission's inquiry, the State Department of Audit and Control and the director of administration for the Third Judicial Department had attempted to elicit from respondent an explanation of his failure to report and remit monies according to law. Respondent failed to respond to those inquiries.

By failing to report and remit monies for as many as 15 months, by failing to respond to appropriate inquiries from three state agencies, and by failing to respond to a simple request that his answer in this proceeding be verified, respondent has evinced repeatedly his inability or unwillingness to discharge the responsibilities of judicial office. As such he has violated those provisions of the Rules Governing Judicial Conduct which require diligent attention to administrative duties (Section 33.3[b][1]) and conduct promoting public confidence in the judiciary (Sections 33.1 and 33.2[a]).

The Commission notes from the record (i) that respondent filed in October 1979 the overdue reports from June 1978 through August 1979 and (ii) that his reports for September through November 1979, were filed on December 28, 1979, up to two and a half months later than required by law.

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


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

Dated: April 9, 1980
Albany, New York

APPEARANCES:

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

Brent Rogers, Respondent *Pro Se*