

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

DAVID J. SANDBURG,

a Justice of the Lisbon Town Court,
St. Lawrence County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
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
John J. Sheehy, Esq.

APPEARANCES:

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

DeGraff, Foy, Conway, Holt-Harris & Mealey
(James F. Downs, Of Counsel) for Respondent

The respondent, David J. Sandburg, a justice of the
Lisbon Town Court, St. Lawrence County, was served with a Formal
Written Complaint dated March 7, 1984, alleging certain

financial depositing deficiencies. Respondent did not answer the Formal Written Complaint.

On November 30, 1984, 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, stipulating that the agreed statement be executed in lieu of respondent's answer and further stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement on December 13, 1984.

Both parties submitted memoranda as to sanction. The administrator filed a reply to respondent's memorandum. On April 26, 1985, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Lisbon Town Court and has been since January 1971.

2. Respondent is not a lawyer. He is president of a mobile home dealership. He has attended all required courses offered by the Office of Court Administration for non-lawyer judges.

3. Respondent's wife works as his court clerk.

4. Between December 28, 1978, and November 5, 1980, the transactions in respondent's official court account resulted in a deficiency of \$253.25.

5. Between November 5, 1980, and March 31, 1981, the transactions in respondent's official court account resulted in a deficiency of \$198.25.

6. After March 31, 1981, respondent received \$725 in fines and bail. On April 30, 1981, respondent deposited \$630 (\$95 less than he received during this period), leaving a cumulative deficiency in his official court account of \$293.25.

7. After April 30, 1981, respondent received \$505 in fines and bail. On May 29, 1981, respondent deposited \$470 (\$35 less than he received during this period), leaving a cumulative deficiency in his official court account of \$328.25.

8. After May 29, 1981, respondent received \$705 in fines and bail. On July 2, 1981, respondent deposited \$625 (\$80 less than he received during this period), leaving a cumulative deficiency in his official court account of \$408.25.

9. After July 2, 1981, respondent received \$1,398 in fines and bail. On July 31, 1981, respondent deposited \$1,305 (\$93 less than he received during this period), leaving a cumulative deficiency in his official court account of \$501.25.

10. After July 31, 1981, respondent received \$380 in fines and bail. On August 28, 1981, respondent deposited \$373

(\$7 less than he received during this period), leaving a cumulative deficiency in his official court account of \$508.25.

11. After August 28, 1981, respondent received \$840 in fines and bail. On October 1, 1981, respondent deposited \$755 (\$85 less than he received during this period), leaving a cumulative deficiency in his official court account of \$593.25.

12. After October 1, 1981, respondent received \$890 in fines and bail. On October 30, 1981, respondent deposited \$723 (\$167 less than he received during this period), leaving a cumulative deficiency in his official court account of \$760.25.

13. After October 30, 1981, respondent received \$1,520 in fines and bail. On November 24, 1981, respondent deposited \$1,605 (\$85 more than he received during this period), leaving a cumulative deficiency in his official court account of \$627.25.

14. After November 24, 1981, respondent received \$580 in fines and bail. On December 31, 1981, respondent deposited \$510 (\$70 less than he received during this period), leaving a cumulative deficiency in his official court account of \$745.25.

15. After December 31, 1981, respondent received \$120 in fines and bail. On January 12, 1982, respondent deposited \$19 (\$101 less than he received during this period), leaving a cumulative deficiency in his official court account of \$846.25.

16. After January 12, 1982, respondent received \$110 in fines. On January 28, 1982, respondent deposited \$230 (\$120

more than he received during this period), leaving a cumulative deficiency in his official court account of \$726.25.

17. After January 28, 1982, respondent received \$685 in fines and bail. On March 1, 1982, respondent deposited \$580 (\$105 less than he received during this period), leaving a cumulative deficiency in his official court account of \$831.25.

18. On March 2, 1982, an audit of respondent's court was commenced. On March 2, 1982, respondent deposited \$405, of which \$300 was cash, leaving a cumulative deficiency in his official court account of \$426.25.

19. After March 2, 1982, respondent received \$325 in fines. On March 10, 1982, respondent deposited \$85 (\$240 less than he received during this period), leaving a cumulative deficiency in his official court account of \$666.25.

20. After March 10, 1982, respondent received \$94 in fines and civil fees. On March 22, 1982, respondent was notified by state auditors that his official court account was deficient by \$483.90. On March 25, 1982, respondent deposited \$817.90 (\$723.90 more than he received during this period), leaving a cumulative surplus in his official court account of \$57.65. This deposit included \$483.90 of respondent's personal funds which respondent used to eliminate the deficiency found by the auditors.

21. During the time period noted above, respondent and his wife regularly kept undeposited court funds in a

briefcase at their home. Although respondent testified that all the cash in the briefcase was deposited each time a deposit was made in his official court account, respondent could not explain why the deficiency in his account continued to grow steadily until discovered by the state auditors.

22. Between July 1980 and March 1982, respondent failed to report or remit to the State Comptroller fines totaling \$345 received in connection with 16 cases in his court.

23. The cases were reported and the funds remitted on March 24, 1982, after the cases were called to respondent's attention by a state auditor.

24. Between February 12, 1981, and March 1, 1982, respondent's wife and court clerk used undeposited cash from respondent's official court account for personal expenses, simultaneously issuing personal checks in the amount taken and later depositing them in respondent's official court account. Respondent was aware of the practice and permitted it to occur.

25. On each occasion when respondent or his wife substituted a check for court funds, there were sufficient funds in their personal account to cover the amount of the checks issued.

26. The total of the personal checks substituted for court funds was \$1,130.

27. On November 6, 1981, respondent personally substituted a check from his business account for \$100 in court funds.

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; Sections 2020 and 2021(1) of the Uniform Justice Court Act; Section 30.7 of the Uniform Justice Court Rules; Section 1803 of the Vehicle and Traffic Law; and Section 27(1) of the Town Law. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Over a period of years, respondent consistently deposited less money in his official court account than he had received since the previous deposit. The deficiency thus created steadily grew from \$253.25 in 1980 to \$831.25 by early 1982.

Respondent maintains that undeposited court moneys were kept in a briefcase between deposits and that all the funds in the briefcase were deposited when he or his wife went to the bank. If that had been the case, there would have been no deficiency, however. Respondent's only explanation for the

depositing shortages is that he and his wife engaged in a practice of cashing personal checks from undeposited cash in the briefcase. However, if each time they took cash from the briefcase, they substituted a check, there would have been no deficiency since the checks would have been deposited on the next trip to the bank.

Because of respondent's careless handling of public moneys, neither he nor anyone else can explain the whereabouts of the missing money. Such neglect of his administrative responsibilities constitutes a breach of the public trust and ordinarily should result in removal. Matter of Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981); Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976).

In mitigation, the Commission notes that (i) respondent cooperated fully in the investigation of this matter; (ii) he corrected the deficiency by depositing personal funds upon being notified by the state auditors (see Matter of Howard J. Miller, unreported [Com. on Jud. Conduct, June 4, 1980]; Matter of James H. Reedy, unreported [Com. on Jud. Conduct, Dec. 28, 1981]); (iii) records of respondent's court transactions were well maintained (see Reedy, supra); and, (iv) respondent made no attempt to conceal the deficiency (see Matter of Lawrence L. Rater, unreported [Com. on Jud. Conduct, May 6, 1982]).

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

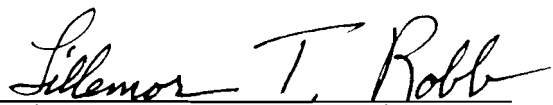
Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Cleary and Mrs. DelBello 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: June 6, 1985


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