

**State of New York**  
**Commission on Judicial Conduct**

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

CARL W. SIMON,

a Justice of the Galen Town  
Court, Wayne County.

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**Determination**

THE COMMISSION:

Mrs. Gene Robb, Chairwoman  
Honorable Fritz W. Alexander, II  
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  
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Cody B. Bartlett, Of  
Counsel) for the Commission

Carl W. Simon, Respondent Pro Se

The respondent, Carl W. Simon, a justice of the Galen Town Court, Wayne County, was served with a Formal Written Complaint dated March 19, 1982, alleging inter alia that he failed to deposit, report and remit to the State Comptroller various funds received in his official capacity. Respondent did not file an answer.

By motion dated July 26, 1982, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent did not oppose the motion. By determination and order dated August 20, 1982, the Commission granted the administrator's motion, found respondent's misconduct established and set a date for oral argument on the issue of sanction. Respondent did not appear for oral argument or submit a memorandum in lieu thereof. The administrator filed a memorandum in lieu of oral argument. The Commission considered the record of this proceeding on September 16, 1982, and made the following findings of fact.

1. From January 1, 1980, through December 31, 1981, respondent failed to perform properly his administrative duties, as follows.

(a) Respondent failed to account for, deposit or make a record of \$175 received in cash from Mr. Mike Bishop on October 13, 1980, in payment of a fine. Respondent failed to write an official receipt for the \$175.

(b) Respondent failed to deposit within 72 hours of receipt all monies collected in his official capacity, as required by Section 30.7 of the Uniform Justice Court Rules.

(c) Respondent failed to make any deposits in eight of the 24 months in this period, notwithstanding that he received funds in his official capacity during those months, as set forth in Schedule A appended hereto.

(d) Respondent failed to report and remit to the State Comptroller in a timely manner all fines, civil fees and bail forfeitures received in his official capacity, as set forth in Schedule B appended hereto, as required by 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. Respondent's judicial salary consequently was suspended by the State Comptroller.

(e) Respondent failed to maintain an index of cases and a cashbook prior to October 1980, as required by Section 30.9 of the Uniform Justice Court Rules.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27 of the Town Law, Section 1803 of the Vehicle and Traffic Law, Section 30.7 of the Uniform Justice Court Rules, Sections 100.1, 100.2(a), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained and respondent's misconduct is established.

The laws and rules cited above require a town or village justice (i) to maintain proper docket books of matters on the court's calendar, (ii) to maintain a cashbook, (iii) to deposit official funds in an official court account within 72 hours of receipt and (iv) to report and remit to the State

Comptroller all collected monies on or before the tenth day of the month following collection. Failure to do so constitutes misconduct and may result in removal of the judge from office. Cooley v. State Commission on Judicial Conduct, 53 NY2d 64 (1981); Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981).

By failing for as long as two years to meet the various financial and administrative responsibilities noted above, and by failing altogether to account for certain cash received in his official capacity, respondent has exhibited an inability or unwillingness to discharge the obligations of judicial office in a responsible manner. Respondent's behavior clearly was improper, constituted at least negligence and evinced an indifference to the legal and ethical constraints upon him. Such conduct is inconsistent with his position of trust and responsibility as a judicial officer.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

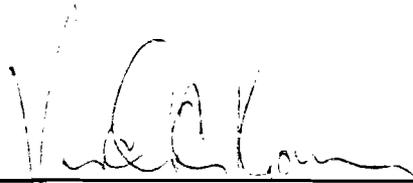
Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mrs. DelBello and Judge Rubin 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: November 12, 1982



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Victor A. Kovner, Esq.  
New York State Commission on  
Judicial Conduct