

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

ROY E. SMITH,

a Justice of the Davenport
Town Court, Delaware 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, Of Counsel) for the
Commission

The respondent, Roy E. Smith, a justice of the
Davenport Town Court, Delaware County, was served with a Formal
Written Complaint dated August 4, 1987, alleging certain
financial reporting, remitting and depositing deficiencies and
alleging that he failed to perform his administrative and

adjudicative responsibilities in numerous cases. Respondent did not answer the Formal Written Complaint.

By motion dated September 25, 1987, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct be deemed established. Respondent did not oppose the motion or file any papers in response thereto. By determination and order dated October 22, 1987, the Commission granted the administrator's motion and found respondent's misconduct established.

The administrator submitted a memorandum as to sanction. Respondent neither submitted a memorandum nor requested oral argument.

On November 13, 1987, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Davenport Town Court and has been since January 1970.

2. Between February 1984 and August 1986, respondent failed to remit funds and report cases to the Department of Audit and Control in a timely manner, as set forth in the appendix hereto, in violation of Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law and Section 27(1) of the Town Law. Respondent's

reports for the period were late in 28 of the 31 months. They were from 1 to 151 days late, or an average of 42 days late.

As to Charge II of the Formal Written Complaint:

3. Between December 7, 1983, and June 24, 1987, respondent failed to deposit court funds in his official court account in a timely manner, as set forth in Schedule B of the Formal Written Complaint, in violation of Section 30.7(a) of the Uniform Justice Court Rules in effect until January 6, 1986, and thereafter in violation of Section 214.9(a) of the Uniform Civil Rules for the Justice Courts.

4. Respondent kept undeposited court funds in a cash box at his home.

5. A Commission investigator reviewing respondent's court records also found \$210 in cash in a shoe box containing court records.

6. As a result of respondent's failure to make timely deposits, his court account was deficient consistently throughout the period by as much as \$1,734.86.

7. Respondent testified before a member of the Commission on May 5, 1987, that at one point he discovered a \$250 shortage in his accounts and had concluded that he inadvertently threw \$250 in cash bail in the trash.

As to Charge III of the Formal Written Complaint:

8. Since July 1983, respondent has failed to dispose of cases in a timely manner with the result that, as of July 9, 1987, 58 cases were pending in his court for more than nine months, as set forth in Schedule C of the Formal Written Complaint.

9. Respondent failed to maintain a cashbook from June 1983 to December 1986, in violation of Section 105.1 of the Recordkeeping Requirements for Town and Village Courts in effect until January 6, 1986, Section 30.9 of the Uniform Justice Court Rules in effect until January 6, 1986, and thereafter in violation of Section 214.11(a)(3) of the Uniform Civil Rules for the Justice Courts.

10. Respondent failed to maintain case files and indices of cases, in violation of Sections 107, 2019 and 2019-a of the Uniform Justice Court Act, Section 105.1 of the Recordkeeping Requirements for Town and Village Courts in effect until January 6, 1986, Section 30.9 of the Uniform Justice Court Rules in effect until January 6, 1986, and thereafter in violation of Sections 214.11(a)(1) and 214.11(a)(2) of the Uniform Civil Rules for the Justice Courts.

11. As of July 9, 1987, respondent had failed to open seven items of mail from six defendants, as set forth in Schedule D of the Formal Written Complaint.

12. Respondent failed to notify law enforcement agencies and the Department of Motor Vehicles of the disposition of cases in his court, in violation of Section 91.12 of the Regulations of the Commissioner of the Department of Motor Vehicles.

13. Respondent failed to report to the Department of Audit and Control the disposition of 19 criminal cases, as set forth in Schedule E of the Formal Written Complaint, in violation of Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27(1) of the Town Law and Section 1803 of the Vehicle and Traffic Law.

14. Respondent failed to maintain complete and adequate dockets of the 19 cases listed on Schedule E of the Formal Written Complaint, in violation of Sections 107, 2019 and 2019-a of the Uniform Justice Court Act and Section 105.3 of the Recordkeeping Requirements for Town and Village Courts in effect until January 6, 1986.

15. Respondent handles fewer than 25 cases a month. He has no excuse or explanation for his failures other than that he "got behind" and the work "overwhelmed" him.

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 and Canons 1, 2A, 3A(1), 3A(5)

and 3B(1) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent has neglected nearly every aspect of his adjudicative and administrative duties. He has failed to dispose of cases pending in his court for years. He has mishandled public moneys by keeping them in his personal possession instead of promptly depositing them in his official account and turning them over to the state. By his own admission, respondent was so careless that on one occasion he threw \$250 cash in the trash. He also failed to keep proper court records, as required by law.

By his disdain for the responsibilities of a judge, respondent has demonstrated that he is not fit to hold judicial office. Matter of Vincent v. State Commission on Judicial Conduct, 70 NY2d 208 (1987); Matter of Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981); Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976).

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

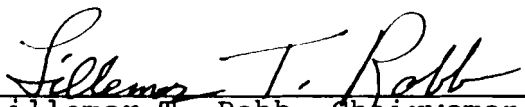
Mrs. Robb, Mr. Bower, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bromberg and Judge Ostrowski 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: December 21, 1987


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

APPENDIX

<u>Month and Year of Report</u>	<u>Date Received by Audit and Control</u>	<u>Number of Days Late</u>
2/84	3/23/84	13
3/84	4/10/84	0
4/84	5/21/84	11
5/84	8/21/84	71
6/84	8/21/84	42
7/84	8/21/84	11
8/84	9/20/84	10
9/84	10/18/84	8
10/84	11/07/84	0
11/84	2/27/85	79
12/84	2/27/85	48
1/85	2/27/85	16
2/85	3/11/85	1
3/85	6/11/85	62
4/85	6/11/85	32
5/85	6/11/85	1
6/85	11/13/85	126
7/85	11/13/85	95
8/85	11/13/85	64
9/85	11/13/85	34
10/85	11/13/85	3
11/85	1/15/86	36
12/85	1/16/86	6
1/86	4/09/86	58
2/86	4/09/86	30
3/86	4/09/86	0
4/86	10/08/86	151
5/86	10/08/86	120
6/86	10/08/86	90
7/86	10/08/86	59
8/86	10/08/86	28