

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

PAUL E. HUTZKY,

a Justice of the Saratoga Town Court,
Saratoga County.

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
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Stephen F. Downs and Henry S. Stewart,
Of Counsel) for the Commission

David L. Riebel for Respondent

The respondent, Paul E. Hutzky, a justice of the
Saratoga Town Court, Saratoga County, was served with a Formal
Written Complaint dated May 2, 1983, alleging that he had failed

to meet various records keeping and financial reporting, deposit and remittance requirements. Respondent did not file an answer.

On September 16, 1983, 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 by 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 upon the pleadings and the agreed upon facts.

The Commission approved the agreed statement and, on October 13, 1983, 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 1978.
2. Respondent was a justice of the Schuylerville Village Court from October 1980 to September 1982.
3. Respondent holds a master's degree in education and has received credit toward a doctorate.
4. Respondent has successfully completed three training sessions for non-lawyer judges given by the Office of Court Administration.

As to Charge I of the Formal Written Complaint:

5. Between January 1978 and January 25, 1983, respondent failed to deposit court moneys into his official account within 72 hours of receipt in that he:

(a) Made no deposits in his town court account from March 15, 1980, to June 3, 1980, notwithstanding that he received a total of \$1,863 in court funds in his town court during that period;

(b) made no deposits in his town court account from February 28, 1981, to May 28, 1981, notwithstanding that he received a total of \$830 in court funds in his town court during that period;

(c) made no deposits in his village court account from April 4, 1981, to May 28, 1981, notwithstanding that he received a total of \$2,540 in court funds in his village court during that period;

(d) made no deposits in his village court account from August 1, 1981, to September 28, 1981, notwithstanding that he received a total of \$1,823.25 in court funds in his village court during that period;

(e) deposited money in his court accounts at an average frequency of once a month between January 1980 and May 1981;

(f) did not deposit a \$10 check received on May 15, 1981, on behalf of the defendant in People v. David Jordan;

(g) did not deposit until December 3, 1982, a total of \$50 in cash received on September 4, 1980, from the defendants in People v. Theresa Mayer, People v. Gerald G. Mayer and People v. Dale P. Mayer;

(h) did not deposit a \$20 money order received on July 28, 1981, from the defendant in People v. Frederick Trinkaus;

(i) did not deposit \$5 in cash received in October 1981 from the defendant in People v. Linda Kosloske;

(j) did not deposit a \$250 check received on June 3, 1982, from the defendant in People v. Kenneth Tilford; and,

(k) did not deposit a \$25 money order received on October 31, 1981, from the defendant in People v. Edward White.

6. Respondent kept undeposited court funds in his home freezer, in his shoes and at other locations in his house for substantial periods of time.

7. Respondent made deposits only when he remembered to do so. The bank in which his official accounts were held was only a half mile from his home.

8. Respondent was aware that he was required by law to deposit court funds in his official accounts within 72 hours of receipt.

As to Charge II of the Formal Written Complaint:

9. On June 2, 1981, during an audit of his town court, respondent falsely certified in writing to the Department

of Audit and Control that he had no undeposited court funds and no cash on hand in his town court.

10. In fact, on June 2, 1981, respondent had more than \$300 in court funds at his home. Respondent deposited these court funds after the auditor called his attention to a deficiency in his court account.

11. Respondent did not then know and still does not know the exact amount of funds hidden in his house, to what cases the funds relate, or how long they have lain undeposited in his house.

As to Charge III of the Formal Written Complaint:

12. From the time that he took judicial office in January 1978, respondent failed to perform his administrative and judicial duties in that he:

(a) Failed to respond to 42 defendants who pled guilty by mail to traffic tickets in respondent's court;

(b) failed to return 48 driver's licenses to defendants who sent in their licenses in connection with pleas of guilty to traffic charges;

(c) failed to dispose of 282 cases;

(d) failed to make entries in his docket book for 456 cases pending in his court;

(e) failed to maintain any records for 63 cases pending in his court;

(f) failed to report and remit to the Department of Audit and Control in a timely manner a total of \$6,533.05 in fines received over a period of nearly four years from defendants in 183 cases;

(g) failed to report to law enforcement agencies the disposition of 99 cases brought by those agencies in respondent's court;

(h) failed to submit certificates of conviction to the Department of Motor Vehicles for 44 cases which were disposed of by respondent;

(i) failed to report cases and remit moneys received to the Department of Audit and Control in a timely manner, in that reports were submitted an average of three weeks late for the town and an average of more than one month late for the village, with one village report submitted 172 days late; and,

(j) failed to maintain case files and indices of cases for all cases in his town and village courts.

As to Charge IV of the Formal Written Complaint:

13. Respondent failed to explain to the Commission staff the status of hundreds of cases or to give information concerning those cases, notwithstanding that the information was requested seven times over a period of five months.

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 107, 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act; Sections 30.7(a) and 30.9 of the Uniform Justice Court Rules; Sections 105.1 and 105.3 of the Recordkeeping Requirements for Town and Village Courts; Section 91.12 of the Regulations of the Commissioner of the Department of Motor Vehicles (15 NYCRR 91.12); Section 1803 of the Vehicle and Traffic Law; Section 27 of the Town Law; and Section 4-410(1) of the Village Law. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent has neglected nearly every aspect of his judicial and administrative duties. As a result, the records of his courts are a shambles. No one, including respondent, can reconstruct what cases have come before him and how they were handled.

Respondent is well-educated and has no excuse for his gross negligence except "bad habits" and "sloppy bookkeeping." He has mishandled hundreds of cases and thousands of dollars in public moneys. Such disregard of a judge's statutory responsibilities warrants removal from office. Bartlett v. Flynn, 50

AD2d 401 (4th Dept. 1976); Matter of Petrie, 54 NY2d 807 (1981);
Matter of Cooley, 53 NY2d 64 (1981).

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

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.

Dated: New York, New York
November 4, 1983



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