

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

NATHANIEL HALL,

a Justice of the Ava Town Court,
Oneida County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Myriam J. Altman
Helaine M. Barnett, Esq.
Herbert L. Bellamy, Sr.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Lawrence S. Goldman, Esq.
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, of Counsel) for
the Commission

Carter, Conboy, Bardwell, Case, Blackmore & Napierski
(By James M. Conboy; Kevin P. Burke and
Susan M. Di Bella, Of Counsel) for Respondent

The respondent, Nathaniel Hall, a justice of the Ava
Town Court, Oneida County, was served with a Formal Written
Complaint dated April 5, 1990, alleging that he failed to meet
certain financial and recordkeeping requirements. Respondent
filed an answer dated May 30, 1990.

By order dated June 6, 1990, the Commission designated Eugene C. Gerhart, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 12, 1990, and the referee filed his report with the Commission on January 8, 1991.

On March 11, 1991, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion on April 1, 1991. The administrator filed a reply dated April 3, 1991.

On April 11, 1991, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Ava Town Court since January 1, 1988.

2. From February 1988 through December 1989, as set forth in Schedule A appended hereto, respondent regularly failed to deposit court funds in his official account within 72 hours of receipt, as required by the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.9(a). As a result, respondent's account was deficient by \$549 by December 1, 1989.

3. Respondent testified that his home was burglarized in October 1988 and that court funds may have been stolen. Respondent reported \$210 stolen. He cannot account for the

amount of court money he had on hand at the time because he did not keep a cashbook and had not issued proper receipts.

4. Between December 6, 1988, and April 24, 1989, respondent made no deposits at all in his official account, even though he received \$917 in court funds during that period. On April 25, 1989, he deposited only \$360.

5. Respondent testified that he kept court funds in an unlocked briefcase and in an unlocked desk at his home.

6. As set forth in Schedule B appended hereto, respondent failed to remit fines and surcharges totalling \$621 to the state comptroller by the tenth day of the month following collection, as required by Vehicle and Traffic Law §1803, Town Law §27 and UJCA 2020, 2021(1).

7. From April 1988 to October 1989, respondent failed to maintain a cashbook, as required by the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.11(a)(3).

8. In 1988 and 1989, respondent failed to issue and maintain proper records of the receipt of court funds, as required by Town Law §31(1)(a).

9. By the date of the hearing in this proceeding on July 12, 1990, respondent had attempted to eliminate the deficiency in his account by depositing personal funds.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a), 100.3(a)(1) and 100.3(b)(1), and Canons 1, 2A, 3A(1) and 3B(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent held hundreds of dollars in his personal possession, unsecured, rather than promptly depositing them in the bank as required by law (Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.9[a]). This raises the possibility of improper interim use of the money. (Matter of More, 1990 Ann Report of NY Commn on Jud Conduct, at 140, 141). He also failed to remit promptly \$621 to the state comptroller. (See, UJCA 2021[1]). His carelessness in handling the money and his failure to keep proper records of receipts left court funds vulnerable to theft. In addition, his carelessness made it impossible for him to determine whether court funds had been taken when his home was burglarized.

The careless handling of public money by a judge is misconduct, even when not done for personal profit. (Bartlett v. Flynn, 50 AD2d 401 [4th Dept]). "The severity of the sanction imposed for this variety of misconduct depends on the presence or absence of mitigating and aggravating circumstances." (Matter of Rater v. State Commission on Judicial Conduct, 69 NY2d 208, 209).

No aggravating circumstances exist here. (Compare, Rater, supra; Matter of Cooley v. State Commission on Judicial Conduct, 53 NY2d 64; Matter of Vincent v. State Commission on Judicial Conduct, 70 NY2d 208; Matter of Hutzky, 1984 Ann Report of NY Commn on Jud Conduct, at 94).

Rather, respondent has made an attempt to eliminate the deficiency in his court account by depositing his own funds. He has also sought assistance in learning how to keep proper records and has made arrangements to facilitate timely deposits of court funds. These factors suggest a willingness to meet the responsibilities of judicial office. (See, Matter of Rogers v. State Commission on Judicial Conduct, 51 NY2d 224, 226). Future audits will indicate whether respondent has, in fact, met these responsibilities.

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Mr. Cleary, Mrs. Del Bello, Mr. Goldman, Judge Salisbury, Mr. Sheehy and Judge Thompson concur.

Judge Ciparick did not participate.

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 4, 1991

Henry T. Berger

Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct

Schedule A

<u>Fines Received Per Receipts And Audit And Control Reports</u>	<u>Additional Fines Received</u>	<u>Bail Or Restitution Received</u>	<u>Date Of Receipt</u>	<u>Total Receipts</u>	<u>Deposit Per Bank Statement</u>	<u>Date Of Deposit</u>	<u>Deficient (D) or Surplus (S) Deposit</u>	<u>Cumulative Deficient (D) Or Surplus (S) Deposit</u>
					\$1.00	12/28/87	\$0	\$0
\$55	\$0	\$1,000	1/19/88- 1/20/88	\$1,055	1,055	1/22/88	0	0
67	0	0	1/27/88- 2/1/88	67	65	2/3/88	2(D)	2(D)
135	0	0	2/8-2/24/88	135	135	2/26/88	0	2(D)
430	10	500	3/12/88- 3/23/88	940	940	3/28/88	0	2(D)
90	0	0	4/4-4/12/88	90	90	4/13/88	0	2(D)
370	0	0	4/13/88- 5/18/88	370	340	6/23/88	30(D)	32(D)
690	10	0	6/29/88- 8/17/88	700	690	8/19/88	10(D)	42(D)
410	0	0	8/31/88- 11/9/88	410	220	11/14/88	190(D)	232(D)
75	40	0	11/23/88	115	215	12/6/88	100(S)	132(D)
477	230	210	12/14/88- 4/24/89	917	360	4/25/89	557(D)	689(D)
202	0	0	5/3-5/31/89	202	227	6/14/89	25(S)	664(D)
52	167	650	6/7/89- 9/14/89	869	227	9/18/89	642(D)	1,306(D)
				0	707	9/27/89	707(S)	599(D)
384	0	0	10/4-10/17/89	384	434	10/18/89	50(S)	549(D)
150	0	0	10/18-10/24/89	150	150	10/31/89	0	549(D)
0	0	1,000	11/2/89	1,000	1,000	11/8/89	0	549(D)
375	0	0	11/8-11/27/89	375	375	11/29/89	0	549(D)
282	0	0	11/29/89	282	282	11/30/89	0	549(D)
104	0	0	12/13-12/28/89	104	104	12/28/89	0	549(D)

Schedule B

<u>Name of Defendant</u>	<u>Amount Of Fine</u>	<u>Date Of Receipt</u>	<u>Receipt Number</u>	<u>Date Reported</u>
Joseph Sadlowski	\$ 2	2/1/88	805	1/90
Rick Nelson	290	8/17/88	828	1/90
David Mendoza	100	2/22/89	852	1/90
James Nellis	30	4/12/89	NONE	1/90
David Murray	30	4/19/89	NONE	1/90
K. Edward (by W. Schmitt)	2	4/24/89	NONE	*
Evelyn Sweat	100	6/7/89	NONE	2/90
D.A. Mower	57	6/28/89	NONE	*
J. Abbe	<u>10</u>	6/28/89	NONE	*
	\$621			

*Not reported as of March 23, 1990.