

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

LAWRENCE L. RATER,

Determination

a. Justice of the Town Court of
Sherman, Chautauqua County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

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

Cole, Sorrentino, Cavanaugh, Stephenson
and O'Brien (By Stephen E. Cavanaugh)
for Respondent

The respondent, Lawrence L. Rater, a justice of the Town Court of Sherman, Chautauqua County, who is not a lawyer, was served with a Formal Written Complaint dated March 6, 1981, and an amended Formal Written Complaint dated April 14, 1981, alleging that he failed to meet various financial reporting and record-keeping requirements and that he improperly presided over a traffic case in which his brother was the defendant. Respondent filed an answer dated May 1, 1981.

By order dated June 10, 1981, the Commission designated the Honorable Harry D. Goldman referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on September 14, 1981, and the referee filed his report with the Commission on November 19, 1981.

By motion dated January 26, 1982, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion on March 10, 1982. The Commission heard oral argument on the matter on March 25, 1982, thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. From January 1, 1976, to July 30, 1980, respondent was negligent in accounting for monies received in his official capacity, resulting in a deficiency in the amount of \$264.68.
2. From May 21, 1979, to August 2, 1979, and from October 31, 1979, to November 30, 1979, respondent failed to deposit official funds into his court account within 72 hours of receipt, as required by Section 30.7(a) of the Uniform Justice Court Rules.
3. From January 1, 1976, to July 30, 1980, respondent failed to report and remit to the State Comptroller, within the first ten days of receipt, all fines, civil fees and bail forfeitures received in his official capacity, as required by Sections 2020 and 2021(1) of the Uniform Justice Court Act and Section 1803 of the Vehicle and Traffic Law.

4. From January 1, 1976, to December 15, 1980, respondent failed to maintain a complete cashbook and index of cases as required by Section 30.9 of the Uniform Justice Court Rules.

As to Charge II of the Formal Written Complaint:

5. On March 18, 1978, respondent's brother, Norman Rater, was charged with speeding 43 miles per hour in a 30 miles per hour zone. On March 28, 1978, respondent presided over the case of People v. Norman Rater and dismissed the charge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 14 of the Judiciary Law, Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(5), 33.3(b)(1) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(5), 3B(1) and 3C(1)(d) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

By failing to make timely deposits of official funds, by failing to report and to remit such funds in a timely manner to the State Comptroller, and by failing to maintain complete and accurate records such that his accounts were \$264 deficient, respondent failed to discharge diligently his administrative responsibilities. Such neglect of his duties is cause for discipline. Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976), app. disp., 39 NY2d 942 (1976); Matter of Reich, unreported (Com. on Jud. Conduct, Jan. 20, 1982); Matter of Reedy, unreported (Com. on Jud. Conduct, Dec. 28, 1981).

By presiding over his brother's traffic case and by dismissing the charge, respondent violated the rules and statutory prohibitions on hearing a matter involving relatives within six degrees of consanguinity (Section 14 of the Judiciary Law and Section 33.3 [c][1] of the Rules Governing Judicial Conduct). By so doing, respondent prejudiced the administration of justice and undermined public confidence in the integrity and impartiality of the judiciary.

There remains the issue of appropriate sanction. Considering the circumstances of this case, we conclude that censure is more appropriate than removal from office.

While respondent's administrative failures constitute clear misconduct, we note (i) the relatively modest deficiency occurring over a long period of time (\$264 over four-and-a-half years), (ii) the absence of evidence of conversion, (iii) the subsequent balancing of the court account and (iv) respondent's frank admission of error.

Respondent's presiding over his brother's case is serious misconduct, but we note in mitigation (i) respondent's apparently honest failure to understand that recusal is mandatory in such cases, (ii) that this is an isolated incident and (iii) that respondent frankly admitted wrongdoing.

Although these mitigating factors in no way excuse respondent of his misconduct or exempt him from stern public discipline, they do in our judgment require a sanction short of removal. The facts here differ from other cases in which the Commission determined that removal was the appropriate sanction. Cf, Matter of Adams, NYLJ, Jan. 19, 1979, p. 1, col. 1 (Com. on Jud. Conduct, Nov. 29, 1978), Matter of Seaton, unreported (Com. on Jud. Conduct, May 8, 1980), and Matter of Schultz, NYLJ, June 8, 1979, p. 1, col. 2 (Com. on Jud. Conduct, May 29, 1979).

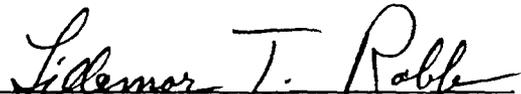
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

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: May 6, 1982


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