

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

**Determination**

JOSEPH C. SLOMBA,

a Justice of the Newfane Town Court,  
Niagara County.

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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 (John J. Postel, Of Counsel) for the  
Commission

William E. Smith for Respondent

The respondent, Joseph C. Slomba, a justice of the Newfane Town Court, Niagara County, was served with a Formal Written Complaint dated August 6, 1992, alleging that he failed to deposit court funds promptly and that he used court funds for personal purposes. Respondent filed an answer dated October 13, 1992.

On September 1, 1993, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4) and stipulating that the Commission make its determination on the Formal Written Complaint and the agreed upon facts. The Commission approved the agreed statement by letter dated September 10, 1993.

Counsel submitted memoranda as to sanction. Oral argument was waived.

On October 21, 1993, the Commission considered the record of the proceeding and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Newfane Town Court since 1976.

2. From January 1988 through December 1989, as denominated in Schedule A appended hereto, respondent 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). By the end of the period, respondent's court account was deficient by \$3,458.

As to Charge II of the Formal Written Complaint:

3. On 27 occasions between February 17, 1988, and February 4, 1991, as denominated in Schedule B appended hereto, respondent cashed personal checks of his and his relatives from cash that he had collected in court. He then used the cash for personal purposes. Twenty of these checks were written by respondent.

4. Each of the 27 personal checks was subsequently deposited into respondent's court account. There were insufficient funds in respondent's accounts to cover ten of the checks written by him at the time they were drawn. With respect to four of the ten checks, there were still insufficient funds in the accounts at the time that the checks were deposited. Nonetheless, nine of the checks were honored in their entirety when the amounts were deposited.

5. The tenth check was on respondent's personal account at Unit No. 1 Federal Credit Union. Respondent drew check #430 for \$312 on October 30, 1989, and took that amount in cash from court funds. On that date, the balance in his account was \$108.90.

6. On October 31, 1989, respondent attempted to deposit in his personal account sufficient funds to cover check #430. He was told at the bank that his account had been involuntarily closed because he had filed for bankruptcy relief on September 18, 1989.

7. On October 31, 1989, respondent deposited \$312 in cash into his court account to replace check #430.

Supplemental Findings:

8. After being advised by town auditors in January 1990 that his failure to make deposits promptly was improper, respondent delegated the task of depositing funds to his court clerk.

9. Respondent has abandoned the practice of cashing personal checks from court funds.

10. Three audits by the town and one by the state comptroller since January 1990 have found no irregularities in respondent's official account.

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) and 100.3(b)(1), and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

For 16 of the 24 months in 1988 and 1989, respondent's deposits in his official account were significantly less than his receipts for those months. In 15 of those months, his deposits were short by hundreds of dollars. This raises questions about the interim use of the money. (Matter of More, 1990 Ann Report of NY Commn on Jud Conduct, at 140, 141).

Over this period and an additional year, respondent had a practice of replacing cash that he had collected in court with personal checks drawn by himself and members of his family. On one occasion, he allowed a relative to cash a \$1,000 check from his court receipts. Respondent withdrew as much as \$956.25.

Standing alone, this constitutes an unsound fiscal practice. What makes it especially inappropriate is that, at the time that he wrote ten of these checks, respondent did not have sufficient funds in his personal accounts to cover the amount of cash that he was taking from the court and, with respect to four of the checks, there were insufficient funds in the accounts when respondent deposited them into his court account. In essence, he was advancing himself short-term, no-interest loans from the court's cash. The improper handling of public money is serious misconduct which warrants public sanction. (Matter of Hall, 1992 Ann Report of NY Commn on Jud Conduct, at 46, 47).

"The severity of the sanction imposed for this variety of misconduct depends upon the presence or absence of mitigating and aggravating circumstances." (Matter of Rater v State Commission on Judicial Conduct, 69 NY2d 208, 209). In mitigation, we have considered that respondent recognized his mistakes and has taken corrective action. (See, Hall, supra, at 48; Matter of Rath, 1990 Ann Report of NY Commn on Jud Conduct, at 150, 152). This suggests a willingness to meet the responsibilities of judicial office. (See, Matter of Rogers v State Commission on Judicial Conduct, 51 NY2d 224, 226).

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

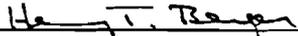
Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mr. Goldman, Mr. Sheehy and Judge Thompson concur.

Judge Salisbury was 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 16, 1993

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

Schedule A

<u>Month</u>	<u>Funds Collected</u>	<u>Amounts Deposited</u>	<u>Surplus/ Deficiency</u>	<u>Cumulative</u>
1/88	\$1,859	\$1,839	-\$ 20	-\$ 20
2/88	2,315.89	2,711.89	+ 396	+ 376
3/88	3,686.78	2,936.78	- 750	- 374
4/88	4,238.25	4,089	- 149.25	- 523.25
5/88	4,417	3,901.25	- 515.75	- 1,039
6/88	4,682.50	6,097.50	+ 1,415	+ 376
7/88	3,368	3,365	- 3	+ 373
8/88	4,276	3,941.25	- 334.75	+ 38.25
9/88	3,229.25	2,654.25	- 575	- 536.75
10/88	2,378.50	2,859.25	+ 480.75	- 56
11/88	3,688.50	2,957.75	- 730.75	- 786.75
12/88	4,248.75	3,541.75	- 707	- 1,493.75
1/89	2,912.50	3,113.25	+ 200.75	- 1,293
2/89	1,655	1,156.25	- 498.75	- 1,791.75
3/89	5,944.25	4,560	- 1,384.25	- 3,176
4/89	4,759.25	7,148.50	+ 2,389.25	- 786.75
5/89	5,484.25	4,825.25	- 659	- 1,445.75
6/89	3,657.50	4,826.50	+ 1,169	- 276.75
7/89	3,955.75	4,079.75	+ 124	- 152.75
8/89	4,354.75	3,502.50	- 852.25	- 1,005
9/89	5,821	5,488.25	- 332.75	- 1,337.75
10/89	4,803.50	4,150	- 653.50	- 1,991.25
11/89	6,832	6,085.50	- 746.50	- 2,737.75
12/89	2,889.25	2,169	- 720.25	- 3,458

Schedule B

<u>Date</u>	<u>Cash Withdrawn</u>
2/17/88	\$688
2/22/88	75
2/22/88	50
2/22/88	10
5/29/88	440
6/10/88	956.25
6/14/88	30
6/28/88	55
7/12/88	95
7/16/88	40
8/7/88	120
8/9/88	1,000
8/11/88	240
10/13/88	450
11/88	150
11/28/88	334
2/4/89	10
5/22/89	4
6/12/89	220
6/14/89	567
6/20/89	159.50
6/28/89	330
7/28/89	410
9/27/89	567
10/30/89	312
6/25/90	25
2/4/91	51