

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

ROBERT P. APPLE,

a Justice of the Pawling Village Court,
Dutchess County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Nina M. Moore
Honorable Karen K. Peters
Richard A. Stoloff, Esq.

APPEARANCES:

Robert H. Tembeckjian (Roger J. Schwarz, Of Counsel) for the Commission

Honorable Robert P. Apple, *pro se*

The respondent, Robert P. Apple, a Justice of the Pawling Village Court,
Dutchess County, was served with a Formal Written Complaint dated October 25, 2011,
containing one charge. The Formal Written Complaint alleged that respondent operated a

motor vehicle after consuming a quantity of alcohol that elevated his blood alcohol content to a level in excess of the legal limit. Respondent filed an Answer dated December 13, 2011.

On January 17, 2012, the Administrator and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On January 26, 2012, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Pawling Village Court, Dutchess County, since 1991. His current term expires on December 6, 2013. He was admitted to the practice of law in New York in 1984 and has been self-employed in the private practice of law for approximately 20 years.

2. On November 26, 2009, respondent consumed a number of alcoholic “cocktails” at his home. Sometime after consuming these cocktails, respondent drove his automobile, a Ford Focus, to a supermarket in Patterson, New York.

3. At approximately 1:57 PM, at the intersection of East Main Street and State Route 22 in the Village of Pawling, respondent drove his vehicle into the rear end of an automobile being operated by Oddny P. Olson, who resides in Stormville, New York. At the time of the accident, Ms. Olson’s vehicle was stopped at a traffic light. Respondent’s vehicle struck Ms. Olson’s vehicle with sufficient force to cause her

eyeglasses to fly off her face and for the bolts securing respondent's license plate to become embedded in Ms. Olson's vehicle's bumper.

4. A Sheriff's Deputy dispatched to the scene observed that respondent's eyes were glassy, that he staggered while walking and that he swayed while standing. The Deputy also detected the odor of alcohol on respondent's breath.

5. Respondent failed a field sobriety test administered at the scene.

6. Respondent was arrested and taken to the Pawling substation of the Dutchess County Sheriff's Department. At approximately 3:35 PM, nearly two hours after the accident, respondent was given a breathalyzer test, which indicated a blood alcohol content of .21%, more than two and a half times the legal limit of .08%.

7. Respondent was charged with Aggravated Driving While Intoxicated in violation of Vehicle and Traffic Law ("VTL") Section 1192(2-a), Driving While Intoxicated ("DWI") in violation of VTL Section 1192(2) and (3), and Following Too Closely in violation of VTL Section 1129(a).

8. On or about February 22, 2010, respondent appeared before Justice John D. Crodelle in the North East Town Court and pled guilty to DWI, a class "A" misdemeanor, in full satisfaction of all the charges.

9. On or about February 22, 2010, respondent was sentenced to a conditional discharge and directed to pay a \$500 fine and participate in a "Drunk Driver Program." Judge Crodelle also revoked respondent's license to operate a motor vehicle for a period of six months.

Mitigating Factors:

10. Respondent has expressed contrition for his actions. He also retained Martin D. Lynch, MS, a Licensed Professional Counselor specializing in alcohol and substance abuse, to evaluate respondent's consumption of alcohol before driving on November 26, 2009. Mr. Lynch concluded that it was an "isolated event" and that further counseling was not needed. Notwithstanding this opinion, respondent enrolled in, and regularly attends Alcoholics Anonymous meetings, and is receiving "preventative counseling."

11. There is no indication that respondent invoked his judicial office to secure favorable treatment at any time during his encounters with law enforcement authorities or others in connection with this incident.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.4(A)(2) and 100.4(A)(3) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent violated his ethical obligation to respect and comply with the law and endangered public safety by operating a motor vehicle after consuming a significant quantity of alcohol, resulting in a minor accident and his conviction for

Driving While Intoxicated. Such conduct is inconsistent with a judge's obligation to maintain high standards of conduct at all times, both on and off the bench (Rules, §§100.1, 100.2[A]).

Respondent should have recognized that driving after consuming "a number of alcoholic 'cocktails'" created a significant risk to the lives of others. Ignoring the risk of such behavior, he operated his vehicle notwithstanding that his blood alcohol content was well above the legal threshold for impairment. While it is fortunate that his behavior did not result in serious injury, his conduct resulted in an accident in which his car struck a vehicle stopped at a traffic light. After failing a field sobriety test, he was taken to the police station, where a breathalyzer test taken almost two hours after the accident showed a .21% blood alcohol content, more than twice the .08% legal limit. He later pled guilty to Driving While Intoxicated, a misdemeanor, in satisfaction of the charges against him. By violating the law which he is called upon to apply in his own court, respondent engaged in conduct that undermines his effectiveness as a judge and brings the judiciary as a whole into disrepute.

In determining an appropriate disposition for such behavior, the Commission in prior cases has considered mitigating and/or aggravating circumstances, including the level of intoxication, whether the judge's conduct caused an accident or injury, whether the conduct was an isolated instance or part of a pattern, whether the judge was cooperative during arrest, whether the judge asserted his or her judicial office and sought special treatment, and the need and willingness of the judge to seek treatment.

See, e.g., Matter of Maney, 2011 Annual Report 106 (judge, convicted of Driving While Ability Impaired [“DWAI”], made an illegal U-turn to avoid a sobriety checkpoint, delayed taking a breathalyzer test and repeatedly invoked his judicial office while requesting “professional courtesy” and “consideration” [censure]); *Matter of Martineck*, 2011 Annual Report 116 (DWI conviction, based on a blood alcohol content of .18%, after the judge drove erratically and hit a mile marker post [censure]); *Matter of Burke*, 2010 Annual Report 110 (DWAI conviction after causing a minor accident; judge was cooperative during the arrest and did not assert her judicial office [censure, in part for additional misconduct]); *Matter of Mills*, 2006 Annual Report 218 (though acquitted of DWI, judge operated a motor vehicle after consuming alcoholic beverages, “vehemently” protested her arrest and made offensive statements to the arresting officers [censure]); *Matter of Pajak*, 2005 Annual Report 195 (DWI conviction after causing a property damage accident [admonition]); *Matter of Stelling*, 2003 Annual Report 165 (two alcohol-related convictions [censure]); *Matter of Burns*, 1999 Annual Report 83 (DWAI conviction [admonition]); *Matter of Henderson*, 1995 Annual Report 118 (DWI conviction; judge referred to his judicial office during the arrest and asked, “Isn’t there anything we can do?” [admonition]); *Matter of Siebert*, 1994 Annual Report 103 (DWAI conviction after causing a three-car accident [admonition]); *Matter of Innes*, 1985 Annual Report 152 (DWAI conviction; judge’s car caused damage to a patrol car while backing up [admonition]); *Matter of Barr*, 1981 Annual Report 139 (two alcohol-related convictions; judge asserted his judicial office and was abusive and uncooperative during

his arrests, but had made “a sincere effort to rehabilitate himself” [censure]; *Matter of Quinn*, 54 NY2d 386 (1981) (two alcohol-related convictions and other non-charged alcohol-related incidents; judge was uncooperative and abusive to officers during his arrest and repeatedly referred to his judicial position [removal reduced to censure in view of the judge’s retirement]). In the wake of increased recognition of the dangers of driving while impaired by alcohol and the toll it exacts on society, alcohol-related driving offenses have been regarded with increasing severity.

In this case, we note that there is no indication that respondent invoked his judicial office in an attempt to secure favorable treatment (*compare, Matter of Maney, supra*). The record further reveals that although an evaluation determined that the incident was an “isolated event,” respondent has sought “preventative counseling” and attends AA meetings. Given the totality of the circumstances presented here, we conclude that the sanction of censure is appropriate.

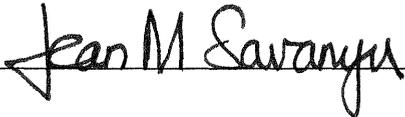
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen, Mr. Emery, Mr. Harding, Ms. Moore, Judge Peters and Mr. Stoloff concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State
Commission on Judicial Conduct.

Dated: January 31, 2012



A handwritten signature in black ink, reading "Jean M. Savanyu", is written over a horizontal line. The signature is cursive and includes a stylized initial "J".

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct