

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

THOMAS W. BALDWIN,

a Justice of the Cairo Town Court,
Greene County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Cheryl L. Randall, Of Counsel) for the
Commission

Honorable Thomas W. Baldwin, *pro se*

The respondent, Thomas W. Baldwin, a Justice of the Cairo Town Court,
Greene County, was served with a Formal Written Complaint dated March 5, 2008,

containing four charges. The Formal Written Complaint alleged that respondent improperly delayed three small claims actions and engaged in an improper *ex parte* communication in a landlord-tenant case. Respondent filed an answer dated April 4, 2008.

On July 22, 2008, the Administrator of the Commission 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 admonished and waiving further submissions and oral argument.

On July 31, 2008, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent is not an attorney. He has served as Cairo Town Justice for more than 25 years, having assumed his judicial position on January 1, 1982. His current term began on January 2, 2006, and will expire on December 31, 2009.

As to Charge I of the Formal Written Complaint:

2. On August 31, 1998, Fabrizio Fuel (a corporation) sued Kenneth Kligerman in Cairo Town Court for recovery of an allegedly unpaid balance of \$1,598.06 for fuel delivery. Plaintiff was represented by David Shults, Esq., of Shults and Shults, P.C.

3. By letter dated October 7, 1998, respondent set a trial date for October 13, 1998.

4. By letter dated October 13, 1998, a paralegal from plaintiff's attorney's office wrote to respondent stating that Mr. Shults was requesting an adjournment of the trial date and asking respondent to notify the defendant regarding the adjournment. The letter also indicated that Mr. Shults would contact the court for another trial date. The letter was not copied to the defendant.

5. During the next three years, the plaintiff never requested another trial date. Respondent never took any further action to reschedule the matter.

6. Three years later, on November 28, 2001, attorney Michael Esslie wrote to the court on behalf of the plaintiff inquiring as to the status of the action.

7. By letter dated December 18, 2001, respondent generated a written notice of a hearing to be scheduled for January 8, 2002. Although it lists the addresses of each party, the notice was copied only to the plaintiff.

8. On January 21, 2002, Mr. Esslie filed a Proposed Order, stating that the defendants had not appeared at trial on January 8, 2002, that plaintiff had given "due proof" on the issue of damages and that the court had assessed the damages at \$1,598.06.

9. On January 25, 2002, respondent signed the Order.

10. On March 19, 2002, Mr. Esslie filed a default judgment with the County Clerk. On the same day, the defendant told respondent, while in court on another matter, that he had never received notice of the January 8, 2002 hearing date in *Fabrizio Fuel v. Kligerman*.

11. On March 26, 2002, Mr. Esslie sent a letter addressed to the Cairo

Town Court Clerk, stating that he learned the judgment debtor had raised the issue of notice and that he would not oppose a proper motion to vacate the default judgment provided the judgment debtor would agree to no further adjournments of the trial date.

12. Mr. Esslie's March 26, 2002 letter was not copied to the defendant. Respondent never received Mr. Esslie's March 26, 2002 letter as it was addressed to the court clerk.

13. On April 22, 2002, after checking the court file and noting that no summons or Affidavit of Service had been mailed to the defendant, respondent vacated the default judgment *sua sponte*. Respondent also set a new trial date for May 14, 2002.

14. On May 7, 2002, the defendant filed a motion to dismiss the complaint as abandoned. On May 9, 2002, respondent sent notice to both parties that the trial date would be adjourned to June 11, 2002.

15. On June 11, 2002, Mr. Esslie filed an affidavit in opposition to the motion to dismiss, noting that "all that remains is for the court to rule on the motion."

16. On June 25, 2002, the defendant filed a corrected motion to dismiss, correcting one numbered provision of the CPLR.

17. To date, respondent has failed to rule on the May 2002 motion to dismiss and has failed to correspond with the parties since that time.

As to Charge II of the Formal Written Complaint:

18. On September 5, 2000, respondent presided over a trial in *Veverka v. Burstell*, a small claims action for non-payment of \$3,000 for the installation of a modular

home, as to which the defendant counterclaimed for \$3,000 for alleged defects.

19. On September 9, 2000, upon consent of the parties, respondent made a post-trial visual inspection of the premises in question and determined there was still outstanding work to be completed.

20. On or about September 23, 2000, the parties sent additional post-trial materials to the court.

21. Respondent has lost or misplaced the file associated with the case and, to date, has failed to issue a decision in the matter.

As to Charge III of the Formal Written Complaint:

22. On August 13, 2002, respondent's co-judge awarded the claimant in *Chubb v. Palson* a default judgment in a small claims action for an unreturned deposit in the amount of \$855.

23. On March 12, 2003, the claimant's attorney, Michael Esslie, served an information subpoena upon the judgment debtor.

24. On May 27, 2003, Mr. Esslie filed a notice of motion to punish for contempt for the judgment debtor's noncompliance with the information subpoena.

25. On June 24, 2003, respondent presided over a contempt proceeding. While the judgment debtor responded to the majority of questions posed by the information subpoena, respondent ordered him to provide additional information to the claimant prior to the end of June 2003, regarding ownership of a snowmobile.

26. On July 8, 2003, Mr. Esslie sent a letter to respondent stating that the

judgment debtor had not provided the additional information pertaining to the snowmobile and requesting that the debtor be incarcerated for contempt.

27. On July 14, 2003, respondent signed an Order to Show Cause requiring the judgment debtor to appear in court on July 22, 2003, unless he provided the requested information.

28. On July 21, 2003, Mr. Esslie wrote to respondent to ask whether his attendance in court for the Order to Show Cause hearing was mandatory and to state that he would not be in attendance if it was not. Respondent orally advised Mr. Esslie that he did not have to appear for a hearing.

29. On July 25, 2003, Mr. Esslie wrote to respondent, informing him that the defendant had still refused to supply the requested information or to pay off the judgment. He further asked respondent to advise him of the court's decision on the contempt motion.

30. To date, respondent has failed to issue a decision on the motion for contempt. Nor has he taken any other action in connection with the proceeding.

31. Respondent chose not to find the defendant in contempt or incarcerate him because he believed that the unresolved issue of the snowmobile could have been determined "very easily" by counsel. He has not communicated his decision to the parties.

As to Charge IV of the Formal Written Complaint:

32. On November 9, 2004, respondent presided over a trial in *Fava v.*

Schnur, a summary proceeding to recover possession of real property by evicting tenants who were renting the subject premises with an option to buy.

33. On November 15, 2004, respondent signed a warrant of eviction awarding delivery and possession of the premises to the petitioners by December 28, 2004, along with the sum of \$2,600.

34. On January 20, 2005, the warrant was served upon the tenants.

35. On or about January 21, 2005, respondent signed an order staying the warrant of eviction until February 1, 2005. The order indicates that it was based upon the “oral application of Jens Lobb,” attorney for the respondents, and “on telephone notice” to Mr. Esslie’s law office, which was representing the petitioners.

36. On the same day, January 21, 2005, Mr. Esslie wrote to respondent objecting to the fact that there was no motion for a stay before the court and that he had had no opportunity to object to the stay.

37. Respondent failed not only to provide proper notice of the tenants’ application for an order staying the eviction to the petitioners, but also to require the tenants to make a deposit with the court, as required by Section 751 of the Real Property Actions and Proceedings Law.

38. On February 7, 2005, Mr. Esslie wrote to the Greene County Sheriff’s office withdrawing the warrant of eviction. Shortly thereafter, the tenants purchased the property from the petitioner.

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(B)(1), 100.3(B)(6) and 100.3(B)(7) 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. Charges I through IV of the Formal Written Complaint are sustained, and respondent’s misconduct is established.

The record establishes that respondent was responsible for significant delays in three small claims actions that were filed in his court. In one case respondent failed to issue a decision after a hearing, apparently because of a lost file; in another case he failed to rule on a motion to dismiss; and in a third case he failed to rule on a request for a contempt finding. These delays, in cases that have been pending for several years, deprived the parties of the opportunity to have their claims resolved in a timely manner. *See Matter of Scolton*, 2008 Annual Report 209 (Comm on Judicial Conduct) (delays in scheduling a hearing and issuing decisions in six small claims actions); *Matter of Robichaud*, 2008 Annual Report 205 (Comm on Judicial Conduct) (poor management resulting in delayed decisions and failure to report the delays to court administrators as required); *Matter of Leonard*, 1986 Annual Report 137 (Comm on Judicial Conduct) (delays in 14 small claims actions, despite numerous calls and letters from the litigants).

The ethical standards require every judge to dispose of court matters “promptly, efficiently and fairly” (Rules, §100.3[B][7]). The “informal and simplified” procedures for small claims are intended to provide litigants with an efficient and just resolution to their legal disputes (Uniform Justice Court Act §1804). This goal is

thwarted when cases are unduly delayed through no fault of the parties. Respondent has acknowledged his responsibility for the delayed matters.

It was also improper for respondent to stay a warrant of eviction in a landlord-tenant case based upon an *ex parte* communication and to fail to require the holdover tenant to make a deposit with the court, as required by law. A judge is required to maintain professional competence in the law and to accord all legally interested persons or their attorney the right to be heard according to law (Rules, §§100.3[B][1] and 100.3[B][6]).

In admonishing respondent, who has served as a judge since 1982, we note that he has acknowledged his misconduct and that his derelictions, as depicted in the record before us, appear to be relatively isolated and limited to the matters described herein.

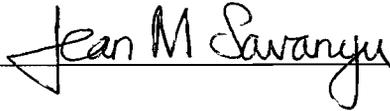
By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

Judge Klonick, Mr. Coffey, Mr. Belluck, Ms. DiPirro, Mr. Emery, Mr. Harding, Ms. Hubbard, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

CERTIFICATION

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

Dated: August 22, 2008



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" that loops back to the left.

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