

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

RAYMOND R. BARLAAM,

a Justice of the Ossining Village Court,
Westchester County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Honorable Jill Konviser
Nina M. Moore
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Robert H. Tembeckjian and Brenda Correa,
Of Counsel) for the Commission

Honorable Raymond R. Barlaam, *pro se*

The respondent, Raymond R. Barlaam, a Justice of the Ossining Village
Court, Westchester County, was served with a Formal Written Complaint dated July 15,

2009, containing one charge. The charge alleged that respondent failed to schedule or re-schedule trials in a timely manner in more than 500 traffic cases, resulting in lengthy delays. Respondent filed a verified Answer dated September 18, 2009.

On February 24, 2010, 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 March 4, 2010, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a part-time Justice of the Ossining Village Court, Westchester County, since 1983. Respondent was admitted in 1975 to the practice of law in the State of New York.

2. From 2003 to 2008, as an Ossining Village Court Justice, respondent maintained a policy of scheduling trials based solely on the availability of the individual issuing police officers for the expediency of the Ossining Police Department and for the financial benefit of the Village of Ossining. As a result, respondent failed to efficiently and promptly schedule and reschedule trials in more than 500 traffic matters, and these matters languished without resolution in his court for as long as five years and five months.

3. The court scheduled weekly Vehicle and Traffic trials on Thursday

afternoons between the hours of 1:00 P.M. to 4:30 P.M.

4. From 2003 to 2008, all matters in respondent's court were catalogued in a case-tracking system based upon the individual issuing officer's name, and they were assigned trial dates based upon each officer's availability for court, as determined by whether the officer had been assigned to a day shift.

5. Pursuant to respondent's policy and practice, his court clerk obtained the schedule of each officer in advance of a court appearance to determine whether the officer was on duty for the day shift. The clerk would then schedule or reschedule the court appearance to coincide with the officer's availability during a day shift. The purpose of the court's scheduling practice was to enable the police department to reduce overtime costs.

6. As a result of respondent's policy, over 500 traffic cases were not adjudicated for as long as five years and five months because the issuing officers were either not assigned to work the day shift or were unavailable due to injuries or illness. In the case of one officer, his cases were not heard because he was activated for military service and was therefore not available for trial.

7. The following officers were unavailable for the following periods due to injury or illness: Officer Sylvester (November 2006 to September 2007), Officer Demilia (June 2007 to October 2007), Officer Rzyz (July 2007 to February 2008) and Officer Carpenter (December 2007 to January 2008). The following officer was unavailable for the following period due to his being activated for military duty: Officer

Kastunis (October 2003 to March 2005).

8. The cases for which these officers were responsible are noted in the schedules annexed to the Agreed Statement of Facts.

9. Without comment on whether the delays due to injury, illness and military leave were appropriate as a matter of law, the Administrator did not consider the time periods and cases referred in paragraphs 7 and 8 above as delays to be held against respondent for purposes of this public discipline.

10. Respondent acknowledges that his blanket policy of scheduling cases solely on the basis of the officers' schedules created a bias and/or the appearance of bias in favor of the police department and was detrimental to the litigants, who were forced to wait years for their day in court.

Factors in Mitigation

11. There is no indication that any individual defendant's driver's license was suspended due to respondent's blanket practice of scheduling or postponing trials based upon the shift to which the police department assigned the issuing officer.

12. As a result of the Commission's inquiry, respondent has discontinued his blanket scheduling policy and practice. He now calendars matters in a timely fashion, without necessarily accommodating the police officers' schedules, and he considers requests for adjournment on a case by case basis.

13. As a result of the Commission's inquiry, respondent has disposed of virtually all of the approximately 500 cases at issue, by conducting trials, accepting guilty

pleas or entertaining motions to dismiss by the prosecutor.

14. Respondent now recognizes that his previous blanket scheduling policy was no excuse for the numerous, lengthy delays that resulted and that were *inter alia* inconsistent with his obligations to be and appear impartial and to dispose of judicial matters promptly, efficiently and fairly.

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)(4), 100.3(B)(7) and 100.3(C)(2) 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.

The ethical standards require every judge to dispose of court matters “promptly, efficiently and fairly” (Rules, §100.3[B][7]). As a result of respondent’s policy of scheduling trials based solely on the availability of the issuing police officer, more than 500 traffic matters languished without resolution in respondent’s court for as long as five years and five months. The inordinate delays resulting from this practice, in which hundreds of litigants were deprived of a timely adjudication of their cases, were detrimental to the proper administration of justice in respondent’s court. *See, Matter of Scolton*, 2008 Annual Report 209 (judge, *inter alia*, delayed scheduling a hearing in six small claims cases).

Most of the delays in this record ranged from two to three years. While some of the delays were attributable in part to the officers' unavailability due to injuries, illness or military service, we note that those absences accounted for a relatively insignificant part of the delays. It appears that, for the most part, delays were caused because cases were not scheduled unless the officer was on duty on the afternoon when respondent normally scheduled traffic trials. The resulting delays were excessive and unwarranted.

Respondent has acknowledged that his procedures, which were intended to reduce police overtime costs, "created a bias and/or the appearance of bias in favor of the police department" (Agreed Statement, par. 10). Such financial considerations do not justify a practice in which many litigants were forced to wait years for their day in court. Excessive delays could also be detrimental to justice in other respects. Such delays might adversely affect the prosecution of cases, since police officers could not reasonably be expected to recall a traffic stop from years earlier. Some defendants, whose licenses were subject to revocation upon conviction if they were repeat offenders, may have been permitted to remain on the roads while the adjudication of their cases was delayed. As a result, public confidence in the fair and prompt administration of justice is eroded.

In mitigation, we note that respondent recognizes that his scheduling policy was no excuse for the resulting delays and that his practice was inconsistent with his obligation to be and appear impartial and to dispose of judicial matters promptly, efficiently and fairly. Respondent now calendars all matters in a timely fashion and he

has disposed of virtually all of the delayed matters.

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

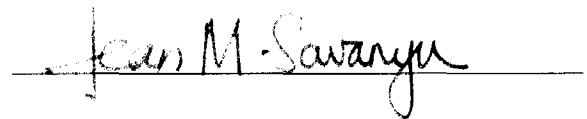
Judge Klonick, Mr. Coffey, Mr. Belluck, Mr. Emery, Mr. Harding, Ms. Hubbard, Judge Konviser, Ms. Moore and Judge Ruderman concur.

Judge Peters was not present.

CERTIFICATION

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

Dated: March 15, 2010

A handwritten signature in cursive script, reading "Jean M. Savanyu", is written over a horizontal line.

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