

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

STEPHEN H. BROWN,

a Justice of the Junius Town Court,
Seneca County.

DETERMINATION

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the Commission
Honorable Stephen H. Brown, *pro se*

The respondent, Stephen H. Brown, a Justice of the Junius Town Court,
Seneca County, was served with a Formal Written Complaint dated August 21, 2007,
containing one charge. The Formal Written Complaint alleged that in connection with a

landlord-tenant dispute respondent engaged in an *ex parte* communication and sent an intimidating letter to the tenant without any lawful basis. Respondent filed an answer on October 20, 2007.

On November 19, 2007, 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 December 6, 2007, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Junius Town Court since January 1, 2006. He is not an attorney. He was employed for 36 years as an independent contractor serving mainframe computers. He now runs a business repairing furniture and restoring antique furniture.

2. Respondent and Stephen Smith are volunteer firefighters in the Town of Junius. They are acquainted with each other through that activity but are not personal friends.

3. On October 26, 2006, respondent was scheduled to hear *Stephen Smith v. Kimberly Silbernagel*, a summary proceeding for eviction and nonpayment of rent over a trailer located in the Town of Junius.

4. Prior to the scheduled hearing, the defendant moved out of the

trailer, and the parties spoke privately and settled the dispute. The defendant orally agreed to pay the plaintiff \$550 by December 1, 2006. Neither party was represented by counsel.

5. The parties advised respondent on October 26, 2006, that they had settled the matter and told him of Ms. Silbernagel's oral agreement to pay Mr. Smith \$550 by December 1, 2006. Therefore, no hearing was held. The oral settlement agreement between the parties was never memorialized, and respondent did not issue a decision, order or judgment in the matter. Neither party had counsel with them before respondent.

6. Prior to this proceeding, respondent had presided over only one other summary proceeding for eviction.

7. On the afternoon of December 1, 2006, Mr. Smith went to respondent's home in the Town of Junius and told him he had not received the \$550 from Ms. Silbernagel. Mr. Smith asked for respondent's assistance in obtaining payment. Respondent told Mr. Smith that he would contact Ms. Silbernagel.

8. On December 13, 2006, respondent composed and sent to Ms. Silbernagel a handwritten letter on court stationery, which is attached as Exhibit A to the Agreed Statement of Facts, stating *inter alia* that he knew where she lived and that if she did not contact him with a plan for paying Mr. Smith, respondent could take various actions against her, such as ordering the suspension of her operator's license, issuing a warrant for her arrest, garnishing her wages and sending her to jail.

9. Respondent composed the letter off-the-cuff, without assistance from Mr. Smith or anyone else. His purpose was to convince Ms. Silbernagel to live up to her

oral representation in his court that she would pay Mr. Smith \$550, as agreed, in settlement of the lawsuit.

10. Respondent recognizes that it was improper for him to send a threatening letter to Ms. Silbernagel as a method of enforcing the oral agreement she had reached with Mr. Smith.

11. Respondent had been on the bench for ten months at the time of this episode. He did not realize then but recognizes now that Section 1812 of the Uniform Justice Court Act sets forth the procedures for a judgment creditor to enforce a small claims judgment in his court. Respondent also now recognizes that, in the absence of a judgment or other enforceable court order, or any other formal application for relief, there was no basis for him to intervene in this matter.

12. As of the date of this Agreed Statement of Facts, the dispute between Mr. Smith and Ms. Silbernagel has not been resolved. There have been no further proceedings or discussions between them, and there has been no judgment or other adjudication rendered. In the event there are further proceedings in connection with the dispute, respondent will disqualify himself from any involvement.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(A), 100.3(B)(3), 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. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent abused his judicial power by sending a threatening letter in a landlord-tenant dispute in an attempt to enforce an oral settlement agreement.

Respondent acted without a lawful basis based on the landlord's *ex parte* request for assistance in obtaining payment.

A month after the parties in an eviction proceeding advised respondent that their dispute had been settled, the landlord contacted respondent, told him that the tenant had not paid the agreed-upon amount, and asked for assistance in collecting the payment. Based on the landlord's request, respondent attempted to coerce the tenant into paying the debt by sending a letter on court stationery, stating that she "must" contact the court within a week "with a payment plan." Respondent's letter stated further that if the tenant failed to do so, "remember I know where you live" and "N.Y. state law allows the court many options. Suspensions of all licenses – Warrants – Wage Garnish – Jail."

Respondent's threat of incarceration for nonpayment of a civil debt was unenforceable. *See, Matter of Hamm*, 2003 Annual Report 123 (Comm on Judicial Conduct). Even if there had been a decision or judgment, respondent had no authority to arrest a litigant for non-payment of a civil debt, and it was improper even to imply that non-payment of the debt was a criminal matter. Nor did he have authority to impose any other sanctions in the absence of a judgment or decision. It is apparent that the sole purpose of making such statements was to intimidate the tenant into complying with the

oral agreement. By his conduct, respondent violated his obligation to discharge his judicial duties in a fair and judicious manner and created the appearance that the landlord, who was a fellow volunteer firefighter in the town, was in a special position to influence respondent, contrary to Section 100.2(C) of the Rules.

In considering an appropriate sanction, we note that at the time of these events respondent had served as a judge for less than a year. In further mitigation, we note that respondent has stipulated that his conduct was improper and that he will disqualify himself from any further proceedings in connection with this matter.

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

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

Mr. Felder was not present.

CERTIFICATION

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

Dated: December 12, 2007

A handwritten signature in black ink that reads "Jean M. Savanyu". The signature is written in a cursive style and is positioned above a horizontal line.

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