

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

C. ERNEST BROWNELL,

a Justice of the Junius Town Court,  
Seneca County.

---

THE COMMISSION:

Lawrence S. Goldman, Esq., Chair  
Honorable Frances A. Ciardullo, Vice Chair  
Stephen R. Coffey, Esq.  
Colleen C. DiPirro  
Richard D. Emery, Esq.  
Raoul Lionel Felder, Esq.  
Christina Hernandez, M.S.W.  
Honorable Daniel F. Luciano  
Honorable Karen K. Peters  
Alan J. Pope, Esq.  
Honorable Terry Jane Ruderman

APPEARANCES:

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

Trevett Lenweaver & Salzer (By Lawrence J. Andolina) for Respondent

The respondent, C. Ernest Brownell, a justice of the Junius Town Court,  
Seneca County, was served with a Formal Written Complaint dated November 12, 2003,

containing one charge. Respondent filed an answer dated January 15, 2004.

On August 31, 2004, the administrator of the Commission, respondent's counsel 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. The Commission approved the agreed statement on September 23, 2004. Each side submitted memoranda as to sanction. Oral argument was waived.

On November 4, 2004, the Commission considered the record of the proceeding and made the following determination.

1. Respondent has been a justice of the Junius Town Court, Seneca County, since 1981. Respondent is not an attorney.

2. On July 18, 2002, Mark C. Jameson filed a small claim against Paul Hefferon in the Junius Town Court seeking judgment in the amount of \$1,165 for damage allegedly done to Mr. Jameson's automobile.

3. On August 22, 2002, respondent scheduled a hearing in the case for September 5, 2002, but did not send the Notice of Claim or a Notice of Hearing to Mr. Hefferon.

4. On September 5, 2002, Mr. Jameson appeared before respondent. Mr. Hefferon did not appear, nor did anyone on his behalf. Nevertheless, at respondent's direction, Mr. Jameson gave testimony concerning his claim. Respondent advised Mr. Jameson that he would separately obtain Mr. Hefferon's testimony.

5. At some time between September 5, 2002, and January 31, 2003,

respondent happened to meet Mr. Hefferon on a local street and advised him about the *Jameson* claim. Respondent took no action to provide Mr. Hefferon with the Notice of Claim or schedule an adjourned hearing date. Respondent was aware that this discussion did not provide Mr. Hefferon with his right to present a defense to the claim or to testify on his own behalf.

6. On January 31, 2003, respondent issued a decision in favor of Mr. Jameson and awarded him \$365.60. Respondent never notified Mr. Hefferon that he had ruled in Mr. Jameson's favor.

7. On January 31, 2003, respondent issued Mr. Jameson a check in the amount of \$365.60, drawn on the town court bank account, notwithstanding that respondent had not collected any funds from Mr. Hefferon concerning the matter. Respondent issued the check in an attempt to remedy the harm caused to Mr. Jameson by respondent's failure to have acted properly and promptly in the matter. Respondent knew that it was improper to use courts funds in such a manner.

8. Respondent does not have a social, personal, professional or political relationship with either party. He has no excuse for his actions in this case, other than the time demands placed upon him by his personal employment. After learning of the Commission's investigation, respondent reimbursed the court \$365.60 from his personal funds on October 14, 2003.

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(A), 100.3(B)(1),

100.3(B)(6) and 100.3(C)(1) of the Rules Governing Judicial Conduct 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's misconduct demonstrates a serious misunderstanding of fundamental principles of law and of his responsibilities as a judge.

From start to finish, respondent mishandled the *Jameson* case, committing a series of errors that violated basic concepts of notice and an opportunity to be heard. After scheduling a hearing, respondent failed to send the Notice of Claim to the defendant; thus, respondent's court never had jurisdiction over the defendant, who learned of the case only months later, in a chance encounter with respondent. On the scheduled hearing date, respondent took *ex parte* testimony from the claimant and told the claimant that he would take the defendant's testimony separately. Respondent took no further action in the case until five months later when, without ever hearing from the defendant or conducting a proper trial, he issued a decision awarding the claimant \$365.60. These errors of law were fundamental and constitute judicial misconduct. *See, Matter of McCall*, 2004 Annual Report 135 (Comm. on Judicial Conduct) (judge commenced a hearing and heard evidence in a small claims case before the defendant's arrival at the scheduled time).

After totally mishandling the *Jameson* case and awarding a judgment without any lawful basis, respondent misappropriated court funds to pay the judgment.

Having awarded a judgment that he must have known was unenforceable, respondent made an inexcusable decision to use court funds to pay the claimant the amount awarded. Without collecting any funds from the defendant or even notifying him of the judgment, respondent issued a check from the court account to pay the claimant in an ill-conceived effort to remedy the harm caused by his own improprieties. Even though the funds did not go into respondent's own pocket, such an unauthorized use of official monies constitutes egregious misconduct.

Town and village justices are responsible for monies collected in the performance of their duties and entrusted to their care (*see*, State Compt. Op. 79-285; 22 NYCRR §214.9; Town Law §27; UJCA §§2020, 2021[1]). The mishandling of court funds by a judge constitutes serious misconduct, even when not done for the judge's personal benefit. *Bartlett v. Flynn*, 50 AD2d 401, 404 (4<sup>th</sup> Dept 1976). Monies in a court account, consisting mostly of fines, surcharges and bails collected by the court, can only be withdrawn for purposes permitted by law (22 NYCRR §214.9[b]). The monies respondent withdrew from the court account were not his to disburse, and created a deficiency for which he was responsible. Significantly, respondent did not reimburse the court, from his personal funds, until more than eight months later, after learning of the Commission's investigation.

In determining an appropriate sanction, we are mindful that removal from office is not normally imposed for conduct that amounts to poor judgment, even extremely poor judgment. *See, Matter of Sims*, 61 NY2d 349, 356 (1984). Here, respondent's misconduct transcends poor judgment. We reject the argument that

respondent's misconduct can be attributed to his unfamiliarity with small claims procedures, the demands of his personal employment and his health problems in 2002. While those factors may have contributed to respondent's delays in handling the *Jameson* case, they do not excuse his misappropriation of court funds. A judge is required to be faithful to the law and maintain professional competence, and the judicial responsibilities of a judge take precedence over all the judge's other activities (Sections 100.3[A] and 100.3[B][1] of the Rules Governing Judicial Conduct). Moreover, having served as a judge since 1981, respondent should be familiar with fundamental principles of law and the appropriate uses of court funds. Indeed, respondent has conceded that he knew it was improper to use court funds in such a manner.

Respondent's misconduct, especially his misappropriation of court monies for an unauthorized purpose, seriously erodes public confidence in his ability to safeguard public monies and to properly administer his court. We conclude that such egregious misconduct "goes beyond 'simple careless inattention to the applicable ethical standards'" and demonstrates that respondent is unfit to serve as a judge. *Matter of Gibbons*, 98 NY2d 448, 450 (2002), quoting *Matter of Steinberg*, 51 NY2d 74, 81 (1980).

We base our determination of removal solely upon the misconduct demonstrated in this record. However, in view of the statements in respondent's brief that respondent "has never before been the subject of a disciplinary action, investigation, or complaint" and has "twenty two years of unblemished service as a Town Court Justice" (Respondent's brief, pp. 4, 11), we are constrained to note that respondent has previously received two letters of dismissal and caution in connection with the performance of his

official duties. We did not consider these two prior letters of dismissal and caution in concluding that respondent should be removed from office.

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

Mr. Goldman, Judge Ciardullo, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

Mr. Coffey and Ms. DiPirro were not present.

#### CERTIFICATION

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

Dated: December 20, 2004

A handwritten signature in black ink, appearing to read "Lawrence S. Goldman", is written over a horizontal line.

Lawrence S. Goldman, Esq., Chair  
New York State  
Commission on Judicial Conduct