

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

BRET CARVER,

a Justice of the Fremont Town Court,
Steuben 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 (Kathleen Martin, Of Counsel) for the Commission

Honorable Bret Carver, *pro se*

The respondent, Bret Carver, a Justice of the Fremont Town Court, Steuben County, was served with a Formal Written Complaint dated June 18, 2009, containing two charges. The Formal Written Complaint alleged that respondent failed to deposit,

report and remit town court funds within the time required by law. Respondent filed an answer dated July 27, 2009.

On September 10, 2009, 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 September 23, 2009, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Fremont Town Court, Steuben County since January 1, 2007. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. From March 2008 to August 2008, as set forth below, respondent failed to deposit approximately \$7,685 in court funds within 72 hours of receipt, as required by Section 214.9(a) of the Uniform Civil Rules for the Justice Courts (22 NYCRR §214.9[a]).

3. From March 3, 2008 to March 24, 2008, respondent received \$1,830 in court funds. Respondent deposited \$1,680 on March 28, 2008; he did not deposit the remaining \$150 until September 2008.

4. From March 29, 2008 to March 30, 2008, respondent received \$450

in court funds that he did not deposit until September 2008.

5. In April 2008 respondent received \$1,295 in court funds that he did not deposit until September 2008.

6. In May 2008 respondent received \$2,850 in court funds that he did not deposit until September 2008.

7. In June 2008 respondent received \$2,190 in court funds that he did not deposit until September 2008.

8. From July 6, 2008 to July 14, 2008, respondent received \$2,015 in court funds. Respondent deposited \$1,925 on July 15, 2008; he did not deposit the remaining \$90 until September 2008.

9. From July 21, 2008 to July 28, 2008, respondent received \$640 in court funds that he did not deposit until September 2008.

10. In August 2008 respondent received \$20 in court funds that he did not deposit until September 2008.

11. Respondent does not have a court clerk. Respondent himself receives court funds, issues receipts, marshals funds for deposit, prepares bank deposit tickets and deposits funds into the court bank account.

12. Between March 2008 and August 2008, the cumulative deficiency of undeposited court funds reached \$7,685. Respondent kept these undeposited funds in a metal cash box in a locked file cabinet in his office at the court. No one else has access to this cabinet.

13. Respondent eventually deposited all of the funds referred to above, and there is no indication that funds were missing or used for inappropriate purposes.

14. Respondent was aware from the time he assumed his position as Fremont Town Court Justice that he was required by law to deposit court funds within 72 hours of receipt. He acknowledged during the Commission's investigation that he was responsible for properly handling and depositing court funds and that he did not perform these duties in an adequate manner.

As to Charge II of the Formal Written Complaint:

15. From March 2008 through August 2008, as set forth in Exhibit 1 to the Agreed Statement of Facts, respondent failed to report and certify receipt of court funds to the Office of the State Comptroller and failed to remit approximately \$11,290 in court funds to the chief fiscal officer of the Town of Fremont within ten days of the month succeeding collection, as required by Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law, and Section 27(1) of the Town Law.

16. Respondent acknowledges that his monthly obligation to report and remit court funds is not complete until: (i) a check for the funds has been delivered to the chief fiscal officer, (ii) the report has been received by the State Comptroller, and (iii) a certification of the report, signed by the judge, is received by the State Comptroller.

17. On July 28, 2008, the State Comptroller issued a notice to the Fremont Town Supervisor to suspend respondent's salary pending the filing of reports,

certifications and remittances for the months of March, April and May 2008.

18. On August 4, 2008, respondent electronically filed his report for the month of March 2008 with the State Comptroller, in which he reported that he had collected \$2,280 in court funds. On the same date, respondent faxed a certification to the State Comptroller that certified that he had collected \$2,655 in court funds for the month of March 2008.

19. Respondent filed his reports for the months of April, May, June, July and August 2008 on September 22, 2008. Respondent submitted certifications with his reports for April and May 2008, but failed to submit certifications with his reports for June, July and August 2008.

20. Respondent faxed his certifications for the months of June, July and August 2008 to the State Comptroller on January 28, 2009, one day after he appeared and testified before the Commission. He filed a corrected certification for the month of March 2008 on January 29, 2009. Respondent's certification to the State Comptroller for March 2008 was received on January 29, 2009, 294 days beyond the time provided by the statutory requirement.

21. Respondent remitted court funds for March 2008 in the amount of \$2,280 to the chief fiscal officer on February 17, 2009, 313 days beyond the time provided by the statutory requirement.

22. Respondent's certification to the State Comptroller for the month of April 2008 was received on September 22, 2008, 135 days beyond the time provided by

the statutory requirement. Respondent remitted court funds for April 2008 in the amount of \$1,135 to the chief fiscal officer on September 29, 2008, 142 days beyond the time provided by the statutory requirement.

23. Respondent's certification to the State Comptroller for the month of May 2008 was received on September 22, 2008, 104 days beyond the time provided by the statutory requirement. Respondent remitted court funds for May 2008 in the amount of \$2,690 to the chief fiscal officer on September 29, 2008, 111 days beyond the time provided by the statutory requirement.

24. Respondent's certification to the State Comptroller for the month of June 2008 was received on January 28, 2009, 222 days beyond the time provided by the statutory requirement. Respondent remitted court funds for June 2008 in the amount of \$2,415 to the chief fiscal officer on September 29, 2008, 81 days beyond the time provided by the statutory requirement.

25. Respondent's certification to the State Comptroller for the month of July 2008 was received on January 28, 2009, 171 days beyond the time provided by the statutory requirement. Respondent remitted court funds for July 2008 in the amount of \$2,655 to the chief fiscal officer on September 29, 2008, 50 days beyond the time provided by the statutory requirement.

26. Respondent's certification to the State Comptroller for the month of August 2008 was received on January 28, 2009, 140 days beyond the time provided by the statutory requirement. Respondent remitted court funds for August 2008 in the

amount of \$20 to the chief fiscal officer on November 28, 2008, 79 days beyond the time provided by the statutory requirement.

27. The State Comptroller ordered payment of respondent's salary resumed on January 30, 2009.

28. Respondent failed to make timely deposits and to report, certify and remit court funds in a timely manner as a result of a new job as an emergency medical technician in the health and safety field at a private company, volunteer commitments with the town's ambulance and fire department, and his efforts to start an online medication management system company. Respondent regrets and apologizes for his conduct and recognizes that his judicial duties take precedence over all other activities.

29. Respondent commits himself in the future to deposit court funds within 72 hours of receipt and to submit his monthly reports and certifications to the State Comptroller, and make remittances to the chief fiscal officer, within the first ten days of the succeeding month.

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) and 100.3(C)(1) 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 and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The handling of official monies is one of a judge's most important responsibilities. Depositing, reporting and remitting such monies promptly, in strict compliance with the statutory mandates, is essential to ensure public confidence in the integrity of the judiciary. The failure to comply with these mandates constitutes misconduct, even if there is no evidence that monies were missing or used for inappropriate purposes. *See Matter of Minogue*, 2009 Annual Report 138 (Comm on Judicial Conduct); *Matter of Hrycun*, 2002 Annual Report 109 (Comm on Judicial Conduct); *Matter of Ranke*, 1992 Annual Report 64 (Comm on Judicial Conduct); *see also Bartlett v. Flynn*, 50 AD2d 401, 404 (4th Dept 1976).

All monies received by the court are required to be deposited "as soon as practicable" and no later than 72 hours after receipt, and reported and remitted to the appropriate authorities by the tenth day of the month following collection (Uniform Civil Rules for the Justice Courts §214.9[a]; Uniform Justice Ct Act §2021[1]; Town Law §27; Vehicle and Traffic Law §1803).

Over a six-month period in 2008, respondent failed to deposit, report and remit court funds in a timely manner as required by law. Over that period, respondent received \$11,290 in official monies but deposited only \$3,605, resulting in a cumulative deficiency of \$7,685 by September 2008. In four of those months, he made no deposits at all, although he had collected a total of \$6,355. During this time, the undeposited funds were kept in a locked file cabinet in respondent's office.

Over the same period, respondent also failed to report and remit these funds to the appropriate officials on a monthly basis, as required by law. The electronic filing procedures, which are intended to make the process more efficient and give localities access to their revenues sooner, require a judge to transmit reports electronically to the Office of the State Comptroller, to submit an appropriate, signed certification, and to send a check for the total amount reported to the chief fiscal officer of the town. Here, the record indicates significant delays by respondent in performing each of these tasks. These derelictions, which led to a six-month suspension of respondent's salary by order of the State Comptroller, resulted in significant delays in processing the monies collected by the court.

Respondent's neglect of these important duties is not excused by the demands of his employment or other activities. A judge's official duties, including the judge's administrative responsibilities, "take precedence over all the judge's other activities" (Rules, §100.3[A]).

In considering the sanction, we note that all the monies collected by respondent have been accounted for and that there is no indication that any monies were missing or used for inappropriate purposes. We also note that respondent has acknowledged his misconduct and commits himself in the future to performing these important duties in a timely manner as required by law.

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

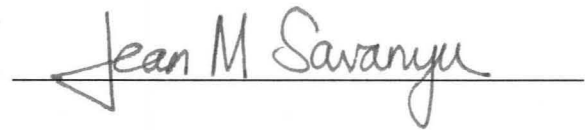
Judge Klonick, Mr. Coffey, Mr. Emery, Mr. Harding, Ms. Hubbard, Judge Konviser, Ms. Moore, Judge Peters and Judge Ruderman concur.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: September 30, 2009

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

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