

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

BRIAN M. DUGAN,

DETERMINATION

a Justice of the Scipio Town Court,
Cayuga County.

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (David M. Duguay, Of Counsel) for the Commission
Bond, Schoeneck & King, PLLC (by Joseph S. Nacca) for the Respondent

The respondent, Brian M. Dugan, a Justice of the Scipio Town Court,
Cayuga County, was served with a Formal Written Complaint dated February 11, 2010,

containing one charge. The Formal Written Complaint alleged that respondent failed to disqualify himself in a matter involving his business tenant and a long-time acquaintance and improperly involved himself in the matter by, *inter alia*, promoting and negotiating a financial settlement. Respondent filed an answer dated April 26, 2010.

On September 16, 2010, 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, recommending that respondent be censured and waiving further submissions and oral argument.

On September 29, 2010, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Scipio Town Court, Cayuga County, since 1992. His current term of office ends on December 31, 2011. He is not an attorney.

2. Respondent owned the premises in which Nana's Bakery and Café ("Nana's") was located, in Scipio Center, New York, and rented the property to Debbie Cook for approximately \$750 per month. Ms. Cook was approximately \$2,500 in arrears to respondent as of December 2008.

3. Lindsley Berry was an employee of Nana's. Respondent was socially acquainted with Ms. Berry for approximately 15 years. Respondent attended high school with Ms. Berry's now-deceased husband.

4. On or about December 19, 2008, respondent received a Warrant Request Form in his court mailbox seeking an arrest warrant for Lindsley Berry on a charge of Petit Larceny.

5. On or about January 26, 2009, respondent met with Onondaga County Sheriff Deputy Joseph Ryan concerning the status of the warrant request for Ms. Berry. Respondent told Deputy Ryan that he needed additional information about the case before he would issue a warrant. At Deputy Ryan's request, respondent agreed to view a surveillance video taken at Nana's depicting the alleged crime.

6. On or about January 31, 2009, respondent met with Deputy Ryan and Ms. Cook at Nana's and viewed the surveillance video. Before viewing the video, Ms. Cook told respondent that Ms. Berry stole money from her restaurant. During and after viewing the video, respondent asked Ms. Cook questions about the procedure for handling money in the restaurant and commented that nothing in the video indicated that a crime had occurred.

7. At the same meeting, respondent suggested to Ms. Cook that she could resolve the matter by entering into a financial settlement with Ms. Berry. Respondent asked Ms. Cook to propose a settlement amount and said that he would forward this amount to Ms. Berry.

8. On or about February 1, 2009, respondent telephoned Michael D'Agostino, a mutual friend of his and Ms. Berry's, described what had transpired between Ms. Cook and Ms. Berry and said that Ms. Cook was willing to settle with Ms.

Berry for several thousand dollars.

9. On or about February 2, 2009, Mr. D'Agostino called respondent and informed him that Ms. Berry rejected the proposed settlement amount. Respondent and Mr. D'Agostino then discussed the fact that Ms. Berry might have to retain an attorney and would likely spend several hundred dollars to do so.

10. On or about February 3, 2009, Mr. D'Agostino called respondent and said that Ms. Berry would pay \$300 if Ms. Cook signed a stipulation resolving the matter. Respondent agreed to present the settlement document and the money to Ms. Cook and to witness Ms. Cook accepting the money and signing the document.

11. On or about February 28, 2009, respondent went to Nana's and presented Ms. Cook with a Stipulation of Settlement and a money order from Ms. Berry for \$300. When Ms. Cook told respondent that \$300 was less than the amount allegedly taken by Ms. Berry, respondent replied that there would be no further offer from Ms. Berry.

12. Respondent signed the Stipulation as a witness and gave the \$300 money order to Ms. Cook.

13. In or about late April 2008, Ms. Cook paid respondent \$1,500 toward her rent arrearage.

Mitigating Factors:

14. Respondent acknowledges that it was inappropriate to intervene in an impending proceeding involving his tenant and a long-time acquaintance. While

respondent intended to act only as a messenger to facilitate the resolution of a conflict, he now recognizes that his *ex parte* communications with the parties and his personal involvement in negotiating the terms of settlement compromised the integrity and independence of the judiciary and created at least the appearance that he used his judicial office for his personal benefit or the benefit of others.

15. Respondent has been cooperative with the Commission throughout its inquiry.

16. Respondent has served as the Justice of the Scipio Town Court for 18 years and has never been disciplined by the Commission.

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(B)(6), 100.3(E)(1), 100.4(A)(1) and 100.4(A)(3) 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 failed to disqualify himself in a criminal matter involving his business tenant and a long-time acquaintance and continued his improper involvement in the matter by suggesting and promoting a financial settlement. Respondent’s actions compromised his impartiality and overstepped the boundaries of his judicial authority.

Since his impartiality “might reasonably be questioned” (Rules, §100.3[E][1]), respondent was required to disqualify himself when he was presented with a request for an arrest warrant in a matter in which (i) the alleged victim was his tenant, (ii) the accused was a long-time social acquaintance, and (iii) the alleged crime had occurred on property owned by the judge. Instead of doing so, respondent told the deputy sheriff that he needed more information before issuing a warrant. While asking for additional information to justify an arrest warrant might be appropriate under other circumstances, in this case, because of respondent’s relationship with the principals and the claim that the crime had occurred on premises he owned, any action taken by respondent was unavoidably tinged with the appearance of partiality. The impropriety of respondent’s involvement was heightened by the fact that his subsequent meeting with the deputy to review the surveillance tape took place on respondent’s property, which was also the scene of the alleged crime.

After opining that there was insufficient indication that a crime had occurred, respondent then suggested and actively promoted a financial settlement. Respondent’s involvement in negotiating a civil settlement in a criminal case overstepped the boundaries of his judicial responsibilities. It is the proper role of a judge to preside in court proceedings, not to mediate disputes out of court. *See, Matter of Glover, 2006 Annual Report 165 (Comm on Judicial Conduct)* (with no case pending, judge attempted to mediate a neighborhood dispute, held *ex parte* meetings with both sides and sent a letter ordering one side to stop engaging in certain conduct or face contempt charges).

Respondent's personal involvement in the negotiations compromised his impartiality and conveyed the appearance that he was promoting the settlement, thereby lending the prestige of judicial office to advance private interests (Rules, §100.2[C]). The fact that he appeared to promote a settlement in which an individual who owed him money would receive compensation compounds the appearance of impropriety.

With nearly two decades of experience as a judge, respondent should have realized that such activity is inconsistent with his judicial role and that he should have avoided any involvement in the matter.

In considering the sanction, we note that respondent has acknowledged his misconduct and has been cooperative throughout the proceedings.

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

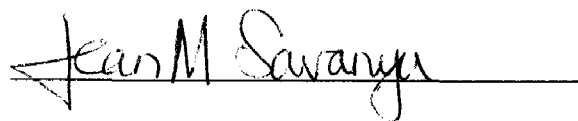
Judge Klonick, Mr. Coffey, Judge Acosta, Mr. Cohen, Mr. Emery, Ms. Hubbard, Ms. Moore, Judge Peters and Judge Ruderman concur.

Mr. Belluck and Mr. Harding were not present.

CERTIFICATION

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

Dated: October 6, 2010

A handwritten signature in cursive script that reads "Jean M. Savanyu". The signature is written over a horizontal line that extends to the right.

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