

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

PAUL M. HENSLEY,

a Judge of the District Court,
Suffolk County.

DETERMINATION

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (Pamela Tishman, Of Counsel) for the Commission

Long, Tuminello, Besso, Seligman, Werner & Sullivan (by David H. Besso)
for the Respondent

The respondent, Paul M. Hensley, a Judge of the District Court, Suffolk
County, was served with a Formal Written Complaint dated October 26, 2010, containing

one charge. The Formal Written Complaint alleged that respondent attended and participated in unlawful, for-profit poker games. Respondent filed an amended Answer dated May 16, 2011.

On June 5, 2012, the Administrator, 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. The Commission had rejected an earlier Agreed Statement.

On June 14, 2012, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Judge of the District Court, Suffolk County, since 2002. His current term expires on December 31, 2014. He was admitted to the practice of law in New York in 1987.

2. During 2008, respondent was an announced candidate for the position of District Court Judge and was actively campaigning for that position.

3. From August 13, 2008, to November 5, 2008, respondent attended and/or participated in numerous for-profit poker games called "Texas Hold 'Em" held at a facility owned and operated by the Fraternal Order of Eagles ("FOE") in Northport, New York.

4. Respondent is a member of the FOE but has never been an officer or otherwise managed its business affairs. It was well known among the membership that

respondent was a judge.

5. From August 13, 2008, to November 5, 2008, the FOE rented its facility on Wednesday evenings, for \$300 per time, to an individual named Frank Servidio, who organized and hosted the poker games on those evenings. On the nights that respondent attended, card games were usually taking place at one or two tables, with a dealer at each table provided by the host. In such games, it is called “raking the pot” when the dealer takes money from the ante or “pot” for the benefit of the “house” or host/organizer.

6. There were tournament games, in which players paid entry fees of \$120, and the evening’s top three or four winners were awarded prizes ranging from \$300 to \$1250, depending on the number of participants. There were also “cash games,” in which participants at the table played against each other for individual stakes, with a minimum buy-in of \$200.

7. The players included members of the FOE and their guests, or guests of Mr. Servidio, the host. Among the players in attendance on one or more occasions was a Suffolk County police officer.

8. While it is a crime under the New York State Penal Law to advance or profit from unlawful gambling activity, and to run (A) a for-profit game in which the dealer “rakes the pot” for the benefit of the “house” or (B) a tournament game where all the entry fees are not paid out in prizes to the players, it is not unlawful to attend gambling events, or to participate as a player.

9. On August 13, 2008, respondent participated in a for-profit tournament card game at the FOE. The total amount of the prizes paid out was less than the amount of entry fees collected from the players; the remaining funds were kept by the “house.” Respondent understood that a cash game was scheduled to start later; however, respondent left the premises prior to the start of the cash game.

10. On August 20, 2008, respondent participated in a for-profit tournament card game at the FOE and observed prizes being paid to tournament winners from the pot. The total amount of prizes paid out was less than the amount of entry fees collected from the players; the remaining funds were kept by the “house.”

11. On September 10, 2008, respondent attended for-profit cash card games at the FOE during which the dealer “raked the pot,” but respondent did not play in such games.

12. Between October 1 and 8, 2008, respondent learned from other card players at the FOE that a Suffolk County police sergeant had come to the facility to investigate a complaint regarding an illegal Texas Hold 'Em poker game and noise. Respondent had not been there at the time. No arrests were made, and no additional action was taken.

13. On October 8, 2008, respondent went to the FOE to play cards. Smoking is not permitted inside the facility. Respondent did not observe anyone smoking cigarettes or marijuana inside or outside the FOE. However, on prior occasions he thought it possible that when some players stepped outside for a break, some may have

smoked marijuana.

14. In the course of conversation on October 8, 2008, during and between card games, respondent and other players commented on the possibility that the police would return to the FOE one day. In that context, respondent said it would be a good idea to “get rid of your pot,” to which one player responded, “I don’t have any,” to which respondent replied, “I’m not suggesting you do.”

15. On October 22, 2008, respondent attended for-profit cash card games at the FOE during which the dealer “raked the pot,” but respondent did not play in such games.

16. On November 5, 2008, respondent arrived at the FOE at approximately 11:45 PM, to celebrate his having been re-elected to District Court the day before. Respondent had been at other election celebrations earlier in the evening, including one at the local Knights of Columbus and one at his campaign manager’s home.

17. Approximately eight other men were present, with a congratulatory ice cream cake in honor of respondent’s re-election.

18. Although others may have been playing poker before respondent arrived, respondent himself did not play. About ten minutes after respondent arrived at the FOE, before the celebratory cake was eaten, four officers from the Suffolk County Police Department arrived and executed a search warrant of the premises.

19. At least some of the officers in attendance already knew respondent was a judge. In response to police officer inquiries that all in attendance identify

themselves and produce identification, respondent showed Detective Anthony Schwartz his New York State Driver's license and judicial identification card. Respondent also asked to speak to the "person in charge" and was directed to Lieutenant William Madigan.

20. Respondent and Lieutenant Madigan spoke in the kitchen of the FOE. Referring to the celebratory cake, respondent said he had been re-elected to the bench the day before, was at the FOE to celebrate, and had not played in any card games that night.

21. Lieutenant Madigan asked respondent if he would be conducting any arraignments that might eventuate from the search warrant then being executed at the FOE. Respondent responded that he was not assigned to arraignments.

22. Lieutenant Madigan asked respondent who was running the gaming tables, and respondent said he did not know because he only just arrived, but the Lieutenant could find out by determining who was sitting in the dealer's chair at each table. Respondent did not know whether one or two tables had been in use for poker before his arrival. Respondent said he knew that many of the people in attendance were members of the FOE.¹

23. While the police on the scene were talking to other players, respondent was approached by a man whom he recognized as a card player from previous

¹ The Administrator withdraws that portion of the Formal Written Complaint alleging that respondent made false statements to the police.

visits to the FOE. Unknown to respondent, the man was an undercover police officer. The man asked what respondent would do if the police asked him questions, and respondent said that he did not want to make a statement.

24. Frank Servidio, the host, was arrested and charged with gambling-related offenses. The charges were eventually disposed of on consent of the District Attorney with an Adjournment in Contemplation of Dismissal and were dismissed on July 23, 2009.

25. Neither respondent nor any of the other players were arrested or charged with any offenses. The police did not accord respondent special consideration or otherwise treat him differently than any of the other players at the FOE.

Additional Factors

26. Respondent's participation in the poker games did not violate any law, and he was not arrested or charged with a crime.

27. Respondent recognizes that his participation in for-profit tournament games and presence at for-profit cash games was inconsistent with his role as a judge and his obligation to respect and comply with the law, because he was voluntarily in the presence of those who *were* violating the law by operating such games. He acknowledges that, at least, he should have left the premises upon observing that illegal games were taking place.

28. Respondent is extremely remorseful and assures the Commission that such lapses in judgment will not recur. Respondent avers that he has not attended

any gambling tournaments or similar events since November 5, 2008.

29. Respondent has never before been disciplined by the Commission.

30. Respondent has submitted significant evidence of his good character.

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), 100.4(A)(2) 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.

Both on and off the bench, judges “are held to higher standards of conduct than members of the public at large and...relatively slight improprieties subject the judiciary as a whole to public criticism and rebuke” (*Aldrich v State Comm. on Judicial Conduct*, 58 NY2d 279, 283 [1983]). As the Court of Appeals has stated:

Standards of conduct on a plane much higher than for those of society as a whole, must be observed by judicial officers so that the integrity and independence of the judiciary will be preserved. A Judge must conduct his everyday affairs in a manner beyond reproach. Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function....

Matter of Kuehnel v. State Comm. on Judicial Conduct, 49 NY2d 465, 469 (1980); *see*,

Rules §§100.1, 100.2(A). Under the facts presented in this record, respondent's participation as a player in unlawful, for-profit poker games violated these standards and reflects adversely on the judiciary as a whole.

While it has been stipulated that respondent's involvement in gambling activities as a player did not violate the law, the person or persons who ran and profited from the games were engaging in criminal conduct, as respondent should have recognized.² Thus, respondent and the other players who participated in the poker games made it possible for the crimes to occur. Significantly, even after learning that a police sergeant had come to the premises to investigate a complaint about the poker games, respondent continued to attend the games. This reckless behavior showed extremely poor judgment. Moreover, since respondent's judicial status was well known at the facility, his presence at and participation in the games gave his judicial imprimatur to this unlawful activity.

Respondent compounded his misconduct by his behavior when the police arrived to execute a search warrant and arrested the individual who organized and hosted the event. During these events, respondent made two gratuitous references to his judicial status, conveying an appearance that he was asserting his judicial position to obtain special treatment. Initially, when asked for identification, he identified himself as a judge by providing his judicial identification card while asking to speak to someone "in

² It is unlawful for a person to "knowingly advance[] or profit[] from unlawful gambling activity" (Penal Law §225.05 [Promoting Gambling in the Second Degree, a Class A misdemeanor]).

charge.” Then, after being directed to another officer, he again referred to his judicial office, volunteering that he had just been re-elected to the bench. By interjecting his judicial status into the incident, respondent conveyed an appearance that he was seeking special consideration because of his judicial office. *See Matter of Werner*, 2003 Annual Report 198 (during a traffic stop, judge gave the officer his judicial ID, which was an improper assertion of his judicial status). In addition, by advising another player (an undercover officer) that he did not want to make a statement to the police, respondent gave legal advice to one of the participants in the incident, which was, in itself, inconsistent with his role as a judge.

In its totality, respondent’s conduct showed insensitivity to the high ethical standards incumbent on judges and detracts from the dignity of judicial office. Such conduct affects public confidence in the integrity of the judiciary (Rules, §§100.4[A][2], [3]), even though it is unrelated to respondent’s performance on the bench. *See, Matter of Miller*, 1997 Annual Report 108 (judge harassed her former boyfriend by sending numerous anonymous, malicious mailings); *Matter of Kelso*, 61 NY2d 82, 84 (1984) (judge’s misconduct as an attorney warranted discipline notwithstanding that it was “unrelated, either directly or peripherally, to [his] judicial position”).

In considering the appropriate sanction, we note that respondent has no previous disciplinary record, is remorseful and has acknowledged that his conduct was inconsistent with his obligations as a judge.

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

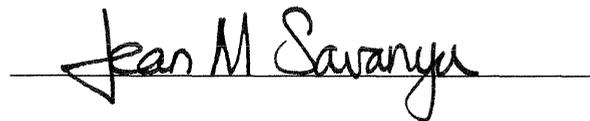
Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen, Mr. Emery, Mr. Harding, Ms. Moore and Mr. Stoloff concur.

Judge Peters was not present.

CERTIFICATION

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

Dated: June 22, 2012

A handwritten signature in black ink, 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