

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

JOHN R. JAROSZ,

a Justice of the Paris Town Court,
Oneida County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

George F. Aney for Respondent

The respondent, John R. Jarosz, a Justice of the Paris Town Court, Oneida County, was served with a Formal Written Complaint dated October 7, 2002, containing two charges. Respondent filed an answer dated October 25, 2002.

On March 13, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On March 13, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a Justice of the Paris Town Court since January 1995. He is not an attorney. Respondent has attended and successfully completed all required training sessions for judges.

As to Charges I and II of the Formal Written Complaint:

2. Respondent failed to supervise his court clerk, who is also his wife, with the result that, between January 2001 and October 2001, as set forth on Schedule A, respondent's clerk failed to deposit into the court account or to remit to the State Comptroller over \$3,000 in court funds, as required by Section 214.9(a) of the Uniform Civil Rules For The Justice Courts, Section 27 of the Town Law, Sections 2020 and 2021(1) of the Uniform Justice Court Act and Section 1803 of the Vehicle and Traffic Law, and as of October 11, 2001, the balance in respondent's official bank account was only one dollar.

3. During that same period of time, the clerk engaged in a pattern of falsifying entries in the court records, so as to conceal the receipt of the funds which were

not deposited or remitted to the comptroller, and respondent failed to examine or check any of the court's financial records, which were maintained by his court clerk, despite receiving ten letters from the State Comptroller's office between January 2001 and September 2001, notifying him that his reports and remittances were late, and notwithstanding that in September 2001, respondent's judicial salary was stopped for his failure to file the reports and remittances as required.

4. By check dated December 6, 2002, respondent made restitution to the State Comptroller in the amount of \$3,205 for the missing court funds. By letter dated December 6, 2002, respondent's attorney requested that the State Comptroller's office conduct a full audit of respondent's court, so as to identify any additional missing funds. Respondent agrees to cooperate with the comptroller's investigation and that he will pay to the comptroller any additional funds identified as missing by the comptroller's office.

5. Respondent's court clerk resigned in July 2002, and the other clerk of the court has taken over respondent's record-keeping and financial responsibilities. Respondent assures the Commission that he now reviews the court's financial records and exercises proper supervision over the court clerk's record-keeping and the depositing, reporting and remitting of court funds.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.3(A), 100.3(C)(1) and 100.3(C)(2) of the

Rules Governing Judicial Conduct¹ and engaged in misconduct in office and conduct prejudicial to the administration of justice, as defined in Article 6, Section 22a 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 insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

A town or village justice is personally responsible for monies received by the court (1983 Opinion of the State Comptroller, No 83-174). Such monies must be properly documented, promptly deposited and remitted to the State Comptroller by the tenth day of the month following collection (UJCA §2021[1]; Town Law §27; Vehicle and Traffic Law §1803; Uniform Civil Rules For The Justice Courts §214.9[a]). Although these responsibilities may be delegated, a judge is required to exercise supervisory vigilance to ensure the proper performance of these important functions. *See Matter of Restino*, 2002 Ann Rep 145 (Comm'n on Jud Conduct, Nov 11, 2001).

As a consequence of respondent's inadequate supervision, respondent's wife, who served as his court clerk until her resignation in July 2002, was able to falsify entries in court records to conceal the receipt of over \$3000 in court monies, which were not deposited or remitted as required.

¹ Sections 100.1 and 100.2(A) of the Rules were also charged in the Formal Written Complaint but were not included in the Agreed Statement of Facts, following the decision on February 20, 2003, in *Spargo v. NYS Comm'n on Jud Conduct*, 244 F Supp2d 72 (NDNY 2003), which barred the Commission from enforcing those provisions. Although the *Spargo* decision has been stayed by the U.S. Court of Appeals for the Second Circuit pending appeal, Sections 100.1 and 100.2(A) are not included in this determination, which is limited to the stipulated conclusions of law.

Significantly, respondent was on notice during that period of problems connected with the clerk's performance of her duties, having received ten letters from the State Comptroller's office notifying him that his reports and remittances were late. Such repeated notices should have prompted respondent to personally review the court's financial records and to take such other prompt, remedial action as necessary to ensure the proper safeguarding of court monies.

In mitigation, we note that respondent's attorney has asked the State Comptroller's office to conduct a full audit of respondent's court and that respondent has agreed to cooperate with the comptroller's investigation and to pay to the comptroller any additional funds identified as missing. We also note respondent's assurances that he now reviews the court's financial records and exercises proper supervision over the court clerk's record-keeping and the depositing, reporting and remitting of court funds.

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

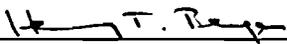
Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Ms. Moore, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

CERTIFICATION

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

Dated: May 28, 2003



Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct

SCHEDULE A

Per Bank Records

Per Court Records

Name of Defendant	Date of Check or Money Order	Amount of Check or Money Order	Date Deposited Per Bank Statement	Amount Received Per Cashbook/ State Comptroller Report	Date Received Per Cashbook/ State Comptroller Report	Amount Unreported or Underreported to State Comptroller	Cumulative Amount Unreported or Underreported to State Comptroller	Bank Balance	Date
								\$ 177	12/29/00
James DeCastro	11/14/00	\$ 65	1/29/01	\$ 35	12/11/00	\$ 30	\$ 30		
Scott Dullea	11/13/00	70	1/29/01	35	12/11/00	35	65		
David Cook	11/20/00	60	1/29/01	35	12/11/00	25	90		
Morriah Christian	11/20/00	40	1/29/01	35	12/11/00	5	95		
Jeffrey Foster	11/22/00	45	1/29/01	35	12/11/00	10	105		
Raymond Houle	12/6/00	100	1/29/01	35	12/18/00	65	170		
Rebecca Good	12/7/00	85	1/29/01	65	12/18/00	20	190		
Samantha Allen	12/4/00	40	1/29/01	35	1/16/01	5	195		
Paul Bonner	12/8/00	50	1/29/01	35	1/16/01	15	210		
Kevin Cassanova	12/12/00	60	1/29/01	35	1/16/01	25	235		
Kim Borek	1/22/01	15	1/29/01	Crossed Out	Crossed Out	15	250		
Jessica Atkinson	11/14/00	50	1/29/01	No Entry	No Entry	50	300		
Jacqueline Gilbreth	1/20/01	80	2/6/01	35	2/5/01	45	345		
Julie Fougare	12/13/00	105	2/6/01	85	2/5/01	20	365		
Daniel Hale	?	100	2/6/01	35	2/5/01	65	430	247	2/6/01
James Georgia	?	100	2/13/01	35	2/12/01	65	495		
Rebecca Ferrald	?	100	2/13/01	No Entry	No Entry	100	595		
Beverly Kehoe	1/29/01	15	2/13/01	No Entry	No Entry	15	610	272	2/29/01
Daniel Burgess	2/26/01	15	3/23/01	No Entry	No Entry	15	\$ 625		
Milton Cook	3/19/01	55	3/23/01	45	3/19/01	10	635		
Colleen Daley-Greenfield	3/12/01	565	3/23/01	No Entry	No Entry	565	1,200		
Robert Wood	2/17/01	160	3/23/01	No Entry	No Entry	160	1,360		

Per Bank Records

Per Court Records

Name of Defendant	Per Bank Records			Per Court Records		Amount Unreported or Underreported to State Comptroller	Cumulative Amount Unreported or Underreported	Bank Balance	Date
	Date of Check or Money Order	Amount of Check or Money Order	Date Deposited Per Bank Statement	Amount Received Per Cashbook/ State Comptroller Report	Date Received Per Cashbook/ State Comptroller Report				
Frank Cotrupe	2/20/01	\$135	3/28/01	\$125	3/12/01	\$ 10	\$ 1,370		
Robert Kepner	2/15/01	60	3/28/01	35	3/12/01	25	1,395		
Keith Allen	2/15/01	60	3/28/01	35	3/12/01	25	1,420		
Daniel Butts	2/17/01	50	3/28/01	35	3/12/01	15	1,435		
Richard Hoffman	2/16/01	85	3/28/01	35	3/12/01	50	1,485		
Keith Chmura	2/21/01	45	3/28/01	Dismissed	3/19/01	45	1,530	\$1,217	3/30/01
*Clifford Coffin									
Robert Wood	2/23/01	160	5/3/01	265	4/2/01	45	1,575		
Robert Wood	3/2/01	150	5/3/01						
Gary King	4/5/01	60	5/3/01	35	4/23/01	25	1,600		
Joyce Ford	4/2/01	85	5/3/01	35	4/23/01	50	1,650		
Ben Grant	4/13/01	60	5/3/01	35	4/23/01	25	,675		
Robert Budetti	3/26/01	60	5/3/01	35	4/23/01	25	1,700		
John Edwards	3/26/01	85	5/3/01	35	4/23/01	50	1,750		
Joseph Conde	3/27/01	60	5/3/01	35	4/23/01	25	1,775		
Robin Brown	3/30/01	60	5/3/01	35	4/23/01	25	1,800		
Susan Guardi	4/2/01	50	5/3/01	Crossed Out	Crossed Out	50	1,850		
**James Gould	1/26/01	50	5/3/01	35	11/00	**	**	1,667	5/30/01
Darlene Abbe	3/10/01	60	5/17/01	35	4/30/01	25	1,875		
Larry Hunter	4/9/01	60	5/17/01	35	5/14/01	25	1,900		
Kisti Alsanti	4/20/01	100	5/17/01	35	5/14/01	65	1,965		
Richard Bristol	5/2/01	60	5/17/01	35	5/14/01	25	1,990		
Mark Delmedico	4/28/01	60	5/17/01	35	5/14/01	25	2,015		
Jason Carpenter	5/1/01	50	5/17/01	35	5/14/01	15	2,030		
Jeffery Glod	?	60	5/17/01	35	5/14/01	25	2,055		
***Bradley Falin									
Terese Cecilia	5/14/01	35	6/6/01	25	6/4/01	10	2,065		
Barbara Kilts	5/11/01	100	6/6/01	35	6/4/01	65	2,130		

Per Bank Records

Per Court Records

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Daniel Hugaboon	5/14/01	\$ 35	6/6/01	\$ 25	6/4/01	\$ 10	\$ 2,140		
C.S. Kimball	5/10/01	105	6/6/01	35	6/4/01	35	2,175		
Candice Kimball	5/10/01		6/6/01	35	6/4/01				
David Degrace	5/20/01	60	6/6/01	35	6/4/01	25	2,200		
John Gowanis	5/21/01	60	6/6/01	35	6/4/01	25	2,225		
Joyce Kinville	5/21/01	60	6/6/01	35	6/4/01	25	2,250		
Anthony Carter	5/7/01	100	6/6/01	35	6/4/01	65	2,315		
MaryBeth Castelletti	4/20/01	100	6/6/01	35	6/4/01	65	2,380	\$ 1,517	6/6/01
Sharon Brown	6/11/01	95	7/10/01	35	6/11/01	60	2,440		
Terry Heburn	3/28/01	55	7/10/01	35	6/18/01	20	2,460		
Katherine Ellison	6/11/01	85	7/10/01	35	6/18/01	50	2,510		
Scott Brunell	5/21/01	25	7/10/01	25	6/18/01	25	2,535		
Roland Becker	6/28/01	120	7/20/01	35	7/23/01	85	2,620	422	7/17/01
Tammy Carpenter	7/5/01	50	7/20/01	35	8/6/01	15	2,635		
Joseph Klosek	6/22/01	100	7/20/01	35	8/6/01	65	2,700		
Joshua Atwell	6/13/01	60	7/20/01	35	8/6/01	25	2,725		
Robert Collins, Jr.	6/15/01	45	7/20/01	35	8/6/01	10	2,735		
Steven Doyle	6/23/01	110	7/20/01	85	8/6/01	25	2,760		
Roger Bransol	7/3/01	100	7/20/01	85	8/6/01	15	2,775		
Bruce Cota	6/13/01	45	7/20/01	35	8/6/01	10	2,785		
Donna Bernstein	6/23/01	60	7/20/01	35	8/6/01	25	2,810		
Walter Jungbauer	7/9/01	50	7/20/01	35	8/6/01	15	2,825	777	7/23/01
Todd Coon	7/10/01	60	9/14/01	35	8/6/01	25	2,850		
Raymond Auger	8/7/01	50	9/14/01	35	8/13/01	15	2,865	527	8/8/01

Per Bank Records

Per Court Records

<u>Name of Defendant</u>	<u>Date of Check or Money Order</u>	<u>Amount of Check or Money Order</u>	<u>Date Deposited Per Bank Statement</u>	<u>Amount Received Per Cashbook/ State Comptroller Report</u>	<u>Date Received Per Cashbook/ State Comptroller Report</u>	<u>Amount Unreported or Underreported to State Comptroller</u>	<u>Cumulative Amount Unreported or Underreported</u>	<u>Bank Balance</u>	<u>Date</u>
John Bullen	8/15/01	\$ 50	9/21/01	\$ 35	9/17/01	\$ 15	\$ 2,880	\$ 7.00	9/18/01
James Buschmann	8/16/01	50	9/21/01	5	9/17/01	15	2,895		
Alija Capra	8/16/01	40	9/21/01	35	9/17/01	5	2,900		

Additional Unreported or Underreported Cases

Per Defendant Contacts and TSLED Records

*Clifford Coffin--Defendant paid \$70 fine in cash				35	4/2/01	35	2,935		
**James Gould-- Defendant paid a total of \$125 in installments-- \$40 cash in November 2000, \$35 check in December 2000, and \$50 check in January 2001				35	11/27/00	90	3,025		
***Bradley Falin-- Defendant paid a fine of \$180 in May 2001				No Entry	No Entry	180	3,205	1.00	10/11/01