

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

ARTHUR S. MICLETTE,

a Justice of the Crown Point Town Court,
Essex 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
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Nina M. Moore
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Charles F. Farcher, Of Counsel) for the Commission

Honorable Arthur S. Miclette, *pro se*

The respondent, Arthur S. Miclette, a Justice of the Crown Point Town
Court, Essex County, was served with a Formal Written Complaint dated March 3, 2009,

containing two charges. The Formal Written Complaint alleged that respondent failed to make timely deposits and to report and remit funds to the State Comptroller in a timely manner (Charge I) and filed a small claims action in his own court, presided over the case and failed to transfer it to another court (Charge II).

On May 21, 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 censured and waiving further submissions and oral argument.

On June 17, 2009, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has served as a Justice of the Crown Point Town Court, Essex County, since January 2000. His current term expires in December 2011. He is not an attorney.
2. Respondent is the only justice of the Crown Point Town Court.
3. Respondent, who is also a mechanic, owns and operates Village Auto, a car repair shop in Crown Point.

As to Charge I of the Formal Written Complaint:

4. As set forth more fully on Schedule A annexed to the Formal Written Complaint, from November 2006 until July 2007 respondent failed to deposit court funds within 72 hours of receipt as required by Section 214.9 of the Uniform Civil Rules for

Justice Courts.

5. During that time respondent made sporadic deposits, allowing weeks and/or months to elapse in the interim, notwithstanding the collection of significant court funds.

6. An analysis of respondent's court account reflected a cumulative deficiency of \$350 as of August 2007.

7. Respondent failed to timely file reports or remit court funds to the State Comptroller for the months of December 2006 and February 2007, as required by Section 27 of the Town Law, Section 1803(8) of the Vehicle and Traffic Law and Section 2021(1) of the Uniform Justice Court Act.

8. On June 6, 2007, the State Comptroller issued a notice to the Crown Point Town Supervisor to suspend respondent's salary, pending the filing of reports and the remittal of court funds for the months of December 2006 and February 2007.

9. Respondent thereafter brought his filings and remittances up to date, and in July 2007 the State Comptroller withdrew the notice to suspend respondent's salary.

10. Respondent delegated the task of receiving, depositing, remitting and reporting court funds to his original part-time court clerk, who contemporaneously held multiple part-time jobs that at times distracted her from her court duties.

11. Respondent acknowledges his failure to supervise his court clerk adequately and recognizes that he is ultimately personally responsible for all court funds.

Respondent has since retained a new court clerk and deposits appear to be made regularly.

12. The \$350 deficiency appears to have resulted from poor record-keeping. There is no indication that the money was misappropriated.

As to Charge II of the Formal Written Complaint:

13. On July 5, 2007, respondent filed a small claim against Edward Hargett, seeking to recoup an unpaid debt of \$600 for auto repair services rendered by respondent at his Village Auto shop. Respondent paid the appropriate filing fees and the claim was filed in the Crown Point Town Court, the appropriate court of jurisdiction.

14. Without discussing the matter or its scheduling with respondent, respondent's court clerk issued a standard court notice to Edward Hargett.

15. Edward Hargett appeared before respondent in the Crown Point Town Court on August 16, 2007, as the defendant in both *Arthur S. Miclette v. Edward Hargett* and another unrelated matter, *Crown Point Citgo v. Edward Hargett*.

16. At the call of the *Crown Point* case, respondent, from the bench, disclosed his own impending small claim against Edward Hargett, returnable that same evening, and obtained the consent of both parties before presiding over *Crown Point Citgo v. Hargett*. Respondent has no business connection to Crown Point Citgo.

17. Crown Point Citgo presented receipts endorsed by Edward Hargett, evincing his indebtedness in the amount of \$341.41, and Edward Hargett acknowledged the debt, as well as his willingness to repay Crown Point Citgo. Respondent rendered an oral ruling in favor of Crown Point Citgo in the amount of \$341.41 and the matter was

concluded. No judgment was ever entered.

18. Respondent subsequently addressed his own case, *Miclette v. Hargett*, informing Edward Hargett, from the bench, that he could not hear the matter in his own court, but that if the \$600 debt was not satisfied he would transfer the matter to another court for further proceedings.

19. Edward Hargett acknowledged the debt and agreed to repay respondent, requesting additional time in which to do so. Respondent agreed to the request. There was no formal ruling or return date set, nor was the case transferred to another court.

20. Notwithstanding the understanding in court between respondent and Mr. Hargett on August 16, 2007, nothing further has happened in the case. Respondent took no further action to collect the unpaid debt from Edward Hargett or otherwise pursue his claim following the court appearance of August 16, 2007.

21. Since respondent's court had jurisdiction over the car repair matter, respondent was required to file his small claim in his own court, even though he serves without a co-judge.

22. Respondent understands that where he disqualifies himself or his impartiality otherwise might reasonably be questioned, arrangements must be made to transfer the case to another judge or court, especially since he is the only judge of his own court.

Supplemental finding:

23. Respondent has been cooperative and contrite throughout the Commission's proceedings.

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(A), 100.3(C)(1), 100.3(C)(2) and 100.3(E)(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 court monies is one of a judge's most important responsibilities, and a town or village justice is personally responsible for all monies received by the court (NYS Compt Op No 83-174). Such monies must be deposited within 72 hours of receipt 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 important responsibilities may be delegated, a judge is required to exercise supervisory vigilance to ensure the proper performance of these functions. *See, Matter of Burin*, 2008 Annual Report 97; *Matter of Jarosz*, 2004 Annual Report 116 (Comm on Judicial Conduct). Judges are required to diligently discharge their administrative responsibilities and to require court staff "to observe the standards of fidelity and diligence that apply to the

judge” (Rules, 100.3[C][1] and [2]).

Here the record indicates that as a result of respondent’s inadequate supervision of his part-time court clerk, to whom he had delegated these tasks, deposits and remittances were not made in a timely manner. Over a nine-month period, deposits were made sporadically and sometimes not for weeks or months, resulting in a cumulative deficiency of \$350; further, for two months, timely reports and remittances were not made to the State Comptroller. As a consequence of these derelictions, respondent’s salary was suspended in June 2007. Although there is no indication that any money was misappropriated, public confidence in the courts is jeopardized when monies are not scrupulously handled as required by law.

We note that a month after his salary was suspended, respondent brought his filings and remittances up to date, that he has since retained a new court clerk, and that it appears that these administrative tasks are now being properly performed.

Respondent also acted improperly with respect to *Miclette v. Hargett*, a small claims action which he filed in his own court. While it is not improper for a judge to commence an action in the judge’s own court, the judge must promptly recuse and take appropriate steps to ensure that the case is assigned to another judge (*see* Adv Op 07-108, 90-11). Here, since there was no co-judge to hear the case, respondent should have immediately transferred the case to another jurisdiction. Instead, on August 16, 2007, after hearing another case involving the same defendant, Edward Hargett (and issuing an oral ruling against the defendant), respondent addressed his own case and announced that

he would transfer the case unless Mr. Hargett agreed to satisfy the debt. In effect, respondent engaged in settlement discussions in his own court, from the bench, in a case in which he was a party.

It is no excuse that respondent disclosed the conflict, obtained the consent of the parties before presiding over Mr. Hargett's first case, and offered to transfer his own case involving Mr. Hargett. Under the circumstances, it was patently improper for respondent to have any dealings in his court with the defendant, with whom he had an adversarial relationship.

In mitigation, the record indicates that following the court appearance described above, respondent took no further action to collect the debt from the defendant. Respondent has acknowledged his misconduct, and it has been stipulated that he now understands that when he is recused, arrangements must be made promptly to transfer the case.

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

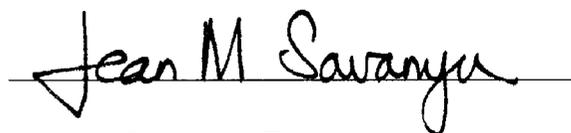
Judge Klonick, Mr. Coffey, Mr. Emery, Mr. Harding, Ms. Hubbard, Judge Konviser, Ms. Moore, Judge Peters and Judge Ruderman concur.

Mr. Belluck and Mr. Jacob were not present.

CERTIFICATION

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

Dated: July 1, 2009

A handwritten signature in black ink that reads "Jean M. Savanyu". The signature is written over a horizontal line.

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