

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

SHAWN W. MINOGUE,

a Justice of the Wilmington Town Court,
Essex County.

THE COMMISSION:

Raoul Lionel Felder, Esq., Chair
Honorable Thomas A. Klonick, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Bruce D. Lennard, Of Counsel) for the
Commission

Favor J. Smith for the Respondent

The respondent, Shawn W. Minogue, a Justice of the Wilmington Town
Court, Essex County, was served with a Formal Written Complaint dated August 21,

2007, containing four charges. The Formal Written Complaint alleged that respondent: (i) failed to make timely deposits in 18 cases; (ii) failed to report and remit in a timely manner to the State Comptroller a total of \$415 in six cases; (iii) failed to keep a complete and accurate cashbook; and (iv) presided over and disposed of a case in which her sister-in-law was charged with a seat belt violation. Respondent filed a Verified Answer dated September 20, 2007.

On January 22, 2008, 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 January 29, 2008, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been an elected Justice of the Wilmington Town Court, Essex County, from January 2005 to the present. Her current term ends in December 2008. She is not an attorney.

As to Charge I of the Formal Written Complaint:

2. From in or around January 2005 to in or around November 2006, as set forth in Schedule A to the Formal Written Complaint, respondent failed to deposit court funds within 72 hours of receipt, exclusive of Sundays and holidays, notwithstanding the

requirements of Section 214.9(a) of the Uniform Civil Rules for the Justice Courts (22 NYCRR §214.9[a]).

3. In *People v. Gordon Hewey*, respondent collected \$65.00 from the defendant on January 27, 2005. Respondent deposited that \$65.00 payment into her court checking account on February 11, 2005, 15 days later.

4. In *People v. Kenneth Dalton*, respondent collected \$75.00 from the defendant and issued him a signed Receipt for Fine, number 006, dated March 25, 2005. Respondent deposited that \$75.00 payment into her court checking account on April 8, 2005, 14 days later.

5. In *People v. Elmer Guy*, respondent collected \$85.00 from the defendant and issued him a signed Receipt for Fine, number 007, dated March 22, 2005. Respondent deposited that \$85.00 payment into her court checking account on April 8, 2005, 17 days later.

6. In *People v. Richard James*, respondent collected \$60.00 from the defendant on March 22, 2005. Respondent deposited that \$60.00 payment into her court checking account on April 8, 2005, 17 days later.

7. In *People v. Valeriy Kapustin*, respondent collected \$320.00 from the defendant and issued him a signed Receipt for Fine, number 008, dated March 24, 2005. This \$320.00 payment was for two fines of \$85.00 and \$235.00, respectively. Respondent timely deposited \$85.00 into her court checking account on March 25, 2005. Respondent did not deposit the remaining \$235.00 of the amount collected into her court

checking account. Instead, respondent retained the money and eventually returned it to Mr. Kapustin after she dismissed the charge upon which the fine was levied.

8. In *People v. Andrea Villiere*, respondent collected \$60.00 from the defendant and issued her a signed Receipt for Fine, number 009, dated March 24, 2005. Respondent deposited that \$60.00 payment into her court checking account on April 8, 2005, 15 days later.

9. In *People v. Mikhail Sobolkov*, respondent collected \$85.00 from the defendant and issued him a signed Receipt for Fine, number 014, dated April 7, 2005. Respondent deposited that \$85.00 payment into her court checking account on July 29, 2005, 113 days later.

10. In *People v. Thomas Sarchioto*, respondent collected \$35.00 from the defendant and issued him a signed Receipt for Fine, number 016, dated April 7, 2005. Respondent deposited that \$35.00 payment into her court checking account on July 29, 2005, 113 days later.

11. In *People v. Christina Carpenter* and *People v. Harry Rosco*, respondent collected \$50.00 from the defendants for two fines of \$25.00 each and issued them a signed Receipt for Fine, number 034, dated July 14, 2005. Respondent deposited that \$50.00 payment into her court checking account on July 29, 2005, 15 days later.

12. In *People v. Dewey Trudeau*, respondent collected \$25.00 from the defendant and issued him a signed Receipt for Fine, number 035, dated July 14, 2005. Respondent deposited that \$25.00 payment into her court checking account on July 29,

2005, 15 days later.

13. In *People v. B. Locklin*, respondent collected \$105.00 from the defendant and issued the defendant a signed Receipt for Fine, number 050, dated September 22, 2005. Respondent collected the \$105.00 from defendant Locklin for her co-justice. Respondent did not deposit that \$105.00 payment into her court checking account; instead, respondent put the money in an envelope and left it for her co-justice.

14. In *People v. Erin Haley*, respondent collected \$60.00 from the defendant and issued her a computer generated receipt, number 067, dated September 22, 2005. Respondent deposited that \$60.00 payment into her court checking account on December 30, 2005, 99 days later.

15. In *People v. Jeffery Webber*, respondent collected \$85.00 from the defendant and issued him a computer generated receipt, number 073, dated November 17, 2005. Respondent deposited that \$85.00 payment into her court checking account on December 5, 2005, 18 days later.

16. In *People v. Joseph Pafundi*, the defendant provided the court with a money order dated January 4, 2006, in the amount of \$25.00 in connection with a Simplified Traffic Information adjudicated on December 15, 2005. Respondent did not deposit the \$25.00 collected from Mr. Pafundi into her court checking account.

17. In *People v. Randall Smith*, respondent collected \$35.00 from the defendant in February 2006. As of November 21, 2006, respondent had not deposited that \$35.00 payment into her court checking account.

18. In *People v. Christopher Hozley*, respondent collected \$75.00 from the defendant and issued him a receipt, number 144, dated July 13, 2006. Respondent timely deposited \$70.00 of that \$75.00 payment into her court checking account on July 14, 2006. Respondent did not deposit the remaining \$5.00 of that \$75.00 payment into her court checking account.

19. In *People v. David Johnson*, respondent collected \$110.00 from the defendant and issued him a receipt, number 144, dated July 13, 2006. Respondent timely deposited \$105.00 of that \$110.00 payment into her court checking account on July 14, 2006. Respondent did not deposit the remaining \$5.00 of that \$110.00 payment into her court checking account.

20. In all cases, respondent stored the undeposited funds in her locked briefcase, which she kept in her courtroom, under her bench. The courtroom is routinely locked when not in use but does on occasion serve as a community center used by a number of groups at times when neither respondent nor court staff were present. Respondent understands the need to safeguard undeposited court funds in a more secure manner and affirms that she now does so by locking them in her briefcase, which she keeps with her until the following day, when she deposits the funds in the bank.

As to Charge II of the Formal Written Complaint:

21. From in or around March 2005 to in or around June 2006, as set forth in Schedule B to the Formal Written Complaint and more fully in paragraphs 22 through

39 below, respondent failed to report and remit¹ to the State Comptroller a total of \$415.00 from six cases, notwithstanding the requirements of Section 27(1) of the Town Law, Sections 2020 and 2021 of the Uniform Justice Court Act, and Section 1803 of the Vehicle and Traffic Law.

22. By letter dated June 13, 2005, a clerk of the Justice Court Fund in the Office of the State Comptroller advised respondent that her report of her court's financial activity for the month of April 2005, and any remittance due, were not on file. By this letter, respondent was asked to check her records and confirm with the Justice Court Fund that she had filed her report or, if she had not filed her report, to send the report as soon as possible.

23. By letter dated July 11, 2005, an accountant of the Justice Court Fund advised respondent that the Justice Court Fund, as of that date, had not yet received her report of her court's financial activity for the months of April and May 2005, and any remittance due. Respondent was asked to contact the Justice Court Fund as soon as possible with the required documentation to avoid a loss of revenue to her municipality and suspension of her compensation.

24. On August 12, 2005, and again on August 17, 2005, the manager of the Justice Court Fund left telephone messages for respondent regarding her reports not being filed of her court's financial activity for the months of April and May 2005.

¹ Respondent's method of remitting to the State Comptroller is to write a check drawn on her court checking account to her town's budget officer who, in turn, sends the funds to the State Comptroller.

25. By letter dated August 19, 2005, the manager of the Justice Court Fund gave official notification to the supervisor of the Town of Wilmington that, as of that date, respondent had not filed a report of her court's financial activity, or remitted where due, for the months of April and May 2005. This official notice, upon receipt by the supervisor of the Town of Wilmington, required that respondent's judicial salary be stopped until further notice from the Justice Court Fund, pursuant to Section 27(1) of the Town Law.

26. Respondent's judicial salary was stopped in August 2005 as a result of her failure to file reports and remittances with the State Comptroller for the months of April and May 2005.

27. By letter dated August 24, 2005, the Commission advised respondent that it was conducting an initial review and inquiry of allegations that she had failed to file reports or remit funds to the State Comptroller for the months of April and May 2005.

28. By letter dated August 29, 2005, the manager of the Justice Court Fund gave official notification to the Supervisor of the Town of Wilmington that, as of that date, respondent was current in her monthly reporting requirements and that payment of her judicial salary should resume.

29. By a letter postmarked September 8, 2005, respondent acknowledged receipt of the Commission's letter of August 24, 2005, and stated that she had, in fact, faxed her report of her court's financial activity for the month of April 2005 to the State Comptroller on May 12, 2005, but that she was unable to provide a confirmation of that

fax transmission. Respondent also stated that she had re-faxed the April 2005 report to the State Comptroller on June 16, 2005, along with her report of her court's financial activity for the month of May 2005.² In support of these assertions, respondent provided the Commission, in her letter postmarked September 8, 2005, with purported copies of reports of her court's financial activity for the months of April and May 2005, each dated June 16, 2005 and signed by respondent. Respondent also provided therewith a copy of the August 29, 2005, letter from the manager of the Justice Court Fund to demonstrate that she was up-to-date on her report and remittance requirements for the months of April and May 2005.

30. Notwithstanding her statements in her letter postmarked September 8, 2005, on July 28, 2005, respondent certified that she had, on that date, transmitted electronically her report for the month of April 2005 to the State Comptroller and sent a check in the amount of \$805.00 to the chief fiscal officer of the Town of Wilmington. A copy of cancelled check number 105 shows that respondent did write a check to the Town of Wilmington in the amount of \$805.00 on July 28, 2005. The August 2005 statement of activity in respondent's court checking account shows that check number 105 in the amount of \$805.00 cleared the account on August 1, 2005.

31. In *People v. Daniel Smith*, respondent collected \$165.00 from the defendant and issued him a signed Receipt for Fine, number 005, dated March 10, 2005.

²Though respondent described faxing her reports, in testimony during the Commission's investigation, she later clarified that she meant that she had filed her reports electronically over the internet and later faxed a confirmation letter.

Respondent did not report the \$165.00 collected from Mr. Smith in her March 2005 report of her court's financial activity, or in any subsequent report of her court's financial activity; nor did respondent remit the \$165.00 collected from Mr. Smith to the State Comptroller.

32. In *People v. Thomas Richardson*, respondent collected \$85.00 from the defendant and issued him a signed Receipt for Fine, number 043, dated August 25, 2005. Respondent did not report the \$85.00 collected from Mr. Richardson in her August 2005 report of her court's financial activity, or in any subsequent report of her court's financial activity; nor did respondent remit the \$85.00 collected from Mr. Richardson to the State Comptroller.

33. In *Rasmussen v. Neuman*, a small claims action, respondent collected a \$15.00 filing fee from the plaintiff and issued him a signed Receipt for Fine, number 042, dated September 9, 2005. Respondent also collected a \$15.00 filing fee from the defendant and issued him a signed Receipt for Fine, number 045, dated September 9, 2005. Respondent was required to include both payments of \$15.00 in her September 2005 report of her court's financial activity, and she reported only one payment in that amount in that report. Respondent did not remit the second payment of \$15.00 collected in *Rasmussen v. Neuman* to the State Comptroller.

34. In *People v. Allison Buckley*, respondent collected \$50.00 from the defendant and issued her a signed Receipt for Fine, number 046, dated October 20, 2005. Respondent did not report the \$50.00 collected from Ms. Buckley in her October 2005

report of her court's financial activity, or in any subsequent report of her court's financial activity; nor did respondent remit the \$50.00 collected from Ms. Buckley to the State Comptroller.

35. In *People v. Joseph Pafundi*, the defendant was issued five separate Simplified Traffic Informations, all of which were adjudicated on December 15, 2005. Four of the five Simplified Traffic Informations were dismissed, and the fifth, involving a seat belt violation, resulted in a fine of \$25.00 and a surcharge of \$35.00. Mr. Pafundi subsequently provided the court with a money order, dated January 4, 2006, in the amount of \$25.00. Respondent reported three of the four dismissed Simplified Traffic Informations in her December 2005 report of her court's financial activity, but did not report the disposition of the fourth dismissed Simplified Traffic Information or the collection of the \$25.00 payment in any report of her court's financial activity; nor did respondent remit the \$25.00 collected from Mr. Pafundi to the State Comptroller.

36. In her March 2006 report to the State Comptroller of her court's financial activity, respondent reported collecting \$25.00 from the defendant in *People v. Steven Fletcher*, who had been assessed a total of \$315.00 in fines and surcharges in connection with various vehicle and traffic offenses. In respondent's April 2006 report of her court's financial activity, she reported collecting another \$25.00 from Mr. Fletcher, and in her May 2006 report of her court's financial activity, she reported collecting a third payment of \$25.00. After making three payments of \$25.00 in March, April and May 2006, Mr. Fletcher owed respondent's court \$240.00.

37. On June 1, 2006, respondent collected a fourth payment of \$25.00 from Mr. Fletcher and, on that same day, issued him an unsigned computer generated receipt, number 114. This receipt indicated that Mr. Fletcher then owed the court \$215.00. On June 8, 2006, respondent collected another \$25.00 from Mr. Fletcher and issued him an unsigned computer generated receipt, number 120. Finally, on June 20, 2006, respondent collected a sixth payment of \$25.00 from Mr. Fletcher and provided him with an unsigned computer generated receipt, number 125.

38. Respondent did not report or remit any of the three payments of \$25.00 each, collected on June 1, 8 and 20, 2006, from Mr. Fletcher in her June 2006 report of her court's financial activity.

39. On July 20, 2006, respondent collected a seventh payment of \$25.00 from Mr. Fletcher and provided him with an unsigned computer generated receipt, number 148. Respondent reported this payment of \$25.00 from Mr. Fletcher in her July 2006 report of her court's financial activity. Respondent did not report any payments from Mr. Fletcher in her August 2006 report of her court's financial activity. On September 14, 2006, respondent collected an eighth payment of \$25.00 from Mr. Fletcher and provided him with an unsigned computer generated receipt, number 176. Respondent reported this payment of \$25.00 from Mr. Fletcher in her September 2006 report of her court's financial activity. As of this September 2006 report, Mr. Fletcher owed respondent's court \$115.00.

As to Charge III of the Formal Written Complaint:

40. From in or around January 2005 through in or around December 2005, respondent failed to maintain a complete and accurate cashbook and failed to itemize chronologically all receipts and disbursements of funds, as required by Section 200.23(a)(3) of the Recordkeeping Requirements for Town and Village Courts (22 NYCRR §200.23[a][3]). Respondent asserts that she did not know that there existed a computer-generated cashbook until the Commission had requested a copy of it. She further asserts that she had to ask her co-judge where to find the computer-generated cashbook, that she did not know how it was generated, and that there was a lot about the computer and record-keeping that she needed to learn.

As to Charge IV of the Formal Written Complaint:

41. Mary J. Minogue is respondent's sister-in-law. She is married to the brother of respondent's husband.

42. On July 25, 2006, Mary J. Minogue was issued a ticket for a seat belt violation under Section 1229-c(3-a) of the Vehicle and Traffic Law, returnable in respondent's court. Ms. Minogue entered a guilty plea by mail with an explanation that though she always wears her seat belt, she had taken it off in this instance for five minutes to retrieve a spilled coffee cup from within her car. According to Section 1229-c(5) of the Vehicle and Traffic Law, the maximum civil fine for this violation is \$50.00. There is no mandatory minimum fine. There are no points assessed to the driver's license in connection with this violation.

43. In October 2006, the ticket was assigned to respondent in the ordinary course because at that time she was the town's only justice. Respondent adjudicated Ms. Minogue's guilty plea to the ticket and imposed only the mandatory State surcharge. Ms. Minogue did not appear in court. Respondent did not discuss the ticket with Ms. Minogue but accepted her written explanation of the incident.

44. Respondent acknowledges that she should have recused herself from handling the ticket but, at the time, she genuinely considered the matter to be of such minor import that she did not wish to transfer the ticket to another court and burden another judge with it.

45. While respondent has previously imposed fines of varying amounts in other seat belt violation cases, she has also imposed no fine in certain seat belt violation cases when, as here, she accepted the defendant's explanation. Respondent presided over nine other seat belt convictions in 2006. Of those nine, no fine was assessed in one case, involving a defendant whom respondent did not know, and a fine of either \$25.00 or \$50.00 was assessed in eight cases. The mandatory State surcharge was assessed in all cases.

Additional findings:

46. Respondent agrees to report and remit to the State Comptroller by January 21, 2008, the unreported \$165.00 collected from Mr. Smith, the unreported \$85.00 collected from Mr. Richardson, the unreported second payment of \$15.00 collected in *Rasmussen v. Neuman*, the unreported \$50.00 collected from Ms. Buckley,

the unreported \$25.00 collected from Mr. Pafundi, and the unreported \$75.00 collected from Mr. Fletcher, all totaling \$415.00, and further agrees to provide the Commission with documentation that she has remitted these funds.

47. Respondent's failure to deposit court funds within 72 hours of receipt, her failure to report and remit to the State Comptroller a total of \$415.00 from six cases, and her failure to maintain a complete and accurate cashbook and to itemize chronologically all receipts and disbursements of funds are the result of respondent's poor bookkeeping and recordkeeping practices. There is no evidence of conversion or the misuse of funds.

48. Respondent has agreed that the Commission may make future checks and audits of respondent's bookkeeping and recordkeeping practices and of her deposits, reports and remittances to the State Comptroller. Respondent understands that any future deficiencies in her financial practices could subject her to additional charges of judicial misconduct and could result in the Commission's determination that she be removed from office.

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(B), 100.2(C), 100.3(B)(1), 100.3(C)(1) and 100.3(E)(1)(d)(i) 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 through IV of the Formal Written Complaint are sustained, and

respondent's misconduct is established.

All funds received by a town or village justice must be properly documented, deposited "as soon as practicable" and no later than 72 hours after receipt, and remitted to the State Comptroller by the tenth day of the month following collection (Uniform Civil Rules for the Justice Courts §214.9[a]; Uniform Justice Ct Act §§2020 and 2021[1]; Town Law §27; Veh and Traf Law §1803). Depositing and reporting official monies promptly is essential to ensure public confidence in the integrity of the judiciary, and the failure to do so in a timely manner constitutes misconduct, even if there is no evidence of conversion. *See Matter of Hrycun*, 2002 Annual Report 109 (Comm on Judicial Conduct); *Matter of Ranke*, 1992 Annual Report 64 (Comm on Judicial Conduct); *Matter of Hamel*, 1991 Annual Report 61 (Comm on Judicial Conduct); *Matter of Jurhs*, 1984 Annual Report 109 (Comm on Judicial Conduct); *see also Bartlett v. Flynn*, 50 AD2d 401, 404 (4th Dept 1976).

In numerous cases in 2005 and 2006 respondent failed to deposit and report official monies in a timely manner as required by law. Some amounts were deposited months after they were received, or not at all; other amounts, totaling \$415.00, were not remitted to the State for several years, after her conduct had come under scrutiny by the Commission. Over the same period, respondent failed to maintain a complete and accurate cashbook recording her receipts and disbursements. Even after her salary was suspended in August 2005 as a result of her derelictions, respondent's practices were lax. Respondent has acknowledged these lapses of her bookkeeping and recordkeeping

responsibilities.

It was also improper for respondent to preside over her sister-in-law's seat belt case, in which she accepted a guilty plea and imposed no fine. Judges are strictly prohibited from handling any matter in which a relative is a party (Rules, §100.3[E][1][d][i]), regardless of the nature of the case or the disposition. In this matter, the lenient disposition respondent accorded her relative compounds the appearance of impropriety (Rules, §100.2).

In considering the sanction, we note that there is no indication that any funds were used for inappropriate purposes, that all the mishandled funds have now been reported and remitted, and that respondent recognizes that she will be held strictly accountable for any future administrative lapses.

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

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

Mr. Felder and Mr. Jacob were not present.

CERTIFICATION

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

Dated: February 21, 2008


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