

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

TERRENCE C. O'CONNOR,

a Judge of the Civil Court of the City of
New York, Queens County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Alan W. Friedberg, Of Counsel) for the Commission
Joseph V. DiBlasi for the Respondent

The respondent, Terrence C. O'Connor, a Judge of the Civil Court of the
City of New York, Queens County, was served with a Formal Written Complaint dated
December 5, 2012, containing two charges. The Formal Written Complaint alleged that:

(i) respondent served as a fiduciary in several matters while a full-time judge and that (ii) prior to becoming a judge, he filed four applications for appointment as a fiduciary in which he falsely responded to a question about his financial liabilities.

On June 17, 2013, 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.

On August 1, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Judge of the New York City Civil Court, Queens County, since 2009. His current term expires on December 31, 2018. Respondent was admitted to the practice of law in New York in 1977.

As to Charge I of the Formal Written Complaint:

2. From January 1, 2009, when he first became a full-time judge, to on or about January 17, 2012, respondent continued to serve as a court-appointed fiduciary in several cases, notwithstanding that he needed but neither sought nor obtained the approval of the Chief Administrator of the Courts because he was a full-time judge and the individuals for whom he was serving as a fiduciary were not his family members.

Matter of Victoria Tucker

3. In or about 2005 or 2006, respondent was appointed by court order to

serve as guardian for Victoria Tucker, an incapacitated person.

4. From January 1, 2009, to on or about February 15, 2011, respondent continued to serve as court-appointed guardian for Ms. Tucker, notwithstanding that he was a full-time judge, that Ms. Tucker was not a member of his family, and that he did not seek or obtain the approval of the Chief Administrator of the Courts.

5. After Ms. Tucker's death in or about 2007, respondent, in his capacity as guardian, unnecessarily delayed filing a final accounting. The executor of Ms. Tucker's estate moved to compel an accounting, and on or about April 13, 2010, a court order was issued directing respondent to file a final accounting within 45 days. On or about December 20, 2010, respondent filed a final accounting.

6. On or about February 15, 2011, an order was signed settling the final account and releasing respondent as guardian.

7. Respondent received the following fees for his work in the *Tucker* matter: \$567.16 on September 15, 2004; \$4,179.29 on November 30, 2005; and \$48,000 pursuant to the February 15, 2011 order settling the final account.

Matter of Cordell Murray

8. In or about 2002 or 2003, respondent was appointed by court order to serve as guardian for Cordell Murray, a disabled individual.

9. From January 1, 2009, to on or about December 9, 2011, respondent continued to serve as court-appointed guardian for Cordell Murray, notwithstanding that he was a full-time judge, that Mr. Murray was not a member of his family, and that he did

not seek or obtain the approval of the Chief Administrator of the Courts.

10. On three occasions after becoming a full-time judge -- in 2009, in or about May 2010 and in or about October 2010 -- respondent, in his capacity as guardian, traveled to Florida to visit Mr. Murray, who resides there. Respondent's expenses for each of the trips were paid from the financial assets of Mr. Murray.

11. To date, respondent has received the following fees for his work in the *Murray* matter: \$3,707.86 on December 5, 2005; \$3,445.07 on June 8, 2007; and \$1,994.21 on May 19, 2009.

12. On or about December 9, 2011, respondent was replaced as guardian, and Michael G. Sileo, Esq., is preparing a final accounting in this matter.

Matter of Anthony Aboussouan

13. In or about May 2004, respondent was appointed by court order to be the trustee of a supplemental needs trust for Anthony Aboussouan, an incapacitated person. Mr. Aboussouan died shortly after respondent's appointment.

14. From on or about January 1, 2009, through in or about 2012, respondent continued to serve as court-appointed trustee of Mr. Aboussouan's trust, notwithstanding that he was a full-time judge, that Mr. Aboussouan was not a member of his family, and that he did not seek or obtain the approval of the Chief Administrator of the Courts.

15. Subsequent to respondent's becoming a judge, the City of New York filed a lien against the trust. On several occasions, respondent communicated with the

City's attorneys, in his capacity as trustee, with regard to the lien, and did so at times from the court facilities to which he was assigned as a full-time judge.

16. On January 17, 2012, the court ordered respondent to file a final accounting.

17. Michael G. Sileo, Esq., is in the process of completing the final accounting.

18. To date, respondent has not received any fees for his work in the *Aboussouan* matter.

As to Charge II of the Formal Written Complaint:

19. In 2002, Washington Mutual Bank commenced a foreclosure action against respondent as to his primary residence. In 2008, the bank's motion for summary judgment was denied. In 2009, the Appellate Division, Second Department, reversed. In 2010, JP Morgan Chase was substituted as the petitioner. The matter is still pending. In essence, the parties dispute the amount that respondent is required to pay on a monthly basis, and respondent has been withholding that portion of the payment which he contests.

20. On or about May 30, 2003, August 20, 2003, May 17, 2005, and May 16, 2007, respondent filed applications and re-registration applications with the Office of Court Administration, pursuant to Part 36 of the Rules of the Chief Judge, seeking to become eligible to receive fiduciary appointments.

21. On each of the applications, respondent responded "No" to question 14(f), which on each application reads as follows:

HAVE YOU EVER BEEN, OR ARE PROCEEDINGS PENDING IN WHICH YOU MAY BE,

* * *

f. found liable for unpaid money judgments, liens or judgments of foreclosure?

[Emphasis in original.]

22. At the time he filed each of the applications, respondent knew that he was a defendant in a foreclosure proceeding concerning his residence and that he may have been found liable in that proceeding. Respondent notes that the pertinent question on the application contained 11 subquestions, and he represents that (A) he did not read the pertinent part of the form carefully and (B) he thought the question pertained only to past findings of liability, not possible future findings of liability.

23. After filing each application, respondent was appointed as a fiduciary by the courts of New York State in numerous cases.

Additional Factors

24. Respondent acknowledges that it was his responsibility to familiarize himself with the Rules Governing Judicial Conduct and that his three trips to Florida as guardian in the *Murray* matter while he was a full-time judge should have prompted him to investigate whether such conduct was permissible. He now realizes that Rule 100.4(E) prohibited him from continuing to serve as a court-appointed fiduciary after becoming a judge. He represents that he is no longer acting as a fiduciary on any matters and will not serve as a fiduciary for a non-family member without seeking and obtaining the approval of the Chief Administrator of the Courts while serving as a judge.

25. Respondent acknowledges that he should have reported the foreclosure proceeding against him on all applications for appointment.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.4(A)(3) and 100.4(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 insofar as they are consistent with the above findings and conclusions, and respondent’s misconduct is established.

The ethical rules impose certain restrictions on the extra-judicial activities of judges which are intended to minimize the risk of conflict with judicial obligations (Rules, §100.4). Among other restrictions, a full-time judge is prohibited from acting as a fiduciary except for a family member or, with the approval of the Chief Administrator of the Courts, for a person “with whom the judge has maintained a longstanding personal relationship of trust and confidence” (Rules, §100.4[E][1]). For several years after taking judicial office, respondent violated this ethical mandate by continuing to serve as a court-appointed fiduciary in three non-family matters without seeking or obtaining administrative approval.

The record of respondent’s actions in *Tucker*, *Murray* and *Aboussouan* after he became a judge reflects continued involvement in the matters and sporadic, dilatory

acts, rather than a diligent effort to be replaced as fiduciary or to conclude the matters expeditiously. For example, in *Tucker*, he unnecessarily delayed filing a final accounting, and even after a court order was issued directing him to file a final accounting within 45 days, he did not do so for eight months; in *Aboussouan*, he had not filed the final accounting as of June 2013, although a court ordered him in January 2012 to do so. In *Murray*, he was not replaced as guardian until almost three years after assuming the bench; and while a judge, he made three trips to Florida in his capacity as guardian, paid for by the disabled person's assets, and continued to collect fees as a fiduciary. The record also indicates that as a fiduciary, he communicated with attorneys from the court facilities where he served as a judge. These acts presented a clear conflict with his judicial role.

Respondent's services as a fiduciary after becoming a full-time judge continued for "an inexcusably long period," and to the extent some tasks he performed may have been ministerial, "no justification appears for his failure to turn them over to another attorney" (*Matter of Moynihan*, 80 NY2d 322, 324, 325 [1992] [involving a full-time judge who continued to act as fiduciary in several estates and to perform business or legal services for clients for more than two years after assuming the bench]). Respondent should have recognized that his continued service as a fiduciary was inconsistent with the ethical rules. While it is stipulated that he "now realizes" that such conduct was prohibited, "[i]gnorance and lack of competence do not excuse violations of ethical standards" (*Matter of VonderHeide*, 72 NY2d 658, 660 [1988]; see also *Matter of Feinberg*, 5 NY3d 206, 214 [2005]).

In addition, prior to becoming a judge, respondent filed four applications seeking to become eligible for fiduciary appointments that misrepresented his financial liabilities. In applications filed with the Office of Court Administration, he represented that there had never been and were no foreclosure proceedings pending against him, notwithstanding that at the time of such filings, he was a defendant in a foreclosure proceeding concerning his residence. Respondent's failure to disclose that significant legal proceeding against him on documents filed with the court system – through which he was seeking appointments to serve in a position of trust – cannot be condoned, notwithstanding that the conduct occurred several years before he became a judge. *See, e.g., Matter of Tamsen*, 100 NY2d 19 (2003) (prior to ascending the bench, judge misappropriated client funds and altered records as an attorney, resulting in his disbarment while serving as a judge). *See also Matter of Alessandro*, 13 NY3d 238 (2009) (judges gave inaccurate and incomplete information on loan applications and financial disclosure statements); *Matter of Esposito*, 2004 NYSCJC Annual Report 100 (judge's conduct in litigation was "deceptive" in significant respects). While respondent claims that he misread the question, he had a duty to read the form carefully in order to make sure that his responses were accurate. We note that the pertinent question specifically mentioned foreclosure proceedings – at a time when there was a pending foreclosure proceeding against him involving his home – which should have alerted him to be particularly careful in making sure that he understood the question and responded truthfully.

In accepting the jointly recommended sanction of censure, we note that respondent has acknowledged that his actions were inconsistent with the ethical standards.

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

Judge Klonick, Judge Ruderman, Mr. Belluck, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

Judge Acosta was not present.

CERTIFICATION

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

Dated: August 12, 2013

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