

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

MARIE ROLLER,

a Justice of the Veteran Town Court and
Acting Justice of the Millport Village
Court, Chemung County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard¹
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the Commission

Honorable Marie Roller, *pro se*

¹ Ms. Hubbard was appointed to the Commission on June 10, 2008. The vote in this matter was taken on May 8, 2008.

The respondent, Marie Roller, a Justice of the Veteran Town Court and Acting Justice of the Millport Village Court, Chemung County, was served with a Formal Written Complaint dated January 24, 2007, containing three charges. The Formal Written Complaint alleged that respondent failed to make timely deposits of court monies (Charges I and II) and failed to notify the Department of Motor Vehicles regarding defendants who did not answer charges or pay fines as required (Charge III). Respondent filed an Answer dated February 15, 2007.

By Order dated July 3, 2007, the Commission designated William T. Easton, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 14, 2007, in Syracuse. Schedules A and B of the Formal Written Complaint were amended at the hearing. The referee filed a report dated March 20, 2008.

The parties submitted briefs with respect to the referee's report. Oral argument was waived. On May 8, 2008, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a Justice of the Veteran Town Court and has served in that capacity since January 1, 2000. Since 2003, she has also served as an Acting Justice of the Millport Village Court.
2. Respondent's co-justice of the Veteran Town Court is Thomas P. Brooks, II, who assumed his position at the same time as respondent.
3. During her tenure as Veteran Town Justice, respondent was assisted

by three court clerks: Jane Briggs (from January 2000 to August 2000), Beverly Michalko (from November 2000 to December 2002), and Carol Zachary (from May 2003 to May 2005).

4. Before taking office as a town justice, respondent attended a training course sponsored by the Office of Court Administration, and since that time she has regularly attended and successfully completed Office of Court Administration training programs.

As to Charge I of the Formal Written Complaint:

5. In April 2005, during a scheduled examination of Veteran Town Court records pursuant to a Commission investigation, Commission investigator Rebecca Roberts discovered \$430 in undeposited court funds in a file cabinet in respondent's office at the court. These funds included: (a) a \$25 money order from John Howells that was noted as received by the court on July 9, 2001; (b) a \$20 money order from David Clowers that was noted as received by the court on August 14, 2002; (c) \$110 in cash that was noted as being paid by Kimberly Marshall to the court in September 2002; (d) a \$75 money order from Alice Seymour that was noted as received by the court on May 27, 2004; and (e) a \$200 money order from Elizabeth Mousaw that was noted as received by the court on October 12, 2004.

6. These payments were not deposited into the court bank account until at least February 2006.

7. The cases of *Howells*, *Clowers* and *Marshall* were resolved in

respondent's court. The cases of *Seymour* and *Mousaw* pre-dated respondent's tenure as Veteran Town Justice, but those payments were received by the court when respondent was a judge and thus were under her control and supervision.

8. The undeposited payments in *Howells*, *Clowers* and *Marshall* represented partial payments of fines and surcharges.

9. Respondent was aware from the time she assumed her position as Veteran Town Justice that Section 214.9(a) of the Uniform Civil Rules for the Justice Courts requires judges to deposit court funds within 72 hours of receipt, exclusive of Sundays and holidays.

10. Although respondent was confused during this period whether the court could accept partial payments, respondent was aware that partial payments, if received, were not exempt from the rules governing deposit of court funds.

11. Three of the five undeposited payments (*Howells*, *Clowers* and *Marshall*) were received during the tenure of Court Clerk Beverly Michalko, and two (*Seymour* and *Mousaw*) were received during the tenure of Court Clerk Carol Zachary.

As to Charge II of the Formal Written Complaint:

12. From May 2004 until April 2005, respondent deposited court funds into the Veteran Town Court account on a monthly basis rather than within 72 hours of receipt.

13. Respondent held court sessions at least twice per month during this period, and the court also received payment of fines and surcharges between court

sessions, including payments by mail.

14. Because respondent was depositing funds on a monthly basis and not within 72 hours of receipt, respondent's practice resulted in the accumulation of substantial amounts of undeposited funds.

15. Respondent's practice also resulted in a substantial discrepancy between the payments received in every month and the funds deposited, as follows:

(a) In May 2004, respondent received \$6,140 in payments, but deposited \$1,050 into her court account.

(b) In June 2004, respondent received \$2,410 in payments, but deposited \$6,140 into her court account.

(c) In July 2004, respondent received \$2,430 in payments but deposited \$2,410 into her court account.

(d) In August 2004, respondent received \$3,980 in payments but deposited \$2,325 into her court account.

(e) In September 2004, respondent received \$4,440 in payments but deposited \$3,980 into her court account.

(f) In October 2004, respondent received \$4,645 in payments but deposited \$4,440 into her court account.

(g) In November 2004, respondent received \$3,567 in payments but deposited \$4,745 into her court account.

(h) In December 2004, respondent received \$12,505 in payments but

deposited \$3,567 into her court account.

(i) In January 2005, respondent received \$2,655 in payments but made no deposits into her court account.

(j) In February 2005, respondent received \$4,950 in payments but deposited \$15,160 into her court account.

(k) In March 2005, respondent received \$9,000 in payments but deposited \$4,930 into her court account.

(l) In April 2005, respondent received \$4,055 in payments but deposited \$12,920 into her court account.

16. Respondent personally deposited funds into the court account during this period. Respondent's court clerk during this period, Carol Zachary, prepared deposit slips for respondent but never made deposits.

17. Although respondent was aware during this time that Section 214.9(a) of the Uniform Civil Rules for the Justice Courts requires court funds to be deposited within 72 hours of receipt, respondent never informed her court clerk of this requirement; nor did respondent direct her clerk to prepare deposit slips to enable respondent to deposit these funds in compliance with the Rules.

18. Respondent's professional relationship with her clerk, Carol Zachary, became acrimonious during Ms. Zachary's tenure.

As to Charge III of the Formal Written Complaint:

19. From April 2001 through February 2006, respondent failed to notify

the Department of Motor Vehicles (DMV) regarding 110 defendants who had either failed to answer their charges within 60 days of the return date or failed to pay the fines respondent had imposed, as indicated on Schedule B to the Formal Written Complaint as amended at the hearing.

20. Of these cases, 49 defendants had failed to appear in court or answer the charges against them, and 61 defendants had failed to pay fines and/or surcharges imposed by respondent. As a result of respondent's failure to notify DMV, these defendants did not have their licenses suspended or have points assessed against their licenses, and \$7,430 of imposed fines and/or surcharges was not collected.

21. The above cases were returnable before respondent during the time when Beverly Michalko and Carol Zachary served as court clerk, as well as during several months when respondent had no court clerk.

22. Respondent was aware of her obligation to notify DMV regarding such defendants. Respondent neither notified DMV herself nor instructed her court clerk to do so.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.3(C)(1) and 100.3(C)(2) of the Rules Governing Judicial Conduct 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 III of the Formal Written Complaint as amended are sustained, and respondent's misconduct is established.

A town or village justice is personally responsible for monies received by the court (1983 Op. of the State Comptroller, No. 83-174). Such monies must be deposited within 72 hours of receipt (Uniform Civil Rules for the Justice Courts §214.9[a] [22 NYCRR §214.9(a)]). While this responsibility may be delegated, a judge is required to exercise supervisory vigilance over court staff to ensure the proper performance of this important function. *See Matter of Cavotta*, 2008 Annual Report 107 (Comm on Judicial Conduct); *Matter of Jarosz*, 2004 Annual Report 116 (Comm on Judicial Conduct). *See also*, *Matter of Brooks*, 2008 Annual Report 89 (Comm on Judicial Conduct).

Respondent failed to perform her administrative and supervisory duties adequately, resulting in the careless handling of funds collected by the court. The record reveals a pattern of deposits that were untimely and incomplete. For example, in one month respondent received \$12,505 in payments but deposited \$3,567 into the court account; the next month she received \$2,655 but made no deposits; and the following month, \$4,950 was received and \$15,160 was deposited. In five cases, monies received by the court totaling \$430, including \$110 in cash, were simply placed in a file cabinet, where they remained for months or years. These monies, some of which represented partial payments of fines and surcharges, remained undeposited until they were discovered during a Commission investigation.

The administration of justice is compromised when public funds entrusted to a judge are handled in a careless manner. When such carelessness involves substantial

amounts of money and continues for years, the damage to public confidence in the judge's court is considerable.

In addition, respondent neglected 110 motor vehicle cases pending in her court by failing to use the legal means available to compel defendants to answer the charges or to pay fines totaling \$7,430 she had imposed. Section 514(3) of the Vehicle and Traffic Law requires a judge to notify the Commissioner of Motor Vehicles of such derelictions so that the defendants' drivers' licenses can be suspended. By failing to do so, respondent permitted defendants to avoid legal process by ignoring the summonses they were issued or the fines levied against them. Respondent's neglect is unacceptable since it promotes disrespect for the administration of justice, deprived state and local authorities of thousands of dollars that should have been collected, and enabled defendants whose licenses should have been suspended to continue to drive for months or years. *See, Matter of Ware*, 1991 Annual Report 79 (Comm on Judicial Conduct).

Respondent's problems with her court clerk over some of this period do not excuse these administrative lapses. Indeed, those circumstances should have prompted respondent to take particular care to insure that her administrative duties were being properly performed.

In mitigation, there is no evidence that court funds were misused, and respondent has taken steps to insure that funds are now deposited promptly, as required by law.

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

Judge Klonick, Mr. Emery, Mr. Harding, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

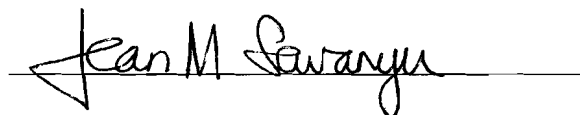
Mr. Belluck and Mr. Coffey concur as to Charge III and the sanction of censure, but dissent as to Charges I and II and vote to dismiss the charges on the basis that the administrative problems have been remedied and there is no indication that monies were missing.

Ms. DiPirro was not present.

CERTIFICATION

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

Dated: July 7, 2008

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