STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JOHN M. SKINNER,

a Justice of the Columbia Town Court,
Herkimer County.

DETERMINATION

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THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Eteena J. Tadjiogueu, Of Counsel) for the Commission

Honorable John M. Skinner, respondent pro se

The respondent, John M. Skinner, a Justice of the Columbia Town Court, Herkimer County, was served with a Formal Written Complaint dated February 14, 2018, containing two charges. The Formal Written Complaint alleged that respondent delayed

and mishandled a small claims action and failed to mechanically record any court proceedings for more than eight years. Respondent filed an Answer dated April 10, 2018.

On June 6, 2018, the Administrator and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, 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 13, 2018, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Columbia Town Court, Herkimer County, since 2009. His current term expires on December 31, 2020. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint:

2. As set forth below, from May 2015 to November 2016, while presiding over *Erek Treen-Goff v Heidi Schimmelpfennig*, a small claims proceeding, respondent failed to be faithful to the law and maintain professional competence in it and failed to dispose of the matter promptly, efficiently and fairly, in that he: (A) unduly delayed holding a hearing and failed to decide the defendant's request for a jury trial until after he rendered judgment; (B) failed to direct his court clerk to prepare minutes of the proceeding and to file a return with the County Court pursuant to Section 1704 of the Uniform Justice Court Act; and (C) failed to mechanically record any appearances in the

matter, in violation of Section 30.1 of the Rules of the Chief Judge (22 NYCRR §30.1) and Administrative Order 245/08.

3. On April 14, 2015, Erek Treen-Goff filed a notice of small claim in the Columbia Town Court against Heidi Schimmelpfennig. Mr. Treen-Goff sought $3,000 plus $15 court costs for damage caused to his vehicle, which he claimed was sustained when he swerved into a utility pole to avoid hitting Ms. Schimmelpfennig's dog that had run into the road.

4. On April 14, 2015, Janet Elliott, the Town of Columbia court clerk, processed Mr. Treen-Goff's petition and set a hearing date for 6:00 PM on May 19, 2015.

5. On May 12, 2015, Ms. Schimmelpfennig filed an "affidavit of facts" in the Columbia Town Court, demanded a jury trial and paid a jury fee in the amount of $10 and a $50 deposit. The affidavit was not notarized.

6. On May 19, 2015, respondent sent Ms. Schimmelpfennig a letter requesting a notarized written demand for a jury trial and an affidavit of facts, among other items.

7. On June 1, 2015, Ms. Schimmelpfennig re-filed a jury trial demand and "affidavit of facts." Neither the jury trial demand nor the affidavit was notarized.

8. From May 12, 2015, to August 20, 2016, respondent adjourned the hearing date at least three times, notwithstanding that neither Mr. Treen-Goff nor Ms. Schimmelpfennig ever requested an adjournment.

9. Respondent failed to hold a hearing in the case until September 27, 2016. Present in the courtroom on that date were the plaintiff, the defendant, the

plaintiff's grandfather, Fred Treen, and the defendant's friend, Bob Meyer, who was an observer and did not intend to offer any testimony.

10. During the proceeding on September 27, 2016, the parties testified about the accident, and the plaintiff or his grandfather provided a police report and documentary evidence concerning repairs to Mr. Treen-Goff's vehicle.

11. At the conclusion of the proceeding on September 27, 2016, respondent adjourned the matter to provide the plaintiff with time to obtain records from the New York State Electric and Gas Corporation (NYSEG) specifying when the accident occurred and when the utility pole was replaced.

12. On October 11, 2016, the parties again appeared before respondent. Also present in the courtroom were the plaintiff's grandfather, Mr. Treen, and the defendant's son, Evan Schimmelpfennig.

13. During the appearance, Mr. Treen provided respondent with weather reports from the date of the accident, handwritten statements from neighbors who had allegedly witnessed the defendant's dogs in the road, and a document from the utility company regarding repairs to the utility pole.

14. On October 11, 2016, respondent issued a judgment in favor of Mr. Treen-Goff, awarding him $1,000 plus $15 court costs.

15. On October 18, 2016, respondent sent Ms. Schimmelpfennig a copy of the judgment. In a cover letter accompanying the judgment, respondent wrote that Ms. Schimmelpfennig's motion for a jury trial was denied and he returned her $50 deposit and $10 filing fee.

16. On October 31, 2016, Ms. Schimmelpfennig sent a Notice of Appeal to Mr. Treen-Goff and the Columbia Town Court by certified mail, signature required. The caption in the Notice of Appeal stated that the judgment was being appealed to the "Appellate Division of the Supreme Court of the State of New York, Second Judicial Department," although the Columbia Town Court is located in the Third Judicial Department and the proper forum for appeal of a town court decision is County Court.

17. On November 9, 2016, Ms. Schimmelpfennig sent the Columbia Town Court a money order in the amount of $101.50 and a $5 cash filing fee. On November 29, 2016, respondent returned Ms. Schimmelpfennig's money order. He failed to direct his court clerk to prepare minutes of the proceeding and to file a return with the County Court, and he did not otherwise take any action on Ms. Schimmelpfennig's appeal.

18. During the pendency of *Treen-Goff v Schimmelpfennig,* respondent failed to mechanically record any appearances in the case.

As to Charge II of the Formal Written Complaint:

19. From January 1, 2009, when he assumed judicial office, through May 23, 2017, respondent failed to mechanically record any appearances in the Columbia Town Court as required by Section 30.1 of the Rules of the Chief Judge (22 NYCRR §30.1) and Administrative Order 245/08.

20. Section 30.1 of the Rules of the Chief Judge and Administrative Order 245/08 provide that every town and village justice must mechanically record all

proceedings in the court. The recording requirement became effective on June 16, 2008.

21. Respondent did not begin recording proceedings until after he was asked by the Commission during its investigation of the matters herein to provide audio recordings of appearances in *Treen-Goff v Schimmelpfennig.*

Additional Factors

22. Respondent acknowledges that he improperly delayed in holding a hearing in *Treen-Goff v Schimmelpfennig*. Prior to presiding over the matter, respondent had never received a small claims jury trial demand and did not know how to process the petition. Respondent avers that in the future he will immediately contact the Judicial Resource Center for assistance if he encounters a judicial issue that he cannot independently resolve.

23. Respondent also acknowledges that he did not mechanically record proceedings in his court prior to May 23, 2017. Respondent asserts that he did not know how to operate the laptop recorder, and until the Commission's inquiry he did not seek assistance in learning how to operate the recorder. Respondent also asserts that, notwithstanding the clear mandate of Section 30.1 of the Rules of the Chief Judge and Administrative Order 245/08 that all proceedings be mechanically recorded, he believed his handwritten notes of proceedings were sufficient, even though he had not researched the matter and could point to no authority supporting his interpretation. After the Commission attempted to obtain audio recordings of proceedings in *Treen-Goff v Schimmelpfennig,* respondent received training from a local computer technician, which he acknowledges he could have done years before. Since May 2017, respondent has

complied with the mechanical recording requirement and pledges to continue to comply henceforth.

24. Respondent further acknowledges that it was improper to fail to take action on the defendant's appeal. Respondent states that he was awaiting the results of the Commission's investigation before acting on the appeal, but he now appreciates that it was inappropriate and unfair to the litigants to defer his judicial responsibilities in their case for so long, pending resolution of a disciplinary complaint against him. Respondent further states that he had never previously handled an appeal, but he assures the Commission that in the future he will consult with the Judicial Resource Center in a timely manner concerning his judicial obligations with regard to appeal procedures or any other matters that, as here, may confound him.

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(B)(7) and 100.3(C)(1) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the 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 record establishes that respondent inexcusably neglected his duties as a judge by failing to mechanically record any court proceedings for more than eight years, contrary to a statewide administrative order, and by unduly delaying a small claims matter in which he failed to hold a hearing until 17 months after a notice of claim was

filed. Respondent has acknowledged his responsibility for these ethical lapses.

Since 2008, town and village justices have been required to mechanically record all court proceedings pursuant to Administrative Order 245/08, issued pursuant to the Rules of the Chief Judge (22 NYCRR §30.1). Despite this clear mandate, which went into effect shortly before he became a judge, respondent failed to record any proceedings in his court from the time he first took office and continuing for more than eight years. Respondent's claim that he "believed that his handwritten notes of proceedings were sufficient" suggests that he had at least some awareness of the recording requirement, and while he has explained that he "did not know how to operate the laptop recorder," which the court system had provided, his failure for more than eight years to seek assistance in learning to do so is plainly inexcusable. Not until after the Commission contacted him to ask for an audio recording of a particular proceeding did he seek training from a local computer technician and begin to comply with this important mandate.

The absence of a recording in any proceeding is significant since it not only makes it more difficult to determine what transpired at the proceeding but also indicates lack of compliance with an administrative order, which is inconsistent with a judge's ethical responsibilities (Rules, §100.3[C][1]). *See, e.g., Matter of Ridsdale*, 2012 NYSCJC Annual Report 148; *Matter of Allen*, 2012 NYSCJC Annual Report 64. While the cases that have come to the Commission's attention in this regard have generally involved judges who may have forgotten to turn on the recorder in isolated instances, did not ensure that the court staff had activated it or simply did not realize the equipment was not working, respondent's decision to simply ignore this important requirement by failing

to record any proceedings whatsoever was unprecedented and grossly improper.

Respondent was also responsible for significant delay in a small claims action that was filed in his court. By not holding a hearing until 17 months after the notice of claim was filed, he deprived the parties of the opportunity to have the claim resolved in a timely manner. *See Matter of Scolton*, 2008 NYSCJC Annual Report 209 (delays in scheduling a hearing and issuing decisions in six small claims actions); *Matter of Baldwin*, 2009 NYSCJC Annual Report 74 (significant delays in three small claims matters); *Matter of Trickler*, 2016 NYSCJC Annual Report 222 (ten-month delay in scheduling a trial in a case involving alleged violations of the Environmental Conservation Law).

The ethical standards require every judge to dispose of court matters "promptly, efficiently and fairly" (Rules, §100.3[B][7]). The "informal and simplified" procedures for small claims are intended to provide litigants with an efficient and just resolution to their legal disputes (Uniform Justice Court Act ["UCJA"] §1804). This goal is thwarted when a simple matter that could have been resolved expeditiously is delayed for over a year through no fault of the parties. *See Matter of Gilpatric,* 2011 NYSCJC Annual Report 97. A small claim is not insignificant to the parties involved, and for litigants whose cases may represent their only personal involvement with the courts, an unduly delayed resolution of their dispute would likely convey the impression that the judicial system is inefficient and insensitive to their concerns.

Here, respondent's apparent uncertainty about how to process the defendant's demand for a jury trial obviously does not excuse the excessive delay. While

respondent, who had never previously handled a small claims jury trial request, appears to have recognized that the defendant's unsworn submission did not meet the statutory requisite (*see* UJCA §1806; *Village of Castleton on the Hudson v Pillsworth*, 184 Misc2d 284, 285 [Sand Lake Justice Ct Rensselaer Co 2000]) and asked her to submit a notarized filing, it is unclear why he then inexplicably delayed and repeatedly adjourned the matter for over a year, instead of seeking guidance from the City, Town and Village Courts Resource Center.

After the defendant filed a notice of appeal in the matter, respondent further neglected his judicial responsibilities by failing to direct his court clerk to prepare minutes of the proceeding and to file a return with the County Court. Respondent's claim that he was awaiting the results of the Commission's investigation before acting on the appeal is patently unacceptable since he was required to comply with the statutory directives, and his unfamiliarity with appeal procedures does not excuse his failure to seek appropriate guidance. *See Matter of Ayres*, 30 NY3d 59 (2017) (judge failed to file the court's return in a timely manner despite multiple directives to do so from County Court). Respondent's failure to diligently discharge his judicial duties in the matter was contrary to ethical standards and statutory mandates, with adverse consequences not only to the litigants, but to public confidence in the administration of justice as a whole.

In accepting the jointly recommended sanction of censure, we note that respondent has acknowledged his misconduct and has assured the Commission that he will seek guidance from the Resource Center when needed, and we trust that he will diligently discharge his judicial duties in the future. We also take this opportunity to

remind all judges of the numerous resources provided by the court system that are available to them, including the Resource Center and the Advisory Committee on Judicial Ethics, when questions about procedures or their judicial responsibilities arise.

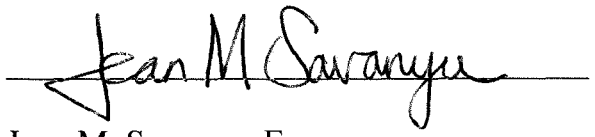
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Mr. Raskin, Mr. Stoloff and Ms. Yeboah concur.

CERTIFICATION

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

Dated: June 26, 2018



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Clerk of the Commission
New York State
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