

**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

FRANK R. SPHON,

STIPULATION

A Justice of the French Creek Town Court,
Chautauqua County

Subject to the approval of the Commission on Judicial Conduct

("Commission"):

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission on Judicial Conduct ("Commission"), the Honorable Frank R. Sphon ("respondent"), and his attorney, James P. Subjack, Esq., as follows.

1. Respondent has served as a Justice of the French Creek Town Court since 1992. He is not an attorney. His current term of office expires on December 31, 2009. Respondent is 76 years old.
2. Respondent was served by the Commission with a Formal Written Complaint dated September 4, 2008, which alleged that from in or about January 2006 to in or about October 2006, respondent failed to properly administer the French Creek Town Court, supervise his court clerk, and maintain adequate records resulting in court funds not being timely deposited; and that respondent, on one occasion, on a weekend

night, removed \$20 cash from the court bank bag, which was used to store court funds pending their deposit to the court account, which he then used for a personal purpose. (At the time he withdrew the money from the bank bag, respondent placed his personal check for \$20 into the court bank bag in lieu of the money he had removed, and thereafter deposited the check along with court funds). A copy of the Formal Written Complaint is appended hereto as Exhibit 1.

3. Respondent submitted an Answer dated October 24, 2008 in which he admitted all factual allegations related to the first charge but denied that his conduct was violative of any of the Rules Governing Judicial Conduct. Respondent in his Answer to the second charge of misconduct denied any conversion of court funds. A copy of the Answer is appended hereto as Exhibit 2.

4. Respondent tendered his resignation from judicial office on December 31, 2008, effective January 31, 2009, and has submitted copies to the French Creek Town Court and the Office of Court Administration. A copy of respondent's resignation letter is appended hereto as Exhibit 3.

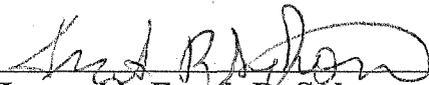
5. Pursuant to Section 47 of the Judiciary Law, the Commission's jurisdiction over a judge continues for 120 days after resignation from office.

6. Respondent affirms that he will neither seek nor accept judicial office in the future.

7. All the parties to this Stipulation respectfully request that the Commission close the pending matter based upon this Stipulation.

8. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law to the limited extent that this Stipulation will be made public if accepted by the Commission.

Dated: 12-31-08



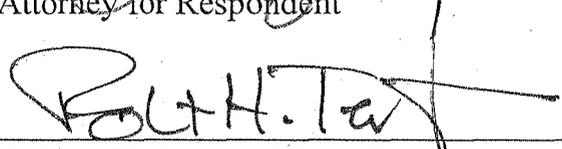
Honorable Frank R. Sphon
Respondent

Dated: 12-23-08



James P. Subjack, Esq.
Attorney for Respondent

Dated: 1-13-09



Robert H. Tembeckjian, Esq.
Administrator & Counsel to the Commission
(John J. Postel and David M. Duguay, Of Counsel)

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

FRANK R. SPHON,

a Justice of the French Creek Town Court,
Chautauqua County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to respondent, Frank R. Sphon, a Justice of the French Creek Town Court, Chautauqua County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon respondent the annexed Formal Written Complaint; and that, in accordance with said statute, respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon him to serve the Commission at its Rochester office, 400 Andrews Street, Suite 700, Rochester, New York 14604, with his verified Answer to the specific paragraphs of the Complaint.

Dated: September 2, 2008
New York, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway
New York, New York 10006
(646) 386-4800

To: Honorable Frank R. Sphon
French Creek Town Court Justice
French Creek Town Court
10073 King Road
Clymer, New York 14724-9628

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

FRANK R. SPHON,

a Justice of the French Creek Town Court,
Chautauqua County

**FORMAL
WRITTEN COMPLAINT**

1. Article 6, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct ("Commission"), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.
2. The Commission has directed that a Formal Written Complaint be drawn and served upon Frank R. Sphon ("respondent"), a Justice of the French Creek Town Court, Chautauqua County.
3. The factual allegations set forth in Charges I and II state acts of judicial misconduct by respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct ("Rules").
4. Respondent has been a Justice of the French Creek Town Court since July 7, 1992. He is not an attorney.

CHARGE I

5. From in or about January 2006 to in or about October 2006,

respondent failed to properly administer the French Creek Town Court, failed to supervise his court clerk, and failed to maintain adequate records as required by Sections 99-1 and 99-m of the General Municipal Law and Section 214.11(3) of the Uniform Rules for the Justice Courts, with the results that court funds were not deposited within 72 hours of receipt as required by Section 214.9(a) of the Uniform Rules for the Justice Courts, and deposits into his court account exceeded the amount of money his records indicate he received by \$3,404.

Specifications to Charge I

6. In or about January 2006, respondent received \$300 in court funds but deposited \$1,069 into his court account, \$769 more than his court records indicated had been received.

7. In or about February 2006, respondent received \$775 in court funds but deposited \$3,285 into his court account, \$2,510 more than his court records indicated had been received.

8. In or about March 2006, respondent received \$279 in court funds but deposited \$1,336 into his court account, \$1,057 more than his court records indicated had been received.

9. In or about April 2006, respondent received \$190 in court funds but deposited \$442 into his court account, \$252 more than his court records indicated had been received.

10. In or about May 2006, respondent received \$602 in court

funds but deposited \$682 into his court account, \$80 more than his court records indicated had been received.

11. In or about June 2006, respondent received \$692 in court funds but deposited \$337 into his court account, \$355 less than his court records indicated had been received.

12. In or about July 2006, respondent received \$670 in court funds but deposited \$725 into his court account, \$55 more than his court records indicated had been received.

13. In or about August 2006, respondent received \$1,714 in court funds but deposited \$754 into his court account, \$960 less than his court records indicated had been received.

14. In or about September 2006, respondent received \$330 in court funds but deposited \$325 into his court account, \$5 less than his court records indicated had been received.

15. In or about October 2006, respondent received \$380 in court funds but deposited \$381 into his court account, \$1 more than his court records indicated had been received.

16. By reason of the foregoing, respondent 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, in that respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of

Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently in that he failed to be faithful to the law and maintain professional competency, in violation of Section 100.3(B)(1) of the Rules, failed to diligently discharge his administrative responsibilities and maintain professional competence in judicial administration, in violation of Section 100.3(C)(1) of the Rules, and failed to require his court staff and others subject to his direction and control to observe the standards of fidelity and diligence that apply to the judge, in violation of Section 100.3(C)(2) of the Rules.

CHARGE II

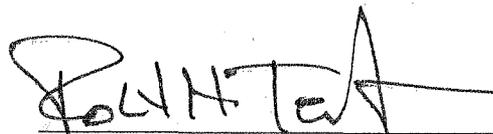
17. In or about 2004, respondent converted to his personal use \$20 in court funds received by him in his judicial capacity, by removing cash from the court bank bag and using the funds for personal, non-official purposes, in violation of Section 214.9(b) of the Uniform Rules for the Justice Courts.

18. By reason of the foregoing, respondent 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, in that respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of

Section 100.1 of the Rules; and failed to avoid impropriety and the appearance of impropriety in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

WHEREFORE, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: September 2, 2008
New York, New York



ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway
New York, New York 10006
646-386-4800

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

WRITTEN ANSWER

FRANK R. SPHON,

a Justice of the French Creek Town Court,
Chautauqua County

The respondent, Frank R. Sphon, for his answer to the Formal Written Complaint to the Office of Judicial Conduct, respectfully alleges as follows:

1. He acknowledges that the deposits and receipts as set forth in paragraphs six through 15 accurately reflect the state of deposits and receipts for that period of time. however, denies that such action fails to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so the integrity and independence of the judiciary would be preserved or that he failed to avoid impropriety or appearance of impropriety and that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity or impartiality of the judiciary or that he failed to perform the duties of judicial office impartially and diligently and that he failed to be faithful to the law and maintain professional competency or that he failed to diligently discharge his administrative responsibilities and maintain professional competence and judicial administration.

2. With regard to charge two, the respondent absolutely denies that he ever converted any funds whatsoever received in his judicial capacity and has never so utilized

actual funds in any way other than to deposit them in the appropriate town court bank.

AS AND FOR AN AFFIRMATIVE DEFENSE

3. Repeats and realleges paragraphs one and two as if more fully set forth herein.

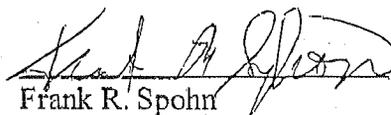
4. The respondent has faithfully executed his duties as town justice for a period in excess of 18 years and has never converted funds on his behalf, has never engaged in any action whatsoever that would give the appearance of impropriety or act improperly or done anything which brings discredit upon the office of town justice.

Yours, etc.,

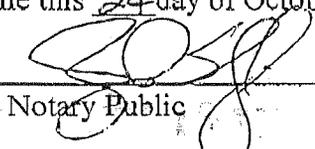
James P. Subjack
Attorney for Defendant
Office & Post Office Address
2 W. Main St.
Fredonia, NY 14063
(716) 672-2800

State of New York
County of Chautauqua

FRANK R. SPHON is the Respondent herein. He has read the foregoing Answer and knows the contents thereof. The contents are true except as to those matters therein alleged to be upon information and belief, and as for those matters, I believe them to be true.


Frank R. Spohn

Subscribe and sworn to before
me this 24 day of October, 2008


Notary Public

JAMES P. SUBJACK #4678729
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires Dec. 31, 2010

F.R. SPHON, JUSTICE
TOWN OF FRENCH CREEK

10073 King Road
Clymer, NY 14724
Phone-716-355-9945
Fax-716355-9945
Email-sphon325@windstream.net

Decmeber 31,2008

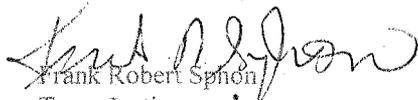
To the Town Supervisor, Members of the Town Board
Town of French Creek
169 Rte #426
Clymer, NY 14724

Dear Dave and Members,

Effective January 31,2009, I tender my resignation from the position as Town Justice for the Town of French Creek.

I would like to sincerely thank you for your years of cooperation.

Yours truly,


Frank Robert Sphon
Town Justice