

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

WILLIAM F. BURIN,

a Justice of the Lansing Town Court,
Tompkins 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 (John J. Postel, Of Counsel) for the Commission

Williamson, Clune & Stevens (by John Alden Stevens) for the Respondent

The respondent, William F. Burin, a Justice of the Lansing Town Court,
Tompkins County, was served with a Formal Written Complaint dated September 18,
2006, containing two charges. Respondent filed a Verified Answer dated October 4,

2006.

On February 8, 2007, 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 March 8, 2007, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Lansing Town Court, Tompkins County since January 1, 1994. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. From about January 2004 through in or about May 2005, respondent did not diligently discharge his administrative responsibilities and properly supervise his court clerks, with the result that approximately \$153,403.21 in court funds received during that period were not deposited within 72 hours of receipt, as required by Section 214.9(a) of the Uniform Civil Rules for the Justice Courts, and as indicated in the following paragraphs.

3. In January 2004, respondent received \$4,535.00 in court funds that were not deposited until March 11, 2004.

4. In February 2004, respondent received \$5,455.00 in court funds that

were not deposited until March 11, 2004.

5. In March 2004, respondent received \$9,247.34 in court funds that were not deposited until May 7, 2004.

6. In April 2004, respondent received \$6,648.37 in court funds that were not deposited until June 10, 2004.

7. In May 2004, respondent received \$10,380.00 in court funds that were not deposited until June 25, 2004.

8. In June 2004, respondent received \$11,420.00 in court funds of which \$6,370.00 was deposited on July 28, 2004, and \$5,050.00 on July 29, 2004.

9. In July 2004, respondent received \$7,050.00 in court funds that were not deposited until August 25, 2004.

10. In August 2004, respondent received \$6,790.00 in court funds of which \$500.00 was deposited on August 12, 2004, \$1,000.00 on August 25, 2004, and \$5,290.00 on September 15, 2004.

11. In September 2004, respondent received \$10,420.00 in court funds of which \$10,315.00 were deposited on September 30, 2004, and \$105.00 on October 2, 2004.

12. In October 2004, respondent received \$6,650.00 in court funds that were not deposited until February 7, 2005.

13. In November 2004, respondent received \$15,110.00 in court funds that were not deposited until February 23, 2005.

14. In December 2004, respondent received \$12,110.00 in court funds that were not deposited until March 10, 2005.

15. In January 2005, respondent received \$10,900.00 in court funds that were not deposited until March 23, 2005.

16. In February 2005, respondent received \$4,165.00 in court funds that were not deposited until April 1, 2005.

17. In March 2005, respondent received \$8,830.00 in court funds that were not deposited until April 15, 2005.

18. In April 2005, respondent received \$11,055.00 in court funds of which \$6,070.00 was deposited on April 29, 2005, and \$4,985.00 on May 12, 2005.

19. In May 2005, respondent received \$12,637.50 in court funds of which \$9,552.50 were deposited on May 24, 2005, and \$3,085.00 on June 8, 2005.

20. From January 2004 through May 2005, respondent relied on his court clerk to properly handle all court funds. The court clerk received the funds, issued receipts, marshaled funds for deposit, prepared bank deposit tickets and deposited the funds into the court bank account. Respondent did not handle court funds.

21. As a matter of practice, court funds were deposited on a monthly basis rather than within 72 hours of receipt, although on occasion, funds were held for periods of up to four months. Respondent never advised his court clerk that funds were required to be deposited within 72 hours of receipt.

22. Undeposited court funds were secured in a "bank bag" that was

stored with the court records in the court office. During the period from January 2004 through May 2005, respondent had two different clerks: Patricia Kannus, who resigned in September 2004, and Penny Slougher, who began in October 2004. A prior court clerk, Joanne Payne, left her position on September 3, 2003. The position was not filled until the hiring of Ms. Kannus on October 20, 2003. Respondent was aware that court deposits were required to be made within 72 hours of receipt and that between October 2004 and May 2005, the statutory requirement was not being met. Respondent did not take any action to assist personally in the handling or depositing of funds to ensure compliance with the statutory requirement.

23. In January 2005, as a consequence of a letter issued by the Department of Audit and Control directing the Lansing Town Supervisor to stop payment of respondent's salary, respondent attempted to secure assistance from the town board for his clerk. Respondent requested and obtained permission for his court clerk to receive "overtime" compensation for time beyond her normal work week. It was not until after being contacted by Commission staff in July 2005 that respondent required the clerk to deposit all court funds within 72 hours of receipt.

24. While deposits of respondent's court funds were regularly made after the 72-hour period prescribed by law, all funds were accounted for and eventually deposited. No court funds were missing.

25. Respondent acknowledges that he was responsible for properly training and supervising his court clerk in the handling and depositing of court funds but

that he did not perform these duties in an adequate manner.

As to Charge II of the Formal Written Complaint:

26. From January 2004 through April 2005, respondent did not diligently discharge his administrative responsibilities and properly supervise his court clerks, with the result that approximately \$99,078.37 in court funds received during that period were not reported and remitted to the State Comptroller within ten days of the month succeeding collection, as required by Sections 2020 and 2021 of the Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law and Section 27(1) of the Town Law, as indicated in the following paragraphs. As a result, on February 24, 2005, the State Comptroller ordered that payment of respondent's judicial salary be stopped.

27. Respondent's report and remittance to the State Comptroller for the month of January 2004, in the amount of \$4,535.00, was received on April 26, 2004, 76 days beyond the statutory required time.

28. Respondent's report and remittance to the State Comptroller for February 2004, in the amount of \$3,455.00, was received on May 26, 2004, 77 days beyond the statutory requirement.

29. Respondent's report and remittance to the State Comptroller for March 2004, in the amount of \$7,900.00, was received on June 25, 2004, 76 days beyond the statutory requirement.

30. Respondent's report and remittance to the State Comptroller for April 2004, in the amount of \$4,348.37, was received on July 6, 2004, 57 days beyond the

statutory requirement.

31. Respondent's report and remittance to the State Comptroller for May 2004, in the amount of \$5,880.00, was received on July 28, 2004, 48 days beyond the statutory requirement.

32. Respondent's report and remittance to the State Comptroller for June 2004, in the amount of \$11,720.00, was received on August 27, 2004, 48 days beyond the statutory requirement.

33. Respondent's report and remittance to the State Comptroller for July 2004, in the amount of \$6,550.00, was received on September 9, 2004, 30 days beyond the statutory requirement.

34. Respondent's report and remittance to the State Comptroller for August 2004, in the amount of \$4,890.00, was received on October 4, 2004, 24 days beyond the statutory requirement.

35. Respondent's report and remittance to the State Comptroller for October 2004, in the amount of \$5,400.00, was received on February 9, 2005, 91 days beyond the statutory requirement.

36. Respondent's report and remittance to the State Comptroller for November 2004, in the amount of \$6,110.00, was received on March 1, 2005, 81 days beyond the statutory requirement.

37. Respondent's report and remittance to the State Comptroller for December 2004, in the amount of \$9,010.00, was received on March 14, 2005, 63 days

beyond the statutory requirement.

38. Respondent's monthly report and remittance to the State Comptroller for January 2005, in the amount of \$7,480.00, was received on March 28, 2005, 46 days beyond the statutory requirement.

39. Respondent's report and remittance to the State Comptroller for February 2005, in the amount of \$4,165.00, was received on April 6, 2005, 27 days beyond the statutory requirement.

40. Respondent's report and remittance to the State Comptroller for March 2005, in the amount of \$9,080.00, was received on April 18, 2005, eight days beyond the statutory requirement.

41. The State Comptroller ordered payment of respondent's salary resumed on March 31, 2005.

42. Respondent's report and remittance to the State Comptroller for April 2005, in the amount of \$8,555.00, was received on May 18, 2005, eight days beyond the statutory requirement.

43. Respondent was aware that he was required by law to report and remit all court funds to the State Comptroller within ten days of the month succeeding collection. Respondent was also aware that as a matter of practice, his reports and remittances to the State Comptroller were submitted late. Respondent signed and reviewed each report before it was submitted to the State Comptroller.

44. Respondent relied on his court clerk to prepare and submit his

monthly report. He took no action to ensure that reports were submitted as required by law until after the State Comptroller ordered that payment of his salary be stopped for late reporting and remitting. Respondent thereafter took steps to secure the approval of the town board of overtime hours for his clerk. Respondent did not take any action to assist personally in the reporting and remitting of funds to ensure compliance with the statutory requirement.

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 (“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, and respondent’s misconduct is established.

A town or village justice is personally responsible for monies received by the court (1983 Opinion of the State Comptroller, No. 83-174). Such monies must be deposited within 72 hours of 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]; UJCA §2021[1]; Town Law §27; Vehicle and Traffic Law §1803). Although these responsibilities may be delegated, a judge is required to exercise supervisory vigilance to ensure the proper performance of these important functions. *See Matter of Jarosz*, 2004 Annual Report 116 (Comm. on Judicial Conduct) (inadequate supervision of

court clerk, who made false entries to conceal receipt of monies, resulting in \$3,000 in missing funds) (censure); *Matter of Restino*, 2002 Annual Report 145 (Comm. on Judicial Conduct) (inadequate supervision of court clerk, who failed to maintain adequate records and to make timely deposits) (admonition).

As a consequence of respondent's inadequate supervision of his court staff over a period of 17 months, thousands of dollars in court monies were not deposited and remitted to the State in a timely manner. Typically, deposits were made monthly, rather than within 72 hours of receipt as required by law. Remittances to the State, which are required to be made monthly, were filed as much as three months late, thereby depriving State coffers of funds that should have been remitted earlier. Since respondent's court collected an average of over \$9,000 per month, the amounts involved were considerable.

Although respondent relied on his clerk to handle all court monies, he failed to provide adequate supervision or training to his staff to ensure that monies were deposited promptly and reported and remitted on a timely basis. Even after he became aware that the statutory requirements were not being followed, respondent did not assist personally in handling funds to ensure compliance with the mandated procedures, although he took steps to secure approval for overtime hours for his clerk. Only after being contacted by Commission staff did respondent finally require that deposits be made within 72 hours of receipt.

We note that undeposited funds were stored in a "bank bag" stored with court records in the court office. We remind respondent of the importance of ensuring

that court funds are not only promptly deposited, but properly safeguarded prior to deposit.

In mitigation, we note that all funds were eventually deposited and have been properly accounted for. There is no indication that funds were missing or used for inappropriate purposes. We also note that respondent now recognizes his obligation as a judge to ensure compliance with the statutory procedures regarding the depositing, reporting and remitting of court funds.

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

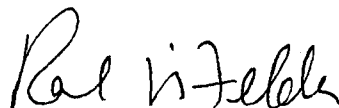
Mr. Felder, Judge Klonick, Mr. Coffey, Mr. Emery, Mr. Harding, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

Ms. DiPirro was not present.

CERTIFICATION

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

Dated: March 16, 2007



Raoul Lionel Felder, Esq., Chair
New York State
Commission on Judicial Conduct