

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

ROBERT W. ENGLE,

a Justice of the Madison Town Court,
Madison County.

DETERMINATION

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Honorable Jill Konviser
Nina M. Moore
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

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

Honorable Robert W. Engle, *pro se*

The respondent, Robert W. Engle, a Justice of the Madison Town Court,
Madison County, was served with a Formal Written Complaint dated August 3, 2009,

containing five charges. The Formal Written Complaint alleged that respondent sent fine notices to defendants without a trial or guilty plea, sent fine notices to other defendants who had already paid their fines, improperly initiated the suspension of defendants' driver's licenses, and, in two cases, disqualified himself and his co-justice without his co-justice's knowledge or consent. Respondent filed an answer dated September 17, 2009.

On October 27, 2009, the Administrator of the Commission 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 admonished and waiving further submissions and oral argument.

On November 5, 2009, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Madison Town Court, Madison County since January 1990. His current term expires on December 31, 2009. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. In three cases between 2004 and 2007 respondent failed to advise defendants of trial dates upon receipt of not guilty pleas, as required by Section 1806 of the Vehicle and Traffic Law, and instead imposed fines and surcharges without either a trial or a guilty plea.

People v. Matthew A. French

3. On October 17, 2006, Matthew A. French was charged with Driving Across a Hazard Marking and Operating Out of Class. Mr. French appeared before respondent on November 6, 2006, and pleaded not guilty to both charges. At that time, respondent gave Mr. French a charge reduction application to submit to the Madison County District Attorney's office, but did not set an adjourned date or schedule a trial.

4. On April 27, 2007, respondent sent Mr. French a fine notice stating that fines and surcharges totaling \$190 were due by April 30, 2007, and that Mr. French must appear on that date to explain why he had ignored the two charges.

5. On April 28, 2007, Mr. French met with respondent's co-judge, Michael P. Hynes, concerning respondent's fine notice. Judge Hynes sent a fax cover sheet to the District Attorney's office stating the case belonged to respondent and that Mr. French had "not pled guilty to any charge yet," along with copies of Mr. French's undated application to the District Attorney, the two tickets and the fine notice.

6. On May 5, 2008, respondent convicted Mr. French on the charge of Operating Out of Class and dismissed the charge of Driving Across a Hazard Marking. Respondent did not suspend Mr. French's driver's license while the charges were pending.

7. Respondent recognizes that it was improper to send Mr. French a fine notice imposing the fines and surcharges without first conducting a trial or obtaining a guilty plea. When respondent sent the fine notice to Mr. French, he did not realize that

he had failed to schedule further proceedings in the matter. He has apologized to Mr. French.

People v. William G. Meyer

8. On September 20, 2004, William G. Meyer was charged with Speeding. Mr. Meyer's attorney sent a facsimile to respondent entering a not guilty plea on behalf of Mr. Meyer and requesting a four-week adjournment. Respondent granted the adjournment, but did not set an adjourned date or schedule a trial.

9. Sometime between October 12, 2004, and November 2, 2004, respondent sent Mr. Meyer a letter stating that he accepted his guilty plea and imposing a fine and a surcharge totaling \$110.

10. On November 2, 2004, Mr. Meyer's attorney wrote a letter to respondent stating that Mr. Meyer had pleaded not guilty and that she was requesting a recommendation from the District Attorney that the Speeding charge be reduced.

11. On December 9, 2004, Mr. Meyer pleaded guilty to a reduced charge and paid a \$30 fine.

People v. Deborah J. Smith

12. On March 22, 2006, Deborah J. Smith was charged with Use of Mobile Telephones. The case was originally returnable before respondent's co-judge, Michael P. Hynes. Judge Hynes disqualified himself and the case came before respondent.

13. On April 20, 2006, Ms. Smith's attorney sent a letter to Judge Hynes,

with a copy of the District Attorney's recommendation and consent to dismiss the charge.

14. On August 20, 2006, respondent sent Ms. Smith a "Notice to Defendant of Failure to Pay Fine," which stated that Ms. Smith had failed to answer the court's previous fine notice and that the \$75 fine was imposed by the court "as a result of [her] guilty plea." The letter further stated that respondent would notify the Commissioner of Motor Vehicles to suspend Ms. Smith's driver's license if she did not respond to his letter by August 26, 2006.

15. On August 24, 2006, Ms. Smith's attorney sent a letter to respondent with a copy of the District Attorney's recommendation and consent to dismiss the charge.

16. Respondent dismissed the charge against Ms. Smith. He later apologized to Ms. Smith for sending the fine notice.

17. Respondent does not recall receiving the District Attorney's recommendation to dismiss the charge.

As to Charge II of the Formal Written Complaint:

18. In two cases between 2005 and 2007, respondent sent notices to defendants demanding payment of fines and surcharges that had previously been paid in full.

People v. Charles E. Ireland

19. On October 4, 2006, Charles E. Ireland was charged with No Inspection. Mr. Ireland appeared before respondent on October 30, 2006, pleaded guilty to a reduced charge and paid a \$70 fine.

20. On July 17, 2007, respondent sent a notice to Mr. Ireland stating that he owed a fine and a surcharge totaling \$90 and warning that he would notify the Commissioner of Motor Vehicles to suspend his driver's license if the amount was not paid by July 27, 2007.

21. On July 23, 2007, Mr. Ireland paid the additional \$90 fine. He then provided copies of this receipt and his initial receipt for \$70 to the Madison Town Board. On November 16, 2007, the Madison Town Attorney sent a letter to respondent concerning the double fines that Mr. Ireland paid for the same ticket. Respondent sent a refund to Mr. Ireland on November 21, 2007, and later apologized to Mr. Ireland.

22. Respondent sent Mr. Ireland a fine notice because he wrongly believed that a second No Inspection charge had been filed against Mr. Ireland and that Mr. Ireland had pleaded guilty to that charge.

People v. Allen E. Smith

23. On September 18, 2005, Allen E. Smith was charged with No Seat Belt. Mr. Smith pleaded guilty by mail on September 28, 2005.

24. On October 8, 2005, respondent sent a "Notice of Fine Due" to Mr. Smith imposing a \$45 fine and a \$55 surcharge. Sometime between October 8, 2005 and October 17, 2005, Mr. Smith paid respondent \$100 in full satisfaction of the fine and surcharge.

25. Sometime between October 17, 2005 and January 31, 2007, respondent sent a second, undated notice to Mr. Smith directing payment of the

outstanding fine and surcharge within ten days of receipt of the letter.

26. On January 31, 2007, Mr. Smith sent a letter to respondent stating that he had previously paid his fine. The matter was concluded with no additional payments by Mr. Smith.

27. Respondent sent the second fine notice because he wrongly believed that Mr. Smith was another defendant with the same last name who had the same charge pending.

As to Charge III of the Formal Written Complaint:

28. In four cases between 2003 and 2006, respondent notified the Commissioner of Motor Vehicles to suspend a defendant's driver's license for failure to appear or answer charges or failure to pay a fine imposed by the court, notwithstanding that each defendant had previously pleaded guilty and paid his or her fine and surcharge.

People v. Justin M. Graham

29. On October 31, 2003, Justin M. Graham was charged with Speeding and Facilitating Aggravated Unlicensed Operation of a Motor Vehicle. On March 1, 2004, Mr. Graham pleaded guilty to a reduced charge in satisfaction of the Speeding charge and paid a \$65 fine and a \$55 surcharge. Respondent dismissed the Unlicensed Operation charge.

30. Sometime between March 4, 2005 and August 5, 2005, respondent notified the Commissioner of Motor Vehicles to suspend Mr. Graham's driver's license for failure to appear or answer charges or failure to pay a fine imposed by the court.

31. Sometime between August 5, 2005, and September 10, 2005, Mr. Graham's mother wrote to respondent stating that her son had paid his ticket, and Judge Hynes lifted the suspension before it went into effect.

32. Respondent sent the notice to the Commissioner of Motor Vehicles because he wrongly believed that Mr. Graham was another defendant who shared the same last name and had a pending case.

People v. Lawrence F. Griffo, Jr.

33. On February 17, 2003, Lawrence Griffo was charged with Speeding. Mr. Griffo appeared before respondent on June 2, 2003, pleaded guilty to a reduced charge and paid a \$25 fine.

34. Sometime between June 2, 2003 and August 5, 2005, respondent notified the Commissioner of Motor Vehicles to suspend Mr. Griffo's driver's license for failure to appear or answer charges or failure to pay a fine imposed by the court.

35. On August 16, 2005, Mr. Griffo contacted respondent's court, and Judge Hynes lifted the suspension before it went into effect.

36. Respondent sent the notice to the Commissioner of Motor Vehicles because he did not notice that the "Certificate Concerning Disposition" was missing from the ticket packet, which would indicate that the matter had been resolved and information regarding the disposition had been sent to the Commissioner of Motor Vehicles.

People v. Jamison G. Mills

37. On October 16, 2004, Jamison G. Mills was charged with Speeding.

Mr. Mills pleaded guilty to a reduced charge on November 9, 2004. On December 9, 2004, Mr. Mills paid respondent a fine and a surcharge totaling \$70.

38. Sometime between December 9, 2004, and August 5, 2005, respondent notified the Commissioner of Motor Vehicles to suspend Mr. Mills' driver's license for failure to appear or answer charges or failure to pay a fine imposed by the court.

39. On August 16, 2005, Mr. Mills contacted respondent's court, and Judge Hynes lifted the suspension before it went into effect.

People v. Margaret S. Peer

40. On May 27, 2005, Margaret S. Peer was charged with Unregistered Motor Vehicle. Ms. Peer pleaded guilty by mail on May 28, 2005.

41. On June 4, 2005, respondent sent Ms. Peer a notice imposing a fine and a surcharge totaling \$95.

42. Sometime between June 4, 2005 and June 17, 2005, respondent received Ms. Peer's payment and issued her a fine receipt in the amount of \$95.

43. Sometime between June 17, 2005 and May 1, 2006, respondent notified the Commissioner of Motor Vehicles to suspend Ms. Peer's license for failure to appear or answer charges or failure to pay a fine imposed by the court.

44. On May 4, 2006, respondent recognized his error after he received a phone message that Ms. Peer had paid her ticket and lifted Ms. Peer's suspension before it went into effect.

45. Respondent sent the notice to Commissioner of Motor Vehicles because he wrongly believed that Ms. Peer had a second charge pending in his court.

As to Charge IV of the Formal Written Complaint:

46. In 2004 respondent notified the Commissioner of Motor Vehicles to suspend the driver's licenses of two defendants for failure to appear or answer charges or to pay a fine imposed by the court, notwithstanding that his co-judge, Michael P. Hynes, had previously disposed of the defendants' cases.

People v. Janet Brooks

47. On April 9, 2004, Janet Brooks was charged with Failure To Obey a Stop Sign. Ms. Brooks appeared before Judge Hynes on April 26, 2004, pleaded guilty and paid a fine and a surcharge totaling \$90.

48. Sometime between April 26, 2004 and October 16, 2004, respondent notified the Commissioner of Motor Vehicles to suspend Ms. Brooks' driver's license for failure to appear or answer charges or failure to pay a fine imposed by the court.

49. On September 27, 2004, Ms. Brooks contacted respondent's court and Judge Hynes lifted the suspension before it went into effect.

People v. Heidi Enslow

50. On March 6, 2004, Heidi Enslow was charged with No Seat Belt. Ms. Enslow appeared before Judge Hynes on April 21, 2004, and he dismissed the charge.

51. Sometime between April 21, 2004 and October 16, 2004, respondent

notified the Commissioner of Motor Vehicles to suspend Ms. Enslow's driver's license for failure to appear or answer charges or failure to pay a fine imposed by the court.

52. On September 27, 2004, Ms. Enslow contacted respondent's court, and Judge Hynes lifted the suspension before it went into effect.

As to Charge V of the Formal Written Complaint:

53. In 2007, in *People v. Sarah M. Swartfiguer* and *People v. Jason W. Swartfiguer*, respondent notified the Madison County Court that both he and his co-judge, Michael P. Hynes, were recusing themselves from presiding over the matters and requested that the matters be "sent to an adjoining court." Respondent made such representations to the Madison County Court notwithstanding that he had no authority to speak for Judge Hynes and did so without Judge Hynes' knowledge or consent.

54. On April 23, 2006, Jason W. Swartfiguer was issued a ticket for Operating Without a License. On August 12, 2006, Sarah M. Swartfiguer was issued a ticket for Operating Without a License and Unregistered Motor Vehicle. The tickets were returnable before respondent.

55. Sometime between April 23, 2006 and May 9, 2007, respondent arraigned Mr. Swartfiguer, who pleaded not guilty. Ms. Swartfiguer never appeared before respondent.

56. Sometime between April 23, 2006 and May 9, 2007, respondent asked Judge Hynes to take the *Swartfiguer* cases. Judge Hynes informed respondent that he had called the State Police over Mr. Swartfiguer firing assault weapons in the woods

near his home.

57. On May 9, 2007, respondent submitted a letter to the Madison County Court: (1) stating that Judge Hynes had “had run ins” with Mr. Swartfiguer, “feared for his well being” and “gave” the *Swartfiguer* cases to him, (2) advising that he had done some carpentry work for Mr. Swartfiguer and was recusing himself and (3) requesting the transfer of both cases to another court.

58. Prior to sending the letter to the Madison County Court, respondent did not inform Judge Hynes that he was notifying the County Court that both he and Judge Hynes had recused themselves from the *Swartfiguer* matters, nor did he obtain Judge Hynes’ consent to do so.

59. On May 30, 2007, County Court Judge Biagio J. DiStefano signed an Order of Transfer, granting a change of venue in the *Swartfiguer* matters from the Town of Madison Justice Court to the Town of Eaton Justice Court.

60. The *Swartfiguer* matters were concluded on May 13, 2008, with both defendants being convicted of the original charges of Operating Without a License.

Supplemental finding:

61. As to Charges I through IV, respondent acknowledges that he mishandled the matters, in part due to his reluctance to use a computer and other available record-keeping technology. As a result of the Commission’s inquiry, respondent has taken steps to improve his court’s record-keeping procedures, including obtaining a computer, using a local courts’ administrative program, and hiring a court clerk after

several years of not having one.

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)(6) 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 New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I through V of the Formal Written Complaint are sustained, and respondent’s misconduct is established.

In eleven traffic cases respondent made serious administrative errors that were prejudicial to the parties and the proper administration of justice. In three cases, he failed to advise defendants who had pleaded not guilty of trial dates, and instead imposed a fine without a trial or a guilty plea. In two cases, he sent notices to defendants demanding payment of fines that had previously been paid. In six cases, he notified the Commissioner of Motor Vehicles to suspend the defendants’ driver’s license for failure to appear or to pay a fine, although five of the defendants had paid their fines and the other defendant’s case had been dismissed. As a result of respondent’s derelictions, at least two defendants consulted an attorney; one defendant paid a fine he had already paid; and in each case the defendant had to contact the court to resolve the error in order to avoid further adverse consequences. Collectively, these errors, apparently caused by deficiencies in record-keeping and case management, indicate respondent’s neglect of proper court administration and, thus, constitute misconduct warranting public discipline.

Matter of Spiehs, 1988 Annual Report 222 (Comm on Judicial Conduct) (judge committed a series of legal and administrative errors that adversely affected due process and showed inattention to proper procedures); Rules, §100.3(C)(1) (requiring a judge to diligently discharge the judge's administrative responsibilities).

It has also been stipulated that respondent transferred two cases from his court, disqualifying both himself and his co-justice, without his co-justice's knowledge or consent. In transferring cases, judges are obliged to adhere to the appropriate procedures (see *Matter of Hooper*, 2004 Annual Report 113 [Comm on Judicial Conduct]), and respondent did not do so here. We note that prior to transferring the matters, respondent had spoken to his co-justice about the cases, and his co-justice advised him of an out-of-court conflict he had involving the defendant. Given the particular circumstances presented here, we find respondent's conduct in this regard to be *de minimis*.

Respondent should have been especially sensitive to the ethical mandates since he was censured by the Commission in 1997 for using his judicial prestige to assist a defendant who was awaiting sentencing in another court. *Matter of Engle*, 1998 Annual Report 185 (Comm on Judicial Conduct).

In considering the sanction, we note that as a result of the Commission's investigation, respondent has taken corrective action to improve his court's administrative operations, including learning to use the computerized case management program available to town and village courts and working with a newly-hired clerk to improve administrative procedures. These steps should enable respondent to avoid similar

misconduct in the future. We also note that the administrative derelictions reflected in the charges affected only 13 cases out of more than 9,000 cases handled by respondent.

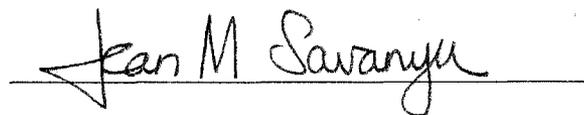
By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

Judge Klonick, Mr. Coffey, Mr. Belluck, Mr. Emery, Mr. Harding, Ms. Hubbard, Judge Konviser, Ms. Moore, Judge Peters and Judge Ruderman concur.

CERTIFICATION

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

Dated: November 9, 2009

A handwritten signature in cursive script that reads "Jean M. Savanyu". The signature is written in black ink and is positioned above a solid horizontal line.

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct