

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

EDIE M. HALSTEAD,

a Justice of the Davenport Town Court,
Delaware County.

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (Thea Hoeth, Of Counsel) for the Commission

Honorable Edie M. Halstead, *pro se*

The respondent, Edie M. Halstead, a Justice of the Davenport Town Court,
Delaware County, was served with a Formal Written Complaint dated August 10, 2010,

containing four charges. The Formal Written Complaint alleged that respondent failed to deposit and remit court funds in a timely manner, filed reports with the State Comptroller that falsely and/or inaccurately stated the amounts collected, and engaged in impropriety with respect to various traffic violations with which she was charged. Respondent filed an answer on October 1, 2010.

By motion dated November 17, 2010, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's Operating Procedures and Rules (22 NYCRR §7000.6[c]). No response to the motion was received from respondent. By Decision and Order dated December 8, 2010, the Commission granted the administrator's motion and determined that the charges were sustained and that respondent's misconduct was established.

The Commission scheduled oral argument on the issue of sanctions for January 26, 2011. Oral argument was not requested and thereby was waived. Counsel to the Commission filed a memorandum recommending that respondent be removed from office. No papers on the issue of sanctions were received from respondent.

On January 26, 2011, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent was a Justice of the Davenport Town Court, Delaware County, from January 1, 2009, until her resignation on October 1, 2010. She is not an attorney.
2. From in or around 2006 through December 31, 2008, respondent

served as the court clerk to Davenport Town Justice Britt Kelch. At all relevant times herein, the Davenport Town Court had a single town justice.

As to Charge I of the Formal Written Complaint:

3. From on or about January 1, 2009 to on or about December 31, 2009, as set forth on Schedule A annexed to the Formal Written Complaint and as described below, respondent failed to deposit over \$11,000 in court funds into her court bank account within 72 hours of receipt, as required by Section 214.9 of the Uniform Civil Rules for the Justice Courts. During that period, respondent received court funds on over 100 occasions that she failed to deposit in a timely manner.

4. Respondent made 34 deposits in her court account between January 1, 2009 and December 31, 2009, in which the amount of money deposited did not match the sum of the funds received by the court since the previous deposit. On 20 occasions the amount respondent deposited was less than the amount received by her court since the previous deposit, and on 14 occasions the amount deposited was more than the amount received since the previous deposit.

5. Respondent's failure to deposit court funds in a timely manner as required by law resulted in a cumulative deficiency in her court bank account of \$3,511.45 as of December 31, 2009. From May 27, 2009, to December 31, 2009, the cumulative deficiency in respondent's court account was consistently more than \$3,500, and on September 30, 2009, the deficiency reached \$5,098.95.

As to Charge II of the Formal Written Complaint:

6. From in or about February 2009 through in or about November 2009, in the 19 cases set forth on Schedule B annexed to the Formal Written Complaint and as described below, respondent failed to report court funds totaling \$2,203.95 to the State Comptroller within ten days of the month succeeding collection, as required by Section 1803 of the Vehicle and Traffic Law and Section 27.1 of the Town Law, and failed to remit those funds to the State Comptroller or to the Chief Fiscal Officer of the Town of Davenport, as required by Sections 2020 and 2021 of Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law, Section 27.1 of the Town Law and Section 99-a of the State Finance Law.

7. With respect to seven of the cases on Schedule B, respondent falsely and/or inaccurately certified in her reports to the State Comptroller that she had dismissed the case or collected no fine, when in fact she had collected funds totaling \$1,110 in those cases.

As to Charge III of the Formal Written Complaint:

8. In November and December 2008, as the clerk of the Davenport Town Court, respondent deposited court funds into the court account of then-Davenport Town Justice Britt Kelch and prepared Judge Kelch's monthly reports to the State Comptroller and remittances to the Davenport Chief Fiscal Officer.

9. On January 1, 2009, respondent replaced Judge Kelch as the Davenport Town Justice. Respondent maintained Judge Kelch's court account and funds

through April 2009.

10. In or about February and March 2009, respondent prepared and submitted reports to the State Comptroller with respect to funds received by the Davenport Town Court or deposited into the court account in November and December 2008. As set forth on Schedule C annexed to the Formal Written Complaint, those reports falsely and/or inaccurately failed to report court funds totaling \$5,700 that were received by the court or deposited into the court account in 29 cases. With respect to two of these cases, the reports indicated that Judge Kelch had dismissed the case or collected no fine, when in fact the court had collected \$470 in those cases.

11. In November 2008 respondent deposited \$1,248 from her personal funds into Judge Kelch's court account in order to cover deficiencies in the account.

12. Upon becoming a judge on January 1, 2009, respondent took no action to report the deficiencies in the court account, audit the books, examine the court's administrative procedures or otherwise determine the circumstances which had led her to cover the deficiency with her personal funds.

As to Charge IV of the Formal Written Complaint:

13. Respondent failed to respect and comply with the law and failed to uphold high standards of conduct by: (i) asserting the prestige of the Davenport Town Court with regard to Vehicle and Traffic Law violations charged against her in the Princetown Town Court, (ii) failing to appear in court on scheduled return dates and/or failing to pay fines and surcharges imposed with regard to Vehicle and Traffic Law

violations charged against her in the Princetown and Richmondville Town Courts, (iii) failing to maintain vehicle liability insurance coverage and (iv) operating a motor vehicle notwithstanding that her license had been suspended by the Department of Motor Vehicles.

Town of Princetown 2008 Speeding Violation

14. On or about April 3, 2008, respondent was charged in the Town of Princetown, Schenectady County, with Speeding in violation of Section 1180(d) of the Vehicle and Traffic Law.

15. On or about April 28, 2008, respondent mailed her not guilty plea to the Princetown Town Court in an envelope bearing the return address “Hon. Britt Turner Kelch, Davenport Town Court.”

16. On or about September 4, 2008, the Princetown Town Court mailed respondent a notice of trial and set a pre-trial conference for November 12, 2008. Respondent never appeared or communicated with the court for an adjournment.

17. On or about May 12, 2009, the Department of Motor Vehicles notified respondent that her driver’s license would be suspended for her failure to answer the summons. Respondent did not subsequently appear or otherwise communicate with the Princetown Town Court, and her license was suspended on June 19, 2009.

18. On or about March 14, 2010, after receiving a letter from the Commission requesting her appearance to give testimony concerning, *inter alia*, the suspensions of her driver’s license, respondent mailed a letter to the Princetown Town

Court in which she changed her plea to guilty. Respondent sent the letter in an envelope bearing the pre-printed return address of the "Davenport Town Court," which was crossed out but still legible.

19. On or about March 17, 2010, the Princetown Town Court issued respondent a notice of fine, surcharge and fee totaling \$220.

20. On or about March 22, 2010, respondent paid a fee to lift the suspension of her license for the violation in the Town of Princetown. As of the date of the Formal Written Complaint, respondent had not paid the fine or surcharge to the court.

Town of Richmondville 2009 Seat Belt Violation

21. On or about January 6, 2009, respondent was charged in the Richmondville Town Court, Schoharie County, with a Seat Belt violation under Section 1229-c(3) of the Vehicle and Traffic Law. Respondent pled guilty to the charge by mail.

22. On or about February 2, 2009, the Richmondville Town Court notified respondent that her guilty plea had been accepted and that a fine and surcharge totaling \$110 were imposed, payable to the court by March 4, 2009. Respondent failed to pay the fine and surcharge as required.

23. On or about June 17, 2009, the Department of Motor Vehicles notified respondent that her license would be suspended for failure to pay the fine owed to the Richmondville Town Court. Respondent did not pay the fine, and her license was suspended on July 22, 2009.

24. On or about March 23, 2010, respondent paid a fee to the

Richmondville Town Court to lift the suspension of her driver's license. The court granted respondent until April 7, 2010 to pay the fine and surcharge. As of the date of the Formal Written Complaint, respondent had not paid the fine or surcharge for the underlying offense.

2009 Suspension Order for Lapsed Vehicle Liability Insurance Coverage

25. On or about December 4, 2009, the Department of Motor Vehicles sent respondent a suspension order informing her that her driver's license would be suspended indefinitely effective December 17, 2009, for her failure to maintain continuous vehicle liability insurance coverage.

Town of Sidney Aggravated Unlicensed Operation Violation

26. On or about March 31, 2010, respondent was charged in the Sidney Town Court, Delaware County, with Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree, a misdemeanor, in violation of Vehicle and Traffic Law Section 511(1)(a), for driving while knowing or having reason to know that her driver's license was suspended. Respondent pled guilty to the charge by mail.

27. On or about June 28, 2010, the Sidney Town Court notified respondent that her guilty plea had been accepted and that a fine and surcharge totaling \$540 were imposed, payable to the court by July 22, 2010.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(B)(1), 100.3(C)(1) and 100.4(A)(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 through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The record establishes that throughout her first year as a judge, respondent repeatedly failed to comply with clear statutory requirements governing the depositing, reporting and remitting of court funds and filed reports that falsely and/or inaccurately understated the amounts collected by the court. The failure to comply with these statutory mandates constitutes a serious dereliction of a judge's duties since the handling of public monies is one of a judge's most important responsibilities. *See, Matter of Rater*, 69 NY2d 208 (1987); *Matter of Petrie*, 54 NY2d 807 (1981); *Matter of Cooley*, 53 NY2d 64 (1981). "The mishandling of public money by a judge is 'serious misconduct' even when not done for personal profit" (*Bartlett v. Flynn*, 50 AD2d 401, 404 [4th Dept 1976]).

All funds received by a town justice must be deposited within 72 hours of receipt and must be reported and remitted to the State Comptroller or the town's Chief Fiscal Officer by the tenth day of the month following collection (Uniform Civil Rules for the Justice Courts §214.9 [22 NYCRR §214.9]; UJCA §2021[1]; Town Law §27; Vehicle and Traffic Law §1803). Having made deposits and prepared the required monthly reports when she had served as the court clerk under her predecessor, respondent was presumably familiar with these important administrative responsibilities, but, as a judge, she was apparently unwilling or unable to comply with the statutorily mandated

procedures. She failed to make timely deposits and frequently made deposits that did not match the total amounts received by the court since the previous deposit, resulting in a cumulative deficiency in the court bank account of more than \$3,500 by the end of her first year as a judge. Her reports to the State Comptroller were inaccurate and incomplete, failing to report the receipt of more than \$2,200 and stating, as to seven cases, that she had dismissed the cases or collected no fines when in fact she had collected funds totaling \$1,110 in those cases. The reports she prepared for the final two months of her predecessor's term were similarly deficient. In the final months of her tenure as court clerk, respondent deposited \$1,248 from her personal funds into the court account in order to cover deficiencies in the account.

With respect to such financial and administrative transgressions, the Court of Appeals has stated:

The severity of the sanction imposed for this variety of misconduct depends upon the presence or absence of mitigating and aggravating circumstances. Certainly, in the absence of any mitigating factors, the failure to make timely deposits in the court account and timely reports and remittances to the State might very well lead to removal (*Matter of Petrie*, 54 NY2d 807; *Matter of Cooley*, 53 NY2d 64). On the other hand, if a Judge can demonstrate that mitigating circumstances accounted for such failings, such a severe sanction may be unwarranted (*id.*; *Matter of Rogers*, 51 NY2d 224).

Matter of Rater, *supra*, 69 NY2d at 209. We find no mitigation here. This record of pervasive derelictions cannot be excused by respondent's claim that the court's records were inaccurate and unreliable because of persistent computer problems and

administrative deficiencies that she inherited from her predecessor. The fact that respondent was aware of those problems should have prompted her to take whatever steps were necessary to obtain assistance in order to ensure that the records were accurate and that all court monies were properly accounted for. “The judicial duties of a judge take precedence over all the judge's other activities” (Rules, §100.3).

Compounding this misconduct is a pattern of impropriety by respondent with respect to a series of traffic violations. She failed to appear in court in response to a summons; failed to pay fines and surcharges imposed for two traffic violations, resulting in her license suspension; failed to maintain vehicle liability insurance coverage; and was convicted of Aggravated Unlicensed Operation, a misdemeanor, for driving with a suspended license. These transgressions represent a pattern of failing to respect and comply with the law that is unacceptable for a judicial officer. Such conduct diminishes public confidence in the judiciary as a whole and irreparably damages her authority as a judge.

In its totality, respondent’s conduct shows a pervasive disregard for the ethical and administrative responsibilities of her judicial office, which establishes that she is unfit to serve as a judge. “[T]he purpose of judicial disciplinary proceedings is ‘not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents’” (*Matter of Reeves*, 63 NY2d 105, 111 [1984], quoting *Matter of Waltemade*, 37 NY2d [a], [III] [Ct on the Jud 1975]). In view of respondent’s resignation,

the sanction of removal is necessary to ensure that she is ineligible for judicial office in the future (NY Const Art 6 §22[h]).

This determination is rendered pursuant to Judiciary Law Section 47 in view of respondent's resignation from the bench.

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

Judge Klonick, Mr. Coffey, Mr. Cohen, Mr. Emery, Ms. Hubbard, Judge Peters and Judge Ruderman concur.

Judge Acosta, Mr. Belluck and Mr. Harding dissent as to the sanction and vote that the matter be closed in view of respondent's resignation.

Ms. Moore was not present.

CERTIFICATION

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

Dated: January 27, 2011

A handwritten signature in black ink, reading "Jean M. Savanyu", is written over a horizontal line.

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