

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

THOMAS C. KRESSLY,

a Justice of the Urbana Town Court,
Steuben County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

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

Honorable Thomas C. Kressly, *pro se*

The respondent, Thomas C. Kressly, a Justice of the Urbana Town Court,
Steuben County, was served with a Formal Written Complaint dated January 6, 2015,

containing one charge. The Formal Written Complaint alleged that respondent mishandled \$500 cash bail he received at an arraignment and failed to maintain records of the proceeding as required. Respondent filed an answer dated January 25, 2015.

On February 17, 2015, the Administrator 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 March 12, 2015, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Urbana Town Court, Steuben County, since 1996. Respondent's current term expires on December 31, 2015. He is not an attorney.

2. As set forth below, on or about August 8, 2011, in connection with his arraignment of the defendant in *People v John Doe*, respondent:

A. accepted \$500 cash bail which he failed to deposit into his court account within 72 hours, as required by Section 214.9(a) of the Uniform Civil Rules for the Justice Courts;

B. failed to mechanically record the proceeding, as required by Section 30.1 of the Rules of the Chief Judge and Administrative Order 245/08 of the Chief Administrative Judge of the Courts; and

C. failed to maintain copies of any and all papers, files, orders, minutes

or notes made by the court, and documents relating to the proceeding, as required by Section 214.11(a)(1) of the Uniform Civil Rules for the Justice Courts.

3. Early in the morning on August 8, 2011, respondent presided over an after-hours arraignment in *People v John Doe* for the Town of Wayne Court. Mr. Doe was charged with Unlawful Imprisonment in the Second Degree, a violation of Section 135.05 of the Penal Law.

4. Respondent did not record the proceeding in *People v John Doe*, as required by Section 30.1 of the Rules of the Chief Judge and Administrative Order 245/08 of the Chief Administrative Judge of the Courts, dated May 21, 2008.

5. Respondent set bail at \$500 cash or \$1,000 bond.

6. During the proceeding, James Doe, the defendant's father, gave respondent \$500 cash for the defendant's bail. Respondent issued receipt #5162 to James Doe, but did not maintain an exact duplicate record of that receipt.

7. After the arraignment, respondent took the \$500 cash bail and placed it in a business-size envelope, which he then placed in a manila envelope.

8. Respondent also placed the *Doe* court records in the manila envelope, and made notations about the case on the outside of the manila envelope, including "BAIL \$500.00 CASH." Respondent took the manila envelope, containing the cash bail and court records, home with him.

9. On August 8, 2011, respondent drove to the Town of Wayne municipal building and gave the manila envelope and its contents, including the business-

size envelope containing the \$500 cash bail, to an unidentified man who indicated that he would forward it to the Wayne Town Court.

10. Respondent failed to deposit the \$500 cash bail posted by the defendant into his justice court account within 72 hours of receipt, as required by Section 214.9(a) of the Uniform Civil Rules for the Justice Courts.

11. Respondent failed to maintain any notes, records, files, or a copy of the receipt related to the arraignment in *People v John Doe*, as required by Section 214.11(a)(1) of the Uniform Civil Rules for the Justice Courts.

12. There is no record of the *Doe* matter and no exact record of the \$500 cash bail in the records of the Urbana Town Court. The *Doe* matter was disposed of in the Wayne Town Court, which resulted in the defendant being granted an Adjournment in Contemplation of Dismissal on October 27, 2011, and approximately \$500 from the court's consolidated bail account was paid to the defendant's father. As of April 27, 2012, the adjourned date, the charge was deemed dismissed.

13. The report of an audit of the Wayne Town Court by the New York State Comptroller for the period covering January 1, 2010, through August 31, 2012, indicated that the \$500 cash bail had not been deposited or properly accounted for in the court's financial records. In response to the Comptroller's report, a Justice of the Wayne Town Court who has since left office reported depositing the \$500 bail and reconciling that court's bail account on or about April 30, 2013.

Additional Factors

14. Respondent has been cooperative and contrite throughout the Commission inquiry.

15. Respondent acknowledges that on December 17, 2004, he was admonished by the Commission for failing to follow required procedures in a code violation case and depriving the town attorney or code enforcement officer of the opportunity to present evidence.

16. Respondent regrets his failure to abide by the applicable Rules in this instance and pledges henceforth to abide by them faithfully.

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) 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. Charge I of the Formal Written Complaint is sustained, and respondent’s misconduct is established.

The handling of official funds is one a judge’s most important responsibilities, and “a town justice is personally responsible for moneys received by the justice court” (1983 Ops St Comp 83-174)]. This responsibility requires strict adherence to the mandated procedures in order to avoid even the appearance that court funds have been mishandled or misappropriated. Among other requirements, all funds received by a

town or village justice are required to be deposited “as soon as practicable” and no later than 72 hours after receipt (Uniform Civil Rules for the Justice Courts §214.9[a] [22 NYCRR §214.9(a)]). Respondent’s mishandling of the \$500 cash bail in *People v Doe* circumvented the required procedures and was inconsistent with his ethical duty to diligently discharge his administrative responsibilities and to avoid even the appearance of impropriety (Rules, §§100.3[B][1], 100.2).

After conducting a late-night arraignment in *Doe*, a case that was returnable in a neighboring town court, respondent did not deposit the \$500 cash bail into his court account, as required by the relevant rules. Instead, he personally delivered the money later that day, along with the court records of the matter, to the Town of Wayne municipal building, leaving the envelope marked “BAIL \$500.00 CASH” with an unidentified individual. Though it is unclear in the record before us whether the funds were received or deposited by the Wayne Town Court, respondent’s own conduct was clearly inconsistent with his duty to safeguard court monies entrusted to his care. His departure from the mandated procedures placed the funds at risk and gave rise to questions and uncertainty as to how the money was handled – all of which could have been avoided if he had deposited the bail into his court account as required. And at the very least, it was ill-advised to leave a cash-filled envelope with an unidentified person at the Wayne municipal building. Respondent’s failure to keep any records of the case, or to record the arraignment, was also a violation of the procedural requirements and compounds the appearance of impropriety.

Depositing official monies promptly is essential to ensure public confidence in the integrity of the judiciary. *See Matter of Murphy*, 82 NY2d 491 (1993) (judge failed to deposit \$1,173 in court monies, claiming that he lost the funds and might have left them in a car that was sold). In *Murphy*, the Court of Appeals observed that whether the judge's failure to make the deposit resulted from "carelessness or calculation,... the mishandling of public money by a judge is 'serious misconduct'" (*Id.* at 494). Such conduct is improper even, as here, when not done for personal profit and when all the funds are eventually accounted for. *Matter of Carver*, 2010 NYSCJC Annual Report 119 (judge failed to make timely deposits and reports to the State Comptroller for six months) (admonition); *Matter of Chapman*, 2005 NYSCJC Annual Report 137 (judge delayed in depositing numerous bail checks over a three-year period, resulting in significant delays in returning the funds) (censure).

While we note that respondent was previously admonished in 2004 for unrelated misconduct (*Matter of Kressly*, 2005 NYSCJC Annual Report 173), his acknowledged failure to follow the mandated procedures in *Doe* appears to be an isolated instance of such behavior. We accept his assurance that he will abide by the applicable rules in the future.

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

CERTIFICATION

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

Dated: March 25, 2015

A handwritten signature in cursive script, reading "Jean M. Savanyu", is written over a solid horizontal line.

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