

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

DAVID W. WILBANKS,

a Justice of the Fort Covington Town Court,
Franklin County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Brian C. Doyle, Esq.
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore, Ph.D.
Marvin Ray Raskin, Esq.
Graham B. Seiter, Esq.
Honorable Anil C. Singh
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Shruti Joshi, Of
Counsel) for the Commission

Hon. David W. Wilbanks, *pro se*

Respondent, David W. Wilbanks, a Justice of the Fort Covington Town

Court, Franklin County, was served with a Formal Written Complaint (“Complaint”) dated October 26, 2023 containing two charges. Charge I of the Complaint alleged that for the months of December 2022 through May 2023, respondent failed to report and remit court funds in a timely manner to the Office of the State Comptroller (“Comptroller”), as required by Section 1803 of the Vehicle and Traffic Law, Sections 2020 and 2021 of the Uniform Justice Court Act, Section 27, subdivision 1 of the Town Law and Section 99-a of the State Finance Law. Charge II alleged that from in or about May 2023 to in or about August 2023, respondent failed to cooperate with the Commission’s investigation of the complaint that he failed to timely report and remit court funds to the Comptroller, in that he failed to respond to two letters from the Commission requesting his response to the complaint; failed to produce court records and other related documents requested by the Commission; and failed to appear for scheduled testimony before the Commission, as was required. Respondent did not file an Answer.

By motion dated December 18, 2023, the Administrator of the Commission moved for summary determination pursuant to Sections 7000.6(b) and (c) of the Commission’s Operating Procedures and Rules. Respondent did not submit a response to the Commission. By decision and order dated January 25, 2024, the Commission granted the Administrator’s motion and determined that the factual

allegations of the Complaint were sustained and that respondent's misconduct was established.

By letter dated January 25, 2024, the Commission set a schedule for briefs and oral argument on the issue of sanction. On February 15, 2024, the Administrator submitted a memorandum which argued for respondent's removal. The Administrator waived oral argument unless respondent was to appear. Respondent did not make a submission on the issue of sanction, did not respond to the Administrator's sanction memorandum, and did not appear for oral argument. Thereafter the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Fort Covington Town Court, Franklin County, since January 1, 2021. His term expires on December 31, 2024. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

2. On or about February 14, 2023, the Comptroller issued to respondent a written notice that his December 2022 monthly report had not been filed by the 10th day of the following month as required and still was not on file with the Comptroller.

3. On or about March 22, 2023, the Comptroller issued to respondent a second written notice that his December 2022 monthly report had not

been filed, and simultaneously notified him that he had failed to file his January 2023 monthly report by the 10th day of the following month as required.

4. Respondent failed to file his February 2023 monthly report by the 10th day of the following month as required, and it remained unfiled through on or about mid-April 2023.

5. On or about April 20, 2023, the Comptroller left a phone message for respondent regarding his still-unfiled reports for December 2022, January 2023, and February 2023, as a courtesy before mailing him a notice that his salary would be stopped in connection with those delinquencies.

6. That same day, the Comptroller also sent an email to respondent, again noting the delinquent December 2022 and January 2023 monthly reports and notifying him of his failure to file his February 2023 monthly report in a timely manner. The email further advised respondent of the prior written notices, as well as the phone message left for him that same day, concerning his delinquent reports.

7. On or about April 18, 2023, the Comptroller notified the Fort Covington Town Supervisor to stop respondent's judicial salary in connection with his failure to file his monthly reports for December 2022, January 2023 and February 2023. Thereafter, respondent failed to timely file his reports for March, April and May 2023.

8. Respondent failed to file his monthly reports with the Comptroller for the

months of December 2022 through May 2023 until on or about July 6, 2023.

Thereafter, respondent's judicial salary was resumed.

As to Charge II of the Formal Written Complaint

9. Section 44, subdivision 3, of the Judiciary Law, and Volume 22, Sections 7000.3(c) and (e) of the New York Codes, Rules and Regulations (22 NYCRR 7000.3[c] and [e]), authorize the Commission to request a written response from a judge who is the subject of a complaint, and to require a judge's testimony during an investigation.

10. By letter dated May 3, 2023, the Commission notified respondent that it was investigating a complaint from the Comptroller alleging that he had failed to file reports or remit funds to the Comptroller in the time required by law for the months of December 2022, January 2023, and February 2023, which resulted in his judicial salary being stopped on or about April 18, 2023. The letter requested that respondent provide a written response to the allegations and to produce court records and other related documents by May 31, 2023. The letter was sent to respondent by regular mail and via email to his court system account:

██████████@nycourts.gov.

11. Respondent failed to respond to the Commission's letter of May 3, 2023, and failed to produce any documents requested therein.

12. By letter dated June 14, 2023, the Commission sent respondent a copy

of its letter dated May 3, 2023, and requested his response by June 28, 2023. The letter informed respondent that his “failure to respond may be found by the Commission to be failure to cooperate with the investigation” (emphasis in original).

13. Respondent did not respond to the Commission’s letter of June 14, 2023.

14. By letter dated July 13, 2023, which was personally delivered to the Fort Covington Town Court and accepted by the court clerk, the Commission notified respondent that his testimony concerning the stop-salary complaint was required on August 16, 2023, at 10:30 a.m. at the Commission’s Albany office. The letter noted that the Commission had not received a response from respondent and enclosed a copy of the complaint, as well as copies of the letters from the Commission dated May 3, 2023, and June 14, 2023. The letter of July 13, 2023, requested that respondent confirm his appearance by August 7, 2023.

15. Respondent neither confirmed his appearance for testimony nor provided any documents to the Commission.

16. On or about August 15, 2023, a member of the Commission’s staff telephoned respondent at his place of employment. Respondent confirmed having received the Commission’s letter requiring his appearance the following day for testimony. Respondent stated that he was going to be out of town and could not

appear to testify as scheduled, but offered to appear for testimony on his day off the following week, on August 21, 2023.

17. The Commission sent respondent a letter dated August 15, 2023, to his home address, adjourning his appearance for testimony to August 21, 2023, as he had requested and agreed, and providing directions to the Commission's Albany office.

18. Respondent failed to appear at the Commission's Albany office on August 21, 2023, and failed to communicate with the Commission in any manner. A transcript was prepared on August 21, 2023, noting respondent's failure to appear. On August 23, 2023, a copy of the transcript along with its exhibits and a cover letter were mailed to respondent's home address. Respondent personally received and signed for those documents on August 28, 2023.

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(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 VI, 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.

The Rules require judges to maintain high standards of conduct and to "act

at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” (Rules, §§100.1, 100.2(A)) Judges are required to “be faithful to the law and maintain professional competence in it” and to “diligently discharge the judge’s administrative responsibilities.” (Rules §§100.3(B)(1) and 100.3(C)(1)) When respondent failed to report and remit funds to the State Comptroller as he was required by statute to do, he violated the Rules and undermined public confidence in the judiciary. Moreover, respondent continued to be delinquent even after being notified multiple times that he was not in compliance with his obligations.

“The handling of official monies is one of a judge’s most important responsibilities. . . . The failure to comply with these mandates constitutes misconduct, even if there is no evidence that monies were missing or used for inappropriate purposes.” *Matter of Ridgeway*, 2010 Ann Rep NY Commn on Jud Conduct at 205, 209 (citations omitted). *See, Matter of Hrycun*, 2002 Ann Rep NY Commn on Jud Conduct at 109, 110 (citations omitted) (“The failure to remit funds promptly to the State Comptroller constitutes neglect of a judge’s administrative duties, even if the money is accounted for and on deposit and even if the amounts are small.”) By not reporting and remitting funds to the State Comptroller as required for six months, respondent failed to diligently perform his administrative duties. His conduct brought reproach upon the judiciary.

Furthermore, respondent's failure to cooperate during the Commission's investigation as well as his failure to participate in the Commission's proceedings after the Complaint was issued constituted additional serious misconduct. Section 44(3) of the Judiciary Law and the Commission's Operating Procedures and Rules, 22 NYCRR 7000.3(c) and (e), authorize the Commission during an investigation to request a written response from a judge who is the subject of a complaint and to require a judge's testimony. Respondent failed to respond to two inquiry letters from the Commission and failed to appear for testimony during the Commission's investigation. In addition, he failed to file an Answer to the Complaint as Section 7000.6(b) of the Commission's Operating Procedures and Rules required, failed to respond to the Administrator's motion for summary determination, failed to make a submission regarding sanction after summary determination was granted, failed to respond to the Administrator's memorandum which argued that he should be removed and did not appear for oral argument before the Commission on the issue of sanction. All judges must be attentive to their responsibility to participate in Commission proceedings. *See, Matter of O'Connor*, 32 NY3d 121, 129 (2018) ("... willingness to cooperate with the Commission's investigations and proceedings is not only required -- it is essential.") Respondent's failure to respond to the Complaint and participate in the proceedings demonstrated his disdain for the Commission's important function.

We are mindful that “. . . the extreme sanction of removal is warranted only in the event of “‘truly egregious circumstances’ that extend beyond the limits of ‘even extremely poor judgment’” . . .” *Matter of Putorti*, 40 NY3d 359, 367 (2023) (citation omitted) The Court of Appeals has held that, “the 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) (citation omitted) Respondent’s failure to report and remit funds to the State Comptroller was significantly exacerbated by his decision to ignore the Commission’s investigation and proceedings and his misconduct warrants removal.¹

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

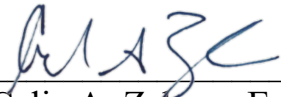
Mr. Belluck, Ms. Grays, Judge Camacho, Mr. Doyle, Judge Falk, Judge Miller, Ms. Moore, Mr. Raskin, Mr. Seiter, Judge Singh and Ms. Yeboah concur.

¹ This finding is consistent with New York attorney grievance proceedings in which nonresponsive attorneys are routinely disbarred. *Matter of Carlos*, 192 AD3d 170 (1st Dept. 2021); *Matter of Lovett*, 194 AD3d 39 (2nd Dept. 2021); *Matter of McCoy-Jacien*, 181 AD3d 1089 (3rd Dept. 2020); *Matter of Shaw*, 180 AD3d 1 (4th Dept. 2019).

CERTIFICATION

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

Dated: April 12, 2024



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct