

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

ANTHONY J. CAVOTTA,

a Justice of the Stillwater Town and Village
Courts, Saratoga 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 (Cathleen S. Cenci, Of Counsel) for the
Commission

Tabner, Ryan and Keniry, LLP (by William J. Keniry) for the
Respondent

The respondent, Anthony J. Cavotta, a Justice of the Stillwater Town and
Village Courts, Saratoga County, was served with a Formal Written Complaint dated

March 5, 2007, containing one charge. The Formal Written Complaint alleged that respondent failed to supervise his court clerks and failed to discharge his administrative responsibilities diligently, resulting in numerous record-keeping and other administrative deficiencies. Respondent filed a Verified Answer dated March 30, 2007.

On July 6, 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 July 12, 2007, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent was a Justice of the Stillwater Village Court from 1977 until March 2007, when the position was abolished. He has been a Justice of the Stillwater Town Court since 1983, and his current term of office expires on December 31, 2007. Respondent is not an attorney.

2. From in or about January 1999 to in or about May 2005, notwithstanding that he was aware of reports by the State Comptroller in 1997 and 2000 that identified deficiencies in the Town of Stillwater Justice Court's financial records and procedures, respondent failed to adequately supervise his court clerks and failed to discharge his administrative duties diligently.

3. In August 2004, respondent and his then co-justice reported to the

State Police their discovery that \$315 in court funds collected in December 2003 had not been deposited. After an inconclusive investigation by the State Police, respondent and his co-justice each contributed \$157.50 to cover the shortage, which respondent attributes to malfeasance by a former court clerk.

4. There is no evidence that respondent misappropriated any court funds or destroyed any court records.

5. Respondent has cooperated with the State Police, Stillwater town officials and the Office of Court Administration in an attempt to identify the sources of the missing funds and to reconstruct the missing court records, and has implemented a number of new procedures, as recommended by the State Comptroller in the report appended to the Agreed Statement, so as to prevent future deficiencies such as those identified in the report.

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(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. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions, and respondent’s misconduct is established.

A town or village justice is personally responsible for monies received by the court (1983 Op. of the State Comptroller, No. 83-174). Such monies must be properly documented, deposited within 72 hours of receipt, and remitted monthly to the State Comptroller (UJCA §2021[1]; Town Law §27; Vehicle and Traffic Law §1803; Uniform Justice Court Rules §214.9[a]). While 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); *Matter of Restino*, 2002 Annual Report 145 (Comm. on Judicial Conduct).

Respondent has acknowledged that over a six-year period, he failed to adequately supervise his court clerks and failed to discharge his administrative duties diligently, as required by the ethical standards (Rules, §100.3[C][1] and [2]). As a consequence of respondent's inadequate supervision, \$315 in court monies, received in December 2003, had not been deposited by August 2004 and could not be properly traced due to missing court records. Ultimately, respondent and his co-justice each contributed their personal funds to cover the shortage.

Significantly, respondent was on notice of deficiencies in the court's records and procedures as a result of reports by the State Comptroller in 1997 and 2000. Such reports should have prompted respondent to be particularly diligent in supervising court staff to ensure that the court's financial records were properly maintained and that court funds were properly safeguarded. Respondent has acknowledged that he failed to do so.

In considering an appropriate sanction, we note that there is no indication that respondent misappropriated court funds or destroyed court records. We also note, in mitigation, that respondent has cooperated with Town and State officials in an attempt to identify the sources of the missing funds and to reconstruct the missing records, and that he has implemented a number of new procedures, as recommended by the State Comptroller, so as to prevent future deficiencies.

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

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

Mr. Felder and Ms. DiPirro were not present.

CERTIFICATION

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

Dated: July 19, 2007

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

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