

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

WILLIAM J. FISHER,

a Justice of the Worcester Town Court,
Otsego County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Michael L. Breen for the respondent

The respondent, William J. Fisher, a Justice of the Worcester Town Court,
Otsego County, was served with a Formal Written Complaint dated February 23, 2018,
containing one charge. The Formal Written Complaint alleged that respondent

improperly entered a property without the owner's permission, took photographs of the property which he posted on Facebook along with disparaging comments about the owner, and failed to promptly remove the offensive Facebook post despite assuring the Commission that he would do so.

On March 20, 2018, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, 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 June 13, 2018, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Worcester Town Court, Otsego County, since July 1991. His current term expires on December 31, 2018. He is not an attorney.

2. From January 2015 to February 2018, as set forth below, respondent failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, failed to avoid the appearance of impropriety and failed to conduct all of his extra-judicial activities so that they do not detract from the dignity of judicial office, in that:

- A. In January 2015 respondent, without notice or permission, entered the home of a woman who had defaulted on a mortgage held by an estate of which

respondent's wife was co-executrix. Respondent took photographs to document what he considered to be the poor physical condition of the premises, and he posted the photographs on his wife's Facebook account with the comment "Mom and Alton are turning over in their graves," referring to the deceased relatives who left the estate;

B. On April 6, 2017, respondent publicly posted four of the photographs of the premises on his own Facebook account, as well as six photographs of the residence's interior taken prior to its sale. Along with the "before" and "after" photographs, respondent commented on contrasting the condition of the home before and after the sale, and he stated that the buyer had been in arrears in her mortgage payments. Respondent made the posting in retaliation for the woman's public accusations that respondent and his co-judge had committed judicial misconduct; and

C. Respondent did not remove the four "after" photographs from his Facebook account until November 13, 2017, following an inquiry by the Commission. As of February 2, 2018, respondent had not removed from his Facebook account either the "before" photographs or the comments about the condition of the house or the buyer's mortgage arrearage.

3. Respondent is married to Joanne Fisher. In 2008, following the death of Ms. Fisher's stepfather, Alton Adams, Ms. Fisher became a co-executrix of his estate ("Estate"). The primary asset of the Estate was a house located at [REDACTED] [REDACTED] ("Property").

4. Respondent was not an executor or beneficiary of the Estate and had no legal right to act on its behalf.

5. In March 2012 the Estate sold the Property to S. The note and mortgage identified the Estate as the mortgagee and provided that S. was to make monthly payments to the Estate until March 16, 2015, at which time she was required to make a “balloon” payment of the outstanding balance. Under the note and mortgage, the Estate’s legal remedies, upon a default by the buyer, were to commence summary eviction and/or foreclosure proceedings. The note and mortgage included no provision granting the Estate a right to enter and inspect the Property.

6. On January 10, 2015, S. was in arrears in her mortgage payments and was not living on the Property. After consulting the Estate’s attorney but without providing notice to S. or obtaining her permission to enter, respondent entered the Property, which was in a state of disorder, and took photographs of the premises. The Estate had not commenced legal proceedings against S.

7. Facebook is an internet social networking website that *inter alia* allows users to post and share content on their own Facebook accounts as well as on the Facebook accounts of other users. Facebook users are responsible for managing the privacy settings associated with their accounts. At the option of the account holder, the content of one’s Facebook account may be viewable online by the public or restricted to one’s Facebook “Friends.”

8. In January 2015 respondent’s wife maintained a Facebook account under the name “Joanne Fisher.”

9. On January 18, 2015, respondent posted seven of the photographs he had taken of the Property on Ms. Fisher’s Facebook account, including at least two

photographs showing the Property's interior. The photographs were posted with a comment stating "Mom and Alton are turning over in their graves," a reference to respondent's deceased mother-in-law and stepfather-in-law.

10. Other Facebook users wrote comments on Ms. Fisher's Facebook account expressing, *inter alia*, their disgust and sadness concerning the state of the Property without identifying S. by name. Respondent's son, who is also named William Fisher, indicated in two comments that the owner of the house had children and "had many visits . . . And many phone calls for action[.]" Another Facebook user opined that the residents of the Property were "either on drugs or have mental illness."

11. Although S. was not "Friends" with Ms. Fisher on Facebook, she was able to view the content of the January 18, 2015 post on Ms. Fisher's Facebook account, including the comments left by other Facebook users. In November 2016, S. took screenshots of portions of the Facebook post on her mobile phone.

12. In August 2015 S. completed payment of the outstanding balance due to the Estate, discharging the mortgage, and subsequently completed renovations to the Property.

13. From December 2015 to February 2017, S.'s then-domestic partner, G., was a defendant in three proceedings in Worcester Town Court, in which S. was the complaining witness.

14. By letter dated March 15, 2017, addressed to the Worcester Town Court Clerk, the Commission requested copies of court records and audio recordings of proceedings related to G. The Commission's letter made no reference to S.

15. Between March 17, 2017, and March 21, 2017, G. was charged with various offenses in Worcester Town Court. S. was the complaining witness.

Respondent's co-judge, Brian P. Keenan, presided over the charges and sentenced G. to a conditional discharge in November 2017.

16. By letter dated March 27, 2017, respondent personally replied to the Commission's request for records by submitting copies of the G. court records.

Respondent also gratuitously included numerous pages containing apparent Facebook posts by S. from her Facebook account, urging others to contact the Commission about respondent and his co-judge.

17. Respondent sent the Commission the posts from S.'s Facebook account because he believed S. had made a complaint against him with the Commission and he wanted the Commission to understand "what [he] was dealing with."

18. In April 2017 respondent maintained a Facebook account under the name "William Fisher."

19. On April 6, 2017, respondent posted ten photographs onto his Facebook account, with the comment: "house before sale(holding paper) [sic] next photos behind 4 months of not making payments and not paying and ballon [sic] payment of (\$25000.00) power off, behind \$6200.00 in taxes starting to foreclose.good [sic] thing mommy and daddy come [sic] through. (if selling do a back ground [sic] check.)" (The "mommy and daddy come through" reference is to financial aid respondent believed S. had received from her parents to discharge the mortgage.)

20. Six of the ten photographs posted by respondent were date-stamped

February 15, 2011, purportedly showing the interior of the Property prior to its sale to S. The other four photographs, date-stamped January 10, 2015, were among the ones respondent had taken of the Property's interior, without authorization, as indicated in paragraph 6 herein.

21. The content of respondent's April 6, 2017 Facebook post was viewable by the public, and other Facebook users wrote comments to the post.

22. Respondent posted the content onto his Facebook account and intended it to be viewable by the public because he was "upset" at S. for repeatedly and publicly accusing him and Judge Keenan of committing judicial misconduct and for publicly encouraging others to file complaints against them with the Commission.

23. In testimony before the Commission on July 10, 2017, respondent pledged to remove the April 6, 2017 Facebook post "this afternoon." By letter dated November 10, 2017, the Commission asked respondent why, as of November 7, 2017, he had not removed the post. On November 13, 2017, respondent removed from the post the four photographs that he had taken of the Property's interior, without authorization, on January 10, 2015. Respondent failed to remove the remainder of the post, including his comment (as quoted in paragraph 19 herein), the February 2011 photographs and comments by other Facebook users, which remained publicly viewable at least until February 2, 2018.

Additional Factors

24. Respondent avers that he believed, as the spouse of an executrix, he could lawfully enter S.'s Property to inspect it, and that it appeared to have been

abandoned and uninhabited. Respondent now realizes he should not have entered the Property without permission of the owner.

25. Respondent did not remove the Facebook post of April 6, 2017, until February 28, 2018. Respondent has no excuse for not having removed it promptly, as he had promised to do when he appeared for testimony at the Commission on July 10, 2017.

26. Respondent promises to be more circumspect in the use of social media in the future, to ensure that none of his postings convey the appearance of impropriety, conflict or interfere with his judicial duties or detract from the dignity and impartiality of the judiciary.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) 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 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.

Both on and off the bench, judges are held to standards of conduct “much higher than for those of society as a whole” (*Matter of Kuehnel*, 49 NY2d 465, 469 [1980]; Rules, §100.2). Even personal conduct by a judge unrelated to judicial office may be subject to discipline. *See, e.g., Matter of Fiechter*, 2003 NYSCJC Annual Report 110 (judge sent copies of letter denigrating another judge to numerous other judges and state officials); *Matter of Pautz*, 2005 NYSCJC Annual Report 199 (judge engaged in a

series of annoying acts toward a woman with whom he had had a personal relationship); *Matter of Honorof*, 2008 NYSCJC Annual Report 133 (judge failed to make payments owed under a confession of judgment). As respondent has stipulated, his actions in connection with a property that had been sold by the estate of his wife's stepfather detracted from the dignity of judicial office and constitute a departure from the exacting standards of personal conduct required of judges (Rules, §§100.2[A], 100.4[A][2]).

Respondent has acknowledged that at a time when the property's owner was in default on the mortgage held by the estate, of which his wife was co-executrix, he entered the property without the owner's permission, took photographs of the house's interior and posted them on Facebook with a comment about the property's deteriorated physical condition. Even if, as he claims, the property appeared to have been "abandoned and uninhabited," respondent had no legal right to enter, "inspect" and photograph the premises simply because of his wife's connection to the estate, which, in the event of a default, had legal remedies spelled out in the contract of sale. As a judge for over 20 years who presumably has handled numerous Trespass cases, respondent should have recognized that entering a private property without the owner's permission may constitute a violation under the Penal Law (§140.05). We are unpersuaded by his dubious claim that he mistakenly believed he could lawfully enter the property to inspect it because of a spousal connection. We note, however, that it has been stipulated that he acted after consulting the estate's attorney, and while that is inconclusive, acting in good faith after attempting to get legal advice about the matter would be mitigating.

More problematic is respondent's Facebook post two years later, when he

again posted the photos he had taken during his unauthorized inspection of the property, along with derogatory comments about the owner (S.) and her past arrears on the mortgage, which had since been discharged. By that point, respondent knew that the Commission was investigating his court's handling of cases in which S. was the complaining witness, which were pending before respondent's co-judge, and he knew that S. had publicly encouraged others with complaints about him and his co-judge to contact the Commission. Indeed, respondent has admitted that this Facebook post was retaliatory in that he posted the content because he was upset that S. had repeatedly and publicly accused him and his co-judge of misconduct and encouraged others to file complaints against them. Even if he was provoked by what he perceived as S.'s improper behavior, it was respondent's obligation as a judge to observe high standards of conduct and to act with restraint and dignity instead of escalating the unseemly public accusations and debate over a private matter that played out on Facebook. Every judge must understand that a judge's right to speak publicly is limited because of the important responsibilities a judge has in dispensing justice, maintaining impartiality and acting at all times in a manner that promotes public confidence in the judge's integrity. Although neither of the posts at issue referred to respondent's judicial position or mentioned S. by name, many in his small community would likely know that he is a judge and would recognize the property and individuals involved.

As the Commission and the Advisory Committee on Judicial Ethics have stated, judges who use online social networks must exercise "an appropriate level of prudence, discretion and decorum" so as to ensure that their conduct in such forums is

consistent with their ethical responsibilities (*Matter of Whitmarsh*, 2017 NYSCJC Annual Report 266; NY Jud. Advisory Op. 08-176).

Compounding respondent's misconduct, he inexplicably failed to remove the offensive Facebook post promptly after the Commission questioned him about the matter, despite promising under oath to do so. Although he assured the Commission during his investigative testimony in July 2017 that he would remove the post "this afternoon," he did not remove the four photos taken during his unauthorized inspection of the property until four months later – shortly after the Commission had contacted him again to ask why the post had not been removed – and did not remove the remainder of the post until February 2018. In the meantime, his comments denigrating the property's owner remained on Facebook, and we can assume that more public members would have the opportunity to read them and comment. That was a further injustice to the owner of the property. Respondent concedes that he has "no excuse" for his lengthy delay in removing the post promptly after pledging to do so, and his failure to respond promptly to the Commission's concerns shows a lack of sensitivity to his ethical responsibilities as a judge.

In accepting the jointly recommended sanction publicly admonishing respondent for his behavior, we note that respondent has acknowledged the impropriety of his conduct and has pledged to be more circumspect in the use of social media in the future.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzairelli, Mr. Raskin, Mr. Stoloff and Ms. Yeboah concur.

CERTIFICATION

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

Dated: June 26, 2018

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