

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding  
Pursuant to Section 44, subdivision 4,  
of the Judiciary Law in Relation to

DONALD P. MARTINECK,

a Justice of the Somerset Town Court,  
Niagara County.

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**DETERMINATION**

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 (David M. Duguay, Of Counsel) for the Commission

Lawrence G. Stuart and Michael M. Mohun for the Respondent

The respondent, Donald M. Martineck, a Justice of the Somerset Town  
Court, Niagara County, was served with a Formal Written Complaint dated April 27,

2010, containing one charge. The Formal Written Complaint alleged that respondent operated a motor vehicle after consuming a significant quantity of alcohol and was convicted of Driving While Intoxicated. Respondent filed a verified answer dated May 13, 2010.

On September 23, 2010, 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 September 29, 2010, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Somerset Town Court, Niagara County, since 2007. His current term expires on December 31, 2010. Respondent is not an attorney.

2. On March 1, 2009, respondent consumed 40 or more ounces of wine over a period of approximately seven and a half hours while at a family member's home in North Tonawanda, New York.

3. Respondent left his family member's home at approximately 8:30 P.M. and began driving to his home in Barker, New York, approximately 35 miles away.

4. Respondent drove his vehicle partially off the right edge of the road, approximately 12 miles from his home, and struck a mile marker post, damaging his

vehicle's right front fender and knocking the passenger-side mirror off his vehicle.

5. Respondent twice drove his vehicle across the center line of the road, approximately eight miles and six miles from his home, while traveling at approximately 55 mph. There was no oncoming traffic.

6. Approximately five miles from respondent's home, a Niagara County Sheriff's Office patrol deputy who was responding to a reckless driver complaint pulled his patrol car behind respondent's vehicle and activated his siren to initiate a stop. Respondent drove partially off the right edge of the road and crossed the center of the road before coming to a stop.

7. Respondent, who is 6'1" and weighed approximately 290 pounds, had difficulty exiting his vehicle and required assistance from a Niagara County Sheriff's Deputy to maintain his balance. The deputy observed that respondent had a strong odor of alcohol on his breath and glassy eyes. The deputy did not conduct field sobriety tests with respondent due to his impaired motor condition.

8. Respondent was arrested and charged with two counts of Driving While Intoxicated ("DWI"), violations of Sections 1192(2) and (3) of the Vehicle and Traffic Law ("VTL"); Aggravated DWI (a .18% blood alcohol content), a violation of Section 1192(2-a) of the VTL; and Failure to Keep Right, a violation of Section 1120(a) of the VTL.

9. Respondent did not tell the Sheriff's Deputy that he is a judge and did not otherwise assert his judicial status at any time during his arrest.

10. On July 30, 2009, respondent pled guilty in the North Tonawanda City Court to DWI, a violation of Section 1192(3) of the VTL, in full satisfaction of all charges.

11. On October 1, 2009, respondent was sentenced to a six-month revocation of his driver's license, \$895 in fines and surcharges, and a one-year conditional discharge that required him to attend a drinking driver program and continue counseling until successfully discharged.

Mitigating Factors:

12. Respondent was cooperative with law enforcement officers during his arrest and the administration of the chemical test, and never attempted to assert his judicial office.

13. Respondent voluntarily engaged in counseling shortly after his arrest to address and manage his stress related to health problems and the legal charges. Respondent continued in counseling pursuant to his conditional discharge until March 2010 when his treatment provider determined that "continued treatment was no longer necessary."

14. In February 2010 and August 2010, respondent obtained two assessments with New York State Office of Alcoholism and Substance Abuse Services ("OASAS") approved providers, which both recommended no treatment.

15. Respondent has complied with all the terms of his sentence. His conditional discharge expired on October 1, 2010.

16. Respondent has been cooperative with the Commission and its staff throughout the investigative and adjudicative proceedings in this matter.

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 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.

Respondent violated his ethical obligation to respect and comply with the law and endangered public safety by operating a motor vehicle after consuming a significant quantity of alcohol, resulting in his conviction for Driving While Intoxicated. *See, Matter of Burke*, 2010 Annual Report 110; *Matter of Pajak*, 2005 Annual Report 195 (Comm on Judicial Conduct). Such conduct is inconsistent with a judge’s obligation to maintain high standards of conduct, both on and off the bench (Rules, §§100.1, 100.2[A]) and brings the judiciary as a whole into disrepute.

In determining an appropriate disposition for such behavior, the Commission in prior cases has considered mitigating and/or aggravating circumstances, including the level of intoxication, whether the judge’s conduct caused an accident or injury, whether the conduct was an isolated instance or part of a pattern, the conduct of the judge during arrest, and the need and willingness of the judge to seek treatment. *See,*

*Matter of Burke, supra* (DWAI conviction after causing a minor accident; judge was cooperative during the arrest and did not assert her judicial office [censure, in part for additional misconduct]); *Matter of Mills*, 2006 Annual Report 218 (though acquitted of DWI, judge admitted operating a motor vehicle after consuming alcoholic beverages, “vehemently” protesting her arrest and making offensive statements to the arresting officers [censure]); *Matter of Pajak, supra* (judge was convicted of DWI after a property damage accident [admonition]); *Matter of Stelling*, 2003 Annual Report 165 (DWI conviction following a conviction for DWAI [censure]); *Matter of Burns*, 1999 Annual Report 83 (DWAI conviction [admonition]); *Matter of Siebert*, 1994 Annual Report 103 (DWAI conviction after causing a three-car accident [admonition]); *Matter of Henderson*, 1995 Annual Report 118 (DWAI conviction; judge referred to his judicial office during the arrest and asked, “Isn’t there anything we can do?” [admonition]); *Matter of Innes*, 1985 Annual Report 152 (DWAI conviction; judge’s car caused damage to a patrol car while backing up [admonition]); *Matter of Barr*, 1981 Annual Report 139 (judge had two alcohol-related convictions, asserted his judicial office and was abusive and uncooperative during his arrests, but had made “a sincere effort to rehabilitate himself” [censure]); *Matter of Quinn*, 54 NY2d 386 (1981) (two alcohol-related convictions and other non-charged incidents; judge was uncooperative and abusive to officers during his arrest and repeatedly referred to his judicial position [removal reduced to censure in view of the judge’s retirement and poor health]). In the wake of increased recognition of the dangers of Driving While Intoxicated and the toll it exacts on society, alcohol-related

driving offenses must be regarded with particular severity.

In this case, respondent should have recognized that driving after consuming a substantial quantity of alcohol created a significant risk to the lives of others, and it is fortunate that his behavior did not result in serious injury. His impaired condition resulted in erratic driving, which included hitting a roadside mile marker. Even after hitting the marker, respondent continued to drive erratically at high speed for several miles, twice crossing the center line, before being stopped and placed under arrest. In satisfaction of the charges against him, respondent pled guilty to Driving While Intoxicated, a misdemeanor. By violating the law which he is called upon to apply in his own court, respondent engaged in conduct that undermines his own effectiveness as a judge.

While such conduct warrants a severe sanction, we note that respondent was cooperative during his arrest and did not identify himself as a judge, assert his judicial status or otherwise attempt to obtain special treatment because of his judicial office. Respondent has complied with the terms of his sentence and his one-year conditional discharge, which has now expired. We further note respondent's acknowledgment of misconduct and his recognition that a severe sanction is appropriate.

By reason of the foregoing, and mindful that the sanction of suspension from office is not available, the Commission determines that the appropriate disposition is censure.

Judge Klonick, Mr. Coffey, Judge Acosta, Mr. Cohen, Mr. Emery, Ms.

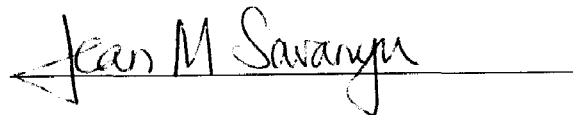
Hubbard, Ms. Moore, Judge Peters and Judge Ruderman concur.

Mr. Belluck and Mr. Harding were not present.

CERTIFICATION

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

Dated: October 12, 2010

A handwritten signature in cursive script that reads "Jean M. Savanyu". The signature is written over a horizontal line that extends to the right.

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