

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

DAVID McANDREWS,

a Judge of the District Court,
Nassau County.

DETERMINATION

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 (Mark Levine, Of Counsel) for the Commission

McDonough & McDonough, LLP (by Chris G. McDonough) for the
Respondent

The respondent, David McAndrews, a Judge of the District Court, Nassau
County, was served with a Formal Written Complaint dated November 27, 2012,

containing two charges. The Formal Written Complaint alleged that respondent failed to file his 2010 financial disclosure statement in a timely manner and failed to cooperate with the Commission investigation by not responding to numerous inquiries. Respondent filed an answer dated January 9, 2013, in which he admitted all the factual allegations.

On June 4, 2013, the Administrator, 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 June 6, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Judge of the District Court, Nassau County, since 2010. His current term expires on December 31, 2016. He was admitted to the practice of law in New York in 1993.

As to Charge I of the Formal Written Complaint:

2. In or about 2011, respondent failed to file his 2010 financial disclosure statement with the Ethics Commission for the Unified Court System ("Ethics Commission") in a timely manner. Pursuant to 22 NYCRR Section 40.2, judges are required to file annual financial disclosure statements with the Ethics Commission by May 15th of the following year.

3. When respondent did not file his 2010 statement by the due date of

May 15, 2011, the Ethics Commission sent and respondent shortly thereafter received a Notice to Cure dated June 6, 2011.

4. When respondent did not file his 2010 statement in response to the Notice to Cure, the Ethics Commission sent and respondent shortly thereafter received a Notice of Delinquency dated June 30, 2011.

5. Respondent did not file his financial disclosure statement until on or about April 9, 2012, nearly eleven months after it was due.

6. Respondent testified that he believes that he did file or attempt to file his 2010 financial disclosure statement electronically; however, he was unable to support this claim and he could not provide details such as when he filed or attempted to file the financial disclosure statement. Moreover, he acknowledges that he has no valid excuse for failing to file his 2010 financial disclosure statement in a timely manner, or for filing it eleven months after it was due, despite the receipt of notices from the Ethics Commission and letters from the Commission regarding his failure to timely file his 2010 financial disclosure statement. Throughout the time period in issue, respondent was otherwise fulfilling his judicial responsibilities in the ordinary course.

As to Charge II of the Formal Written Complaint:

7. From in or about November 2011 through in or about April 2012, respondent failed to cooperate with the Commission during its investigation of the matters herein.

8. Judiciary Law Section 44(3) and 22 NYCRR Sections 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 such judge's testimony during the investigation.

9. Respondent received but failed to respond to three letters from the Commission dated November 9, 2011, January 20, 2012, and February 8, 2012, in which the Commission posed questions to him regarding his alleged failure to file his 2010 financial disclosure statement.

10. Respondent received but failed to respond to two written requests from the Commission, dated February 29, 2012, and March 12, 2012, that he confirm his attendance at an appearance for testimony scheduled for March 16, 2012.

Notwithstanding his failure to confirm, respondent appeared at the Commission on March 16, 2012, without counsel, and requested an adjournment so that he might retain and return with counsel at a later date. The request was granted and the proceeding was adjourned to April 6, 2012, at which time respondent appeared with counsel and testified.

Additional Information

11. Respondent acknowledges that he should have timely filed his 2010 financial disclosure statement.

12. Respondent acknowledges that he should have promptly responded to the letters of inquiry and the notices to appear for testimony that he received from the Commission. Respondent also acknowledges that his failure to file his financial disclosure statement in a timely manner was compounded by his failure to cooperate promptly and fully with the Commission.

13. Respondent has expressed contrition for his misconduct.

14. Respondent timely filed his 2011 financial disclosure statement and pledges to file all of his future financial disclosure statements in a timely manner.

15. Respondent pledges to cooperate fully with any future Commission inquiries.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.3C(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. Charges I and II of the Formal Written Complaint are sustained, and respondent’s misconduct is established.

Every state-paid judge is required to file an annual financial disclosure statement with the Ethics Commission by May 15th of the following year (22 NYCRR §40.2). The Legislature and the Chief Judge have determined that financial disclosure by judges serves an important public function,¹ and one of the duties of a judge is to file these reports promptly.

Respondent failed to file his financial disclosure statement for 2010 until

¹ As stated on the Unified Court System’s website, the Ethics in Government Act of 1987 was enacted “in order to promote public confidence in government, to prevent the use of public office to further private gain, and to preserve the integrity of governmental institutions. The Act accomplishes those goals by prohibiting certain activities, requiring financial disclosure by certain State employees, and providing for public inspection of financial statements.” *See also* Jud Law §211(4).

April 9, 2012 – nearly eleven months late. Even after the Ethics Commission had sent him a Notice to Cure and a Notice of Delinquency, and even after the Commission on Judicial Conduct had sent him three written inquiries about his alleged failure to file, he continued to delay before finally filing the required report. Respondent has stipulated that he “has no valid excuse” for his late filing.

Respondent’s inattention to this important responsibility is inconsistent with his ethical obligation to diligently discharge his administrative duties (Rules, §100.3[C][1]). While a single instance of failing to file a financial disclosure statement in a timely manner without a valid excuse, standing alone, typically warrants a confidential caution, such conduct may warrant public discipline in the presence of aggravating factors (2013 NYSCJC Annual Report 25). *See, e.g., Matter of Elliott*, 2003 NYSCJC Annual Report 107; *Matter of Russell*, 2001 NYSCJC Annual Report 121; *Matter of Burstein*, 1994 NYSCJC Annual Report 57.

Respondent’s misconduct was seriously exacerbated by his failure to cooperate with the Commission’s inquiry into his dilatory filing. During an investigation, the Commission is authorized to “request a written response from the judge who is the subject of the complaint” (22 NYCRR §7000.3[c]). By not responding to the Commission’s written inquiries over a period of several months, respondent delayed and impeded the Commission’s efforts to obtain a full record of the relevant facts and thereby obstructed the Commission’s discharge of its lawful mandate. The failure to cooperate in a duly-authorized Commission investigation shows a lack of respect for the process,

created by Constitution and statute, under which the Commission is empowered to investigate the conduct of judges (*Matter of Lockwood*, 2007 NYSCJC Annual Report 123), and is a significant factor in determining sanction (*Matter of Mason*, 100 NY2d 56, 60 [2003]; *Matter of Burstein, supra*; *Matter of Cooley*, 53 NY2d 64, 66 [1981]).

Respondent's negligence in this regard, coupled with his delay in filing his financial disclosure statement, demonstrates an unacceptable disregard for the administrative and ethical responsibilities of his judicial office.

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

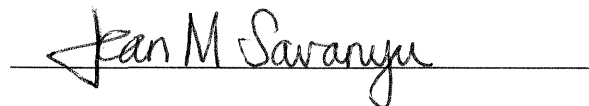
Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: June 18, 2013

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

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