

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

NORMAN J. PETERS,

a Justice of the Collins Town Court,
Erie County.

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
Michael M. Mohun for the Respondent

The respondent, Norman J. Peters, a Justice of the Collins Town Court, Erie
County, was served with a Formal Written Complaint dated February 11, 2010,

containing one charge. The Formal Written Complaint alleged that respondent told the Collins Town Board that unless his salary was increased, he would not preside over the court dates scheduled by his former co-justice and would dismiss the cases scheduled on the next such date. Respondent filed a verified answer dated April 3, 2010.

On July 17, 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 Collins Town Court, Erie County, since 1986. He is not an attorney.
2. On or about August 31, 2008, Paul North, respondent's co-justice, retired from the Collins Town Court. The Collins Town Board did not appoint a replacement, and respondent began presiding over Judge North's calendar as well as his own.
3. On several occasions in September and October 2008, respondent asked Kenneth Martin, the Collins Town Supervisor and member of the Town Board, to increase his salary by using the remainder of Judge North's salary. Respondent also made this request at a meeting of the Collins Town Board on October 6, 2008.

4. In or about October 2008, Supervisor Martin informed respondent that the Collins Town Board declined to authorize additional compensation for respondent because it could not reallocate monies from Judge North's salary.

5. Respondent had been involved in preparing the Collins Town Court budgets for approximately 22 years and was aware of the revenues collected by the court.

6. On November 3, 2008, respondent appeared at an open Town Board meeting on the town budget which was attended by all five Town Board members, the Town Attorney and Prosecutor, the Town Clerk, two members of the local news media, and approximately twelve community members including respondent's wife.

7. Respondent stated at the meeting that he was owed \$2,350 for the work he had performed in presiding over his retired co-justice's cases. When Supervisor Martin responded that the Town did not have the funds, respondent suggested that the Town Attorney's position be eliminated to free additional funds.

8. Respondent stated at the meeting that unless he received additional pay he would not preside over the seven remaining court dates in 2008 that had previously been scheduled by his retired co-justice. Respondent further stated that he would direct his court clerk to advise the defendants who appeared on the 77 cases scheduled for November 5, 2008, that their cases were dismissed.

9. In response to Collins Town Attorney and Prosecutor James Musacchio's admonition that respondent could not dismiss cases without a proper legal basis, respondent stated, "I'm the judge" and "[t]hey're scheduled and if those people

show up, they will be dismissed.”

10. The Town Board adjourned to executive session and, in response to respondent’s threatened action, authorized compensation to respondent in the amount of \$3,000 to cover his additional duties in the Collins Town Court from September 1, 2008, through December 31, 2008.

Factors in Mitigation

11. Respondent appeared for all court calendars scheduled by his retired co-justice in 2008, and all scheduled matters were adjudicated in accordance with the law and Rules.

12. Respondent acknowledges that his conduct was inappropriate. His threatened action was spurred by his mistaken belief that he was entitled to additional financial compensation in the same manner provided on two occasions in 1988, when he sat as the sole justice and received the absent justice’s salary in addition to his own.

13. Respondent has been cooperative with the Commission throughout its inquiry.

14. Respondent has served as a Collins Town Court justice since 1986 and has never been disciplined for judicial misconduct. He regrets his failure to abide by the Rules in this instance and pledges to conduct himself in accordance with the Rules as he has previously done during his many years in office.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(A),

100.3(C)(1) and 100.4(A)(3) 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.

It was improper for respondent to tell the Town Board that unless he received additional compensation, he would not preside over the court dates scheduled by his former co-justice and would direct his clerk to advise defendants who appeared that their cases were dismissed. A judge is required to perform all the duties of judicial office diligently and impartially (Rules, §100.3), and refusing to do so out of pique or attempting to extract a higher salary by refusing to work would be highly improper. *See, Matter of Himelein*, 2010 Annual Report 182 (judge disqualified himself from numerous cases involving legislators’ law firms and urged other judges to do the same, as a “tactic” to further the judges’ interests in achieving legislative approval for a pay raise); *see also, Matter of Reeves*, 63 NY2d 105 (1984) (judge refused to work for two days to protest an alleged shortage of staff); *Matter of Leff*, 1983 Annual Report 119 (judge refused to perform his assigned duties for six months because he viewed the assignment as punitive and retaliatory).

Even though he never acted on his threat, respondent’s coercive comments were inappropriate. Such comments, linking the disposition of cases with a request for additional compensation, are contrary to the role of a judge, which is to dispose of cases

based on the merits. *See, Matter of Tauscher*, 2008 Annual Report 217 (judge made threatening statements to the Town Board explicitly linking his discretionary ability to set fines with a proposed salary increase). Significantly, respondent reiterated his threat even after the town attorney told him that he could not dismiss cases without a proper legal basis. By making such statements at an open meeting of the Town Board, which was attended by the media and the public, respondent undermined public confidence not only in the integrity and impartiality of his court, but in the judiciary as a whole.

Even if respondent viewed his compensation as inadequate and sincerely believed that he was entitled to a higher salary for handling an increased caseload, his statements were improper, as he has acknowledged in this proceeding. There is no justification for refusing to discharge one's judicial duties as a tactic to achieve a pay raise, and even threatening to do so cannot be condoned. Because respondent's improper statements, which resulted in his being granted additional compensation, were public, he created the appearance that a judge may make such threats with impunity. Accordingly, a public disciplinary sanction is warranted.

In mitigation, the record reflects that respondent appeared for all the court dates scheduled by his former co-justice and that the scheduled matters were adjudicated in accordance with the appropriate standards. We also note that respondent has an otherwise unblemished record in 24 years of service as a judge, has acknowledged that his comments were improper, and has pledged to conduct himself in the future in accordance with the ethical Rules.

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

Judge Klonick, Mr. Coffey, Judge Acosta, Mr. Cohen, Mr. Emery, Ms. Moore, Judge Peters and Judge Ruderman concur.

Ms. Hubbard dissents and votes to reject the Agreed Statement on the basis that the proposed disposition is too harsh.

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 6, 2010

A handwritten signature in cursive script, 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