

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 M. TRICKLER,

DETERMINATION

a Justice of the Birdsall Town Court,
Burns Town Court and Grove Town
Court, Allegany County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Honorable Jill Konviser
Nina M. Moore
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay,
Of Counsel) for the Commission

Joseph G. Pelych for the Respondent

The respondent, David M. Trickler, a Justice of the Birdsall Town Court,
Burns Town Court and Grove Town Court, Allegany County, was served with a Formal

Written Complaint dated August 8, 2008, containing four charges. The Formal Written Complaint alleged that from 2004 to 2006 respondent failed to perform certain administrative responsibilities with respect to numerous cases as required by law. Respondent filed an answer dated September 22, 2008.

On July 31, 2009, 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 admonished and waiving further submissions and oral argument.

On September 23, 2009, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Burns Town Court since November 1980, a Justice of the Grove Town Court since November 1994 and a Justice of the Birdsall Town Court since January 2002. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. From on or about January 24, 2004, to on or about August 10, 2006, respondent failed to notify the Commissioner of the Department of Motor Vehicles to order the suspension of the driver's licenses of 15 defendants in the Burns Town Court who did not pay fines imposed by respondent totaling \$1,585, as set forth in Schedule A annexed to the Agreed Statement of Facts, notwithstanding that the defendants had not

paid their fines for more than 60 days. Respondent was familiar with the requirements of Section 514(3) of the Vehicle and Traffic Law and his obligation to notify the Department of Motor Vehicles. Two defendants were charged with misdemeanors, Driving While Intoxicated and Driving While Ability Impaired by Drugs.

3. In response to the Commission's investigation, respondent has taken appropriate corrective action regarding the cases identified in Schedule A by collecting \$725 in fines owed by defendants and properly notifying the Commissioner of the Department of Motor Vehicles to order the suspension of the drivers' licenses of nine defendants who have failed to pay their fines.

4. From on or about May 21, 2004, to on or about June 11, 2006, respondent failed to notify the Commissioner of the Department of Motor Vehicles to order the suspension of the drivers' licenses of 43 defendants in the Burns Town Court who failed to appear or answer in respondent's court to 45 charges, as set forth in Schedule B annexed to the Agreed Statement of Facts, notwithstanding that the defendants had failed to appear or answer within 60 days of the court date set for their traffic charges. Respondent was familiar with the requirements of Section 514(3) of the Vehicle and Traffic Law and his obligation to notify the Department of Motor Vehicles. Five defendants were charged with the misdemeanor of Aggravated Unlicensed Operator in the Third Degree.

5. In response to the Commission's investigation, respondent has taken appropriate corrective action regarding the cases identified in Schedule B by obtaining

dispositions in 22 cases, collecting \$1,410 in fines, and properly notifying the Commissioner of the Department of Motor Vehicles to order the suspension of the driver's licenses of 23 defendants who failed to appear in respondent's court to answer charges.

As to Charge II of the Formal Written Complaint:

6. From on or about July 15, 2004, to on or about April 8, 2006, respondent failed to certify to the Commissioner of the Department of Motor Vehicles that 16 defendants in the Burns Town Court had been convicted by respondent of 21 violations of the Vehicle and Traffic Law, as set forth in Schedule C annexed to the Agreed Statement of Facts. Respondent was familiar with the requirements of Section 514(1) of the Vehicle and Traffic Law and his obligation to notify the Department of Motor Vehicles. Two defendants were charged with misdemeanors, Driving While Intoxicated and Driving While Ability Impaired by Drugs.

7. In response to the Commission's investigation, respondent has taken appropriate corrective action regarding the cases identified in Schedule C by reporting the case dispositions to the Department of Motor Vehicles.

As to Charge III of the Formal Written Complaint:

8. From on or about June 24, 2004, to on or about March 18, 2006, respondent failed to report and remit to the State Comptroller fines and fees in 20 vehicle and traffic cases in the Burns Town Court totaling \$1,980.35 as set forth in Schedule D

annexed to the Agreed Statement of Facts, notwithstanding that respondent was familiar with the requirements of Sections 2020 and 2021 of the Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law and Section 27 of the Town Law.

9. In response to the Commission's investigation, respondent has taken appropriate corrective action regarding the cases identified in Schedule D by properly reporting fines and fees and remitting appropriate funds to the State Comptroller's Office.

As to Charge IV of the Formal Written Complaint:

10. From on or about January 3, 2004, through on or about September 10, 2006, respondent failed to record and issue fine and fee receipts to defendants in seven cases in the Burns Town Court, totaling \$760, as set forth in Schedule E annexed to the Agreed Statement of Facts, notwithstanding that respondent was familiar with the requirements of Sections 99-b and 99-1 of the General Municipal Law and Section 214.11(a)(3) of the Uniform Civil Rules for the Justice Courts.

Supplemental Findings:

11. From in or about January 2004 through in or about September 2006, respondent performed all administrative duties in the Birdsall Town Court, Burns Town Court and Grove Town Court without the assistance of any court clerk.

12. From in or about January 2004 through in or about September 2006, respondent reported to the State Comptroller's office presiding over 332 cases in the Burns Town Court. During the approximate same period, respondent presided over a

total of 27 cases in the Birdsall Town Court and 26 cases in the Grove Town Court.

There were no accounting deficiencies observed in respondent's administration of the Birdsall and Grove Town Courts.

13. As a result of the Commission's investigation of the matters herein, the Town of Burns has hired a court clerk and purchased a computer and printers to assist respondent with recordkeeping and financial management. Additionally, respondent has sought additional training in recordkeeping and financial management from the State Comptroller's Office.

14. Respondent has been forthright and cooperative with the Commission's investigation and has demonstrated a sincere commitment to rectifying past deficiencies by properly reporting defendants who failed to pay fines and fees or failed to answer traffic charges, and by working closely with his newly hired court clerk to implement appropriate policies and procedures to ensure compliance with timely and accurate reporting.

15. As a result of the Commission's investigation of the matters herein, respondent has begun electronic reporting to the Department of Motor Vehicles and the State Comptroller's Office.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1) and 100.3(C)(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 through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Over a two and a half-year period, respondent failed to properly perform important administrative responsibilities. In numerous cases he failed to remit monies to the state in a timely manner, failed to report convictions in traffic cases, failed to record and issue fine and fee receipts to defendants, and failed to use available means to punish defendants who had failed to appear or pay fines in traffic cases, thereby depriving the state of funds that should have been collected. Such derelictions, which violate statutory and ethical mandates, constitute misconduct warranting public discipline.

A town or village justice is personally responsible for monies received by the court (1983 Op. of the State Compt., No. 83-174). Fines and fees received by the court must be properly recorded and receipts issued for all such payments (Gen Mun Law §§99-b, 99-l; Uniform Civil Rules for the Justice Courts §214.11[a][3] [22 NYCRR §214.11(a)(3)]). In addition, fines and fees collected must be reported and remitted to the State Comptroller within the first ten days of the month succeeding collection (Uniform Justice Court Act §§2020, 2021; Vehicle and Traffic Law ["VTL"] §1803; Town Law §27), and convictions must be reported to the Department of Motor Vehicles (VTL §514[1]). In 43 cases respondent failed to perform one or more of these administrative duties, notwithstanding that, as a judge for more than two decades, he was aware of his obligations under the respective statutes.

In addition, respondent neglected 58 motor vehicle cases pending in his

court by failing to use the legal means available to compel defendants to answer the charges or to pay fines totaling \$1,585 he had imposed. Section 514(3) of the Vehicle and Traffic Law requires a judge to notify the Department of Motor Vehicles of such derelictions so that the defendants' drivers' licenses can be suspended. By failing to do so, respondent permitted defendants to avoid legal process by ignoring the summonses they were issued or the fines levied against them. Such neglect is unacceptable since it promotes disrespect for the administration of justice, deprived state and local authorities of monies that should have been collected, and enabled defendants whose licenses should have been suspended to continue to drive for months or years. *See, Matter of Roller*, 2009 Annual Report 165; *Matter of Brooks*, 2008 Annual Report 89; *Matter of Ware*, 1991 Annual Report 79 (Comm on Judicial Conduct).

In considering an appropriate sanction, we note that respondent's lapses appear to be a result of poor management and there is no indication in the record that any monies were not properly deposited, were missing or were otherwise mishandled. The record also indicates that as a result of the Commission investigation, respondent has taken appropriate corrective action in the cases cited herein, and all monies have been accounted for. We also note that respondent has shown a commitment to avoiding such deficiencies in the future by seeking additional training in recordkeeping and financial management from the State Comptroller's Office and by working with his newly hired court clerk to implement appropriate policies and practices to ensure that his procedures are in compliance with the relevant mandates.

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

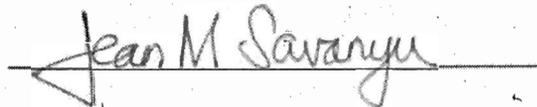
Judge Klonick, Mr. Coffey, Mr. Emery, Mr. Harding, Ms. Hubbard, Ms. Moore, Judge Peters and Judge Ruderman concur.

Mr. Belluck and Judge Konviser were not present.

CERTIFICATION

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

Dated: September 30, 2009

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

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