

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

THOMAS P. BROOKS, II,

DETERMINATION

a Justice of the Veteran Town Court and the
Millport Village Court, Chemung County.

THE COMMISSION:

Raoul Lionel Felder, Esq., Chair
Honorable Thomas A. Klonick, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the Commission
Honorable Thomas P. Brooks, II, *pro se*

The respondent, Thomas P. Brooks, II, a Justice of the Veteran Town Court
and the Millport Village Court, Chemung County, was served with a Formal Written
Complaint dated January 24, 2007, containing three charges. The Formal Written

Complaint alleged that respondent failed to administer properly the Veteran Town Court and failed to properly supervise his court staff with the result that court funds were not deposited as required, and failed to notify the Department of Motor Vehicles that 142 defendants in traffic cases had failed either to appear or to pay fines as required.

Respondent filed an answer dated February 20, 2007.

On August 21, 2007, the Administrator of the Commission 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 November 1, 2007, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Veteran Town Court since 2000 and a Justice of the Millport Village Court since 1997. He is not an attorney.
2. From 2000 to the present, six [sic] different clerks have been employed at various times by the Town of Veteran to assist respondent: Jane Briggs (through September 2000); Beverly Michalko (December 2000 through December 2002); Carol Zachery (May 2003 through July 2005); Rebecca Clark (September 2005 through December 2006); and Deborah Kelce Brooks (January 2007 to the present).

As to Charge I of the Formal Written Complaint:

3. From April 2001 through February 2006, respondent did not properly

administer the Veteran Town Court and supervise his court clerk, with the result that \$1,395.00 in court funds received by the court in connection with eleven cases as set forth in Schedule A annexed to the Agreed Statement of Facts were not deposited into the court's bank account but were instead retained in the court files.

4. Upon learning from the Commission's staff in February 2006 that fines and fees received by the court in connection with eleven cases had been paper-clipped to the specific case files and not deposited into the court bank account, respondent took action to deposit those funds. All the funds have now been deposited, and there is no evidence of conversion or the misuse of funds.

As to Charge II of the Formal Written Complaint:

5. From May 2004 through April 2005, respondent did not properly administer the Veteran Town Court and supervise his court clerk, with the result that court funds were not deposited in the court's bank account within 72 hours of receipt as required by Section 214.9(a) of the Uniform Rules for the Justice Courts. In no month during that period did respondent's deposits into the court account equal the amount of court funds he had received during that month.

6. In or around May 2004, respondent received \$5,240.00 in court funds but deposited \$715.00 into his court account.

7. In or around June 2004, respondent received \$2,910.00 in court funds but deposited \$5,240.00 into his court account.

8. In or around July 2004, respondent received \$815.00 in court funds

but deposited \$2,060.00 into his court account.

9. In or around August 2004, respondent received \$5,425.00 in court funds but deposited \$1,065.00 into his court account.

10. In or around September 2004, respondent received \$2,465.00 in court funds but deposited \$5,425.00 into his court account.

11. In or around October 2004, respondent received \$2,230.00 in court funds but deposited \$2,465.00 into his court account.

12. In or around November 2004, respondent received \$4,515.00 in court funds but deposited \$2,230.00 into his court account.

13. In or around December 2004, respondent received \$2,526.00 in court funds but deposited \$4,390.00 into his court account.

14. In or around January 2005, respondent received \$3,640.00 in court funds but deposited \$2,621.00 into his court account.

15. In or around February 2005, respondent received \$8,107.00 in court funds but deposited \$1,887.42 into his court account.

16. In or around March 2005, respondent received \$3,610.00 in court funds but deposited \$8,560.55 into his court account.

17. In or around April 2005, respondent received \$1,520.00 in court funds but deposited \$4,210.00 into his court account.

18. As a matter of practice between May 2004 and April 2005, court funds were deposited into the court account on a monthly basis rather than within 72

hours of receipt.

19. As a result of the Commission's investigation of the matters herein, respondent has taken steps to insure that all court funds are now deposited within 72 hours of receipt, as required by law.

20. Although respondent's deposits of court funds were not made in a timely or complete manner, all court funds have now been deposited, and there is no evidence of conversion or the misuse of funds.

As to Charge III of the Formal Written Complaint:

21. From January 2000 through February 2006, notwithstanding the requirements of Section 514(3) of the Vehicle and Traffic Law, respondent did not notify the Commissioner of Motor Vehicles to order the suspension of the driver's licenses of traffic defendants who failed to appear or pay a fine. Specifically, respondent failed to notify the Commissioner about the 142 defendants identified on Schedule B annexed to the Agreed Statement of Facts, notwithstanding that such defendants had been charged in the Veteran Town Court with violations of the Vehicle and Traffic Law and had failed either to appear in court or pay fines totaling \$7,750.00.

22. As a result of the Commission's investigation of the matters herein, respondent notified the Commissioner of Motor Vehicles to suspend the licenses of any and all defendants who have failed to appear or pay a fine, and to collect the \$7,750.00 in unpaid fines.

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), 100.3(C)(1) and 100.3(C)(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. Charges I through III of the Formal Written Complaint are sustained, and respondent’s misconduct is established.

A town or village justice is personally responsible for monies received by the court (1983 Op. of the State Comptroller, No. 83-174). Such monies must be properly documented and deposited within 72 hours of receipt (Uniform Justice Court Rules §214.9[a] [22 NYCRR §214.9(a)]). While these responsibilities may be delegated, a judge is required to exercise supervisory vigilance over court staff to ensure the proper performance of these important functions. *See Matter of Cavotta*, 2008 Annual Report ___ (Comm. on Judicial Conduct); *Matter of Jarosz*, 2004 Annual Report 116 (Comm. on Judicial Conduct).

Respondent has acknowledged that over a six-year period, he failed to perform his administrative and supervisory duties adequately, resulting in the careless handling of funds collected by the court. The record reveals a pattern of deposits that were untimely and incomplete. For example, in one month, respondent received \$5,240 in court funds but deposited only \$715 into his court account; the next month, \$2,910 was received and \$5,240 was deposited. In eleven cases, monies received by the court were simply placed in the case files, rather than deposited in the court bank account. In one

case, a \$500 check was not deposited until nearly five years after it was received; several other checks and money orders were not deposited for several years.

Notwithstanding that all the funds respondent collected were eventually deposited, the administration of justice is compromised when public funds entrusted to a judge are handled in a careless manner. When such carelessness involves substantial amounts of money and continues for years, the damage to public confidence in the judge's court is considerable.

In addition, respondent neglected 142 motor vehicle cases pending in his court by failing to use the legal means available to him to compel defendants to answer the charges or to pay fines totaling \$7,750 he had imposed. Section 514(3) of the Vehicle and Traffic Law requires a judge to notify the Commissioner of Motor Vehicles of such dereliction so that the defendants' drivers' licenses can be suspended. By failing to do so, respondent permitted defendants to avoid legal process by simply ignoring the summonses they were issued or the fines levied against them. Such neglect deprived state and local authorities of thousands of dollars that should have been collected, and promotes disrespect for the administration of justice. *Matter of Ware*, 1991 Annual Report 79 (Comm. on Judicial Conduct).

In mitigation, it has been stipulated that there is no evidence of conversion or misuse of court funds and that respondent has taken steps to insure that funds are now deposited promptly, as required by law.

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

Judge Klonick, Mr. Coffey, Mr. Emery, Mr. Harding, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

Mr. Felder and Ms. DiPirro were not present.

CERTIFICATION

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

Dated: November 7, 2007

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

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