

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

JAMES H. RIDGEWAY,

a Justice of the Richland Town Court
and Acting Justice of the Pulaski Village
Court, Oswego County.

DETERMINATION

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

James K. Eby for the Respondent

The respondent, James H. Ridgeway, a Justice of the Richland Town Court
and Acting Justice of the Pulaski Village Court, Oswego County, was served with a

Formal Written Complaint dated February 13, 2009, containing four charges. The Formal Written Complaint alleged that respondent failed to deposit, report and remit court funds within the time required by law and failed to issue duplicate receipts as required by law. Respondent filed an answer dated March 31, 2009.

On September 30, 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 censured and waiving further submissions and oral argument.

On November 5, 2009, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Richland Town Court since January 2000 and an Acting Justice of the Pulaski Village Court since April 2001. He is not an attorney.
2. Respondent's wife worked as his court clerk in the Richland Town Court between January 2005 and January 2008. Before hiring his spouse, respondent received the unanimous approval of the Richland Town Board. Respondent was unaware of his need to obtain the prior approval of the Chief Administrator of the Courts as required by Section 100.3(C)(3) of the Rules.¹

¹ This provision, which prohibits a judge from appointing a relative, states: "Nothing in this paragraph shall prohibit appointment of the spouse of the town or village justice, or other

As to Charge I of the Formal Written Complaint:

3. From March 26, 2005 through May 1, 2007, as set forth in Exhibit 1 to the Agreed Statement of Facts, respondent failed to deposit tens of thousands of dollars in Richland Town Court funds within 72 hours of receipt, as required by Section 214.9(a) of the Uniform Civil Rules for the Justice Courts.

4. During a four-month period between September 29, 2006, and January 24, 2007, the cumulative deficiency in the court account was continuously more than \$10,000 and, for more than 30 days in that period, exceeded \$20,000. As of May 1, 2007, the cumulative deficiency in respondent's court account was still \$5,125.98.

5. Respondent's court clerk placed the undeposited funds in various unsecured locations, including inside of case files or stapled to receipts in a receipt book kept in a non-theft resistant wooden filing cabinet.

6. Respondent has now deposited all of the court funds. There is no evidence of conversion or misuse of the funds.

7. Respondent acknowledges his failure to supervise his court clerk and recognizes that he is personally responsible for all court funds. As a result of the Commission's investigation, respondent obtained a theft and fire-resistant metal filing cabinet in which he locks all collected monies pending deposit.

member of such justice's household, as clerk of the town or village court in which such justice sits, provided that the justice obtains the prior approval of the Chief Administrator of the Courts, which may be given upon a showing of good cause."

As to Charge II of the Formal Written Complaint:

8. From October 2006 through February 2007, as set forth in Exhibit 2 to the Agreed Statement of Facts, respondent failed to file reports to the State Comptroller and to remit \$26,560 in town court funds to the Chief Fiscal Officer of the Town of Richland "(Chief Fiscal Officer)" within ten days of the month succeeding collection, as required by Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law and Section 27(1) of the Town Law.

9. On February 22, 2007, the State Comptroller issued notice to the Richland Town Supervisor to stop payment of respondent's judicial salary pending the filing of reports and the remittal of funds for the months of October, November and December 2006.

10. Respondent's report and remittance for the month of October 2006, in the amount of \$3,105, was received on March 13, 2007, 123 days beyond the time provided by the statutory requirement.

11. Respondent's report and remittance for the month of November 2006, in the amount of \$7,300, was received on March 13, 2007, 93 days beyond the time provided by the statutory requirement.

12. Respondent's report and remittance for the month of December 2006, in the amount of \$6,055, was received on April 11, 2007, 91 days beyond the time provided by the statutory requirement.

13. Respondent's report and remittance for the month of January 2007,

in the amount of \$5,375, was received on April 6, 2007, 55 days beyond the time provided by the statutory requirement.

14. Respondent's report and remittance for the month of February 2007, in the amount of \$4,725, was received on April 6, 2007, 27 days beyond the time provided by the statutory requirement.

15. On April 12, 2007, the State Comptroller notified the Town Supervisor that respondent was current in his monthly reporting and directed that payment of respondent's salary be resumed.

As to Charge III of the Formal Written Complaint:

16. From February 2005 through March 2007, as set forth in Exhibits 5 and 6 to the Agreed Statement of Facts, respondent failed to report to the State Comptroller and remit to the Chief Fiscal Officer \$2,797.50 in court funds he received in 34 cases in the Richland Town Court, as required by Sections 2020 and 2021 of the Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law and Section 27(1) of the Town Law.

As to Charge IV of the Formal Written Complaint:

17. From January 2005 through March 2007, as set forth in Exhibit 7 to the Agreed Statement of Facts, respondent failed to issue duplicate receipts for \$2,444 in court funds he received in 26 cases in the Richland Town Court, as required by Section 31(1)(a) of the Town Law and Section 99-b of the General Municipal Law.

Supplemental findings:

18. In January 2005, after respondent lost the services of his court clerk, his wife, Tammy Ridgeway, filled the position. Mrs. Ridgeway worked part-time and was the sole clerk for the Richland Town Court.

19. Mrs. Ridgeway received minimal, informal training concerning her duties and responsibilities as a court clerk and was unfamiliar with the required procedures for recording, depositing and reporting court funds

20. In April 2005 Mrs. Ridgeway began experiencing serious health problems. On the recommendation of her doctor, Mrs. Ridgeway resigned her position as court clerk in December 2007. In January 2008 respondent hired a new court clerk, who attended paralegal school and received training from the Office of Court Administration.

21. As a result of the Commission's investigation, respondent has taken steps to ensure that his reports and remittances are timely and accurate and that all court funds are deposited within 72 hours of receipt, including regularly reviewing court records, books and reports and conducting monthly reconciliations.

22. Respondent acknowledges that he failed to diligently discharge his administrative responsibilities and to supervise his court clerk, and commits that his administrative and financial shortcomings will not be repeated.

23. Respondent has not experienced similar reporting, remitting and depositing deficiencies as Acting Justice of the Pulaski Village Court, where his caseload is significantly lighter and he has had a trained clerk assisting him since assuming the

bench.

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 IV of the Formal Written Complaint are sustained, and respondent’s misconduct is established.

The handling of official monies is one of a judge’s most important responsibilities. Depositing, reporting and remitting such monies promptly, in strict compliance with the statutory mandates, is essential to ensure public confidence in the integrity of the judiciary. The failure to comply with these mandates constitutes misconduct, even if there is no evidence that monies were missing or used for inappropriate purposes. *See Matter of Minogue*, 2009 Annual Report 138 (Comm on Judicial Conduct); *Matter of Hrycun*, 2002 Annual Report 109 (Comm on Judicial Conduct); *Matter of Ranke*, 1992 Annual Report 64 (Comm on Judicial Conduct); *see also Bartlett v. Flynn*, 50 AD2d 401, 404 (4th Dept 1976). Although these important functions may be delegated, a judge is required to exercise supervisory vigilance over court staff to ensure the proper performance of these responsibilities. *See, Matter of Burin*, 2008 Annual Report 97 (Comm on Judicial Conduct); *Matter of Jarosz*, 2004 Annual Report 116 (Comm on Judicial Conduct); Rules, §§100.3(C)(1) and (2) (judge

must require court staff “to observe the standards of fidelity and diligence that apply to the judge”).

All monies received by the court are required to be deposited “as soon as practicable” and no later than 72 hours after receipt, and must be reported and remitted to the appropriate authorities by the tenth day of the month following collection (Uniform Civil Rules for the Justice Courts §214.9[a]; Uniform Justice Ct Act §2021[1]; Town Law §27; Vehicle and Traffic Law §1803). Additionally, all monies received and disbursed by the court must be properly recorded, and duplicate receipts must be issued (Town Law §31[1][a]; Gen Mun Law §99-b).

Over a two-year period, respondent failed to deposit tens of thousands of dollars in court monies in a timely manner as required by law. Over that period, deposits were made on a sporadic basis – weekly, biweekly or even less frequently – and the amounts deposited were often less than the amounts collected by the court. As a result, there was a cumulative deficiency in the court account that, at one point, was more than \$20,000. During this time, undeposited funds were kept in various unsecured locations in the court office.

Over the same period, respondent also failed to report and remit all court monies to the appropriate authorities on a monthly basis, as required by law. Funds totaling \$2,797.50, which the court had collected in 34 cases between February 2005 and March 2007, were unreported over that period. For five months, respondent made no reports and remittances, notwithstanding that his court had collected \$26,560 over that

period: his remittances for October and November 2006 (totaling \$10,405) were not filed until March 2007, and his reports and remittances for December 2006 through February 2007 (totaling \$16,155) were not filed until April 2007. These derelictions, leading to a suspension of respondent's salary by order of the State Comptroller, resulted in significant delays in processing the monies collected by the court. In addition, contrary to the statutory requirements, in 26 cases no duplicate receipts were issued for \$2,444 in court funds that were collected.

It appears that these deficiencies were attributable to respondent's inadequate supervision of his court clerk, his spouse, who was hired for that position after the departure of the previous clerk in January 2005. It has been stipulated that respondent's wife received "minimal, informal" training for her clerical duties and that for most of the period at issue she had serious health problems. These factors do not mitigate respondent's responsibility for these serious lapses; indeed, these circumstances should have put him on notice of potential problems in connection with the performance of the clerk's responsibilities and should have prompted him to personally review the court's financial records and to take such other action as necessary to ensure the appropriate handling of court monies.

In considering the sanction, we note that there is no indication that any monies were used for inappropriate purposes. We also note that a new court clerk has been hired and that respondent is committed to avoiding these administrative and financial lapses in the future. As a result of the Commission's investigation, respondent

has taken significant steps, including regularly reviewing court records and reports and conducting monthly reconciliations, to ensure that in the future these responsibilities are performed in a timely and accurate manner. In view of these factors, we accept the recommended sanction of censure.

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

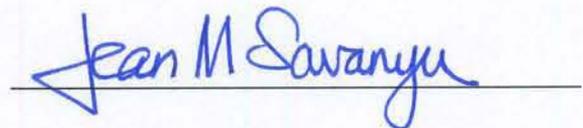
Judge Klonick, Mr. Coffey, Mr. Emery, Mr. Harding, Ms. Hubbard, Judge Konviser, Ms. Moore, Judge Peters and Judge Ruderman concur.

Mr. Belluck dissents in an opinion and votes to reject the Agreed Statement of Facts on the basis that the proposed disposition is too harsh.

CERTIFICATION

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

Dated: December 15, 2009

A handwritten signature in blue ink that reads "Jean M. Savanyu". The signature is written over a horizontal line.

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

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DISSENTING OPINION
BY MR. BELLUCK

I write with the dual purpose of explaining my dissent from the majority's decision to accept the recommended sanction of censure in this case, and expressing my concern about the incongruity of sanctions imposed by the Commission, which this case and *Matter of Burke* (decision issued today) exemplify.

In accepting the Agreed Statement of Facts, the Commission censures Judge Ridgeway for administrative deficiencies over a two-year period, in which the judge failed to make timely deposits of court monies, failed to report the monies he collected on a timely basis to the State, and failed to issue duplicate receipts in some cases. It is stipulated that the judge's problems began when he lost the services of his court clerk, whose position, with the approval of the Town Board, was filled by the judge's wife. (Such employment is specifically permitted by the Rules [§100.3[C][3].) It is also stipulated that upon her employment the judge's wife received minimal formal

training in the appropriate record-keeping, depositing and reporting procedures and that, within a short time, she also developed serious health problems. Within this context, it seems clear that the administrative and financial shortcomings that ensued in the court were the result of an unfortunate series of circumstances and were, at worst, managerial lapses, not intentional or willful wrongdoing.

Most importantly, it has been stipulated that there is no evidence whatsoever of conversion or any inappropriate use of court monies. No monies were missing, and all the monies have been accounted for and have now been deposited. In such instances, as I have indicated previously (*Matter of Roller*), it is my view that public discipline is unwarranted. Moreover, the record here indicates that the judge's wife resigned as clerk nearly two years ago; a new clerk was hired; and, as the majority states, the judge "is committed to avoiding these administrative and financial lapses in the future" and "has taken significant steps" to ensure that his administrative responsibilities are properly performed. Given these circumstances, any public discipline, let alone the sanction of public censure – the most severe sanction short of removal the Commission can impose – seems unduly harsh. Such conduct, I believe, warrants at most a confidential caution or even outright dismissal, perhaps with a proviso that the Commission will review the judge's records in a year to ascertain whether there has been any recurrence of these administrative problems.

I recognize that Judge Ridgeway, represented by counsel, has agreed to the sanction of censure. In my view, the judge's assent to this result, negotiated with Commission counsel, does not make it fair, appropriate or acceptable. With the weight of

Commission proceedings bearing down on him for several years, it is not surprising that a judge is willing to conclude the proceedings in any way that permits him to keep his judgeship and move forward. But I cannot vote to accept such a draconian result based on the facts presented here.

Further, it is apparent to me that the negotiated sanction here – a public censure – is completely out of proportion with the dispositions the Commission has imposed in other cases. In recent years, the Commission has censured judges for, *e.g.*, sending an unrepresented, almost certainly incompetent defendant to prison for 90 days absent even a modicum of due process (*Matter of Dunlop*, 2008); allowing a co-judge's law partners to appear before her in dozens of cases and allowing her personal attorney's law firm to appear before her (*Matter of Lehmann*, 2008); fixing a Speeding ticket for a friend's wife based on *ex parte* communications (*Matter of Lew*, 2008); a series of acts which showed bullying, intemperate, retaliatory behavior on the bench (*Matter of Hart*, 2008); abusing the contempt power on three occasions, all of which resulted in the incarceration of litigants (*Matter of Griffin*, 2008); interceding in two matters in Family Court to advance a friend's interests, persisting in doing so despite being warned about such conduct, and telling a supervising judge, "Everybody does it" (*Matter of Horowitz*, 2005); and, most recently, operating a vehicle under the influence of alcohol, resulting in a conviction for Driving While Ability Impaired, and sitting on a friend's cases (*Matter of Burke*, 2009). Although the misconduct in the above-cited cases is exponentially more serious than the administrative lapses of Judge Ridgeway, the Commission imposes the same sanction – censure. Indeed, on the very day that the Commission voted to censure

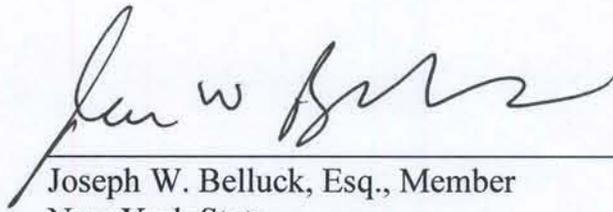
Judge Ridgeway for administrative shortcomings resulting in delays in depositing and remitting money, it voted to censure a judge for hitting another vehicle while driving under the influence of alcohol (*Matter of Burke, supra*). In my mind, there is simply no way that drunk driving – unlawful behavior that threatens the safety of other people’s lives – warrants the same sanction as what Judge Ridgeway admitted doing here.

Moreover, the continued use of censure for wrongdoing that is relatively minor, as in this case – simply because the parties have agreed to the sanction – undermines the significance of this sanction when it is appropriately imposed and undermines public confidence in the Commission’s ability to properly distinguish between serious wrongdoing and less serious misbehavior.

Other judges have been accorded a more lenient sanction – admonition – for misconduct which I view as significantly more serious than Judge Ridgeway’s. *E.g.*, *Matter of Shkane* (2008) (judge was abusive to two police officers who had lawfully arrested a litigant outside the court); *Matter of Pajak* (2004) (judge was convicted of Driving While Intoxicated after a property damage accident). I also note that, according to the Commission’s annual reports, numerous judges have been issued a confidential letter of dismissal and caution for “not ensuring that fines and other court funds were properly and timely recorded, deposited and disbursed” (*e.g.*, 2009 Annual Report, p. 13) – the same conduct for which Judge Ridgeway is now censured. In my view, the disparity of these results is inconsistent with the fair and proper administration of justice.

Accordingly, I vote to reject the Agreed Statement of Facts.

Dated: December 15, 2009

A handwritten signature in black ink, appearing to read "Joseph W. Belluck", written over a horizontal line.

Joseph W. Belluck, Esq., Member
New York State
Commission on Judicial Conduct