

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 P. MCDERMOTT,

a Justice of the Chester Town Court,
Warren County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Eteena J. Tadjioqueu,
Of Counsel) for the Commission

John M. Silvestri for respondent

The respondent, James P. McDermott, a Justice of the Chester Town Court,
Warren County, was served with a Formal Written Complaint dated June 18, 2018,

containing one charge. The Formal Written Complaint alleged that respondent failed to account for the receipt of over \$15,000 in court funds or promptly remit such funds to the Office of the State Comptroller (“Comptroller”) as required and accumulated a surplus of funds in his court bank account which he could not identify. Respondent filed a Verified Answer dated July 16, 2018.

On October 19, 2018, the Administrator, respondent’s counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, 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 December 6, 2018, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Chester Town Court, Warren County, since January 1998. His current term expires on December 31, 2021.

Respondent is the sole justice of the Chester Town Court. He is not an attorney.

2. The Chester Town Court has had the same court clerk since in or about 1988. At various times during respondent’s judgeship, there have also been additional, part-time clerks.

3. As set forth below, respondent failed to account for the receipt of over \$15,000 in court funds or to promptly remit these funds to the person or agency entitled to same, as required by Section 27 of the Town Law, Section 99-a of the State

Finance Law, Section 1803 of the Vehicle and Traffic Law, and Sections 2020 and 2021 of the Uniform Justice Court Act. As of January 2011, respondent had over \$10,000 in his court bank account and could not identify the source of the majority of those funds. Notwithstanding a January 2011 audit report published by the Comptroller, recommending that respondent remit the accumulated funds and alter the court's accounting procedures, respondent failed to remit the funds in a timely manner. As of December 2016, respondent had accumulated an additional surplus of over \$5,000, the sources of which he could not identify and which he did not timely remit.

4. On February 4, 1998, one month after respondent assumed the bench, approximately \$15,487.36 in court funds, which had accumulated during the tenure of prior judges, was deposited into respondent's court bank account at Glens Falls National Bank and Trust Company.

5. In January 2011 the Comptroller published a report summarizing the findings of an audit of the Chester Town Court's financial records for the period of January 1, 2007, to December 31, 2009. Its findings included the following:

A. The 2011 audit report indicated that the court's accounting procedures were inadequate, with the result that, *inter alia*, the court bank account had an unidentified balance of \$10,165 as of December 31, 2009. The auditors found that internal controls were not appropriately designed or operating effectively and that, consequently, one out of every 22 cash receipt entries had errors, including eight receipts that were issued out of sequence and numerous differences between the amounts recorded as received and the amounts that were actually deposited. In addition, the dollar amounts

reflected in three of the six monthly reports reviewed did not correspond with the accounting records, and the court clerk did not prepare monthly accountabilities or maintain complete records of bails on deposit.

B. The 2011 audit report further found that respondent did not ensure that the records kept by the court clerks were accurate or corresponded with the supporting documentation. There were inaccuracies and errors throughout the accounting records, including deposits that did not agree with the receipts. The audit report noted that inconsistencies in the court records made it “virtually impossible” to confirm with certainty whether the court was collecting the fines, fees and surcharges that defendants were required to pay, or whether all funds collected were properly recorded and paid over to the Comptroller.

C. In the report, the Comptroller provided seven recommendations, including that respondent determine the source of the unidentified surplus and, if the money in the account could not be identified, report and remit the unidentified balance to the Comptroller as unidentified money. The report did not recommend a time frame to implement the Comptroller’s recommendations.

6. A subsequent audit by the Comptroller for the period of January 1, 2015, to December 28, 2016, again indicated that respondent’s accounting procedures were inadequate, with the result that, *inter alia*, the court bank account had an average unidentified balance of \$15,700 during the audit period. The Comptroller again recommended that respondent identify the source of the unidentified money and remit any unidentified funds to the Justice Court Fund. The report did not recommend a time

frame to implement the Comptroller's recommendations.

7. Respondent did not report or remit the unidentified funds in the court's bank account between the publication of the first audit report in January 2011 through the publication of the second audit report in June 2017.

8. Respondent did not begin to remit the unidentified funds until November 2017, when he reported and remitted \$5,000 in unidentified funds to the Comptroller.

9. In March 2018 respondent reported and remitted an additional \$5,000 in unidentified funds to the Comptroller.

10. In April 2018, after the Commission first communicated with respondent about the matters herein, the Town of Chester retained a forensic accounting firm to determine, *inter alia*, the source of the unidentified surplus funds. The accounting firm informed respondent that it would be cost prohibitive to identify the source of the surplus funds that had not yet been remitted to the Comptroller.

11. In May 2018, after receiving the accounting firm's report, respondent reported and remitted an additional \$5,513.12 in unidentified funds to the Comptroller.

Additional Factors

12. The February 4, 1998 deposit into respondent's court account of funds accumulated by prior judges contained unidentified funds that appear to account for a portion of the surplus identified by the Comptroller in its two audit reports. Respondent acknowledges, however, that the surplus amount increased by approximately \$5,000

between the publication of the 2011 and 2017 audit reports, indicating that inappropriate and/or ineffective accounting practices during his tenure also contributed to the surplus of unidentified funds in the court's bank account.

13. Respondent avers that after the Comptroller conducted both audits, he attempted to identify the source(s) of the surplus funds and requested that the Town of Chester provide accounting assistance. That assistance was not provided until April 2018.

14. Respondent acknowledges that he is responsible for accounting for all money collected by the court and deposited into his bank account and for remitting funds as required by the tenth day of the month following collection, that he must supervise the clerk's activities with regard to the receipt, documentation and deposit of court funds, and that he must reconcile his bank account monthly. Respondent pledges to timely seek assistance from the Justice Court Fund and/or Judicial Resource Center with any accounting concerns and questions. He avers that he has undertaken steps to improve accounting procedures, such as obtaining accounting software and separating the court bank account into designated fine and bail accounts.

15. The Comptroller did not find evidence that court funds were lost or misappropriated. However, respondent recognizes that failing to properly account for large sums of money could result in at least the appearance that court funds were being mismanaged or misappropriated, undermining public confidence in the integrity of the court. Therefore, respondent avers that he is committed to avoid any repetition of the deficient financial practices addressed herein.

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(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 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.

The handling of official funds is one of a judge’s most important responsibilities, and “a town justice is personally responsible for moneys received by the justice court” (1983 Ops St Comp 83-174). This responsibility requires strict adherence to mandated procedures in order to avoid even the appearance that court funds have been mishandled or misappropriated. Among other requirements, all funds received by a town or village justice are required to be reported and remitted to the appropriate authorities by the tenth day of the month following collection (Uniform Justice Ct Act §§2020 and 2021[1]; Town Law §27; Vehicle and Traffic Law §1803; State Finance Law §99-a).

Respondent acknowledged that after a 2011 audit report by the State Comptroller’s Office found an unidentified surplus of more than \$10,000 in the court bank account and recommended that he either identify the source of the funds or remit the unidentified balance to the Comptroller, he did not begin to remit the surplus funds until November 2017, a few months after a second audit report found that the amount of the unidentified surplus had ballooned to over \$15,000. Not until May 2018 – more than seven years after the initial audit – was the entire amount of the surplus remitted.

Although there is no evidence that any monies were lost or misappropriated, this lengthy delay in reporting and transmitting the funds to the appropriate authorities was improper and deprived state and local governments of thousands of dollars to which they were entitled. *See, Matter of Schiff*, 83 NY2d 689 (1994) (village justice failed to report the dispositions of over 600 cases in a timely manner over a four-year period, resulting in an unidentified surplus of \$22,000 in the court account, and failed to take prompt action to remit the surplus funds and remedy his record-keeping practices despite repeated reminders); *Matter of Trickler*, 2010 NYSCJC Annual Report 235; *Matter of Goebel*, 1990 NYSCJC Annual Report 101.

While it is stipulated that a portion of the surplus included funds that had accumulated during the tenure of prior judges that were deposited into the court account shortly after respondent took office in 1998, that does not excuse his laxity in permitting those monies to languish in the account for years. Respondent avers that after both audits, he “attempted to identify the source(s) of the surplus funds and requested that the Town of Chester provide accounting assistance,” which was not provided until April 2018. The next month, after a forensic accounting firm retained by the town advised him that it would be “cost prohibitive” to identify the source of the remaining surplus funds, he remitted the balance of the surplus.

Notwithstanding the large unidentified surplus that respondent inherited, it is noteworthy that the amount of the surplus increased by over \$5,000 between the issuance of the 2011 and 2017 audit reports, indicating that his own inappropriate and/or ineffective accounting practices were also a contributing factor, even after he was on

notice of the significant problems that existed with respect to his court's procedures and records. Both audits cited numerous discrepancies and deficiencies in the court's records and accounting procedures, noting that such errors made it difficult to determine with certainty whether funds were properly collected and reported. Regardless of whether the record-keeping and procedural errors were attributable to court staff, respondent, as the sole judge of the court, bears responsibility for ensuring that the court's financial activities are properly documented and reported. Judges are required not only to diligently discharge their own administrative duties, but to ensure that the court's staff observe "the standards of fidelity and diligence that apply to the judge" (Rules, §§100.3[C][1] and 100.3[C][2]).

Although the unreported monies at issue were on deposit in the court bank account, any failure to properly account for large sums of money in a timely manner may result in at least the appearance that court funds were being mismanaged or misappropriated, which undermines public confidence in the integrity of the court.

In accepting the jointly recommended sanction of censure, we note that respondent avers that he is committed to avoid any repetition of the deficient financial practices addressed herein, has taken steps to improve the court's accounting procedures, and will in the future seek timely assistance with any accounting concerns and questions that may arise.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge

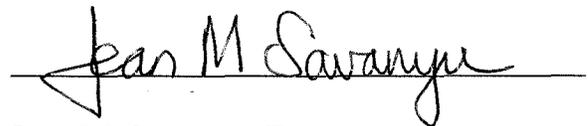
Leach, Judge Mazzairelli, Judge Miller, Mr. Raskin and Mr. Stoloff concur.

Ms. Yeboah was not present.

CERTIFICATION

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

Dated: December 12, 2018

A handwritten signature in black ink, reading "Jean M. Savanyu", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "J".

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