

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

DETERMINATION

VINCENT SGUEGLIA,

a Judge of the County, Family and
Surrogate Court, Tioga County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Nina M. Moore
Honorable Karen K. Peters
Richard A. Stoloff, Esq.

APPEARANCES:

Robert H. Tembeckjian (Kathleen Martin, Of Counsel) for the Commission

Pope & Schrader, LLP (by Alan J. Pope) for the Respondent

The respondent, Vincent Sgueglia, a Judge of the County, Family and
Surrogate's Courts, Tioga County, was served with a Formal Written Complaint dated

March 31, 2011, containing two charges. The Formal Written Complaint alleged that respondent: (i) issued himself a pistol license and (ii) discharged a pistol in his chambers. Respondent filed a verified Answer dated June 22, 2011.

On June 7, 2012, the Administrator, 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. The Commission had rejected an earlier Agreed Statement.

On June 14, 2012, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Judge of the County Court, Family Court and Surrogate's Court of Tioga County since 1993. Respondent's current term expires on December 31, 2012, by which time he will be 70 years old. Respondent agrees that he will not seek appointment as a judicial hearing officer after the conclusion of his term. He was admitted to the practice of law in New York in 1968.

As to Charge I of the Formal Written Complaint:

2. On or about September 6, 2005, respondent completed a State of New York Pistol/Revolver License Application seeking a permit to carry concealed pistols, including a Kel Tec Automatic .380, a Glock Automatic 9 Millimeter and a Walther Automatic .22. Respondent listed his present occupation as county judge.

Respondent then submitted the permit application to the Tioga County Sheriff's Department for the required background investigation of himself as the applicant.

3. From September 6, 2005, through November 3, 2005, the Tioga County Sheriff's Office investigated respondent's application for the issuance of a pistol permit. After its investigation, the Sheriff's Department recommended approval of respondent's permit application. As it does with all applications, the Sheriff's Department returned the permit application to respondent.

4. On or about November 3, 2005, respondent, a licensing officer authorized to review and issue pistol permits in Tioga County by virtue of his judicial office, approved his own Pistol/Revolver License Application for a "have-and-carry-concealed" license, authorizing his largely unrestricted possession of three pistols: a Kel Tec Automatic .380, a Glock Automatic 9 Millimeter and a Walther Automatic .22. The permit contained no restrictions.

5. Respondent mistakenly believed that he could sign his own permit because he is the sole licensing officer in Tioga County pursuant to Penal Law Section 265.00(10). Respondent is the only Tioga County Court Judge, and there is no other judge or justice of a court of record having an office in Tioga County.

6. Between February 6, 2006, and September 15, 2010, the Sheriff's Department approved 14 amendments to respondent's permit, noting the addition of 17 pistols. Pursuant to the usual practice in Tioga County, it was not necessary for respondent to approve these amendments to his permit. Other than filing his applications,

respondent played no role in approving the amendments to his pistol permit.

7. As the licensing officer for Tioga County, respondent is also empowered by Penal Law Sections 400.00(1) and 400.00(9) to issue amendments to pistol permits. Respondent had previously authorized the Tioga County Sheriff's Department to amend the pistol permits of prior approved licensees who provided notice that they were acquiring and/or disposing of pistols other than those listed on their original permit, and who were not seeking a change in any other terms of their licenses. Licensees seeking to add pistols to their permit were required to show the source of the firearm and to attest that they had not been arrested, indicted, convicted or suffered a mental illness since the time of the issuance of their original license.

8. Respondent did not consult his Administrative Judge or any other official of the Office of Court Administration, nor did he request an Opinion from the Advisory Committee on Judicial Ethics, as to whether he could issue himself a pistol permit or whether another judge from outside Tioga County could do so in his stead.

9. On reflection, respondent realizes that it was inappropriate for him to take judicial action on his own pistol permit application and that he should have consulted with court officials to arrange for another judge to handle the matter.

10. Respondent has submitted a pistol permit application for his various firearms and requested that Deputy Chief Administrative Judge Michael V. Coccoma assign that application to another judge to consider and rule upon. The application review is underway before another judge.

As to Charge II of the Formal Written Complaint:

11. Whenever a member of the public brings a firearm, loaded or not, to the Tioga County Courthouse, it is standard procedure for court security to take the firearm and place it in a locker in a public area supervised by court security. When the individual leaves the courthouse, the firearm is returned.

12. Respondent provided evidence of the following, which the Administrator accepts.

A. At all times relevant to the matters herein, it was respondent's practice to carry a firearm to and from court as a matter of personal safety.

B. Respondent began carrying a firearm to court after having been directly threatened by individuals on two occasions. In November 2002, when respondent was campaigning for re-election, a man carrying a pick-axe approached him, cursed at him and said he wished respondent dead for having ruined his life. On a separate occasion, when respondent was in the public square in front of the courthouse, he was approached by a man who said he wished respondent dead.

C. On several occasions, respondent has been followed after leaving the court parking lot by unknown drivers who have continued toward his home. On those occasions, respondent took circuitous routes to evade the unknown driver following him and subsequently reported the incidents to police or court security officers. On one such occasion, respondent drove into the State Police barracks parking lot in order to evade the unknown driver, and on another occasion he drove into the Owego Police Station parking

lot. Respondent has never identified these individuals.

D. In November 2010, Harvey Smith, a Tioga County jail inmate, was charged with a felony in connection with his attempt to recruit a fellow inmate to murder respondent.

13. Respondent advised court security personnel that he was regularly carrying a loaded gun into the courthouse, and court security officers assigned to the courthouse were advised that respondent carried a firearm to court. Respondent did not advise his administrative judge that he was bringing a gun to the courthouse.

14. Respondent's standard practice was to keep the firearm in a drawer in his chambers while he was in the courthouse. This practice was adopted to eliminate the necessity for a court officer to obtain and secure respondent's firearm in the locker, which is located in another part of the courthouse, and then to retrieve it when respondent left. Respondent routinely entered and left the courthouse with the knowledge of court security, utilizing a non-public entrance located on the opposite side of the building from where the secure public entrance and secure lockers are located.

15. There were no administrative policies prohibiting judges from bringing firearms into their chambers and no promulgated procedures for court security staff to follow in such circumstances.

16. On January 21, 2010, respondent carried a .38 caliber Smith and Wesson revolver into the Tioga County Courthouse. Respondent knew there was a faulty mechanism on the revolver that was used to cock the firearm and rotate the cylinder.

When respondent reached his chambers he took the revolver out of his pocket and placed it in a desk drawer.

17. At about 10:30 AM on January 21, 2010, during a break in court proceedings and while alone in his chambers, respondent decided to try to repair the mechanism. Respondent did not know that the revolver was loaded but as a standard protocol he pointed it in a safe direction at a concrete wall. While respondent was manipulating the revolver for repair, it accidentally discharged. Respondent does not know mechanically what caused the gun to discharge. Respondent did not check to determine if the gun was loaded, and when he started to fix it he still believed it was unloaded.

18. Immediately after the revolver discharged, respondent emptied the remaining bullets from the revolver. Respondent's court assistant, Deborah Simonik, who was located in the courtroom next to respondent's chambers, promptly notified court security that the gun had accidentally discharged and that no one was hurt.

19. At the time the firearm was discharged, respondent's secretary, Lisa Mistretta, was in an office across the hall from his chambers, located away from the wall into which the bullet was fired.

20. Following Ms. Simonik's notification, two court officers, Sergeant Charles Scudiero and Lieutenant John Sullivan, interviewed respondent regarding the discharge of the revolver in his chambers.

21. Later that morning, Captain Carl Fennisey of the New York State

Unified Court System Court Security Office contacted Tioga County Sheriff Gary Howard and requested an investigation of the discharge of a firearm in respondent's chambers.

22. Two Sheriff's Department investigators, Senior Investigator Patrick Hogan and Investigator Casey Rhodes, thereafter arrived at the courthouse to investigate. They found the .38 caliber bullet embedded in a wall in respondent's chambers, close to the floor. An elevator shaft is located on the other side of the wall from where the bullet was lodged. As a result of their investigation, it was determined that respondent had accidentally discharged the firearm. Prosecution was neither recommended nor initiated.

23. The Tioga County Courthouse is located in the Village of Owego. Section 153-3 of the Village Ordinances of Owego prohibits the discharge of a firearm "whether on public or private property within the corporate limits of the village," with three exceptions: (a) in self-defense, (b) in the discharge of official duty or (c) in target practice at an indoor range. Respondent did not receive a summons or ticket for violating the local ordinance.

24. Although all court staff and police officers involved in this matter knew respondent to be a judge, at no time did respondent invoke his judicial title or influence with them to avert an investigation into the discharge of his firearm, impede their inquiries, evade a summons or otherwise interfere with their duties.

25. Respondent acknowledges that the accidental discharge of his revolver was contrary to the local ordinance and that the ordinance does not distinguish

between intentional and accidental discharge. Respondent recognizes that his conduct did not fall within the three exceptions contained in the ordinance.

26. No action was taken to revoke or amend respondent's permit as a result of the incident.

27. After January 21, 2010, respondent stopped bringing a firearm to the courthouse.

28. Upon reflection, respondent acknowledges that his chambers was not an appropriate location for him to have been repairing a personal firearm.

29. Respondent's intention was to carry a firearm for personal safety. Respondent recognizes that the Office of Court Administration employs court officers whose duties include providing security services to judges within the courthouse.

Mitigating Factors

30. On reflection and mindful of the safety of others, respondent has not brought a firearm into the courthouse since January 21, 2010.

31. Respondent has been contrite throughout the Commission inquiry.

32. Respondent has served as the Judge of the County Court, Family Court and Surrogate's Court of Tioga County for 19 years 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 faithfully in accordance with the Rules for the remainder of his term as a judge.

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), 100.3(E)(1), 100.3(E)(1)(a)(i) and (ii) and 100.4(A)(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 and II of the Formal Written Complaint are sustained, and respondent’s misconduct is established.

A judge may not exercise his or her decision-making authority for the judge’s personal benefit. By approving his own application for a pistol permit, respondent clearly violated this fundamental precept. Approving a pistol permit involves the exercise of discretion; it is not ministerial, and there is no inherent right to carry a concealed weapon. Even if respondent’s application would likely have been approved by any other licensing officer, especially since the Sheriff’s Department raised no objection, respondent’s approval of his own application was inappropriate.

Since respondent is the sole licensing officer in the county, it would have been appropriate under the circumstances to consult his Administrative Judge or other court officials or to seek an Advisory Opinion as to how he could properly obtain a permit. Instead, as respondent has stipulated, he violated well-established ethical standards by failing to disqualify himself in a matter in which his impartiality might reasonably be questioned and as to which he had a personal stake and personal knowledge concerning the underlying facts, thereby creating an appearance of impropriety (Rules,

§§100.2[A], 100.3[E][1], 100.3[E][1][a][i], [ii]).

Respondent compounded his misconduct by accidentally discharging his gun in his chambers, while attempting to repair it. Handling a gun in his chambers showed a lack of good judgment and a notable disregard for the safety of others. Every year, the accidental discharge of firearms is responsible for hundreds of fatalities and thousands of injuries in the United States.¹ Respondent should have recognized that his chambers was not an appropriate location for him to have been repairing a weapon that has the capacity for causing serious physical harm or death to himself or another. Thus, he is responsible even for the “accidental” discharge of the gun, which, as stipulated, was contrary to a local ordinance prohibiting the discharge of a firearm within village limits; the ordinance does not distinguish between intentional and accidental discharge.

Even off the bench, every judge must observe “standards of conduct on a plane much higher than for those of society as a whole.” *Matter of Kuehnel*, 49 NY2d 465, 469 (1980). Any departure from this exacting standard of personal conduct may undermine a judge’s effectiveness as a judge and impair the public’s respect for the judiciary as a whole.

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

¹ In 2009, there were 613 such deaths and 18,610 injuries, according to the National Center for Injury Prevention and Control (2010 Statistical Handbook of the U.S. Census Bureau).

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Cohen, Mr. Emery,
Mr. Harding, Ms. Moore and Mr. Stoloff concur.

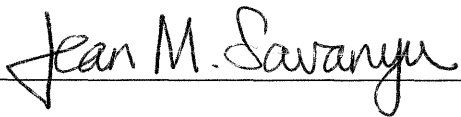
Mr. Belluck dissents and votes to reject the Agreed Statement on the basis
that the facts as presented in Charge II do not provide a basis for a finding of misconduct.

Judge Peters did not participate.

CERTIFICATION

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

Dated: August 10, 2012



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