

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

MICHAEL A. PETUCCI,

a Justice of the Herkimer Town Court,
Herkimer County.

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.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci, Of Counsel)
for the Commission

Gerstenzang, Sills, Cohn & Gerstenzang (by Peter Gerstenzang)
for respondent

Respondent, Michael A. Petucci, a Justice of the Herkimer Town Court, Herkimer
County, was served with a Formal Written Complaint dated June 11, 2019, containing

one charge. The Formal Written Complaint alleged that on December 12, 2018, in the Village of Herkimer, New York, respondent operated a motor vehicle while his ability to do so was impaired by alcohol. Respondent filed a Verified Answer dated June 20, 2019.

On July 16, 2019, 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 October 17, 2019, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Herkimer Town Court, Herkimer County, since 2008, having previously served as a Justice of the Herkimer Village Court, Herkimer County, from 2010 to 2015, and as an Acting Justice of the Ilion Village Court, Herkimer County, from 2008 to 2012. His current term expires on December 31, 2023. Respondent is not an attorney.

2. At all times pertinent to the facts herein, respondent was Director of the IT Department at the Slocum-Dickson Medical Group in New Hartford, New York.

3. Respondent was sworn in as President of the New York State Magistrates Association (SMA) on September 25, 2018, for a term ending on September 17, 2019. The SMA *inter alia* offers education and training programs to town and village court justices on adherence to the Rules Governing Judicial Conduct and judicial ethics.

4. On December 12, 2018, respondent left his place of employment at the Slocum-Dickson Medical Group shortly after 6:00 p.m. and drove his vehicle to Stoney's Tavern on South Main Street in Herkimer, New York. Respondent consumed at least two alcoholic beverages between 6:40 p.m. and 7:10 p.m., when he left Stoney's.

5. Respondent then drove approximately half a mile to the Elks Lodge on Mary Street in Herkimer, where he consumed at least two more alcoholic beverages between 7:15 p.m. and 8:20 p.m., when he left the lodge.

6. Respondent then drove again to Stoney's Tavern, where he consumed more alcohol until sometime after 9:00 p.m., when he again left Stoney's.

7. Respondent then drove to South Washington Street in Herkimer, which is less than half a mile from Stoney's. At approximately 9:28 p.m., as a result of his impairment by alcohol, respondent lost control of his vehicle and crashed into the side of a former Kmart building on South Washington Street. The impact of the crash caused damage to both the building and respondent's vehicle such that, *inter alia*, the left front wheel of respondent's vehicle flew off and the airbags deployed.

8. At the time of the crash, respondent was carrying a loaded handgun and had another full magazine of ammunition in one of his pockets. Respondent was licensed to carry a firearm.

9. On December 12, 2018, after emergency responders and Herkimer police arrived at the scene of the crash, respondent told Paramedic Joseph Durr that he was coming from Stoney's and had consumed alcohol. Respondent, whose breath smelled strongly of alcohol, was yelling obscenities and was otherwise belligerent to Mr. Durr

and to Herkimer Police Sgt. John Scholl. At one point, respondent asked Mr. Durr to arrest Sgt. Scholl.

10. Respondent repeatedly refused Sgt. Scholl's request to undergo field sobriety tests or a chemical test of his blood alcohol content, despite three separate warnings by Sgt. Scholl about the consequences of such refusals, including that his driver's license would be suspended. In response to one of Sgt. Scholl's requests to submit to a roadside breath test, respondent said, "No, fuck you."

11. Respondent did not invoke his judicial position at the scene. Sgt. Scholl was aware that respondent was a judge because he had appeared in respondent's court in the course of his duties as a police officer. In addition, the license plate on respondent's car was "1 SMA2019" and bore the insignia of the SMA. The New York State license plate "1 SMA" is traditionally reserved for the SMA President.

12. Respondent was transported to St. Elizabeth's Hospital in Utica.

13. Late in the evening on December 12, 2018, respondent was charged with Driving While Intoxicated, in violation of Vehicle and Traffic Law (VTL) Section 1192.3, and Refusal To Take Breath Test, in violation of VTL Section 1194.1(b).

14. The charges were returnable in the Herkimer Village Court and were subsequently transferred to the Little Falls City Court after the Herkimer village justices recused themselves.

15. The Herkimer County District Attorney's office, which prosecutes cases in respondent's court, moved to be relieved in respondent's case, whereupon the Herkimer County Court appointed the Oneida County District Attorney as special prosecutor.

16. On January 8, 2019, respondent pled guilty in the Little Falls City Court to Driving While Ability Impaired by Alcohol, in violation of VTL Section 1192.1, in satisfaction of both charges against him. He was sentenced to pay a fine of \$500 and a \$255 surcharge, attend a victim impact panel and undergo a comprehensive clinical assessment. Respondent's driving privileges were suspended for 90 days. Respondent later received a conditional license.

17. By Order dated December 13, 2018, Herkimer County Court Judge John H. Crandall ordered that respondent's pistol permit be suspended pending a hearing. The status of respondent's pistol permit was pending as of the date of the Agreed Statement of Facts.

18. By administrative order of Deputy Chief Administrative Judge Michael C. Cocomma dated December 17, 2018, respondent was suspended from performing his judicial duties. Respondent remained suspended from performing judicial duties as of the date of the Agreed Statement of Facts.

Additional Factors

19. Respondent avers that he has no recollection of the events on December 12, 2018, after he left the Elks Lodge. Respondent specifically avers that he does not recall being belligerent to the arresting officers and first responders. However, based on his review of the Herkimer Police Department report and the credibility of the officers involved, respondent believes those allegations to be true and does not dispute his conduct as described above. Respondent has since apologized to Sgt. Scholl for his behavior.

20. On December 28, 2018, respondent was evaluated by a Credentialed Alcoholism and Substance Abuse Counselor (“CASAC”) and multidisciplinary team, which determined that no treatment was recommended. Notwithstanding this finding, in January 2019, respondent voluntarily entered outpatient treatment with a licensed social worker/CASAC. Respondent avers that he has refrained from the use of alcohol since the date of the incident on December 12, 2018.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.4(A)(1), (2) and (3) 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.

It is the responsibility of every judge to act at all times in a manner that promotes public confidence in the integrity of the judiciary and to avoid conduct that detracts from the dignity of judicial office. Respondent violated his ethical obligation to respect and comply with the law by driving his vehicle while his ability was impaired by alcohol which caused him to lose control of his car and crash into a building. As a result of the accident which he could not recall, he caused damage to both his vehicle and the building. At the scene, respondent, whose breath smelled strongly of alcohol, admitted to the responding paramedic that he was coming from a tavern and had been drinking. Respondent subsequently pled guilty to Driving While Ability Impaired by Alcohol in violation of VTL Section 1192.1. His unlawful and reckless conduct endangered public

safety and brought the judiciary into disrepute.

According to the New York State 2018 Highway Safety Annual Report, there are thousands of arrests for alcohol-related driving offenses every year. That report indicated that alcohol-impaired driving causes over 300 fatalities and 5,000 injuries in New York state each year. Respondent should have known that by driving his vehicle after consuming a large amount of alcohol in a relatively short period of time he created a significant risk to himself and others.

Given respondent's role in adjudicating civil and criminal cases involving impaired driving, respondent's misconduct undermines his effectiveness as a judge and undermines public confidence in the judiciary. As a judge entrusted with the responsibility of exercising judgment over the conduct of others and applying the law in his court, respondent is "obligated to conduct [himself] at all times in a manner that reflected [his] own personal respect for the letter and spirit of the law." *Matter of Backal*, 87 N.Y.2d 1, 7 (1995). Any departure from this exacting standard of personal conduct undermines his effectiveness as a judge and impairs the public's respect for the judiciary as a whole.

In prior cases involving alcohol-related driving offenses, in determining the appropriate disposition, the Commission has considered various mitigating and aggravating factors including: the degree of intoxication, whether the judge caused an accident or injury, whether the conduct was an isolated incident or part of a pattern, whether the judge was cooperative during arrest, whether the judge asserted his or her judicial office and sought preferential treatment, whether the judge accepted

responsibility for the offense and the need and willingness of the judge to seek treatment. See, e.g., *Matter of Astacio*, 2019 NYSCJC Annual Report 71, *aff'd*, 32 N.Y.3d 131 (2018) [removal] (DWI conviction; judge was uncooperative during arrest and asserted her judicial office; judge also engaged in additional misconduct related to her judicial duties); *Matter of Landicino*, 2016 NYSCJC Annual Report 129 [censure] (DWI conviction; judge repeatedly asserted his judicial office during arrest; subsequently he made extensive efforts to rehabilitate himself); *Matter of Newman*, 2014 NYSCJC Annual Report 164 [censure] (DWAII conviction after rear-ending a car at a traffic light; judge was uncooperative during arrest); *Matter of Apple*, 2013 NYSCJC Annual Report 95 [censure] (DWI conviction based on a blood alcohol concentration of .21%); *Matter of Maney*, 2011 NYSCJC Annual Report 106 [censure] (DWAII conviction; judge made illegal U-turn to avoid sobriety checkpoint, repeatedly identified himself as a judge and asked for “professional courtesy”); *Matter of Martineck*, 2011 NYSCJC Annual Report 116 [censure] (DWI conviction after driving erratically and hitting a mile marker); *Matter of Burke*, 2010 NYSCJC Annual Report 110 [censure] (DWAII conviction after causing an accident; additional misconduct included presiding over two cases without disclosure of her relationship with a complaining witness); *Matter of Mills*, 2006 NYSCJC Annual Report 218 [censure] (although judge was acquitted of DWI, she admitted driving after consuming alcoholic beverages and making offensive statements to the arresting officers).

In this case, respondent consumed several alcoholic drinks and drove his vehicle bearing SMA license plates into the side of a building with sufficient force to

severely damage his vehicle. Respondent, who refused field sobriety and breath tests at the scene of the crash, was under the influence of alcohol and his judgment was impaired which caused the crash and damage to both the building and his vehicle.

Respondent's misconduct was aggravated when he was uncooperative and belligerent during his arrest. Respondent yelled obscenities at the paramedic and police personnel who responded to the scene of his car crash. He asked the paramedic to arrest the police sergeant. He repeatedly refused to take field sobriety tests and a chemical test of his blood alcohol level. In response to one of the police sergeant's requests that he take a breath test, respondent stated, "No, fuck you." This conduct is inconsistent with a judge's obligation to maintain high standards of conduct at all times, both on and off the bench, in order to promote public confidence in the integrity of the judiciary. (Rules §§100.1 and 100.2(A))

Further aggravating respondent's misconduct, he carried a loaded handgun and another full magazine of ammunition while impaired by alcohol. Although respondent was licensed to carry a firearm, he exercised extremely poor judgment in carrying a loaded firearm in these circumstances.

In mitigation, shortly after the accident, respondent was evaluated by a Credentialed Alcoholism and Substance Abuse Counselor and a multidisciplinary team. They determined that no treatment was recommended for respondent. Nevertheless, respondent has voluntarily participated in counseling with a Credentialed Alcoholism and Substance Abuse Counselor.

In accepting the jointly recommended sanction of censure, we have taken into

consideration that respondent's misconduct involved one incident and that he recognizes a severe sanction is appropriate. We also note that respondent was suspended from performing his judicial duties shortly after the incident. We trust that respondent has learned from this experience and in the future will act in strict accordance with his obligation to abide by the Rules Governing Judicial Conduct.

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

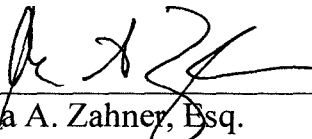
Mr. Belluck, Mr. Harding, Ms. Corngold, Ms. Grays, Judge Falk, Judge Leach, Judge Mazzairelli, Judge Miller, and Ms. Yeboah concur.

Mr. Raskin was not present.

CERTIFICATION

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

Dated: January 30, 2020



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct