STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

GENINE D. EDWARDS,

a Justice of the Supreme Court,
Kings County.

DETERMINATION

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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 (Mark Levine and Melissa DiPalo, Of Counsel), for the Commission

Roger Bennet Adler for respondent

Respondent, Genine D. Edwards, a Justice of the Supreme Court, Kings County, was served with a Formal Written Complaint dated May 21, 2019, containing one charge. The Formal Written Complaint alleged that on March 9, 2017, while presiding over a trial

in *Carolyn Thomas v. Quest Livery Services, LLC et al.*, respondent threatened to file a professional grievance against an attorney unless his client immediately offered to settle the case for $25,000.

On July 9, 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 admonished and waiving further submissions and oral argument.

On September 12, 2019, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Supreme Court, Kings County, since 2016, having previously served as a Judge of the New York City Civil Court, Kings County, from 2006 to 2015. Her term expires on December 31, 2029. She was admitted to the practice of law in New York in 1993.

2. As set forth below, on March 9, 2017, while presiding over *Carolyn Thomas v. Quest Livery Services, LLC et al.*, respondent threatened to file a professional grievance against a defense attorney, Michael L. Tawil, Esq., unless his client immediately offered to settle the case for $25,000.

3. On March 8 and March 9, 2017, respondent presided over the liability portion of a bifurcated trial in *Carolyn Thomas v. Quest Livery Services, LLC D/B/A Bee Bee Car Services, Pedro Roberto Batista, Nelson J. Urbina and Methuran Bahiro*, an action to recover damages for personal injuries sustained by the plaintiff in a car accident.

4. On March 8, 2017, the attorney for defendants Urbina and Bahiro, Michael L. Tawil, Esq., delivered a summation in which he made the following statement:

> On the other hand, you have Mr. Batista. He's on the phone talking to his female girlfriend or someone. He's selling cell phones to his passenger, he's listening to the radio, he said they're having a good time in the car. They're having a good time and he's paying attention to the passenger, to his girlfriend, probably to the radio. For all we know, he could be frying up some platanos in the front seat. We don't know. But he's not paying attention to the road, what's going on around him, okay.

5. The next day, March 9, 2017, before the jury was charged, respondent conducted an off-the-record conference in chambers with both Mr. Tawil and his client's insurance adjuster for the purpose of settling the case and addressing Mr. Tawil's summation remark.

6. During the off-the-record conference, respondent said that Mr. Tawil's statement during summation about platanos was "racist" and that she and her court staff were offended by his remark. Respondent then told Mr. Tawil, "What's going to happen now is your client is going to pay $25,000 to settle this case right now or I am going to report you to the Appellate Division Second Department. That's your license counselor."

7. The insurance adjuster called his supervisor and then advised respondent that his client refused to settle the case for $25,000.

8. Respondent thereafter charged the jury, and while the jury was deliberating, respondent placed on the record the substance of the conference with Mr. Tawil and the insurance adjuster, stating as follows:

> I'd like to indicate that I had a[n] off the record conversation with defendant Bahiro's counsel as well as the adjustor for defendant

> Bahiro regarding statements made by counsel during his summations which I was offended by and I thought they were totally culturally insensitive statements. And during that conversation I indicated to counsel and the adjustor that they should, to resolve this matter for $25,000. A call was made, fifteen was offered, plaintiff declined it. But, and so we went forward. And I indicated to counsel that if we couldn't resolve the matter, that I would be taking the entire transcript and making a complaint as it is my duty as not only a[n] officer of the court, but also as a duly elected Supreme Court justice, and I'm complaining to the Appellate Division regarding this statement.

9. The jury returned a verdict finding that defendants Bahiro and Batista were negligent and equally responsible for the accident. The verdict sheet from the damages portion of the trial shows that the jury awarded the plaintiff $200,000 for past pain and suffering. Before the jury finished deliberating, the plaintiff settled her claim against defendant Bahiro for $65,000.

10. Respondent did not report Mr. Tawil's conduct to disciplinary authorities.

Additional Factors

11. Respondent has been cooperative, candid and contrite throughout the Commission's inquiry.

12. Respondent acknowledges that it was improper to state that she would file a professional grievance against Mr. Tawil unless his client settled the case for a specific sum, even if she believed that Mr. Tawil committed an ethical violation. She recognizes that her words may have created the appearance that she was attempting to use Mr. Tawil's alleged misconduct as leverage to induce his client to settle the case.

13. Respondent recognizes that if she believed that Mr. Tawil had committed a "substantial violation" of ethical rules, she was obliged to report his conduct to the

attorney grievance committee regardless of whether a settlement was reached.

14. Respondent appreciates that she is obliged to discharge her judicial duties in a fair and judicious manner, and that her threat to report Mr. Tawil if his client did not settle the case undermined public confidence in the courts.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), and 100.3(B)(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 1 of the Formal Written Complaint is sustained and respondent's misconduct is established.

Each judge is obligated to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." (Rules, §100.2(A)) By threatening to use the attorney disciplinary process in an attempt to coerce a settlement in a matter pending before her, respondent did not meet this high standard. Respondent's explicit threat to complain to disciplinary authorities regarding Tawil's summation comment in an effort to induce Tawil's client to settle the matter pending before her for a specific amount was coercive and improper.

The undisputed facts show that respondent threatened to report Tawil to disciplinary authorities unless his client settled the matter. Respondent admitted that during an off-the-record conference in her chambers, she told Tawil, "What's going to happen now is your client is going to pay $25,000 to settle this case right now or I am going to report you to the Appellate Division Second Department. That's your license

counselor."[1] Later the same day, respondent stated on the record, "And I indicated to counsel that if we couldn't resolve the matter, that I would be taking the entire transcript and making a complaint as it is my duty as not only a[n] officer of the court, but also as a duly elected Supreme Court justice, and I'm complaining to the Appellate Division regarding this statement."[2]

Public confidence in the integrity and impartiality of the judiciary is essential to the administration of justice. By specifically linking her threat to file a professional grievance against the lawyer to whether his client agreed to settle the matter, respondent violated her obligation to discharge her judicial duties in a fair manner and undermined public confidence in the judiciary.

Using such a threat as leverage in an apparent effort to coerce a settlement violated the high standards of conduct required of a judge. *Matter of Taylor*, 1983 NYSCJC Ann. Report 197 (judge admonished for, among other things, punishing a lawyer whose client did not wish to waive a jury trial by refusing to call her case and forcing the attorney to sit in court in an effort "to coerce the lawyer to waive a right she had repeatedly asserted.") As the Commission stated in *Taylor*, "The administrative

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[1] It was stipulated that Tawil's client eventually paid more to settle the case than the $25,000 amount respondent mentioned in her threat.

[2] Rules §§100.3(D)(2) and (3) provide that, "[a] judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct (22 NYCRR Part 1200) shall take appropriate action" and "[a]cts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties."

directives and pressures on a judge to try to settle cases in busy courts such as respondent's do not excuse the abuses of discretion and decorum exhibited by respondent in the matters herein." *See also*, *Matter of Recant*, 2002 NYSCJC Ann. Report 139 (judge censured because she, among other things, "misused bail in an attempt to coerce guilty pleas").

Moreover, by weaponizing her obligation to take appropriate action regarding substantial attorney misconduct, respondent demonstrated an insensitivity to her special ethical obligations as a judge. A judge's obligation to take appropriate action regarding substantial attorney misconduct is part of a judge's judicial duties. (Rules §§100.3(D)(2) and (3)) It is a serious responsibility designed to protect the integrity of the legal system. It is improper to threaten to make a report pursuant to that obligation in an attempt to force a settlement of a matter. *Matter of D'Apice*, 1980 NYSCJC Ann. Report 175 ("Grievance proceedings are to determine matters of alleged professional misconduct and are not meant to be used as leverage by one party over another in a private dispute."); *In re Mertens*, 392 N.Y.S.2d 860, 867-868 (1st Dept. 1977) (in censuring a judge for improper conduct which included threatening attorneys with filing complaints with disciplinary authorities, the Court stated, "Parties must feel that if they have a claim, the Judge will listen to it impartially. . .. And they must be able to do so without fear that the Judge . . . will probably cause them to suffer severe consequences beyond the loss of the particular case if they persist – e.g., prosecution, disciplinary proceedings. . .. This is not to say that a Judge should not refer cases of improper conduct to the appropriate authorities; . . . But he must lean over backward and err on the side of making sure that he

does not intimidate the parties from pursuing legitimate claims . . ..")

In accepting the jointly recommended sanction of admonition, we have taken into consideration that respondent's misconduct involved one case and that respondent has acknowledged that her conduct was improper. We also note that respondent has expressed remorse for her conduct. We trust that respondent has learned from this experience and in the future will act in accordance with her obligation to abide by the Rules Governing Judicial Conduct.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Mazzarelli, Judge Miller and Mr. Raskin concur.

Mr. Belluck files a concurring opinion which Mr. Raskin joins.

Judge Leach and Ms. Yeboah were not present.

CERTIFICATION

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

Dated: October 23, 2019

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

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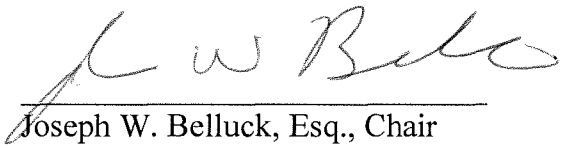
CONCURRING OPINION BY MR. BELLUCK, WHICH MR. RASKIN JOINS

I concur in the findings of the majority and the sanction of admonition. I write separately to underscore that notwithstanding the finding of misconduct here, judges have extremely wide latitude to encourage parties to settle cases. In most cases I would not support a finding of misconduct related to a judge's efforts to settle cases. This case involves a threat to report a lawyer to the Appellate Division if the case was not settled.

While judges have broad discretion in their efforts to assist in the settlement of a lawsuit, the facts and circumstances of this case clearly demonstrate an abuse of that discretion.

Dated: October 23, 2019



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