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

KEVIN V. HUNT,

a Justice of the Shawangunk Town Court,
Ulster County.

DETERMINATION

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 (Jill S. Polk, Of Counsel) for the Commission

Honorable Kevin V. Hunt, *pro se*

The respondent, Kevin V. Hunt, a Justice of the Shawangunk Town Court, Ulster County, was served with a Formal Written Complaint dated July 18, 2011, containing one charge. The Formal Written Complaint alleged that respondent intervened

in his friend's traffic case that was returnable before respondent's co-judge.

On October 11, 2011, the Administrator 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 3, 2011, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Shawangunk Town Court, Ulster County, since January 2005. His current term expires on December 31, 2013. He is not an attorney.

2. On May 25, 2006, Shawangunk Police Officer Roy Snyder issued Wendy M. Myers two traffic tickets, for violations of Vehicle and Traffic Law Sections 1180(c) (speeding in a school zone) and 1225-c(2)(a) (using a cell phone while operating). The tickets were returnable in the Shawangunk Town Court on June 13, 2006, before respondent's co-judge, Timothy S. McAdam.

3. After receiving the tickets, Ms. Myers entered a plea of not guilty by mail. By letter dated June 6, 2006, Judge McAdam acknowledged receipt of the defendant's not guilty plea and scheduled a trial date for July 11, 2006.

4. Respondent became aware of the *Myers* tickets shortly after their issuance. At the time the tickets were issued, respondent had known Ms. Myers and her husband, Keith Myers, in a social capacity for approximately 15 years. Respondent

never spoke to Wendy Myers about the tickets, but he looked up the tickets in the court's files and determined they were returnable before Judge McAdam.

5. Prior to the trial date, respondent went to the Shawangunk Police station and spoke to Officer Snyder about Myers' tickets. Officer Snyder was acquainted with respondent and had appeared before him in court. Respondent told Officer Snyder that Ms. Myers was a friend and that she and her family were "good people." He asked Officer Snyder to do "whatever you can do."

6. Officer Snyder and defendant Myers both appeared in court on the July 11, 2006, trial date before Judge McAdam. Officer Snyder recommended that the tickets be disposed of by adjournment in contemplation of dismissal ("ACD"). Judge McAdam granted an ACD, and the matter was adjourned for six months. On January 11, 2007, the tickets were dismissed. Respondent never spoke to Judge McAdam about the defendant or the tickets.

7. Officer Snyder would not have proposed an ACD as a disposition for the charges against Wendy Myers absent respondent's request.

8. Respondent acknowledges that he should not have intervened in the disposition of Wendy Myers' tickets.

9. Respondent acknowledges that his actions in speaking to Officer Snyder and advocating for his friend lent the prestige of judicial office to advance the private interest of his friend and constituted a request for favoritism.

Mitigating Factors

10. Respondent has been cooperative and forthright with the Commission and its staff throughout the investigative and adjudicative proceedings in this matter.

11. Respondent is remorseful and assures the Commission that lapses such as occurred here will not recur.

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

It was improper for respondent to seek special consideration for a defendant in a traffic case by contacting the officer who issued the tickets, identifying the defendant as a friend whose family are "good people," and asking the officer to do "whatever you can do." By engaging in such conduct, respondent violated the Rules enumerated above and engaged in ticket-fixing, which is a form of favoritism that has long been condemned. In *Matter of Byrne*, 47 NY2d (b), (c) (1979), the Court on the Judiciary declared that "a judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court, is guilty of *malum in se* misconduct constituting cause

for discipline." Ticket-fixing was equated with favoritism, which the Court stated "is wrong, and has always been wrong" (*Id.* at [b]).

Making such a request of a police officer who appears in the judge's court is particularly egregious. In these circumstances, there is inherent pressure on the officer to accede to the judge's request. Moreover, seeking such favors from the police corrupts future cases – if the officer accedes to the request, which benefits the judge's friend, the judge's impartiality is tainted in subsequent cases in which the judge might be required to determine the officer's credibility. Certainly a defendant "might reasonably...question" the judge's impartiality if the defendant knew that the officer had done such a favor for the judge (Rules, §100.3[E][1]). There is no indication whether respondent disclosed the conflict or disqualified himself in such cases after this incident.

In the 1970s and 1980s, the Commission uncovered a widespread pattern of ticket-fixing throughout the state and disciplined over 140 judges for the practice. As the Commission stated in a 1977 report about the assertion of influence in traffic cases, ticket-fixing results in "two systems of justice, one for the average citizen and another for people with influence." The report stated: "While most people charged with traffic offenses accept the consequences, including the full penalties of the law ... some are treated more favorably simply because they are able to make the right 'connections'" ("Ticket-Fixing: The Assertion of Influence in Traffic Cases," Interim Report, June 20, 1977, p. 16). Such conduct subverts the entire system of justice, which is based on the impartiality and independence of the judiciary, and undermines respect for the judiciary as

a whole. With the benefit of a significant body of case law, every judge in the state should be well aware that such conduct is prohibited.

Here, respondent's message to the officer who issued the tickets was clearly a request for special consideration. As the Court of Appeals has held, such requests are improper even in the absence of a specific request for favorable treatment. *See, Matter of Edwards v. Comm. on Judicial Conduct,* 67 NY2d 153, 155 (1986). As a result of respondent's intervention, the officer recommended that the defendant be granted an adjournment in contemplation of dismissal, a lenient disposition he would not have proposed absent respondent's request.

The Court of Appeals has stated that even a single incident of ticket-fixing "is misconduct of such gravity as to warrant removal" (*Matter of Reedy v. Comm. on Judicial Conduct*, 64 NY2d 299, 302 [1985]), although mitigating factors may warrant a reduced sanction (*see, e.g.*, *Matter of Edwards*, *supra* [judge's "judgment was somewhat clouded by his son's involvement"]; *Matter of Lew*, 2009 Annual Report 130 [in dismissing a charge based on *ex parte* emails from the defendant's husband who was serving in Iraq, judge "was motivated in significant part by the desire...to make what he viewed as a patriotic gesture"]).

In considering the appropriate disposition in this case, we note in mitigation that respondent is contrite and has been forthright and cooperative in this proceeding. We also note that this incident, which occurred more than five years ago, appears to be an isolated occurrence and that, at the time, respondent had served as a judge for 18 months.

While we conclude that censure is appropriate here, this decision, based upon a joint recommendation, should not be interpreted to suggest that we will never impose the sanction of removal for such transgressions. We continue to regard ticket-fixing as extremely serious misconduct and underscore that such conduct will be condemned with strong measures.

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

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

Mr. Belluck was not present.

CERTIFICATION

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

Dated: November 9, 2011

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