

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

KENNETH J. MARBOT,

a Justice of the Pittstown Town Court,
Rensselaer 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.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

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

Anderson, Moschetti and Taffany, PLLC (by Peter J. Moschetti, Jr.)
for the Respondent

The respondent, Kenneth J. Marbot, a Justice of the Pittstown Town Court,
Rensselaer County, was served with a Formal Written Complaint dated June 13, 2013,

containing one charge. The Formal Written Complaint alleged that respondent failed to disqualify himself from a case in which the defendant was the son of respondent's wife's sister. Respondent filed a verified answer dated June 19, 2013.

On July 25, 2013, 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 admonished and waiving further submissions and oral argument.

On August 1, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Pittstown Town Court, Rensselaer County, since 2009. His current term expires on December 31, 2016. He is not an attorney.
2. In December 2011 and January 2012, respondent failed to disqualify himself and presided over *People v. Joshua Wysocki* notwithstanding that the defendant, who was charged with Speeding, is respondent's nephew by marriage.
3. Mr. Wysocki is the son of the sister of respondent's wife. Respondent was aware of the relationship at all times relevant to this matter and socialized with Mr. Wysocki at large family gatherings about two to three times a year.
4. On or about October 24, 2011, Joshua Wysocki received a ticket for Speeding 60 miles per hour in a 45-miles-per-hour zone. The ticket was returnable in the

Pittstown Town Court on November 16, 2011. The defendant failed to appear on the return date and failed to enter a plea by mail.

5. On or about December 16, 2011, Mr. Wysocki telephoned the Pittstown Town Court and stated to the court clerk that he had lost his ticket. The clerk advised him to appear in court on December 21, 2011.

6. On December 21, 2011, Mr. Wysocki appeared before respondent and entered a plea of not guilty to the Speeding charge. Respondent recognized the defendant as his wife's nephew, accepted the defendant's not guilty plea and adjourned the matter for action by the Assistant District Attorney.

7. Pursuant to court policy, the clerk forwarded the *Wysocki* ticket and the defendant's driving abstract to Assistant District Attorney Arthur Glass, who sent the court a written plea offer, agreeing to a reduction of the Speeding charge to a parking violation. The plea agreement provided that the fine would be determined by the court.

8. On January 18, 2012, Mr. Wysocki appeared before respondent, who accepted the defendant's guilty plea to the reduced parking violation and imposed a fine of \$25. Respondent also ordered the defendant to complete a defensive driving course. The defendant later provided proof to the court that he had successfully completed the course.

9. In presiding over *Wysocki*, respondent failed to disclose his relationship with the defendant.

Additional Factors

10. Respondent has at all times been cooperative with the Commission and contrite.

11. Respondent asserts that the *Wysocki* ticket was treated no differently than any similar ticket, but he now recognizes that it was nevertheless improper for him to have presided over a matter involving his wife's nephew.

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(E)(1) and 100.3(E)(1)(d)(i) 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.

A judge's disqualification is required when the judge's impartiality "might reasonably be questioned," including any matter in which a party to the proceeding is within the sixth degree of relationship to the judge or the judge's spouse (Rules, §§100.3[E], 100.3[E][1][d][i]). As the Court of Appeals has stated: "Few principles are more fundamental to the integrity, fair-mindedness and impartiality of the judiciary than the requirement that judges not preside over or otherwise intervene in judicial matters involving relatives" (*Matter of LaBombard*, 11 NY3d 294, 297 [2008]; see also *Matter of Wait*, 67 NY2d 15, 18 [1986]). By presiding over his nephew's Speeding case in *People*

v. *Wysocki*, respondent violated this well-established ethical standard.

The record indicates that respondent's nephew by marriage personally appeared before him on two occasions with respect to the charge – initially to enter a not guilty plea, and later for sentencing.¹ Seeing his relative, with whom he socialized several times a year, standing before him in the courtroom certainly should have reminded respondent – the defendant's uncle – of the clear conflict. In and of itself, the appearance of a judge's family member before the judge creates a serious appearance of impropriety, and under such circumstances the public can have no confidence in the judge's impartiality in the matter (Rules, §100.2). Compounding the impropriety, the lenient disposition respondent imposed (reducing the Speeding charge to a parking violation and imposing a low fine) could reasonably give the impression that respondent's relative received favorable treatment, notwithstanding that the prosecutor had recommended the reduction and notwithstanding respondent's assertion that his nephew's ticket was treated no differently than any similar ticket. Even the appearance of such favoritism is inconsistent with the ethical standards and undermines public confidence in the integrity and impartiality of the judiciary.

In accepting the stipulated recommendation as to the sanction, we emphasize that any involvement by a judge in a case to which a family member is a party “has been and will continue to be viewed ... as serious misconduct” (*Matter of Wait*,

¹ While it has been stipulated that respondent did not disclose his relationship to the defendant, it should be noted that even with full disclosure, a conflict involving Section 100.3(E)(1)(d)(i) of the Rules is not subject to remittal (Rules, §100.3[F]).

supra, 67 NY2d at 18). Every judge must be mindful of the importance of adhering to this fundamental ethical standard so that public confidence in the judiciary may be preserved.

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

Judge Klonick, Judge Ruderman, Mr. Belluck, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

Judge Acosta was not present.

CERTIFICATION

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

Dated: August 6, 2013

A handwritten signature in black ink that reads "Jean M. Savanyu". The signature is written in a cursive style and is positioned above a horizontal line.

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