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

DETERMINATION

THOMAS J. NEWMAN, JR.,

a Justice of the Sloatsburg Village Court,
Rockland County.

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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 (Brenda Correa, Of Counsel) for the Commission

Burke, Miele & Golden, LLP (by Patrick T. Burke) for the Respondent

The respondent, Thomas J. Newman, Jr., a Justice of the Sloatsburg Village Court, Rockland County, was served with a Formal Written Complaint dated September 13, 2013, containing one charge. The Formal Written Complaint alleged that respondent operated his automobile while under the influence of alcohol, caused a motor vehicle

accident and was uncooperative with police during his arrest.

On November 26, 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 censured and waiving further submissions and oral argument.

On December 12, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Sloatsburg Village Court, Rockland County, since 1981. His current term expires on December 5, 2016. He was admitted to the practice of law in New York in 1980.

2. On August 16, 2011, between 5:45 PM and 6:45 PM in the Town of Ramapo, respondent operated his automobile while under the influence of alcohol, caused a motor vehicle accident, was arrested, and was disruptive toward and uncooperative with the police, as set forth below.

3. On August 16, 2011, between 5:45 and 6:45 PM, after voluntarily consuming a number of alcoholic beverages, respondent drove his automobile in the Town of Ramapo. While approaching the intersection of Route 17 and the exit 15A ramp of the New York State Thruway, respondent drove into the rear end of another vehicle that was lawfully stopped at a traffic light.

4. The driver of the other vehicle called 911 to report the accident.

Respondent called an attorney.

5. Police Officers Robert Navarro and Jonathan Quinn were dispatched to the scene and arrived separately. When Officer Navarro approached respondent's vehicle and spoke with respondent, he detected an odor of alcohol on respondent's breath and observed that respondent had red glassy eyes and difficulty keeping his balance as he exited his vehicle. Officer Quinn also detected the odor of alcohol emanating from inside the car and observed that respondent had watery eyes, appeared wobbly as he exited the vehicle and stumbled as he stepped away from his car.

6. Officer Quinn conducted two field sobriety tests, and respondent failed both. At that point, F. Hollis Griffin, Jr., an attorney, arrived and advised respondent not to take any additional tests. Respondent refused any further tests.

7. Respondent was placed under arrest. Respondent told Officer Quinn that he did not intend to cooperate and stated in sum and substance that he wanted to die, wanted to hurt himself, and wanted the officer to shoot him.

8. As Officer Quinn walked respondent toward a police car, respondent attempted to break away from his grasp.

9. Both officers struggled with respondent to get him into the patrol car. Respondent repeatedly said that he wanted to die and that he was going to attack one of the officers so that he would shoot respondent.

10. After being put into the police car, and while being transported to the police station, respondent repeatedly slammed his head into the rear passenger-side window and the partition between the front and back seats of the patrol car.

11. At the police station, respondent was placed in a holding cell. He continued to make suicidal statements and threatened to take an officer's gun. The police called for an ambulance. Respondent was placed on a gurney with restraints and was transported to Good Samaritan Hospital.

12. By simplified traffic informations, respondent was charged with Driving While Intoxicated, a misdemeanor, under Vehicle and Traffic Law (VTL) section 1192(3); Following Too Closely, a violation, under VTL section 1129(a); and Refusal to Take a Breathalyzer Test, a violation, under VTL section 1194(1)(b).

13. On March 14, 2012, respondent appeared before Justice Laura G. Weiss in the Village of Piermont Justice Court and pled guilty to Driving While Ability Impaired by Alcohol, a violation, under VTL section 1192(1), in full satisfaction of all the charges.

14. On March 14, 2012, respondent was sentenced to a one-year Conditional Discharge and a $350 fine. Respondent was required to participate in the "Drinking Driver Program" and the Victim Impact Program, and to make restitution to the victim of the motor vehicle accident. Respondent completed the "Drinking Driver Program" and the Victim Impact Program and made restitution for the damage caused to the other vehicle in the amount of $228 and paid the fine of $350. Respondent surrendered his driver's license to the court on the date of sentence for a 90-day suspension, pending a 20-day stay granted by the court. Respondent's driving privileges have since been restored.

Additional Factors

15. Respondent acknowledges that he is an alcoholic and has been suffering from alcoholism, in various stages, for the last 15 to 20 years. Respondent states that the circumstances surrounding his arrest were a trigger for him to obtain the help that he needed to treat his condition.

16. On August 20, 2011, the day after he was discharged from the hospital, respondent met with a psychologist who specializes in the treatment of alcohol addiction. During the year following his arrest, respondent attended weekly therapy sessions with his psychologist and also attended group treatment sessions approximately three times per month.

17. On August 20, 2011, respondent attended his first Alcoholics Anonymous ("AA") meeting. During the first 90 days following that meeting, respondent attended approximately 90 AA meetings. He continues to attend AA meetings on a regular basis.

18. Respondent avers, and the Administrator does not refute, that respondent has not had an alcoholic drink since the date of his arrest.

19. Respondent's unruly, self-destructive and at times suicidal behavior at the time of the incident was instigated by the deleterious effects of alcohol, which significantly impaired his clarity and self-control. With the benefit of sobriety, respondent regrets that he did not behave in a manner consistent with the integrity and dignity required of all judges, on or off the bench, and that he was burdensome and recalcitrant with the police officers.

20. At no time did respondent invoke his judicial office to secure favorable treatment in connection with this incident.

21. Respondent has been contrite and cooperative with the Commission throughout this inquiry and has expressed embarrassment and remorse for his behavior and any diminution of respect for the judiciary it may have caused.

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)(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. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent violated his ethical obligation to respect and comply with the law and endangered public safety by operating a motor vehicle while under the influence of alcohol, resulting in a minor accident and his conviction for Driving While Ability Impaired ("DWAI"). Exacerbating his misconduct, he was uncooperative and disruptive during his arrest, refused to take a breathalyzer test, tried to break away from the arresting officer's grasp, had to be forced into the patrol car and threatened to take the officer's gun. Such conduct is plainly inconsistent with a judge's obligation to maintain high standards of conduct at all times, both on and off the bench, so as to promote public confidence in the integrity of the judiciary (Rules, §§100.1, 100.2[A]).

Operating a motor vehicle while under the influence of alcohol creates a

significant risk to the lives of others and is a serious social problem. According to the National Highway Traffic Safety Administration, in 2012 there were 344 deaths in traffic accidents in this state due to drunk driving; nationwide, there were 10,332 such fatalities, accounting for 31% of all traffic deaths. While it is fortunate that respondent's behavior did not result in injury, his conduct endangered the lives of others (motorists, passengers, pedestrians and law enforcement personnel) and resulted in an accident in which his car struck a vehicle stopped at a traffic light. As a judge who has handled such matters in his own court for three decades, respondent should be well aware of the consequences of such behavior. By violating the law which he is called upon to administer in his court, respondent engaged in conduct that undermines his effectiveness as a judge and brings the judiciary as a whole into disrepute.

In determining an appropriate disposition for such behavior, the Commission in prior cases has considered mitigating and/or aggravating circumstances, including the level of intoxication, whether the judge's conduct caused an accident or injury, whether the conduct was an isolated instance 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, and the need and willingness of the judge to seek treatment. In the wake of increased recognition of the dangers of driving while impaired by alcohol and the toll it exacts on society, alcohol-related driving offenses have been regarded with increasing severity. *See, e.g., Matter of Apple*, 2013 NYSCJC Annual Report 95 (DWI conviction after causing a minor accident [censure]); *Matter of Maney*, 2011 NYSCJC Annual Report 106 (DWAI conviction; judge had made an illegal U-turn

to avoid a sobriety checkpoint, delayed taking a breathalyzer test and repeatedly invoked his judicial office while requesting "professional courtesy" and "consideration" [censure]); *Matter of Martineck,* 2011 NYSCJC Annual Report 116 (DWI conviction after the judge drove erratically and hit a mile marker post [censure]); *Matter of Burke,* 2010 NYSCJC Annual Report 110 (DWAI conviction after causing a minor accident [censure, in part for additional misconduct]); *Matter of Pajak*, 2005 NYSCJC Annual Report 195 (DWI conviction after causing a property damage accident [admonition]); *Matter of Stelling*, 2003 NYSCJC Annual Report 165 (two alcohol-related convictions [censure]); *Matter of Burns*, 1999 NYSCJC Annual Report 83 (DWAI conviction [admonition]); *Matter of Henderson*, 1995 NYSCJC Annual Report 118 (DWI conviction; judge referred to his judicial office during the arrest and asked, "Isn't there anything we can do?" [admonition]); *Matter of Siebert*, 1994 NYSCJC Annual Report 103 (DWAI conviction after causing a three-car accident [admonition]); *Matter of Innes*, 1985 NYSCJC Annual Report 152 (DWAI conviction; judge's car caused damage to a patrol car while backing up [admonition]); *Matter of Barr*, 1981 NYSCJC Annual Report 139 (two alcohol-related convictions; judge asserted his judicial office and was abusive and uncooperative during his arrests, but had made "a sincere effort to rehabilitate himself" [censure]); *Matter of Quinn*, 54 NY2d 386 (1981) (two alcohol-related convictions and other non-charged alcohol-related incidents; judge was uncooperative, belligerent and abusive to officers during his arrest and repeatedly referred to his judicial position [removal reduced to censure in view of the judge's retirement]).

In this case, there seems little doubt that respondent, who refused to take a

breathalyzer test, was highly intoxicated and that his judgment and self-control were impaired by alcohol; he was not merely uncooperative and unruly during his arrest, but repeatedly said that he wanted to die and wanted the police to shoot him. While such behavior might call into question his fitness for the bench, the record before us indicates that respondent acknowledges that he is an alcoholic and states that this incident was "a trigger for him to obtain the help that he needed to treat his condition." It has been stipulated that since his arrest – more than two years ago – respondent has undergone counseling, regularly attends AA meetings, and has abstained from alcohol, and we give appropriate weight to the record of these rehabilitative efforts. We also note that there is no indication that respondent invoked his judicial office during his arrest in an attempt to secure favorable treatment (*compare*, *Matter of Maney*, *supra*).

Thus, while we believe that respondent's misconduct comes very close to the "truly egregious" standard that requires the sanction of removal (*Matter of Cunningham*, 57 NY2d 270, 275 [1982][citations omitted]), we conclude that in view of the totality of the circumstances presented here, the sanction of censure is appropriate. We underscore that this result and the Commission's prior decisions in matters involving alcohol-related driving offenses should not be interpreted to suggest that such behavior can never rise to a level warranting removal. For the reasons indicated above, we believe that such misconduct must be regarded with increasing severity, and we will not hesitate to impose the sanction of removal in the future in an appropriate matter. In censuring respondent on the facts presented here, we are mindful that the sanction of suspension

from office without pay is not available to us.[1]

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen, Ms. Corngold and Mr. Stoloff concur.

Mr. Emery, Mr. Harding and Judge Weinstein dissent and vote to reject the Agreed Statement of Facts on the basis that the proposed disposition is too lenient.

CERTIFICATION

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

Dated: December 18, 2013

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

[1] We have previously urged the Legislature to consider a constitutional amendment providing such a sanction as an alternative available to the Commission (Commission Annual Reports, 2011, 2010, 2009, 2006, 2002, 2000, 1997).