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

MICHAEL A. TORREGIANO,

a Justice of the Avon Town Court,
Livingston County.

DETERMINATION

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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 (Kathleen Martin, Of Counsel) for the Commission

Honorable Michael A. Torregiano, *pro se*

The respondent, Michael A. Torregiano, a justice of the Avon Town Court, Livingston County, was served with a Formal Written Complaint dated May 7, 2013, containing one charge. The Formal Written Complaint alleged that respondent made a

statement during a Town Board meeting indicating that because he had granted special consideration in a traffic case to the daughter of a Board member, the member should have supported respondent's pay raise. Respondent filed an answer dated May 11, 2013.

On June 17, 2013, 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. The Commission had rejected an earlier Agreed Statement of Facts.

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

1. Respondent has been a Justice of the Avon Town Court, Livingston County, since January 1, 2004. His current term expires on December 31, 2015. He is not an attorney.

2. On December 30, 2010, during a meeting in executive session of the Avon Town Board, at which only town officials were present, respondent reacted to the Board's decision not to raise his pay for 2011 by making a statement implying that respondent had granted special consideration to the daughter of a Board member in a traffic case, and that as a consequence, the Board member should have voted in favor of respondent's pay raise.

3. On January 3, 2007, Alicia D. Mairs was charged with Speeding, a violation of section 1180(d) of the Vehicle and Traffic Law (VTL) in *People v. Alicia D.*

Mairs. Ms. Mairs's father, Thomas Mairs, has been a member of the Avon Town Board since 2005.

4. On January 23, 2007, Ms. Mairs appeared before respondent. Respondent reduced Ms. Mairs's Speeding violation to a parking violation under section 1201(a) of the VTL and imposed a $25 fine.

5. Respondent states that the disposition in *Mairs* was neither the result of special consideration nor inconsistent with dispositions rendered in similar cases. Examination of court records, and interviews of pertinent assistant district attorneys, court staff, and Ms. Mairs reveal nothing to the contrary.

6. On December 30, 2010, respondent attended the Avon Town Board's executive session, which was closed to the public, to discuss the Board's decision not to raise respondent's pay for 2011. Town Supervisor David LeFeber, Deputy Supervisor Kelly Cole, Town Attorney James Campbell, and Councilmen Thomas Mairs, James Blye and Donald Cook were present.

7. Respondent was angry that he was not being given a pay raise. He rebuked Mr. Mairs for not supporting respondent's pay raise, stating, in words or substance, "I took care of a ticket for [your] daughter" and "this is the thanks that I get."

8. Respondent told the Town Board that, by refusing to give him a pay raise, the Board had "shoved it up [his] ass."

Additional Factors

9. Respondent has no previous disciplinary record.

10. Respondent has been cooperative and contrite throughout the Commission inquiry.

11. Respondent recognizes that it was improper for him to link his advocacy for a pay raise with his disposition of a particular case, even if the disposition of the case had been entirely on the merits.

12. Respondent regrets his failure to abide by the applicable Rules in this instance and pledges to conduct himself in accordance with the Rules in the future.

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(C), 100.3(B)(3), 100.4(A)(1) 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.

By linking a lenient disposition he had granted to the daughter of a Town Board member to the member's vote on respondent's salary, respondent conveyed the appearance that the disposition was based on favoritism and that he wanted a quid pro quo. The clear import of respondent's statements was that because of the way he "took care of" the daughter's Speeding ticket (reducing the charge to a parking violation and imposing a low fine), he expected "thanks" in return, in the form of the member's support for a pay raise.

Those words, on their face, are shocking. Even if it cannot be proved that the lenient disposition of the Speeding charge was the result of favoritism, respondent's pointed reference to the case in chastising the defendant's father strongly implied that it was based on favoritism, and it can only be assumed that that was the message respondent intended to convey. This was not a private comment; the six town officials in attendance at the Board meeting could reasonably conclude from those words that respondent was available to grant favors to others in similar positions, and that he might have done so in other matters. Compounding the appearance of favoritism, respondent linked the disposition to the member's vote on his salary. Expressing his anger at the member's lack of support by specifically referring to the disposition of his daughter's case was, at best, ill-considered. His comments conveyed not just that the disposition was based on favoritism, but that because of his handling of that case, he felt entitled to the member's support. Respondent certainly should have considered the serious implications of his words.

Even the appearance of such impropriety is inconsistent with the ethical standards and seriously damages public confidence in the integrity and independence of his court and in the judiciary as a whole (Rules, §100.2). *See Matter of Cohen,* 74 NY2d 272, 277-78 (1989) (judge was removed for depositing court monies in an institution that was granting him interest-free loans, thereby "creat[ing] the ...impression, that his judicial decisions were influenced by personal profit motives in violation of the most basic ethical standards"); *Matter of Cunningham*, 57 NY2d 270 (1982) (County Court

judge was censured for sending sent two letters to a lower court judge conveying the appearance that he would never reverse the lower court judge's sentencing decisions, though he did not actually abrogate his responsibility to review the matters solely on the merits). *See also Matter of Tauscher*, 2008 NYSCJC Annual Report 217 (judge's statements indicated that he would decrease fines unless the Town raised his salary or would increase fines to help fund such a raise; there was no indication that he ever took action on his implied threats).

Although it has been stipulated that no evidence has been found that the disposition of the Speeding charge was the result of special consideration, the public should not have to wonder whether the disposition in a particular case was based on the merits or was motivated by any element of self-interest. Respondent's poorly chosen words justly deserve a strong public rebuke.

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

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

Mr. Cohen and Mr. Emery dissent in an opinion and vote to reject the Agreed Statement on the basis that the stipulated facts are insufficient for the Commission to make a determination.

Judge Acosta was not present.

CERTIFICATION

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

Dated: August 26, 2013

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

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DISSENTING OPINION
BY MR. COHEN AND
MR. EMERY

Our colleagues have accepted the joint recommendation of the Commission staff and the respondent-judge and, based upon the stipulated facts, they propose to censure for respondent for the conduct described therein.

It may be, at day's end, that that sanction is indeed the appropriate one for the conduct under scrutiny, and that we too would concur in it. Nonetheless, we cannot do so at this point based upon the record presented to us thus far. The stipulated facts tell us that in 2007 respondent disposed of a Speeding ticket to Alicia Mairs, the daughter of a Town Board member, by convicting her of a parking violation and imposing a $25 fine. Almost four years later, when respondent was denied a pay raise by the Board, he invoked that disposition in expressing his dissatisfaction to the Board's members.

It is clear from the stipulated facts that respondent was extremely upset at the Board's decision. While the vulgar language he used at a Board meeting to show the intensity of his anger might be viewed as a spontaneous outburst, motivated by a

temporary pique, in response to being denied a pay raise he felt he deserved[1], his gratuitous reference to the disposition of the member's daughter's case, in the context of that discussion, is startling. In the language of the Agreed Statement, respondent "rebuked" Mr. Mairs (a Board member who had voted against raising respondent's salary) by saying, in substance, "I took care of a ticket for [your] daughter" and "this is the thanks that I get."

It might be, perhaps, that that remark too was a thoughtless comment resulting from his deeply-felt anger, for which respondent has now properly apologized. On the other hand, the fact that that particular ticket's disposition loomed so large in his memory several years later may suggest that when he handled that case, he was mindful of the defendant's father's role in setting his salary[2] – supporting an inference that the disposition was not a routine result and, indeed, that in granting the lenient disposition, he hoped for an eventual pay-off in the form of the member's future support when needed. To be sure, if the latter scenario was implicated in respondent's conduct – meaning, he accorded leniency to a relative of a Board member in the hope that it might benefit him later – the sanction of censure would be far too lenient. We should not render a

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[1] It is noteworthy, however, that the stipulated facts may imply that when he came to the meeting he already knew he was not getting a raise (*see* Agreed Statement, par 7). That would suggest that he had time to think about his response, and thus his comments were not a spur-of-the-moment lapse.

[2] Numerous opinions of the Advisory Committee on Judicial Ethics have advised that a judge should not preside over the cases of officials who vote on the judge's salary, subject to remittal (*e.g.*, Adv Op 88-17[b], 88-41, 88-126). This episode, involving such an official's relative, illustrates the inherent conflict presented, especially if the disposition conveys an appearance of favoritism.

determination where a more fully developed record might reveal that the judge is unfit to remain on the bench.

The Agreed Statement does not indicate whether the prosecutor had recommended the reduction of the Speeding charge, or specifically how the disposition and fine compare with others the judge has imposed in similar cases. Yet even if we were to accept that the reduction and low fine were not "inconsistent with dispositions rendered in similar cases" in the judge's court (as respondent asserts and as the staff does not dispute), we cannot evaluate the true meaning or intent of respondent's comment, or the disposition he imposed, without the benefit of respondent's testimony (subject to cross-examination) as to his state of mind when he disposed of the ticket and, equally important, when he made the offending comment years later. Was he lying to the Board member when he implied he had done him a favor?

In his response to the charges, respondent does not seek to excuse his behavior, but states "there were many personal issues that had proceeded [sic] the meeting" (Answer). Additional testimony from respondent on that subject might shed meaningful light on the conduct under scrutiny, including why this matter was brought to the Commission's attention in the first place.

We also think a hearing is necessary in this case to evaluate the effect of these statements by respondent on the appearance of impropriety and whether the appearance should disqualify him from further serving as a judge. Whether said in a fit of pique without basis or whether they reflect his conscious attempt to curry favor with individuals who had the authority to fix his salary is only partially the issue here. The

reaction of his community and the general question of whether his comments were so degrading to his function as to irretrievably damage the respect for his office necessary for him to continue to serve, also should be the focus of our decision – perhaps it is the primary damage done to the administration of justice. The other public officials who were present – and the public at large – could reasonably conclude from the judge's comments that he expected to be rewarded for the favor he had done for the member's daughter, which would mean that he was willing to use his judicial discretion to trade favors and that his decisions in other cases also may have had ulterior motives. What explanation can the judge offer to persuade us why that conclusion should not be drawn? The acceptance of the Agreed Statement precludes this essential component of our decision.

For these reasons, we respectfully dissent from according respondent the sanction of censure without further clarification of the relevant facts.

Dated: August 26, 2013

Joel Cohen, Member
New York State
Commission on Judicial Conduct

Richard D. Emery, Member
New York State
Commission on Judicial Conduct