

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

MICHAEL W. COLE,

a Justice of the Alden Town and
Village Courts, Erie County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Stefano Cambareri, Esq.
Brian C. Doyle, Esq.
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore, Ph.D.
Marvin Ray Raskin, Esq.
Honorable Anil C. Singh
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of
Counsel) for the Commission

Gilmore & Killelea, LLP (Daniel M. Killelea) for respondent

Respondent, Michael W. Cole, a Justice of the Alden Town and Village

Courts, Erie County, was served with a Formal Written Complaint (“Complaint”) dated September 17, 2024 containing one charge. The Complaint alleged that from August 31, 2021 through October 5, 2021, respondent used his judicial position to delay the processing of a small claims action brought against him in the Town of Alden Justice Court while he attempted to have the matter withdrawn.

On October 22, 2024, the Administrator, respondent’s counsel and respondent entered into an Agreed Statement of Facts (“Agreed Statement”) 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 December 12, 2024, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent was admitted to the practice of law in New York in 2001. He has been a Justice of the Alden Village Court, Erie County, since 2019, having previously served as Associate Justice of that court from 2018 to 2019. He has been a Justice of the Alden Town Court, Erie County, since 2021. Respondent’s term as town justice expires in December 2028, and his current term as village justice expires on March 31, 2025.

2. As a part-time town and village court justice, respondent is permitted to practice law.

3. In 2018, Candice Wynecoop-Kane hired respondent as an attorney and paid him a \$1,500 retainer to represent her with regard to a custodial relocation matter involving her child. Ms. Wynecoop became dissatisfied with respondent's representation and made several unsuccessful requests for his return of her retainer before hiring new counsel in the fall of 2019.

4. On August 31, 2021, Ms. Wynecoop filed a small claims action against respondent in the Alden Town Court for return of the \$1,500 retainer, and a \$15 filing fee.

5. On August 31, 2021, Alden Town Court Clerk Sarah Miller sent respondent a text message about Ms. Wynecoop's small claims application, *inter alia* noting that recusal would be necessary. Her message stated as follows:

Good morning Mike! Just a heads up a lady named Candace called in asking about a small claim application for a deposit she allegedly paid you at your office. We would have to recuse anyways but I just wanted to let you know.

6. Respondent replied via text message, inquiring about the identity of the caller. Ms. Miller then identified her as "Candace," and then noted, "Sorry I was to[o] late, She just left here."

7. Respondent then asked Ms. Miller, “Did she file?” Approximately one minute later, before Ms. Miller replied, respondent sent her a text message stating, “It’s okay. I just emailed her.”

8. Approximately seven minutes later, in response to respondent’s having asked if Ms. Wynecoop had filed a small claims application, Ms. Miller sent a text message stating, “She did.” Approximately one minute thereafter, respondent replied, “Okay. Don’t mail me the notice. Just put in my inbox.”

9. Approximately one minute later, Ms. Miller texted respondent that she did not intend to draft a case notice for him because she anticipated both Alden Town Court justices would recuse themselves from Ms. Wynecoop’s case. Approximately one minute later, respondent texted to Ms. Miller that she should “Hold for a bit,” adding, “I’m gonna call her and ask her to withdraw it.”

10. Shortly thereafter, in reply to his inquiry about Ms. Wynecoop’s phone number, Ms. Miller gave respondent the phone number on Ms. Wynecoop’s application.

11. On August 31, 2021, respondent telephoned Ms. Wynecoop and left a message. On September 3, 2021, respondent returned Ms. Wynecoop’s return call to his law office, and they discussed resolving her pending case against him in the Alden Town Court.

12. On September 3, 2021, respondent emailed Ms. Wynecoop, confirming their discussion, informing her that he had written and mailed a check in her name for \$1,515 to her Indiana mailing address, and requesting that she email him when she received his check. In both his email and letter of September 3, 2021, respondent asked Ms. Wynecoop to let the court know at her earliest convenience once the check cleared, and to request that her small claims case “be withdrawn as satisfied.”

13. Subsequent to his email to Ms. Wynecoop on September 3, 2021, respondent put a note in the Alden Town Court file for her, dated September 7, 2021, stating, “Candice should have received \$1,515.00 from my office today,” and “Please wait until next week, and if she hasn’t called, call her and ask her if she withdraws her action.”

14. On October 5, 2021, in the absence of any communication from Ms. Wynecoop confirming her withdrawal of her application, respondent signed a certificate of disqualification from her case. A transfer order of the Eighth Judicial District Administrative Judge, dated October 6, 2021, moved the case to the Clarence Town Court, which set the matter down for a hearing on December 14, 2021.

15. On December 14, 2021, after communication from Ms. Wynecoop, respondent emailed a letter to the Clarence Town Court, with a copy via email to

Ms. Wynecoop, stating that the parties had resolved their case, and neither intended to appear at court that evening.

Additional Factors

16. Respondent has been cooperative and contrite throughout the Commission's investigation.

17. Respondent acknowledges that it was improper for him as a judge to influence court staff to delay the processing of a claim filed against him by a litigant. He recognizes as well that such a claim would have to be transferred to another court because of the obvious conflict that would arise were his court to adjudicate a claim against him. Respondent also recognizes that even if his intent was to resolve the matter quickly, he effectively used his status as a judge to avoid public disclosure and the potential embarrassment of a personal lawsuit against him.

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(C)(1) and (2), 100.4(A)(1), (2) and (3) and 100.4(D)(1)(a) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article VI, 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 insofar as it is consistent with the above findings and conclusions and

respondent's misconduct is established.

Respondent acted in a manner that was inconsistent with his obligations to maintain high standards of conduct and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” (Rules, §§100.1, 100.2(A)) The Rules require that “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge. . . .” (Rules §100.2(C)) Respondent violated the Rules when he used his status as a judge to delay the processing of a small claims action filed against him seeking the return of a \$1,500 retainer paid to him in his capacity as an attorney.

“Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved. . . . Judges must assiduously avoid those contacts which might create even the appearance of impropriety.” *Matter of Lonschein*, 50 NY2d 569, 572 (1980) (citation omitted). Instead of promptly disqualifying himself from the action filed against him in the court where he presides, respondent improperly influenced court staff and delayed the processing of the claim. In this way, respondent violated well-established ethical standards and used his judicial status for his personal benefit. His conduct undermined public confidence in the integrity and impartiality of the judiciary. *See, Matter of Ayres*, 30 NY3d 59, 65 (2017).

In accepting the jointly recommended sanction of admonition, we have taken into consideration that respondent has acknowledged that his conduct was improper and warrants public discipline. We trust that respondent has learned from this experience and in the future will act in strict accordance with his obligation to abide by all the Rules Governing Judicial Conduct.

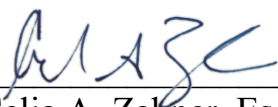
By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

Mr. Belluck, Ms. Grays, Judge Camacho, Mr. Cambareri, Mr. Doyle, Judge Falk, Judge Miller, Professor Moore, Mr. Raskin, Judge Singh and Ms. Yeboah concur.

CERTIFICATION

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

Dated: December 18, 2024



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