

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

SHARI R. MICHELS,

a Judge of the New York City Civil Court
and an Acting Justice of the Supreme Court,
12th Judicial District, Bronx County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Brenda Correa and Mark Levine, Of Counsel)
for the Commission

Godosky & Gentile, P.C. (by David M. Godosky) for respondent

Respondent, Shari R. Michels, a Judge of the New York City Civil Court
and an Acting Justice of the Supreme Court, 12th Judicial District, Bronx County, was

served with a Formal Written Complaint dated March 8, 2017, containing one charge. The Formal Written Complaint alleged that in August 2015 after respondent's vehicle struck a police van, respondent asserted her judicial office to advance her private interests, pressured police officers not to complete an accident report and threatened a police officer who completed the report. Respondent filed a Verified Answer dated April 17, 2017.

By order dated August 7, 2017, the Commission designated Malvina Nathanson, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 17, 18 and 19, 2018, in New York City. The referee filed a report dated June 27, 2018.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Both sides recommended that the referee's findings and conclusions be confirmed in part and disaffirmed in part. Commission counsel recommended the sanction of removal, and respondent's counsel argued that respondent's actions do not constitute misconduct but that if misconduct is found, a confidential caution is appropriate. The Commission heard oral argument on October 25, 2018, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Judge of the New York City Civil Court since 2007. Her current term expires on December 31, 2026. Respondent has been an Acting Justice of the Supreme Court, 12th Judicial District, Bronx County, since 2015.

2. At about 4:15 PM on August 6, 2015, a car driven by respondent

stopped behind a marked police van that was stopped at a traffic light on East 161st Street near Gerard Avenue in Bronx County, a short distance from the courthouse where respondent worked. The van contained four police officers from the 48th Precinct in the Bronx who were on their way to an assignment at Yankee Stadium. When the traffic light changed, respondent's car moved forward and made contact with the police van. There were no injuries and no property damage.

3. The officers got out of the van, and respondent got out of her vehicle. During the ensuing events, as set forth below, respondent voluntarily identified herself as a judge to the police several times, presented her judicial identification card, and made several other references to her judicial status. She also repeatedly questioned the necessity for an accident report, and the delay in preparing the report, in an attempt to curtail the investigation and be allowed to leave. She continued to do so even after being informed that a report was required since the accident involved a police vehicle.

4. The driver of the van, Officer Andres Zambrano, was the first police officer to speak with respondent. When he approached her, respondent immediately told him that she was a judge, that there was no damage to the vehicles and that the vehicles were blocking traffic so, "let's just keep it moving." Zambrano obtained her driver's license, registration and insurance information. He told respondent that whenever a police vehicle is in an accident, the police are required to call a supervisor and make a report.

5. Zambrano called his supervisor, Sergeant Nathan Yakubov, who

arrived a short time later. After Zambrano informed him that respondent was a judge, Sergeant Yakubov spoke with respondent, who was upset at having to wait for an accident report. He explained that a report was necessary because a police vehicle was involved.

6. Since the sergeant had to leave for the Yankee Stadium assignment, he directed Zambrano to call a supervisor from the 44th Precinct, where the accident had occurred. Several minutes later Sergeant Owais Khanzada arrived, and an officer informed him that the driver of the second vehicle was a judge. Sergeant Yakubov told Khanzada that he would have to make the report.

7. Respondent approached Sergeant Khanzada and identified herself as the driver. In response to his request, she provided her license, registration and insurance card. Although he had not asked where she was employed, she also identified herself as a judge who worked in the Supreme Court, Civil Term, and she gave him her judicial identification card.

8. Respondent, who had suggested earlier that the police van and her car should move since they were blocking traffic, told Sergeant Khanzada that the vehicles should be moved. At some point both vehicles were moved (with respondent driving her own car) around the corner onto Gerard Avenue.

9. After Sergeant Khanzada interviewed the officers and respondent about the details of the incident, respondent asked him if he was doing an accident report, and he replied that he was. Respondent told him that he did not have to make a report

and should “just let it slide,” or words to that effect, since there were no injuries or damage to the vehicles. While there is some dispute as to the precise words she used, respondent clearly conveyed to Khanzada, the officer responsible for preparing the report, that she did not think a report was necessary. Khanzada told her that he was required to make a report because a police vehicle was involved in an accident.

10. Respondent has acknowledged that she also made a reference to her courtroom while speaking to Sergeant Khanzada.¹

11. While Sergeant Khanzada was preparing the report, respondent spoke with his driver, Officer Louis Guglielmo. Respondent appeared frustrated and indicated to Guglielmo that she did not understand why an accident report was needed and why it was taking so long; she mentioned that it had been a long day and she had to be in court the next morning. Guglielmo explained that the police had to comply with the required procedures. He also told respondent that she could get a copy of the report at the precinct, and she replied, “If you want me to have the report, you can bring it to me. I work in the courthouse two blocks that way.”

12. Sergeant Khanzada completed an accident report.

13. During the incident, which lasted 45 minutes to an hour, respondent remained at the scene and complied with the police officers’ requests.

14. Respondent reported the accident to her insurance carrier. No

¹ The referee stated that it was unnecessary to resolve the differing accounts of what was said since respondent conceded that she “made yet another reference to her role as a judge” (Report, p 7).

insurance claims were filed as a result of the incident.

15. At the hearing before the referee, respondent testified that during the incident she identified herself as a judge in the context of wanting “to alleviate any concerns that the police officers had,” including that she was “not going to flee” if allowed to move her car and or make false claims against the police. She expressed regret for identifying herself as a judge and acknowledged that doing so “changes the complexion of the interaction,” was interpreted as invoking the prestige of judicial office and “could be perceived as even threatening.” She also testified that she regrets making any reference to working at the courthouse and “absolutely regret[s]” her “rude” comment to Officer Guglielmo about bringing a copy of the report to her at the courthouse; she testified that she did not need the report but felt frustrated and annoyed at that point because she had to wait so long for a report to be completed.

16. Respondent also testified that during the incident it was not initially clear to her why an accident report was necessary or that it was required by police protocol, but that she eventually understood that the police had no discretion in the matter. She denied that she attempted to “convince” or “persuade” the police not to make a report; she testified that she only inquired in order to understand why a report was necessary and that it was not her intent “to direct anyone in any way”; she now understands that the police “were just doing their job.”

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), 100.4(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 insofar as it is consistent with the above findings and conclusions, and respondent’s misconduct is established.

Throughout a nearly hour-long incident that began after a minor accident in which respondent’s car made contact with a police van at a traffic light, respondent showed insensitivity to her ethical obligations as a judge. From the first moments after the accident, when she identified herself as a judge to the van’s driver, through successive conversations with other officers who arrived at the scene, respondent repeatedly invoked her judicial status while questioning the officers’ actions and conveying in no uncertain terms how she wanted the matter to be handled. To the driver of the van and the sergeant responsible for investigating the matter, she identified herself as a judge or a Supreme Court judge, although neither had asked where she was employed, and she also gave the sergeant her judicial identification card. To that sergeant and another officer, she also made gratuitous references to her courtroom and the nearby courthouse where she worked. Identifying herself as a judge or making any reference to her judicial status was entirely unnecessary and inappropriate in that situation and created the appearance that respondent did not want to be treated like an ordinary motorist involved in an accident, but instead expected deference because of her judicial position. Such behavior is inconsistent with well-established ethical standards prohibiting judges from lending the

prestige of office to advance private interests and requiring judges to act “at all times” in a manner that promotes public confidence in the integrity of the judiciary and to avoid even the appearance of impropriety (Rules, §100.2[A], [C]).²

As the referee found, respondent’s references to her judicial position were coupled with persistent questioning about why it was necessary for the police to prepare an accident report in connection with the incident. Even after the van’s driver informed her at the outset that such a report was required because a police vehicle was involved, she persisted in questioning the need for a report in discussions with other officers, each of whom told her the same thing. Respondent should have recognized at the accident scene that, as she acknowledged at the hearing, identifying herself as a judge in such circumstances “changes the complexion of the interaction” and, therefore, that it would be perceived as adding her judicial clout to all of her statements, including her directive to the van’s driver (“let’s just keep it moving”), her requests to move the vehicles to

² See, e.g., *Matter of LaBombard*, 11 NY3d 294, 296, 299 (2008) (judge’s behavior in “repeatedly and gratuitously” referring to his judicial status after a motor vehicle accident and implying that because of his judicial status the other motorist must have been at fault “suggest[s] a willingness to misuse his judicial office for personal advantage – a quality that is antithetical to the judicial role”); *Matter of Landicino*, 2016 NYSCJC Annual Report 129 (judge’s repeated invocation of his judicial position during his arrest for Driving While Intoxicated “creat[ed] the appearance that he was using the prestige of judicial office in an attempt to minimize the consequences of his unlawful behavior” and conveyed an “implicit message...that because he is a high-ranking judge, he should be exempt from the ordinary standards of law enforcement that apply to others”); *Matter of Werner*, 2003 NYSCJC Annual Report 198 (by showing his judicial identification during a traffic stop in response to a request for his driver’s license and registration, judge “gratuitously interjected his judicial status into the incident, which was inappropriate...even in the absence of an explicit request for special consideration”); *Matter of D’Amanda*, 1990 NYSCJC Annual Report 91 (judge invoked his judicial status on three occasions to avoid getting traffic tickets; “[t]he mere mention of his judicial office in order to obtain treatment not generally afforded to others violates the canons of judicial ethics”).

another area, and her questions and observations about the necessity for a report. Notwithstanding her insistence that she never attempted to persuade the police not to do a report, respondent's statements to Sergeant Khanzada (the officer responsible for preparing the report) in which she referred to her judicial role while conveying that she believed a report was unnecessary can only be understood as pressure to forego the report, using her status as a judge. This is particularly so since (i) at least two other officers had already explained to her that police protocol required a report and (ii) having already identified herself as a judge to the sergeant and given him her judicial identification, she ratcheted up the pressure by making a gratuitous reference to her courtroom after he told her he would do a report. Invoking her judicial status to pressure the police to depart from their required procedures for her personal benefit was a particularly improper assertion of influence. Based on our review of the entire record, we find no reason to overturn the referee's factual findings regarding the substance of respondent's statements to the officers and her intent in making them, as reflected in our findings herein.

“Public confidence in the fair and proper administration of justice requires that judges, who are sworn to uphold the law, neither request nor receive special treatment when the laws are applied to them personally” (*Matter of Werner, supra*). In the circumstances here – a police investigation of an accident in which a judge was involved – the public would expect the judge not only to comply with the officers' requests but to give deference to the officers' judgment without repeatedly questioning

and expressing dissatisfaction with their procedures. As the Court of Appeals has stated:

“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.... There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary.”

Matter of Lonschein, 50 NY2d 569, 572 (1980); *see also Matter of Kuehnel*, 49 NY2d 465, 469 (1980) (“[T]hroughout this entire incident [the judge], ‘although off the bench remained cloaked figuratively, with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others’”).

In determining the appropriate sanction for respondent’s violation of the above-cited ethical standards, we reject respondent’s argument that public discipline is unwarranted because the “private interest” she was seeking to further during the incident was relatively minor. Although the police report itself may have been inconsequential to respondent except for the resulting delay, her desire to be allowed to leave the accident scene more quickly was clearly important enough to her to warrant invoking her judicial status repeatedly at each stage of her interactions with the police, in violation of Rule 100.2(C). In view of such behavior and the totality of the circumstances as set forth above, we conclude that a public admonition is required. In imposing this sanction, we remind every judge of the obligation to abide by this important ethical mandate.³

³ While we are mindful that respondent was previously admonished for misconduct during her 2006 campaign for judicial office (*Matter of Michels*, 2012 NYSCJC Annual Report 130), the conduct established in the matter before us, by itself, provides ample basis for public discipline.

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

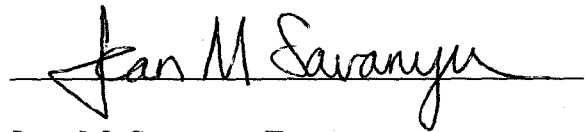
Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzairelli, Judge Miller, Mr. Raskin and Ms. Yeboah concur.

Mr. Stoloff was not present.

CERTIFICATION

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

Dated: December 27, 2018

A handwritten signature in black ink, reading "Jean M. Savanyu", written over a horizontal line.

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