

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

MICHAEL J. MIRANDA,

a Justice of the Shandaken Town Court,
Ulster 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.
Akosua Garcia Yeboah

APPEARANCES:

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

Mainetti & Mainetti (by Alfred B. Mainetti for respondent)

Respondent, Michael J. Miranda, a Justice of the Shandaken Town Court, Ulster
County, was served with a Formal Written Complaint dated February 14, 2019,
containing two charges. Charge I of the Formal Written Complaint alleged that on March

19, 2018, in the Town of Shandaken, New York, respondent operated his motor vehicle while under the influence of alcohol. Charge II of the Formal Written Complaint alleged that on March 19, 2018, respondent asserted and/or attempted to assert his judicial office to advance his private interests in connection with his arrest for Driving While Intoxicated. Respondent filed an Answer dated March 21, 2019. On June 19, 2019, the Commission designated David M. Garber, Esq. as referee to hear and report proposed findings of fact and conclusions of law. A hearing was scheduled to commence on September 16, 2019.

On September 5, 2019, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts 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 censured and waiving further submissions and oral argument.

On October 17, 2019, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent was admitted to the practice of law in New York in 1975. He has been a Justice of the Shandaken Town Court, Ulster County, since 2006. His current term expires on December 31, 2021.

As to Charge I of the Formal Written Complaint

2. On March 19, 2018, in the Town of Shandaken, New York, respondent operated his motor vehicle while under the influence of alcohol.

3. On the evening of March 18, 2018, while in Orlando, Florida, respondent

consumed alcoholic beverages, and he was still feeling the effects of the alcohol the following morning.

4. On March 19, 2018, at the airport in Orlando, respondent consumed at least four or five glasses of vodka and seltzer from approximately 9:00 a.m. to 11:00 a.m., prior to boarding a flight to Albany, New York, that departed at approximately 11:00 a.m.

5. During the flight from Orlando to Albany, which lasted approximately three hours, respondent consumed at least another four alcoholic drinks containing vodka. Respondent also consumed two small bags of peanuts but had nothing else to eat.

6. After arriving at the Albany airport in the afternoon on March 19, 2018, respondent went to the airport parking lot where his personal car, a 2013 Subaru Outback, was parked. Respondent's vehicle bore "SMA" license plates, which identified it as belonging to a judge. "SMA" stands for the State Magistrates Association, which is composed of town and village court justices throughout New York State.

7. Respondent entered his vehicle in the parking lot and, still under the influence of alcohol, began to drive to his home in Shandaken, New York, a distance of approximately 70 miles, requiring a travel time of approximately 90 minutes to two hours. His route included a stretch of the New York State Thruway.

8. While on the Thruway, respondent stopped at the New Baltimore service area in Hannacroix, New York, drank from a bottle of vodka that was in his car, then resumed his drive toward Shandaken – a remaining distance of approximately 47 miles, or about one hour of travel time.

9. At approximately 5:30 p.m. on March 19, 2018, at the intersection of New York State Route 212 (a/k/a "Plank Road"), Wittenberg Road and Mount Tremper-Phoenicia Road in Shandaken, respondent lost control of his vehicle and crashed, causing damage to the front of his vehicle and property damage to two stop signs and two benches. Photographs of the damage to respondent's vehicle, which subsequently cost \$6,784 to repair, are appended to the Agreed Statement of Facts.

10. Shandaken Police Officer Kyle Hassett and Woodstock Police Officer Christopher Benson separately arrived at the scene of the accident at approximately 5:35 p.m. In conversing with respondent, both officers smelled an odor of alcohol emanating from respondent and observed that he had glassy/watery eyes and impaired motor coordination.

11. Officer Hassett asked whether respondent had consumed any alcoholic beverages, to which respondent replied that he had consumed only two alcoholic drinks on his flight or at an airport.

12. Because respondent is a Shandaken Town Justice and the local police appear in cases before him, Officer Hassett called the Shandaken police chief with a request that the New York State Police take over the investigation of this matter. Shortly thereafter, New York State Police Troopers James Adams and Cameron Manley separately arrived at the scene of the accident.

13. Trooper Adams interviewed respondent at the scene, smelled an odor of alcohol emanating from respondent's breath and observed that respondent had slurred speech, glassy/watery eyes, difficulty standing and impaired motor coordination.

14. Trooper Adams asked whether respondent had consumed any alcoholic beverages, to which respondent replied that he had drunk “two beers” at the Orlando airport.

15. Respondent failed three standard field sobriety tests administered at the scene by Trooper Adams: the “horizontal gaze nystagmus,” the “walk-and-turn” and the “one-leg-stand” tests. Respondent then refused Trooper Adams’s request that he submit to a portable breath test, but he consented to submit to a chemical breath test at the State Police barracks.

16. Trooper Adams placed respondent under arrest, put him in his police vehicle and transported him to the local State Police barracks.

17. At the State Police barracks, respondent was cooperative and agreed to submit to a chemical breath test. The test, which was administered by Trooper Adams at approximately 7:14 p.m., indicated that respondent’s blood alcohol concentration (“BAC”) at that time was 0.17%. In New York State, a BAC of .05% is evidence of driving while impaired, a BAC of .08% or higher is evidence of driving while intoxicated, and a BAC of .18% or more is evidence of aggravated driving while intoxicated.

18. On March 19, 2018, respondent was charged with five Vehicle and Traffic Law (VTL) offenses: a misdemeanor for Driving While Intoxicated Per Se, in violation of VTL Section 1192(2); a misdemeanor for Driving While Intoxicated, in violation of VTL Section 1192(3); a traffic infraction for Refusal to Take Breath Test, in violation of VTL Section 1194(1)(B); a traffic infraction for Failure to Stop at Stop Sign, in violation

of VTL Section 1172(A); and a traffic infraction for Speed Not Reasonable and Prudent, in violation of VTL Section 1180(A).

19. The charges were returnable in the Shandaken Town Court but, on March 22, 2018, both respondent and respondent's co-judge recused themselves. By order dated May 7, 2018, then Acting Ulster County Court Judge Terry J. Wilhelm transferred the charges to the Saugerties Town Court.

20. On August 22, 2018, respondent appeared before Saugerties Town Justice Claudia Andreassen and pled guilty to a traffic infraction of Driving While Ability Impaired, in violation of VTL Section 1192(1), in full satisfaction of all the charges. Judge Andreassen sentenced respondent to a \$300 fine and a \$260 surcharge, which respondent paid immediately.

21. Respondent's auto insurance carrier paid New York State the sum of \$1,138 for costs to replace the two stop signs that respondent destroyed when he crashed his car. It is not known who owned the two benches that respondent damaged beyond repair but neither he nor his insurance company has received any request for payment.

As to Charge II of the Formal Written Complaint

22. On March 19, 2018, respondent asserted and/or attempted to assert his judicial office to advance his private interests in connection with his arrest for Driving While Intoxicated.

23. On March 19, 2018, respondent operated his 2013 Subaru Outback while under the influence of alcohol and lost control of it, causing it to crash at the intersections of New York State Route 212 (a/k/a "Plank Road"), Wittenberg Road and Mount

Tremper-Phoenicia Road in Shandaken, New York. Soon thereafter, New York State Police Troopers James Adams and Cameron Manley arrived at the scene and approached respondent by his damaged and disabled vehicle.

24. At a hearing before the referee in the disciplinary matter herein, Troopers Adams and Manley would testify that, when Trooper Adams requested respondent's license and registration, respondent asked if Trooper Adams knew who he was, which the troopers understood to be a reference to respondent's judicial office. When Trooper Adams replied, "Yes, I do" and/or that he did not care who he was, respondent said that he would never again come out to conduct an arraignment for the State Police.

25. At a hearing before the referee in the disciplinary matter herein, respondent would testify that, although he has no recollection of making such statements, he does not dispute the recollections of the troopers.

Additional Factors

26. Although respondent does not recall telling the troopers that he would never again come out to conduct an arraignment for the State Police, he attributes the comment to his diminished capacity and judgment due to his consumption of alcohol. Respondent understands that it is wrong to reference his judicial office under these circumstances, regrets doing so and avers that he would not have done so but for his diminished capacity. It is not alleged that respondent made a direct request for special consideration because of his judicial office to either trooper.

27. New York State Police Captain (now Major) James Michael met with respondent while he was in custody at the barracks. During his interactions with Captain

Michael, respondent was cooperative and apologetic and did not invoke his judicial office or ask for any special consideration from the captain.

28. Respondent acknowledges that he suffers from an “Alcohol Use Disorder” and has been suffering from the disorder for approximately 12 years prior to his arrest. Respondent states that the circumstances surrounding his arrest were a trigger for him to obtain the help that he needed to treat his condition.

29. On June 1, 2018, respondent voluntarily admitted himself into a three-day alcohol detoxification program at a hospital. On June 4, 2018, respondent voluntarily admitted himself into a two-weeks-long inpatient alcohol rehabilitation program. During the inpatient program, a Credentialed Alcoholism and Substance Abuse Counselor and National Certified Addiction Counselor diagnosed respondent as suffering from “Severe Alcohol Use Disorder.”

30. Respondent remained in and successfully completed the two-weeks-long inpatient alcohol rehabilitation program. Near the conclusion of the program, respondent signed a Discharge Instructions and Continuing Care Plan in which, among other things, he agreed as part of a “self-identified Plan to address Relapse Issues” to “Attend AA meetings” and “gain a sponsor and a home group.” Although respondent has not followed through on this part of his continuing care plan, his counselor has advised the Commission that respondent is uncomfortable in group sessions but responds well in individual therapy.

31. Since October 4, 2018, respondent has been attending individual counseling sessions twice a month with a licensed drug and alcohol abuse counselor for treatment of

his Alcohol Use Disorder. According to respondent's counselor, respondent has requested to meet more often than twice a month, *i.e.* once a week for a total of four times a month, but the counselor has been unavailable for more than two meetings a month.

32. Respondent avers that he has not consumed an alcoholic drink since June 1, 2018, and the Administrator has no information to the contrary. Respondent also avers that he is committed to continuing his treatment and to sobriety.

33. Respondent acknowledges that he should have sought treatment *before* this incident occurred.

34. 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.

35. Respondent recognizes that his conduct had the potential to put innocent lives at risk of death and serious injury.

36. Respondent is a Vietnam Veteran, was a prosecutor in the Ulster County District Attorney's Office for nearly twenty years and has an otherwise unblemished record during his approximately 14 years on the bench.

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) 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 Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained

and respondent's misconduct is established.

It is the responsibility of every judge to act at all times in a manner that promotes public confidence in the integrity of the judiciary and to avoid conduct that detracts from the dignity of judicial office. Respondent violated his ethical obligation to respect and comply with the law by driving his vehicle while his ability was impaired by alcohol which caused him to lose control of his car and crash into two stop signs and two benches. At the scene of the accident, respondent's breath smelled of alcohol. He had difficulty standing, his speech was slurred and he failed three field sobriety tests. In addition, at the scene of the crash, respondent twice falsely told law enforcement personnel that he had only had two alcoholic drinks prior to the accident. Respondent subsequently pled guilty to Driving While Ability Impaired in violation of VTL Section 1192(1). His unlawful and reckless conduct endangered public safety and brought the judiciary into disrepute.

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 undermines public confidence in the judiciary. This is especially true given respondent's role in adjudicating civil and criminal cases involving impaired driving. As a judge entrusted with the responsibility of exercising judgment over the conduct of others and applying the law in his court, respondent is "obligated to conduct [himself] at all times in a manner that reflected [his] own personal respect for the letter and spirit of the law." *Matter of Backal*, 87 N.Y.2d 1, 7 (1995). Any departure from this exacting standard of personal conduct undermines his effectiveness as a judge and impairs the public's

respect for the judiciary as a whole.

In prior cases involving alcohol-related driving offenses, in determining the appropriate disposition, the Commission has considered various mitigating and aggravating factors including: the degree of intoxication, whether the judge caused an accident or injury, whether the conduct was an isolated incident 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, whether the judge accepted responsibility for the offense and the need and willingness of the judge to seek treatment. *See, e.g., Matter of Astacio*, 2019 NYSCJC Annual Report 71, *aff'd*, 32 N.Y.3d 131 (2018) [removal] (DWI conviction; judge was uncooperative during arrest and asserted her judicial office; judge also engaged in additional misconduct related to her judicial duties); *Matter of Landicino*, 2016 NYSCJC Annual Report 129 [censure] (DWI conviction; judge repeatedly asserted his judicial office during arrest; subsequently he made extensive efforts to rehabilitate himself); *Matter of Newman*, 2014 NYSCJC Annual Report 164 [censure] (DWAI conviction after rear-ending a car at a traffic light; judge was uncooperative during arrest); *Matter of Apple*, 2013 NYSCJC Annual Report 95 [censure] (DWI conviction based on a blood alcohol concentration of .21%); *Matter of Maney*, 2011 NYSCJC Annual Report 106 [censure] (DWAI conviction; judge made illegal U-turn to avoid sobriety checkpoint, repeatedly identified himself as a judge and asked for “professional courtesy”); *Matter of Martineck*, 2011 NYSCJC Annual Report 116 [censure] (DWI conviction after driving erratically and hitting a mile marker); *Matter of Burke*, 2010 NYSCJC Annual Report 110 [censure] (DWAI conviction after causing

an accident; additional misconduct included presiding over two cases without disclosure of her relationship with a complaining witness); *Matter of Mills*, 2006 NYSCJC Annual Report 218 [censure] (although judge was acquitted of DWI, she admitted driving after consuming alcoholic beverages and making offensive statements to the arresting officers).

Respondent admitted that on March 19, 2018 he had a total of at least eight drinks containing vodka while at the Orlando Airport and on the flight to Albany. Instead of calling for a ride or staying at an airport hotel, he got in his car bearing SMA plates and started to drive to his home 70 miles away. During the drive, he stopped at a service area on the Thruway and drank from a bottle of vodka that he had in his car. Subsequently, respondent lost control of his car and crashed causing damage to public property. He failed three field sobriety tests at the scene of the accident. Respondent was under the influence of alcohol and his judgment was impaired. When measured later at the State Police barracks, his blood alcohol concentration was .17%, just below the level which would be evidence of aggravated driving while intoxicated.

Respondent should have recognized at the time that operating his motor vehicle after consuming such a large quantity of alcohol created a significant risk to himself and to the lives of others. According to the National Highway Traffic Safety Administration, in 2018, there were 10,511 fatalities in motor vehicle traffic crashes nationwide in which alcohol was involved. Of those fatalities, 7,051 involved at least one driver with a blood alcohol concentration of .15% or higher.

Respondent's misconduct was aggravated when he made false statements at the

scene of the crash to law enforcement personnel regarding his alcohol consumption. He told one officer that he had had two alcoholic drinks on the flight or at an airport. He then told a trooper that he had “two beers” at the Orlando airport. These false statements were inconsistent with a judge’s obligation to maintain high standards of conduct at all times, both on and off the bench, in order to promote public confidence in the integrity of the judiciary. (Rules §§100.1 and 100.2(A))

Further aggravating respondent’s serious misconduct, he invoked his judicial office at the scene of the accident. In response to the trooper’s request for his license and registration, respondent asked the trooper if he knew who he was. When the trooper responded in the affirmative, respondent stated that he would never come out to conduct an arraignment for the State Police again. *See, Matter of Edwards*, 67 N.Y.2d 153, 155 (1986) (it is “irrelevant” whether a judge overtly requests “favorable treatment or special consideration.”) As the Commission has stated,

Respondent’s conduct was improper even in the absence of an explicit request for special consideration. . . . Judges must be particularly careful to avoid any conduct that may create the appearance of seeking special consideration simply because of their judicial status. 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, 2003 NYSCJC Ann. Rep. 198, 199 (citation omitted). Respondent’s diminished capacity as a result of his drinking is no excuse for this behavior.

Alcoholism is a disease and the Office of Court Administration should treat it as such by encouraging judges to come forward and seek treatment. Getting into a car and

driving while under the influence is a choice. Respondent has recognized that his conduct put lives in jeopardy and that he should have sought treatment for his Alcohol Use Disorder prior to the accident. Given the numerous aggravating factors present, this case comes very close to removal.

In determining the appropriate sanction, we must consider whether this single incident has irreparably damaged respondent's effectiveness as a judge and whether the public interest is served by permitting him to remain on the bench in light of his serious misconduct. As we have stated in other matters involving alcohol-related driving offenses with significant aggravating factors, *Matter of Landicino* and *Matter of Maney*, were the sanction of suspension from judicial office without pay available to us, we would have imposed it in those cases and would impose it here based upon the seriousness of such behavior. However, while we view respondent's misconduct as extremely serious, in accepting the jointly recommended sanction of censure, we have taken into consideration that respondent's misconduct involved one incident. In addition, respondent acknowledged his misconduct and recognized that a severe sanction is appropriate. We note that respondent has averred that he is committed to continuing his treatment for his Alcohol Use Disorder and to abstaining from alcohol.

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

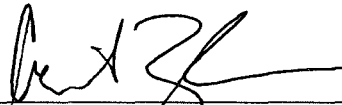
Mr. Belluck, Mr. Harding, Ms. Corngold, Ms. Grays, Judge Falk, Judge Leach, Judge Mazzairelli, Judge Miller and Ms. Yeboah concur.

Mr. Raskin was not present.

CERTIFICATION

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

Dated: January 30, 2020



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