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

DANIEL P. SULLIVAN,

a Justice of the Whitestown Town Court,
Oneida 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 (Thea Hoeth, Of Counsel) for the Commission
Robert F. Julian for the Respondent

The respondent, Daniel P. Sullivan, a Justice of the Whitestown Town Court, Oneida County, was served with a Formal Written Complaint dated March 24, 2015, containing one charge. The Formal Written Complaint alleged that in two

conversations with law enforcement officials respondent lent the prestige of judicial office to advance the private interests of his son.

On April 16, 2015, 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 June 18, 2015, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Whitestown Town Court, Oneida County, since January 1, 2012, having been elected to that position on November 8, 2011. Respondent's term expires on December 31, 2015. He is not an attorney.

2. On July 20, 2013, and July 22, 2013, respondent created the appearance of impropriety and lent the prestige of his judicial office to advance his son's private interests by requesting leniency for his son from two law enforcement officers in two separate conversations concerning impending charges of Overdriving, Torturing and Injuring Animals, a misdemeanor, and Violating Prohibited Park Hours, a violation under the local law.

3. On Friday, July 19, 2013, shortly after 9:00 PM, Whitestown Police Officer Frank S. McCully contacted respondent regarding respondent's 19-year-old son, Joseph Sullivan, and asked respondent to come to the Gibson Road Town Park.

4. When respondent arrived at the park a few minutes later, his son was

handcuffed and sitting in the back seat of a police car in the parking area adjacent to park restrooms. Officer McCully led respondent to the women's restroom where he had earlier found Joseph Sullivan with two small kittens. One of the kittens had been hog-tied with tape, and there was a lighter nearby. Officer McCully informed respondent that his son would be charged at a later time and would be allowed to go home with respondent that night. Respondent was given custody of the kittens to return them to the location where his son had obtained them. No charges were issued against respondent's son that night.

5. Early the next morning, Saturday, July 20, 2013, respondent telephoned Whitestown Chief of Police Donald Wolanin on the chief's cell phone to discuss the incident in the park the night before. Respondent told the chief that he hoped that the police would not "go piling on" charges or "overcharge" his son, or words to that effect.

6. On the evening of July 22, 2013, at the conclusion of respondent's court session, Officer McCully entered the Whitestown Town Court and asked to speak with respondent. The two went outside the building, where Officer McCully said that he needed respondent's son to come to the police station where the officer would issue an appearance ticket for animal cruelty and being in the park after hours. Respondent stated, "Do you really have to arrest him?" or words to that effect. Respondent told Officer McCully that if his son was arrested it would ruin his chances of getting a job with the Oneida County sheriff.

7. Respondent also said to Officer McCully that his son's drug

rehabilitation had cost respondent and his wife nearly all their life savings. Respondent argued that because the kittens were not actually injured, a charge of cruelty to animals did not apply.

8. Later on July 22, 2013, Officer McCully charged respondent's son with violating Section 353 of the Agriculture and Markets Law (Overdriving, Torturing and Injuring Animals), a misdemeanor, and Section 145-1 of Town of Whitestown Local Law (Violating Prohibited Park Hours), a violation. The charges against respondent's son were subsequently transferred to the Oriskany Village Court, where the son pled guilty to a violation of Section 359 of the Agriculture and Markets Law (Carrying Animal in a Cruel Manner). He was sentenced to a one-year Conditional Discharge that required him to refrain from possessing or being in the presence of any feline, stay out of the Whitestown Park grounds, complete 50 hours of community service, and pay a mandatory surcharge of $205.

Additional Factors

9. Respondent has been cooperative throughout the Commission's inquiry.

10. Although understandably concerned that his son was about to be charged by the police, respondent recognizes that it was improper to call the Chief of Police, and to communicate with the arresting officer, in order to suggest leniency for his son. He acknowledges that his "'paternal instincts' do not justify a departure from the standards expected of the judiciary" (*Matter of Edwards*, 67 NY2d 153, 155 [1986]). He

also recognizes that "any communication from a Judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office" (*Matter of Lonschein*, 50 NY2d 569, 572-73 [1980]). Respondent regrets his failure to abide by the applicable Rules and pledges henceforth to abide by them faithfully.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.2(C) 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 acting as his son's advocate in two conversations with law enforcement officials while seeking leniency with respect to impending charges, respondent lent the prestige of his judicial office to advance his son's private interests. Such conduct is prohibited by well-established ethical standards (Rules, §100.2[C]), even in the absence of a specific request for special consideration or an overt assertion of judicial status and authority (*see Matter of Edwards*, 67 NY2d 153 [1986]; *Matter of Lonschein,* 50 NY2d 569 [1980]). As the Court of Appeals has stated:

> [N]o judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. 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. Thus, any communication from a judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office. [Citations omitted.]

Matter of Lonschein, supra, 50 NY2d at 571-72. Regardless of a judge's intent, such conduct may convey an appearance of using the prestige of judicial office to advance private interests. Section 100.2 of the Rules requires a judge to avoid even the appearance of impropriety.

Initially, after learning that the police intended to charge his son regarding an incident involving mistreating kittens, respondent contacted the chief of police the next morning to discuss the matter. The fact that respondent was able to reach the police chief, via the chief's cell phone, to discuss his son's case underscored both his special access, as a judge, to law enforcement officials and the likelihood that the police chief would give particular attention to respondent's intercession on his son's behalf. At a time when the police were still considering the potential charges to be filed, respondent told the chief that he hoped the police would not "pile on" or "overcharge" respondent's son, or words to that effect. This was impermissible advocacy in the form of an implicit request for favorable treatment.

Respondent again acted as his son's advocate two days later when he spoke to the arresting officer. Though respondent did not initiate that conversation – the officer had come to court to tell respondent that his son needed to go to the police station and

would be issued an appearance ticket – respondent's comments were inappropriate. Urging leniency, he asked, "Do you really have to arrest him?", noted that an arrest would "ruin" his son's chances of employment, and argued that a charge of animal cruelty was inapplicable. These statements could have had only one purpose: to influence the police to give favorable consideration to respondent's son. As a judge for 18 months, respondent should have recognized that such communications were improper and that any legal arguments on his son's behalf should instead have come from his son's lawyer.

While it is understandable that respondent was concerned for his son and hoped for leniency in the officers' assessment of potential charges, his "'paternal instincts' do not justify a departure from the standards expected of the judiciary" (*see Matter of Edwards, supra,* 67 NY2d at 155). A judge does not relinquish his or her parental rights and responsibilities, but the instinct to help a family member in trouble must be constrained by a judge's ethical responsibilities, including the duty to act "at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and to avoid using the prestige of office to advance private interests (Rules, §§100.2[A], [C]). Strict adherence to these important principles is essential to ensure public confidence in our system of justice, which is based on equal treatment for all and decisions that are based on the merits, not the result of special influence or having the right "connections." Under the circumstances here, acting as his son's advocate or otherwise seeking leniency on his son's behalf was inconsistent with those requirements, since such communications could be perceived as backed by his judicial power and

prestige.

Seeking special consideration from local law enforcement officials is especially problematic. There is inherent pressure on the police – who presumably appear in the judge's court and knew that the suspect's father was the local judge – to agree to the request. And seeking such favors from police impacts future cases – if the police accede to a request that benefits a judge's child, the judge's impartiality in subsequent cases in which the police appear is compromised. A defendant could have little confidence in a judge's impartiality if the defendant knows that the police had done the judge a significant favor. Respondent should have been more sensitive to the implications of seeking, or appearing to seek, such a favor.

Violations of Rule 100.2(C) have been found in a broad spectrum of cases, including where judges have contacted other judges, law enforcement officials or other persons in a position of authority in order to advance private interests. *E.g.*, *Matter of Smith*, 2014 NYSCJC Annual Report 208 (judge sent an unsolicited letter on judicial stationery on behalf of an inmate seeking parole, whose mother was a friend of the judge's relative); *Matter of Pennington*, 2004 NYSCJC Annual Report 139 (judge met with DA to object to the police investigation of his son); *Matter of Nesbitt*, 2003 NYSCJC Annual Report 152 (judge sent a letter on judicial stationery to his son's school challenging an administrative determination regarding his son and the legal sufficiency of the school's procedures); *Matter of Stevens*, 1999 NYSCJC Annual Report 153 (judge angrily confronted police who were investigating a complaint involving his son and urged

the police to arrest his son's neighbor).

In accepting the stipulated sanction of censure, we are mindful that while respondent's communications were highly improper, his judgment "was somewhat clouded by his son's involvement" in difficult circumstances (*see Matter of Edwards*, *supra*, 67 NY2d at 155). We also note that in his efforts to help his son, respondent's misconduct was limited to a plea for leniency. In the circumstances here, we conclude that censure, the most severe sanction available short of removal, is appropriate. We underscore that every judge must be mindful of the importance of adhering to the ethical standards so that public confidence in the integrity and impartiality of the judiciary may be preserved.

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

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

Mr. Emery dissents in an opinion and votes to reject the Agreed Statement on the basis that the sanction of censure is too lenient.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: July 14, 2015

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

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DISSENTING OPINION
BY MR. EMERY

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Public confidence in our system of justice requires that the outcome of every case, no matter who the parties are, "must be fair, unbiased, untainted, and driven by the law and the facts," not by "the personal desires and interests of individual judges" (*see Matter of Cook*, 2006 NYSCJC Annual Report 119, Emery Dissent; *Matter of LaClair*, 2006 NYSCJC Annual Report 199, Emery Dissent). As I have previously stated, when a judge attempts to use the system for personal gain by wielding special influence to advance private interests in pending cases, "I consider this category of judicial misconduct to be the most serious of any that comes before the Commission" (*Id.*; *Matter of Lew,* 2009 NYSCJC Annual Report 130, Emery Dissent; *see also Matter of Maney*, 2011 NYSCJC Annual Report 106). Such behavior "strikes at the heart of our justice system," invidiously perverting the fair and proper administration of justice and eroding public confidence in the judiciary as a whole (*Id.*).

It is uncontroverted that on two separate occasions Judge Sullivan

interceded with law enforcement officials to advocate on behalf of his son and urge leniency with respect to impending charges. First reaching out to the police chief by calling the chief's cell phone, then speaking directly with the arresting officer, he vigorously and repeatedly acted as his son's advocate, making legal arguments as well as personal pleas that were irrelevant to the merits of the charges (noting, for example, that he had borne the expenses of his son's drug treatment and that the charges would adversely affect his son's employment prospects). Plain and simple, in arguing for leniency, Judge Sullivan was asking the police for a very personal and very significant favor. In any circumstances, such behavior is highly improper; seeking such a favor from local law enforcement officials, who presumably appear in his court on a regular basis, is especially troubling and corrupts the appearance of impartiality in subsequent cases.

Unlike the majority, I find no mitigation in the fact that Judge Sullivan was motivated by "paternal instincts." "Instincts" are what the rule of law seeks to control and regulate, and such motivations animating a judge should never be characterized as "mitigation." A civilized legal system, a system that respects the rule of law as enforced by judges cannot allow judges to indulge their "paternal instincts."

Before contacting the police chief, Judge Sullivan had ample opportunity to reflect on the propriety of making that phone call and intervening on his son's behalf. Over more than three decades, the Commission and the Court of Appeals have disciplined judges for communicating with law enforcement officials or others in a

position of authority to seek special treatment for themselves, their friends and relatives.[1] With this substantial body of case law, no judge can credibly claim that he or she was unaware that such conduct is improper, and a judge who is unable to observe these basic ethical boundaries should not remain in office. Nor do I find mitigation in the fact that, when caught, the judge was contrite, since no amount of contrition can override inexcusable conduct. *See Matter of Bauer,* 3 NY3d 158, 165 (2004).

Because this misconduct, in my view, is so inconsistent with the highest standards of honor and integrity required of every judge, it requires the most severe sanction available – removal from office. Accordingly, I must dissent and vote to reject the Agreed Statement of Facts.

Dated: July 14, 2015

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

[1] *E.g., Matter of Lonschein,* 50 NY2d 569 (1980) (judge asked a deputy counsel at the Taxi and Limousine Commission to expedite a friend's license application); *Matter of Pennington,* 2004 NYSCJC Annual Report 139 (judge asserted his judicial office in a vulgar tirade towards a park official when stopped and charged with infractions); *Matter of Williams,* 2003 NYSCJC Annual Report 200 (judge misused his judicial prestige in asking another judge to vacate an order of protection issued against his friend); *Matter of Stevens,* 1999 NYSCJC Annual Report 153 (judge interfered in police investigation of a dispute involving his son and demanded that his son's antagonist be arrested); *Matter of D'Amanda,* 1990 NYSCJC Annual Report 91 (judge used the authority of his office to avoid receiving three traffic tickets); *Matter of LoRusso,* 1988 NYSCJC Annual Report 195 (judge intervened with police on behalf of the son of a former court employee); *Matter of Montaneli,* 1983 NYSCJC Annual Report 145 (judge sought special consideration from the prosecutor and the presiding judge on behalf of a friend who was charged with a crime).