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

DANIEL P. SULLIVAN,

a Justice of the Whitestown Town Court,
Oneida County.

DETERMINATION

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THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Honorable Rolando T. Acosta
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Honorable Thomas A. Klonick
Honorable Leslie G. Leach
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Thea Hoeth and Cathleen S. Cenci, 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 February 11, 2016, containing one charge. The Formal Written Complaint alleged that respondent lent

the prestige of judicial office to advance private interests by signing his name and judicial title to a defendant's letter to a judge asking to change his plea. Respondent filed a verified Answer dated March 7, 2016.

By Order dated May 4, 2016, the Commission designated David M. Garber, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 18, 2016, in Albany. The referee filed a report dated November 8, 2016.

The parties submitted briefs with respect to the referee's report. Counsel to the Commission recommended the sanction of removal; respondent's counsel argued that if misconduct was found, removal was too harsh. On January 26, 2017, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Whitestown Town Court, Oneida County, since 2012. His current term expires in 2019. He is not an attorney or a notary public.

2. On December 24, 2014, Oxford Village Police Officer Ronald Martin issued a ticket to Elan M. Scott, then age 19, charging him with Failure to Obey a Traffic Control Device in violation of Section 1110(a) of the Vehicle and Traffic Law. The electronic ticket also contains the notations "South Canal 52-30" and "Radar," which appear to reflect a radar-measured speed of 52 miles per hour ("mph") in a 30-mph posted speed zone. The ticket was returnable on January 12, 2015 in the Oxford Village

Court, Chenango County.

3. On January 12, 2015, Mr. Scott appeared in the Oxford Village Court before Village Justice John V. Weidman and pled not guilty to the charge. Judge Weidman told Mr. Scott that the issuing officer had "cut you a break" on the ticket by charging only a two-point violation rather than Speeding[1], that Judge Weidman could not reduce a charge without the consent of the District Attorney's office and that he intended to return Mr. Scott's traffic ticket to the Oxford Police Department to provide the police with an opportunity to "rewrite it back" to a Speeding charge. Judge Weidman also told Mr. Scott that if he was charged with Speeding he could contact the District Attorney's office and attempt to negotiate a plea and that the disposition would ultimately be up to the judge.

4. On the same date, the Oxford Police Department issued and mailed a new ticket to Mr. Scott, charging him with Speeding for driving 52 miles per hour in a 30-mph posted zone. The return date on the ticket is January 12, 2015.

5. Mr. Scott told his mother, Sherri LaSalle, what had occurred at his court appearance. On January 13 or 14, 2015, Ms. LaSalle encountered respondent by chance near the elevators in the Oneida County Office Building where both she and respondent worked (Ms. LaSalle in the Department of Personnel and respondent in the Office of Pistol Permit Licensing). Ms. LaSalle had known respondent for six to seven

[1] Under the point system used by the Department of Motor Vehicles, the Failure to Obey infraction is assigned two points; a charge of driving 22 mph over the posted limit is assigned six points. If a driver receives eleven points in an 18-month period, his/her driver's license may be suspended.

years as someone who worked in the same building, and she knew that he was a town or village justice. In a brief conversation, Ms. LaSalle told respondent that a judge had changed her son's traffic ticket to charge him with a different traffic violation, and she asked if he had "ever heard of such a thing"; respondent said he had. Ms. LaSalle also told respondent that "people" had advised her to write a letter to the judge requesting that he allow her son to withdraw his not guilty plea and plead guilty to the original charge; respondent said that she "could do that but it doesn't mean that it would change anything. It's up to the judge." Respondent told Ms. LaSalle that in his court he would require a notarized statement from a defendant requesting permission to change a plea.

6. Ms. LaSalle drafted a letter for her son to the Oxford Village Court. The letter, dated January 14, 2015, began with the salutation "Dear Honorable Judge" and asked "if I could plead guilty to my first charge of disobeying a traffic control device." Mr. Scott signed the letter, and on January 15, Ms. LaSalle faxed a copy to the Oxford Village Court. Ms. LaSalle testified that after she faxed the letter, "people" told her that the letter should have been notarized.

7. On January 16, 2015, Ms. LaSalle, accompanied by her son, visited respondent's office to ask him to notarize Mr. Scott's January 14 letter. Ms. LaSalle had previously gone to another office in the building where she knew there was a notary; when that individual was not available, a woman in that office said that she thought respondent was a notary.

8. When Ms. LaSalle came to respondent's office, he was on the telephone, and she "mouthed" her request that he notarize something. When he finished

the call, she introduced her son to respondent and asked respondent if he would notarize the January 14 letter, which Mr. Scott had already signed. She directed her son to show respondent his driver's license to prove that he was the person who had signed the letter.

9. Respondent looked briefly at Mr. Scott's letter and did not ask him any questions about the purpose of the letter or its contents.

10. At the time, respondent sincerely but erroneously believed that his position as a town justice vested him with broad notarial powers and that he thus had authority to notarize Mr. Scott's letter. Based upon that belief, respondent signed his name and judicial title on the letter, directly below Mr. Scott's signature, as:

> "1/16/15 Justice Sullivan
> Town of Whitestown
> Whitestown N.Y."

11. Respondent did not administer an oath to Mr. Scott or include a jurat on the letter stating that he had administered an oath and that Mr. Scott had signed the letter in respondent's presence. It appears that in signing his name and affixing his judicial title below Mr. Scott's signature, respondent understood that he was verifying the identity of the signer and confirming that Mr. Scott had signed the document.

12. Later that day, Ms. LaSalle faxed a copy of Mr. Scott's January 14 letter, which now contained respondent's signature and judicial title, to the Oxford Village Court and mailed the original letter to the court.

13. Two days later, on January 18, 2015, the Oxford Village Court sent a document to Mr. Scott indicating that the first traffic ticket had been withdrawn, that his guilty plea to the charge of Failure to Obey a Traffic Control Device on the second ticket

was accepted, and that the sentence was a fine and surcharge totaling $270.

14. In believing that he had notarial powers for the purpose of notarizing Mr. Scott's letter, respondent, in good faith, relied upon the advice of Trenton Town Justice J. Patrick VanBuskirk. Judge VanBuskirk, who has served as a town justice since 1990 and had worked with respondent in the Office of Pistol Permit Licensing for approximately 13 years until his retirement, had advised respondent in 2012, shortly after respondent became a judge, that his position as Town Justice vested him with notarial powers. Judge VanBuskirk, who is not an attorney, based his advice upon his understanding of information contained in a 1994 training manual for town and village justices which was prepared by the Office of Court Administration. In a section entitled "The Justice As a Notary," the manual states *inter alia* that a town or village justice "has limited notary powers but is not a notary" and that such a judge "may take depositions, administer oaths and take acknowledgments within the limits of the county where he or she sits when acting as a 'notary public'"; it further states that "[w]hen a justice is acting as a 'notary public' the Acknowledgment or Jurat should be signed with an official title, *i.e.*, 'Town Justice' or 'Village Justice,'" and that "[i]t is also a good practice to include the name of the municipality, the county and the state after the title." The language in this section, the referee found, is "poorly drafted" and "confusing."

15. Pursuant to Judge VanBuskirk's erroneous interpretation of this section and the advice he provided to respondent, Judge VanBuskirk and respondent had routinely notarized various documents related to their duties in the Office of Pistol Permit Licensing as well as other documents for members of the general public who asked them

to do so.

16. As stipulated at the hearing, respondent's position as a Town Justice did not vest him with notarial powers for the purpose of notarizing Mr. Scott's letter to the Oxford Village Court.

17. Respondent acknowledged at the hearing that, in hindsight, he should not have signed his name and affixed his judicial title to Mr. Scott's letter whether or not he was acting in a notarial capacity because, as he stated, "Justice courts 101 is that you do not sign a document that goes to another court." He testified that he did not connect the requested notarization with his earlier conversation with Mr. Scott's mother, that he did not realize that Mr. Scott's letter was directed to another court since he did not read it, and that it was his practice not to read the documents he notarized because he had been advised that it was improper to do so.

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 insofar as it is consistent with the above findings and conclusions, and respondent's misconduct is established.

By signing his name and judicial title beneath a defendant's signature on a letter to the Oxford Village Court, respondent added his judicial clout and imprimatur to

the defendant's request to change his plea, from not guilty to guilty, to the two-point traffic infraction originally filed against him. (The original charge, the record indicates, had been superseded by the issuance of a second ticket charging him with a six-point infraction.) Such conduct is prohibited by well-established ethical standards prohibiting a judge from lending the prestige of judicial office to advance private interests and requiring a judge to avoid even the appearance of impropriety (Rules, §§100.2[C], 100.2[A]). *See Matter of Lustyik,* 2015 NYSCJC Annual Report 128 (judge identified himself as "Hon." when witnessing a statement that was intended to be used in a Family Court custody proceeding); *see also Matter of Lonschein,* 50 NY2d 569 (1980) (judge asked a city official to expedite a friend's license application); *Matter of Smith,* 2014 NYSCJC Annual Report 208 (judge sent an unsolicited letter on judicial stationery to the State Division of Parole on behalf of an inmate seeking parole, whose mother was a friend of the judge's relative); *Matter of Bowers*, 2005 NYSCJC Annual Report 125 (judge sent a letter on judicial stationery to another town justice requesting special consideration for an acquaintance charged with Speeding who "needs to avoid any points").

As we have previously stated, "it is not a judge's responsibility to witness every document presented to him or her" (*Matter of Lustyik, supra*), whether by a friend, a litigant or anyone else. Placing respondent's name and judicial title on the letter presented to him for notarization necessarily implicated his judicial status, and before agreeing to do so, he should have made sufficient inquiry to ensure that his participation was consistent with the ethical rules, including his obligation to avoid even the

appearance of impropriety (Rules, §100.2). Instead, respondent signed his name and judicial title below Mr. Scott's signature without making any inquiry at all except to verify the signer's identity. He did not inquire into the nature, contents or purpose of the document or why his "notarization" was requested on what appeared to be a letter that, on its face, did not require it. Nor, according to his testimony, and despite acknowledging that "Justice courts 101 is that you do not sign a document that goes to another court," did respondent even glance at the letter sufficiently to notice that the intended recipient was a judge. Respondent's name and judicial title on a defendant's letter to another court conveyed the appearance that his judicial status was being used in support of the defendant's interests, which was inconsistent with Rule 100.2(C). At the very least, by failing to make any inquiry into the circumstances, respondent showed insensitivity to his ethical obligations.

We concur with the referee's conclusion that when respondent signed and affixed his judicial title below Mr. Scott's signature, he "sincerely, but erroneously" believed that he was exercising notarial powers that were inherent in his position as Town Justice, relying in good faith upon the erroneous advice of a long-time Town Justice and colleague that his judicial office vested him with such powers[2] (Report, pp 9-10). It is undisputed in the record before us that based on this mistaken belief, both judges had routinely notarized documents both in connection with their employment at a county agency and for members of the public upon request. However, although town and village

[2] We also note that this erroneous advice derived from a section in a training manual that the referee described as "poorly drafted" and "confusing" (Report p 10 *fn*).

justices have limited powers to administer an oath, make an acknowledgment and take a deposition (*see* Real Property Law §298; CPLR 2309[a], 3113[a][1]), such judges are not notaries simply by virtue of holding judicial office. *See Matter of Rumenapp*, 2017 NYSCJC Annual Report 192 (in the apparent, mistaken belief that her status as a town justice qualified her to act as a notary, judge authenticated signatures on a designating petition by signing her name and judicial title on a form requiring attestation by a notary public or commissioner of deeds).

Although witnessing Mr. Scott's signature on a letter to another court would have been improper regardless of whether respondent was acting as a notary, it seems clear that he agreed to do so only because he believed that as a judge he was empowered to act as a notary and was thus providing a notarial service in confirming the authenticity of the signature. Viewed in this light, it is also apparent that when respondent included his judicial title, he was not intentionally asserting his judicial status to advance the defendant's interests, but was specifying his judicial position, as he believed he was required to do, as the basis for his notarial authority (*see Matter of Rumenapp*, *supra*). Based on the totality of the evidence before us, we are thus persuaded that even if respondent witnessed the signature as a favor to an acquaintance, the favor was to provide a service, not to use his influence to further private interests. While this does not excuse his misconduct, it distinguishes this case from the most egregious violations of Rule 100.2(C) we have considered.

Respondent's belief that he was exercising notarial powers also explains, but does not excuse, his assertion that he did not review the contents of the letter before

witnessing the signature. While it seems almost inconceivable that he would not at least skim the letter before witnessing it, and while it is troubling that, by his own testimony, he barely gave the letter a cursory glance, respondent credibly testified that he had been advised that it was improper to read a document before notarizing it and thus it was not his practice to do so. *See Matter of Lustyik, supra* (in admonishing a judge who identified himself as "Hon." in witnessing an unsworn statement whose disturbing contents "should have raised red flags" – a statement that was as brief as the letter in the instant case – the Commission stated that "it seems inconceivable that respondent would not have at least glanced at the contents and understood the gist of it").

Significantly, when this incident occurred, respondent knew that he was under investigation by the Commission for misusing the prestige of his judicial office in requesting leniency in two conversations with law enforcement officers with respect to impending criminal charges against his son, an alleged ethical infraction that also involved Rule 100.2(C). While the nature of the conduct in the earlier matter is significantly different from the conduct here, the pending investigation in that case, which resulted in respondent's censure later that year (*Matter of Sullivan*, 2016 NYSCJC Annual Report 209), should have made him especially sensitive to his ethical obligations. Unfortunately, it appears that respondent's mistaken belief in his notarial authority blinded him to the ethical implications of affixing his judicial title to a document unrelated to his official duties.

Unlike the dissent, we concur with the conclusion of the referee that while respondent's testimony at the hearing regarding these events was "at times, muddled,

inconsistent and even wrong," there is insufficient proof that he was "intentionally deceptive" (Report p 14 *fn*). (Respondent testified that his memory of the actual "pen to paper moment," and of his earlier conversation with Mr. Scott's mother, was limited since the incidents were brief and had no particular significance to him at the time.) The referee, after carefully weighing the witnesses' credibility and evaluating the evidence, provided a thorough, thoughtful analysis of the evidence and specifically declined to find that respondent's testimony lacked candor (*Id.*)[3], and we accord due deference to his findings and conclusions. *See, e.g., Matter of Going*, 97 NY2d 121, 124 (2001).

As noted above, respondent was previously censured, pursuant to a joint recommendation, for seeking leniency for his son from law enforcement officers (*Matter of Sullivan*, *supra*). Even in view of this prior discipline, we believe that the sanction of removal is unwarranted, for the reasons we have noted above. We also note that at the hearing, respondent, as the referee found, acknowledged "with commendable candor" that his conduct was improper (Report p 10). We trust that in the future respondent will comport himself in strict accordance with the high ethical standards required of every judge.

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

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[3] We strongly disagree with Commission counsel's argument that the referee's statements that he did "not credit" respondent's testimony in several respects require the conclusion that the testimony lacked candor. We also reject counsel's suggestion that because the referee's refusal to find lack of candor was "relegated to a footnote," it should be given little weight.

Mr. Belluck, Mr. Harding, Judge Acosta, Mr. Cohen, Ms. Corngold, Judge Leach, Mr. Stoloff, Judge Weinstein and Ms. Yeboah concur.

Mr. Emery and Judge Klonick dissent as to the sanction and vote that respondent should be removed from office. Mr. Emery files an opinion, which Judge Klonick joins.

CERTIFICATION

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

Dated: March 13, 2017

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

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

DANIEL P. SULLIVAN,

a Justice of the Whitestown Town Court,
Oneida County.

DISSENTING OPINION
BY MR. EMERY, WHICH
JUDGE KLONICK JOINS

- -

Twenty months ago, the Commission censured respondent for seeking leniency for his son in two conversations with law enforcement officials. The discipline imposed in that case – censure – was based upon an Agreed Statement of Facts that contained a joint recommendation by staff and respondent as to the sanction. Now the Commission decides to again censure respondent despite the staff's strenuous assertion that removal is appropriate. The result in this case is unprecedented and unsupportable.

In respondent's first case, I dissented because I believed that in asking the police "for a very personal and very significant favor," respondent placed his personal family interests ahead of his ethical responsibility, conduct that required the sanction of removal. My opinion in that case states in part:

> 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." 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 [citations omitted] ... 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.... (*Matter of Sullivan*, 2016 NYSCJC Annual Report 209)

Respondent dodged a bullet on the first censure. Now that he has come before us again, having engaged in misconduct that violates the same ethical proscriptions, again he gets a strained rationale for a too-lenient result. Removal is plainly required this time.

Bolstered not only by his prior discipline for similar misconduct but also by the fact that respondent engaged in this new misconduct at a time when he knew that the Commission was investigating his earlier actions, it is difficult to see how the majority avoids this obvious result. Combined with his prior conduct, his obliviousness to ethical norms and his questionable credibility in this case, it is clear that the bench is foreign territory and should be permanently off limits.

It is undisputed that when respondent affixed his name and judicial title to Mr. Scott's letter to another court seeking to change his plea, he knew that the Commission was examining his use of his office on behalf of his son. He had already been questioned under oath about his actions in that matter. While he had not yet been served with formal charges, the nature and thrust of the pending inquiry were obvious. Nevertheless, when asked to "notarize" the letter of an acquaintance's son *that was addressed to another court*, respondent clearly failed to recognize the ethical implications and carefully wrote his name and judicial title on the document.

In my view, respondent's explanation that he did not review the letter because he understood that it was wrong to read a document before notarizing it is a

convenient obfuscation. Since respondent knew, as he testified at the hearing, that "Justice courts 101 is that you do not sign a document that goes to another court," it is inexplicable that he would not examine Mr. Scott's letter before signing it in order to ensure, at the very least, that putting his name and title on the document would not run afoul of that particular ethical proscription.

Respondent's story just does not hold water. Notary or not, no judge is obliged to put his or her name and judicial title on every document proffered to the judge out of court, and it is frankly absurd to suggest, as respondent does, that in any circumstances it might be reasonable to do so without, at least, a minimal review, at least to protect from obvious influence peddling. Put simply, respondent should not have placed his name and judicial title on a party's letter addressed to another court, and cannot avoid responsibility for that act by claiming he didn't read it. *See Matter of Sims*, 61 NY2d 349, 355 (1984) (where a judge signed an arrest warrant in a case in which her son was the complaining witness, her explanation that she did not notice her son's name and address [which was also the judge's address] on the attached information and that she relied on her clerk to check the propriety of documents submitted for her signature was "wholly inadequate to excuse her conduct").

Of course, even with respondent's explanation that he thought it would be improper to read the document he was notarizing, it is inconceivable that in the half minute or so that it might have taken him to carefully write out his name, title and town, he would not have noticed the addressee on the very short, neatly typed letter: "Dear Honorable Judge." Significantly, the referee stated that he did "not credit Respondent's

testimony that he did not read Mr. Scott's letter before he signed his name and affixed his judicial title to it and that he therefore did not know that it was addressed to a judge of another court" (Report p 13). The referee also observed that "it seems inconceivable that Respondent did not at least skim Mr. Scott's letter – which comprised only five lines of text – to determine its addressee..., contents and purpose" (Report pp 13-14). Apparently, the majority agrees with that analysis (*see* Determination p 11) – and I certainly do.

Nevertheless, in what seems to me to be a muddled contradiction, the majority also apparently accepts respondent's "credible" explanation as to why he did not read the document and therefore did not know that it was addressed to a judge, illogically relying on the referee's separate conclusion that "the record does not contain sufficient evidence that Respondent was intentionally deceptive" with respect to other issues in the case (Determination p 12; Report p 14 *fn*).[1]

To be clear, the referee's reluctance to make a categorical finding of lack of candor based on the staff's request does not diminish the referee's very pointed skepticism about respondent's assertion that he did not know that the letter was directed to a judge. The majority's conclusion that respondent's conduct was simply a mistake, rather than a knowing act to help a colleague's son, flies in the face of the evidence, the referee's specific finding and common sense.

Viewed alongside his conduct in the earlier matter, it is clear that

[1] If the majority accepts respondent's benign explanation for his failure to read the addressee on the letter, then his misconduct here is limited to his misunderstanding of his lack of authority to notarize. In that case a censure is too severe.

respondent, who is now being censured for the second time in his five years as a judge, at the very least too easily loses sight of his ethical responsibilities when personal circumstances intrude. Either that, or he simply does not understand the conflict between his values and instincts as a "good" parent and friend, and his duties as a judge. It is also clear to me that he never will understand this axiomatic dichotomy. Thus, in my view, the Commission fails in this case in our duty to protect the public from judges who have demonstrated "an unacceptable degree of insensitivity to the demands of judicial ethics" (*Matter of Conti*, 70 NY2d 416, 419 [1987]).

As a judge, required to "conduct his everyday affairs in a manner beyond reproach" and to observe "standards of conduct on a plane much higher than for those of society as a whole" (*Matter of Kuehnel*, 49 NY2d 465, 469 [1980]), respondent's insensitivity to his ethical obligations even at a time when he was presumably on high alert to avoid even the slightest transgression shows that he lacks a fundamental understanding of a judge's ethical responsibilities.

Accordingly, I dissent from the sanction imposed by the majority. Respondent should be removed.

Dated: March 13, 2017

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