

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

WILLIAM E. ABBOTT,

a Justice of the Palmyra Town Court and
Associate Justice of the Palmyra Village
Court, Wayne 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 (John J. Postel and David M. Duguay, Of Counsel)
for the Commission

James I. De Point for respondent

Respondent, William E. Abbott, a Justice of the Palmyra Town Court and
an Associate Justice of the Palmyra Village Court, Wayne County, was served with a

Formal Written Complaint dated November 19, 2018, containing one charge. The Formal Written Complaint alleged that respondent lent the prestige of judicial office to advance private interests by invoking his judicial position while asking the police for assistance in unlocking his personal vehicle and threatening to refuse to do arraignments in the future.

On January 22, 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 January 31, 2019, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Palmyra Town Court and an Associate Justice of the Palmyra Village Court, Wayne County, since 1979. His current term as Palmyra Town Justice expires on December 31, 2019, and his current term as Associate Justice of the Palmyra Village Court expires on December 2, 2019.

Respondent is not an attorney.

2. As set forth below, on November 28, 2017, respondent lent the prestige of his judicial office to advance his own private interest when he (i) invoked his judicial title while requesting that the Newark Police Department ("NPD") send an officer to unlock his personal motor vehicle in contravention of their established policy,

and (ii) threatened to refuse to do future arraignments for the NPD.

3. The Town of Palmyra and the Village of Newark, both located in Wayne County, adjoin one another. As the judge of a court whose jurisdiction adjoins the Village of Newark, respondent presides over the arraignments of defendants brought to Palmyra by NPD officers when the justice and associate justice of the Newark Village Court are unavailable.

4. On November 28, 2017, at approximately 3:00 PM, after accidentally locking the keys to his personal motor vehicle inside the vehicle, which was parked at the Newark-Wayne Community Hospital, respondent called 911 and thereafter spoke to Patricia Latta, an NPD clerk. Respondent asked Ms. Latta to send police personnel to unlock his personal vehicle.

5. Ms. Latta informed respondent that, pursuant to NPD policy, the police did not respond to requests to unlock cars unless it was an emergency, such as when a child is locked inside the vehicle. Ms. Latta offered to contact a local automotive garage to assist respondent.

6. Respondent replied that the police had “done this before for me,” and then said in a raised voice, “I am Judge Abbott of Palmyra and I just won’t do any arraignments for you anymore.”

7. Ms. Latta felt intimidated by respondent, told NPD Sergeant Michael Patton about the call and asked Sergeant Patton to assist respondent with his locked vehicle.

8. Sergeant Patton left the police facility and drove to respondent’s

location at the hospital. Pursuant to NPD policy to document the whereabouts of NPD officers, Ms. Latta notified the local 911 dispatcher that Sergeant Patton was responding to respondent's call for assistance with his car.

9. At the hospital parking lot, Sergeant Patton was unable to unlock respondent's car. Sergeant Patton then called a second officer, who arrived soon thereafter and unlocked the vehicle. Sergeant Patton spent approximately 20 minutes with respondent before the car was unlocked.

Additional Factors

10. Respondent recognizes that identifying himself to the police as a town justice while making a personal request for assistance with his personal vehicle was wrong.

11. Respondent recognizes that a willful refusal to conduct arraignments would be prejudicial to the administration of justice, and that his threat out of pique not to conduct arraignments was wrong and undermined public confidence in the courts, even if he did not intend to carry it out.

12. Respondent avers, and the Administrator has no evidence to the contrary, that at the time of his call to the police, respondent was experiencing physical irritation as a result of a recent medical procedure. Respondent acknowledges that notwithstanding any discomfort associated with the procedure, his actions and statements were improper.

13. Respondent was previously censured by the Commission in 1989 for soliciting an affidavit from a witness in a case pending in another court on behalf of the

defendant's counsel, who was a friend of the judge.

14. Respondent has been cooperative with the Commission throughout its inquiry and regrets his failure to abide by the Rules in this matter. He pledges to conduct himself in accordance with the Rules for the remainder of his tenure as a judge.

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)(2) and 100.4(A)(3) 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. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

The stipulated facts establish, and respondent has acknowledged, that he used his judicial prestige to advance his private interests in a successful effort to get the police to come to his immediate assistance one afternoon in November 2017 when he was locked out of his vehicle in a hospital parking lot. After calling 911 for assistance and being informed that the police do not respond to such requests except in emergencies, he identified himself as a judge and told the clerk that the police had "done this before for me." Such behavior violates well-established ethical principles prohibiting judges from lending the prestige of judicial office to advance private interests and requiring judges to observe high standards of conduct both on and off the bench (Rules, §§ 100.2[A], 100.2[C]).

In the circumstances here, identifying himself as a judge while asking for

assistance, standing alone, would have constituted an implicit request for special treatment, which is inconsistent with the high ethical standards required of every judge. *See Matter of D’Amanda*, 1990 NYSCJC Annual Report 91 (where a judge invoked his judicial position to avoid getting traffic tickets, the Commission stated: “The mere mention of his judicial office in order to obtain treatment not generally afforded to others violates the canons of judicial ethics”); *see also Matter of Werner*, 2003 NYSCJC Annual Report 198 (by showing his judicial identification to an officer during a traffic stop, judge “gratuitously interjected his judicial status into the incident, which was inappropriate ... even in the absence of an explicit request for special consideration”). When respondent added that the police had “done this before for me,” his request for special treatment became explicit, clearly conveying that his judicial status entitled him to deference and exempted him from policies that apply to others. Asking the police to depart from an established policy for his personal benefit was a particularly improper assertion of special influence (*see Matter of Michels*, 2019 NYSCJC Annual Report ____).

Compounding the misconduct, respondent then threatened to retaliate against the Newark police if they did not respond favorably to his request. By stating plainly that he would not provide judicial services (“I just won’t do any arraignments for you anymore”), he intimidated the clerk into asking a sergeant to respond to the request and, as a result, two police officers were diverted from their official duties while they assisted him with his personal vehicle, assistance that could have been provided by an automotive garage. There is no justification for a judge’s refusal to perform judicial duties out of personal pique, and even threatening to do so is detrimental to public

confidence not only in the integrity of the judge's court, but in the judiciary as a whole. *See Matter of Crosbie*, 1990 NYSCJC Annual Report 86 (judge called the police and threatened not to make himself available for arraignments in the adjoining village because he suspected the police had disclosed the arrest of his friend and political associate to the press); *Matter of Peters*, 2011 NYSCJC Annual Report 138 (judge told town board that he would not preside over cases scheduled by his former co-judge unless his salary was increased). Performing arraignments for police from an adjoining village is part of respondent's duties, and a judge is required to perform all the duties of judicial office diligently and impartially and to act "at all times in a manner that promotes public confidence in the integrity ... of the judiciary" (Rules §§100.2[A], 100.3).

As the Court of Appeals has stated, even off the bench a judge "remain[s] cloaked figuratively, with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others" (*Matter of Kuehnel*, 49 NY2d 465, 469 [1980]).

In considering the appropriate sanction, we note that respondent was censured in 1989 for using his judicial prestige to advance private interests by soliciting an affidavit from a witness as a favor to a lawyer-friend (*Matter of Abbott*, 1990 NYSCJC Annual Report 69); in that case, the Commission found that respondent violated Rule 100.2(C) by engaging in conduct that "conveyed the impression ... that [the judge's friend] was in a special position to influence him." While we are troubled by the misconduct depicted here, especially in light of respondent's prior discipline, we have also considered that respondent has served as a judge for 40 years, has acknowledged his

misconduct and expressed regret for his actions, and “pledges to conduct himself in accordance with the Rules for the remainder of his tenure as a judge.” We are also mindful of respondent’s claim that at the time of the incident he was affected by physical discomfort as a result of a recent medical procedure.

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

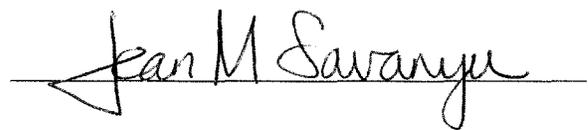
Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzaelli, Judge Miller, Mr. Raskin and Mr. Stoloff concur.

Ms. Yeboah was not present.

CERTIFICATION

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

Dated: February 7, 2019

A handwritten signature in black ink that reads "Jean M. Savanyu". The signature is written in a cursive style and is positioned above a horizontal line.

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