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

JAMES A. ALUZZI,

a Justice of the Volney Town Court,
Oswego County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Honorable Rolando T. Acosta
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, David M. Duguay and Kathleen Martin, Of Counsel) for the Commission

Robert F. Julian for respondent

Respondent, James A. Aluzzi, a Justice of the Volney Town Court, Oswego County, was served with a Formal Written Complaint dated June 15, 2016, containing one charge. The Formal Written Complaint alleged that respondent lent the prestige of

judicial office to advance private interests by seeking special consideration from court officials in connection with a friend's traffic ticket. Respondent filed a verified Answer dated July 19, 2016.

By Order dated September 21, 2016, the Commission designated Gary Muldoon, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on November 18, 2016, in Syracuse. The referee filed a report dated February 17, 2017.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Commission counsel recommended the sanction of removal, and respondent's brief argued that removal was too harsh. On April 27, 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 Volney Town Court, Oswego County, since 2003. His current term expires on December 31, 2017. He is not an attorney.

2. On April 10, 2015, D. S. was issued a Uniform Traffic Ticket for having tinted windows on his vehicle in violation of Section 375.12-a, subdivision (b)(2) of the Vehicle and Traffic Law. The ticket was returnable in the Fulton City Court on April 23, 2015.

3. Respondent was acquainted with Mr. S. from seeing him around town and from businesses that Mr. S. owned. The two did not have a social relationship.

4. A day or two before April 20, 2015, Mr. S. drove to respondent's recycling business and asked respondent to help him get the ticket dismissed. Respondent told Mr. S. that he would try to help get the ticket dismissed, and took the ticket.

5. At the hearing before the referee, respondent acknowledged that when he agreed to help Mr. S. get his traffic ticket dismissed, he knew that doing so was a "big mistake" and was inconsistent with his ethical obligations; he had learned through his training as a judge that ticket-fixing was serious misconduct and that judges are subject to removal for the practice. He testified that he wanted to help Mr. S., who was sick and in his 70's, as a personal favor.

6. In April 2015 Judge David Hawthorne was the full-time Fulton City Court Judge. The Oswego County District Attorney prosecutes traffic tickets in the Fulton City Court, and every Thursday, traffic arraignments were conducted and an assistant district attorney was available at the court beginning at 9:00 AM to discuss traffic tickets with defendants and attorneys.

7. On April 20, 2015, respondent went to the window of the Fulton City Court clerk's office and spoke to a court office assistant, Shelly Fantom. Ms. Fantom knew respondent as a Town Justice from various interactions over the years in connection with respondent's role as a judge. The Town of Volney adjoins the City of Fulton, and respondent occasionally dropped off court papers in connection with arraignments he had performed.

8. Respondent gestured to Ms. Fantom to come out, and when she opened the security door, he attempted to hand Mr. S.'s ticket to her and said, "Give this

to Judge Hawthorne and have him dismiss it for me." In doing so, respondent understood that he was using his judicial status to help Mr. S. get his traffic ticket dismissed.

9. Ms. Fantom raised her hands in a "stop" motion and said to respondent, "We don't do that here. If you want that ticket reduced or dismissed, you have to go through the DA's office." Ms. Fantom's statements were consistent with both court policy and the policy of the District Attorney's office, as she understood it.

10. Respondent continued holding out the ticket toward Ms. Fantom and stated, "Just take it, and just give it to him." Ms. Fantom did not take the ticket because she understood that "[t]he court is not allowed to do that."

11. Respondent put the ticket on the counter. Pointing to the ticket, respondent told Ms. Fantom to write his name and telephone number on it and to have Judge Hawthorne call him about the ticket.

12. As directed, Ms. Fantom wrote respondent's name ("Jim Aluzzi") and telephone number on the ticket. She then took the ticket and time-stamped it, in accordance with office policy, "RECEIVED Fulton City Court 2015 APR 20 AM 8:54." Ms. Fantom testified, "I'm a clerk and he's a judge, and he's telling me to take it, so I should take it." Ms. Fantom was concerned that she would be in trouble for taking the traffic ticket at respondent's direction.

13. Ms. Fantom also wrote a note documenting her interaction with respondent that states: "Jim Aluzzi came to the window with this ticket. Advised me to 'give this to the Judge and have him Dismiss it for me.'" That afternoon, she gave Mr. S.'s ticket to the chief clerk, Maureen Ball, and told her what had occurred.

14. The next morning, Ms. Ball took the ticket to Judge Hawthorne and explained what Ms. Fantom had told her. They agreed that they should contact the District Administrative Office about respondent's actions, and Ms. Ball sent an email describing the incident to the District Executive and to Judge James Tormey, Administrative Judge for the Fifth Judicial District.

15. On Thursday, April 23, 2015, the return date of the ticket, respondent returned to the Fulton City Court between 9:00 and 9:30 AM and again went to the window of the court clerk's office. When Ms. Ball came to the window, respondent asked to speak with her at the door. Ms. Ball knew respondent to be a Volney Town Justice and had seen him on numerous occasions at the Fulton City Court on court-related business.

16. Respondent asked Ms. Ball to find out from Judge Hawthorne about Mr. S.'s ticket, to make sure "that it hadn't got lost in the shuffle." Ms. Ball said she would do so.

17. While respondent waited, Ms. Ball went into the courtroom where Judge Hawthorne was on the bench and asked him to take a recess to discuss the matter. Judge Hawthorne instructed her to call Judge Tormey before she spoke with respondent. Ms. Ball was unable to reach Judge Tormey but spoke with Judge Tormey's secretary, Kathy Vaeth. Ms. Vaeth directed her to give respondent the name and telephone number of Judge David Gideon, who supervises town and village justices in the Fifth Judicial District. Ms. Ball wrote Judge Gideon's name and telephone number on a Post-it note, which she gave to respondent, who was still waiting some 90 minutes after she had left

him.

18. Respondent then stated that Mr. S. was willing to plead guilty to the charge and that he was sick, but "could come right down" to the court. Ms. Ball advised respondent that Mr. S. had 60 days to appear in court to resolve the ticket before his license would be suspended. Respondent asked if the assistant district attorney was still at the court, and Ms. Ball advised that he was not.

19. On April 30, 2015, Judge Hawthorne dismissed Mr. S.'s traffic ticket pursuant to a motion by the District Attorney's office, whose written recommendation indicated "Ticket not proper."

20. Respondent testified at the hearing that his intent on April 23, 2015, was to retrieve Mr. S.'s ticket and get an attorney for Mr. S., but he acknowledged that in his initial conversation with the chief clerk he only asked about the status of the ticket, that he told Ms. Ball that he did not want it to get "lost in the shuffle," and that he did not ask for the ticket to be returned to him. Only after the clerk had returned and indicated that he should contact Judge Gideon did respondent tell her that Mr. S. could come immediately to the court and ask whether Mr. S. could meet with the assistant district attorney.

21. On March 3, 2015, less than two months before the events described above, respondent's mother died. Respondent had tended to her in her last years and was still deeply affected by her death at the time of the April 2015 incident.

22. At the hearing and oral argument, respondent was contrite and acknowledged that his actions were improper.

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(B) 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.

It is undisputed that respondent used the prestige of his judicial office in an attempt to obtain special consideration for an acquaintance who had received a traffic ticket. With knowledge that such conduct was prohibited by the ethical standards required of judges, he violated those standards by agreeing to help D. S. get his ticket dismissed, taking the ticket to the Fulton City Court, and, with an explicit directive that unmistakably conveyed his request for favoritism, asking a court assistant to give it to the judge handling the matter and "[h]ave him dismiss it for me." Even after the clerk rebuffed him ("We don't do that here"), he persisted in his efforts ("Just take it, and just give it to him"), and when the clerk refused again to take the ticket, he placed it on the counter and directed her to write his name and telephone number on it. Feeling pressured because of respondent's judicial status, the clerk reluctantly complied with his directive and took the ticket although she knew that doing so was contrary to the proper procedures and feared she would get into trouble. Three days later, on the return date of the ticket, respondent returned to the court and asked about the ticket to make sure it did not get

"lost in the shuffle." Not until the chief clerk referred him to a supervising judge did respondent desist from his efforts and tell the clerk that the defendant was willing to meet immediately with the assistant district attorney to discuss the matter.

By attempting to obtain a favorable disposition of a traffic ticket based on an assertion of special influence, respondent engaged in ticket-fixing, which is a form of favoritism that has long been condemned. *E.g.*, *Matter of Byrne*, 47 NY2d (b) (Ct on the Judiciary 1979); *Matter of Dixon*, 47 NY2d 523 (1979); *Matter of Conti*, 70 NY2d 416 (1987). Such conduct violates fundamental 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]).

Ticket-fixing – asserting special influence to obtain favorable treatment in traffic cases, or acceding to requests for special consideration – strikes at the heart of our system of justice, which is based on equal treatment for all. As the Commission stated 40 years ago in a special report, ticket-fixing results in "two systems of justice, one for the average citizen and another for people with influence" ("*Ticket-Fixing: The Assertion of Influence in Traffic Cases*," NYSCJC Interim Report, 6/20/1977, p 16). In *Matter of Byrne*, *supra*, 47 NY2d at (b), (c), the Court on the Judiciary equated ticket-fixing with favoritism, which "is wrong, and always has been wrong," and declared that "a judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court, is guilty of *malum in se* misconduct constituting cause for discipline." From the late 1970s, when the Commission uncovered a widespread pattern

of ticket-fixing throughout the state, through the mid-1980s, some 150 judges were publicly disciplined for the practice, including one who was removed for a single incident of ticket-fixing after a previous censure for similar conduct (*Matter of Reedy*, 64 NY2d 299 [1985]). In *Reedy*, the Court of Appeals declared that "[t]icket-fixing is misconduct of such gravity as to warrant removal, even if this matter were [the judge's] only transgression" (*Id* at 302). Since then, the prevalence of such behavior has declined sharply[1], and with the benefit of this significant body of case law, every judge in New York State should be cognizant that such conduct is prohibited.

Indeed, respondent, who had been a judge for twelve years at the time of his actions here, has acknowledged that when he agreed to help Mr. S. get his ticket dismissed, he knew that doing so was inconsistent with his ethical obligations; he was also aware, through his training as a judge, that ticket-fixing is serious misconduct and that judges are subject to removal for the practice. Nevertheless, despite ample time to reflect on the matter (he went to the court a day or two later), respondent asked the Fulton City Court judge, using a court assistant as an intermediary, to dismiss the ticket based on nothing more than respondent's personal request. Although respondent did not explicitly invoke his judicial office, the court personnel knew of his position because of his prior dealings with the court, and thus his request was implicitly supported by his judicial status (*see Matter of Lonschein*, 50 NY2d 569, 572-73 [1980]). Respondent's behavior in these circumstances showed a clear disregard of basic ethical precepts, which are

[1] After more than a decade with no cases involving such behavior, there have been ten cases involving various kinds of ticket-fixing in the past 15 years.

fundamental to ensuring public confidence in the fairness and integrity of judicial proceedings.

As to respondent's intent in returning to the Fulton City Court three days after his initial visit, his actions seem to belie his claim – and the referee's finding – that he went to the court because he "on his own recognized that his conduct was improper and attempted to retrieve the ticket" (Report, p 12). Although a referee's findings are entitled to due deference, the Commission is not bound by them (*Matter of Marshall*, 8 NY3d 741, 743 [2007]), and we find little evidence in the record to support this particular finding except for respondent's testimony about what was in his mind at the time. More persuasive, in our view, are respondent's admitted actions: that he told the chief clerk that he did not want the ticket to get "lost," that he did not ask for the ticket back, and that he did not tell the clerk that the defendant was willing to meet with the assistant district attorney until the clerk, after talking to Judge Hawthorne and Judge Tormey's secretary, referred respondent to his supervising judge. We also note that attempting to get the ticket back could be viewed as an attempt to cover up the earlier misconduct since respondent's name and telephone number were written on it. We thus conclude that respondent's intent in his second visit to the court is, at best, uncertain, though the evidence seems to weigh against respondent's claim. Moreover, even if it were proved that respondent attempted to undo his wrongdoing by retrieving the ticket three days later, that would not negate his misconduct on the earlier date, which is the primary basis for our finding of wrongdoing.

It should not inure to respondent's benefit that the Fulton City Court

personnel, recognizing the impropriety of respondent's request for favoritism, responded appropriately to his breach of judicial ethics and did not effectuate the requested "fix"; nor is it ameliorating that the violation the defendant was charged with was a minor infraction that was ultimately dismissed on the prosecutor's recommendation. Those facts are irrelevant to the impropriety of respondent's intervention in the case. Respondent should have recognized that had Judge Hawthorne acceded to respondent's request, he too would have been implicated in serious misconduct.

In considering the appropriate sanction, we are mindful that while the Court of Appeals has declared that "as a general rule, intervention in a proceeding in another court should result in removal," the Court also stated that that principle, enunciated in *Matter of Reedy*, *supra*, did not "establish[ ] a per se rule of removal in all cases, precluding consideration of mitigating factors" (*Matter of Edwards*, 67 NY2d 153, 155 [1986] [reducing the sanction from removal to censure for judge who made an implicit request for special consideration in several phone calls and letters to the judge handling his son's traffic case]). *See also, e.g., Matter of Lew*, 2009 NYSCJC Annual Report 130 (censuring judge who dismissed a Speeding charge based on *ex parte* emails from his friend, the defendant's husband, who was serving in Iraq); *Matter of LaClair*, 2006 NYSCJC Annual Report 199 (censuring judge who sought special consideration for two defendants charged with Speeding; one of the incidents had occurred eight years earlier, and the judge disclosed it to the Commission during its investigation). Of the ten cases in the past 15 years involving judges who engaged in various types of ticket-fixing, many involved a joint recommendation as to the sanction, and only one judge was removed, in

a case that involved two incidents and particularly egregious circumstances (*Matter of Schilling*, 2013 NYSCJC Annual Report 286). Thus, we must explore "the presence or absence of mitigating and aggravating circumstances" in this case to determine the severity of the sanction to be imposed (*Matter of Rater*, 69 NY2d 208, 209 [1987]; *Matter of Edwards*, *supra*, 67 NY2d at 155).

In doing so, we have noted several aggravating factors, including that respondent knowingly violated the ethical standards by using his judicial influence to advance private interests and that he persisted in his efforts even when the court clerk's resistance should have brought the impropriety of his actions to his attention. However, we are also mindful that the referee, who heard and assessed the witnesses' testimony, cited numerous factors in mitigation. We conclude, based on our own careful review of the entire record, that there is compelling mitigation presented here. Notably, throughout the proceedings respondent forthrightly acknowledged that his actions were improper (his answer to the Formal Written Complaint admits the charge in its entirety) and he appears to be sincerely remorseful. Further, we note that this incident appears to be an isolated occurrence and that respondent has had an otherwise unblemished record in 14 years as a judge. We have also considered that, as the referee found, respondent did not act for personal gain, that he believed Mr. S. to be in poor health, and that at the time of these events, respondent was deeply affected by his mother's recent death and, as he testified, "wasn't thinking properly." To be sure, by using his judicial influence in an attempt to get a minor traffic charge dismissed for an individual whom, the record indicates, he barely knew, respondent clearly showed extremely poor judgment, but we recognize that

his judgment may have been affected by his personal circumstances at the time (*see Matter of Edwards*, *supra*, 67 NY2d at 155).

Weighing these factors, we have concluded, based on the particular facts presented here, that a public censure is appropriate and reflects the seriousness with which we view misconduct of this nature. We emphasize that ticket-fixing will not be tolerated and that any such conduct will be condemned with strong measures, including, in appropriate circumstances in the future, the sanction of removal.

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

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

Ms. Grays was not present.

CERTIFICATION

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

Dated: June 26, 2017

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