

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

KENNETH J. MARBOT,

a Justice of the Pittstown Town Court,
Rensselaer County.

**AGREED
STATEMENT OF FACTS**

Subject to the approval of the Commission on Judicial Conduct

("Commission"):

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, and Honorable Kenneth J. Marbot ("Respondent"), who is represented in this proceeding by Peter J. Moschetti, Jr., of Anderson, Moschetti and Taffany, PLLC, that further proceedings are waived and that the Commission shall make its determination upon the following facts, which shall constitute the entire record in lieu of a hearing.

1. Respondent is not attorney. He has been a Justice of the Pittstown Town Court, Rensselaer County, since 2009. Respondent's current term expires on December 31, 2016.
2. Respondent was served with a Formal Written Complaint dated June 13, 2013, a copy of which is appended as Exhibit 1. He filed an Answer dated June 19, 2013, a copy of which is appended as Exhibit 2.

As to Charge I

3. In December 2011 and January 2012, Respondent failed to disqualify himself and presided over *People v Joshua Wysocki*, notwithstanding that the defendant, who was charged with speeding, is the nephew of Respondent's wife.

4. Joshua Wysocki is the son of the sister of Respondent's wife. Respondent was aware of the relationship at all times relevant to this matter and socialized with Mr. Wysocki at large family gatherings about two to three times a year.

5. On or about October 24, 2011, Joshua Wysocki received a ticket for speeding at 60 miles per hour in a 45-miles-per-hour zone. The ticket was returnable in the Pittstown Town Court on November 16, 2011. The defendant failed to appear on the return date and failed to enter a plea by mail.

6. On or about December 16, 2011, Joshua Wysocki telephoned the Pittstown Town Court and stated to the court clerk that he had lost his ticket. The clerk advised him to appear in court on December 21, 2011.

7. On December 21, 2011, Joshua Wysocki appeared before Respondent and entered a plea of not guilty to the speeding charge. Respondent recognized the defendant as his wife's nephew, accepted the defendant's not guilty plea and adjourned the matter for action by the Assistant District Attorney.

8. Pursuant to court policy, the clerk forwarded the *Wysocki* ticket and the defendant's driving abstract to Assistant District Attorney Arthur Glass, who sent the court a written plea offer, agreeing to a reduction of the speeding charge to a parking violation. The plea agreement provided that the fine would be determined by the court.

9. On January 18, 2012, Joshua Wysocki appeared before Respondent, who accepted the defendant's guilty plea to the reduced parking violation and imposed a fine of \$25. Respondent also ordered the defendant to complete a defensive driving course. The defendant later provided proof to the court that he had successfully completed the course.

10. In presiding over *Wysocki*, Respondent failed to disclose his relationship with the defendant.

11. By reason of the foregoing, Respondent 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, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law, including but not limited to Section 14 of the Judiciary Law, and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that he failed to disqualify himself in a proceeding in which his impartiality might reasonably be questioned, in violation of Sections 100.3(E)(1) and 100.3(E)(1)(d)(i) of the Rules.

Additional Factors

12. Respondent has at all times been cooperative with the Commission and contrite.

13. Respondent asserts that the *Wysocki* ticket was treated no differently than any similar ticket, but he now recognizes that it was nevertheless improper for him to have presided over a matter involving his wife's nephew.

IT IS FURTHER STIPULATED AND AGREED that Respondent withdraws from his Answer any denials or defenses inconsistent with this Agreed Statement of Facts.

IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Admonition based upon the judicial misconduct set forth above.

IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Admonition without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the Respondent or the Administrator and Counsel to the Commission.

Dated: 7/18/13



Honorable Kenneth J. Marbot
Respondent

Dated: 7/18/13



Peter J. Moschetti, Jr., Esq.
Anderson, Moschetti and Taffany, PLLC

Dated: July 25, 2013



Robert H. Tembeckjian, Esq.
Administrator & Counsel to the Commission
(Cathleen S. Cenci, Of Counsel)

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

KENNETH J. MARBOT,

a Justice of the Pittstown Town Court,
Rensselaer County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, Kenneth J. Marbot, a Justice of the Pittstown Town Court, Rensselaer County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon Respondent the annexed Formal Written Complaint; and that, in accordance with said statute, Respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon him to serve the Commission at its Albany office, Corning Tower, Suite 2301, Albany, New York 12223, with his verified Answer to the specific paragraphs of the Complaint.

Dated: June 13, 2013
New York, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway
Suite 1200
New York, New York 10006
(646) 386-4800

To: Peter J. Moschetti, Esq.
Attorney for Respondent
26 Century Hill Drive
Suite 206
Latham, New York 12110

EXHIBIT 1

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

**FORMAL
WRITTEN COMPLAINT**

KENNETH J. MARBOT,

a Justice of the Pittstown Town Court,
Rensselaer County.

1. Article 6, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct (“Commission”), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.

2. The Commission has directed that a Formal Written Complaint be drawn and served upon Kenneth J. Marbot (“Respondent”), a Justice of the Pittstown Town Court, Rensselaer County.

3. The factual allegations set forth in Charge I state acts of judicial misconduct by Respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct (“Rules”).

4. Respondent has been a Justice of the Pittstown Town Court, Rensselaer County, since 2009. Respondent’s current term expires on December 31, 2016. Respondent is not an attorney.

CHARGE I

5. In or about December 2011 and January 2012, Respondent failed to disqualify himself and presided over *People v Joshua Wysocki*, notwithstanding that the defendant, who was charged with speeding, is the nephew of Respondent's wife.

Specifications to Charge I

6. Joshua Wysocki is the son of the sister of Respondent's wife. Respondent was aware of the relationship at all times relevant to this matter and would socialize with Mr. Wysocki at family gatherings.

7. On or about October 24, 2011, Joshua Wysocki received a ticket for speeding at 60 miles per hour in a 45-miles-per-hour zone. The ticket was returnable in the Pittstown Town Court on November 16, 2011. The defendant failed to appear on the return date and failed to enter a plea by mail.

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10. Pursuant to court policy, the clerk forwarded the *Wysocki* ticket and the defendant's driving abstract to Assistant District Attorney Arthur Glass, who sent the

court a written plea offer, agreeing to a reduction of the speeding charge to a parking violation. The plea agreement provided that the fine would be determined by the court.

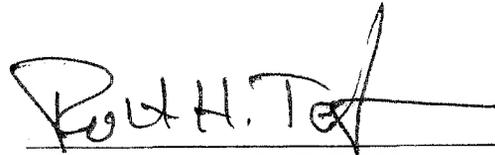
11. On or about January 18, 2012, Joshua Wysocki appeared before Respondent, who accepted the defendant's guilty plea to the reduced parking violation and imposed a fine of \$25. Respondent also ordered the defendant to complete a defensive driving course. The defendant later provided proof to the court that he had successfully completed the course.

12. In presiding over *Wysocki*, Respondent failed to disclose his relationship with the defendant.

13. By reason of the foregoing, Respondent 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, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law, including but not limited to Section 14 of the Judiciary Law, and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that he failed to disqualify himself in a proceeding in which his impartiality might reasonably be questioned, in violation of Sections 100.3(E)(1) and 100.3(E)(1)(d)(i) of the Rules.

WHEREFORE, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: June 13, 2013
New York, New York

A handwritten signature in black ink, appearing to read "Robert H. Tembeckjian", written over a horizontal line.

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway
Suite 1200
New York, New York 10006
(646) 386-4800

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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Of the Judiciary Law in Relation to

VERIFIED ANSWER

KENNETH J. MARBOT,

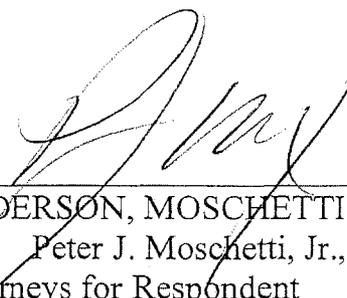
A Justice of the Pittstown Town Court,
Rensselaer County.

The respondent, Kenneth J. Marbot, through his attorneys, Anderson, Moschetti & Taffany, PLLC, submits the following as a Verified Answer to the complaint herein:

1. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "1", "2", "7", "8" and "10.
2. Respondent denies the allegations set forth in paragraphs "3" and "13".

WHEREFORE, by reason of the foregoing, the respondent demands that the complaint herein be dismissed, with such other and further relief as the Commission may deem just and proper.

DATED: June 19, 2013



ANDERSON, MOSCHETTI & TAFFANY, PLLC
By: Peter J. Moschetti, Jr., Esq.
Attorneys for Respondent
Office and P.O. Address
26 Century Hill Drive, Suite 206
Latham, New York 12110
(518) 785-4900

EXHIBIT 2

TO: STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
61 Broadway, Suite 1200
New York, New York 10006

