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

MICHAEL L. TAWIL,

a Justice of the Ossining Town Court,
Westchester County.

DETERMINATION

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.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Melissa DiPalo, Of Counsel), for the Commission

Scalise & Hamilton, PC (by Deborah A. Scalise) for respondent

Respondent, Michael A. Tawil, a Justice of the Ossining Town Court, Westchester County, was served with a Formal Written Complaint dated May 22, 2019, containing two charges. Charge I of the Formal Written Complaint alleged that in the summer of

2016, respondent entered a gift shop and publicly confronted store employees about a display of smoking and/or drug-related paraphernalia in the store's window display, used profanity and invoked his judicial office in an attempt to have the items removed from the window display. Charge II of the Formal Written Complaint alleged that on March 8 and March 9, 2017, while acting as a private defense attorney in *Carolyn Thomas v. Quest Livery Services, LLC D/B/A Bee Bee Car Services, Pedro Roberto Batista, Nelson J. Urbina and Methuran Bahiro*, respondent (A) made an insensitive remark about a co-defendant's ethnicity during his summation and (B) asserted his judicial office to advance his private interests when confronted about the impropriety of his summation remark.

On October 9, 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 December 5, 2019, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent was admitted to the practice of law in New York in 1992. He has been a part-time Justice of the Ossining Town Court, Westchester County, since 2012. Respondent's current term expires on December 31, 2019. He is also an attorney in private practice.

As to Charge I of the Formal Written Complaint

2. In the summer of 2016, respondent entered a gift shop and publicly

confronted store employees about a display of smoking and/or drug-related paraphernalia in the store's window display, used profanity and invoked his judicial office in an attempt to have the items removed from the window display.

3. Gracie's Gifts is a gift shop, located within a pharmacy, in Ossining, New York. In 2016, Gracie's Gifts displayed certain smoking and/or drug-related paraphernalia, including glass pipes and hookahs, in a store window visible to pedestrian and vehicular traffic.

4. In the summer of 2016, respondent entered Gracie's Gifts to ask the store's manager to remove the smoking and/or drug-related paraphernalia from the store's window display.

5. Respondent approached an employee of the store, Syed Rahman ("Syed"), and said, "What is this bullshit?" referring to the items in the display. Respondent directed Syed to "take this shit down," and said that stores in his town should not sell items used for illegal drugs.

6. When Syed explained to respondent that the products were "legal" and used to smoke tobacco, respondent replied, "Bullshit, I have never seen anyone smoke tobacco from a crack pipe," and repeated, "Take this shit down." Syed then suggested that respondent leave the store.

7. Respondent also spoke with Syed's father, who was working in the back of the store and whose name is also Syed Rahman ("Mr. Rahman"). Respondent pointed to items in the display and told Mr. Rahman that he lived in town, and that he did not want the drug-related items sold in his town.

8. At some point, an officer from the Ossining Police Department entered the store to conduct a safety check of the pharmacy. The police officer approached respondent and Mr. Rahman, said "Hi Judge" to respondent, and told respondent that the items in the display were legal.

9. Respondent referred to his judicial office during the encounter with the store employees.

As to Charge II of the Formal Written Complaint

10. On March 8 and March 9, 2017, respondent appeared as a private defense attorney in the liability phase of a bifurcated trial in *Carolyn Thomas v. Quest Livery Services, LLC et al.*, an action to recover damages for personal injuries sustained by the plaintiff in a car accident.

11. Respondent represented defendants Nelson J. Urbina and Methuran Bahiro. A co-defendant, Pedro Roberto Batista, is of Hispanic descent. Supreme Court Justice Genine D. Edwards presided over the trial in Supreme Court, Kings County.

12. On March 8, 2017, respondent delivered a summation in which he made the following statement:

> On the other hand, you have Mr. Batista. He's on the phone talking to his female girlfriend or someone. He's selling cell phones to his passenger, he's listening to the radio, he said they're having a good time in the car. They're having a good time and he's paying attention to the passenger, to his girlfriend, probably to the radio. For all we know, he could be frying up some platanos in the front seat [emphasis added]. We don't know. But he's not paying attention to the road, what's going on around him, okay.

13. The next day, on March 9, 2017, before the jury was charged, Judge Edwards conducted an off-the-record conference with respondent and his client's insurance adjuster in chambers. At the conference, Judge Edwards told respondent *inter alia* that his summation remark about "platanos" was "racist." Judge Edwards told respondent, "What's going to happen now is your client is going to pay $25,000 to settle this case right now or I am going to report you to the Appellate Division Second Department. That's your license counselor."

14. Respondent replied that he was "a current Part-Time Town Justice" and that he would never "intentionally make a racist comment." Respondent would testify that he was fearful of the threat and nervous when he said this.

15. Respondent subsequently sought an opinion from the Advisory Committee on Judicial Ethics ("Committee") on whether he must report Judge Edwards to the Commission because, while presiding over a case, she threatened to file a disciplinary complaint against him in an attempt to force his client to settle the case for a particular sum. The Committee advised that respondent must report Judge Edwards to the Commission and, in filing a complaint against Judge Edwards, respondent disclosed his conduct to the Commission. Upon reviewing respondent's complaint against Judge Edwards, the Commission authorized investigation of respondent's own conduct in the matter.

Additional Factors

16. Respondent has been cooperative and contrite throughout the Commission's inquiry and has had an otherwise unblemished career as a judge.

17. Respondent recognizes that it was improper both to confront the gift shop employees and to invoke his judicial office while demanding that they rearrange their storefront window display.

18. Respondent also recognizes that it was improper to invoke his judicial office when speaking to Judge Edwards about his summation in the *Thomas* case.

19. Respondent regrets his summation remark in *Thomas* about "frying up some platanos" and recognizes that the remark, which he intended to be humorous, was insensitive and injudicious.

20. Respondent recognizes that a judge's conduct – even off the bench, including when acting as an attorney – may reflect adversely on the integrity of the judiciary. Respondent apologizes to the bench, bar and public.

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)(1), (2) and (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. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

Respondent acted in a manner that was inconsistent with his obligations to maintain high standards of conduct and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." (Rules, §§100.1, 100.2(A)) The Rules specifically provide that "[a] judge shall not lend the prestige of

judicial office to advance the private interests of the judge or others. . .." (Rules, §100.2(C)) Respondent acknowledged that on two occasions he inappropriately invoked his judicial office to advance his private interests. Respondent admittedly invoked his judicial office when he confronted the employees of the gift shop as part of his effort to have the store's window display changed. Compounding his misconduct during his visit to the store, respondent repeatedly used profanity when speaking with the store employees. Respondent again invoked his judicial office when the presiding judge confronted him about his remark during his summation in the *Thomas* matter. At that time, respondent improperly identified himself as a current part-time town justice in response to the presiding judge's statements.

Respondent's behavior violated the ethical rule 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) and 100.4) A judge's off-the-bench conduct must comport with high ethical standards to ensure the public's respect for the judiciary as a whole since "[w]herever he travels, a Judge carries the mantle of his esteemed office with him." *Matter of Steinberg*, 51 N.Y.2d 74, 81 (1980) In *Matter of Lonschein*, 50 N.Y.2d 569 (1980), the Court of Appeals stated,

> no Judge should ever . . . 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.

Id. at 571-572 (citations omitted). In *Matter of Werner*, 2003 NYSCJC Annual Report 198, the Commission held, "[b]y producing a card identifying him as a judge and handing it to the police officer who had stopped respondent's car, respondent gratuitously interjected his judicial status into the incident, which was inappropriate . . . Respondent's conduct was improper even in the absence of an explicit request for special consideration." *Id.* at 199 (citations omitted). In *Matter of D'Amanda*, 1990 NYSCJC Ann. Rep. 91, the Commission held, "[t]he mere mention of his judicial office in order to obtain treatment not generally afforded to others violates the canons of judicial ethics." *Id.* at 94. Here, respondent referred to his judicial office while speaking with the store employees. On another occasion, he identified himself as a judge after being confronted about his summation comment. In both instances, respondent created the appearance that he expected special treatment and deference because of his status as a judge. Such conduct was improper and violated the Rules.

In addition to invoking his judicial office, respondent also made a demeaning remark during his summation in the *Thomas* case. Respondent's summation comment showed an insensitivity to the special ethical obligations of judges and detracted from the dignity of judicial office. After the presiding judge confronted him about his comment, respondent improperly invoked his judicial office. While we agree with our colleague that all attorneys (including those who are judges) have wide latitude in presenting argument to the jury, we believe that the tone of the comment and the assertion of his judicial office warrant a finding of misconduct.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent was cooperative with the Commission. He admitted that his conduct was improper and warrants public discipline. We also note that respondent has expressed remorse for his conduct.

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 Mazzarelli, Judge Miller, and Ms. Yeboah concur.

Mr. Raskin files an opinion concurring in part and dissenting in part.

CERTIFICATION

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

Dated: December 12, 2019

Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

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OPINION BY MR. RASKIN CONCURRING IN PART AND DISSENTING IN PART

I concur with the majority determination and sanction and respectfully dissent as to the characterization of respondent's "platanos" comment referenced in Charge II as "demeaning."

This case arose out of a contentious exchange between a trial judge and respondent attorney, who is also a town justice, during a personal injury trial before a jury in Kings County. In an effort to coerce a settlement, the trial judge threatened to report respondent to the Appellate Division stating, "that's your license counselor," based on her conclusion that respondent's comment during his summation was "racist." The Commission recently issued a determination finding that the trial judge should be admonished for her conduct. In the course of reviewing respondent's complaint against the trial judge, the Commission authorized an investigation of respondent's own conduct in the matter.

My learned colleagues concluded that respondent uttered a "demeaning" remark during his summation. I cannot apprehend the impropriety or insensitivity of respondent's words in the absence of context. While the statement respondent made may well be demeaning, it may also be benign, strategic, or otherwise inoffensive when viewed in the framework of the trial and the issues before the jury. Based upon the facts presented to the Commission and lacking perspective on the trial, I cannot conclude that respondent's comment was "demeaning."

This limited analysis does not otherwise disturb my concurrence with the majority as to determination and sanction.

Dated: December 12, 2019

Marvin Ray Raskin, Member
New York State
Commission on Judicial Conduct