

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 J. MIRANDA,

a Justice of the Shandaken Town Court,
Ulster 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, Administrator and Counsel to the Commission, and Honorable Michael J. Miranda (“Respondent”), who is represented in this proceeding by Alfred B. Mainetti, Esq. of Mainetti & Mainetti, P.C., 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 was admitted to the practice of law in New York in 1975. He has been a Justice of the Shandaken Town Court, Ulster County, since 2006. His current term expires on December 31, 2021.

2. Respondent was served with a Formal Written Complaint dated February 14, 2019. He filed a Verified Answer dated March 21, 2019. The Commission thereafter appointed David M. Garber, Esq., as Referee to hear and report proposed findings of fact and conclusions of law. A hearing was scheduled to commence on September 16, 2019.

As to Charge I

3. On March 19, 2018, in the Town of Shandaken, New York, Respondent operated his motor vehicle while under the influence of alcohol.

As to the Specifications to Charge I

4. On the evening of March 18, 2018, while in Orlando, Florida, Respondent consumed alcoholic beverages, and he was still feeling the effects of the alcohol the following morning.

5. On March 19, 2018, at the airport in Orlando, Respondent consumed at least four or five glasses of vodka and seltzer from approximately 9:00 AM to 11:00 AM, prior to boarding a flight to Albany, New York, that departed at approximately 11:00 AM.

6. During the flight from Orlando to Albany, which lasted approximately three hours, Respondent consumed at least another four alcoholic drinks containing vodka. Respondent also consumed two small bags of peanuts but had nothing else to eat.

7. After arriving at the Albany airport in the afternoon on March 19, 2018, Respondent went to the airport parking lot where his personal car, a 2013 Subaru Outback, was parked. Respondent's vehicle bore "SMA" license plates, which identified it as belonging to a judge. "SMA" stands for the State Magistrates Association, which is comprised of town and village court justices throughout New York State.

8. Respondent entered his vehicle in the parking lot and, still under the influence of alcohol, began to drive to his home in Shandaken, New York, a distance of

approximately 70 miles, requiring a travel time of approximately 90 minutes to two hours. His route included a stretch of the New York State Thruway.

9. While on the Thruway, Respondent stopped at the New Baltimore service area in Hannacroix, New York, drank from a bottle of vodka that was in his car, then resumed his drive toward Shandaken – a remaining distance of approximately 47 miles, or about one hour of travel time.

10. At approximately 5:30 PM on March 19, 2018, at the intersection of New York State Route 212 (a/k/a “Plank Road”), Wittenberg Road and Mount Tremper-Phoenicia Road in Shandaken, Respondent lost control of his vehicle and crashed, causing damage to the front of his vehicle and property damage to two stop signs and two benches. Photographs of the damage to Respondent’s vehicle, which subsequently cost \$6,784 to repair, are appended as Exhibit A.

11. Shandaken Police Officer Kyle Hassett and Woodstock Police Officer Christopher Benson separately arrived at the scene of the accident at approximately 5:35 PM. In conversing with Respondent, both officers smelled an odor of alcohol emanating from Respondent and observed that he had glassy/watery eyes and impaired motor coordination.

12. Officer Hassett asked whether Respondent had consumed any alcoholic beverages, to which Respondent replied that he had consumed only two alcoholic drinks on his flight or at an airport.

13. Because Respondent is a Shandaken Town Justice and the local police appear in cases before him, Officer Hassett called the Shandaken police chief with a

request that the New York State Police take over the investigation of this matter. Shortly thereafter, New York State Police Troopers James Adams and Cameron Manley separately arrived at the scene of the accident.

14. Trooper Adams interviewed Respondent at the scene, smelled an odor of alcohol emanating from Respondent's breath and observed that Respondent had slurred speech, glassy/watery eyes, difficulty standing and impaired motor coordination.

15. Trooper Adams asked whether Respondent had consumed any alcoholic beverages, to which Respondent replied that he had drunk "two beers" at the Orlando airport.

16. Respondent failed three standard field sobriety tests administered at the scene by Trooper Adams: the "horizontal gaze nystagmus," the "walk-and-turn" and the "one-leg-stand" tests. Respondent then refused Trooper Adams's request that he submit to a portable breath test, but he consented to submit to a chemical breath test at the State Police barracks.

17. Trooper Adams placed Respondent under arrest, put him in his police vehicle and transported him to the local State Police barracks.

18. At the State Police barracks, Respondent was cooperative and agreed to submit to a chemical breath test. The test, which was administered by Trooper Adams at approximately 7:14 PM, indicated that Respondent's blood alcohol concentration ("BAC") at that time was 0.17%. In New York State, a BAC of .05% is evidence of driving while impaired, a BAC of .08% or higher is evidence of driving while

intoxicated, and a BAC of .18% or more is evidence of aggravated driving while intoxicated.

19. On March 19, 2018, Respondent was charged with five Vehicle and Traffic Law (VTL) offenses: a misdemeanor for Driving While Intoxicated Per Se, in violation of VTL Section 1192(2); a misdemeanor for Driving While Intoxicated, in violation of VTL Section 1192(3); a traffic infraction for Refusal to Take Breath Test, in violation of VTL Section 1194(1)(B); a traffic infraction for Failure to Stop at Stop Sign, in violation of VTL Section 1172(A); and a traffic infraction for Speed Not Reasonable and Prudent, in violation of VTL Section 1180(A).

20. The charges were returnable in the Shandaken Town Court but, on March 22, 2018, both Respondent and Respondent's co-judge recused themselves. By order dated May 7, 2018, then Acting Ulster County Court Judge Terry J. Wilhelm transferred the charges to the Saugerties Town Court.

21. On August 22, 2018, Respondent appeared before Saugerties Town Justice Claudia Andreassen and pled guilty to a traffic infraction of Driving While Ability Impaired, in violation of VTL Section 1192(1), in full satisfaction of all the charges. Judge Andreassen sentenced Respondent to a \$300 fine and a \$260 surcharge, which Respondent paid immediately.

22. Respondent's auto insurance carrier paid New York State the sum of \$1,138 for costs to replace the two stop signs that Respondent destroyed when he crashed his car. It is not known who owned the two benches that Respondent damaged beyond repair but neither he nor his insurance company has received any request for payment.

23. 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 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 conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to conduct all of his extra-judicial activities so that they do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

As to Charge II

24. On March 19, 2018, Respondent asserted and/or attempted to assert his judicial office to advance his private interests in connection with his arrest for Driving While Intoxicated.

As to the Specifications to Charge II

25. On March 19, 2018, Respondent operated his 2013 Subaru Outback while under the influence of alcohol and lost control of it, causing it to crash at the intersections of New York State Route 212 (a/k/a “Plank Road”), Wittenberg Road and Mount Tremper-Phoenicia Road in Shandaken, New York. Soon thereafter, New York State

Police Troopers James Adams and Cameron Manley arrived at the scene and approached Respondent by his damaged and disabled vehicle.

26. At a hearing before the Referee in the disciplinary matter herein, Troopers Adams and Manley would testify that, when Trooper Adams requested Respondent's license and registration, Respondent asked if Trooper Adams knew who he was, which the troopers understood to be a reference to Respondent's judicial office. When Trooper Adams replied, "Yes, I do" and/or that he did not care who he was, Respondent said that he would never again come out to conduct an arraignment for the State Police.

27. At a hearing before the Referee in the disciplinary matter herein, Respondent would testify that, although he has no recollection of making such statements, he does not dispute the recollections of the troopers.

28. 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; and failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the 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 lent the prestige of judicial office to advance his own private interests, in violation of Section 100.2(C) of the Rules.

Additional Factors

29. Although Respondent does not recall telling the troopers that he would never again come out to conduct an arraignment for the State Police, he attributes the comment to his diminished capacity and judgment due to his consumption of alcohol. Respondent understands that it is wrong to reference his judicial office under these circumstances, regrets doing so and avers that he would not have done so but for his diminished capacity. It is not alleged that Respondent made a direct request for special consideration because of his judicial office to either trooper.

30. New York State Police Captain (now Major) James Michael met with Respondent while he was in custody at the barracks. During his interactions with Captain Michael, Respondent was cooperative and apologetic and did not invoke his judicial office or ask for any special consideration from the captain.

31. Respondent acknowledges that he suffers from an “Alcohol Use Disorder” and has been suffering from the disorder for approximately 12 years prior to his arrest. Respondent states that the circumstances surrounding his arrest were a trigger for him to obtain the help that he needed to treat his condition.

32. On June 1, 2018, Respondent voluntarily admitted himself into a three-day alcohol detoxification program at a hospital. On June 4, 2018, Respondent voluntarily admitted himself into a two-weeks-long inpatient alcohol rehabilitation program. During the inpatient program, a Credentialed Alcoholism and Substance Abuse Counselor and National Certified Addiction Counselor diagnosed Respondent as suffering from “Severe Alcohol Use Disorder.”

33. Respondent remained in and successfully completed the two-weeks-long inpatient alcohol rehabilitation program. Near the conclusion of the program, Respondent signed a Discharge Instructions and Continuing Care Plan in which, among other things, he agreed as part of a “self-identified Plan to address Relapse Issues” to “Attend AA meetings” and “gain a sponsor and a home group.” Although Respondent has not followed through on this part of his continuing care plan, his counselor has advised the Commission that Respondent is uncomfortable in group sessions but responds well in individual therapy.

34. Since October 4, 2018, Respondent has been attending individual counseling sessions twice a month with a licensed drug and alcohol abuse counselor for treatment of his Alcohol Use Disorder. According to Respondent’s counselor, Respondent has requested to meet more often than twice a month, *i.e.* once a week for a total of four times a month, but to date the counselor has been unavailable for more than two meetings a month due to his own busy schedule.

35. Respondent avers that he has not consumed an alcoholic drink since June 1, 2018, and the Administrator has no information to the contrary. Respondent also avers that he is committed to continuing his treatment and to sobriety.

36. Respondent acknowledges that he should have sought treatment *before* this incident occurred.

37. Respondent has been contrite and cooperative with the Commission throughout this inquiry and has expressed embarrassment and remorse for his behavior and any diminution of respect for the judiciary it may have caused.

38. Respondent recognizes that his conduct had the potential to put innocent lives at risk of death and serious injury.


39. Respondent is a Vietnam Veteran, was a prosecutor in the Ulster County District Attorney's Office for nearly twenty years and has an otherwise unblemished record during his approximately 14 years on the bench.

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 Censure 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 Censure 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:



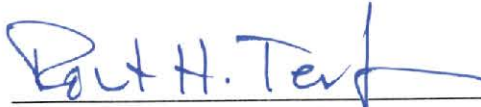
Honorable Michael J. Miranda
Respondent

Dated:



Alfred Mainetti, Esq.
Attorney for Respondent

Dated: September 5, 2019



Robert H. Tembeckjian
Administrator & Counsel to the Commission
(**Cathleen S. Cenci and S. Peter Pedrotty, Of Counsel**)



Photo

Claim Reference Id: 185077486037-203

File Name: Rt front corner damage .jpg

File Date: 03/26/2018

Label: Photo

Note: Rt front corner damage

Photo Location:

Photo Taken By: PDA - CSC, HOME OFFICE - 000

Estimate Indicator: E01





Photo

Claim Reference Id: 185077486037-203

File Name: Rt stay bracket damage .jpg

File Date: 03/26/2018

Label: Photo

Note: Rt stay bracket damage

Photo Location:

Photo Taken By: PDA - CSC, HOME OFFICE - 000

Estimate Indicator: E01



Photo

Claim Reference Id: 185077486037-203

File Name: Rt front wheel perspective view .jp

File Date: 03/26/2018

Label: Photo

Note: Rt front wheel perspective view

Photo Location:

Photo Taken By: PDA - CSC, HOME OFFICE - 000

Estimate Indicator: E01