

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 A. PETUCCI,

a Justice of the Herkimer Town Court,
Herkimer 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 A. Petucci ("Respondent"), who is represented in this proceeding by Peter Gerstenzang of Gerstenzang, Sills, Cohn & Gerstenzang, 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 has been a Justice of the Herkimer Town Court, Herkimer County, since 2008, having previously served as a Justice of the Herkimer Village Court, Herkimer County, from 2010 to 2015, and as an Acting Justice of the Ilion Village Court, Herkimer County, from 2008 to 2012. His current term expires on December 31, 2019.

Respondent is not an attorney.

2. At all times pertinent to the facts herein, Respondent was Director of the IT Department at the Slocum-Dickson Medical Group in New Hartford, New York.

3. Respondent was sworn in as President of the New York State Magistrates Association (SMA) on September 25, 2018, for a term ending on September 17, 2019. The SMA *inter alia* offers education and training programs to town and village court justices on adherence to the Rules Governing Judicial Conduct (Rules) and judicial ethics.

4. Respondent was served with a Formal Written Complaint dated June 11, 2019. He filed a Verified Answer dated June 20, 2019.

As to Charge 1

5. On December 12, 2018, in the Village of Herkimer, New York, Respondent operated a motor vehicle while his ability to do so was impaired by alcohol.

Specifications to Charge 1

6. On December 12, 2018, Respondent left his place of employment at the Slocum-Dickson Medical Group shortly after 6:00 PM and drove his vehicle to Stoney's Tavern on South Main Street in Herkimer, New York. Respondent consumed at least two alcoholic beverages between 6:40 PM and 7:10 PM, when he left Stoney's.

7. Respondent then drove approximately half a mile to the Elks Lodge on Mary Street in Herkimer, where he consumed at least two more alcoholic beverages between 7:15 PM and 8:20 PM, when he left the lodge.

8. Respondent then drove again to Stoney's Tavern, where he consumed more alcohol until sometime after 9:00 PM, when he again left Stoney's.

9. Respondent then drove to South Washington Street in Herkimer, which is less than half a mile from Stoney's. At approximately 9:28 PM, as a result of his impairment

by alcohol, Respondent lost control of his vehicle and crashed into the side of a former Kmart building on South Washington Street. The impact of the crash caused damage to both the building and Respondent's vehicle such that, *inter alia*, the left front wheel of Respondent's vehicle flew off and the airbags deployed. Photographs of the condition of the building and Respondent's vehicle after the impact are annexed as Exhibit A.

10. At the time of the crash, Respondent was carrying a loaded Glock 9MM handgun and had another full magazine of ammunition in one of his pockets. Respondent was licensed to carry a firearm.

11. On December 12, 2018, after emergency responders and Herkimer police arrived at the scene of the crash, Respondent told Paramedic Joseph Durr that he was coming from Stoney's and had consumed alcohol. Respondent, whose breath smelled strongly of alcohol, was yelling obscenities and was otherwise belligerent to Mr. Durr and to Herkimer Police Sgt. John Scholl. At one point, Respondent asked Mr. Durr to arrest Sgt. Scholl.

12. Respondent repeatedly refused Sgt. Scholl's request to undergo field sobriety tests or a chemical test of his blood alcohol content, despite three separate warnings by Sgt. Scholl about the consequences of such refusals, including that his driver's license would be suspended. In response to one of Sgt. Scholl's requests to submit to a roadside breath test, Respondent said, "No, fuck you."

13. Respondent did not invoke his judicial position at the scene. Sgt. Scholl was aware that Respondent was a judge because he had appeared in Respondent's court in the course of his duties as a police officer. In addition, the license plate on Respondent's car

was "1 SMA2019" and bore the insignia of the SMA. The New York State license plate "1 SMA" is traditionally reserved for the SMA President.

14. Respondent was transported to St. Elizabeth's Hospital in Utica.

15. Late in the evening on December 12, 2018, Respondent was charged with Driving While Intoxicated, in violation of Vehicle and Traffic Law (VTL) Section 1192.3, and Refusal To Take Breath Test, in violation of VTL Section 1194.1(b).

16. The charges were returnable in the Herkimer Village Court and were subsequently transferred to the Little Falls City Court after the Herkimer village justices recused themselves.

17. The Herkimer County District Attorney's office, which prosecutes cases in Respondent's court, moved to be relieved in Respondent's case, whereupon the Herkimer County Court appointed the Oneida County District Attorney as special prosecutor.

18. On January 8, 2019, Respondent pled guilty in the Little Falls City Court to Driving While Ability Impaired by Alcohol, in violation of VTL Section 1192.1, in satisfaction of both charges against him. He was sentenced to pay a fine of \$500 and a \$255 surcharge, attend a victim impact panel and undergo a comprehensive clinical assessment. Respondent's driving privileges were suspended for 90 days. Respondent later received a conditional license.

19. By Order dated December 13, 2018, Herkimer County Court Judge John H. Crandall ordered that Respondent's pistol permit be suspended pending a hearing. The status of Respondent's pistol permit was pending as of the date of this Agreed Statement of Facts.

20. By administrative order of Deputy Chief Administrative Judge Michael C. Coccoma dated December 17, 2018, Respondent was suspended from performing his judicial duties. Respondent remains suspended from performing judicial duties as of the date of this Agreed Statement of Facts.

21. 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 his extra-judicial activities so that they do not cast reasonable doubt on his capacity to act impartially as a judge, detract from the dignity of judicial office, interfere with the proper performance of judicial duties and are not incompatible with judicial office, in violation of Sections 100.4(A)(1), (2) and (3) of the Rules.

Additional Factors

22. Respondent avers that he has no recollection of the events on December 12, 2018, after he left the Elks Lodge. Respondent specifically avers that he does not recall being belligerent to the arresting officers and first responders. However, based on his

review of the Herkimer Police Department report and the credibility of the officers involved, Respondent believes those allegations to be true and does not dispute his conduct as described above. Respondent has since apologized to Sgt. Scholl for his behavior.

23. On December 28, 2018, Respondent was evaluated by a Credentialed Alcoholism and Substance Abuse Counselor (CASAC) and multidisciplinary team, which determined that no treatment was recommended. Notwithstanding this finding, in January 2019, Respondent voluntarily entered outpatient treatment with a licensed social worker/CASAC. Respondent avers that he has refrained from the use of alcohol since the date of the incident on December 12, 2018.

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: 7/11/2019



Honorable Michael A. Petucci
Respondent

Dated: 7/15/19



Peter Gerstenzang, Esq.
Gerstenzang, Sills, Cohn & Gerstenzang

Dated: 7/16/2019



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



EXHIBIT A











