

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 W. COLE,

a Justice of the Alden Town and
Village Courts, Erie County.

**AGREED
STATEMENT OF FACTS**

Subject to the approval of the Commission on Judicial Conduct:

IT IS HEREBY STIPULATED AND AGREED by and between

Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the
Honorable Michael W. Cole (“Respondent”), who is represented in this
proceeding by Daniel M. Killelea, Esq., of Gilmour & Killelea, LLP, 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
2001. He has been a Justice of the Alden Village Court, Erie County, since
2019, having previously served as Associate Justice of that court from 2018 to
2019. He has been a Justice of the Alden Town Court, Erie County, since 2021.
Respondent’s term as town justice expires on December 21, 2024, and his
current term as village justice expires on March 31, 2025.

2. Respondent was served with a Formal Written Complaint dated September 17, 2024. He enters into this Agreed Statement of Facts in lieu of filing an Answer.

As to Charge I

3. From August 31, 2021, through October 5, 2021, Respondent used his judicial position to delay the processing of a small claims action brought against him in the Town of Alden Justice Court while he attempted to have the matter withdrawn.

Specifications to Charge I

4. As a part-time town and village court justice, Respondent is permitted to practice law.

5. In 2018, Candice Wynecoop-Kane hired Respondent as an attorney and paid him a \$1,500 retainer to represent her with regard to a custodial relocation matter involving her child. Ms. Wynecoop became dissatisfied with Respondent's representation and made several unsuccessful requests for his return of her retainer before hiring new counsel in the fall of 2019.

6. On August 31, 2021, Ms. Wynecoop filed a small claims action against Respondent in the Alden Town Court for return of the \$1,500 retainer, and a \$15 filing fee.

7. On August 31, 2021, Alden Town Court Clerk Sarah Miller sent Respondent a text message about Ms. Wynecoop's small claims application, *inter alia* noting that recusal would be necessary. Her message stated as follows:

Good morning Mike! Just a heads up a lady named Candace called in asking about a small claim application for a deposit she allegedly paid you at your office. We would have to recuse anyways but I just wanted to let you know.

8. Respondent replied via text message, inquiring about the identity of the caller. Ms. Miller then identified her as "Candace," and then noted, "Sorry I was to[o] late, She just left here."

9. Respondent then asked Ms. Miller, "Did she file?" Approximately one minute later, before Ms. Miller replied, Respondent sent her a text message stating, "It's okay. I just emailed her."

10. Approximately seven minutes later, in response to Respondent's having asked if Ms. Wynecoop had filed a small claims application, Ms. Miller sent a text message stating, "She did." Approximately one minute thereafter, Respondent replied, "Okay. Don't mail me the notice. Just put in my inbox."

11. Approximately one minute later, Ms. Miller texted Respondent that she did not intend to draft a case notice for him because she anticipated both Alden Town Court justices would recuse themselves from Ms. Wynecoop's case.

Approximately one minute later, Respondent texted to Ms. Miller that she should “Hold for a bit,” adding, “I’m gonna call her and ask her to withdraw it.”

12. Shortly thereafter, in reply to his inquiry about Ms. Wynecoop’s phone number, Ms. Miller gave Respondent the phone number on Ms. Wynecoop’s application.

13. On August 31, 2021, Respondent telephoned Ms. Wynecoop and left a message. On September 3, 2021, Respondent returned Ms. Wynecoop’s return call to his law office, and they discussed resolving her pending case against him in the Alden Town Court.

14. On September 3, 2021, Respondent emailed Ms. Wynecoop, confirming their discussion, informing her that he had written and mailed a check in her name for \$1,515 to her Indiana mailing address, and requesting that she email him when she received his check. In both his email and letter of September 3, 2021, Respondent asked Ms. Wynecoop to let the court know at her earliest convenience once the check cleared, and to request that her small claims case “be withdrawn as satisfied.”

15. Subsequent to his email to Ms. Wynecoop on September 3, 2021, Respondent put a note in the Alden Town Court file for her, dated September 7, 2021, stating, “Candice should have received \$1,515.00 from my office today,”

and “Please wait until next week, and if she hasn’t called, call her and ask her if she withdraws her action.”

16. On October 5, 2021, in the absence of any communication from Ms. Wynecoop confirming her withdrawal of her application, Respondent signed a certificate of disqualification from her case. A transfer order of the Eighth Judicial District Administrative Judge, dated October 6, 2021, moved the case to the Clarence Town Court, which set the matter down for a hearing on December 14, 2021.

17. On December 14, 2021, after communication from Ms. Wynecoop, Respondent emailed a letter to the Clarence Town Court, with a copy via email to Ms. Wynecoop, stating that the parties had resolved their case, and neither intended to appear at court that evening.

18. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article VI, 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 of the Chief Administrator of the Courts Governing Judicial Conduct (“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 lent the prestige of judicial office to advance his own private interest, in violation of Section 100.2(C) of the Rules; failed to perform the duties of judicial office impartially and diligently, in that he failed to diligently discharge his administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, in violation of Section 100.3(C)(1) of the Rules, and failed to require staff subject to his direction and control to observe the standards of fidelity and diligence that apply to him and to refrain from manifesting bias or prejudice in the performance of their official duties, in violation of Section 100.3(C)(2) of the Rules; and failed to so conduct his extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that he did not conduct all of his extra-judicial activities so that they did not cast reasonable doubt on his capacity to act impartially as a judge, in violation of 100.4(A)(1) of the Rules, detract from the dignity of judicial office, in violation of 100.4(A)(2) of the Rules, and interfere with the proper performance of judicial duties and be incompatible with judicial office, in violation of 100.4(A)(3) of the Rules, and engaged in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position, in violation of 100.4(D)(1)(a) of the Rules.

Additional Factors

19. Respondent has been cooperative and contrite throughout the Commission's investigation.

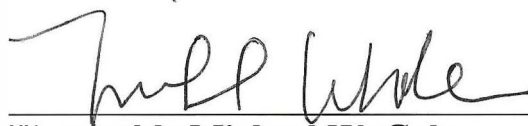
20. Respondent acknowledges that it was improper for him as a judge to influence court staff to delay the processing of a claim filed against him by a litigant. He recognizes as well that such a claim would have to be transferred to another court because of the obvious conflict that would arise were his court to adjudicate a claim against him. Respondent also recognizes that even if his intent was to resolve the matter quickly, he effectively used his status as a judge to avoid public disclosure and the potential embarrassment of a personal lawsuit against him.

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, Respondent or the Administrator and Counsel to the Commission.

Dated: 10/21/2024



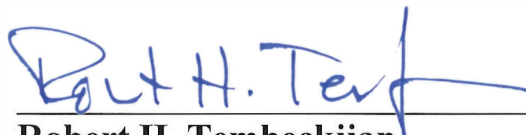
Honorable Michael W. Cole
Respondent

Dated: 10-21-2024



Daniel M. Killelea
Gilmour & Killelea, LLP
Attorney for Respondent

Dated: October 22, 2024



Robert H. Tembeckjian
Administrator & Counsel to the Commission
(**John J. Postel** and **David M. Duguay**,
Of Counsel)