

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.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, Michael W. Cole, a Justice of the Alden Town and Village Courts, Erie 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 Rochester office, 400 Andrews Street, Suite 700, Rochester, New York 14604, with his verified Answer to the specific paragraphs of the Complaint.

Dated: September 17, 2024
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: Daniel M. Killelea,
Attorney for Respondent
Gilmour & Killelea, LLP
11198 Alexander Road, P.O. Box 116
Attica, New York 14011-0116

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,

**FORMAL
WRITTEN COMPLAINT**

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

1. Article VI, 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 Michael W. Cole (“Respondent”), a Justice of the Alden Town and Village Courts, Erie 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 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, 2027.

5. Pursuant to an Administrative Order of the Deputy Chief Administrative Judge for Courts Outside New York City on or about April 5, 2023, Respondent has not presided in either the Alden Town Court or the Alden Village Court since then.

CHARGE I

6. From on or about August 31, 2021, through on or about 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

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

8. In or about 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 or about the fall of 2019.

9. On or about 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.

10. On or about 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.

11. 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."

12. 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."

13. 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."

14. 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."

15. 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.

16. On or about August 31, 2021, Respondent telephoned Ms. Wynecoop and left a message. On or about 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.

17. On or about 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 that she request that her small claims case "be withdrawn as satisfied."

18. Subsequent to his email to Ms. Wynecoop on or about 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.”

19. On or about 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.

20. On or about 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.

21. 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; 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 conduct his extra-judicial activities so as to minimize the risk of conflict 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.

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: September 17, 2024
New York, New York



ROBERT H. TEMBECKJIAN

Administrator and Counsel
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VERIFICATION

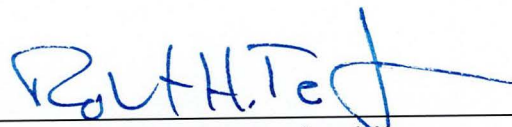
MICHAEL W. COLE,

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

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)


ROBERT H. TEMBECKJIAN, being duly sworn, deposes and says:

1. I am the Administrator of the State Commission on Judicial Conduct.
2. I have read the foregoing Formal Written Complaint and, upon
information and belief, all matters stated therein are true.
3. The basis for said information and belief is the files and records of
the State Commission on Judicial Conduct.



Robert H. Tembeckjian

Sworn to before me this
17th day of September 2024



Notary Public

JACQUELINE AYALA
Notary Public, State of New York
No. 01AY6250614
Qualified in Kings County
Commission Expires October 31, 2027