

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.

**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 L. Tawil (“Respondent”), who is represented in this proceeding by Deborah A. Scalise, Esq., 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 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.

2. Respondent was served with a Formal Written Complaint dated May 22, 2019. He enters into this Agreed Statement of Facts in lieu of filing an Answer.

As to Charge I

3. 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.

As to the Specifications to Charge I

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

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

11. 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 lent the prestige of judicial office to advance his own private interest, in violation of Section 100.2(C) 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 would not detract from the dignity of judicial office, interfere with the proper performance of judicial duties or be

incompatible with judicial office, in violation of Sections 100.4(A)(2) and (3) of the Rules.

As to Charge II

12. 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.

As to the Specifications to Charge II

13. 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.

14. 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.

15. 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.

16. 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."

17. 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.

18. 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.

19. 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 lent the prestige of judicial office to advance his own private interest, in violation of Section 100.2(C) 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 would 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 or be incompatible with judicial office, in violation of Sections 100.4(A)(1), (2) and (3) of the Rules.

Additional Factors

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

21. 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.

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

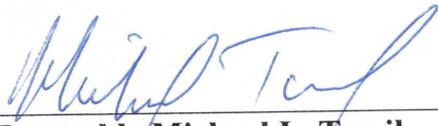
23. Respondent regrets his summation remark in *Thomas* about “frying up some platanos” and recognizes that the remark, which he intended to be humorous, was insensitive and injudicious.

24. 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.

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: 10/8/19



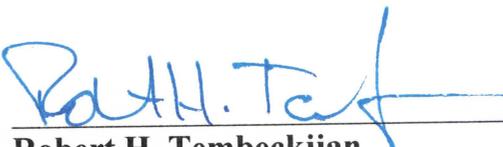
Honorable Michael L. Tawil
Respondent

Dated: 10/8/19



Deborah A. Scalise, Esq.
Scalise & Hamilton, LLP PC DAS

Dated: 10/9/2019



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