

ANNUAL REPORT

2002

NEW YORK STATE



COMMISSION ON JUDICIAL CONDUCT

**NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT**

* * *

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HON. FRANCES A. CIARDULLO
STEPHEN R. COFFEY, ESQ.
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HON. KAREN K. PETERS
ALAN J. POPE, ESQ.
HON. TERRY JANE RUDERMAN

* * *

MEMBERS WHOSE TERMS ENDED ON MARCH 31, 2001

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JEREMY ANN BROWN, C.A.S.A.C.

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March 1, 2002

To Governor of the State of New York,
The Chief Judge of the State of New York and
The Legislature of the State of New York:

Pursuant to Section 42, paragraph 4, of the Judiciary Law of the State of New York, the New York State Commission on Judicial Conduct respectfully submits this Annual Report of its activities, covering the period from January 1 through December 31, 2001.

Respectfully submitted,

Henry T. Berger, Chair
On Behalf of the Commission

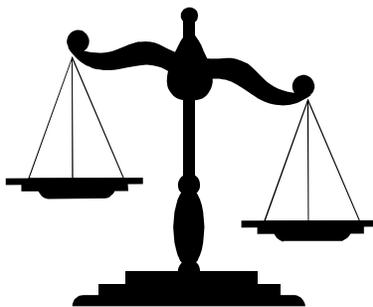
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**Commission Activities
In the Year 2001**



**2002 Annual Report
New York State
Commission on Judicial Conduct**



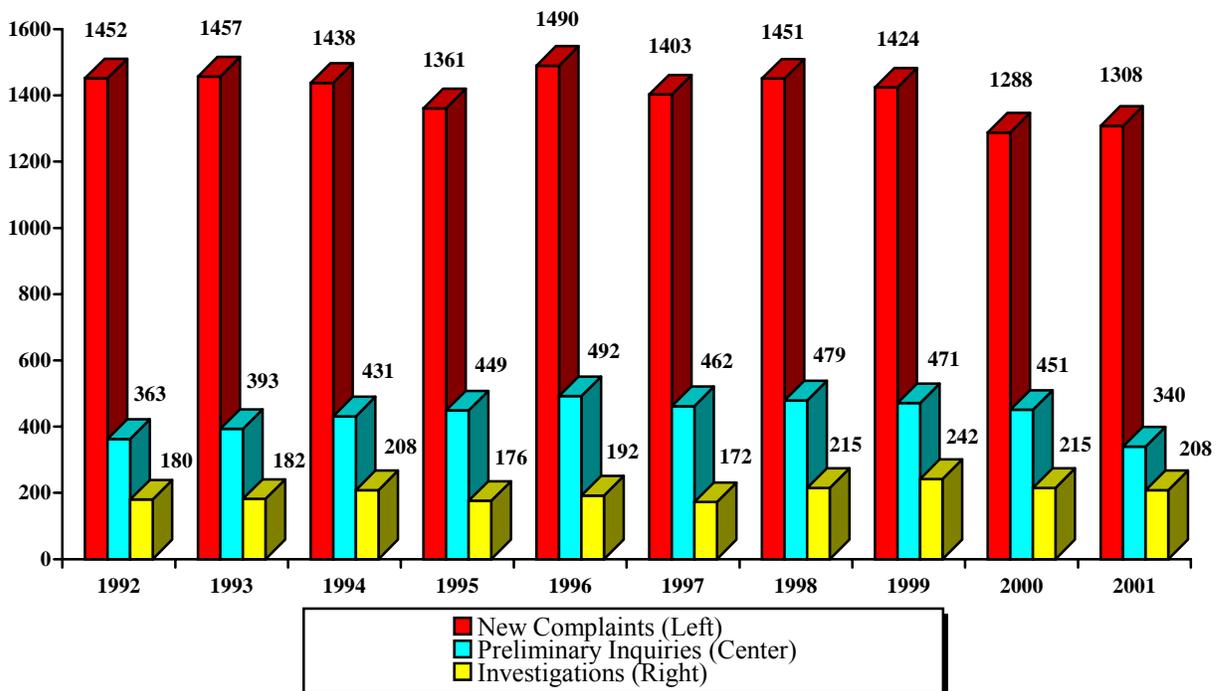
Introduction to the 2002 Annual Report

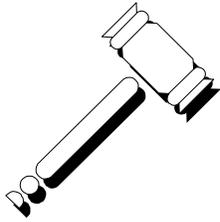
The New York State Commission on Judicial Conduct is the disciplinary agency designated by the State Constitution to review complaints of misconduct against judges of the State Unified Court System, which includes approximately 3,363 judges and justices. The Commission's objective is to enforce high standards of conduct for judges, who must be free to act independently, on the merits and in good faith, but also must be held accountable by an independent disciplinary system, should they commit misconduct. The Rules Governing Judicial Conduct, promulgated by the Chief Administrator of the Courts with the approval of the Court of Appeals, is annexed.

The number of complaints received by the Commission in the past decade has substantially increased compared to the first 17 years of the Commission's existence. Since 1992, the Commission has averaged approximately 1400 new complaints per year, 400 preliminary inquiries and 200 full-fledged investigations. Indeed, in each of the last ten years, the number of incoming complaints has been more than double the 641 we received in 1978, while our budget has remained flat and our staff has decreased from 63 to 27 in that same period. The Commission's budget and need for additional investigators is discussed further at page 35.

This current Annual Report covers the Commission's activities in the year 2001.

Complaints, Inquiries & Investigations Since 1992





Action Taken in 2001

Following are summaries of the Commission’s actions in 2001, including accounts of all public determinations, summaries of non-public decisions, and various numerical breakdowns of complaints, investigations and other dispositions.

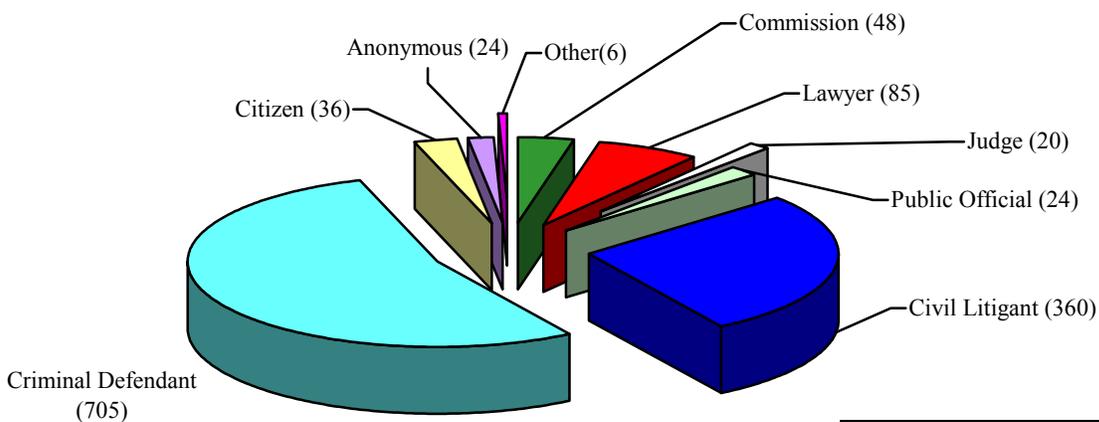
Complaints Received

The Commission received 1308 new complaints in 2001. Preliminary inquiries were conducted in 340 of these, requiring such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts. In 208 matters, the Commission authorized full-fledged investigations. Depending on the nature of the complaint, an investigation may entail interviewing witnesses, subpoenaing witnesses to testify and produce documents, assembling and analyzing various court, financial or other records, making court observations, and writing to or taking testimony from the judge.

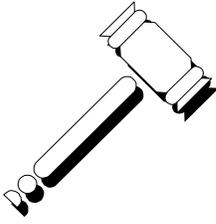
New complaints dismissed upon initial review are those that the Commission

deems to be clearly without merit, not alleging misconduct or outside its jurisdiction, including complaints against judges not within the state unified court system, such as federal judges, administrative law judges and New York City Housing Court judges. Absent any underlying misconduct, such as demonstrated prejudice, conflict of interest or flagrant disregard of fundamental rights, the Commission does not investigate complaints concerning disputed judicial rulings or decisions. The Commission is not an appellate court and cannot reverse or remand trial court decisions.

A breakdown of the sources of complaints received by the Commission in 2001 appears in the following chart.



Complaint Sources in 2001



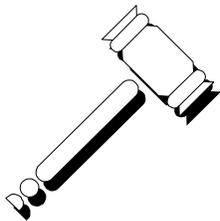
Preliminary Inquiries and Investigations

The Commission's Operating Procedures and Rules authorize "preliminary analysis and clarification" and "preliminary fact-finding activities" by Commission staff upon receipt of new complaints, to aid the Commission in determining whether full investigation is warranted. In 2001, staff conducted 340 such preliminary inquiries, requiring

such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts.

During 2001, the Commission commenced 208 new investigations. In addition, there were 145 investigations pending from the previous year. The Commission disposed of the combined total of 353 investigations as follows:

- 93 complaints were dismissed outright.
- 41 complaints involving 40 different judges were dismissed with letters of dismissal and caution.
- 10 complaints involving 8 different judges were closed upon the judges' resignation.
- 2 complaints involving 2 judges were closed upon vacancy of office due to reasons other than resignation, such as the judge's retirement or failure to win re-election.
- 64 complaints involving 42 different judges resulted in formal charges being authorized.
- 143 investigations were pending as of December 31, 2001.



Formal Written Complaints

As of January 1, 2001, there were pending Formal Written Complaints in 32 matters, involving 26 different judges. During 2001, Formal Written Complaints were

authorized in 64 additional matters, involving 42 different judges. Of the combined total of 96 matters involving 68 judges, the Commission made the following dispositions:

- 36 matters involving 26 different judges resulted in formal discipline (admonition, censure or removal from office).
- 5 matters involving 4 judges resulted in a letter of caution after formal disciplinary proceedings that resulted in a finding of misconduct.
- 1 matter was dismissed outright.
- 7 matters involving 3 judges were closed upon the judge's resignation.
- 2 matters involving 2 judges were closed upon vacancy of office due to reasons other than resignation, such as the judge's death, retirement or failure to win re-election.
- 45 matters involving 32 different judges were pending as of December 31, 2001.

Summary of All 2001 Dispositions

The Commission's investigations, hearings and dispositions in the past year involved judges at various levels of the state unified court system, as indicated in the following ten tables.

TABLE 1: TOWN & VILLAGE JUSTICES – 2186*, ALL PART-TIME

| | <i>Lawyers</i> | <i>Non-Lawyers</i> | <i>Total</i> |
|---|----------------|--------------------|--------------|
| Complaints Received | 76 | 271 | 347 |
| Complaints Investigated | 16 | 89 | 105 |
| Judges Cautioned After Investigation | 6 | 23 | 29 |
| Formal Written Complaints Authorized | 3 | 16 | 19 |
| Judges Cautioned After Formal Complaint | 0 | 0 | 0 |
| Judges Publicly Disciplined | 3 | 13 | 16 |
| Formal Complaints Dismissed or Closed | 0 | 4 | 4 |

Note: Approximately 400 town and village justices are lawyers.

TABLE 2: CITY COURT JUDGES – 388, ALL LAWYERS

| | <i>Part-Time</i> | <i>Full-Time</i> | <i>Total</i> |
|---|------------------|------------------|--------------|
| Complaints Received | 36 | 113 | 149 |
| Complaints Investigated | 8 | 16 | 24 |
| Judges Cautioned After Investigation | 1 | 0 | 1 |
| Formal Written Complaints Authorized | 2 | 5 | 7 |
| Judges Cautioned After Formal Complaint | 0 | 1 | 1 |
| Judges Publicly Disciplined | 0 | 2 | 2 |
| Formal Complaints Dismissed or Closed | 0 | 0 | 0 |

Note: Approximately 100 City Court Judges serve part-time.

*Refers to the approximate number of such judges in the state unified court system.

TABLE 3: COUNTY COURT JUDGES – 84 FULL-TIME, ALL LAWYERS

| | |
|---|-----|
| Complaints Received | 151 |
| Complaints Investigated | 16 |
| Judges Cautioned After Investigation | 1 |
| Formal Written Complaints Authorized | 7 |
| Judges Cautioned After Formal Complaint | 1 |
| Judges Publicly Disciplined | 2 |
| Formal Complaints Dismissed or Closed | 0 |

TABLE 4: FAMILY COURT JUDGES – 120, FULL-TIME, ALL LAWYERS

| | |
|---|-----|
| Complaints Received | 123 |
| Complaints Investigated | 18 |
| Judges Cautioned After Investigation | 4 |
| Formal Written Complaints Authorized | 1 |
| Judges Cautioned After Formal Complaint | 1 |
| Judges Publicly Disciplined | 0 |
| Formal Complaints Dismissed or Closed | 0 |

TABLE 5: DISTRICT COURT JUDGES – 47, FULL-TIME, ALL LAWYERS

| | |
|---|----|
| Complaints Received | 20 |
| Complaints Investigated | 4 |
| Judges Cautioned After Investigation | 0 |
| Formal Written Complaints Authorized | 0 |
| Judges Cautioned After Formal Complaint | 0 |
| Judges Publicly Disciplined | 0 |
| Formal Complaints Dismissed or Closed | 0 |

TABLE 6: COURT OF CLAIMS JUDGES – 64, FULL-TIME, ALL LAWYERS

| | |
|---|----|
| Complaints Received | 22 |
| Complaints Investigated | 1 |
| Judges Cautioned After Investigation | 0 |
| Formal Written Complaints Authorized | 0 |
| Judges Cautioned After Formal Complaint | 0 |
| Judges Publicly Disciplined | 1 |
| Formal Complaints Dismissed or Closed | 0 |

Note: 46 Judges of the Court of Claims serve as Acting Justices of the Supreme Court.

TABLE 7: SURROGATES – 63, FULL-TIME, ALL LAWYERS

| | |
|---|----|
| Complaints Received | 19 |
| Complaints Investigated | 4 |
| Judges Cautioned After Investigation | 2 |
| Formal Written Complaints Authorized | 1 |
| Judges Cautioned After Formal Complaint | 0 |
| Judges Publicly Disciplined | 0 |
| Formal Complaints Dismissed or Closed | 0 |

TABLE 8: SUPREME COURT JUSTICES – 350, FULL-TIME, ALL LAWYERS

| | |
|---|-----|
| Complaints Received | 268 |
| Complaints Investigated | 36 |
| Judges Cautioned After Investigation | 3 |
| Formal Written Complaints Authorized | 7 |
| Judges Cautioned After Formal Complaint | 1 |
| Judges Publicly Disciplined | 5 |
| Formal Complaints Dismissed or Closed | 2 |

**TABLE 9: COURT OF APPEALS JUDGES – 7 FULL-TIME, ALL LAWYERS;
APPELLATE DIVISION JUSTICES – 54 FULL-TIME, ALL LAWYERS**

| | |
|---|----|
| Complaints Received | 26 |
| Complaints Investigated | 0 |
| Judges Cautioned After Investigation | 0 |
| Formal Written Complaints Authorized | 0 |
| Judges Cautioned After Formal Complaint | 0 |
| Judges Publicly Disciplined | 0 |
| Formal Complaints Dismissed or Closed | 0 |

TABLE 10: NON-JUDGES*

| | |
|---------------------|-----|
| Complaints Received | 183 |
|---------------------|-----|

* The Commission reviews such complaints to determine whether to refer them to other agencies.

Note on Jurisdiction

The Commission’s jurisdiction is limited to judges and justices of the state unified court system. The Commission does not have jurisdiction over non-judges, retired judges, judicial hearing officers (JHO’s), administrative law judges (*i.e.* adjudicating officers in government agencies or public authorities such as the New York City Parking Violations Bureau), housing judges of the New York City Civil Court, or federal judges. Legislation that would have given the Commission jurisdiction over New York City housing judges was vetoed in the 1980s.



Formal Proceedings

The Commission may not impose a public disciplinary sanction against a judge unless a Formal Written Complaint, containing detailed charges of misconduct, has been served upon the respondent-judge and the respondent has been afforded an opportunity for a formal hearing.

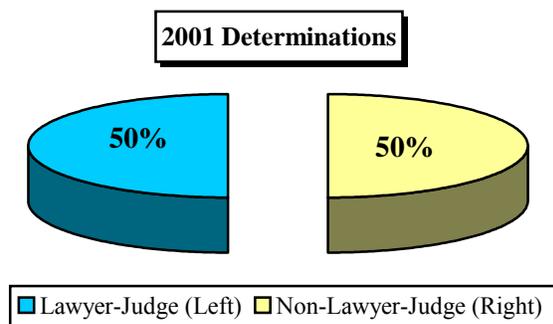
The confidentiality provision of the Judiciary Law (Article 2-A, Sections 44 and

45) prohibits public disclosure by the Commission of the charges served, hearings commenced or related matters, absent a waiver by the judge, until the case has been concluded and a determination of admonition, censure, removal or retirement has been rendered.

Following are summaries of those matters that were completed and made public during 2001. The texts of the determinations are appended to this Report.

Overview of 2001 Determinations

The Commission rendered 26 formal disciplinary determinations in 2001: 11 censures and 15 admonitions. Thirteen of the 26 respondents disciplined were non-lawyer judges, and 13 were lawyer-judges. Sixteen of the respondents were part-time town or village justices, and ten were judges of higher courts.



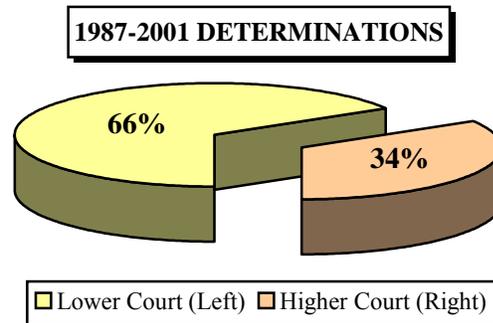
To put these numbers and percentages in some context, it should be noted that, of the 3,300 judges in the state unified court system, approximately 67% are part-time town or village justices. Approximately

82% of the town and village justices, comprising about 55% of all judges in the court system, are not lawyers. (Town and village justices serve part-time and may or may not be lawyers; judges of all other courts must be lawyers, whether or not they serve full-time.)

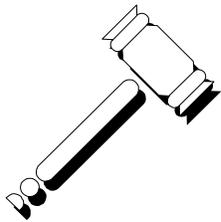
Excluding cases from 1978 to 1982 involving ticket-fixing, which was largely a town and village justice court phenomenon – in larger jurisdictions, traffic matters are typically handled by administrative agencies – the overall percentage of town and village justices disciplined since the Commission’s inception (66%) is virtually identical to the percentage of town and village justices in the judiciary as a whole (67%).

Of course, no set of dispositions in a given year will exactly mirror those percentages. However, from 1987 to 2001, the number of public determinations,

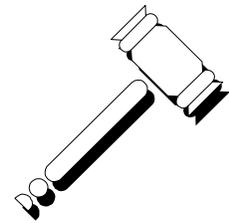
when categorized by type of court and judge, has roughly approximated the makeup of the judiciary as a whole: 166 (about 66%) have involved town and village justices, and 86 (about 34%) have involved judges of higher courts.



Determinations of Censure



The Commission completed 11 disciplinary proceedings in 2001 that resulted in determinations of censure. The cases are summarized below.



Matter of Michael J. Brennan

The Commission determined on February 8, 2001, that Michael J. Brennan, a Judge of the Civil Court of the City of New York, Richmond County (Staten Island), should be censured for making inflammatory and prejudicial remarks at arraignment in a highly publicized case. The judge's remarks presumed guilt at a time when the defendant was entitled to the presumption of innocence, and

evoked an incriminating comment from the defendant. That respondent was a candidate for nomination to Supreme Court at the time contributed to an appearance that he was using the judicial proceeding as a political forum.

Judge Brennan, who is a lawyer, did not request review by the Court of Appeals.

Matter of John P. DiBlasi

The Commission determined on November 19, 2001, that John P. DiBlasi, a Supreme Court Justice, Westchester County, should be censured for (1) attending a daytime broadcasting school during court hours without the permission or knowledge of his administrative judge, (2) failing to disqualify himself from several cases involving a lawyer

with whom the judge was romantically involved, notwithstanding that he took steps to be transferred from the part where the lawyer regularly appeared, and (3) complaining about his paramour's supervisor to the supervisor's boss.

Judge DiBlasi, who is a lawyer, did not request review by the Court of Appeals.

Matter of George Hrycun

The Commission determined on November 19, 2001, that George Hrycun, a part-time Justice of the Ward Town Court, Allegany County, should be censured for failing to make timely reports of cases and remittances of funds to the State

Comptroller, notwithstanding two previous confidential cautions that he do so.

Judge Hrycun, who is not a lawyer, did not request review by the Court of Appeals.

Matter of Richard D. Huttner

The Commission determined on December 26, 2001, that Richard D. Huttner, a Justice of the Supreme Court, Kings County, should be censured for asserting the prestige and influence of his judicial office in litigation brought by the co-op board of his apartment building, *inter alia* by reminding the defendant that he

was a judge and permitting the board's attorney to use his name and judicial title in settlement discussions and correspondence.

Judge Huttner, who is a lawyer, did not request review by the Court of Appeals.

Matter of Roger C. Maclaughlin

The Commission determined on February 8, 2001, that Roger C. Maclaughlin, a part-time Justice of the Steuben Town Court, Oneida County, should be censured for *inter alia* (1) soliciting and relying upon *ex parte* information as to a local property owner whose property was the subject of local code violations, and committing him to jail for failing to make certain repairs, notwithstanding that the defendant's 15-day notice to cure

the violations had not yet expired, and (2) sending a threatening letter on judicial stationery about alleged code violations by another local property owner, notwithstanding that there were no charges pending against this individual.

Judge Maclaughlin, who is not a lawyer, did not request review by the Court of Appeals.

Matter of Gary L. Moore

The Commission determined on November 19, 2001, that Gary L. Moore, a part-time Justice of the Grafton Town Court, Rensselaer County, should be censured

for *inter alia* failing to advise certain defendants of their right to assigned counsel and for making biased and otherwise inappropriate remarks, such as saying of

one defendant charged with Driving While Intoxicated, “I can’t do that to a fellow truck driver,” and saying of an alleged abuse victim that he would have “slapped her around” himself.

Judge Moore, who is not a lawyer, did not request review by the Court of Appeals.

Matter of Donna G. Recant

The Commission determined on November 19, 2001, that Donna G. Recant, a Judge of the Criminal Court of the City of New York, New York County, should be censured for *inter alia* mistreating defendants and attorneys, misusing bail in three cases in order to coerce guilty pleas, holding two defendants in custody and excluding two Legal Aid Society lawyers from her courtroom without complying with proper summary con-

tempt procedures, admonishing a defendant’s mother in the spectator section to speak English or leave since she was in an American courtroom, and depriving a defendant of counsel by directing her to obtain proof of legal residency from her Embassy as a requisite for legal services.

Judge Recant, who is a lawyer, did not request review by the Court of Appeals.

Matter of Richard H. Rock

The Commission determined on June 27, 2001, that Richard H. Rock, a part-time Justice of the Chesterfield Town Court, Essex County, should be censured for *inter alia* failing to effect the right to counsel in two cases and making state-

ments and issuing orders that presumed the guilt of defendants entitled to the presumption of innocence.

Judge Rock, who is not a lawyer, did not request review by the Court of Appeals.

Matter of David G. Roepe

The Commission determined on June 27, 2001, that David G. Roepe, a part-time Justice of the Montgomery Village Court, Orange County, should be censured for threatening his wife with a knife after consuming a quantity of alcohol, notwithstanding that criminal charges as to this episode were dis-

missed. In mitigation, the Commission stated that this appeared to be an isolated and uncharacteristic incident in his marriage of 42 years.

Judge Roepe, who is a lawyer, did not request review by the Court of Appeals.

Matter of Joseph C. Teresi

The Commission determined on February 8, 2001, that Joseph C. Teresi, a Justice of the Supreme Court, Albany County, should be censured for numerous injudicious, intemperate and precipitous remarks and actions in various cases, such as holding individuals in contempt based on unsworn statements and

without a hearing as required by law, and pointedly excluding a female attorney from certain settlement discussions and then exerting undue pressure on the parties to settle.

Judge Teresi, who is a lawyer, did not request review by the Court of Appeals.

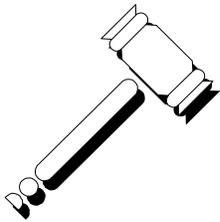
Matter of Edward J. Tracy

The Commission determined on November 19, 2001, that Edward J. Tracy, a part-time Justice of the Moreau Town Court, Saratoga County, should be censured for failing to disqualify himself from a case involving three defendants who he believed had vandalized his home, indicating in advance that he believed they were guilty and, in a separate

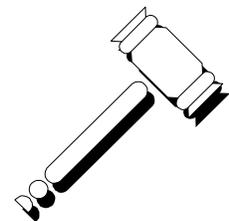
matter, making statements indicating that he would impose a “blanket” policy in DWI cases rather than treat each case individually on its own merits.

Judge Tracy, who is not a lawyer, did not request review by the Court of Appeals.

Determinations of Admonition



The Commission completed 15 disciplinary proceedings in 2001 that resulted in determinations of public admonition. The cases are summarized below.



Matter of Dale P. Christie

The Commission determined on November 19, 2001, that Dale P. Christie, a part-time Justice of the Schuyler Town Court, Herkimer County, should be admonished for violating fundamental procedures and convicting a defendant of a Vehicle & Traffic Law charge without a plea by the defendant or

a trial, then imposing a fine in excess of the statutory maximum and refusing to amend it when the matter was brought to his attention.

Judge Christie, who is not a lawyer, did not request review by the Court of Appeals.

Matter of Thomas A. Ciganek

The Commission determined on March 29, 2001, that Thomas A. Ciganek, a part-time Justice of the Piermont Village Court, Rockland County, should be admonished for creating a dangerous situation by firing his gun at a wild turkey

near a busy intersection, with “notable disregard” for the safety of motorists and bystanders.

Judge Ciganek, who is a lawyer, did not request review by the Court of Appeals.

Matter of Thomas A. Dickerson

The Commission determined on November 19, 2001, that Thomas A. Dickerson, a Judge of the County Court and an Acting Judge of the Family Court, Westchester County, should be admonished for undermining the impartiality of the judiciary, and the obligation to judge each case on its individual merits, by announcing that he would set bail at \$10,000 in all future domestic abuse cases involving death threats, and for

creating an impression that public criticism of his previous rulings had caused him to change his view of the law as to whether a defendant could be guilty of Second Degree Aggravated Harassment for making threats in a telephone call initiated by the alleged victim.

Judge Dickerson, who is a lawyer, did not request review by the Court of Appeals.

Matter of Leigh W. Fuller

The Commission determined that Leigh W. Fuller, a part-time Justice of the Town and Village Courts of Canajoharie, Montgomery County, should be admonished for making his decision in a small claims matter on the basis of an unauthorized *ex parte* communication and for coercing a guilty plea in a Vehicle &

Traffic Law speeding case by erroneously advising the defendant that she was not entitled to a supporting deposition from the issuing officer because she had been offered a plea reduction.

Judge Fuller, who is not a lawyer, did not request review by the Court of Appeals.

Matter of William J. Gori

The Commission determined on March 29, 2001, that William J. Gori, a part-time Justice of the Duane Town Court, Franklin County, should be admonished for soliciting *ex parte* information about a small claims case and holding a hearing and making a ruling in the absence of

defense counsel, after advising defense counsel not to appear because there would be no hearing.

Judge Gori, who is not a lawyer, did not request review by the Court of Appeals.

Matter of Chad R. Hayden

The Commission determined on June 27, 2001, that Chad R. Hayden, a part-time Justice of the Aurelius Town Court, Cayuga County, should be admonished for failing to disqualify himself from presiding over a small claims matter involving a claimant whom he had represented as a

client in a traffic case involving the same incident and whose father was respondent's close friend and court assistant.

Judge Hayden, who is a lawyer, did not request review by the Court of Appeals.

Matter of Larry D. Martin

The Commission determined on December 26, 2001, that Larry D. Martin, a Justice of the Supreme Court, Kings County, should be admonished for improperly having asserted the prestige of judicial office by writing two letters on judicial stationery to other judges, seeking favorable sentencing dispositions on

behalf of two criminal defendants who were the sons of his long-time family friends.

Judge Martin, who is a lawyer, has requested review by the Court of Appeals, where the matter is pending.

Matter of Michael F. Mullen

The Commission determined on February 8, 2001, that Michael F. Mullen, a Judge of the Court of Claims and an Acting Justice of the Supreme Court, Suffolk County, should be admonished for having used over \$18,000 in surplus funds from his 1996 judicial campaign in subsequent campaigns, rather than return

the money *pro rata* to his contributors or otherwise dispose of the funds as required by the Rules Governing Judicial Conduct and numerous Opinions of the Advisory Committee on Judicial Ethics.

Judge Mullen, who is a lawyer, did not request review by the Court of Appeals.

Matter of James R. Nichols, Sr.

The Commission determined on November 19, 2001, that James R. Nichols, Sr., a part-time Justice of the Malta Town Court, Saratoga County, should be admonished for failing to provide a defendant full opportunity to be heard in a minor traffic infraction matter and for discriminatorily incarcerating the defendant after trial because he could not pay his

\$100 immediately, rather than provide the same reasonable opportunity to pay afforded to defendants who mail in pleas of guilty.

Judge Nichols, who is not a lawyer, did not request review by the Court of Appeals.

Matter of Louis J. Ohlig

The Commission determined on November 19, 2001, that Louis J. Ohlig, a Judge of the County Court, Suffolk County, should be admonished for repeatedly asserting the prestige of judicial office for a private benefit, by interjecting himself

on behalf of his wife into her legal services fee dispute with another lawyer.

Judge Ohlig, who is a lawyer, did not request review by the Court of Appeals.

Matter of Thomas G. Restino, Jr.

The Commission determined on November 19, 2001, that Thomas G. Restino, Jr., a part-time Justice of the Hoosick Falls Village Court, Rensselaer County, should be admonished for *inter alia* permitting his co-justice to participate and advocate for a favorable bail decision on behalf of a criminal defendant, and for

failing to maintain accurate case records and make timely remittances of funds to the State Comptroller.

Judge Restino, who is not a lawyer, did not request review by the Court of Appeals.

Matter of Elizabeth A. Shanley

The Commission determined on December 27, 2001, that Elizabeth A. Shanley, a part-time Justice of the Esopus Town Court, Ulster County, should be admonished for (1) misrepresenting her credentials in campaign literature in that she appeared to say she was a graduate of three institutions of higher education when in fact she had attended clerk's

training programs that were held there and (2) indicating a pro-prosecution bias by advertising herself as a "law and order candidate."

Judge Shanley, who is not a lawyer, requested review by the Court of Appeals, where the matter is pending.

Matter of Alexander A. Shannon

The Commission determined on November 19, 2001, that Alexander A. Shannon, a part-time Justice of the Nassau Village Court, Rensselaer County, should be admonished for failing to advise certain defendants of, and effectuate, their right to assigned counsel and

closing his courtroom during civil and criminal proceedings that by law were public.

Judge Shannon, who is not a lawyer, did not request review by the Court of Appeals.

Matter of Robert E. Whelan

The Commission determined on December 27, 2001, that Robert E. Whelan, a Justice of the Supreme Court, Erie County, should be admonished for asserting the prestige of judicial office for a private benefit, by interjecting himself in a “heavy-handed” effort to negotiate with an attorney on behalf of

with an attorney on behalf of his wife, in a fee dispute involving the wife’s real estate business.

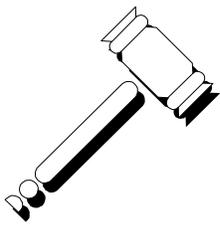
Judge Whelan, who is a lawyer, did not request review by the Court of Appeals.

Matter of Edward J. Williams

The Commission determined on November 19, 2001, that Edward J. Williams, a part-time Justice of the Kinderhook Town and Valatie Village Courts, Columbia County, should be admonished for engaging in prohibited political activity by assisting a volunteer deliver posters in a local congressional campaign, making unwarranted criticism of a local prosecutor’s handling of a case, summarily

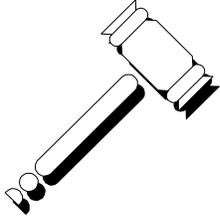
barring the victim’s attorney in a criminal case from observing the public trial, and rendering judgment in a landlord-tenant matter without conducting a hearing and giving the defendants an opportunity to be heard on contested issues.

Judge Williams, who is not a lawyer, did not request review by the Court of Appeals.



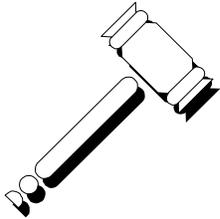
Dismissed or Closed Formal Written Complaints

The Commission disposed of nine Formal Written Complaints in 2001 without rendering public discipline. Three complaints were closed upon the resignation of the respondent-judge. Two complaints were closed upon the expiration of the judge’s term of office. Four complaints were disposed of with a letter of caution, upon a finding by the Commission that judicial misconduct was established but that public discipline was not warranted.



Matters Closed Upon Resignation

Eleven judges resigned in 2001 while complaints against them were pending at the Commission. Eight of them resigned while under investigation and three resigned while under formal charges by the Commission. The matters pertaining to these judges were closed. By statute, the Commission may continue an inquiry for a period of 120 days following a judge's resignation, but no sanction other than removal from office may be determined within such period. When rendered final by the Court of Appeals, the "removal" automatically bars the judge from holding judicial office in the future. Thus, no action may be taken if the Commission decides within that 120-day period that removal is not warranted.



Referrals to Other Agencies

Pursuant to Judiciary Law Section 44(10), the Commission may refer matters to other agencies. In 2001, the Commission referred 27 matters to the Office of Court Administration, typically dealing with relatively isolated instances of delay, poor records keeping or other administrative issues. In addition, one matter was referred to an attorney disciplinary committee.

Letters of Dismissal and Caution



A *Letter of Dismissal and Caution* constitutes the Commission's written confidential suggestions and recommendations to a judge upon conclusion of an investigation, in lieu of commencing formal disciplinary proceedings. A *Letter of Caution* is a similar communication to a judge upon conclusion of a formal disciplinary proceeding and a finding that the judge's misconduct is established. Cautionary letters are authorized by the Commission's rules, 22 NYCRR 7000.1(l) & (m).

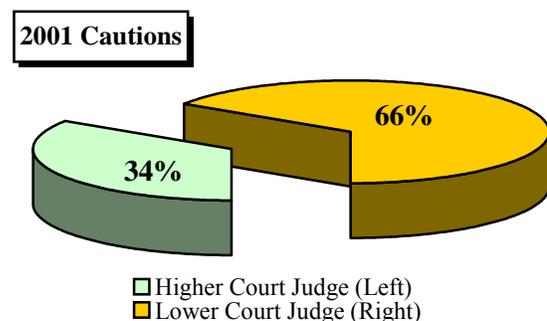
Where the Commission determines that a judge's conduct does not warrant public discipline, it will issue a cautionary letter, privately calling the judge's attention to ethical violations that should be avoided in the future. Such a communication has value not only as an educational tool but also because it is essentially the only method by which the Commission may address a judge's conduct without making the matter public.

In 2001, the Commission issued 40 Letters of Dismissal and Caution and four Letters of Caution. Twenty-nine town or village justices were cautioned, including six who are lawyers. Fifteen judges of higher courts – all lawyers – were cautioned. The caution letters addressed various types of conduct, as the examples below indicate.

Improper Ex Parte Communications.

Four town or village justices were cautioned for having unauthorized *ex parte* communications on substantive matters in pending cases. Two of them had private meetings with prosecutors to discuss potential plea bargains, and two others had substantive discussions with witnesses or parties outside court and then disposed of the cases based on these discussions.

Political Activity. Eight judges were cautioned for improper political activity. The Rules Governing Judicial Conduct prohibit judges from attending political gatherings, endorsing other candidates or otherwise participating in political activities except for a certain specifically-defined "window period" when they themselves are candidates for elective judicial office. Judicial candidates are also obliged to campaign in a manner that reflects appropriately on the integrity of judicial office, *inter alia* avoiding pledges or promises of conduct if elected, and avoiding misrepresentations of their or their opponent's qualifications. One judge was cautioned for not closing his campaign committee in a timely way and in an authorized manner, *e.g.* by failing to return surplus funds in a



timely manner to contributors on a *pro rata* basis. Four judges were cautioned for inaccurate, misleading or undignified statements in their campaign literature. Two others were cautioned for improperly participating in the political campaigns of other candidates.

Conflicts of Interest. All judges are required by the Rules to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned. In 2001, five judges were cautioned for relatively isolated conflicts of interest, such as failing to disclose and presiding over a case involving a former client or business associate of a relative.

Inappropriate Demeanor. Five judges were cautioned for discourteous, intemperate, indecorous or otherwise offensive demeanor toward those with whom they deal in their official capacity, usually in relatively isolated circumstances rather than as part of a discernible pattern.

Poor Administration;

Failure to Comply with Law. Eight judges were cautioned for failing to meet certain mandates of law, either out of ignorance or administrative oversight. Two town justices were cautioned for failing to administer oaths to witnesses. Two others had bail practices that were inconsistent with law. One granted an Adjournment in Contemplation of Dismissal without the requisite approval of the District Attorney. Two other town justices were cautioned for inordinate delays in scheduling or deciding two particular cases, notwithstanding repeated requests.

Lending the Prestige of Office

To Advance Private Purposes. Judges are prohibited by the Rules from lending the prestige of judicial office to advance a private purpose, including such laudable activities as charitable fund-raising. In 2001, five judges were cautioned for such activity, such as intervening in a spouse's private business dispute, permitting a private organization to use the judge's title in promotional material, or being a featured participant in a charity's fund-raising event.

Practice of Law by Part-Time Judges.

While lawyers who serve as part-time justices of town, village and some city courts are permitted to practice law, there are limitations in the Rules on the scope of that practice. For example, a part-time judge may not act as an attorney on any matter in his or her own court. Nor may a part-time lawyer-judge practice law before another part-time lawyer-judge sitting in the same county. In 2001, one part-time judge was cautioned for representing clients before the town board in the town where the judge presides.

Audit and Control. Seven part-time town or village justices were cautioned for failing to make prompt reports, deposits and/or remittances to the State Comptroller of court-collected funds, such as traffic fines, after audits by the Comptroller's Office. There was no indication of misappropriated funds, and the judges all took appropriate administrative steps to avoid such problems in the future.

Other Cautions. One judge was cautioned for failing to take steps to assure compliance with Part 36 of the Chief Judge's Rules, requiring that fiduciary appointments not be made to individuals who had received other appointments within a 12-month period where the compensation is anticipated to exceed \$5,000.

Follow Up on Caution Letters. Should the conduct addressed by a letter of dismissal and caution continue or be repeated, the Commission may authorize an investigation on a new complaint, which may lead to a Formal Written Complaint and further disciplinary proceedings. In certain instances, such as audit and control and records keeping

matters, the Commission will authorize a follow-up review of the judge's finances and records, to assure that promised remedial action was indeed taken.

Disregard of a Caution May Be Used in Subsequent Proceedings

In 1999, the Court of Appeals, in upholding the removal of judge who *inter alia* used the power and prestige of his office to promote a particular private defensive driver program, noted that the judge had persisted in his conduct notwithstanding a prior caution from the Commission that he desist from such conduct. *Matter of Assini v. Commission on Judicial Conduct*, 94 NY2d 26 (1999).



COMMISSION DETERMINATIONS REVIEWED BY THE COURT OF APPEALS

Pursuant to statute, Commission determinations are filed with the Chief Judge of the Court of Appeals, who then serves the respondent-judge. The respondent-judge has 30 days to request review of the Commission's determination by the Court of Appeals, or the determination becomes final. In 2001, the Court decided the two matters summarized below.

Matter of James H. Shaw, Jr., v. State Commission on Judicial Conduct

The Commission determined on November 8, 1999, that James H. Shaw, Jr., a Supreme Court Justice, Kings County, should be censured for engaging in sexually harassing behavior toward his secretary over a 12-year period, including "uninvited touching" and "continual remarks of a personal and sexual nature" that constituted "egregious" conduct and warranted "severe sanction."

In censuring the judge, the Commission took note that he was 76 years old and scheduled to retire in another month.

After the determination was rendered, Judge Shaw made a motion to reconsider based on newly discovered evidence in the form of a witness who claimed that the case against the judge had been based on perjured testimony. The Commission, which considered the new witness's affidavit and a transcript of her testimony before Commission Counsel, denied the motion.

The Court of Appeals, with one dissent

and one concurring opinion, accepted the Commission's determination and censured Judge Shaw in an opinion dated February 20, 2001. 96 NY2d 7 (2001). The Court's Opinion was rendered after two oral arguments, the second of which was directed by the Court *sua sponte*.

The Court held *inter alia* that the remedy sought by petitioner,¹ *i.e.* remand of the case for the Commission or the referee to hear the newly discovered evidence firsthand, was not within its power. *Id.* at 11-12. Moreover, the Court held that, although the parties gratuitously included in the record for review the papers submitted to the Commission on petitioner's motion to reconsider, the Court's review was limited by the Constitution, the Judiciary Law and its own precedents, to the record that was before the Commission when the censure determination was

¹ The disciplined *i.e.* "respondent" judge in a Commission proceeding becomes the "petitioner" when the matter goes before the Court of Appeals.

rendered; that record did not include the motion to reconsider. *Id.* at 12, 13.

Nevertheless, the Court took note of the new witness's "bizarre and inconsistent testimony" in a transcript "filled with repeated admissions, after recesses in which [she] consulted with her attorney, that earlier deposition testimony was false." *Id.* at 11. The Court concluded that under the circumstances, the "Commission, not surprisingly, determined ... that the new evidence did 'not create a reasonable possibility or a probability that [the] Determination would be altered'." *Id.* at 11.

In a concurring opinion, Judge Albert Rosenblatt was "constrained to agree that this Court lacks jurisdiction to review the import of the newly discovered evidence" presented to the Commission by Judge Shaw. *Id.* at 14. He noted that, although Commission Counsel "compellingly impeached [the new witness's] credibility as to various collateral matters ... [he] did not, however, disprove her central allegation – that Justice Shaw had been framed and that the testimony against him was perjured." *Id.* at 14. Judge Rosenblatt suggested that Judge Shaw received less consideration from the Commission than was due.

Judge Rosenblatt also discussed the standards governing motions to reconsider based on newly discovered evidence in criminal and civil cases and suggested that the Commission may have mingled the two in concluding that the newly discovered evidence did "not create a reasonable *possibility or a probability* that [the] Determination would be

altered." *Id.* at 14 (emphasis in original).²

In a dissenting opinion, Judge George Bundy Smith stated that he "cannot agree that this Court has no jurisdiction and no obligation to review the events subsequent to the original decision by the Commission, particularly when the Commission, although denying petitioner's motion for reconsideration, has apparently reviewed that evidence on the merits." *Id.* at 17. Judge Smith opined that the reconsideration issues were part of the Commission's determination, and that there were due process and fairness claims compelling a remand to the Commission or holding the appeal in abeyance until the petitioner could himself bring the matter before the Commission again. *Id.* at 17-18.

² In November 2001, after appropriate published notices and an opportunity for public comment, the Commission amended its Operating Procedures and Rules to include specific criteria pertaining to review of motions to reconsider based on newly discovered evidence. 22 NYCRR 7000.6(f)(6). The text of the amended rule appears on page 25 in this Annual Report.

***Matter of Robert N. Going v.
State Commission on Judicial Conduct***

The Commission determined on December 29, 2000, that Robert N. Going, the full-time Family Court Judge of Montgomery County, should be removed from office for *inter alia* engaging in a course of “bizarre and erratic” conduct arising out of a personal relationship with his law clerk, which detracted from the dignity of his office, seriously disrupted the operations of the court and constituted an abuse of his judicial and administrative power, and for improperly rescinding an order terminating the suspension of the driver’s license of a long-time friend of his.

The Court of Appeals unanimously accepted the Commission’s determination and removed Judge Going from office in an opinion dated November 27, 2001. 97 NY2d 121 (2001).

The Court found “ample evidence of petitioner’s misconduct” that petitioner was unable to controvert. *Id.* at 126. The Court found that Judge Going took “hostile and retaliatory actions against his law clerk,” “interfered with her boyfriend’s service as a law guardian” and “sent a letter to the District Administrative Judge expressing a willingness to fire his law clerk after she had been transferred to another court.” *Id.* at 125. The Court noted that the judge’s “increasingly erratic behavior” escalated the “tension and divisiveness [that] permeated the

courthouse work environment, as characterized by such episodes as his “follow[ing] the Chief Clerk to her office where he pounded on her closed door and yelled at her as she called the Deputy Administrative Judge.” *Id.* at 126. The Court also found misconduct as charged in Judge Going’s handling of the license suspension involving his long-time friend. *Id.* at 126.

The Court held that Judge Going’s “lack of contrition and his additional improprieties during the course of the investigation only exacerbate his misconduct, especially considering that he was admonished by the Commission [in 1997] for disparaging a litigant from the bench.” *Id.* at 126. “Petitioner has consistently failed to recognize and acknowledge the impropriety of his behavior. Instead, he consistently blames co-workers for his personal and professional failings” and has been “resistant and uncooperative with administrators [despite] their repeated attempts to address problems he helped create.” *Id.* at 126.

The Court stated that “Judges must be held to a higher standard of conduct than the public at large,” that petitioner’s conduct was “truly egregious” and that he is “unfit to continue as a Judge.” *Id.* at 127.



CHALLENGES TO COMMISSION PROCEDURES

Commission staff litigated various procedural issues in 2001. One such issue, which was raised before the Court of Appeals in the course of its review of a Commission determination, resulted in an amendment of the Commission's Operating Procedures and Rules. Others were raised in civil litigation. The issues are discussed below.

MOTIONS TO RECONSIDER A COMMISSION DETERMINATION

As a result of the Court's discussion in *Matter of Shaw* of Commission procedures as to a motion to reconsider a disciplinary determination (pages 22-23 in this Annual Report), the Commission amended its Operating Procedures and

Rules in November 2001, to specify the criteria on which such a motion must be based, and reserving to itself the option to referring such a motion to a referee. 22 NYCRR 7000.6(f)(6) was amended to read as follows:

Motions for reconsideration of Commission determination must be made within 30 days of service of the determination upon respondent. In a motion to reconsider on grounds of newly discovered evidence, the moving party must demonstrate that the proffered evidence, if introduced at the hearing before the referee or otherwise properly before the commission, (1) would probably have resulted in a different determination and (2) could not have been discovered in time to introduce at the hearing or otherwise be properly before the commission prior to the rendering of the determination. The commission reserves the authority to direct a hearing before a referee for the purpose of evaluating the newly discovered evidence.

CHALLENGES BY COMPLAINANTS

In several instances complainants commenced court challenges to the Commission's discretion to consider complaints and to determine whether to investigate a judge. In each case considered on the merits, the Commission's exercise of

discretion was affirmed. *Mantell v. State Commn on Jud Conduct*, 277 AD2d 96 (1st Dept 2000), *mot for lv to app den'd*, 96 NY2d 706 (2001); *Sassower v. Comm on Jud Conduct*, 289 AD2d 119, 734 NYS2d 68 (1st Dept 2001).

OBSERVATIONS AND RECOMMENDATIONS

The Commission traditionally devotes a section of its Annual Report to a discussion of various topics of special note or interest that have come to our attention in the course of various investigations. We do this for public education purposes, to advise the judiciary so that potential misconduct may be avoided, and pursuant to our authority to make administrative and legislative recommendations.



FAVORITISM AND THE APPEARANCE OF FAVORITISM IN FIDUCIARY APPOINTMENTS

The Commission's 2001 Annual Report reminded judges that Part 36 of the Rules of the Chief Judge, governing certain fiduciary appointments, provides that the judge must appoint "persons designated to perform services for a receiver ... upon evaluation by that judge of the qualifications of candidates for appointment." The purpose of this rule is to establish appropriate controls that would not otherwise exist with respect to lucrative designations of secondary appointments.

Apparently, some judges had not accepted this message and responsibility under Part 36, notwithstanding an explicit memorandum from Chief Administrative Judge Jonathan Lippman in March 2000, and follow-up memoranda from and meetings with other administrative judges. Judges, for example, had signed orders to appoint a receiver in which the receiver is explicitly authorized to make such secondary appointments as a managing agent or attorney.

Such delegations to the receiver are contrary to Part 36.

Until a court rules otherwise, Part 36 represents the law, and judges are expected to honor the spirit and letter of that provision of law. To avoid even a mistaken delegation to a receiver of the court's duty to make such secondary appointments, judges must pay close attention to the designation-of-receiver orders presented for their approval.

The Commission investigated several judges who did not appear to be abiding by Part 36, even after the March 2000 memorandum from the Chief Administrative Judge. Each of the investigated judges had given the court-appointed primary fiduciary the discretion to make secondary appointments in one or two cases. All but one of the judges explained that they did not intentionally violate Part 36, that their delegation of the secondary appointment power was inadvertent, and that they agreed to abide by Part 36 in the future. The remaining

judge expressed the view that Part 36 is inconsistent with state law, but that he would abide by Part 36 in the future, pending resolution in the courts of the issue of the validity of Part 36. Thus, all of the judges recognize that Part 36 is the law in New York State.

Adherence to this particular provision of Part 36 should eliminate some of the shocking disclosures made in a Decem-

ber 2001 report to the Chief Judge by the court system's Special Inspector General for Fiduciary Appointments, including the relatives of judges in one county getting a majority of highly lucrative secondary fiduciary appointments, *e.g.* as counsel to a receiver.

The Commission expects all judges to comply with Part 36 in the future.



PUBLIC HEARINGS

At present all Commission investigations and formal hearings are confidential by law. Commission activity is only made public at the end of the disciplinary process – when a determination of public admonition, public censure or removal from office is rendered and filed with the Chief Judge pursuant to statute – or when the accused judge requests that the formal disciplinary hearing be public.

The subject of public disciplinary proceedings, for lawyers as well as judges, has been vigorously debated in recent years by bar associations and civic groups, and addressed in newspaper editorials around the state that have supported the concept of public proceedings.

The process of evaluating a complaint, conducting a comprehensive investigation, conducting formal disciplinary proceedings and making a final determination subject to review by the Court of Appeals, takes considerable time. The

process is lengthy in part because of the Commission's painstaking efforts to render a determination that is fair, the lack of adequate funding and the attendant need for more staff, and the obligation to observe various due process requirements set forth in law. If the charges and hearing portion of a Commission matter were open, the public would have a better understanding of the entire disciplinary process. The very fact that charges had been served and a hearing scheduled would no longer be secret.

As it is, maintaining confidentiality is often beyond the Commission's control. For example, in any formal disciplinary proceeding, subpoenas are issued and witnesses are interviewed and prepared to testify, by both the Commission staff and the respondent-judge. It is not unusual for word to spread around the courthouse, particularly as the hearing date approaches. As more "insiders" learn of the proceedings, the chances for "leaks" to the press increase, often resulting in published misinformation and suspicious accusations as to the

suspicious accusations as to the source of the “leaks.” In such situations, both confidentiality and confidence in the integrity of the disciplinary system suffer.

For several years beginning in 1996, the Senate Judiciary Committee, chaired by Senator James Lack, has supported legislation that would make Commission proceedings public 30 days after formal disciplinary charges against the judge were served. (The 30-day period would coincide with the judge’s time to file a formal answer to the charges.)

The Commission itself has long advocated that post-investigation formal pro-

ceedings should be made public, as they were in New York State until 1978, and as they are now in 35 other states. The Commission hopes that the issue will be revived in the Legislature and not be diverted by ancillary matters or political disputes. The Commission also hopes that renewed efforts to enact such a public proceedings measure will succeed without encumbrances as have been suggested in the past, such as the unnecessary introduction of a statute of limitations or increase in the standard of proof from the present “preponderance of the evidence” standard to “clear and convincing evidence.”



SUSPENSION FROM JUDICIAL OFFICE AS A FINAL SANCTION

In its 2001 Annual Report, the Commission recommended that the law be amended to permit suspending a judge from office under certain circumstances while an investigation is pending. In this report, we address another gap in the law: the absence of a provision authorizing suspension as a final disciplinary sanction.

Under current law, the Commission’s disciplinary determinations are limited to public admonition, public censure or removal from office for misconduct, and retirement for mental or physical disability.

Prior to 1978, when both the Constitution and the Judiciary Law were

amended, the Commission, or the courts in cases brought by the Commission, had the authority to determine that a judge be suspended with or without pay for up to six months. Suspension authority was exercised five times from 1976 to 1978: three judges were suspended without pay for six months, and two were suspended without pay for four months.

Since 1978, neither the Commission nor the courts have had the authority to suspend a judge as a final discipline. While the legislative history of the 1978 amendments is not clear on the reason for eliminating suspension as a discipline, there was some discussion among political and judicial leaders at the time suggesting that, if a judge committed misconduct serious enough to warrant the already momentous discipline of sus-

pension, public confidence in the integrity of that judge was probably irretrievably compromised, thus requiring removal. Nevertheless, at times the Commission has felt constrained by the lack of suspension power, noting in several censure cases that it would have suspended the disciplined judge if it had authority to do so.

Some misconduct is more severe than would be appropriately addressed by a censure, yet not egregious to the point of warranting removal from office. As it has done previously, the Commission suggests that the Legislature consider the merits of a constitutional amendment, providing suspension without pay as an alternative sanction available to the Commission.



JUDICIAL CANDIDATES IMPLYING THAT THEY ARE INCUMBENTS OF A PARTICULAR COURT

Political activity by judicial candidates, including incumbent judges seeking elective judicial office, is strictly limited by the Rules Governing Judicial Conduct to a “window period” beginning nine months before the nomination date and ending six months after the nomination or general election date. Sections 100.0(Q) and 100.5. Even within that window period, the Rules proscribe certain political activity and impose various obligations on all judicial candidates, whether incumbent or challenger.

Section 100.5(A)(4)(d)(iii) of the Rules states that a judge or judicial candidate “shall not ... knowingly make any false statement or misrepresent the identity, qualifications, current position or other fact concerning the candidate or an opponent.”

Some judicial candidates have phrased campaign literature in such a way as to appear that they already hold the particular office for which they are running.

Campaign posters or literature for a Family Court candidate may read –

**John Doe
Family Court Judge
Election Day – November 3rd**

– even though candidate Doe may actually be a judge of another (typically lower) court or may not be a judge at all. Sometimes, multiple candidates for the same position may advertise themselves in the same way, causing confusion among the voting public as to which candidate, if any, is an incumbent.

In a September 2000 determination (*Matter of Mullin*, 2001 Annual Report 117; www.scjc.state.ny.us/mullin.htm), the Commission publicly admonished a judge for various violations of the Rules pertaining to political activity, including publishing campaign posters containing the statement, “John N. Mullin Supreme Court Justice,” along with a photograph

of the judge in judicial robes, when in fact, at the time, he was not a Supreme Court Justice. The Commission has also confidentially cautioned a number of judges for misrepresenting their current position in such a fashion, where there were no other violations of the Rules.



**INAPPROPRIATE “OFF THE RECORD”
COMMENTARY BY A JUDGE IN COURT PROCEEDINGS**

Over the years, the Commission has often been confronted with situations in which a judge was alleged to have made discourteous, intemperate or other inappropriate remarks that were not transcribed by the court reporter or otherwise preserved.

The Commission has commented extensively in past Annual Reports about the need to equip courts “not of record” – *e.g.* town and village courts that are not required by law to make verbatim records of proceedings – with tape recording devices or adequate funding for stenographic services so that accurate records could be made of the proceedings in those courts.

The focus of the commentary in this section is judges who purposefully go “off the record” to make improper remarks or silently signal court reporters to stop transcribing or have court reporters selectively edit transcripts to omit the judge’s improper comments.

In one case this year, the Commission learned that a particular town court jus-

All judicial candidates should take steps to make certain that all of the literature, signs and ads that call for their election do not state or imply that they are incumbents of any office that they do not presently hold.

tice would at times silently signal the court reporter to stop transcribing. During such untranscribed periods, which the parties did not know were off the record, the judge made comments that he later acknowledged to be sarcastic and otherwise inappropriate. At other times, the judge would make discourteous remarks and then direct that they be stricken, causing the reporter to omit the remarks when preparing the transcript.

Transcripts of court proceedings are not the private preserve of the judge presiding. They are the official and often the most accurate record of what actually transpired in court. The integrity of the transcript is paramount and must be preserved, not compromised by having nasty or embarrassing remarks by the judge declared “off the record” either before or after the words are uttered. “Striking” or otherwise concealing intemperate remarks does not ameliorate their harshness, and it creates a false impression of what was actually said.

Transcripts may be ordered and relied upon by the parties or others, including court officials and the Commission. In-

deed, even though town and village courts are not required to stenographically record proceedings, Section 1704 of the Uniform Justice Court Act requires that, where there is a transcript, such minutes must be furnished to the court clerk as part of the appeal process. Effectively editing the record from the bench could be prejudicial, compromising the appellate rights of litigants as well as diminishing the integrity of the trial proceedings themselves. The parties and witnesses, who do not have the

power to declare something off the record, are particularly disadvantaged when they are unaware that the judge is silently signaling the stenographer to go off the record.

While it may seem so fundamental as to go without saying, the Commission believes that judges, particularly those who are new to office, should be reminded in the court system's regular judicial education programs of the sanctity of the trial record and the serious ramifications to compromising it.



LENDING THE PRESTIGE OF JUDICIAL OFFICE TO ADVANCE PRIVATE INTERESTS

Section 100.2(C) of the Rules Governing Judicial Conduct mandates *inter alia* that a “judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.”

Over the years, the Court of Appeals and the Commission have publicly disciplined numerous judges for improperly asserting the influence of judicial office and improperly communicating with fellow judges and others on behalf of criminal defendants or civil litigants. It may be personally difficult for a judge to deny the request of a relative or friend who asks for influence or *ex parte* help, but the judge is obliged to refrain from doing so. Protecting the integrity of judicial office and the administration of justice demands it. Failing to do so diminishes respect for both.

In *Matter of Kiley*, 74 NY2d 364 (1989), a District Court Judge was censured for requesting favorable consideration on behalf of two defendants from another judge and an Assistant District Attorney.

In *Matter of Lonschein*, 50 NY2d 569 (1980), a Supreme Court Justice was admonished for using the prestige of office on behalf of a friend who had applied for a lease and licenses from a local government agency.

In *Matter of Shilling*, 51 NY2d 397 (1980), a Civil Court Judge was removed from office for interfering in a proceeding before another judge and lending the prestige of office to advance the interests of a litigant before that judge.

In *Matter of Figueroa*, 1980 Annual Report 159 (1979), the Commission censured a Criminal Court Judge for asserting his judicial influence with another

judge in a criminal case in which his great-grandnephew was the defendant.

In *Matter of Montaneli*, 1983 Annual Report 145 (1982), the Commission censured a town justice for interceding with another judge and the police on behalf of a defendant.

In *Matter of Calabretta*, 1985 Annual Report 112 (1984), the Commission admonished a Supreme Court Justice for requesting another judge to adjourn a case, as a favor to his cousin who was an attorney in the matter.

In *Matter of DeLuca*, 1985 Annual Report 119 (1984), the Commission admonished a Supreme Court Justice for initiating an *ex parte* conversation with another judge about a criminal case pending before the other judge.

In *Matter of Gassman*, 1987 Annual Report 89 (1986), a town justice was admonished for releasing certain defendants after *ex parte* communications from another judge.

In *Matter of Freeman*, 1992 Annual Report 44 (1991), a town justice was admonished for writing to another judge in support of an applicant who was seeking to have his gun license reinstated. The applicant was a customer of the judge's private business.

In *Matter of Engle*, 1998 Annual Report 125 (1997), the Commission censured a town justice for writing a letter on court stationery and circulating a petition on behalf of a defendant whose case was pending in another court.

In *Matter of Putnam*, 1999 Annual Report 131 (1998), a town justice was admonished for writing to another judge and attempting to influence the outcome of a case before that judge.

In *Matter of Howell*, 2001 Annual Report 115 (2000), a town justice was admonished for writing to the judge in a criminal case, disparaging the defendant.

Approximately 150 judges, mostly part-time town or village court justices, were publicly disciplined from 1978 to 1985 for requesting favorable consideration from other judges for defendants in traffic cases, or for granting such requests, or both. *See*, 1995 Annual Report 82. In *Matter of Reedy*, 64 NY2d 299 (1985), the Court of Appeals held that even a single incident of engaging in such favorable consideration in a traffic matter may warrant public discipline.

In *Lonschein, supra*, the Court held that even a simple inquiry – in this case to a municipal agency about the reasons for the delay in a friend's application for a business license – may be improper because of the perception that the judge is implicitly asserting the prestige and influence of office for someone's private benefit. As the Court noted:

Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved. 50 NY2d at 572.

Purportedly “Personal & Unofficial” Communications on Court Letterhead

Where the assertion of judicial influence may be manifested in a letter on court stationery from the judge to the person or agency over which influence is sought, it makes no difference that the letter may be marked “Personal & Unofficial.” That qualifying phrase cannot mask the identity of the sender as a judge.

In a 2001 case, the Commission determined to admonish a Supreme Court Justice for writing letters to two judges seeking leniency on behalf of defendants whose families he had known for many years. *Matter of Larry D. Martin* in this Annual Report. Judge Martin wrote both letters on his judicial stationery, unsolicited by the judges to whom they were addressed. His labeling them both “Personal and Unofficial” did not mitigate the fact that the letters constituted clear attempts to use the prestige of office to advance the private interests of the defendants.

In addition to the significant body of case law in this area, the Advisory Committee on Judicial Ethics has issued numerous opinions on the proper and improper uses of judicial letterhead. Permissible unofficial uses of judicial letterhead are rare.

For example, while a judge may write a reference letter on behalf of a law school or job applicant if the recommendation reflects the judge’s appraisal of the abilities of the applicant (Opinion 88-10), a judge may not voluntarily send a letter to the Probation Department on behalf of

suspended court employee, but may respond to an inquiry from the Department concerning the defendant (Opinion 88-63). While a judge may submit an affidavit of good character for an applicant to the New York bar if it contains an accurate reflection of the judge’s opinion (Opinion 88-166), a judge should not write a character reference at the request of a criminal defendant, even if the defendant is the judge’s former law clerk (Opinion 89-04).

Where a judge has the slightest doubt about the propriety of sending a particular letter, the prudent course would be to examine the case law and Advisory Opinions and request an opinion from the Advisory Committee.

Judges Who Appear in Advertising

Consistent with the prohibition on lending the prestige of judicial office to the private benefit of others, there are numerous Advisory Opinions proscribing a judge’s involvement in commercial or charitable advertising. In the few instances where use of the judge’s name or likeness is permitted, the circumstances are narrowly construed. For example, while a judge may permit his or her resume and photo to appear in a university brochure promoting the achievements of alumni to the public and to prospective employers of alumni (Opinion 88-79), a judge may not make affirmative promotional statements, encouraging the audience to send their children to certain schools (Opinion 93-127).

A judge who is asked to participate in the promotion of a school or other organiza-

tion, however worthy, must take special care not to allow an impermissible use of his or her name, title and likeness. Reference to the Advisory Opinions, and

seeking one that addresses the judge's specific situation, are strongly recommended.



The Commission's Budget

In numerous recent Annual Reports, we have called attention in this space to the fact that the Commission has been persistently and acutely underfunded and understaffed, for at least a decade. As a result, it has been seriously challenged in its endeavor to fulfill its constitutional mandate, *i.e.* to investigate allegations of judicial misconduct and, where appropriate, take disciplinary action against judges.

In fiscal year (FY) 1978-79, the Commission's budget of \$1.64 million supported a full-time staff of 63, including 21 lawyers and 18 investigators.

Currently, after more than a decade of serious cutbacks, the Commission's budget of about \$2.23 million supports a staff of 27, including only nine attorneys, and six full-time and one part-time inves-

tigators. In contrast, while the California Commission on Judicial Performance also has a staff of 27, it has 16 attorneys and nearly twice the annual budget (*i.e.* \$3.7 million), even though California has significantly fewer judges and handles fewer complaints than New York.

As a result of staff and funding shortages, investigations take longer and are not as comprehensive as they should be and once were. Because of budget cutbacks, the time it takes to conclude a complex case in which a full hearing is held (*i.e.*, from intake to final disposition) has gone from 20 months to 26 months. The Commission itself only meets seven or eight times a year, instead of 12 times a year as it did when funding was adequate. This contraction contributes significantly to delay in the completion of proceedings. Meanwhile, the number of complaints handled by the Commission has more than doubled – from 641 in 1978 to 1308 in 2001 – and in seven of the last 10 years, the total exceeded 1400.

COMPARING THE NEW YORK & CALIFORNIA COMMISSIONS

| | NUMBER OF JUDGES | COMPLAINTS (ANNUALLY) | NUMBER OF ATTORNEYS | TOTAL STAFF | ANNUAL BUDGET |
|------------|------------------|-----------------------|---------------------|-------------|----------------|
| California | 1,950 | 1000-1100 | 16 | 27 | \$3.7 million |
| New York | 3,363 | 1300-1450 | 9 | 27 | \$2.23 million |

The Commission's request a year ago for an additional \$100,000 to restore three investigator positions was denied. While such a restoration would have brought our total number up to 9½, this would still only represent half the number of investigators on staff two decades ago. In recognition of overall budgetary projections made by the Division of Budget, we acceded to a request not to renew the request for these three positions for fiscal year 2002-03.

The Governor's Proposed Budget for FY 2002-03 calls for status quo financing of the Commission. Other than contractually mandated salary increases, there will be no new funding. Indeed, our Temporary Service fund, from which we pay the referees who preside over disciplinary hearings, was reduced from an already deficient \$17,000 a year to an unreasonably low \$9,700. If the Commission cannot pay referees, it cannot hold hearings, which would seriously impede the judicial disciplinary system.

Responsible Budget Management

Since its inception 27 years ago, the Commission has managed its finances with extraordinary care. In periods of relative plenty, we kept our budget small; in times of statewide financial crisis, we made difficult sacrifices. Our average annual increase since 1978 has been less than one percent – a no-growth budget which, when adjusted for inflation, has actually meant a major decline in financial resources.

Our record of fiscal prudence was underscored by an exhaustive audit in 1989 by

the State Comptroller, which found that the Commission's finances were in order, that our budget practices were all consistent with state policies and rules, and that no changes in our fiscal practices were recommended.

The Commission's Unique Role

Under the New York State Constitution, the Commission is the only agency of state government with the authority to investigate judges for ethical misconduct. Its disciplinary role is unique. The Commission system has served New York well since its inception 27 years ago. More than 500 judges have been publicly disciplined for judicial misconduct, more than 1000 have been confidentially cautioned, and more than 300 have resigned while under inquiry. By contrast, in the 100 years before the Commission was established, 23 judges were disciplined. It is probably fair to say that the judiciary has become more sensitive to its ethical obligations, and that public confidence in the judiciary has consequently improved.

One of the critical features of the Commission system is its structural independence. The 11 Commission members are appointed to staggered four-year terms by various designating authorities – the Governor, the Chief Judge and the Legislature's leaders – none of whom controls a majority. The Commission, by law, elects its own chairperson and, by law, appoints an attorney as Administrator. The Administrator, by law, appoints a deputy and other counsel, and support staff. All but two of the nine attorneys on staff have been with the

Commission for more than 15 years, providing a professional continuity free of political interference.

Any agency of government should strive to live within reasonable budgetary means, however plentiful or scarce resources may be in a given fiscal year. Clearly, the Commission has demon-

strated its ability to do precisely that, over the course of its entire existence. We have done more with less, for years. But the burden of being so persistently underfunded threatens to impede the discharge of our responsibilities and defeat the public policy underlying the Commission's very creation.

| Budget Figures, 1978 to Present | | | | | | |
|--|---------------|----------------------|--------------------|------------------|------------------------|-------------|
| FISCAL YEAR | ANNUAL BUDGET | COMPLAINTS RECEIVED† | NEW INVESTIGATIONS | STAFF ATTORNEYS* | INVESTIGATORS ON STAFF | TOTAL STAFF |
| 1978-79 | \$1,644,000 | 641 | 170 | 21 | 18 F/T | 63 |
| ≈ | ≈ | ≈ | ≈ | ≈ | ≈ | ≈ |
| 1988-89 | \$2,224,000 | 1109 | 200 | 9 | 12 f/t, 2 p/t | 41 |
| 1989-90 | \$2,211,500 | 1171 | 195 | 9 | 9 f/t, 2 p/t | 41 |
| 1990-91 | \$2,261,700 | 1184 | 212 | 9 | 8 f/t | 37 |
| 1991-92 | \$1,827,100 | 1207 | 197 | 8 | 7 f/t | 32 |
| 1992-93 | \$1,666,700 | 1452 | 180 | 8 | 6 f/t, 1 p/t | 26 |
| 1993-94 | \$1,645,000 | 1457 | 182 | 8 | 4 f/t, 1 p/t | 26 |
| 1994-95 | \$1,778,400 | 1438 | 208 | 8 | 4 f/t, 1 p/t | 26 |
| 1995-96 | \$1,584,100 | 1361 | 176 | 8 | 3 f/t, 1 p/t | 21 |
| 1996-97 | \$1,696,000 | 1490 | 192 | 8 | 2 f/t, 2 p/t | 20 |
| 1997-98 | \$1,736,500 | 1403 | 172 | 8 | 2 f/t, 2 p/t | 20 |
| 1998-99 | \$1,875,900 | 1451 | 215 | 9 | 6 f/t, 1 p/t | 27** |
| 1999-2000 | \$1,947,500 | 1426 | 242 | 9 | 6 f/t, 1 p/t | 27** |
| 2000-01 | \$1,911,800‡ | 1288 | 215 | 9 | 6 f/t, 1 p/t | 27** |
| 2001-02 | \$2,113,300 | 1308 | 208 | 9 | 6 f/t, 1 p/t | 27** |
| 2002-03 | \$2,230,000≠ | -- | -- | 9 | 6 f/t, 1 p/t | 27** |

* Number includes Clerk of the Commission, who does not investigate or litigate cases.

** Number includes two part-time staff.

‡ Cost-of-living allowances negotiated mid-year for all State employees resulted in an additional \$137,000 to cover such mandated costs.

† Complaint figures are calendar year (Jan. 1 – Dec. 31); Budget figures are fiscal year (Apr. 1 – Mar. 31).

≠ Proposed.



Conclusion

Public confidence in the high standards, integrity and impartiality of the judiciary, and in an independent disciplinary system that helps keep judges accountable for their conduct, is essential to the rule of law. The members of the New York State Commission on Judicial Conduct are confident that the Commission's work contributes to that ideal, to a heightened awareness of the appropriate standards of ethics incumbent on all judges, and to the fair and proper administration of justice.

Respectfully submitted,

HENRY T. BERGER, CHAIR
FREDERICK M. MARSHALL, VICE CHAIR
FRANCES A. CIARDULLO
STEPHEN R. COFFEY
LAWRENCE S. GOLDMAN
CHRISTINA HERNANDEZ
DANIEL F. LUCIANO
KAREN K. PETERS
ALAN J. POPE
TERRY JANE RUDERMAN

APPENDIX



Biographies of Commission Members and Attorneys
Roster of Referees Who Served in 2001
The Commission's Powers, Duties & History
Text of the Rules Governing Judicial Conduct
Text of 2001 Determinations
Statistical Analysis of Complaints



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New York State
Commission on Judicial Conduct

BIOGRAPHIES OF COMMISSION MEMBERS

There are 11 members of the Commission on Judicial Conduct. The Governor appoints four members, the Chief Judge of the Court of Appeals appoints three members, and each of the four leaders of the Legislature appoints one member.

The Governor's four appointees must include a judge or justice of the unified court system, an attorney, and two who are neither judges nor members of the bar. The Chief Judge's three appointees must all be judges; one must be a justice of the Appellate Division, one must be a town or village court justice, and one must be a judge other than on the Court of Appeals or Appellate Division. The leaders of the Legislature may appoint attorneys or non-attorneys, but they may not appoint judges.

| Commission Member | Appointing Authority | Expiration of Term |
|---|-----------------------------|---------------------------|
| Henry T. Berger, Esq., <i>Chair</i> | Senate Minority Leader | March 31, 2004 |
| Hon. Frederick M. Marshall, <i>Vice Chair</i> | Governor | March 31, 2004 |
| Hon. Frances A. Ciardullo | Chief Judge | March 31, 2005 |
| Stephen R. Coffey, Esq. | Senate President Pro Tem | March 31, 2003 |
| Lawrence S. Goldman, Esq. | Assembly Speaker | March 31, 2002 |
| Christina Hernandez, MSW | Governor | March 31, 2002 |
| Hon. Daniel F. Luciano | Governor | March 31, 2003 |
| Hon. Karen K. Peters | Chief Judge | March 31, 2002 |
| Alan J. Pope, Esq | Assembly Minority Leader | March 31, 2005 |
| Hon. Terry Jane Ruderman | Chief Judge | March 31, 2004 |
| Vacant | Governor | March 31, 2005 |

Biographies of the current Commission members appear on the following pages.

Henry T. Berger, Esq., *Chair of the Commission*, is a graduate of Lehigh University and New York University School of Law. He is in private practice in New York City, concentrating in labor law and election law. He is a member of the Association of the Bar of the City of New York and the New York State Bar Association. Mr. Berger served as a member of the New York City Council in 1977.

Honorable Frederick M. Marshall, *Vice Chair of the Commission*, attended the University of Buffalo and is a graduate of its law school. He is admitted to practice in all courts of the State of New York as well as the Federal courts. He has served as Chief Trial Assistant in the Erie County District Attorney's office, Senior Erie County Court Judge, President of the New York State County Judges Association, Supreme Court Justice of the State of New York, and President of the State Association of Supreme Court Justices. Justice Marshall has served as Administrative Judge of the Eighth Judicial District and Administrative Justice of the Narcotics Court in the Fourth Judicial Department. In addition to his 30 year tenure in the judiciary, Justice Marshall has been an instructor in constitutional law at the State College at Buffalo, Chairman of the Advisory Council of the Political Science Program at Erie Community College, Chairman of the New York State Bar Association Judicial Section, and has been designated Outstanding Citizen of the Year by the Buffalo News. In 1989 the Bar Association of Erie County presented Justice Marshall with the Outstanding Jurist Award. The University of Buffalo Alumni Association has conferred upon him its Distinguished Alumni Award. He served as a First Lieutenant in the Infantry in World War II. Justice Marshall and his wife have three sons and live in Orchard Park, New York, and Bradenton, Florida.

Honorable Frances A. Ciardullo received her B.A. from Cornell University and her J.D. from Syracuse University College of Law, where she was an Editor on the Law Review. She serves part-time as the Schroepfel Town Justice in Oswego County. She has practiced health law for over 20 years, first as a partner in the law firm of Costello, Cooney & Fearon, LLP and presently as staff counsel with the firm of Fager & Amsler. Justice Ciardullo has served as an Adjunct Professor in Health Law for the Syracuse University College of Law, and has served on the teaching faculty for many educational institutions, including the New School for Social Research, Graduate School of Management in the Master's Degree Program in Health Care Administration, the State University of New York Health Science Center, and the Institute for Health Care Ethics in Syracuse, New York. She is a member of the teaching faculty for the New York State Office of Court Administration certification programs for town and village justices throughout the State. Justice Ciardullo is a past president of the Central New York Women's Bar Association and serves on the Board of Visitors of the Syracuse University College of Law.

Stephen R. Coffey, Esq., is a graduate of Siena College and the Albany Law School at Union University. He is a partner in the law firm of O'Connell and Aronowitz in Albany. He was an Assistant District Attorney in Albany County from 1971-75, serving as Chief Felony Prosecutor in 1974-75. He has also been appointed as a Special Prosecutor in Fulton and Albany Counties. Mr. Coffey is a member of the New York State Bar Association, where he serves on the Criminal Justice Section Executive Committee and lectures on Criminal and Civil Trial Practice, the Albany County Bar Association, the New York State Trial Lawyers Association, the New York State Defenders Association, and the Association of Trial Lawyers of America.

Lawrence S. Goldman, Esq. is a graduate of Brandeis University and Harvard Law School. He is in private practice in New York City, concentrating in white-collar criminal defense. From 1966 through 1971, he served as an assistant district attorney in New York County. He has also been a consultant to the Knapp Commission and the New York City Mayor's Criminal Justice Coordinating Council. Mr. Goldman is currently First Vice President of the National Association of Criminal Defense Lawyers, and former chairperson of its ethics advisory and white-collar committees, a member of the executive committee of the criminal justice section of the New York State Bar Association and a member of the advisory committee on the Criminal Procedure Law. He is a past president of the New York State Association of Criminal Defense Lawyers, and a past president of the New York Criminal Bar Association. He has received the outstanding criminal law practitioner awards of the National Association of Criminal Defense Lawyers, the New York State Bar Association, the New York State Association of Criminal Defense Lawyers and the New York Criminal Bar Association. He has lectured at numerous bar association and law school programs on various aspects of criminal law and procedure, trial tactics, and ethics. He is an honorary trustee of Congregation Rodeph Sholom in New York City. He and his wife Kathi have two children and live in Manhattan.

Christina Hernandez, MSW, is a Board Member of the New York State Crime Victims Board, appointed by Governor George E. Pataki in 1995 and again in 2001. She received a Bachelor of Arts from Buffalo State College, a Masters in Social Work Management from the School of Social Welfare, State University of New York at Albany and a Certificate of Graduate Study in Women and Public Policy from the Rockefeller College School of Public Affairs and Policy, State University of New York at Albany. At present she is in the doctoral program at the School of Social Welfare, pursuing a PhD in Social Work. Ms. Hernandez is a former Fellow of the Center for Women In Government. Her assignment as a Fellow was to serve as a Legislative Assistant at the New York State Department of Environmental Conservation and assist in the research and development of policy regarding environmental justice. Ms. Hernandez served as a Member of the New York State Commission on Domestic Violence Fatalities and the New York State Police Minority Recruitment Task Force. A native of New York City, she now resides in the Capital Region.

Honorable Daniel F. Luciano was educated in the public schools of the City of New York and attended Brooklyn College, from which he received a Bachelor of Arts degree. He thereafter attended Brooklyn Law School, earning a Bachelor of Laws degree in 1954. After serving in the United States Army in Europe, he entered the practice of law, specializing in tort litigation, real property tax assessment certiorari and general practice. He was engaged as trial counsel to various law firms in litigated matters. Additionally, he served as an Assistant Town Attorney for the Town of Islip, representing the Assessor in real property tax assessment certiorari from 1970 to 1982, and chaired the Suffolk County Board of Public Disclosure from 1980 to 1982. He was elected a Justice of the Supreme Court in 1982 and presided over a general civil caseload. In May 1991 he was appointed to preside over Conservatorship and Incompetency proceedings, later denominated Guardianship Proceedings in Suffolk County. He was appointed as an Associate Justice of the Appellate Term, Ninth and Tenth Judicial Districts, in April of 1993. On May 30, 1996, he was appointed by Governor George E. Pataki as an Associate Justice of the Appellate Division, Second Judicial Department. Justice Luciano is one of the founders of the Alexander Hamilton Inn of Court and served as a Director of the Suffolk Academy of Law. He was the Presiding Member of the New York State Bar Association Judicial Section, as well as a Delegate to the House of Delegates of the New York State Bar Association. Justice Luciano is Chair of the Executive Committee of the Association of Justices of the Supreme Court of the State of New York. Justice Luciano has held the positions of Director of the Suffolk County Women's Bar Association, and President, First Vice President, Secretary and Treasurer of the Association of Justices of the Supreme Court of the State of New York. Additionally, he is a member of the Advisory Council of the Touro College, Jacob D. Fuchsberg Law Center.

Honorable Karen K. Peters received her B.A. from George Washington University (*cum laude*) and her J.D. from New York University (*cum laude*; Order of the Coif). From 1973 to 1979 she was engaged in the private practice of law in Ulster County, served as an Assistant District Attorney in Dutchess County and was an Assistant Professor at the State University of New York at New Paltz, where she developed curricula and taught courses in the area of criminal law, gender discrimination and the law, and civil rights and civil liberties. In 1979 she was selected as the first counsel to the newly created New York State Division on Alcoholism and Alcohol Abuse and remained counsel until 1983. In 1983 she was the Director of the State Assembly Government Operations Committee. Elected to the bench in 1983, she remained Family Court Judge for the County of Ulster until 1992, when she became the first woman elected to the Supreme Court in the Third Department. Justice Peters was appointed to the Appellate Division, Third Department, by Governor Mario M. Cuomo on February 3, 1994. Justice Peters has served as Chairperson of the Gender Bias Committee of the Third Judicial District, and on numerous State Bar Committees, including the New York State Bar Association Special Committee on Alcoholism and Drug Abuse, and the New York State Bar Association Special Committee on Procedures for Judicial Discipline. Throughout her career, Justice Peters has taught and lectured extensively in the areas of

Family Law, Judicial Education and Administration, Criminal Law, Appellate Practice and Alcohol and the Law.

Alan J. Pope, Esq. is a graduate of the Clarkson College of Technology (*cum laude*) and the Albany Law School. He is a member of the Broome County Bar Association, where he co-chairs the Environmental Law Committee; the New York State Bar Association, where he serves on the Insurance, Negligence and Compensation Law Section, the Construction and Surety Division, and the Environmental Law Section; and the American Bar Association, where he serves on the Tort & Insurance Practice Section and the Construction Industry Forum Committee. Mr. Pope is also an Associate Member of the American Society of Civil Engineers, a member of the New York Chapter of the General Contractors Association of America, and a past member of the Broome County Environmental Management Council.

Honorable Terry Jane Ruderman graduated *cum laude* from Pace University School of Law, holds a Ph.D. in History from the Graduate Center of the City University of New York and Masters Degrees from City College and Cornell University. In 1995, Judge Ruderman was appointed to the Court of Claims and is assigned to the White Plains district. At the time she was the Principal Law Clerk to a Justice of the Supreme Court. Previously, she served as an Assistant District Attorney and Deputy County Attorney in Westchester County, and later she was in the private practice of law. Judge Ruderman is a member of the New York State Committee on Women in the Courts and Chair of the Gender Fairness Committee for the Ninth Judicial District, and she has served on the Ninth Judicial District Task Force on Reducing Civil Litigation and Delay. She is also Vice President of the New York State Association of Women Judges, Treasurer of the New York State Bar Association Judicial Section, Treasurer of the White Plains Bar Association, a board member and former Vice President of the Westchester Women's Bar Association and a former State Director of the Women's Bar Association of the State of New York. Judge Ruderman also sits on the Alumni Board of Pace University School of Law and the Cornell University President's Council of Cornell Women.

BIOGRAPHIES OF COMMISSION ATTORNEYS

Gerald Stern, *Administrator and Counsel*, is a graduate of Brooklyn College, the Syracuse University College of Law and the New York University School of Law, where he earned an LL.M. in Criminal Justice. Mr. Stern has been Administrator of the Commission since its inception. He previously served as Director of Administration of the Courts, First Judicial Department, Assistant Corporation Counsel for New York City, Staff Attorney on the President's Commission on Law Enforcement and the Administration of Justice, Legal Director of a legal service unit in Syracuse, and Assistant District Attorney in New York County.

Robert H. Tembeckjian, *Deputy Administrator and Deputy Counsel*, is a graduate of Syracuse University, the Fordham University School of Law and Harvard University's Kennedy School of Government, where he earned a Masters in Public Administration. He was a Fulbright Scholar to Armenia in 1994, teaching graduate courses and lecturing on ethics and constitutional law at the American University of Armenia and Yerevan State University. He is on the Board of Directors of the Civic Education Project and was on the Board of Trustees of the United Nations International School from 1999-2001.

Stephen F. Downs, *Chief Attorney (Albany)*, is a graduate of Amherst College and Cornell Law School. He served in India as a member of the Peace Corps from 1964 to 1966. He was in private practice in New York City from 1969 to 1975, and he joined the Commission's staff in 1975 as a staff attorney. He has been Chief Attorney in charge of the Commission's Albany office since 1978.

John J. Postel, *Chief Attorney (Rochester)*, is a graduate of the University of Albany and the Albany Law School of Union University. He joined the Commission's staff in 1980 as an assistant staff attorney in Albany. He has been Chief Attorney in charge of the Commission's Rochester office since 1984. Mr. Postel is a past president of the Governing Council of St. Thomas More R.C. Parish. He is a former officer of the Pittsford-Mendon Ponds Association and a former President of the Stonybrook Association. He served as the advisor to the Sutherland High School Mock Trial Team for eight years. He is the Vice President and a past Treasurer of the Pittsford Golden Lions Football Club, Inc. He is an assistant director and coach for Pittsford Community Lacrosse. He is an active member of the Pittsford Mustangs Soccer Club, Inc.

Alan W. Friedberg, *Senior Attorney*, is a graduate of Brooklyn College, the Brooklyn Law School and the New York University Law School, where he earned an LL.M. in Criminal Justice. He previously served as a staff attorney in the Law Office of the New York City Board of Education, as an adjunct assistant professor of business law at Brooklyn College, and as a junior high school teacher in the New York City public school system.

Cathleen S. Cenci, *Senior Attorney*, graduated *summa cum laude* from Potsdam College in 1980. In 1979, she completed the course superior at the Institute of Touraine, Tours, France. Ms. Cenci received her JD from Albany Law School in 1984 and joined the Commission as an assistant staff attorney in 1985. Ms. Cenci has been a judge of the Albany Law School moot court competitions and a member of Albany County Big Brothers/Big Sisters.

Vickie Ma, *Staff Attorney*, is a graduate of the University of Wisconsin at Madison and Albany Law School, where she was Associate Editor of the Law Review. Prior to joining the Commission staff, she served as an Assistant District Attorney in Kings County.

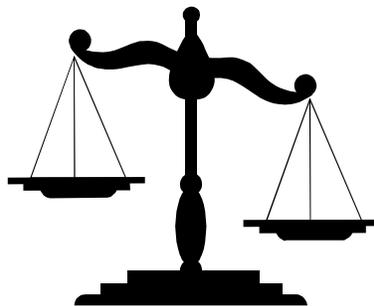
Clerk of the Commission

Jean M. Savanyu, *Clerk of the Commission*, is a graduate of Smith College and the Fordham University School of Law (*cum laude*). She joined the Commission's staff in 1977 and served as Senior Attorney from 1987 to 2000, when she was appointed Clerk of the Commission. Prior to joining the Commission, she worked as an editor and writer. Ms. Savanyu teaches in the paralegal program at Marymount Manhattan College.

REFEREES WHO SERVED IN 2001

| Referee | City | County |
|-----------------------------------|---------------|---------------|
| Mark S. Arisohn, Esq. | New York | New York |
| William I. Aronwald, Esq. | White Plains | Westchester |
| Roger W. Avery, Esq. | Rochester | Monroe |
| William C. Banks, Esq. | Syracuse | Onondaga |
| Joseph A. Barrette, Esq. | Syracuse | Onondaga |
| Patrick J. Berrigan, Esq. | Niagara Falls | Niagara |
| A. Vincent Buzard, Esq. | Rochester | Monroe |
| Jay C. Carlisle, Esq. | White Plains | Westchester |
| Bruno Colapietro, Esq. | Binghamton | Broome |
| Daniel G. Collins, Esq. | New York | New York |
| Robert L. Ellis, Esq. | New York | New York |
| Vincent D. Farrell, Esq. | Mineola | Nassau |
| Paul A. Feigenbaum, Esq. | Albany | Albany |
| Maryann Saccomando Freedman, Esq. | Buffalo | Erie |
| Douglas S. Gates, Esq. | Rochester | Monroe |
| Thomas F. Gleason, Esq. | Albany | Albany |
| Hon. Bertram Harnett | New York | New York |
| Michael J. Hutter, Esq. | Albany | Albany |
| Hon. Janet A. Johnson | White Plains | Westchester |
| Robert M. Kaufman, Esq. | New York | New York |
| C. Bruce Lawrence, Esq. | Rochester | Monroe |
| Hon. John A. Monteleone | New York | Kings |
| James C. Moore, Esq. | Rochester | Monroe |
| Vincent O'Neil, Esq. | Syracuse | Onondaga |
| Jane W. Parver, Esq. | New York | New York |
| Philip C. Pinsky, Esq. | Syracuse | Onondaga |
| John J. Poklemba, Esq. | Albany | Albany |
| Hon. Leon B. Polsky | New York | New York |
| Peter Preiser, Esq. | Schenectady | Schenectady |
| Hon. Eugene M. Salisbury | Buffalo | Erie |
| Laurie Shanks, Esq. | Albany | Albany |
| Hon. Felice K. Shea | New York | New York |
| Shirley A. Siegel, Esq. | New York | New York |
| Hon. Richard D. Simons | Rome | Oneida |
| Robert S. Smith, Esq. | New York | New York |
| Justin L. Vigdor, Esq. | Rochester | Monroe |
| Nancy F. Wechsler, Esq. | New York | New York |
| Steven Wechsler, Esq. | Syracuse | Onondaga |
| Michael Whiteman, Esq. | Albany | Albany |

**The Commission's Powers,
Duties & History**



2002 Annual Report
New York State
Commission on Judicial Conduct

The Commission's Powers, Duties and History



Creation of the New York State Commission on Judicial Conduct

For decades prior to the creation of the Commission on Judicial Conduct, judges in New York State were subject to professional discipline by a patchwork of courts and procedures. The system, which relied on judges to discipline fellow judges, was ineffective. In the 100 years prior to the creation of the Commission, only 23 judges were disciplined by the patchwork system of *ad hoc* judicial disciplinary bodies. For example, an *ad hoc* Court on the Judiciary was convened only six times prior to 1974. There was no staff or even an office to receive and investigate complaints against judges.

Starting in 1974, the Legislature changed the judicial disciplinary system, creating a temporary commission with a full-time professional staff to investigate and prosecute cases of judicial misconduct. In 1976 and again in 1977, the electorate overwhelmingly endorsed and strengthened the new commission, making it permanent and expanding its powers by amending the State Constitution.

The Commission's Powers, Duties, Operations and History

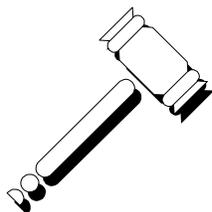
The State Commission on Judicial Conduct is the disciplinary agency constitutionally designated to review complaints of judicial misconduct in New York State. The Commission's objective is to enforce the obligation of judges to observe high standards of conduct while safeguarding their right to decide cases independently. The Commission does not act as an appellate court. It does not review judicial decisions or alleged errors of law, nor does it issue advisory opinions, give legal advice or represent litigants. When appropriate, it refers complaints to other agencies



By offering a forum for citizens with conduct-related complaints, and by disciplining those judges who transgress ethical constraints, the Commission seeks to insure compliance with established standards of ethical judicial behavior, thereby promoting public confidence in the integrity and honor of the judiciary.

All 50 states and the District of Columbia have adopted a commission system to meet these goals.

In New York, a temporary commission created by the Legislature in 1974 began operations in January 1975. It was made permanent in September 1976 by a constitutional amendment. A second constitutional amendment, effective on April 1, 1978, created the present Commission with expanded membership and jurisdiction. (For clarity, the Commission which operated from September 1976 through March 1978 will be referred to as the “former” Commission.)



Membership and Staff

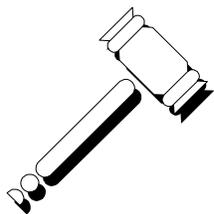
The Commission is composed of 11 members serving four-year terms. Four members are appointed by the Governor, three by the Chief Judge of the Court of Appeals, and one by each of the four leaders of the Legislature. The Constitution requires that four members be judges, at least one be an attorney, and at least two be lay persons. The Commission elects one of its members to be chairperson and appoints an Administrator and a Clerk. The Administrator is responsible for hiring staff and supervising staff activities subject to the Commission’s direction and policies.

The following individuals have served on the Commission since its inception. Asterisks denote those members who chaired the Commission.

Hon. Fritz W. Alexander, II (1979-85)
Hon. Myriam J. Altman (1988-93)
Helaine M. Barnett (1990-96)
Herbert L. Bellamy, Sr. (1990-94)
*Henry T. Berger (1988-present)
*John J. Bower (1982-90)
Hon. Evelyn L. Braun (1994-95)
David Bromberg (1975-88)
Jeremy Ann Brown (1997-2001)
Hon. Richard J. Cardamone (1978-81)
Frances A. Ciardullo (2001-present)
Hon. Carmen Beauchamp Ciparick (1985-93)
E. Garrett Cleary (1981-96)
Stephen R. Coffey (1995-present)
Howard Coughlin (1974-76)
Mary Ann Crotty (1994-1998)
Dolores DelBello (1976-94)
Hon. Herbert B. Evans (1978-79)
*William Fitzpatrick (1974-75)

Lawrence S. Goldman (1990-present)
 Hon. Louis M. Greenblott (1976-78)
 Christina Hernandez (1999-present)
 Hon. James D. Hopkins (1974-76)
 Hon. Daniel W. Joy (1998-2000)
 Michael M. Kirsch (1974-82)
 *Victor A. Kovner (1975-90)
 William B. Lawless (1974-75)
 Hon. Daniel F. Luciano (1995-present)
 William V. Maggipinto (1974-81)
 Hon. Frederick M. Marshall (1996-present)
 Hon. Ann T. Mikoll (1974-78)
 Hon. Juanita Bing Newton (1994-1999)
 Hon. William J. Ostrowski (1982-89)
 Hon. Karen K. Peters (2000-present)
 Alan J. Pope (1997-present)
 *Lillemor T. Robb (1974-88)
 Hon. Isaac Rubin (1979-90)
 Hon. Terry Jane Ruderman (1999-present)
 *Hon. Eugene W. Salisbury (1989-2001)
 Barry C. Sample (1994-97)
 Hon. Felice K. Shea (1978-88)
 John J. Sheehy (1983-95)
 Hon. Morton B. Silberman (1978)
 Hon. William C. Thompson (1990-1998)
 Carroll L. Wainwright, Jr. (1974-83)

The Commission's principal office is in New York City. Offices are also maintained in Albany and Rochester.



The Commission's Authority

The Commission has the authority to receive and review written complaints of misconduct against judges, initiate complaints on its own motion, conduct investigations, file Formal Written Complaints and conduct formal hearings thereon, subpoena witnesses and documents, and make appropriate determinations as to dismissing complaints or disciplining judges within the state unified court system. This authority is derived from Article 6, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law of the State of New York.

By provision of the State Constitution (Article 6, Section 22), the Commission:

shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system...and may determine that a judge or justice be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge or justice be retired for mental or physical disability preventing the proper performance of his judicial duties.

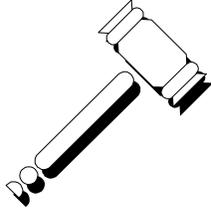
The types of complaints that may be investigated by the Commission include improper demeanor, conflicts of interest, violations of defendants' or litigants' rights, intoxication, bias, prejudice, favoritism, gross neglect, corruption, certain prohibited political activity and other misconduct on or off the bench.

Standards of conduct are set forth primarily in the Rules Governing Judicial Conduct (originally promulgated by the Administrative Board of the Judicial Conference and subsequently adopted by the Chief Administrator of the Courts with the approval of the Court of Appeals) and the Code of Judicial Conduct (adopted by the New York State Bar Association).

If the Commission determines that disciplinary action is warranted, it may render a determination to impose one of four sanctions, subject to review by the Court of Appeals upon timely request by the respondent-judge. If review is not requested within 30 days of service of the determination upon the judge, the determination becomes final. The Commission may render determinations to:

- admonish a judge publicly;
- censure a judge publicly;
- remove a judge from office;
- retire a judge for disability.

In accordance with its rules, the Commission may also issue a confidential letter of dismissal and caution to a judge, despite a dismissal of the complaint, when it is determined that the circumstances so warrant. In some cases the Commission has issued such a letter after charges of misconduct have been sustained.



Procedures

The Commission meets several times a year. At its meetings, the Commission reviews each new complaint of misconduct and makes an initial decision whether to investigate or dismiss the complaint. It also reviews staff reports on ongoing matters, makes final determinations on completed proceedings, considers motions and entertains oral arguments pertaining to cases in which judges have been served with formal charges, and conducts other Commission business.

No investigation may be commenced by staff without authorization by the Commission. The filing of formal charges also must be authorized by the Commission.

After the Commission authorizes an investigation, the Administrator assigns the complaint to a staff attorney, who works with investigative staff. If appropriate, witnesses are interviewed and court records are examined. The judge may be asked to respond in writing to the allegations. In some instances, the Commission requires the appearance of the judge to testify during the course of the investigation. The judge's testimony is under oath, and a Commission member or referee designated by the Commission must be present. Although such an "investigative appearance" is not a formal hearing, the judge is entitled to be represented by counsel. The judge may also submit evidentiary data and materials for the Commission's consideration.

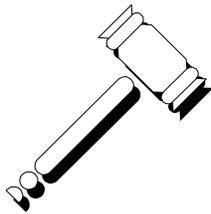
If the Commission finds after an investigation that the circumstances so warrant, it will direct its Administrator to serve upon the judge a Formal Written Complaint containing specific charges of misconduct. The Formal Written Complaint institutes the formal disciplinary proceeding. After receiving the judge's answer, the Commission may, if it determines there are no disputed issues of fact, grant a motion for summary determination. It may also accept an agreed statement of facts submitted by the Administrator and the respondent-judge. Where there are factual disputes that make summary determination inappropriate or that are not resolved by an agreed statement of facts, the Commission will appoint a referee to conduct a formal hearing and report proposed findings of fact and conclusions of law. Referees are designated by the Commission from a panel of attorneys and former judges. Following the Commission's receipt of the referee's report, on a motion to confirm or disaffirm the report, both the administrator and the respondent may submit legal memoranda and present oral argument on issues of misconduct and sanction. The respondent-judge (in addition to his or her counsel) may appear and be heard at oral argument.

In deciding motions, considering proposed agreed statements of fact and making determinations with respect to misconduct and sanction, and in considering other matters pertaining to cases in which Formal Written Complaints have been served, the Commission deliberates in executive session, without the presence or assistance of its Administrator or

regular staff. The Clerk of the Commission assists the Commission in executive session, but does not participate in either an investigative or adversarial capacity in any cases pending before the Commission.

The Commission may dismiss a complaint at any stage during the investigation or adjudication.

When the Commission determines that a judge should be admonished, censured, removed or retired, its written determination is forwarded to the Chief Judge of the Court of Appeals, who in turn serves it upon the respondent-judge. Upon completion of service, the Commission's determination and the record of its proceedings become public. (Prior to this point, by operation of the strict provisions in Article 2-A of the Judiciary Law, all proceedings and records are confidential.) The respondent-judge has 30 days to request full review of the Commission's determination by the Court of Appeals. The Court may accept or reject the Commission's findings of fact or conclusions of law, make new or different findings of fact or conclusions of law, accept or reject the determined sanction, or make a different determination as to sanction. If no request for review is made within 30 days, the sanction determined by the Commission becomes effective.



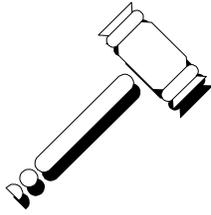
Temporary State Commission on Judicial Conduct

The Temporary State Commission on Judicial Conduct was established in late 1974 and commenced operations in January 1975. The temporary Commission had the authority to investigate allegations of misconduct against judges in the state unified court system, make confidential suggestions and recommendations in the nature of admonitions to judges when appropriate and, in more serious cases, recommend that formal disciplinary proceedings be commenced in the appropriate court. All disciplinary proceedings in the Court on the Judiciary and most in the Appellate Division were public.

The temporary Commission was composed of two judges, five lawyers and two lay persons. It functioned through August 31, 1976, when it was succeeded by a permanent commission created by amendment to the State Constitution.

The temporary Commission received 724 complaints, dismissed 441 upon initial review and commenced 283 investigations during its tenure. It admonished 19 judges and initiated formal disciplinary proceedings against eight judges, in either the Appellate Division or the Court on the Judiciary. One of these judges was removed from office and one was censured. The remaining six matters were pending when the temporary Commission was superseded by its successor Commission.

Five judges resigned while under investigation.



Former State Commission on Judicial Conduct

The temporary Commission was succeeded on September 1, 1976, by the State Commission on Judicial Conduct, established by a constitutional amendment overwhelmingly approved by the New York State electorate and supplemented by legislative enactment (Article 2-A of the Judiciary Law). The former Commission's tenure lasted through March 31, 1978, when it was replaced by the present Commission.

The former Commission was empowered to investigate allegations of misconduct against judges, impose certain disciplinary sanctions and, when appropriate, initiate formal disciplinary proceedings in the Court on the Judiciary, which, by the same constitutional amendment, had been given jurisdiction over all 3,500 judges in the unified court system. The sanctions that could be imposed by the former Commission were private admonition, public censure, suspension without pay for up to six months, and retirement for physical or mental disability. Censure, suspension and retirement actions could not be imposed until the judge had been afforded an opportunity for a full adversary hearing. These Commission sanctions were also subject to a *de novo* hearing in the Court on the Judiciary at the request of the judge.

The former Commission, like the temporary Commission, was composed of two judges, five lawyers and two lay persons, and its jurisdiction extended to judges within the state unified court system. The former Commission was authorized to continue all matters left pending by the temporary Commission.

The former Commission considered 1,418 complaints, dismissed 629 upon initial review, authorized 789 investigations and continued 162 investigations left pending by the temporary Commission.

During its tenure, the former Commission took action that resulted in the following:

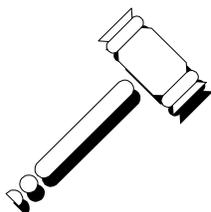
- 15 judges were publicly censured;
- 40 judges were privately admonished;
- 17 judges were issued confidential letters of suggestion and recommendation.

The former Commission also initiated formal disciplinary proceedings in the Court on the Judiciary against 45 judges and continued six proceedings left pending by the temporary Commission. Those proceedings resulted in the following:

- 1 removal;
- 2 suspensions;
- 3 censures;
- 10 cases closed upon resignation of the judge;
- 2 cases closed upon expiration of the judge's term;
- 1 proceeding closed without discipline and with instruction by the Court on the Judiciary that the matter be deemed confidential.

The remaining 32 proceedings were pending when the former Commission expired. They were continued by the present Commission.

In addition to the ten judges who resigned after proceedings had been commenced in the Court on the Judiciary, 28 other judges resigned while under investigation by the former Commission.

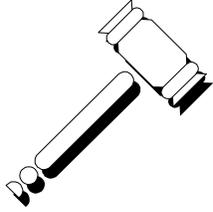


Continuation from 1978 to 1980 of Formal Proceedings Commenced by the Temporary and Former Commissions

Thirty-two formal disciplinary proceedings which had been initiated in the Court on the Judiciary by either the temporary or former Commission were pending when the former Commission was superseded on April 1, 1978, and were continued without interruption by the present Commission.

The last five of these 32 proceedings were concluded in 1980, with the following results, reported in greater detail in the Commission's previous annual reports:

- 4 judges were removed from office;
- 1 judge was suspended without pay for six months;
- 2 judges were suspended without pay for four months;
- 21 judges were censured;
- 1 judge was directed to reform his conduct consistent with the Court's opinion;
- 1 judge was barred from holding future judicial office after he resigned; and
- 2 judges died before the matters were concluded.



The 1978 Constitutional Amendment

The present Commission was created by amendment to the State Constitution, effective April 1, 1978. The amendment created an 11-member Commission (superseding the nine-member former Commission), broadened the scope of the Commission's authority and streamlined the procedure for disciplining judges within the state unified court system. The Court on the Judiciary was abolished, pending completion of those cases that had already been commenced before it. All formal disciplinary hearings under the new amendment are conducted by the Commission.

Subsequently, the State Legislature amended Article 2-A of the Judiciary Law, the Commission's governing statute, to implement the new provisions of the constitutional amendment.



Summary of Complaints Considered Since the Commission's Inception

Since January 1975, when the temporary Commission commenced operations, 28,314 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 22,656 (80%) were dismissed upon initial review or after a preliminary review and inquiry, and 5,658 investigations were authorized. Of the 5,658 investigations authorized, the following dispositions have been made through December 31, 2001:

- 784 complaints involving 614 judges resulted in disciplinary action. (See details below and on the following page.)
- 1163 complaints resulted in cautionary letters to the judge involved. The actual number of such letters totals 1079, 62 of which were issued after formal charges had been sustained and determinations made that the judge had engaged in misconduct.

- 459 complaints involving 327 judges were closed upon resignation of the judge during investigation or in the course of disciplinary proceedings.
- 377 complaints were closed upon vacancy of office by the judge other than by resignation.
- 2687 complaints were dismissed without action after investigation.
- 188 complaints are pending.

Of the 784 disciplinary matters noted above, the following actions have been recorded since 1975 in matters initiated by the temporary, former or present Commission. (It should be noted that several complaints against a single judge may be disposed of in a single action. This accounts for the apparent discrepancy between the number of complaints and the number of judges acted upon.)

- 135 judges were removed from office;
- 3 judges were suspended without pay for six months (under previous law);
- 2 judges were suspended without pay for four months (under previous law);
- 232 judges were censured publicly;
- 183 judges were admonished publicly; and
- 59 judges were admonished confidentially by the temporary or former Commission.

**Text of the Rules
Governing Judicial Conduct**



**2002 Annual Report
New York State
Commission on Judicial Conduct**

THE RULES GOVERNING JUDICIAL CONDUCT

22 NYCRR PART 100

| | |
|--------|--|
| | Preamble |
| §100.0 | Terminology |
| §100.1 | A Judge Shall Uphold the Integrity and Independence of the Judiciary |
| §100.2 | A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities |
| §100.3 | A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently |
| §100.4 | A Judge Shall so Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations |
| §100.5 | A Judge or Candidate for Elective Judicial Office Shall Refrain from Inappropriate Political Activity |
| §100.6 | Application of the Rules of Judicial Conduct |

PREAMBLE

The rules governing judicial conduct are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The rules are to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The rules are designed to provide guidance to judges and candidates for elective judicial office and to provide a structure for regulating conduct through disciplinary agencies. They are not designed or intended as a basis for civil liability or criminal prosecution.

The text of the rules is intended to govern conduct of judges and candidates for elective judicial office and to be binding upon them. It is not intended, however, that every

transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The rules are not intended as an exhaustive guide for conduct. Judges and judicial candidates also should be governed in their judicial and personal conduct by general ethical standards. The rules are intended, however, to state basic standards which should govern their conduct and to provide guidance to assist them in establishing and maintaining high standards of judicial and personal conduct.

§100.0 Terminology. The following terms used in this Part are defined as follows:

(A) A "candidate" is a person seeking selection for or retention in public office by election. A person becomes a candidate for public office as soon as he or she makes a public announcement of candidacy, or authorizes solicitation or acceptance of contributions.

(B) "Court personnel" does not include the lawyers in a proceeding before a judge.

(C) The "degree of relationship" is calculated according to the civil law system. That is, where the judge and the party are in the same line of descent, degree is ascertained by ascending or descending from the judge to the party, counting a degree for each person, including the party but excluding the judge. Where the judge and the party are in different lines of descent, degree is ascertained by ascending from the judge to the common ancestor, and descending to the party, counting a degree for each person in both lines, including the common ancestor and the party but excluding the judge. The following persons are relatives within the fourth degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, first cousin, child, grandchild, great-grandchild, nephew or niece. The sixth degree of relationship includes second cousins.

(D) "Economic interest" denotes ownership of a legal or equitable interest, however small, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding

pending or impending before the judge could substantially affect the value of the interest;

(2) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, cultural, fraternal or civic organization, or service by a judge's spouse or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization, unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

(E) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

(F) "Knowingly", "knowledge", "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(G) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

(H) "Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with

whom the candidate maintains a close familial relationship.

(I) "Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship.

(J) "Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(K) "Non-public information" denotes information that, by law, is not available to the public. Non-public information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports.

(L) A "part-time judge", including an acting part-time judge, is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment.

(M) "Political organization" denotes a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

(N) "Public election" includes primary and general elections; it includes partisan elections, non-partisan elections and retention elections.

(O) "Require". The rules prescribing that a judge "require" certain conduct of others, like all of the rules in this Part, are rules of reason. The use of the term "require" in that

context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(P) "Rules"; citation. Unless otherwise made clear by the citation in the text, references to individual components of the rules are cited as follows:

"Part" - refers to Part 100

"section" - refers to a provision consisting of 100 followed by a decimal (100.1)

"subdivision" - refers to a provision designated by a capital letter (A).

"paragraph" - refers to a provision designated by an arabic numeral (1).

"subparagraph" - refers to a provision designated by a lower-case letter (a).

(Q) "Window Period" denotes a period beginning nine months before a primary election, judicial nominating convention, party caucus or other party meeting for nominating candidates for the elective judicial office for which a judge or non-judge is an announced candidate, or for which a committee or other organization has publicly solicited or supported the judge's or non-judge's candidacy, and ending, if the judge or non-judge is a candidate in the general election for that office, six months after the general election, or if he or she is not a candidate in the general election, six months after the date of the primary election, convention, caucus or meeting.

§100.1 A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Part 100 are to be construed and applied to further that objective.

§100.2 A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES.

(A) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

(D) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of age, race, creed, color, sex, sexual orientation, religion, national origin, disability or marital status. This provision does not prohibit a judge from holding membership in an or-

ganization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.

§100.3 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY.

(A) Judicial duties in general. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

(B) Adjudicative responsibilities. (1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(2) A judge shall require order and decorum in proceedings before the judge.

(3) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, and shall require staff, court officials and others

subject to the judge's direction and control to refrain from such words or conduct.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, against parties witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, sex, sexual orientation or socioeconomic status, or other similar factors are issues in the proceeding.

(6) a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding, except:

(a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and the judge, insofar as practical and appropriate, makes provision for prompt notification of other parties or their lawyers of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and affords

the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge, with the consent of the parties, may confer separately with the parties and their lawyers on agreed-upon matters.

(e) A judge may initiate or consider any ex parte communications when authorized by law to do so.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This paragraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

(9) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(10) A judge shall not disclose or use, for any purpose unrelated to judicial duties, non-public information acquired in a judicial capacity.

(C) Administrative responsibilities. (1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered. A judge shall not appoint or vote for the appointment of any person as a member of the judge's staff or that of the court of which the judge is a member, or as an appointee in a judicial proceeding, who is a relative within the sixth degree of relationship of either the judge or the judge's spouse or the spouse of such a person. A judge shall refrain from recommending a relative within the sixth degree of relationship of either the judge or the judge's spouse or the spouse of such person for appointment or employment to another judge serving in the same court. A judge also shall comply with the requirements of Part 8 of the Rules of the Chief Judge (22 NYCRR Part 8) relating to the appointment of relatives of judges. Nothing in this paragraph shall prohibit appointment of the spouse of the town or village justice, or other member of such justice's household, as clerk of the town or village court in which such justice sits, provided that the justice obtains the prior approval of the Chief Ad-

ministrator of the Courts, which may be given upon a showing of good cause.

(D) Disciplinary responsibilities. (1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.

(3) Acts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties.

(E) Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the judge has a personal bias or prejudice concerning a party or (ii) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge knows that (1) the judge served as a lawyer in the matter in controversy, or (ii) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or (iii) the judge has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other interest that could be substantially affected by the proceeding;

(d) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse of such a person:

- (i) is a party to the proceeding;
- (ii) is an officer, director or trustee of a party;
- (iii) has an interest that could be substantially affected by the proceeding;
- (iv) is likely to be a material witness in the proceeding;

(e) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.

(f) Notwithstanding the provisions of subparagraphs (c) and (d) above, if a judge would be disqualified because of the appearance or discovery, after the matter was assigned to the judge, that the judge individually or as a fiduciary, the judge's spouse, or a minor child residing in his or her household has an economic interest in a party to the proceeding, disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and made a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(F) Remittal of disqualification. A judge disqualified by the terms of subdivision (E), except subparagraph (1)(a)(i), subparagraph (1)(b)(i) or (iii) or subparagraph (1)(d)(i) of this section, may disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

§100.4. A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS.

(A) Extra-judicial activities in general. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) detract from the dignity of judicial office; or
- (3) interfere with the proper performance of judicial duties and are not incompatible with judicial office.

(B) Avocational activities. A judge may speak, write, lecture, teach and participate in extra-judicial activities subject to the requirements of this Part.

(C) Governmental, civic, or charitable activities. (1) A full-time judge shall not ap-

pear at a public hearing before an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(2) (a) A full-time judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy in matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(b) A judge shall not accept appointment or employment as a peace officer or police officer as those terms are defined in section 1.20 of the Criminal Procedure Law.

(3) A judge may be a member or serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Part.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that ordinarily would come before the judge, or

(ii) if the judge is a full-time judge, will be engaged regularly in adversary proceedings in any court.

(b) A judge as an officer, director, trustee or non-legal advisor, or a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities;

(ii) may not be a speaker or the guest of honor at an organization's fund-raising events, but the judge may attend such events. Nothing in this subparagraph shall prohibit a judge from being a speaker or guest of honor at a court employee organization, bar association or law school function or from accepting at another organization's fund-raising event an unadvertised award ancillary to such event;

(iii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice; and

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, but may be listed as an officer, director or trustee of such an organization. Use of an organization's regular letterhead for fund-raising or membership solicitation does not violate this provision, provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.

(D) Financial activities. (1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position,

(b) involve the judge with any business, organization or activity that ordinarily will come before the judge, or

(c) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge, subject to the requirements of this Part, may hold and manage investments of the judge and members of the judge's family, including real estate.

(3) A full-time judge shall not serve as an officer, director, manager, general partner, advisor, employee or other active participant of any business entity, except that:

(a) the foregoing restriction shall not be applicable to a judge who assumed judicial office prior to July 1, 1965, and maintained such position or activity continuously since that date; and

(b) a judge, subject to the requirements of this Part, may manage and participate in a business entity engaged solely in investment of the financial resources of the judge or members of the judge's family; and

(c) any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from this paragraph during the period of such interim or temporary appointment.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the

judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under section 100.3(E);

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and if its value exceeds \$150.00, the judge reports it in the same manner as the judge reports compensation in section 100.4(H).

(E) Fiduciary activities. (1) A full-time judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, designated by an instrument executed after January 1, 1974, except for the estate, trust or person of a member of the judge's family, or, with the approval of the Chief Administrator of the Courts, a person not a member of the judge's family with whom the judge has maintained a longstanding personal relationship of trust and confidence, and then only if such services will not interfere with the proper performance of judicial duties.

(2) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

(3) Any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from paragraphs (1) and (2) during the period of such interim or temporary appointment.

(F) Service as arbitrator or mediator. A full-time judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

(G) Practice of law. A full-time judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to a member of the judge's family.

(H) Compensation, reimbursement and reporting. (1) Compensation and reimbursement. A full-time judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Part, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(c) No full-time judge shall solicit or receive compensation for extra-judicial activities performed for or on behalf of: (1) New York State, its political subdivisions or any office or agency thereof; (2) a school, college or university that is financially supported primarily by New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for a lecture or for teaching a regular

course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or (3) any private legal aid bureau or society designed to represent indigents in accordance with Article 18-B of the County Law.

(2) Public reports. A full-time judge shall report the date, place and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law.

(I) Financial disclosure. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this section and in section 100.3(F), or as required by Part 40 of the Rules of the Chief Judge (22 NYCRR Part 40), or as otherwise required by law.

§100.5 A JUDGE OR CANDIDATE FOR ELECTIVE JUDICIAL OFFICE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY.

(A) Incumbent judges and others running for public election to judicial office. (1) Neither a sitting judge nor a candidate for public election to judicial office shall directly or indirectly engage in any political activity except (i) as otherwise authorized by this section or by law, (ii) to vote and to identify himself or herself as a member of a political party, and (iii) on behalf of measures to im-

prove the law, the legal system or the administration of justice. Prohibited political activity shall include:

(a) acting as a leader or holding an office in a political organization;

(b) except as provided in section 100.5(A)(3), being a member of a political organization other than enrollment and membership in a political party;

(c) engaging in any partisan political activity, provided that nothing in this section shall prohibit a judge or candidate from participating in his or her own campaign for elective judicial office or shall restrict a non-judge holder of public office in the exercise of the functions of that office;

(d) participating in any political campaign for any office or permitting his or her name to be used in connection with any activity of a political organization;

(e) publicly endorsing or publicly opposing (other than by running against) another candidate for public office;

(f) making speeches on behalf of a political organization or another candidate;

(g) attending political gatherings;

(h) soliciting funds for, paying an assessment to, or making a contribution to a political organization or candidate; or

(i) purchasing tickets for politically sponsored dinners or other functions, including any such function for a non-political purpose.

(2) A judge or non-judge who is a candidate for public election to judicial office may participate in his or her own campaign for

judicial office as provided in this section and may contribute to his or her own campaign as permitted under the Election Law. During the Window Period as defined in subdivision (Q) of section 100.0 of this Part, a judge or non-judge who is a candidate for public election to judicial office, except as prohibited by law, may:

(i) attend and speak to gatherings on his or her own behalf, provided that the candidate does not personally solicit contributions;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy, and distribute pamphlets and other promotional campaign literature supporting his or her candidacy;

(iii) appear at gatherings, and in newspaper, television and other media advertisements with the candidates who make up the slate of which the judge or candidate is a part;

(iv) permit the candidate's name to be listed on election materials along with the names of other candidates for elective public office;

(v) purchase two tickets to, and attend, politically sponsored dinners and other functions even where the cost of the ticket to such dinner or other function exceeds the proportionate cost of the dinner or function.

(3) A non-judge who is a candidate for public election to judicial office may also be a member of a political organization and continue to pay ordinary assessments and ordinary contributions to such organization.

(4) A judge or a non-judge who is a candidate for public election to judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the

judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under this Part;

(c) except to the extent permitted by section 100.5(A)(5), shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Part;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly make any false statement or misrepresent the identity, qualifications, current position or other fact concerning the candidate or an opponent; but

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate subparagraphs 100.5(A)(4)(a) and (d).

(5) A judge or candidate for public election to judicial office shall not personally solicit or accept campaign contributions, but may establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures,

mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions and support from the public, including lawyers, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees may solicit and accept such contributions and support only during the Window Period. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

(B) Judge as candidate for nonjudicial office. A judge shall resign from judicial office upon becoming a candidate for elective nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(C) Judge's staff. A judge shall prohibit members of the judge's staff who are the judge's personal appointees from engaging in the following political activity:

(1) holding an elective office in a political organization, except as a delegate to a judicial nominating convention or a member of a county committee other than the executive committee of a county committee;

(2) contributing, directly or indirectly, money or other valuable consideration in amounts exceeding \$500 in the aggregate during any calendar year to all political campaigns for political office, and other partisan political activity including, but not limited to, the purchasing of tickets to political functions, except that this \$500 limitation shall not apply to an appointee's contributions to his or her own campaign. Where an

appointee is a candidate for judicial office, reference also shall be made to appropriate sections of the Election Law;

(3) personally soliciting funds in connection with a partisan political purpose, or personally selling tickets to or promoting a fundraising activity of a political candidate, political party, or partisan political club; or

(4) political conduct prohibited by section 25.39 of the Rules of the Chief Judge (22 NYCRR 25.39).

§100.6 APPLICATION OF THE RULES OF JUDICIAL CONDUCT.

(A) General application. All judges in the unified court system and all other persons to whom by their terms these rules apply, e.g., candidates for elective judicial office, shall comply with these rules of judicial conduct, except as provided below. All other persons, including judicial hearing officers, who perform judicial functions within the judicial system shall comply with such rules in the performance of their judicial functions and otherwise shall so far as practical and appropriate use such rules as guides to their conduct.

(B) Part-time judge. A part-time judge:

(1) is not required to comply with sections 100.4(C)(1), 100.4(C)(2)(a), 100.4(C)(3)(a)(ii), 100.4(E)(1), 100.4(F), 100.4(G), and 100.4(H);

(2) shall not practice law in the court on which the judge serves, or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law, and shall not act as a lawyer in a proceeding in which the judge has served

as a judge or in any other proceeding related thereto;

(3) shall not permit his or her partners or associates to practice law in the court in which he or she is a judge, and shall not permit the practice of law in his or her court by the law partners or associates of another judge of the same court who is permitted to practice law, but may permit the practice of law in his or her court by the partners or associates of a judge of a court in another town, village or city who is permitted to practice law;

(4) may accept private employment or public employment in a federal, state or municipal department or agency, provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties.

(C) Administrative law judges. The provisions of this Part are not applicable to ad-

ministrative law judges unless adopted by the rules of the employing agency.

(D) Time for compliance. A person to whom these rules become applicable shall comply immediately with all provisions of this Part, except that, with respect to section 100.4(D)(3) and 100.4(E), such person may make application to the Chief Administrator for additional time to comply, in no event to exceed one year, which the Chief Administrator may grant for good cause shown.

(E) Relationship to Code of Judicial Conduct. To the extent that any provision of the Code of Judicial Conduct as adopted by the New York State Bar Association is inconsistent with any of these rules, these rules shall prevail, except that these rules shall apply to a non-judge candidate for elective judicial office only to the extent that they are adopted by the New York State Bar Association in the Code of Judicial Conduct.

**Text of the Commission's
2001 Determinations**



**2002 Annual Report
New York State
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. BRENNAN**, a Judge of the Civil Court of the City of New York, Richmond County.

THE COMMISSION

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|---|---------------------------------|
| Honorable Eugene W. Salisbury, Chairman | Honorable Daniel F. Luciano |
| Henry T. Berger, Esq. | Honorable Frederick M. Marshall |
| Jeremy Ann Brown, C.A.S.A.C | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |
| Christina Hernandez, M.S.W. | |

APPEARANCES

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|---|
| Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission |
| Behrins & Behrins, P.C. (By Bruce G. Behrins) for Respondent |

The respondent, **Michael J. Brennan**, a judge of the Civil Court of the City of New York, Richmond County, was served with a Formal Written Complaint dated September 27, 2000, containing one charge, alleging that respondent made improper, inflammatory remarks to and about a defendant while presiding at an arraignment. Respondent filed an answer dated October 20, 2000.

On November 15, 2000, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On December 14, 2000, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Civil Court of the City of New York since 1997. In July 2000, respondent was sitting in the Criminal Court of the City of New York, Richmond County.

2. In July 2000, respondent was a candidate for nomination to Supreme Court.

3. On or about July 19, 2000, respondent, while presiding over the arraignment of the defendant in People v. Guido Tritto in Part AR-1 of the Criminal Court, made the following highly improper, inflammatory comments to and about the defendant:

THE COURT: I just have a couple of things to say particular to you Mr. Tritto.

About 1974 I started as a legal aid attorney in this court and you started your criminal career about the same time. About that time Officer John Kelly was five years old. We're all judged by the decisions we make.

Over the course of your life you have made decisions that have placed you in trouble with the law over 10 or 12 times, including two felony convictions which makes you a three-time loser. If you're convicted of this charge you would be a persistent felony offender and facing life imprisonment.

You sir, are a sociopath. You have no concern for the values and norms of this society. You place your interests above those of anybody else. If somebody were to lay a gun on that table right now you would shoot me and walk out of this court room.

MR. TRITTO: No, I would not.

THE COURT: This community is outraged by this. A simple decision to drive away from a police officer, a prince of the city who was doing his duty, to take a traffic ticket or get arrested for stealing a motorcycle, which you would have faced six months in jail for at worse, you chose to speed away.

And Officer Kelly, because he was a good cop, about the only recompense of this whole business, you're a career criminal and are now off the streets, he is dead. It's not a fair trade, sir.

MR. TRITTO: I would gladly trade places with the gentleman. My life isn't worth much.

THE COURT: If this had been the old west, there would have been a lynch mob waiting at the door for you. Because of police officers like Officer Kelly, who insist on the laws being enforced and due process being obeyed, you will get your day in court.

We'll have to assign an attorney from off of Staten Island for you to make sure you get a fair trial.

He's remanded until tomorrow. Take this loser away from me.

4. Respondent's comments at the arraignment assumed the defendant's guilt, conveyed the appearance that respondent had concluded that the defendant was guilty, elicited incriminating responses from the defendant and distorted the arraignment process.

5. Respondent's comments at the arraignment conveyed the further appearance that respondent, a candidate for nomination to Supreme Court, was pandering to public sentiment against the defendant.

6. By stating to the defendant that the defendant would shoot respondent if given the opportunity, respondent attributed to the defendant the motives and conduct of a murderer.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(B)(1) and 100.3(B)(3) of the Rules Governing Judicial Conduct and Sections 700.5(a) and 700.5(e) of the Special Rules Concerning Court Decorum of the Appellate Division, Second Department. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

In presiding at an arraignment of a defendant charged with a crime that had resulted in the death of a police officer, respondent used the opportunity to make an inflammatory speech, which conveyed the appearance that he was pandering to public sentiment against the defendant. At a time when the defendant was entitled to a presumption of innocence, respondent made statements which assumed the defendant's guilt, called him a "sociopath" and a "loser,"

chastised him for “hav[ing] no concern for the values and norms of this society,” and even stated that the defendant would shoot respondent if given the opportunity. Respondent’s taunting, provocative comments elicited from the defendant an incriminating response, expressing remorse. Respondent’s conduct was antithetical to the proper role of a judge at an arraignment, which is to be an impartial arbiter, and was inconsistent with the fair and proper administration of justice.

The fact that, at the time he made these statements, respondent was a candidate for nomination to Supreme Court also conveyed the impression that respondent was using the judicial proceeding as a political forum in order to demonstrate his harshness toward a defendant charged with a crime which, as respondent commented, had “outraged” the community. This was unseemly and totally inappropriate. Respondent undoubtedly knew, or should have known, that his disparaging remarks about the defendant would likely be widely publicized.

The ethical standards require a judge to be “patient, dignified and courteous to litigants,

jurors, witnesses, lawyers and others with whom the judge deals in an official capacity...” (Rules Governing Judicial Conduct, 22 NYCRR 100.3[B][3]). A judge must be “the exemplar of dignity and impartiality[,]...suppress his personal predilections, control his temper and emotions, and otherwise avoid conduct on his part which tends to demean the proceedings or to undermine his authority in the courtroom” (Rules Concerning Court Decorum of the Appellate Division, Second Department, 11 NYCRR 700.5[e]). By his intemperate diatribe, respondent clearly violated these standards.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Judge Salisbury, Mr. Berger, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Ms. Brown was not present.

Dated: February 8, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **DALE P. CHRISTIE**, a Justice of the Schuyler Town Court, Herkimer County.

THE COMMISSION

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| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission |
| George F. Aney for Respondent |

The respondent, Dale P. Christie, a justice of the Schuyler Town Court, Herkimer County, was served with a Formal Written Complaint dated February 13, 2001, containing one charge.

On June 13, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On June 18, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Schuyler Town Court since 1989. He is not a lawyer. He has attended and successfully completed all required training sessions for judges sponsored by the Office of Court Administration.

2. In People v. Carmen J. Giovannone, in which the defendant was charged with Speed In Work Zone, respondent failed to adhere to the law and failed to accord the defendant full opportunity to be heard, in that:

(a) on or about July 27, 2000, respondent sent the defendant a notice, which indicated that the defendant had been convicted of a reduced Speeding charge and that respondent had imposed sentence, based solely on respondent's receipt of a plea offer from the prosecution, and notwithstanding that the defendant had not had a trial or entered a plea of guilty;

(b) on or about July 27, 2000, respondent imposed a fine of \$150 upon the defendant for a conviction under Section 1180(f) of the Vehicle and Traffic Law, notwithstanding that (i) the maximum fine for that offense was \$100 pursuant to Section 1180(h)(3)(i) of the Vehicle and Traffic Law, and (ii) the defendant had not had a trial or entered a plea of guilty; and

(c) after the defendant agreed to plead guilty to a reduced Speeding charge and the defendant's attorney objected to the excessive fine, respondent failed to correct the fine or to respond to two letters from the defendant's attorney regarding the excessive fine.

3. As a matter of practice, respondent regularly imposed fines for convictions under the Vehicle and Traffic Law which were based not on the charges for which the defendants were convicted, but on the charges for which the defendants had been ticketed originally, and therefore he often exceeded the legally permissible maximum fines.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), and 100.3(B)(6) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above facts, and respondent's misconduct is established.

By convicting a defendant of a reduced Speeding charge based solely upon receipt of a plea offer from the prosecution, without a trial or guilty plea, respondent violated fundamental statutory procedures and denied the defendant the right to be heard (Section 100.3[B][6] of the Rules Governing Judicial Conduct). It is the responsibility of every judge, lawyer or non-lawyer, to maintain professional competence in the law, and as a judge for over 10 years, respondent should be familiar with basic procedural due process. See Matter of Pemrick, 2000 Ann Report of NY Commn on Jud Conduct 141;

Matter of Meacham, 1994 Ann Report of NY Commn on Jud Conduct 87.

In addition, respondent imposed a fine that exceeded the maximum permitted by the Vehicle and Traffic Law. While the minimum fine for Speeding In a Work Zone is twice the amount as a fine for a regular speeding conviction, the maximum fine of \$100 is the same for both (*see Veh and Traf Law §1180[f], [h]*). By failing to correct the excessive fine when the defendant's attorney brought it to his attention, respondent elevated legal error to judicial misconduct. See Matter of Barker, 1999 Ann Report of NY Commn on Jud Conduct 77.

Respondent's regular practice of imposing fines for convictions under the Vehicle and Traffic Law based on the original charge, rather than the charge for which the defendants had been convicted, was also contrary to law and often resulted in fines exceeding the legal maximum. By such conduct, respondent failed to "respect and comply with the law" and to "be faithful to the law," as required by Sections 100.2(A) and 100.3(B)(1) of the Rules.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters and Judge Ruderman concur.

Judge Marshall and Mr. Pope were not present.

Dated: November 19, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **THOMAS A. CIGANEK**, a Justice of the Piermont Village Court, Rockland County.

THE COMMISSION

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| Honorable Eugene W. Salisbury, Chair | Honorable Daniel F. Luciano |
| Henry T. Berger, Esq | Honorable Frederick M. Marshall |
| Jeremy Ann Brown, CASAC | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq | Honorable Terry Jane Ruderman |
| Christina Hernandez, MSW | |

APPEARANCES

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| Gerald Stern (Robert H. Tembeckjian (Of Counsel) for the Commission |
| Birbrower, Montalbano, Condon & Frank (By William Frank) for Respondent |

The respondent, Thomas A. Ciganek, a justice of the Piermont Village Court, Rockland County, was served with a Formal Written Complaint dated November 9, 2000, containing one charge.

On January 16, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On February 1, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent, an attorney with a law office in Rockland County, has been a part-time justice of the Piermont Village Court since 1972.

2. On or about March 16, 2000, at approximately 5:00 P.M., respondent fired a handgun several times towards the rear area of his law office near the public intersection of Route 303 and Kings Highway in Tappan, New York, where his law office is located.

3. Respondent intended to scare a wild turkey off the road that he believed was endangering motorists.

4. Respondent fired his handgun in the nearby presence of motorists, a police officer and two telephone company workers who witnessed respondent shooting into the air. Although no one was injured, the motorists and witnesses may have been endangered by respondent's action.

5. Respondent was arrested by the police officer and thereafter was charged with reckless endangerment in the second degree.

6. On or about June 13, 2000, respondent and the special prosecutor assigned to handle this case agreed to an Adjournment in Contemplation of Dismissal, which was approved by the Ramapo Town Justice to whom the case was assigned. The case was subsequently dismissed on or about November 28, 2000.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.2(A) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Sections 100.1 and 100.2 of the Rules Governing Judicial Conduct require a judge to observe high standards of conduct, to respect and comply with the law, and to act at all times in a manner that promotes public confidence in the judiciary. Off the bench, every judge must observe "standards of conduct on a plane much higher than for those of society as a whole." *Matter of Kuehnel v. State Comm. on Judicial Conduct*, 49 NY2d 465, 469 (1980).

By firing his gun several times near a busy intersection, during rush hour, in order to scare a wild turkey off the road, respondent violated these standards. Respondent's

actions, despite his belief that the turkey was endangering motorists, were contrary to law and showed a lack of good judgment and a notable disregard for the safety of bystanders and motorists. Firing a gun under such circumstances created a dangerous situation, as respondent should have recognized.

As a judge entrusted with the responsibility of exercising judgment over the conduct of others and applying the law in his court, respondent is obligated to act at all times with "respect for the letter and spirit of the law." *Matter of Backal v. State Comm. on Judicial Conduct*, 87 NY2d 1, 7 (1995). Any departure from this exacting standard of personal conduct undermines his effectiveness as a judge and impairs the public's respect for the judiciary as a whole.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Judge Salisbury, Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Peters and Judge Ruderman concur.

Ms. Hernandez and Mr. Pope were not present.

Dated: March 29, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **JOHN P. DiBLASI**, a Justice of the Supreme Court, Westchester County.

THE COMMISSION

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| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern (Vickie Ma, Of Counsel) for the Commission |
| Brennan Fabriani & Novenster, LLP (By Timothy J. Brennan) for Respondent |

The respondent, John P. DiBlasi, a Justice of the Supreme Court, Westchester County, was served with a Formal Written Complaint dated April 13, 2001, containing three charges. Respondent filed an answer dated May 11, 2001.

On September 10, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On November 8, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent is a Justice of the Supreme Court, Westchester County, serving a 14-year term that commenced in January 1995 and expires in December 2008.

With respect to Charge I of the Formal Written Complaint:

2. In October 1999, respondent received a memorandum from Administrative Judge Francis Nicolai requesting respondent's vacation schedule for the following year. The Administrative Judge's memorandum, which emphasized the importance of advising the Administrative Judge of vacation plans, provided as follows:

I must submit the assignments for 2000 to Deputy Chief Administrative Judge Joseph J. Traficanti, Jr., in November. In order to enable me to make the Duty Judge, Naturalization, Grand Jury and other assignments, I need your vacation schedules.

Your vacation schedules are an important management tool. Vacations for court officers, clerks, stenographers and other staff are granted to coincide with judge's vacations. When judges change their vacation schedules, particularly during July

and August, this causes staffing problems. Please try to make your vacation plans as definite as reasonably possible.

You are reminded that the annual vacation is twenty (20) days.

Please submit your vacation plans for 2000 to me no later than Friday, October 22, 1999. *Be sure to always copy your vacation schedule and any changes to your Chief Clerk.*

Also, I am attaching a copy of the 2000 Terms of Court and the 2000 Holidays.

Thank you for your cooperation.

3. Shortly thereafter, respondent submitted his vacation plans for 2000 to the Administrative Judge. He reported that he planned to be away for a few days in February and for two weeks in late August 2000.

4. In late May or early June 2000, respondent enrolled in a six-week broadcasting class from July 10, 2000, to August 21, 2000, at the Connecticut School of Broadcasting in Stratford, Connecticut, approximately 40 miles from the Westchester courthouse. Classes were held Monday through Friday, from 9:15 AM to 1:00 PM.

5. The Rules of the Chief Judge provide that court shall commence no later than 9:30 AM and conclude no earlier than 5:00 PM (22 NYCRR §3.1). That section also provides that the Chief Administrator of the Courts may authorize variances in the opening and closing hours of the courts. This provision serves as a reminder to judges that they are not free to create their own work schedules.

6. At the time respondent submitted his vacation plans for 2000, he had no plans to attend the broadcasting class. Respondent did not advise his Administrative Judge of any change in his vacation plans that would reflect his planned absences to attend the broadcasting classes.

7. Respondent did not appear in court until 2:00 PM on July 10, 11, 12, 13, 17 and 19 because he was attending the broadcasting class. He planned to follow that schedule through August 21, 2000.

8. On two of the eight days that respondent attended the broadcasting class, July 14 and July 18, 2000, respondent remained after class and did not appear in court at all for the purpose of conducting court business.

9. Respondent did not complete the program and withdrew after the eighth day of class, on July 20, 2000, because a newspaper reported respondent's absence from court.

10. Respondent asserts that he intended (in records he kept) to account for the 31 consecutive days that he would have been in broadcasting class as 31 half-days, or 16 days, of vacation time. He asserts further that he did not believe it was necessary for his Administrative Judge to know that respondent was attending the classes in Stratford, Connecticut for 31 straight court days.

11. Respondent neither advised the Administrative Judge that he was attending the broadcasting class nor reported that the time that he attended class and traveled from class to court would be considered vacation time. He regarded his plans to attend the classes as a change in his vacation schedule. Respondent asserts that it was his belief that changes in vacation schedules were not

regularly reported to the Administrative Judge. He further asserts that his absence from the court during the six-week period, as indicated above, was not covered by the Administrative Judge's October 1999 memorandum.

12. Respondent had been assigned to preside over the Central Calendar Part (formerly known as the Trial Assignment Part or TAP) on Wednesdays, commencing at 10:00 AM, where the motion calendar was called. To accommodate his schedule to attend broadcasting classes in Connecticut, respondent sought approval to commence the Central Calendar Part at 2:00 PM on Wednesdays in July and August 2000. A notice had to be sent to lawyers to advise them of the change. In seeking approval for the change, he did not disclose to his Administrative Judge, or to anyone who reported directly to the Administrative Judge, that the purpose was to permit him to attend the broadcasting classes. Respondent advised court personnel with whom he worked in the part that he would be at broadcasting school in the mornings. Respondent concedes that he was wrong not to have disclosed to his Administrative Judge his intention to attend the classes, especially since the need for approval to change the time of the motion calendar provided an excellent opportunity to make full disclosure about his plans to attend classes in Connecticut.

13. Respondent's position that it would be feasible to charge 31 "half-days" to vacation time does not withstand close scrutiny. Although he intended to charge the 31 "half-days" to vacation time, the most productive time in a court day, especially in summer months, is early in the day. Consequently, when a judge begins the court day at 2:00 PM, or later, especially in July or August, it is unrealistic to believe that he

or she is devoting a half-day to court business. Respondent should have been aware that his plans might not have been acceptable to his Administrative Judge or to the Office of Court Administration, and that, by itself, should have prompted respondent to request authorization for his plans to attend the six-week broadcasting class during daytime hours.

14. Before the commencement of the broadcasting course, respondent reviewed the cases pending in his part and rescheduled those that required his direct attention to the afternoons when he would be present. The clerk of the part, as a result of respondent's plans to attend the broadcasting classes, rescheduled some matters for a later time. During morning sessions while respondent attended the broadcasting class, respondent's law clerk held conferences on some cases. It is not uncommon for law clerks to conduct conferences on scheduled cases.

15. If a hearing in this matter were held, respondent's Administrative Judge would testify without contradiction that he would not have approved respondent's plans to attend the broadcasting class for 31 successive days during court hours notwithstanding that respondent in the future was to moderate a cable television show, approved by the Office of Court Administration, about the court system.

16. It was improper for respondent to fail to have advised his Administrative Judge of respondent's planned absences from the court in July and August 2000 and to have attended the classes during court hours without approval.

With respect to Charge II of the Formal Written Complaint:

17. Mental Hygiene Legal Service (“MHLS”) is a state advocacy agency for mentally disabled, institutionalized patients.

18. In February and March 2000, Dana Stricker, an MHLS attorney, appeared before respondent in the Mental Hygiene Part six times. Sometime in February, respondent and Ms. Stricker developed a romantic relationship, which lasted beyond March 2000.

19. Respondent conducted ten, contested hearings in which Ms. Stricker appeared before him on matters involving either the involuntary retention or medication of a patient: In the Matter of L.J., In the Matter of S.D., In the Matter of P.U., In the Matter of P.U., In the Matter of R.M., In the Matter of R.M., In the Matter of S.M., In the Matter of B.I., In the Matter of R.G. and In the Matter of D.G. Respondent’s decision in each of the above matters was contrary to Ms. Stricker’s position. There is no evidence that any of his rulings were in any manner influenced by his relationship with Ms. Stricker.

20. Respondent should have disqualified himself from any proceeding in which Ms. Stricker was involved. Although respondent made efforts to be transferred out of the Mental Hygiene Part, he was unable to obtain an immediate transfer and he remained in the part and presided over matters involving Ms. Stricker’s appearance until the end of March 2000.

With respect to Charge III of the Formal Written Complaint:

21. On or about March 28, 2000, respondent had two telephone conversations with Sidney Hirschfeld, Director of MHLS, Second Judicial Department. These calls were the result of telephone calls to respondent from Dana Stricker.

22. In the first of the two conversations, respondent called Mr. Hirschfeld to complain that Ms. Stricker advised him that Marita McMahon, Principal Attorney of MHLS, Westchester County, was spreading rumors about respondent’s personal life and his relationship with Ms. Stricker. Respondent further stated that he did not want Ms. Stricker to be harassed by Ms. McMahon as a repercussion of his telephone conversation with Mr. Hirschfeld. Thereafter, Ms. McMahon spoke to Ms. Stricker that day about Ms. Stricker’s work habits.

23. Later that same day, Ms. Stricker called respondent again and informed him that Ms. McMahon had already begun harassing her as a result of respondent’s first telephone conversation with Mr. Hirschfeld. Thereafter, respondent called Mr. Hirschfeld a second time and demanded to know why Ms. McMahon was harassing Ms. Stricker.

24. During the second conversation with Mr. Hirschfeld, respondent further complained that Ms. McMahon had been abusive and vindictive towards Ms. Stricker for some time, prior to their telephone conversations; that respondent had other objections to Ms. McMahon that were unrelated to her treatment of Ms. Stricker; that he did not want Ms. McMahon in his courtroom and that Ms. McMahon should be transferred out of Westchester County. Respondent did not disclose to Mr. Hirschfeld that he and Ms. Stricker were involved in a romantic relationship.

25. Immediately after respondent’s telephone calls to Mr. Hirschfeld, Ms. Stricker was assigned to a different supervisor. Subsequently, Ms. Stricker was reassigned to another county.

Additional Finding:

26. Respondent is regarded as a competent, honest, capable and intelligent judge, and in the event of a hearing, there would be no dispute that he has an excellent reputation for these qualities.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(A), 100.3(C)(1), 100.3(E)(1) and 100.4(A)(3) of the Rules Governing Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent has engaged in conduct that demonstrates insensitivity and inattention to the ethical and administrative responsibilities of his office.

It was improper for respondent to fail to advise his Administrative Judge of respondent's planned absences from the court for the better part of 31 consecutive days in order to attend a broadcasting course. As respondent was advised by the Administrative Judge's memorandum, it is essential for court administrators to be apprised of judges' proposed vacation schedules, which are an "important management tool" in planning assignments for judges, approving vacation requests for other court staff and avoiding staffing problems. Respondent should have recognized that his plan to attend the broadcasting course would be of significant concern to court administrators. Regardless of respondent's efforts to rearrange his court schedule and to provide for coverage in his absence, the impact on the operations of his court caused by such absences would be considerable. Indeed, despite his plan to be absent for 31 "half-days," respondent never came to court at all for two of the first eight days of the class, and on the other days, did

not arrive until 2:00 PM, after the most productive time in a court day was over. For obvious reasons, respondent's plan would not have been approved by his Administrative Judge.

Although respondent did seek approval to change the starting time of the once-a-week motion calendar to accommodate his class schedule, he did not disclose the reason for the requested change. Nor, in seeking approval for the 2:00 PM start once a week, did he take the opportunity to notify court administrators that he was planning a similar late start every day for a six-week period. Of course, by not seeking approval for his plans, respondent avoided having to face the possible consequence of having his request denied.

Respondent withdrew from the broadcasting course only after his absences were reported in the press. By enrolling in the course and attending the classes without approval for eight days, respondent failed to cooperate with other judges and court officials in the administration of court business and allowed his extra-judicial activities to interfere with the proper performance of judicial duties, in violation of the ethical rules (Sections 100.3[C][1] and 100.4[A][3] of the Rules Governing Judicial Conduct). Respondent also failed to give his judicial duties precedence over his other activities, in violation of Section 100.3(A) of the Rules.

A judge's disqualification is required in any matter where the judge's impartiality might reasonably be questioned (Section 100.3[E][1] of the Rules). When the judge is involved in a romantic relationship with an attorney who is appearing before him, the judge's impartiality is certainly suspect. By presiding over ten matters under such circumstances, respondent clearly violated the ethical standards. Notwithstanding there

is no evidence that his rulings were influenced by his personal relationship with the attorney – indeed, in each case his decision was contrary to the attorney’s position – respondent’s conduct was improper. Matter of Robert, 1997 Ann Report of NY Commn on Jud Conduct 127, *accepted*, 89 NY2d 745 (1997). To his credit, respondent made efforts to be transferred out of the attorney’s part, but, having recognized the conflict, he should not have continued to preside in the attorney’s cases.

Respondent’s misconduct was exacerbated by his efforts to undermine the attorney’s supervisor based upon the attorney’s allegations that the supervisor was harassing her and spreading rumors about respondent’s relationship with her. In two telephone calls to the director of the agency where the attorney worked, respondent complained about the supervisor’s conduct, told the director that he did not want the supervisor in his court, and said that the supervisor should be transferred out of the county. Because of his personal relationship with the attorney (which he did not disclose), respondent’s views about the matter could not be impartial. His self-serving efforts to have the supervisor barred from his court and transferred from the county -- at least partly in retaliation for her conduct towards an attorney with whom respondent was romantically involved -- were reprehensible. Respondent should have recognized that, as the Court of Appeals has stated, his words would be regarded “with heightened deference simply

because he is a judge” and would “reflect, whether designedly or not, upon the prestige of the judiciary.” Matter of Steinberg v. State Commn on Jud Conduct, 51 NY2d 74, 81 (1980); Matter of Lonschein v. State Commn on Jud Conduct, 50 NY2d 569, 572 (1980). By interjecting himself into the conflict between the attorney and her supervisor, respondent conveyed the appearance that he was lending the prestige of his judicial office to advance the private interests of the attorney, and himself, in violation of Section 100.2[C] of the Rules.

Notwithstanding his ethical misdeeds, respondent ruled against the position being asserted by the attorney with whom he was romantically involved, which avoids the suspicion that his judicial decisions were based on personal considerations. That finding permits the Commission to accept the agreed statement and the joint recommendation for censure.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Judge Marshall, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Mr. Berger and Judge Ciardullo dissent and vote to reject the agreed statement of facts on the basis that the disposition is too lenient.

Judge Luciano was not present.

Dated: November 19, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **THOMAS A. DICKERSON**, a Judge of the County Court and an Acting Family Court Judge, 9th Judicial District, Westchester County.

THE COMMISSION

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|---|-------------------------------|
| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern for the Commission |
| Mancuso, Rubin & Fufidio (By Andrew A. Rubin) for Respondent |

The respondent, Thomas A. Dickerson, a judge of the County Court and an acting Family Court Judge, Westchester County, was served with a Formal Written Complaint dated July 13, 2001, containing one charge.

On September 5, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On November 8, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent served as a judge of the Yonkers City Court from January 1, 1994, to December 31, 1999, and has served as a judge of the Westchester County Court from

January 1, 2000, to the present, sitting as an acting Family Court judge.

2. In November 2000, respondent was sharply criticized in the press for his decision in a Family Court case in which he had dismissed charges against a man who threatened a woman in a telephone conversation. The legal basis of respondent's decision was that the woman had initiated the telephone call.

3. In February 2001, in an interview with a *New York Times* reporter, respondent told the reporter that he had changed his view on whether a person could be held responsible for Aggravated Harassment, Second Degree if he or she threatened another person in a telephone conversation initiated by the person who was threatened. Respondent further stated to the reporter that in future cases, he would broaden his view of the law to protect the alleged victim of a death threat no matter who initiated the telephone call. Respondent expected his comments to be reported in the press, and

his comments were reported in an article dated February 25, 2001.

4. In the course of the interview, respondent indicated what positions he would take in future death-threat cases, including that he would set bail of \$10,000, that he would incarcerate the person who allegedly made a threat against the alleged victim's life, whom he referred to as "the abuser," and that he would find a sufficient basis to charge Aggravated Harassment in the Second Degree.

5. The news article resulting from respondent's comments to the reporter was entitled "An About-Face on Domestic Violence," and a sub-heading, under respondent's posed photo on the bench, was: "Responding to Criticism, Family Court Judge Says He Will Try To Protect Victims of Death Threats."

6. In the interview, respondent referred twice to the alleged abuser as "the abuser," which implies and conveys the impression that respondent believed that all such allegations were true and all alleged abusers were guilty. That impression was bolstered by his other comments to the reporter in which he indicated what action he would take in such cases at the initial appearance. In fact, respondent does not assume the guilt of those who are alleged to have been abusive to their spouses and other partners.

7. Respondent was unaware that he was barred by the applicable rules from announcing publicly how he would act in impending cases in his court. Respondent agrees that such lack of knowledge is not an excuse and is not a mitigating circumstance. He should have been more aware of the applicable rules and he now recognizes that his conduct as set forth in paragraphs 3 through 6 above was improper.

8. Although respondent's comments to the *Times* reporter were made a few weeks after he announced his candidacy for a nomination to a Supreme Court judgeship, he denies that his purpose in granting the interview and making the comments was to enhance his position as a candidate. The evidence would not establish that respondent had a political motive in making the comments or that he gave the interview to make himself a more viable candidate for a Supreme Court nomination.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B), 100.2(C), 100.3(B)(1), 100.3(B)(8), 100.4(A)(1), 100.4(A)(2), 100.4(A)(3), 100.5(A)(4)(d)(i) and 100.5(A)(4)(d)(ii) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained insofar as it consistent with the above facts, and respondent's misconduct is established.

By advising the press that he had changed his view of the law with respect to death-threat cases soon after being sharply criticized for a decision in such a case, respondent conveyed the appearance that he had reshaped his legal views as a result of unfavorable publicity. Such an appearance is antithetical to the proper role of a judge, which is to exercise judgment in an independent, impartial manner, unswayed by concerns about what may be popular or politically correct. Respondent's comments, which were reported in a news article entitled "An About-Face on Domestic Violence," violated well-established standards requiring a judge to avoid impropriety and the appearance of impropriety and "not be swayed by partisan interests, public clamor or fear of criticism" (Rules Governing Judicial Conduct, 22 NYCRR 100.2 and 100.3[B][1]).

The impropriety here is not that respondent changed his view of the law, but that his publicized comments convey the impression of a biased judge whose views shifted in response to public criticism. Although this portrayal is inaccurate, respondent bears responsibility for the impression created by his ill-conceived remarks to the press.

By stating explicitly what position he would take in future death-threat cases (including that he would set bail of \$10,000 and would incarcerate the person who allegedly made the threat), respondent cast reasonable doubt on his capacity to act impartially on issues that were likely to come before him, contrary to Section 100.4(A)(1) of the Rules. His comments convey the appearance of a biased judge who would deal harshly with alleged abusers, rather than judge the merits of individual cases. See Matter of Hafner, 2001 Ann Rep 113 (Comm on Jud Conduct); Matter of Maislin, 1999 Ann Rep 113 (Comm on Jud Conduct); Matter of Herrick, 1999 Ann Rep 103 (Comm on Jud Conduct). Respondent's statements also violated Section 100.3(B)(8) of the Rules, which prohibit a judge from commenting publicly on pending or impending cases. Respondent's professed unfamiliarity with the relevant ethical prohibitions does not

mitigate or excuse his misconduct in this regard. Matter of VonderHeide v. State Commn on Jud Conduct, 72 NY2d 658, 660 (1988).

Respondent, who was then a candidate for a Supreme Court nomination, also violated ethical standards incumbent upon judicial candidates. His statements conveyed the appearance that he was making pledges or promises of conduct in office and appeared to commit him with respect to issues likely to come before the court, contrary to Sections 100.5(A)(4)(d)(i) and (ii) of the Rules. Although the record does not establish that respondent made the comments for the purpose of enhancing his candidacy, his statements were improper and detract from the dignity of judicial office.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Marshall, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

Dated: November 19, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **LEIGH W. FULLER**, a Justice of the Canajoharie Town and Village Courts, Montgomery County.

THE COMMISSION

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| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission |
| Norberta Fuller Krupczak for Respondent |

The respondent, Leigh W. Fuller, a justice of the Canajoharie Town and Village Courts, Montgomery County, was served with a Formal Written Complaint dated June 5, 2001, containing three charges. Respondent filed an answer dated June 27, 2001.

On November 6, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On November 8, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Canajoharie Town Court since 1981 and a justice of the Canajoharie Village Court since 1995. He is not a lawyer. He has attended and successfully completed all

judicial training sessions sponsored by the Office of Court Administration.

As to Charge I of the Formal Written Complaint:

2. On or about February 10, 2000, the plaintiff in Gregory Duesler v. James Blair appeared before respondent for the scheduled trial of Mr. Duesler's small claim for \$385, plus interest and costs, for services rendered in the defendant's establishment. Mr. Blair did not appear at the scheduled time, and, after waiting 30 minutes, respondent administered an oath to the plaintiff, heard his testimony in support of the claim and received documentary evidence. At the conclusion of the proceeding, respondent informed Mr. Duesler that respondent would issue a default judgment in his favor, due to the defendant's failure to appear.

3. Shortly after Mr. Duesler left the court, Mr. Blair appeared in court and informed respondent that he adamantly

disputed the plaintiff's claim and that he did not owe Mr. Duesler any money. On or about March 13, 2000, respondent issued a judgment in favor of the plaintiff for only \$150, plus costs. Respondent held no rehearing, but lowered the amount of the judgment based upon his *ex parte* discussion with the defendant.

4. On or about March 23, 2000, Gregory Duesler questioned respondent about the reduced amount of the judgment, objected and expressed the view that he wished to confront the defendant on the amount due. Respondent told Mr. Duesler that although respondent had spoken to Mr. Blair, Mr. Duesler did not have the right to confront the defendant in the case.

As to Charge II of the Formal Written Complaint:

5. On or about August 21, 1997, the defendant in People v. Eileen Shafran appeared before respondent for trial on a Speeding charge. Ms. Shafran had previously pleaded not guilty by mail and had requested a supporting deposition. When she arrived at court, she was offered a plea reduction by the assistant district attorney. When Ms. Shafran then went before the bench and requested the arresting officer's supporting deposition, which she had not received, respondent angrily informed her that she did not have the right to the arresting officer's supporting deposition because she had been offered a plea reduction.

7. By informing Ms. Shafran that she was not entitled to the supporting deposition, respondent coerced the defendant's plea to a reduced charge, notwithstanding that the defendant was entitled to dismissal of the Speeding charge, pursuant to Section 100.25 of the Criminal

Procedure Law, because of the officer's failure to furnish the supporting deposition.

With respect to Charge III of the Formal Written Complaint:

8. Until the Commission questioned the practice in early 2001, as a matter of practice, respondent regularly held court in his chambers and called defendants into the room individually. Respondent's practice violated Section 4 of the Judiciary Law, which requires that the proceedings be open to the public. In addition, on monthly district attorney court dates, respondent created the impression that the assistant district attorney (ADA) was in charge of the court proceedings, by allowing the ADA to call cases and offer plea bargains in the courtroom while respondent accepted pleas and imposed sentences in chambers.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 (A), 100.3(B)(1), 100.3(B)(3) and 100.3(B)(6) of the Rules Governing Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Every judge, lawyer or non-lawyer, is required to be competent in the law and to act in a manner that promotes public confidence in the integrity of the judiciary (Sections 100.2[A] and 100.3[B][1] of the Rules Governing Judicial Conduct; Matter of Gori, NY Commn on Jud Conduct, March 29, 2001). As a judge since 1981, respondent should be familiar with fundamental principles of law and the ethical rules.

By engaging in an *ex parte* discussion with the defendant in a small claims case and rendering a judgment based upon the discussion, respondent violated well-

established ethical standards prohibiting *ex parte* communications and requiring a judge to afford every person who has a legal interest in a proceeding the right to be heard according to law (Section 100.3[B][6] of the Rules). Respondent compounded his misconduct by advising the plaintiff, who had questioned respondent's conduct, that the plaintiff did not have a right to confront the defendant in the case.

It was also improper for respondent to advise the defendant in a traffic case that she was not entitled to a supporting deposition because she had been offered a plea reduction. Respondent's erroneous statement of the law effectively coerced the defendant's plea to a reduced charge, although she was entitled to dismissal of the Speeding charge, pursuant to Section 100.25 of the Criminal Procedure Law.

By holding court in his chambers, respondent excluded the public from court proceedings, contrary to Section 4 of the

Judiciary Law. Public trials are intended to safeguard a defendant's right to a fair trial and to promote public confidence in the integrity of the judicial process. Matter of Shannon (NY Comm on Jud Conduct, Nov. 19, 2001). In addition, by allowing the prosecutor to call cases and offer plea bargains in the courtroom while respondent held court in chambers, respondent conveyed the impression that the prosecutor, not an impartial arbiter, was in charge of court proceedings.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Marshall, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

Dated: December 26, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **WILLIAM J. GORI**, a Justice of the Duane Town Court, Franklin County.

THE COMMISSION

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| Honorable Eugene W. Salisbury, Chair | Honorable Daniel F. Luciano |
| Henry T. Berger, Esq | Honorable Frederick M. Marshall |
| Jeremy Ann Brown, CASAC | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq | Honorable Terry Jane Ruderman |
| Christina Hernandez, MSW | |

APPEARANCES

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| Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission |
| John A. Piasecki for Respondent |

The respondent, William J. Gori, a justice of the Duane Town Court, Franklin County, was served with a Formal Written Complaint dated February 14, 2000, containing one charge. The charge alleged that in a small claims case, respondent failed to follow the law, engaged in improper *ex parte* communications and failed to afford the defendant full opportunity to be heard.

By order dated April 3, 2000, the Commission designated Roger W. Robinson, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 20, 2000, in Albany, New York. The referee filed a report with the Commission dated October 31, 2000.

The parties filed briefs with respect to the referee's report. Oral argument was waived. On February 1, 2001, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Duane Town Court since January 1, 1998. Respondent, who is not a lawyer, has completed all required judicial training.
2. In December 1998, Gary Betters filed a small claims court action in the Malone Village Court against the Village of Malone, seeking \$1,588.60 in back wages for his previous employment as co-director of the Malone Memorial Recreation Park, run by the Malone Recreation Commission.
3. After the village justices disqualified themselves, the case was transferred to the Malone Town Court. It was thereafter transferred to the Duane Town Court because of an apparent conflict of interest, since the Town of Malone also contributed to the recreation commission's budget.
4. Respondent set a trial date for February 1999, then adjourned it to March 11, 1999, at the request of Derek Champagne, the Malone village attorney.

5. On March 9, 1999, Mr. Champagne served a motion to dismiss Mr. Betters' claim on the basis that the appropriate defendant was the Malone Recreation Commission, not the Village of Malone. Mr. Champagne attached to his motion copies of the Malone Village Law, setting up the recreation commission jointly with the Town of Malone, and the relevant portion of the General Municipal Law.

6. On March 10 or March 11, 1999, Mr. Champagne telephoned respondent to ask about the status of his motion. Mr. Champagne wanted to avoid making an unnecessary trip to court if respondent had decided to grant the motion. Respondent told Mr. Champagne that if he provided clarification regarding the payments to Mr. Betters, respondent would grant the motion and Mr. Champagne's appearance in court would not be necessary. At respondent's request, Mr. Champagne dictated a memorandum to a village employee, who then faxed it to respondent. A copy of the memorandum was not sent to Mr. Betters. The memorandum states:

As Village Attorney, I have examined the issue of whether the Village of Malone authorized at anytime to pay Gary Betters the additional funds requested he be paid in the Small Claims Action Gary Betters vs. The Village of Malone. The Recreation Commission informed the Village of Malone that Mr. Betters has previously been paid for any and all services provided in his previous employment with the Malone Recreation Commission.

7. Prior to the scheduled trial, respondent went to the Village of Malone offices and spoke *ex parte* with Richard Robare, Village treasurer and budget officer, concerning Gary Betters' compensation history. Respondent told Mr. Robare that

respondent had a pending case regarding Mr. Betters' claim and that he wanted to know something about who paid Mr. Betters and his connection with the Village. Mr. Robare told respondent that Mr. Betters was under the direction of the recreation commission and that the Town and Village paid the funds jointly, but that the Village actually disbursed the money. Mr. Robare, who would have been one of the key witnesses in the Betters trial, also told respondent that he did not feel that Mr. Betters was entitled to any more money.

8. Respondent advised Mr. Champagne that he had spoken to Mr. Robare, but he never informed Mr. Betters of his conversation with Mr. Robare.

9. On March 11, 1999, the scheduled trial date, Mr. Betters appeared before respondent. Respondent began the proceeding by saying that he had "stepped on some toes" regarding the case but that he was not going to dismiss the claim.

10. Notwithstanding that respondent had previously indicated to Mr. Champagne that he would grant the motion to dismiss and that Mr. Champagne was not required to appear for trial on March 11, 1999, respondent held a hearing on that date in the absence of Mr. Champagne.

11. Respondent failed to administer an oath to Mr. Betters, in violation of Section 214.10(j) of the Uniform Civil Rules for the Justice Courts. Respondent received unsworn testimony from Mr. Betters concerning the substance of his claim for back wages.

12. During the proceeding on March 11, 1999, Mr. Betters objected that no one was present on behalf of the defendant. Respondent read to Mr. Betters the memorandum respondent had received from

Mr. Champagne, but did not provide a copy of it to Mr. Betters.

13. At the conclusion of the proceeding, respondent told Mr. Betters that he could submit additional information in support of his claim before respondent made his decision and that he would render a decision by March 19, 1999. Mr. Betters agreed to furnish the additional material by Monday, March 15, 1999.

14. On March 15, 1999, Mr. Betters mailed additional documents to respondent regarding his claim. On March 14, 1999, before he had received Mr. Betters' submission, respondent sent his decision to Mr. Champagne dismissing Mr. Betters' claim, and on March 15, 1999, respondent sent a similar decision to Mr. Betters, which Mr. Betters received the following day. Respondent's decision states that he had reviewed documents and Mr. Betters' "testimony."

15. After receiving respondent's decision, Mr. Betters telephoned respondent, who said that he had dismissed the claim because the recreation commission had not authorized the payment.

16. On March 16, 1999, Mr. Betters sent respondent a letter in which he objected to the manner in which respondent had handled the claim, specifically protesting that respondent had received evidence from Mr. Champagne in advance of the trial, that respondent had failed to administer an oath to Mr. Betters, and that respondent had not reviewed Mr. Betters' additional evidence. Mr. Betters requested that respondent declare a mistrial and transfer the case to another court. Respondent did not respond to Mr. Betters' letter.

17. Mr. Champagne was unaware that respondent had held any proceeding on

March 11, 1999, until he received a copy of Mr. Betters' letter to respondent complaining that the proceeding was unfair.

18. Thereafter, Mr. Betters was unable to find a local attorney who would handle his appeal, which was ultimately dismissed by the County Court for failure to perfect the appeal.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1) and 100.3(B)(6) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent's handling of the small claims case of Betters v. Village of Malone was fraught with errors as to basic procedures and conveyed the appearance that he prejudged the case based upon inappropriate, *ex parte* contacts. Respondent solicited *ex parte* information regarding the merits of Mr. Betters' claim from both the Village treasurer and the defendant's attorney, and advised the defendant's attorney that he did not have to appear on the scheduled date since respondent intended to grant the motion to dismiss pending receipt of the requested information. Thereafter, respondent held a hearing in the absence of the defendant's attorney and accepted unsworn testimony from Mr. Betters as to the merits of the claim; significantly, the defendant's attorney was unaware that any proceeding had been held until he received a copy of Mr. Betters' letter complaining that the hearing had been unfair. Compounding the appearance that he prejudged the case, respondent rendered a decision granting the motion to dismiss prior to the deadline he had set for Mr. Betters to

submit additional material regarding his claim.

Respondent's conduct violated established ethical standards requiring a judge to respect and comply with the law, to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and to accord the parties full opportunity to be heard according to law (Rules Governing Judicial Conduct, 22 NYCRR 100.2[A], 100.3[B][1] and 100.3[B][6]).

We reject the contention of respondent's counsel that the concept of *ex parte* communications is "esoteric" and that it is unrealistic to expect lay justices to be fully familiar with the ethical and procedural rules. Town and village justices wield enormous power in civil and criminal cases, and it is not unreasonable to expect them to know and follow basic statutory procedures. As the Court of Appeals has held, ignorance and lack of competence do not excuse ethical violations, and every judge has an

obligation to learn and abide by the Rules Governing Judicial Conduct. Matter of VonderHeide v. Comm. on Judicial Conduct, 72 NY2d 658, 660 (1988). Moreover, respondent's testimony that he understood that each party should have the opportunity to hear the other's evidence and to cross-examine witnesses belies any suggestion that he was unfamiliar with the appropriate standards.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Judge Salisbury, Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Peters and Judge Ruderman concur.

Ms. Hernandez and Mr. Pope were not present.

Dated: March 29, 2001

In the matter of the proceeding pursuant to Section 44, subdivision 4, of the Judiciary Law in relation to **CHAD. R. HAYDEN**, a Justice of the Aurelius Town Court, Cayuga County.

THE COMMISSION:

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| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES:

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| Gerald Stern (John J. Postel and Seema Ali, Of Counsel) for the Commission |
| William G. Moench, Jr., for Respondent |

The respondent, Chad R. Hayden, a justice of the Aurelius Town Court, Cayuga County, was served with a Formal Written Complaint dated February 23, 2000, containing one charge. Respondent filed an answer dated April 10, 2000.

By Order dated July 31, 2000, the Commission designated Patrick J. Berrigan, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 25, 2000, and the referee filed his report dated February 10, 2001, with the Commission.

The parties submitted briefs with respect to the referee's report. On May 10, 2001, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Aurelius Town Court since 1994.

2. Respondent is a graduate of Cornell Law School and was admitted to the practice of law in 1973. Since 1995, respondent has maintained his own law practice, engaged primarily in estate law and real estate law.

3. In January 1998, Jerry Lamphere was involved in an automobile accident while operating a motor vehicle owned by Lindsey Ide. Ms. Ide, who was at home at the time of the accident, told her father that she had been operating the vehicle when the accident occurred. The accident caused substantial damage to the car.

4. Respondent and Edward Ide, Ms. Ide's father, are close personal friends, and Mr. Ide sometimes assists respondent, as a volunteer, at court.

5. On January 14, 1998, Lindsey Ide, then age 18, was issued traffic tickets for Speeding and Failure To Keep Right, arising from the accident. The tickets were returnable in the Moravia Town Court.

6. Mr. Ide told respondent that Lindsey had been involved in an auto accident, and respondent offered to help. Respondent met with Ms. Ide, who told him that the accident had occurred when she was operating the vehicle.

7. Respondent represented Ms. Ide in connection with the traffic tickets and the accident. On behalf of Ms. Ide, respondent entered a plea of not guilty on the traffic charges and requested a trial date.

8. Thereafter, Ms. Ide acknowledged to her father that Mr. Lamphere had been operating the automobile at the time of the accident, and Mr. Ide so informed respondent.

9. Respondent advised Ms. Ide to disclose this information to the State Police, and Ms. Ide did so.

10. In the course of representing Lindsey Ide, respondent asked Patricia Lawler, an assistant district attorney of Cayuga County, what position her office would take if an individual lied in a statement to police and then came forward with the truth.

11. Ms. Lawler advised respondent that she was aware that Lindsey Ide had changed her story and told respondent that she, Ms. Lawler, would recommend that the traffic tickets be dismissed. Thereafter, the traffic tickets were dismissed.

12. On November 3, 1998, Lindsey Ide filed a small claims action against Jerry Lamphere in the Aurelius Town Court. Appearing before respondent, Ms. Ide described her claim against Mr. Lamphere, and respondent prepared the Notice of Small Claim for \$3000, alleging emotional distress and damage to Ms. Ide's automobile arising from unauthorized use of the vehicle by Mr. Lamphere.

13. Respondent caused the Notice of Small Claim to be mailed to Mr. Lamphere's residence in Weedsport, New York, scheduling a hearing in the matter in respondent's court for December 15, 1998. There is no indication that Mr. Lamphere ever received the registered letter.

14. On the return date, Mr. Lamphere did not appear. Respondent took testimony from Lindsey Ide and granted a default judgment in her favor for \$1950 plus \$15 disbursements. This amount represented \$1600 for damages to the automobile, \$200 for lost clothing, \$50 for towing and \$100 for missing a week of school.

15. Respondent's court lacked jurisdiction over Mr. Lamphere, pursuant to Section 1801 of the Uniform Justice Court Act, since Mr. Lamphere did not reside in the town of Aurelius, or have regular employment or an office for the transaction of business in the town.

16. On March 14, 2000, after the Formal Written Complaint in this matter was filed, respondent advised Jerry Lamphere and Lindsey Ide that he lacked jurisdiction over the defendant and was vacating the judgment and dismissing the case. Ms. Ide never collected from Mr. Lamphere the amount awarded in the default judgment.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.3(E)(1), 100.3(E)(1)(a)(i), 100.3(E)(1)(a)(ii) and 100.3(E)(1)(b)(i) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent, a part-time justice who is permitted to practice law, presided over a small claims action involving a claimant

whom he had represented as a client in a traffic case involving the same incident and whose father was respondent's friend and court assistant.

As a judge for four years and a practicing attorney for 25 years, respondent should have recognized the inherent conflicts in presiding over the small claims case. The manifest conflicts required his disqualification: the claimant was the daughter of his close friend; she was a recent client; and he had represented her in a matter involving the same fact situation now before him as a judge. Disqualification is required in matters where a judge has a personal bias concerning a party, has personal knowledge of disputed evidentiary facts or has previously served as a lawyer in the matter in controversy, or in any matter in which the judge's impartiality might reasonably be questioned (Sections 100.3(E)(1), 100.3(E)(1)(a)(i), 100.3(E)(1)(a)(ii) and 100.3(E)(1)(b)(i) of the Rules). See Matter of Ross, 1990 Ann Report of NY Commn on Jud Conduct, at 153; Matter of Cerbone, 1997 Ann Report of NY Commn on Jud Conduct, at 83; Matter of Robert v. Comm. on Jud. Conduct, 89 NY2d 745 (1997).

The appearance of impropriety is exacerbated because respondent granted a default judgment in the claimant's favor, relying exclusively on her testimony, notwithstanding that he lacked personal

jurisdiction over the defendant, who was not a resident of the town and who apparently never received the Notice of Small Claim that respondent had prepared. In view of his conspicuous conflicts in the matter, respondent's error of law on the jurisdictional issue compounds the appearance of impropriety.

By his handling of the matter, respondent showed insensitivity to his obligation not only to be impartial, but to appear to be impartial in matters over which he presides. His conduct undermines public confidence in the fair and impartial administration of justice.

In determining sanction, the Commission has considered respondent's assurances that he now recognizes the importance of maintaining a strict separation between the private practice of law and the performance of his judicial duties.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

Dated: June 27, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **GEORGE HRYCUN**, a Justice of the Ward Town Court, Allegany County.

THE COMMISSION

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| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern (John J. Postel, Of Counsel) for the Commission |
| Honorable George Hrycun, <i>pro se</i> |

The respondent, George Hrycun, a justice of the Ward Town Court, Allegany County, was served with a Formal Written Complaint dated April 20, 2001, containing three charges. Respondent filed an answer dated May 10, 2001.

On August 28, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On November 8, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Ward Town Court since 1990. He is not a lawyer. He has attended and successfully completed all required training sessions for judges.

As to Charge I of the Formal Written Complaint:

2. From August 2000 through October 2000, respondent failed to report any cases or remit to the State Comptroller any of the \$520 in court funds he had received, in violation of Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law and Section 27.1 of the Town Law. The \$520 in court funds that respondent had received during this period were deposited as required by law.

3. From August 2000 through October 2000, respondent failed to report and remit to the State Comptroller, notwithstanding that he had received two letters of dismissal and caution, dated July 27, 1994, and February 10, 2000, from the Commission concerning his prior failures to report and remit to the State Comptroller as required by law.

4. Respondent failed to report and remit to the State Comptroller as required by law as a result of the seasonal demands of his personal employment, which had increased during this period.

5. Respondent agrees that he will comply with the requirements of Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law and Section 27.1 of the Town Law and will submit his monthly reports to the State Comptroller within the first ten days of the month succeeding collection.

As to Charge II of the Formal Written Complaint:

6. From August 1999 through October 1999, respondent failed to report any cases or remit to the State Comptroller any of the \$970 in court funds he had received, in violation of Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law and Section 27.1 of the Town Law. The \$970 in court funds that respondent had received during this period were deposited as required by law.

7. From August 1999 through October 1999, respondent failed to report and remit to the State Comptroller, notwithstanding that he had received a letter of dismissal and caution, dated July 27, 1994, from the Commission concerning his prior failure to report and remit to the State Comptroller as required by law.

As to Charge III of the Formal Written Complaint:

8. From July 1993 through October 1993, respondent failed to report any cases or remit to the State Comptroller any of the \$245 in court funds he had received, in violation of Sections 2020 and 2021(1) of

the Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law and Section 27.1 of the Town Law. The \$245 in court funds that respondent had received during this period were deposited as required by law.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(A) and 100.3(C)(1) of the Rules Governing Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Notwithstanding two prior confidential cautions by the Commission for similar misconduct, respondent failed to report cases and remit court funds to the State Comptroller within the time required by law. Six months after receiving his second letter of dismissal and caution, respondent reverted to his earlier lax practices, filing no reports and remitting no funds to the State Comptroller from August to October 2000 notwithstanding that he had received \$520 in court funds during this period.

A town justice is required to report cases and remit court funds to the State Comptroller by the tenth day of the month following collection (UJCA §2021[1]; Town Law §27[1]; Vehicle and Traffic Law §1803). The mishandling of public funds by a judge is misconduct, even when not done for personal profit. Bartlett v. Flynn, 50 AD2d 401, 404 (4th Dept 1976). The failure to remit funds promptly to the State Comptroller constitutes neglect of a judge's administrative duties, even if the money is accounted for and on deposit and even if the amounts are small. See Matter of Ranke, 1992 Ann Report of NY Commn on Jud Conduct 64; Matter of Erway, 1997 Ann Report of NY Commn on Jud Conduct 91.

Respondent's negligence with respect to his administrative duties is not excused by the demands of his personal employment. The judicial responsibilities of a judge take precedence over all the judge's other activities (Section 100.3[A] of the Rules Governing Judicial Conduct).

Respondent's failure to heed previous Commission warnings to comply with the remitting requirements exacerbates his misconduct. Matter of Goebel, 1990 Ann Report of of NY Comm on Jud Conduct 101; Matter of Erway, *supra*. Any future conduct by respondent which violates the

ethical standards concerning the reporting and remitting requirements may well be cause for removal.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Mr. Berger, Judge Marshall, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

Dated: November 19, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **RICHARD D. HUTTNER**, a Justice of the Supreme Court, 2nd Judicial District, Kings County.

THE COMMISSION

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|---|-------------------------------|
| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission |
| Harvey L. Greenberg and Stillman & Friedman (by Paul Shechtman) for Respondent |

The respondent, Richard D. Huttner, a justice of the Supreme Court, 2nd Judicial District, Kings County, was served with a Formal Written Complaint dated July 5, 2001. Respondent filed an answer dated July 25, 2001.

On December 5, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On December 20, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent served as a Family Court Judge from 1979 to 1985 and has served as a Supreme Court Justice since 1986.

2. Respondent has been a resident of the Murray Hill Mews cooperative in New

York County since July 1996. From May 19, 1997, until September 25, 2001, respondent served as a member of the cooperative's board of directors and as a vice-president of the cooperative's board of directors.

3. Before becoming a member of the Murray Hill Mews cooperative's board of directors, respondent was aware of Opinion 96-08 of the Office of Court Administration Advisory Committee on Judicial Ethics, which states that a judge may serve as an officer of a cooperative's board of directors, provided such service does not "involve the judge in litigation."

4. Between June 1999 and January 2001, respondent signed five affidavits that were filed in court by the cooperative's attorney in connection with litigation between the Murray Hill Mews cooperative and Rio Restaurant Associates, a commercial tenant of the cooperative.

5. Each of the affidavits referred to above contains legal arguments in which respondent urged the courts presiding over the matter to rule in favor of the Murray Hill Mews cooperative and against Rio Restaurant Associates.

6. Respondent's affidavits are replete with legal conclusions and arguments, including phrases such as "legally unsupported" (Exhibit D, p. 9¹), in "violation of every rule regarding the admissibility of settlement documents" (Exhibit D, p. 13), a failure "to meet even a modest threshold of believability" (Exhibit D, p. 14), either "by negligent oversight or as an intentional tactic to mislead this Court" (Exhibit D, p. 16), "insulting and demeaning to this Court" (Exhibit E, p. 3), and "an all-too obvious ploy of diversion by a litigant saddled with a weak set of facts on its side" (Exhibit E, p. 6).

7. The attorneys representing the Murray Hill Mews cooperative in the litigation used respondent's name and referred to his judicial position in correspondence that was sent to the attorneys for Rio Restaurant Associates and to the Supreme Court, New York County. Respondent took no steps to prevent his name and judicial position from being used in this manner. Copies were sent to each member of the cooperative's board of directors, including respondent, who took no action to disassociate himself or his judicial office from the cooperative's legal position.

8. On March 24, 2000, Andrea L. Roschelle, Esq., an attorney representing the Murray Hill Mews cooperative, sent a letter to Adrian Zuckerman, Esq., an attorney representing Rio Restaurant Associates, in which Ms. Roschelle stated that the

cooperative's board of directors had selected respondent as "its representative before the Court during settlement discussions." The letter also stated that respondent had "participated in all aspects of the litigation thus far" and had "submitted all of the Cooperative's affidavits supporting its motions for injunctive relief and summary judgment." Ms. Roschelle sent copies of this letter to all members of the cooperative's board of directors, including respondent.

9. On April 12, 2000, respondent attended a settlement conference held before a Supreme Court, New York County court attorney. Respondent attended as the representative of the Murray Hill Mews cooperative and participated in the conference on behalf of the cooperative. At the conference, the parties did not agree to a settlement. On a previous occasion, the settlement conference had been postponed because of respondent's unavailability.

10. On April 27, 2000, Ms. Roschelle sent a letter to Mr. Zuckerman stating that the Murray Hill Mews cooperative rejected a settlement proposal made by Rio Restaurant Associates. Ms. Roschelle's letter contained a statement that she would not ask respondent "to take time from his busy court calendar to negotiate with a party who is not serious." Ms. Roschelle sent copies of her letter to then Acting Supreme Court Justice Sherry Klein Heitler, who was presiding over the matter, and to the members of the board of directors of the cooperative, including respondent.

11. Respondent's active involvement in the matter resulted in the recusal of Acting Justice Heitler because her husband had previously appeared as a litigant before respondent in Supreme Court, Kings

¹ References are to the Exhibits attached to the Agreed Statement of Facts.

County, and the subsequent transfer of the matter outside New York City.

12. On or about May 11, 2000, respondent patronized the restaurant operated by Rio Restaurant Associates and briefly mentioned to the manager and assistant manager of the restaurant that the litigation should be settled and could be settled if the tenant were represented by a different law firm. During the discussion, respondent referred to his judicial position and gave the assistant manager of the restaurant a card issued by the Patrolmen's Benevolent Association (PBA) to judges. The card has the word "JUDGE" on a picture of a police badge. The PBA gives such cards in large numbers to judges.

13. In mitigation, and to avoid further conflict between his judicial role and the role of a board member of a cooperative that is presently in litigation, respondent resigned from the Murray Hill Mews cooperative board of directors, effective September 25, 2001, and will play no role in the litigation, either as a witness or representative of the cooperative.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 (A), 100.2(C), 100.4(A)(2) and 100.4(A)(3) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

The ethical rules prohibit a judge from lending the prestige of judicial office to advance private interests and from engaging in extra-judicial activities that are incompatible with judicial office or detract from the dignity of judicial office (Sections 100.2[C], 100.4[A][2] and 100.4[A][3] of the Rules Governing Judicial Conduct).

Respondent's highly visible participation in litigation on behalf of his residential cooperative board clearly violated those standards. As the board's representative, respondent signed affidavits filed in connection with the litigation that were replete with legal arguments and conclusions, and he attended a conference in which he participated in settlement discussions. His role in the discussions was apparently a vital one since the conference had been postponed and rescheduled in order to accommodate him. Such conduct necessarily implicates the prestige of judicial office to advance private interests and is incompatible with judicial office.

Respondent displayed a remarkable insensitivity to his ethical responsibilities and to the ethical problems created by his actions. Without objection by respondent, the cooperative's attorney underscored respondent's judicial status in connection with the litigation, sending a letter to the defendant's attorney which defended the board's choice of "Judge Richard D. Huttner" as its representative in the settlement discussions and emphasized that respondent has "participated in all aspects of the litigation thus far"; in another letter (a copy of which was sent to the presiding judge in the case), the attorney stated that "Judge Huttner" will not be asked "to take time from his busy court calendar to negotiate with a party who is not serious." Respondent should have recognized that such heavy-handed communications convey the unseemly impression that the cooperative was using his judicial status to advance its position in the litigation. Although copies of these letters were sent to respondent, he admittedly took no steps to prevent his name from being used in this manner. Respondent's involvement in the matter ultimately resulted in the recusal of the judge handling the case and the

subsequent transfer of the case outside New York City.

Respondent himself used the trappings of his judicial office in connection with the litigation when, in a conversation with the manager and assistant manager of the restaurant operated by the defendant, he referred to his judicial position while discussing the litigation and gave the assistant manager a PBA card with the word "Judge." Whatever the intent of respondent's gesture, it could reasonably be viewed as an unspoken reminder of his judicial status and its attendant perquisites.

Respondent ignored the sound warnings of the Advisory Committee on Judicial Ethics, which has stated unequivocally in numerous opinions that while a judge may serve as an officer of a residential cooperative, any participation in litigation or in rendering legal advice is strictly prohibited in order to avoid the appearance of impropriety (Adv

Op 88-98, 88-119, 95-69, 96-08, 96-28, 98-93). Although fully aware of one pertinent Advisory Opinion, respondent inexplicably persisted in conduct which detracted from the dignity of judicial office.

We note, in mitigation, that respondent has resigned from the cooperative's board of directors and has agreed to play no role in the litigation in the future.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Mr. Berger, Judge Ciardullo, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Mr. Coffey was not present.

Dated: December 26, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law, in Relation to **ROGER C. MACLAUGHLIN**, a Justice of the Steuben Town Court, Oneida County.

THE COMMISSION

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|--------------------------------------|---------------------------------|
| Honorable Eugene W. Salisbury, Chair | Honorable Daniel F. Luciano |
| Henry T. Berger, Esq | Honorable Frederick M. Marshall |
| Jeremy Ann Brown, CASAC | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq | Honorable Terry Jane Ruderman |
| Christina Hernandez, MSW | |

APPEARANCES

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|---|
| Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission |
| Brian Michael Miga for Respondent |

The respondent, **Roger C. Maclaughlin**, a justice of the Steuben Town Court, Oneida County, was served with a Formal Written Complaint dated February 11, 2000, containing two charges. Respondent filed an answer dated March 29, 2000.

By order dated April 6, 2000, the Commission designated Vincent D. Farrell, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 14 and 15, 2000, in Utica, New York. The referee filed a report with the Commission on September 15, 2000, and a supplemental report on September 25, 2000.

The parties filed briefs and replies with respect to the referee's report. On December 14, 2000, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Steuben Town Court since January 1996.

As to Charge I of the Formal Written Complaint:

2. Between February and June 1997, respondent arraigned Lawrence Bizjak on various charges pertaining to Mr. Bizjak's livestock. During that period, respondent met with Sandra Deland, a mobile home tenant of Mr. Bizjak, who complained of violations at Mr. Bizjak's property. Respondent also contacted Robert Hoke, the local codes enforcement officer, and the Oneida County Department of Health and asked them to look into possible violations by Mr. Bizjak. Following these *ex parte* contacts, Mr. Hoke issued three code violations to Mr. Bizjak related to the mobile home park.

3. On June 12, 1997, respondent, at a meeting of the Steuben Town Board, reported to the Board on the code violations

by Mr. Bizjak pending before him and urged the Board not to approve Mr. Bizjak's application for a mobile home park until the code violations were corrected.

4. On June 17, 1997, respondent convicted Mr. Bizjak of several violations, without conducting a trial or obtaining a guilty plea. Respondent sentenced Mr. Bizjak to fines and "court costs" totaling \$750 and ordered him to correct the code violations within 15 days.

5. In his decision against Mr. Bizjak on June 17, 1997, respondent included an award of two months' rent for Ms. Deland, Mr. Bizjak's tenant, and ordered the return of her security deposit when she vacated the premises. Ms. Deland had not commenced any court action against Mr. Bizjak.

6. Respondent based his June 17, 1997, decision in part on information he had received *ex parte* from Ms. Deland and from the Oneida County Department of Health, without notifying Mr. Bizjak of any claim by Ms. Deland or affording him an opportunity to be heard.

7. On June 22, 1997, respondent wrote a letter to the Foothills Veterinary Clinic in Boonville, inquiring whether the clinic had performed an autopsy on any of Mr. Bizjak's cattle; he received a written response in the negative.

8. On July 1, 1997, respondent issued a bench warrant for Mr. Bizjak's arrest and committed Mr. Bizjak to jail for 15 days on a charge of Criminal Contempt of Court for failing to correct the code violations, notwithstanding that the 15-day period to correct the violations had not yet expired. In committing Mr. Bizjak to jail, respondent failed to set bail as required by Section 530.20(1) of the Criminal Procedure Law; there was no underlying accusatory

instrument forming the basis of a charge of Contempt; and respondent did not afford Mr. Bizjak notice or opportunity to be heard, as required by Section 751(1) of the Judiciary Law. Mr. Bizjak served 10 days in jail before being released by respondent when an attorney for Mr. Bizjak interceded on his behalf.

9. In September 1997, respondent disqualified himself from all cases involving Mr. Bizjak.

10. In September 1998, respondent met with Mr. Bizjak's tenants, including Donna Winters, discussed with them allegations of various code violations at Mr. Bizjak's properties, and advised the tenants that they did not have to pay rent while violations existed and that they could not be evicted.

11. Respondent directed the codes enforcement officer to investigate the tenants' allegations, which resulted in new charges against Mr. Bizjak. Respondent presided over the new charges on October 6, 1998.

12. On October 29, 1998, notwithstanding that he wrote to the District Attorney on that date and disqualified himself from hearing Mr. Bizjak's cases due to a "conflict of interest," respondent granted a default judgment to Donna Winters, a tenant of Mr. Bizjak, in the amount of \$902.72. In December 1998 respondent signed a property execution against Mr. Bizjak for the amount of the judgment.

13. Respondent failed to keep complete and accurate dockets and records for several of the Bizjak cases, in violation of Sections 2019 and 2019-a of the Uniform Justice Court Act and Section 214.11 of the Uniform Civil Rules for the Justice Courts.

As to Charge II of the Formal Written Complaint:

14. On June 16, 1997, respondent wrote a letter on judicial stationery to Linna Grabowski, notifying her of code violations on her property and stating: "It is the desire of the Court to resolve this matter without having to institute further legal action." No charges had been filed against Ms. Grabowski in respondent's court.

15. On June 19, 1997, based on Ms. Grabowski's response to his letter, respondent wrote to the codes enforcement officer, Mr. Hoke, suggesting that he issue an appearance ticket to tenants of Ms. Grabowski.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(4), 100.3(B)(6) and 100.3(E)(1) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings, and respondent's misconduct is established.

In a series of cases involving Lawrence Bizjak, respondent acted not only as judge, but as a self-appointed investigator and prosecutor. Respondent failed to follow the law, solicited and received *ex parte* information, and relied upon that information to Mr. Bizjak's detriment. Most seriously, he deprived Mr. Bizjak of his liberty without regard for his rights under the law.

Respondent's *ex parte* investigations, while charges against Mr. Bizjak were pending in his court, were improper and prejudiced the impartiality of the adjudicative process (Matter of VonderHeide, 72 NY2d 658 [1988]; Rules Governing Judicial Conduct,

22 NYCRR 100.3[B][6]). It was also improper that, after directing an inspection of Mr. Bizjak's property, which resulted in the issuance of additional violations, respondent presided over the violations and, based on *ex parte* information he had received, convicted Mr. Bizjak without a trial or guilty plea. Respondent imposed \$750 in fines, ordered Mr. Bizjak to correct the violations within 15 days, and even awarded two months' rent to Mr. Bizjak's tenant, although the tenant had not commenced any court action seeking such relief. Respondent's actions showed a complete disregard for fundamental principles of law and the rights of Mr. Bizjak.

Thereafter, one day before respondent's 15-day deadline had expired, respondent issued a warrant for Mr. Bizjak's arrest and summarily sentenced him to 15 days in jail for contempt of court for failing to complete the required repairs. In doing so, respondent failed to give Mr. Bizjak notice and an opportunity to be heard and failed to set bail as required by law. Respondent's actions, which resulted in Mr. Bizjak's spending ten days in jail, constitute a shocking abuse of judicial power and convey the impression of bias. Matter of Hamel, 88 NY2d 317 (1996). That impression was compounded a year later when respondent, having disqualified himself from Mr. Bizjak's cases, met with Mr. Bizjak's tenants and gave them legal advice, and continued to sit on cases involving Mr. Bizjak. Moreover, respondent's records of the Bizjak cases were inadequate, incomplete and often confusing.

Respondent's abuse of judicial authority and reliance on *ex parte* information were not limited to the Bizjak cases. Respondent sent a threatening letter to Linna Grabowski about code violations on her property,

although no charges had been filed against her. Respondent's letter conveyed the appearance that he was acting as a prosecutor to enforce the law. As such, it undermined the integrity and impartiality of the judiciary (Rules Governing Judicial Conduct, 22 NYCRR 100.2[A]).

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Judge Salisbury, Mr. Berger, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge

Luciano, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur as to sanction.

Judge Salisbury and Mr. Berger vote to adopt an additional finding that, based upon *ex parte* communications, respondent called Mr. Bizjak a "pathological liar."

Mr. Coffey dissents only as to Charge II and votes to dismiss the charge.

Ms. Brown was not present.

Dated: February 8, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **LARRY D. MARTIN**, a Justice of the Supreme Court, Kings County.

THE COMMISSION

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|---|-------------------------------|
| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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|---|
| Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission |
| Jerome Karp for Respondent |

The respondent, Larry D. Martin, a justice of the Supreme Court, Kings County, was served with a Formal Written Complaint dated January 2, 2001, containing two charges.

On March 19, 2001, the Administrator of the Commission, respondent and respondent’s counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts.

The Commission approved the agreed statement on March 29, 2001. Each side submitted memoranda as to sanction.

On June 18, 2001, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following determination.

1. Respondent became a judge in January 1993 upon election to the Civil Court of the City of New York. He was elected to the Supreme Court in November

1994 and assumed that office in January 1995.

As to Charge I of the Formal Written Complaint:

2. On August 7, 2000, respondent sent a letter on his judicial stationery to the Honorable Ralph Gazzillo, a Justice of the Supreme Court, Suffolk County, seeking favorable consideration on behalf of Marlon Paul, a defendant in Judge Gazzillo’s court convicted on a felony drug charge. Respondent’s letter stated that a “non-jail probation disposition would allow for [the defendant to] continue to be a productive member of his community.” The defendant, a college graduate, was the son of a long-time family friend of respondent.

3. Respondent wrote the letter in response to a request for assistance from the defendant’s mother and the defendant himself. Respondent’s letter had not been solicited by any court or any probation official. Respondent sent a copy of the letter

to defense counsel but did not send a copy to the District Attorney prosecuting the case.

4. During the Commission's investigation of this matter, an attorney for Mr. Paul informed Commission staff that, prior to sentencing, he had advised Judge Gazzillo that Mr. Paul's attorneys were obtaining character letters on behalf of the defendant, including a letter from a judge, and that Judge Gazzillo had stated that he did not want to receive a character letter from another judge. There is no indication in the record that respondent was informed of Judge Gazzillo's statement prior to sending the letter on behalf of the defendant.

5. Upon receipt of respondent's letter, Judge Gazzillo disqualified himself from the case.

As to Charge II of the Formal Written Complaint:

6. On or about May 4, 1999, respondent sent a letter on his judicial stationery to the Honorable Lawrence C. McSwain, Chief Judge of the Guilford County District Court in Greensboro, North Carolina, seeking favorable consideration on behalf of Stefan Malliet, a defendant in Judge McSwain's court convicted of shoplifting. Respondent's letter expressly supported the position advocated by defense counsel. The defendant, a college student, was the son of a long-time family friend of respondent's.

7. Respondent wrote the letter after requests for assistance from both the defendant's mother and the defendant's attorney. Respondent did not send a copy of his letter to the District Attorney prosecuting the case.

8. Respondent advised the Commission of his letter to Judge McSwain in response to a question by Commission staff during

the investigation concerning his letter to Judge Gazzillo.

As to Charges I and II of the Formal Written Complaint:

9. After election to the Civil Court and again after election to the Supreme Court, respondent attended orientation and training programs for newly elected judges run by the Office of Court Administration. At those programs, respondent and his colleagues were acquainted with the Rules Governing Judicial Conduct and were specifically advised to avoid unauthorized *ex parte* communications and to avoid using the prestige of judicial office to advance a private interest.

10. Respondent was aware of the Advisory Committee on Judicial Ethics and the role of that committee in issuing advisory opinions to judges upon request. Respondent did not request an advisory opinion before writing the letters to Judge Gazzillo and Judge McSwain addressed above. Numerous published opinions of the Advisory Committee have advised judges against sending such communications.

11. Respondent received annually the Opinions of the Advisory Committee on Judicial Ethics and the Annual Reports of the Commission, which made it clear that judges must avoid initiating *ex parte* communications and asserting the influence of their judicial office for the private benefit of others.

12. Respondent asserts that, when he wrote the two letters at issue in this case, he did not consider that his conduct constituted an improper *ex parte* communication, the assertion of influence or lending the prestige of judicial office to advance a private interest.

13. Respondent is active in a community program that provides mentors for young men and women. Respondent himself is and has been a mentor through this program, but he had not been a mentor to either defendant in the two matters referred to above. He is also active with the Center for Community Alternatives, which is also involved in counseling young people.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B), 100.2(C) and 100.3(B)(6) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

On two occasions, respondent sent *ex parte* letters seeking special consideration on behalf of defendants who were awaiting sentencing in other courts. Such conduct violated well-established ethical standards barring a judge from lending the prestige of judicial office to advance the private interests of others and from engaging in unauthorized *ex parte* communications (Sections 100.2[C] and 100.3[B][6] of the Rules Governing Judicial Conduct). As the Court of Appeals stated in Matter of Lonschein v. State Commn on Jud Conduct, 50 NY2d 569, 571-72 (1980):

[N]o judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. Members of the judiciary should be acutely aware that any action they take, on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved. There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary. Thus, any communication

from a judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office. [Citations omitted.]

With his judicial stationery underscoring the impact of his professional clout, respondent acted as the defendants' advocate, recommending a "non-jail probation disposition" for one defendant and expressly supporting the position of defense counsel in the other matter. Respondent's letters could have had only one purpose: to influence the presiding judges to give special consideration to the defendants, who were the children of respondent's long-time friends. A request by one judge to another for special consideration for any person is "wrong and always has been wrong," whether for favorable treatment as to sentence or for other matters. Matter of Byrne, 47 NY2d (b)(Ct on the Jud 1978); Matter of Calabretta, 1985 Ann Report of NY Commn on Jud Conduct 112. In numerous cases over more than two decades, the Commission and the Court of Appeals have disciplined judges for engaging in such conduct. *See, e.g.,* Matter of Dixon v. State Commn on Jud Conduct, 47 NY2d 523 (1979); Matter of Freeman, 1992 Ann Report of NY Commn on Jud Conduct 44; Matter of Engle, 1998 Ann Report of NY Commn on Jud Conduct 125; Matter of Putnam, 1999 Ann Report of NY Commn on Jud Conduct 131. As a judge since 1993, respondent should have recognized that such communications are strictly prohibited. *See also* Adv Op 89-4 and 89-73 (Advisory Comm on Jud Ethics).

Upon assuming the bench, a judge surrenders certain rights and must refrain from conduct which may be permissible for others. Even otherwise laudable civic or charitable activities must be avoided if they create the appearance that a judge is lending the prestige of judicial office to advance to

private interests. Difficult as it may be to refuse a friend's request to write a letter on behalf of a family member in trouble, every judge must be mindful of the importance of adhering to the ethical standards so that public confidence in the integrity and impartiality of the judiciary may be preserved. While respondent's judgment may have been clouded by a "sincere, albeit misguided desire" to help his friends, that does not excuse his ethical transgressions. Matter of Lonschein, *supra*, 50 NY2d at 573; Matter of Edwards v. State Commn on Jud Conduct, 67 NY2d 153 (1986).

While a judge may respond to an official request for his or her views, a judge may not initiate communication with a sentencing judge in order to convey information. If a judge has information which he or she believes is pertinent, the defense attorney may request the Probation Department to formally contact the judge for the judge's input as part of the pre-sentencing investigation. In no case may a judge voluntarily communicate with a sentencing judge, as respondent did here. Compounding the misconduct, respondent did not send a copy of either letter to the prosecution (*see* Section 100.3[B][6] of the Rules Governing Judicial Conduct).

The consequences of respondent's improper intervention were far from harmless. A judge who receives such an *ex parte* request is placed in a difficult position; indeed, one sentencing judge felt constrained to disqualify himself from the case after receiving respondent's letter. The fair and proper administration of justice, and public confidence in the integrity of the process, are impaired when a defendant is the beneficiary of an influential plea for favorable treatment from a sitting judge, a benefit not available to other defendants. Nor can it be said that respondent received no personal benefit from his actions. A

judge who is willing to use judicial prestige to advance the interests of others in need may well earn the gratitude of friends and community, but such conduct is detrimental to the judiciary as a whole.

In mitigation, we have considered respondent's record of community service, which includes acting as a mentor to others, and that he has been forthright and cooperative throughout this proceeding.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters and Judge Ruderman concur.

Judge Ciardullo and Mr. Coffey dissent as to sanction only and vote that respondent be issued a letter of caution.

Judge Marshall and Mr. Pope were not present.

Dated: December 26, 2001

**DISSENTING OPINION BY MR. COFFEY,
IN WHICH JUDGE CIARDULLO JOINS**

I am mindful of the numerous precedents cited by Commission counsel that judges should be publicly disciplined when they improperly assert the influence of judicial office in seeking special consideration on behalf of others. I find that these precedents, however, do not address the specific facts raised in this case. Indeed, I am persuaded that respondent acted on both occasions out of a sincere, selfless desire to help the children of his long-time friends at a critical time in their lives and expected and received no benefit in return for his letters. While I concur with the conclusion that respondent's conduct violated the ethical rules, I would not publicly admonish this judge. Accordingly, I respectfully dissent.

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **GARY L. MOORE**, a Justice of the Grafton Town Court, Rensselaer County.

THE COMMISSION

| | |
|---|-------------------------------|
| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission |
| Christopher Langlois for Respondent |

The respondent, Gary L. Moore, a justice of the Grafton Town Court, Rensselaer County, was served with a Formal Written Complaint dated January 2, 2001, containing six charges. Respondent filed an answer dated January 9, 2001.

On August 14, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On November 8, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a Justice of the Grafton Town Court since 1993. He is not a lawyer. He has attended and successfully completed all required training sessions for judges.

As to Charge I of the Formal Written Complaint:

2. On or about November 23, 1999, when the defendant in People v. Denis Harrington appeared with his attorney before respondent for arraignment on charges which included a charge of Harassment of the defendant's daughter, respondent stated that he knew the defendant's daughter and that if he were her father, he would have "slapped her around" himself, and respondent decided not to issue an order of protection he had been considering. Respondent was acquainted with the defendant's teen-aged daughter, having worked as a detention supervisor at the school where the defendant's daughter was a student. The case was later disposed of by respondent's co-justice, who was sitting on the adjourned date.

3. Respondent now recognizes that his statement to the defendant was improper and he will refrain from such comments in the future.

As to Charge II of the Formal Written Complaint:

4. On or about November 23, 1999, at the arraignment of the defendant in People v. Leo Bartowski on a charge of Driving While Intoxicated, respondent declined to suspend the defendant's driver's license pending prosecution (pursuant to Section 1193[2][e][7] of the Vehicle and Traffic Law). In handing the license back to the defendant, respondent said, "I can't do that to a fellow truck driver." While respondent arguably had discretion under the law not to suspend the defendant's license pending prosecution, his statement implied that he had based his decision not to suspend on the fact that respondent and the defendant were both engaged in the same employment.

As to Charge III of the Formal Written Complaint:

5. On or about November 23, 1999, at the arraignment of the defendant in People v. Jonathan Hasbrouk, after the defendant pleaded not guilty to a charge of Failure To Yield under the Vehicle and Traffic Law, respondent questioned the defendant about the circumstances of his arrest and whether the defendant had originally been stopped for Speeding. The defendant denied that he had been speeding and respondent adjourned the matter for trial. The case was subsequently disposed of by respondent's co-justice, who was sitting on the adjourned date.

6. Respondent now recognizes that he should not question a defendant who has pleaded not guilty about the circumstances of the charge, since the prosecution, and not the defendant, has the burden of proof, and a defendant may make incriminating statements or other statements that might prejudice the defendant's position at trial.

As to Charge IV of the Formal Written Complaint:

7. On or about January 18, 2000, at the arraignment of the defendant in People v. Charles Maxfield on a misdemeanor charge of Criminal Contempt, respondent failed to advise the defendant of his right to assigned counsel, in violation of Section 170.10(4) of the Criminal Procedure Law, and respondent informed the defendant that although he should speak to an attorney, respondent could not assign an attorney to represent the defendant, notwithstanding that respondent had made no inquiry into the defendant's ability to afford counsel. The case was later disposed of by respondent's co-justice, who was sitting on the adjourned date.

8. As a matter of practice, respondent failed to advise defendants, charged with non-Vehicle and Traffic Law infractions, of their right to assigned counsel, in violation of Section 170.10(4) of the Criminal Procedure Law.

9. Respondent now understands that he is required to advise all defendants, charged with offenses for which a sentence of a term of imprisonment is authorized, other than vehicle and traffic infractions, of the right to assigned counsel.

As to Charge V of the Formal Written Complaint:

10. On or about November 23, 1999, respondent held a small claims court hearing in Roark v. Sager without administering an oath to the witnesses, in violation of Section 214.10(j) of the Uniform Civil Rules For The Justice Courts (22 NYCRR 214.10[j]).

As to Charge VI of the Formal Written Complaint:

11. Notwithstanding that respondent was biased in favor of Lisa Dooley in her dispute with Stephen Stasack over rights to property, respondent failed to promptly disqualify himself from a Harassment charge filed by Ms. Dooley against Stephen Stasack arising out of the property dispute, and respondent presided over the charge from October 19, 1999, until January 11, 2000. During the interim, respondent failed to take any action on a Trespass charge filed by Mr. Stasack against Ms. Dooley.

12. Respondent now recognizes that he should immediately disqualify himself in proceedings which he cannot fairly decide due to bias in favor of a party.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B), 100.2(C), 100.3(B)(1), 100.3(B)(4), 100.3(B)(6) and 100.3(E)(1) of the Rules Governing Judicial Conduct. Charges I through VI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

In numerous cases, respondent failed to follow the law and abandoned his proper role as a neutral and detached magistrate.

Respondent's gratuitous comment in a Harassment case that if he were the father of the alleged victim, he would have "slapped her around" himself suggests not only bias, but actual approval of domestic violence. Such a remark casts doubt on his ability to be impartial in domestic violence cases generally, and on his decision in the particular case not to issue an Order of Protection to the defendant's daughter, whom respondent knew from his employment at her school. See Matter of Roberts v. State Commn on Jud Conduct, 91 NY2d 93 (1997); Matter of Romano v. State

Commn on Jud Conduct, 93 NY2d 161 (1999).

The record suggests that in other matters, respondent also acted not as a neutral, impartial arbiter, but out of favoritism and bias. In Bartowski, while declining to suspend the driver's license of a defendant charged with Driving While Intoxicated, respondent stated, "I can't do that to a fellow truck driver." In the Stasack and Dooley cases, despite his bias in favor of Ms. Dooley, he failed to promptly disqualify himself from the matters and failed to take any action on a Trespass charge filed against Ms. Dooley by Mr. Stasack. Such conduct violates ethical standards requiring a judge to avoid impropriety and the appearance of impropriety, to perform judicial duties without bias and to disqualify himself or herself in a matter where the judge has a personal bias concerning a party (Sections 100.2[A], 100.3[B][4] and 100.3[E][1] of the Rules Governing Judicial Conduct).

Respondent also failed to "respect and comply with the law," to be faithful to the law and to "maintain professional competence in it," in violation of Sections 100.2(A) and 100.3(B)(1) of the Rules. As a matter of practice, respondent failed to advise defendants of their right to assigned counsel when he was legally required to do so, and in the Maxfield case, without making any inquiry into the defendant's ability to afford counsel, he specifically told the defendant that he could not assign counsel (Crim Proc Law §170.10[4]; Matter of Pemrick, 2000 Ann Report of NY Commn on Jud Conduct 141). At an arraignment, he questioned a defendant, who had pleaded not guilty, concerning the underlying facts of the case, thereby placing the defendant in jeopardy of making incriminating admissions. He also violated the law by failing to administer an oath to

witnesses at a small claims hearing (22 NYCRR §214.10[j]).

By his conduct, respondent has shown insensitivity to his obligation not only to be impartial, but to appear to be impartial in matters over which he presides. His conduct undermines public confidence in the fair and impartial administration of justice. In mitigation, respondent has acknowledged his misdeeds and now recognizes his ethical and statutory obligations.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Mr. Berger, Judge Marshall, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

Dated: November 19, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law, in Relation to **MICHAEL F. MULLEN**, a Judge of the Court of Claims and an Acting Justice of the Supreme Court, Suffolk County.

THE COMMISSION

| | |
|--------------------------------------|---------------------------------|
| Honorable Eugene W. Salisbury, Chair | Honorable Daniel F. Luciano |
| Henry T. Berger, Esq | Honorable Frederick M. Marshall |
| Jeremy Ann Brown, CASAC | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq | Honorable Terry Jane Ruderman |
| Christina Hernandez, MSW | |

APPEARANCES

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| Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission |
| Joseph Ryan for Respondent |

The respondent, Michael F. Mullen, a judge of the Court of Claims and an acting justice of the Supreme Court, Suffolk County, was served with a Formal Written Complaint dated January 10, 2000, containing one charge. Respondent filed an answer dated March 1, 2000.

By motion dated March 1, 2000, respondent moved to dismiss the complaint. The administrator of the Commission cross moved, by motion dated March 22, 2000, for summary determination and a finding that respondent had engaged in judicial misconduct. Respondent replied to the cross motion in papers dated March 27, 2000. By decision and order dated April 6, 2000, the Commission denied respondent's motion and the cross motion in all respects.

By order dated April 11, 2000, the Commission designated Hon. Bertram Harnett as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 5, 2000, in

New York City. The referee filed his report with the Commission on September 7, 2000.

The parties filed briefs and replies with respect to the referee's report. On December 14, 2000, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a judge of the Court of Claims and an Acting Justice of the Supreme Court since 1987.
2. In 1996 respondent decided to seek election as a Supreme Court justice. On June 5, 1996, respondent wrote a letter to the Chief Administrative Judge stating that respondent was seeking to obtain the nomination for Supreme Court justice in the November 1996 election.

3. In July 1996, with respondent's authorization and consent, a group of respondent's friends formed a committee under the name "Friends of Judge Michael F. Mullen" (hereinafter "the Committee"), in support of respondent's candidacy for Supreme Court. A fund-raising reception for respondent was held in August 1996.

4. Respondent failed to get the nomination for Supreme Court at the Republican Party's judicial nominating convention in September 1996.

5. By late October 1996, the Committee had raised \$24,182 from 276 donors, and an unexpended balance remained of \$18,441. At a meeting at respondent's home attended by approximately 30 people, including donors and their spouses, the Committee's treasurer advised the group of the unexpended campaign funds. After discussion, it was decided that the funds should be held until the next year to be used for another effort by respondent to obtain the nomination for Supreme Court. Respondent authorized the Committee's treasurer to retain the funds for that purpose. No funds were returned to the donors.

6. At the time he authorized the Committee's treasurer to retain the unexpended campaign contributions, respondent was aware of numerous Advisory Opinions of the Advisory Committee on Judicial Ethics pertaining to the disposition of unexpended campaign funds. At no time did respondent request an Advisory Opinion as to the disposition of the unexpended 1996 campaign contributions.

7. In January 1997 respondent's campaign treasurer filed with the Board of Elections a letter stating that the Committee had funds on hand which were a "carryover" from the 1996 effort to obtain the Supreme

Court nomination, that respondent was again seeking nomination for Supreme Court in the 1997 general election and that the Committee would support that effort. The campaign treasurer had a telephone conversation with an unidentified individual at the Board of Elections regarding the continuing registration and filling out the reporting forms.

8. The Committee remained in existence and held funds into November 1999. There were no new contributions to the Committee after 1996. The Committee filed disclosure statements with the New York State Board of Elections from July 3, 1996, through January 14, 2000.

9. On March 5, 1997, respondent wrote a letter to the Chief Administrative Judge stating that respondent was continuing to seek the nomination for Supreme Court justice in the 1997 general election.

10. The Committee used 1996 contributions in respondent's 1997 campaign for Supreme Court. The Committee made political expenditures in furtherance of respondent's 1997 campaign as set forth in Schedule A, as well as incidental expenditures.

11. Respondent failed to get the nomination for Supreme Court at the Republican Party's judicial nominating convention in 1997. At the end of 1997, over \$15,000 remained on deposit with the Committee, and no funds were returned to the donors.

12. In 1998 and 1999, respondent told various people of his candidacy for the Supreme Court nomination, although he did not notify the Chief Administrative Judge that he was seeking the nomination. Respondent failed to get the nomination for Supreme Court in 1998 and 1999.

13. The Committee used 1996 contributions in respondent's 1998 and 1999 campaigns for Supreme Court. The Committee made political expenditures in furtherance of respondent's 1998 campaign as set forth in Schedule B, as well as incidental expenditures in 1998 and 1999.

14. In November 1999, the Commission wrote to respondent advising him that it was investigating a complaint that contributions to his 1996 campaign for Supreme Court were carried over to his campaigns in 1997, 1998 and 1999, rather than returned *pro rata* to his contributors or otherwise disposed of in a manner consistent with the ethical rules. On November 26, 1999, after respondent had received the Commission's letter, the Committee returned *pro rata* to the 276 contributors from 1996 the remaining unexpended contributions, totaling approximately \$14,224.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.5(A)(1) and 100.5(A)(5) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established. Paragraphs 6 and 7 of the Formal Written Complaint are dismissed.

The Rules Governing Judicial Conduct provide that a candidate for judicial office may solicit and accept campaign funds only during a "window period," beginning nine months before the pertinent judicial nominating convention and ending, if the candidate fails to be nominated, six months after the convention (22 NYCRR 100.0[Q], 100.5[A][5]). By authorizing funds that had been raised in 1996 to be carried over and used in his successive efforts to obtain the

Supreme Court nomination over the next three years, respondent violated both the letter and spirit of the "window period" provisions. Respondent's actions in permitting his Committee to carry for three years a substantial "political pocketbook" (as aptly stated by the referee) gave him an unauthorized benefit and an unfair advantage over other judicial candidates who, under the rules, had a limited time span for raising funds to further their candidacy. As a result, respondent's Committee was able to finance his candidacy for Supreme Court in 1997, 1998 and 1999, despite receiving no contributions during those years.

Respondent has acknowledged that, in authorizing his Committee to retain unexpended 1996 funds for use in his subsequent campaigns for Supreme Court, he was familiar with the ethical rules and with numerous Advisory Opinions of the Advisory Committee on Judicial Ethics pertaining to the disposition of unexpended campaign funds. The Advisory Opinions unequivocally hold that unexpended campaign funds may not be used in a subsequent campaign for office or for the candidate's private benefit, but must be returned to the donors on a *pro rata* basis or used to purchase such items as office equipment which become the property of the court system (Adv. Op. 87-02, 88-59, 88-89, 89-152, 90-6, 91-12, 91-87, 92-68, 92-94, 92-104, 93-04, 93-15). Here, the record indicates that a small percentage of the donors consented to the retention of funds by respondent's Committee, but even if all the donors had so consented, it would still be improper, in view of the "window period" provisions, to carry over the funds for use in subsequent campaigns (*see* Adv. Op. 91-12, 93-15). The ethical rules circumscribing campaign fund-raising by judicial candidates are clear and serve an

important purpose. The consent of contributors does not permit a candidate to use unexpended campaign funds in a manner prohibited by the ethical standards.

As to respondent's claim that these Opinions apply only to a judicial candidate who successfully obtains the nomination and therefore were inapplicable to him or his circumstances, such a distinction is not only unsupported by the language of the Opinions (*e.g.*, Adv. Op. 90-6, 91-12, 92-68) but logically deficient. A judicial candidate who fails to obtain the nomination is subject to the same ethical standards as a successful one. Also illogical is respondent's testimony that he did not consider seeking an Advisory Opinion because he was so certain that the existing Opinions did not apply to him. Had he sought an Opinion from the Advisory Committee, he faced a distinct likelihood of receiving the

unwelcome response that he was obliged to return the funds.

By permitting his campaign funds to be used in a manner clearly inconsistent with the ethical rules, respondent was insensitive to the special ethical obligations of judges and judicial candidates.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Judge Salisbury, Mr. Berger, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano did not participate.

Ms. Brown was not present.

Dated: February 8, 2001

SCHEDULE A

Expenditures in Respondent's 1997 Campaign for Nomination to Supreme Court

| <u>Date</u> | <u>Amount</u> | <u>Recipient</u> |
|-------------|---------------|--|
| 11/14/96 | \$100 | Citizens Committee To Re-Elect Senator Ken LaValle |
| 1/27/97 | \$125 | Huntington Republican "Chairman's Club" |
| 3/4/97 | \$500 | Huntington Conservative Pre-Primary |
| 3/4/97 | \$300 | Huntington Republican Stalwarts |
| 3/10/97 | \$200 | Friends of Joan Raia for Town Clerk |
| 4/3/97 | \$400 | Suffolk County Republican Committee |
| 6/14/97 | \$250 | WJP Memorial Scholarship |
| 8/26/97 | \$200 | Suffolk County Conservative Pre-Primary |
| 9/8/97 | \$400 | Huntington Republican Campaign Supporters |
| 9/25/97 | \$400 | Suffolk County Republican Committee |
| 10/17/97 | \$200 | Friends of Frank Petrone |

SCHEDULE B

Expenditures in Respondent's 1998 Campaign for Nomination to Supreme Court

| <u>Date</u> | <u>Amount</u> | <u>Recipient</u> |
|-------------|---------------|--|
| 3/18/98 | \$500 | Huntington Republican "Chairman's Club" |
| 8/20/98 | \$50 | Citizens Committee To Re-Elect Senator Ken LaValle |

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **JAMES R. NICHOLS, SR.**, a Justice of the Malta Town Court, Saratoga County.

THE COMMISSION

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|---|-------------------------------|
| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission |
| Riebel Law Firm (by David L. Riebel) for Respondent |

The respondent, James R. Nichols, Sr., a justice of the Malta Town Court, Saratoga County, was served with a Formal Written Complaint dated June 8, 2001, containing one charge. Respondent filed an answer dated July 2, 2001.

On July 30, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On November 8, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Malta Town Court since 1983. He is not an attorney. He has attended and successfully completed all required training sessions for justices.

2. On or about January 11, 2001, after a bench trial, respondent found the defendant in People v. Ford C. Keefe guilty of Consuming Alcohol In A Motor Vehicle under Section 1227.1 of the Vehicle and Traffic Law and sentenced Mr. Keefe to a \$100 fine or a 15-day jail sentence.

3. When Mr. Keefe informed respondent that he had \$41 with him which he could apply toward the fine and requested additional time to pay the remainder of the fine money, respondent refused to allow him additional time to pay and committed him to jail for 15 days or until the fine was paid, notwithstanding that respondent allows defendants who plead guilty by mail to pay their fines within three weeks.

4. Respondent failed to advise Mr. Keefe that he had a right to apply to be resentenced, as required by Section 420.10(3) of the Criminal Procedure Law. The defendant was detained at the jail for approximately two and a half hours until he obtained funds to pay the fine.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1) and 100.3(B)(6) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

By committing a defendant to jail after the defendant stated that he was unable to pay a \$100 fine for a traffic infraction and failing to advise the defendant of his right to be resentenced, respondent failed to "be faithful to the law" and failed to provide the defendant with a full opportunity to be heard according to law, as required by Sections 100.3(B)(1) and 100.3(B)(6) of the Rules Governing Judicial Conduct. The Criminal Procedure Law provides that when a defendant can be imprisoned for failure to pay a fine, the judge must advise the defendant of the right to apply for resentencing and that, after resentencing, if the defendant is unable to pay the fine, the court must either adjust the terms of payment or lower the amount of the fine or revoke the sentence (§420.10[3], [5]). As a result of respondent's failure to comply with statutory procedures, the defendant was summarily incarcerated for a simple traffic infraction merely because he could not immediately pay a \$100 fine.

Respondent's treatment of the defendant was especially indefensible since if the

defendant had pleaded guilty by mail, he would have been given three weeks to pay the fine. It was patently unfair and discriminatory for respondent to incarcerate a defendant convicted after trial because he could not pay the fine immediately, rather than to provide for the reasonable time for payment given to mail pleas for a similar offense. See Matter of Muskopf, 2000 Ann Report of NY Comm. on Jud Conduct 133. If the defendant failed to pay the fine within the provided time, respondent could have initiated suspension of the defendant's driver's license.

A judge is obliged by the Rules Governing Judicial Conduct to be competent in the law and to apply the law in a fair and impartial manner. Sections 100.2(A) and 100.3(B)(1) of the Rules; Matter of Curcio, 1984 Ann Report of NY Commn on Jud Conduct 80; Matter of Muskopf, *supra*. As a judge since 1983, respondent should be familiar with statutory procedures.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Marshall, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

Dated: November 19, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **LOUIS J. OHLIG**, a Judge of the County Court, Suffolk County.

THE COMMISSION

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| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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|---|
| Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission |
| Lazer, Aptheker, Feldman, Rosella & Yedid, P.C. (By Leon D. Lazer) for Respondent |

The respondent, Louis J. Ohlig, a judge of the County Court, Suffolk County, was served with a Formal Written Complaint dated April 18, 2001, containing one charge.

On June 8, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On June 18, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent served as a judge of the District Court, Suffolk County, from December 7, 1976, to December 31, 1996, and has served as a judge of the County Court, Suffolk County, since January 1, 1997.

2. In the fall of 1989, respondent called Robert L. Folks, Esq., and asked if Mr.

Folks, a former colleague of respondent in the District Attorney's office, would meet with the family of two persons who had been murdered to determine if Mr. Folks would be interested in representing the family. During that telephone conversation, respondent told Mr. Folks that he was calling at the request of respondent's wife, Barbara Ohlig, Esq. Mr. Folks told respondent that he would meet with the family.

3. Shortly thereafter, at a meeting arranged by Barbara Ohlig, Mr. Folks met with members of the family and Ms. Ohlig at her office and agreed to represent the family. At the time, the family members had been clients of Ms. Ohlig for approximately six years and, when respondent was a practicing attorney, had been clients of respondent.

4. In late 1989, Mr. Folks initiated litigation against New York State on behalf of the family, which, in June 2000, after protracted proceedings and a trial, resulted in New York State making a payment of

approximately \$9,000,000 to the family to settle the lawsuit (hereinafter “the lawsuit”).

5. On December 21, 1990, Barbara Ohlig forwarded her written retainer agreement to Mr. Folks, providing, *inter alia*, that she would receive one-third of the legal fees received by Mr. Folks’s law firm in the lawsuit. The forwarding letter asked that Mr. Folks sign the retainer agreement and return it to Ms. Ohlig, but he did not do so.

6. On April 4, 1991, after various prior requests, Barbara Ohlig wrote to Mr. Folks requesting that he send her a written retainer agreement indicating that she would receive one-third of any legal fees received by Mr. Folks in connection with the lawsuit. Mr. Folks did not send a written retainer agreement to Ms. Ohlig.

7. In December 1991, respondent and Barbara Ohlig met Mr. Folks at a holiday party of the Suffolk County legislature. During a brief conversation, respondent told Mr. Folks that he was disappointed that Mr. Folks had not signed the retainer agreement.

8. In December 1992, respondent and Barbara Ohlig met Mr. Folks at a bar association function. In respondent’s presence, Ms. Ohlig asked Mr. Folks why he had not signed the retainer agreement, and Mr. Folks responded that his clients did not want Ms. Ohlig to share in the fee.

9. In 1993, respondent, who was then a candidate for judicial office, and Barbara Ohlig met Mr. Folks at a political function. Respondent asked Mr. Folks to sign the retainer agreement and asked Mr. Folks why Mr. Folks was not honoring the agreement with Ms. Ohlig.

10. In late 1996, respondent called Mr. Folks and asked him to come to

respondent’s chambers, and Mr. Folks agreed to do so. Shortly thereafter, when Mr. Folks came to respondent’s chambers, they discussed the lawsuit and Ms. Ohlig’s fee. Respondent asked Mr. Folks why he had not signed the retainer agreement. When Mr. Folks stated that the matter might result in a fee of \$3,000,000, respondent asked Mr. Folks to abide by the retainer agreement. Mr. Folks responded negatively and told respondent that attorneys other than Ms. Ohlig had assisted Mr. Folks in the matter, that the clients maintain that Ms. Ohlig did not provide legal services and that the clients did not want Ms. Ohlig to share in the fee.

11. On March 20, 1997, Mr. Folks filed a statement with the Office of Court Administration declaring that the clients were originally referred by Barbara Ohlig, Esq.

12. In 1997, respondent attempted to call Mr. Folks on several occasions to tell Mr. Folks that respondent was disappointed that Mr. Folks had not signed the retainer agreement. Respondent left several messages for Mr. Folks, who did not return the calls.

13. In the spring of 1998, respondent went to Mr. Folks’s law office and asked to see Mr. Folks. When told by a secretary that Mr. Folks was not in the office, respondent repeatedly asked the secretary where Mr. Folks was. When the secretary did not inform respondent where Mr. Folks was, respondent left.

14. In the summer of 1998, respondent went to Mr. Folks’s law office and repeatedly asked to see Mr. Folks. When told by a secretary that Mr. Folks was busy and unable to meet with him, respondent left. Respondent left his judicial business card for Mr. Folks.

15. In late 1998, Barbara Ohlig arranged to meet with Mr. Folks in Mr. Folks's law office to discuss the lawsuit and Ms. Ohlig's fee. Respondent accompanied Ms. Ohlig to the meeting. At the meeting, respondent and Ms. Ohlig again asked Mr. Folks why he had not signed the retainer agreement. Mr. Folks stated that he had to share the fee with other attorneys; that Ms. Ohlig had not done a proportionate amount of the legal work in the matter; that the clients did not want Ms. Ohlig to share in the fee, in part, because she did no legal work in the matter; that referral fees are unethical; and that respondent, and not Ms. Ohlig, had referred the matter to Mr. Folks. Ms. Ohlig insisted that she had done work on the case and that she was entitled to one-third of the fee. Respondent told Mr. Folks that Ms. Ohlig, and not respondent, had referred the matter to Mr. Folks.

16. In his conversations with Mr. Folks, based on Barbara Ohlig's allegation that Mr. Folks had orally agreed to pay her one-third of the legal fee, respondent attempted to persuade Mr. Folks to agree to pay one-third of any legal fees received by Mr. Folks in connection with the lawsuit to Ms. Ohlig.

17. Ms. Ohlig asserted a claim in the Court of Claims proceeding to fix the fees of the various counsel who had participated, in which she sought recovery of one-third of the \$3,097,409.10 fee that had been awarded to the clients' attorneys. Mr. Folks opposed the request, and a hearing was held in the Court of Claims in May 2000. Respondent testified at the hearing. During the hearing, Ms. Ohlig's claim was settled, and she received \$75,000 as a fee. Four other law firms' claims were also settled for a total sum in excess of \$1,000,000.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and

100.2 of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

On numerous occasions over several years, respondent urged an attorney to agree to share what promised to be a substantial legal fee with respondent's spouse, who had previously represented the clients. Respondent telephoned the attorney to discuss the subject, went to the attorney's office and left his judicial business card when he was rebuffed, summoned the attorney to his chambers to discuss the matter, and raised the subject when he encountered the attorney at various events, expressing his "disappoint[ment]" at the attorney's refusal to sign the agreement. Even after the attorney explained his reasons for not signing a retainer agreement which would give one-third of the legal fees in the case to respondent's spouse, respondent continued to press the issue. In 1998, seven years after he first raised the subject with the attorney, respondent accompanied his wife to a meeting at the attorney's office to discuss the issue and continued to question the attorney about his refusal to sign the agreement.

Regardless of the merits of his spouse's claim, respondent should not have interjected himself into the dispute. As a full-time judge, respondent was prohibited from providing legal representation to his spouse, who, as an experienced attorney, was presumably capable of representing her own interests in connection with the disputed fee. Respondent's intervention in the matter and his strenuous advocacy on his spouse's behalf created the appearance that he was using the prestige of his judicial status to advance the private interests of another, in violation of the ethical standards (Section 100.2[C] of the Rules Governing

Judicial Conduct). As the Court of Appeals has stated:

[N]o judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. Members of the judiciary should be acutely aware that any action they take, on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved. There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary. [Citations omitted.]

Matter of Lonschein v. State Commn on Jud Conduct, 50 NY2d 569, 571-72 (1980); *see also* Matter of Kaplan, 1997 Ann Rep of NY Commn on Jud Conduct 96. Moreover, by

leaving his judicial business card at the attorney's office and by arranging a meeting with the attorney in his chambers, respondent used the trappings of his judicial office as part of his efforts to pressure the attorney. Respondent's actions were inherently coercive and showed insensitivity to the special ethical obligations of judges.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters and Judge Ruderman concur.

Judge Luciano did not participate.

Judge Marshall and Mr. Pope were not present.

Dated: November 19, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **DONNA G. RECANT**, a Judge of the Criminal Court of the City of New York, New York County.

THE COMMISSION

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|---|-------------------------------|
| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern (Vickie Ma, Of Counsel) for the Commission |
| Michael S. Ross and Herrick, Feinstein LLP (By Milton Mollen) for Respondent |

The respondent, Donna G. Recant, a judge of the Criminal Court of the City of New York, New York County, was served with a Superseding Formal Written Complaint dated May 31, 2001, containing six charges.

On June 8, 2001, the Administrator of the Commission, respondent and respondent’s counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On June 18, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent is a judge of the Criminal Court of the City of New York, New York County, serving a ten-year term that commenced in June 1995 and expires in December 2005.

As to Charge I of the Superseding Formal Written Complaint:

2. On or about July 20, 1998, while presiding over pre-trial conferences in People v. Leo Kazan, in which the defendant was charged, inter alia, with Aggravated Harassment in the Second Degree, respondent engaged in an improper ex parte conversation with the prosecutor’s supervisor, as set forth below.

3. During pre-trial motions, respondent granted the Molineux application of Assistant District Attorney (“ADA”) Joseph Mazel to introduce prior, uncharged telephone calls that the defendant had made to the victim to show identity and absence of mistake on his direct case. When Mr. Mazel made a Sandoval application to introduce the defendant’s prior convictions for aggravated harassment and the underlying facts of those convictions if the defendant testified at trial, respondent asked:

Wouldn't what you're asking for be part of a Molineux application? Is that what you are seeking on your direct case? Why is that Sandoval? On the Sandoval theory, it's clearly prejudicial. I could allow the facts of the conviction should he take the stand on the Molineux theory.

Respondent asked Mr. Mazel if he wanted to "think about this" and granted Mr. Mazel's Sandoval application in part by allowing Mr. Mazel to introduce the defendant's prior convictions into evidence without the underlying facts.

4. Later that day, respondent called Mr. Mazel's supervisor, Joan Illuzi-Orbon, during a recess and asked to see her in chambers where, in the absence of defense counsel and without advising defense counsel, respondent told Ms. Illuzi-Orbon that Mr. Mazel had improperly identified a Molineux application as a Sandoval application. Subsequently, and unbeknown to respondent, Ms. Illuzi-Orbon met with Mr. Mazel and asked him how his trial was going, without advising him of her conversation with respondent. Mr. Mazel told Ms. Illuzi-Orbon what had transpired earlier in court concerning his Molineux and Sandoval applications. Ms. Illuzi-Orbon commented that his application sounded like a Molineux application and arranged for a more experienced ADA, Seth Krauss, to review the Molineux and Sandoval rules with Mr. Mazel.

5. The following day, on July 21, 1998, respondent stated that she wanted "to go over the Molineux and Sandoval issues." Mr. Mazel responded that he was amending his Molineux application because defense counsel Elizabeth Johnson had raised the issue of identity, intent and mistake during voir dire. After a hearing, respondent

permitted Mr. Mazel to introduce into evidence one of the defendant's prior convictions and its underlying facts on his direct case.

As to Charge II of the Superseding Formal Written Complaint:

6. On or about October 26, 1998, while presiding over People v. Alassane Niass, when 18-B attorney John Wilson declined the court's plea offer, respondent replied, "Okay. That's fine, because this will be the third time around the block, that we know of," and set bail at \$500, although the prosecution was silent on bail. When Mr. Wilson objected and asked why respondent was setting bail, she replied, "Because the way I see it is because he won't plea. That's why. A person that doesn't learn their lesson the first two times does it again."

7. On or about December 20, 1998, respondent denied 18-B attorney John Wilson's oral motion to dismiss the complaint for facial insufficiency in the matter of People v. Darren King and asked him whether his client wanted time served. Respondent noted that the defendant had a warrant, on which she could keep him in, and asked him if he wanted to be heard on bail. When Mr. Wilson responded, "You would hold my client in? This is a SAP warrant," respondent replied, "Not if he pleads to the disorderly conduct, I won't." When the defendant refused to plead guilty, respondent set \$500 bail on the warrant, \$1 bail on the instant matter, and adjourned the matter to the following day.

8. On or about September 21, 1999, while presiding over People v. Jose Rodriguez, in which respondent earlier in the day had issued a bench warrant and had ordered bail forfeited when the defendant was not in court on time, respondent advised New York County Defender Services

attorney Cheryl Moran that the defendant had two choices: to “acknowledge responsibility” for his crime or she was “likely to increase his bail.” Ms. Moran informed the court that the defendant was unable to pay the mandatory fine, to which respondent replied, “If he wants to fight it, that’s fine. I’m telling you now, I’m likely to set bail. I’m giving you a heads up.”

As to Charge III of the Superseding Formal Written Complaint:

9. On or about January 13, 1998, while considering the defendant’s request for assigned counsel in People v. Tatiana Demidenko, respondent demanded proof of her income. Previously, the defendant had appeared in court with retained counsel, who had not been relieved. When the defendant asserted that she was unable to provide such proof because she was merely a tourist, respondent then requested to see her visa. When the defendant claimed that her visa had been stolen, respondent directed the defendant to go to her embassy to obtain documentation of her legal status in the country. Respondent threatened to call the “authorities” if the defendant was in the country illegally and further stated that the defendant was not entitled to legal services at the taxpayers’ expense if she was in the country illegally.

As to Charge IV of the Superseding Formal Written Complaint:

10. On or about October 20, 1998, while presiding over People v. Terry Chen, in response to noisy and distracting gum chewing from someone in the audience, respondent ordered the defendant’s mother, who was seated in the audience section of the courtroom, to “stop with the gum.” When a defense attorney advised the court that the woman did not speak English, respondent replied in substance that it did

not matter, that it was not respondent’s “problem,” and that if the woman wanted to come to an American courtroom, she could learn to speak English or leave.

As to Charge V of the Superseding Formal Written Complaint:

11. On two occasions, as set forth below, respondent held defendants in custody without complying with the procedure governing summary contempt.

12. On or about April 22, 1998, in People v. Andrea Ballard, when the defendant objected to the harsh manner in which respondent was speaking to her, respondent, in effect, temporarily remanded the defendant by ordering her on the “bench” where prisoners sat, as set forth below. Respondent was presiding in a courtroom in which the children of the defendant were unruly. When the defendant’s case was called, respondent admonished the defendant, who had been charged with Endangering the Welfare of a Child, for bringing her children to court with her: “I’m going to tell you something right here, right now. Number one, this is not a place to bring children. There is a day care center.” The defendant replied, “Yes your honor.” Respondent continued, “You have a problem in this courtroom for—involving care of your children to begin with.” When the defendant replied, “Right,” the following occurred:

COURT: I don’t like your attitude. I don’t like the way you are caring for your children and I don’t want to hear anything out of your mouth. Your attorney is not here right now and I don’t want you to say anything. I don’t want you to say anything. I’m telling you right now you are skating on thin ice. The next time you come to court, you make arrangements for the care of

your children and you don't burden this court and you don't open up your mouth.

DEFENDANT: But you don't talk to me that way.

COURT: That's it. Put her on the bench.

DEFENDANT: Call your daddy.

COURT: The officers will taken [sic] the children.

13. The defendant, who had been released on her own recognizance, was then handcuffed and placed on the bench, inside the well of the courtroom, while respondent went to the back room of the court to contact the defendant's attorney. The defendant remained on the prisoner's bench until her case was later recalled and she apologized to the court. The defendant's children, who had been removed to the back room during this incident, were returned to her. Although respondent apparently did not witness the defendant in handcuffs, respondent should have taken steps to insure that her instructions to the court officer were not misinterpreted as a direction to handcuff the defendant.

14. On or about November 10, 1998, respondent ordered the defendant in People v. Kern Cedeno "on the [prisoner's] bench" for blowing a bubble-gum bubble during his appearance before her. The defendant, who had been released on bail, had remained on the prisoner's bench until his case was recalled. The defendant's assigned counsel asked to be relieved from the case because the defendant's family had been abusive to her. As respondent was addressing the issue of replacing counsel, defendant, while standing before the court, blew and popped a bubble-gum bubble. Respondent responded by ordering defendant to sit on the bench inside of the well to "teach [him] a little

lesson" for showing "disrespect" to the court. Subsequently, the case was recalled, new counsel was assigned, and defendant thanked respondent.

As to Charge VI of the Superseding Formal Written Complaint:

15. On two occasions, respondent excluded counsel from the courtroom without establishing a full record justifying such action and without initiating a summary contempt proceeding, as set forth below.

16. On or about September 17, 1999, while presiding over People v. Jorge Delgado, respondent ordered Legal Aid Society attorney Courtney Shapiro out of the courtroom when Ms. Shapiro, who had been outside the courtroom discussing a case with a client when the case was called, declined a plea offer without consulting her client because she had not had enough time to discuss the offer with the defendant. Shortly after the ADA had made the defendant a plea offer, respondent stated, "Come on. Let's go." Ms. Shapiro stated, "I am speaking to my client." Respondent replied, "If you had been here when the case was called then you would have had the opportunity."

17. The following then occurred:

COUNSEL: You are absolutely right. I apologize. I was speaking with—

COURT: Time up. Does he want the offer or not?

COUNSEL: No, Your Honor. Since I don't have time to finish completing my discussion with my client, he doesn't want to take the offer today.

COURT: You're excused. Leave the courtroom as soon as we are done with this. Don't come back. Find another catcher.² 18-B to be assigned. Legal Aid is relieved.

18. On or about April 22, 1998, while presiding over People v. Kevin Brown, respondent ordered Legal Aid Society attorney Donna Klett out of the courtroom when Ms. Klett attempted to address what she perceived to be a misrepresentation by the prosecution concerning an issue which respondent believed was irrelevant. The ADA in the case had requested an Order of Protection and explained why the prior judge at arraignment had denied an earlier request for such an order. When Ms. Klett objected to the ADA's explanation as being false and attempted to make a record, respondent refused to hear her on the matter:

KLETT: I want to make a record. What People [sic] said is not true.

COURT: I will not hear it. I can take it as ex parte argument because your client is not here. Warrant ordered. Order of Protection.

KLETT: The reason the People are now giving is not accurate. It was not—I made a motion to dismiss for facial insufficiency.

COURT: I control the record, not you. You are finished. Out. Good-bye. You are done. Case over. Bye-bye.

² The Legal Aid Society "catcher" is the attorney who is assigned to a particular court part to appear as a substitute for all assigned counsel having matters in that part. The presence of the catcher thereby obviates the need for each assigned attorney to make a court appearance. The catcher typically remains in the assigned court part until the end of the day, when court business is concluded.

When Ms. Klett stated that she had a right to be heard, respondent replied, "No, you don't. Good-bye, it is my courtroom and I rule as I see fit."

By reason of the foregoing, respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(3) and 100.3(B)(6) of the Rules Governing Judicial Conduct and Sections 604.1(e)(1) and 604.1(e)(5) of the Rules of the Appellate Division, First Department, 22 NYCRR (hereinafter "Special Rules Concerning Court Decorum").

Charges I through VI of the Superseding Formal Written Complaint are sustained insofar as they are consistent with the above findings, and respondent's misconduct is established.

The record depicts a judge who, in numerous cases in 1998 and 1999, mistreated both defendants and attorneys, abused her judicial powers, and ignored proper legal procedure. By acting in a manner that was coercive, discourteous and contrary to law, respondent violated well-established ethical standards requiring a judge to "comply with the law" and to be "the exemplar of dignity and impartiality" (Section 100.2 of the Rules Governing Judicial and Section 604.1[e][1] of the Special Rules Concerning Court Decorum).

In Kazan, respondent initiated and engaged in an improper ex parte conversation with the assistant district attorney's supervisor during pre-trial conferences in the matter. Respondent's out-of-court conversation with the supervisor about an application the ADA had made, even if intended as administrative or instructive, was highly inappropriate, especially since respondent failed to inform defense counsel of the conversation. Such conduct not only violated a specific prohibition against ex parte communications

(Section 100.3[B][6] of the Rules Governing Judicial Conduct) but conveys the appearance that respondent was providing out-of-court legal assistance to the prosecution and that she had abandoned her proper role as a neutral magistrate.

In three cases, respondent misused bail in an attempt to coerce guilty pleas. Respondent's statements during the proceedings convey the explicit message that she was using bail as a coercive tactic when defendants appeared reluctant to accept the plea that was offered. The purpose of bail is to insure a defendant's future appearances in court, not to punish a defendant or coerce a guilty plea. Matter of Sardino v. Commn on Jud Conduct, 58 NY2d 286, 289-90 (1983); Matter of Wylie, 1991 Ann Report of NY Commn on Jud Conduct 89.

Respondent also abused her judicial power by holding two defendants in custody without complying with the procedure governing summary contempt. See Matter of Feinman, 2000 Ann Report of NY Commn on Jud Conduct 105. While a judge has broad discretion in the exercise of the contempt power (*see* Judiciary Law §§750, 751), such power must be exercised in accordance with proper legal procedure, which generally requires giving the individual a warning and an opportunity to desist from the contumacious conduct as well as "a reasonable opportunity to make a statement in his defense or in extenuation of his conduct" (*see* Sections 604.2[c] and 604.2[a][3] of the Special Rules Concerning Court Decorum). Respondent ignored these procedures in Ballard, where the defendant was placed in handcuffs, and Cedeno, where respondent detained a defendant who had blown a bubble-gum bubble, stating that she

would "teach [him] a little lesson." Similarly, by excluding two Legal Aid Society attorneys from the courtroom, again without complying with the requirements of a summary contempt proceeding, respondent not only deviated from proper legal procedure but violated the ethical standard requiring a judge to be "patient, dignified and courteous" (Section 100.3[B][3] of the Rules Governing Judicial Conduct).

Respondent's comments, with respect to a defendant's mother who was seated in the audience, that if the woman wanted to come to an American courtroom, she could learn to speak English or leave were also discourteous and inappropriate, as was her treatment of the defendant in Demidenko. By directing Ms. Demidenko to go to her embassy to obtain proof of legal residency as a requisite for access to legal services, respondent effectively deprived the defendant of counsel.

The totality of respondent's conduct represents a significant departure from the proper role of a judge and warrants a severe sanction.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Mr. Berger, Judge Ciardullo, Mr. Coffey, Ms. Hernandez, Judge Luciano, Judge Peters and Judge Ruderman concur.

Mr. Goldman did not participate.

Judge Marshall and Mr. Pope were not present.

Dated: November 19, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **THOMAS G. RESTINO, JR.**, a Justice of the Hoosick Falls Village Court, Rensselaer County.

THE COMMISSION

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|---|-------------------------------|
| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission |
| Thomas J. McDonough for Respondent |

The respondent, Thomas G. Restino, Jr., a justice of the Hoosick Falls Village Court, Rensselaer County, was served with a Formal Written Complaint dated November 29, 2000, containing two charges.

On April 5, 2001, the Administrator of the Commission, respondent and respondent’s counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On June 18, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Hoosick Falls Village Court since September 1996.

As to Charge I of the Formal Written Complaint:

2. On July 14, 1999, respondent conducted an in-chambers conference in People v. Chad Lockrow, in which the defendant was charged with Assault 3rd Degree, a misdemeanor. The defendant had been arraigned two weeks earlier on that charge, and respondent had set bail at that time at \$7,500 bond, \$5,000 cash. Present in chambers were Amy Merkel, an assistant district attorney; Charles Thomas, counsel for the defendant; and the Honorable Lester E. Goodermote, respondent’s co-justice. During arguments between counsel addressed to bail, Judge Goodermote interjected into the argument, stating that Barry Wilt, the alleged victim of the assault, was a “piece of shit” and a stalker. By such statement, Judge Goodermote was advocating the defendant’s position for purposes of bail and gave the appearance that he was advocating on the defendant’s behalf.

3. During the in-chambers arguments and after Judge Goodermote’s interjection under the prevailing circumstances,

respondent took no steps to stay Judge Goodermote's advocacy and gave counsel the impression that he was going to reduce cash bail to \$2,500 as a result of Judge Goodermote's intervention. However, when respondent returned to the bench to render his decision on the arguments addressed to bail, bail was continued unchanged at \$7,500 bond, \$5,000 cash, as had been originally set.

4. Respondent failed to immediately eject Judge Goodermote for his conduct and failed to report Judge Goodermote's conduct to the Commission.

As to Charge II of the Formal Written Complaint:

5. Between June 1, 1997, and May 31, 1998, respondent failed to maintain complete and accurate records of cash receipts and disbursements of court funds, in violation of Section 214.11(a)(3) of the Uniform Civil Rules For The Justice Courts, and failed to deposit all court funds within 72 hours of receipt, or to make certain that the Court Clerk made deposits on a timely basis, in violation of Section 214.9(a) of the Uniform Civil Rules For The Justice Courts. Respondent failed to adequately supervise his Court Clerk, who was responsible for maintaining the court's financial records and for making all deposits.

6. The foregoing problems with records, receipts, disbursements and deposits were unearthed as a result of an audit instituted by respondent when he found deficiencies in his records after a change of clerks.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.3(D)(1) of the Rules Governing Judicial Conduct. Charges I and

II of the Formal Written Complaint are sustained insofar as they are consistent with the above facts, and respondent's misconduct is established.

Respondent permitted his co-justice to participate in a conference in his chambers, during which the co-justice advocated the defendant's position on the issue of bail by making derogatory comments about the complaining witness. Although his co-justice is not a lawyer (and, in any event, could not practice law in respondent's court), respondent allowed him to be present during the conference and did not rebuke him or direct him to leave even after his inappropriate advocacy on the defendant's behalf. By failing to take any steps to stay his co-justice's advocacy, respondent conveyed the appearance that he condoned his co-justice's actions and, indeed, gave counsel the impression that he was going to reduce bail as a result of his co-justice's intervention, although he did not do so. By such conduct, respondent violated the requirement that a judge act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Section 100.2[A] of the Rules Governing Judicial Conduct).

Nor did respondent report his co-justice's misconduct to the Commission, as required by the ethical standards. Section 100.3(D)(1) of the Rules provides that a judge "shall take appropriate action" if the judge "receives information indicating a substantial likelihood that another judge has committed a substantial violation" of the ethical rules. Difficult as it may be for a judge to report the misconduct of a fellow judge, every judge must be mindful of the responsibility to take such action when appropriate. Matter of Gassman, 1987 Ann Rep of NY Comm on Jud Conduct 89.

In addition, respondent failed to maintain complete and accurate records of the receipt and disbursement of court funds and failed to deposit all court funds in a timely manner, in violation of Sections 214.9(a) and 214.11(a)(3) of the Uniform Civil Rules For The Justice Courts. Although these responsibilities were delegated to his court clerk, respondent was required to exercise supervisory vigilance to ensure the proper performance of these important functions. Respondent's supervision was inadequate, as indicated by the problems discovered as a result of a court audit. In mitigation, we note that the problems began in respondent's first year as a judge and that respondent instituted the audit when he found deficiencies in his records after a change of clerks.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Ciardullo, Ms. Hernandez, Judge Luciano, Judge Peters and Judge Ruderman concur.

Mr. Coffey and Mr. Goldman dissent and vote to reject the agreed statement of facts on the basis that the disposition is too severe.

Judge Marshall and Mr. Pope were not present.

Dated: November 19, 2001

In the Matter of the proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **RICHARD H. ROCK**, a Justice of the Chesterfield Town Court, Essex County.

THE COMMISSION

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|--------------------------------------|---------------------------------|
| Honorable Eugene W. Salisbury, Chair | Honorable Daniel F. Luciano |
| Henry T. Berger, Esq | Honorable Frederick M. Marshall |
| Jeremy Ann Brown, CASAC | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq | Honorable Terry Jane Ruderman |
| Christina Hernandez, MSW | |

APPEARANCES

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| Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission |
| Claudia A. Russell for Respondent |

The respondent, Richard H. Rock, a justice of the Chesterfield Town Court, Essex County, was served with a Formal Written Complaint dated September 23, 1999, containing four charges. Respondent filed an answer dated October 18, 1999.

On March 19, 2001, the Administrator of the Commission, respondent and respondent’s counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On March 29, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Chesterfield Town Court, Essex County, since January 1997. Respondent has successfully completed all required training

sessions sponsored by the Office of Court Administration.

As to Charge I of the Formal Written Complaint:

2. On May 29, 1997, respondent arraigned the two 16-year-old defendants in People v. A.³ and People v. B., on charges of Harassment, 2nd Degree, for allegedly “threatening” and spitting at two other individuals. Saying that it was to teach

the defendants “a lesson,” respondent committed the defendants to jail overnight in lieu of \$500 bail, without properly advising them of their right to counsel and to assigned counsel as required by Section 170.10(4) of the Criminal Procedure Law and without determining whether the

³ For purposes of this determination, defendants who were youthful offenders are identified by letter only.

defendants desired counsel or whether they could afford counsel.

3. On May 30, 1997, when the unrepresented defendants A. and B. were returned to court from jail, respondent accepted their guilty pleas to the charges of Harassment, 2nd Degree, and sentenced them to ten days in jail, without effectuating their right to counsel and without receiving a knowing and intelligent waiver of their rights as required by Section 170.10(6) of the Criminal Procedure Law and the New York State and United States Constitutions. Respondent based his decision to sentence the defendants to jail upon allegations by the police that the defendants had committed other, uncharged criminal acts.

4. On June 4, 1997, after defendants A. and B. had served the ten-day jail sentences imposed by respondent, they were returned to respondent's court from jail for arraignment on a series of criminal charges emanating from the incident for which the defendants had earlier pleaded guilty to Harassment. Prior to conducting the arraignments, respondent questioned the unrepresented defendants as to whether they would give a statement to police concerning alleged crimes committed by others.

5. After A., a mandatory Youthful Offender, gave a statement to the police, respondent accepted his guilty plea to charges of Endangering the Welfare of a Child (for having committed the earlier Harassment in the presence of his 14-year-old brother), Conspiracy 6th Degree, Harassment 1st Degree, and Trespass, without effectuating the defendant's right to counsel and without conducting a searching inquiry into the defendant's decision to plead guilty without counsel.

6. Respondent now recognizes the importance of the right to counsel, which

includes the right to assigned counsel, and further recognizes that, on these facts in particular, it is likely that counsel would have protected the rights of the youthful defendants by raising defenses to the repeated charges brought by the police and by raising other objections to the procedures that respondent employed.

As to Charge II of the Formal Written Complaint:

7. On March 5, 1997, in People v. Terry Gordon, at the arraignment of the defendant on a charge of Failure To License Dogs, respondent, in violation of Section 170.10 of the Criminal Procedure Law, refused to allow the defendant to plead not guilty to the charge, denied the defendant's request for an adjournment to obtain counsel, and issued an order to seize the dogs unless they were registered within two days, notwithstanding that the defendant never pleaded guilty to the charge and respondent had not accorded him a trial.

8. Respondent had been present in November 1996 when his co-justice found Mr. Gordon guilty of failing to license his dogs, and respondent considered the March 1997 charges to be an "extension" of the same matter and, therefore, did not feel that he was required to conduct an arraignment of Mr. Gordon.

As to Charge III of the Formal Written Complaint:

9. On or about January 19, 1997, after completing the arraignment in People v. Kenneth Bedard, in which the defendant pleaded not guilty to Harassment on the complaint of his wife, respondent questioned the defendant as to whether he had previously struck his wife, which Mr. Bedard denied.

10. Thereafter, while the charge against Mr. Bedard was still pending, respondent engaged in an *ex parte* conversation about Mr. and Mrs. Bedard with respondent's daughter, who told respondent that Mr. Bedard had previously beaten his wife.

11. On or about January 22, 1997, after Mrs. Bedard agreed to the dismissal of the Harassment charge against Mr. Bedard, respondent, on the basis of his *ex parte* conversation with his daughter, accused Mr. Bedard of lying about not having beaten his wife. Respondent also threatened to charge Mr. Bedard with perjury for allegedly lying in a cross-complaint against his wife, which respondent had dismissed, and informed Mr. Bedard that he should "bring [his] toothbrush" if he ever appeared before respondent again in the future.

As to Charge IV of the Formal Written Complaint:

12. In the cases of People v. Jerry Barber, Laurie Hanson and Scott Hanson, in which the co-defendants were charged with Disorderly Conduct in June 1998, respondent received an *ex parte* note from the arresting officer, requesting "no breaks" for the defendants because, allegedly, they had to be pepper-sprayed during the arrest, and, on the basis of the officer's note, respondent telephoned the Hanson residence prior to the arraignments and told Mr. Hanson to "bring a lot of money" to court or he and his wife would be going to jail.

13. In People v. C., in which the defendant pleaded guilty to a charge of Driving While Intoxicated as a mandatory Youthful Offender, respondent failed to correct the records of the case to reflect the correct disposition and failed to seal the records, as required by Section 720.35 of the Criminal Procedure Law.

14. In October 1998, respondent had an *ex parte* conversation with the mother of the defendant in People v. Christopher McCray, who was also the complaining witness against the defendant, and, based upon his *ex parte* communication with the mother, respondent later sentenced the unrepresented defendant to jail.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(A), 100.3(B)(1), 100.3(B)(4), 100.3(B)(6), 100.3(C)(1) and 100.3(E)(1)(a)(i) of the Rules Governing Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained insofar as they are consistent with the above findings, and respondent's misconduct is established.

In numerous cases, respondent failed to perform his judicial duties impartially, failed to "respect and comply with the law," and failed to "be faithful to the law and to maintain professional competence in it," in violation of ethical standards (Rules Governing Judicial Conduct, 22 NYCRR 100.2[A] and 100.3[B][1]). By disregarding fundamental, well-established rights of defendants, respondent abused his judicial powers and created the appearance of prosecutorial bias.

In the A. and B. cases, respondent repeatedly violated the rights of two unrepresented 16-year old defendants. Without properly advising them of their right to counsel and to assigned counsel or ascertaining whether they desired counsel, respondent sent the youths to jail overnight "to teach them a lesson," then accepted their guilty pleas and sentenced them to a ten-day jail term, based in part upon *ex parte* information from a police officer alleging other, uncharged criminal acts. After the

defendants had served their sentence, respondent arraigned them on additional charges emanating from the same incident for which they had earlier pleaded guilty, and, before accepting another guilty plea, he questioned the still unrepresented defendants as to whether they would give information to police concerning alleged crimes committed by others. Without an attorney to protect their rights and without having made a knowing and intelligent waiver of the right to counsel, the youthful defendants were subjected to unauthorized procedures dictated by a judge who appeared to be actively assisting the prosecution.

Respondent's handling of the Gordon case also violated the law he is sworn to uphold. After denying the defendant's request for an adjournment to obtain counsel, respondent refused to accept the defendant's not guilty plea and, without a trial, issued an order to seize the defendant's dogs.

In other cases, respondent relied on *ex parte* information to the detriment of defendants. In Bedard, based on information respondent had received from his daughter, respondent accused a defendant of lying and warned the defendant to "bring [his] toothbrush" if he ever appeared before respondent again. In Hanson, after receiving an *ex parte* note from the arresting officer about the defendants' conduct, respondent called a defendant before the arraignment and warned him to "bring a lot of money" to court or the defendant and his wife (another

defendant) would be going to jail. In McCray, respondent relied on *ex parte* information from the complaining witness in sentencing the defendant to jail. Respondent's actions created an appearance of bias and violated Section 100.3(B)(6) of the Rules, which prohibits a judge from initiating or considering *ex parte* communications.

Respondent's handling of these cases suggests a serious misunderstanding of fundamental statutory procedures and a misapprehension of the proper role of a judge. Such conduct may warrant removal from office, especially where, as in this case, the judge's actions deprive individuals of liberty without regard for their rights under the law. Matter of McGee v. Comm. on Jud. Conduct, 59 NY2d 870 (1983); Matter of Hamel v. Comm. on Jud. Conduct, 88 NY2d 317 (1996). In mitigation, respondent now recognizes the importance of the right to counsel, which includes the right to assigned counsel.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Judge Salisbury, Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Marshall, Mr. Pope and Judge Ruderman concur.

Ms. Hernandez, Judge Peters and Judge Luciano were not present.

Dated: June 27, 2001

In the matter of the proceeding pursuant to Section 44, subdivision 4, of the Judiciary Law in relation to **DAVID G. ROEPE**, a Justice of the Montgomery Village Court, Orange County.

THE COMMISSION

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|---|-------------------------------|
| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern (Vickie Ma, Of Counsel) for the Commission |
| Richard E. Grayson for Respondent |

The respondent, David G. Roepe, a justice of the Montgomery Town Court, Orange County, was served with a Formal Written Complaint dated February 13, 2001, containing one charge. Respondent filed an answer dated March 29, 2001.

On May 4, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On May 10, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent, who is an attorney, has been a part-time justice of the Montgomery Village Court since 1972. Respondent presides over various matters

including traffic cases, civil cases, small claims and criminal offenses.

2. Respondent and his wife, Hazelann Roepe, reside in separate homes, which are located on the same property in Montgomery, New York. There are three unattached dwellings located on the property. Mrs. Roepe lives alone in the main house; respondent and a 19-year-old son live in a carriage house, approximately 75 feet away; and a second adult son lives in a small house. All four of them have access to all three homes.

3. On or about May 10, 2000, at approximately 11:30 P.M., respondent entered the home in which Mrs. Roepe resides to look for his carving knife. Mrs. Roepe was asleep on the couch. Mrs. Roepe had moved the knife from where respondent had kept it in the carriage house.

4. When respondent found his carving knife in the kitchen, he woke Mrs. Roepe and confronted her by shouting derogatory

names at her, while holding the knife in his hand. As respondent stood next to Mrs. Roepe, he waved the knife at her and shouted that he would “run [her] through,” or words to that effect, if she ever upset him again by taking his knife and things without his permission as she had done in the past. At times, the knife came within 4 to 8 inches of Mrs. Roepe’s throat. All the while, Mrs. Roepe lay supine on the couch.

5. Respondent testified that since the time he had arrived home from work at about 7:00 to 7:30 P.M., he had consumed “at least two or three” glasses of red wine and speculated that he “could have had the whole [bottle]” as he did not “know if there was any wine left in the bottle” at the time of his arrest.

6. Once respondent left the home, Mrs. Roepe ran outside to call a friend.

7. Respondent’s actions caused Mrs. Roepe to be in fear of physical injury.

8. Respondent was thereafter arrested and charged with Menacing in the Second Degree. The incident was reported in a local newspaper.

9. On or about August 18, 2000, the Orange County District Attorney’s office dismissed the charge so that the matter could be handled in Family Court. Mrs. Roepe did not pursue the criminal matter in Family Court.

10. Respondent and his wife have been married for 42 years and continue to reside in their separate homes on the same property. There is no prior or subsequent history of domestic abuse or violence to Mrs. Roepe by respondent. According to Mrs. Roepe, who does not want any disciplinary or criminal action to be taken against respondent, the actions of respondent

were totally out of character with respondent’s personality and the way he has treated her. There is no evidence to the contrary. Respondent has been cooperative and candid in all respects in the investigation, has expressed remorse for his conduct, and appears to be a non-violent, peaceful and decent person.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(A) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent’s misconduct is established.

As the Court of Appeals has held, on or off the bench, a judge remains “clothed figuratively with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others.” Matter of Kuehnel v. Comm. on Jud. Conduct, 49 NY2d 465, 469 (1980). Any conduct, on or off the bench, “inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual judge to carry out his or her constitutionally mandated function.” Matter of Kuehnel, *supra*.

Respondent’s conduct clearly violated the high standards of conduct which judges are obliged to observe “at all times,” both on and off the bench (Section 100.1 of the Rules Governing Judicial Conduct). Angrily confronting his wife, who had upset him by taking a knife that belonged to him, respondent waved the knife close to her throat and threatened to “run [her] through” if she ever upset him again by repeating such conduct. For one who holds a position of public trust, and who presides over cases involving domestic violence in which he is called upon to pass judgment over the

actions of others, such conduct raises serious questions as to respondent's ability to administer the law effectively and impartially. Matter of Benjamin v. State Comm. on Jud. Conduct, 77 NY2d 296 (1991); Matter of Stiggins, 2001 Ann Rep 123 (Comm. on Jud. Conduct).

Although respondent was not convicted of a crime, his admitted conduct constitutes a violation of law (*see* Penal Law §120.14[1])[1]

^[1] Under the statute, a person is guilty of Menacing in the Second Degree when he or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon or dangerous instrument.

The fact that respondent's spouse has not pursued the criminal matter in Family Court does not mitigate the wrongfulness of his conduct. When an angry confrontation in a domestic setting crosses the line into a threat of physical violence underscored by brandishing a deadly weapon, there can be no defense to a charge of judicial misconduct that the conduct occurred within the privacy of the home, since even there a judge's conduct may impact upon the judicial role. Matter of Backal v. Comm. on Jud. Conduct, 87 NY2d 1, 8 (1995). Where, as here, respondent has admitted the underlying conduct in a publicly-reported incident, there can be no doubt that public perception of the judiciary is affected.

While it appears that respondent's conduct may have been affected by his consumption of alcohol, there is no indication from this record that alcohol has affected his judicial performance, or that there is a pattern of such conduct.

In imposing the sanction of censure, rather than removal from office, we do not minimize the seriousness of respondent's behavior. In mitigation, we have considered that respondent's conduct appears to be an isolated, uncharacteristic incident in his marriage of 42 years; that he has been candid, cooperative and contrite throughout this proceeding; and that his record is otherwise unblemished in 29 years as a judge.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Mr. Berger, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Ciardullo dissents on the basis that the facts as set forth in the agreed statement are insufficient to enable the Commission to make a determination.

Judge Luciano was not present.

Dated: June 27, 2001.

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **ELIZABETH A. SHANLEY**, a Justice of the Esopus Town Court, Ulster County.

THE COMMISSION

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| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission |
| Joseph R. Pisani for Respondent |

The respondent, Elizabeth A. Shanley, a justice of the Esopus Town Court, Ulster County, was served with a Formal Written Complaint dated July 20, 2000. Respondent filed an answer dated August 7, 2000.

By Order dated November 6, 2000, the Commission designated Jay C. Carlisle, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 5, 2001, and the referee filed his report dated June 8, 2001, with the Commission.

The parties submitted briefs with respect to the referee’s report. Oral argument was waived. On November 8, 2001, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Esopus Town Court since January 2000. Prior to her election to that position in the fall of 1999, respondent had been a court clerk in the Kingston City Court and the

Esopus Town Court for 14 years. Respondent is not an attorney.

2. During her 1999 campaign for judicial office, respondent personally distributed a campaign brochure in which she is identified as “Elizabeth ‘Betty’ Shanley -Law and Order Candidate” and “GRADUATE Albany Law School, Judicial Law Course; St. Lawrence Univ., Judicial Law Course; Columbia/Green C.C./ Judicial Law Course.” The brochure was prepared and printed by Ira Weiner, Chairman of the Esopus Republican Party. Respondent provided the information for the brochure to Mr. Weiner, the campaign chairman.

3. During the 1999 election, the town Republican Chairman distributed to voters a brochure containing information about Republican candidates in the town, including respondent. In this brochure, respondent is described as “a graduate of Albany Law School – Judicial Law Course, St. Lawrence – Judicial Law Course, Columbia/Green C.C. – Judicial Law

Course.” In preparing the brochure, the Party Chairman used information respondent had provided to him.

4. Respondent is not a graduate of Albany Law School, St. Lawrence University or Columbia/Green Community College. As a court clerk, respondent had attended three sessions of the Court Clerk Continuing Legal Education program sponsored by the Office of Court Administration. These courses were held at the foregoing educational institutions, but were not sponsored by those institutions or affiliated with them.

5. When respondent saw the brochure described in paragraph 2, she was uncomfortable with the use of the term “graduate” but did not ask Mr. Weiner to change or reprint the brochure. The cost of printing the brochure was \$25.00. When the original supply of 2,500 brochures ran out, respondent had more brochures printed on her own.

6. As used in the campaign brochures described above, the term “graduate” was misleading since respondent neither attended nor graduated from the educational institutions cited, and the courses she completed at those institutions were court clerk training programs sponsored by the Office of Court Administration. Although respondent believed that the term “graduate” was misleading, she distributed the campaign brochures containing that language despite her misgivings.

7. The term “law and order candidate,” as used in respondent’s campaign brochure, is commonly understood to suggest strong pro-prosecution and anti-defendant positions.

Upon the foregoing findings of fact, the Commission concludes as a matter of law

that respondent violated Sections 100.1, 100.2 (A), 100.5(A)(4)(d)(i), 100.5(A)(4)(d)(ii) and 100.5(A)(4)(d)(iii) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent’s misconduct is established.

Respondent’s campaign literature during her 1999 campaign for judicial office was misleading as to her qualifications and conveyed the impression of pro-prosecutorial bias.

By describing her as a “graduate” of the “Judicial Law Course” at Albany Law School, St. Lawrence University and Columbia-Green Community College, respondent’s brochures, which respondent tacitly approved and personally distributed, conveyed the false impression that respondent was a graduate of those educational institutions. In fact, respondent had attended three sessions of a continuing legal education program for court clerks at those locations, sponsored by the Office of Court Administration. A person who attends such a course is not a “graduate.” By using the term “graduate” in connection with those educational institutions, respondent enhanced and misrepresented her credentials as a judicial candidate, in violation of Section 100.5(A)(4)(d)(iii) of the Rules Governing Judicial Conduct. *See Matter of Fiore*, 1999 Ann Report of NY Commn on Jud Conduct 101. An individual might reasonably conclude from that representation that respondent was a graduate of a community college, a four-year university and a prestigious law school. Despite recognizing that the characterization was misleading when she saw the brochure, respondent did not ask that the brochures be reprinted, notwithstanding that the cost would have been minimal.

It was also improper for respondent's campaign literature to use the phrase "law and order candidate" to describe her. Because of the widely held perception that the term implies a pro-prosecutorial position favoring harsh treatment of defendants, it should not be used in judicial campaigns to describe a candidate's views. The ethical standards prohibit a judicial candidate from making statements that commit the candidate with respect to issues that are likely to come before the court or statements that may reflect on his or her impartiality (Sections 100.5[A][4][d][i] and [ii] of the Rules).

A judicial candidate's inexperience or reliance on the advice of campaign officials does not excuse misconduct during a political campaign. A judicial candidate must be familiar with the relevant ethical

standards and bears ultimate responsibility for the content of his or her campaign literature.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Marshall, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur as to the disposition.

Mr. Coffey, Ms. Hernandez and Judge Peters dissent only as to the conclusion that the use of the term "law and order candidate" was improper.

Judge Luciano was not present.

Dated: December 27, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **ALEXANDER A. SHANNON**, a Justice of the Nassau Village Court, Rensselaer County.

THE COMMISSION

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| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission |
| Cade & Saunders, P.C. (By Larry Rosen) for Respondent |

The respondent, Alexander A. Shannon, a justice of the Nassau Village Court, Rensselaer County, was served with a Formal Written Complaint dated October 31, 2000, containing two charges. Respondent filed an answer dated November 15, 2000.

On April 13, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts. The Commission approved the agreed statement on May 10, 2001. Each side submitted memoranda as to sanction. Oral argument was waived.

On June 18, 2001, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Nassau Village Court since 1987. He has attended and successfully completed all required training sessions for judges

sponsored by the Office of Court Administration.

As to Charge I of the Formal Written Complaint:

2. On or about February 23, 1999, respondent precluded the public from observing the small claims hearing in Joseph Hall v. Dennis Rieck.

3. On or about October 5, 1999, without legal justification, respondent closed the courtroom to the public during a plea conference with the defendant in the Driving While Intoxicated case of People v. Mary Ryan.

4. As a matter of practice, respondent frequently ordered that the courtroom be cleared of spectators in order to take a break; however, because respondent continued to hold proceedings during these recesses, he prevented the public from observing matters which should have been open to the public, and thereby violated Section 4 of the Judiciary Law.

As to Charge II of the Formal Written Complaint:

5. On court nights in November and December 1999 and January 2000, and as a matter of practice, respondent failed to advise defendants, who were charged with misdemeanors, of the right to assigned counsel in the first instance, as required by Section 170.10(4) of the Criminal Procedure Law, but, rather, required defendants first to indicate that they desired counsel before respondent advised them of the right to assigned counsel. Respondent's practice was to advise the defendants at arraignment of their right to an attorney and then adjourn the proceedings; however, he did not at that time advise them of their right to assigned counsel if they could not afford counsel and only did so if they subsequently appeared in court without counsel.

6. In addition, as a matter of practice, respondent failed to assign counsel to defendants who could not afford to retain counsel and who were charged with non-vehicle and traffic violations. Respondent thereby failed to comply with Section 170.10(4) of the Criminal Procedure Law.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1) and 100.3(B)(6) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A judge is required to advise all defendants charged with offenses for which a sentence of a term of imprisonment is authorized, other than vehicle and traffic infractions, of the right to assigned counsel and must take such affirmative steps as are necessary to effectuate the right (Crim Proc Law §170.10[4]; County Law §722-a; Matter of

Pemrick, 2000 Ann Report of NY Comm on Jud Conduct 141). With 14 years of experience as a judge, respondent should be familiar with this fundamental principle of law. Respondent's practice of advising defendants of the right to assigned counsel only if they returned without counsel on the adjourned date is contrary to both the letter and spirit of the statutory requirements. Such conduct may effectively thwart the defendants' exercise of their statutory rights and cause unnecessary delays.

Respondent also failed to assign counsel to eligible defendants charged with non-vehicle and traffic infractions (Crim Proc Law §170.10[3][c]). Such defendants may be subject to substantial fines and incarceration. By his conduct, respondent failed to "respect and comply with the law" and to "be faithful to the law" as required by Sections 100.2(A) and 100.3(B)(1) of the Rules Governing Judicial Conduct.

By closing his courtroom during both civil and criminal public proceedings, respondent violated the statutory requirement that court proceedings be open to the public (Jud Law §4). Public trials are intended to safeguard a defendant's right to a fair trial and to promote public confidence in the integrity of the judicial process. A judge's discretionary power to close the courtroom should "be sparingly exercised and then, only when unusual circumstances necessitate it." People v. Hinton, 31 NY2d 71, 76 (1972).

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters and Judge Ruderman concur. Judge Marshall and Mr. Pope were not present.

Dated: November 19, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law, in Relation to **JOSEPH C. TERESI**, a Justice of the Supreme Court, Albany County.

THE COMMISSION

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| Honorable Eugene W. Salisbury, Chair | Honorable Daniel F. Luciano |
| Henry T. Berger, Esq | Honorable Frederick M. Marshall |
| Jeremy Ann Brown, CASAC | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq | Honorable Terry Jane Ruderman |
| Christina Hernandez, MSW | |

APPEARANCES:

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| Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission |
| Roche, Corrigan, McCoy & Bush (By Robert P. Roche) for Respondent |

The respondent, Joseph C. Teresi, a justice of the Supreme Court, Third Judicial District, Albany County, was served with a Formal Written Complaint dated September 26, 2000, containing four charges.

On November 17, 2000, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On December 14, 2000, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Supreme Court since 1994.

As to Charge I of the Formal Written Complaint:

2. On June 18, 1997, in Smith v. Smith, the parties appeared with counsel before respondent, each having cross-moved through their attorneys for an order of contempt as against the other and having submitted papers and affidavits to support their respective claims. Cynthia Smith, the defendant, while admitting the facts on which the contempt was based, asserted that she had justification for her conduct and that therefore it should not be contemptuous. Terry Smith, the plaintiff, while admitting that he had been at the same housing development and examined the same unit that his wife had looked at hours before, contended in his papers and through his attorneys that this conduct was no more than a coincidence, did not constitute stalking and did not violate the prior court order; he adamantly denied the remaining allegations against him. Respondent, without holding a factual hearing and relying solely on the representations in the papers and the parties' unsworn oral statements, found both parties guilty of contempt for failure to abide by a

previous court order. Respondent set a sentencing date for July 11, 1997.

3. On or about June 23, 1997, after the parties were ordered to exchange personal property at the marital residence under the supervision of their attorneys, respondent asked each of the respective attorneys to send him *ex parte* a report concerning the exchange. If the exchange of property had gone well, it was the intention of the court to purge the respective parties of contempt before sentencing. The attorneys were requested to communicate with the court directly in response to the court's inquiry and were specifically directed not to exchange the affidavits with one another. The reports delivered to the court *ex parte* by the respective attorneys described the exchange of property as acrimonious.

4. On or about July 11, 1997, Terry Smith, the plaintiff, moved for reargument of the contempt finding based on the court's failure to hold a factual hearing. Respondent denied the motion and sentenced Mr. Smith to one day in jail for contempt. Thereafter, respondent sentenced the defendant Cynthia Smith to one weekend in jail for her contempt. No further action was brought by the attorneys for either side to stay the imposition of the sentence or to cure or purge their respective clients of contempt.

As to Charge II of the Formal Written Complaint:

5. On or about November 21, 1997, in Robert Marini Builders, Inc. v. Charles J. Rao v. Ronald G. Loeber et al., respondent granted a default judgment against the third-party defendant, Ronald Loeber, a *pro se* litigant, and ordered him to execute a deed (represented to the court to be a corrective deed) to real property. It was the position of

the litigant that such deed would extinguish Mr. Loeber's water easement. This action by respondent did not take into account that: (a) Mr. Loeber's time to answer the amended third-party complaint, which was not before the court at the time of the hearing, had not expired and therefore he was not in default; (b) Mr. Loeber had appeared in court and expressed in writing and orally his intention to defend the action on the merits; (c) Mr. Loeber, as the third-party defendant, would only be held liable for indemnity if Mr. Rao were ultimately found liable on the claim, and no such finding of liability had as yet been made; and (d) the effect of the corrective deed on the extinguishment of the water easement was not sufficiently clarified so as to allow the court to rule in such a summary fashion on that issue.

6. On or about December 30, 1997, respondent found Mr. Loeber in contempt of court and sentenced him to six months in jail for his refusal to sign an instrument represented to the court as a corrective deed, which had been drafted by the opposing party. Prior to respondent's contempt determination, Mr. Loeber had appeared before respondent three times and respondent had spoken to an attorney, whom Mr. Loeber represented to be his attorney, who informed the court *ex parte* that he had advised Mr. Loeber to sign the corrective deed. At the time of sentencing for contempt, Mr. Loeber asserted that he still had objections to the terms of the proposed corrective deed, although in his *pro se* capacity he was not capable of enunciating his position to respondent's satisfaction. The court did not make a separate written order of contempt containing the necessary provisions, as required by Sections 755 and 774 of the Judiciary Law, as to the manner in which Mr. Loeber, during the pendency of his incarceration, could purge himself of

the contempt. Mr. Loeber was incarcerated in the Albany County Jail, where he remained for 45 days until another court acted upon an application to release him from custody brought by his newly retained attorney.

As to Charge III of the Formal Written Complaint:

7. On September 4, 1996, in Rachel Anglin v. Harold Anglin, respondent interrupted the testimony of plaintiff's expert witness and required all the attorneys to meet in chambers for a conference. After the conference commenced, respondent requested that the female associate of the attorney for the defendant be excluded from chambers. While in chambers, respondent applied pressure in an injudicious and indiscriminate manner to settle the matter by expressing in colorful terms his displeasure with the course of the testimony and his belief that the court's time was being wasted by the proceeding. Respondent's actions thereby forced a settlement of the issues between the respective parties.

As to Charge IV of the Formal Written Complaint:

8. On or about July 10, 1998, at a pre-trial conference in Diorio v. Diorio in Ulster County Supreme Court, respondent impatiently observed that the parties were wasting the court's time on matters that should long since have been settled and that the parties' attorneys were promoting this petulant exchange between the parties. In very strong and unequivocal terms, the court directed that the parties, through their attorneys, come to a financial settlement of the issues then before the court. In doing so, the court did not give adequate account to the respective attorneys' attempts to correct, change and persuade the court that the predicate numbers which the court was

using in its figures and calculations were in error.

9. After this discussion, when the parties in Diorio rejected the proposed settlement, respondent observed of the attorneys, in the presence of their clients, that they were being overly litigious and claimed that this was a trait of the attorneys in the County in which they practiced. Respondent's statements disparaged and cast in doubt the positions of the respective attorneys and disparaged the claims of the respective parties.

10. Respondent stated that he would hold a trial in the matter within the next few days, overlooking the fact that a trial date certain had been scheduled for August 5, 1998.

11. When Mrs. Diorio's attorneys objected to the immediate trial date on the ground that their client would not be available, respondent opined that the client should therefore consider the settlement. Respondent did not call a court reporter into chambers for the purpose of allowing the attorneys to make a record of their objection before the court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(B)(1), 100.3(B)(3) and 100.3(B)(6) of the Rules Governing Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

By his actions in two cases, respondent failed to "respect and comply with the law" and to "be faithful to the law" in violation of the ethical standards (Rules Governing

Judicial Conduct, 22 NYCRR 100.2[A] and 100.3[B][1]).

In Smith, it was improper for respondent to find the parties guilty of contempt and sentence them to jail, based on their unsworn statements, without holding a hearing as required by law. It was also improper for respondent to instruct the attorneys to submit affidavits to him concerning the exchange of property without giving a copy to the opposing attorney. Such conduct violates Section 100.3(B)(6) of the Rules, which provides that a judge “shall not initiate, permit, or consider *ex parte* communications.”

Respondent’s handling of the Robert Marini Builders, Inc. case repeatedly violated the rights of a third-party defendant, Mr. Loeber, and conveyed an appearance of bias. He granted a default judgment against Mr. Loeber, who was appearing *pro se*, although the litigant was not in fact in default; he ordered Mr. Loeber to sign a corrective deed before the issues had been sufficiently clarified and before any finding had been made as to the defendant’s liability; and he held Mr. Loeber in contempt and sentenced him to six months in jail for refusing to sign the deed, without any provision for his release during that period if he purged himself of the contempt. Mr. Loeber remained in jail for 45 days pursuant to respondent’s order. Respondent’s actions constitute an abuse of his judicial power and suggest that he was biased against the unrepresented litigant.

In two other cases, respondent was injudicious, impatient and discourteous

during discussions in which he attempted to achieve a settlement. In Anglin, after pointedly excluding a female attorney from a conference in chambers, respondent used “colorful” language and exerted pressure in an “injudicious and indiscriminate manner” in order to force a settlement. In Diorio, while exerting pressure to achieve a settlement, respondent stated that the parties were wasting the court’s time on matters that should have been settled, and he disparaged the attorneys, in the presence of their clients, by asserting that they were being overly litigious and that this was characteristic of Ulster County attorneys. Then, after stating that he would hold a trial within the next few days (notwithstanding that a later date had been scheduled) and being advised that one of the parties would be unavailable, respondent suggested that therefore the client should settle. While a judge may play an active role in attempting to settle cases, the judge’s conduct toward litigants and their attorneys at all times should be “patient, dignified and courteous” (Rules Governing Judicial Conduct, 22 NYCRR 100.3[B][3]).

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Judge Salisbury, Mr. Berger, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Ms. Brown was not present.

Dated: February 8, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **EDWARD J. TRACY**, a Justice of the Moreau Town Court, Saratoga County.

THE COMMISSION

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| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

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| Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission |
| Cade & Saunders, PC (by Larry J. Rosen) for Respondent |

The respondent, Edward J. Tracy, a justice of the Moreau Town Court, Saratoga County, was served with a Formal Written Complaint dated April 30, 2001, containing two charges. Respondent filed an answer dated June 6, 2001.

On June 26, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On November 8, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Moreau Town Court since 1986. He is not a lawyer. He has attended and successfully completed all required training sessions for judges.

As to Charge I of the Formal Written Complaint:

2. In the summer of 1999, respondent reported to the state police that a rock had been thrown against the front door of his residence, that various objects had been thrown at his house over the past two years, and that respondent believed that the perpetrators were three youths – Reagan Moon, Brian Varney and Michael Christon – or their friends who were angry about respondent's sentences. In September and October 1999, the police questioned Brian Varney and Michael Christon, who denied involvement in the vandalism. The state police closed their investigation of respondent's complaints in October 1999 without arresting anyone, but respondent continued to believe that the three youths were responsible.

3. As set forth on the attached Schedule A, in 1999 and 2000, respondent failed to disqualify himself and presided over and disposed of numerous cases pertaining to

defendants Reagan Moon, Brian Varney and Michael Christon, notwithstanding his belief that these defendants had been involved in vandalism to respondent's residence. During the period, respondent frequently stated to his court clerk that he intended to sentence the defendants to maximum fines, and, in fact, respondent frequently did so.

4. In October 1999, while presiding over charges against Reagan Moon, respondent stated that he had seen Mr. Moon near respondent's house, and upon learning that Mr. Moon's driver's license had been suspended, respondent asked Mr. Moon, "So, I won't have to listen to you drive by my house at one or two in the morning, right?"

5. On May 24, 2000, in sentencing Mr. Moon in connection with traffic charges, respondent advised Mr. Moon to cease his action, and added that Mr. Moon knew what he meant. Respondent told Mr. Moon to "stop the nonsense and grow up," thereby conveying the impression that respondent was addressing the alleged actions of Mr. Moon at respondent's home.

As to Charge II of the Formal Written Complaint:

6. In or about January or February 2000, respondent publicly announced to prosecutors, defense attorneys and a newspaper reporter that any defendant convicted of Driving While Intoxicated or Driving While Ability Impaired By Alcohol, whose blood alcohol test showed a level of .15 percent or greater, would be sentenced to jail and a maximum fine. Respondent's remarks were published in a newspaper account on February 3, 2000. Thereafter, respondent followed this "policy" until the Commission questioned respondent about making such an announcement about future

action on cases and failing to consider each case on its merits.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(4), 100.3(B)(6) and 100.3(E)(1)(a)(i) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A judge must disqualify himself or herself in matters in which the judge's impartiality might reasonably be questioned. This includes matters in which the judge has a personal bias concerning a party, or the appearance of such bias. Sections 100.2(A) and 100.3(E)(1)(a)(i) of the Rules Governing Judicial Conduct; Matter of Van Buskirk, 1990 Ann Report of NY Commn on Jud Conduct 174; Matter of Lindell-Cloud, 1996 Ann Report of NY Commn on Jud Conduct 91. In view of respondent's belief that three youths were involved in acts of vandalism to respondent's residence, it was improper for respondent to preside over numerous cases involving these defendants just months after he had reported his suspicions to the police. Respondent's comments on two occasions while presiding over Mr. Moon's cases in which he alluded to Mr. Moon's alleged actions at respondent's home further conveyed the appearance that respondent was biased and underscore why he should not have presided over the defendants' cases.

Respondent compounded his misconduct by making statements to his court clerk indicating that he intended to give the maximum fines to the three defendants when they appeared before him, and then by frequently doing so. Respondent's statements further demonstrate his partiality and strongly suggest that his sentences in the

defendants' cases were not decided on the merits, but were predetermined according to the judge's bias.

Respondent's public announcement of a "policy" concerning the strict sentence he would impose on all defendants in certain drunk-driving cases was highly improper. Such a pronouncement is inconsistent with the role of a judge in our legal system, which is to apply the law in each case in a fair and impartial manner (Sections 100.2[A] and 100.3[B][1] of the Rules). While the expression of such a blanket "policy" against drunk drivers may pander to popular sentiment that all such defendants should be treated harshly, respondent's words conveyed the appearance that he would not, and did not, consider each case individually on the merits, after a fair hearing, as he is required to do. Judicial discretion, which is at the heart of a judge's powers, is nullified when a judge imposes a "policy" that will dictate sentences in future

cases. In the exercise of discretion, respondent may impose any sentence permitted by law in such cases, but only after considering the facts of each case and affording each defendant an opportunity to be heard according to law (*see* Section 100.3[B][6] of the Rules). Public confidence in the impartiality and independence of the judiciary is diminished by such statements.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Mr. Berger, Judge Marshall, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

Dated: November 19, 2001

SCHEDULE A

| <u>Defendant</u> | <u>Charge</u> | <u>Date of Arrest</u> | <u>Disposition</u> |
|------------------|---|-----------------------|---|
| Michael Christon | Stopped On Pavement | 11/7/99 | \$100 fine |
| | No Seat Belt | 11/7/99 | \$50 fine/\$30 surcharge |
| | Speeding 60/45 | 11/29/99 | \$200 fine/\$30 surcharge |
| | Passed Red Light | 12/30/99 | \$200 fine/\$30 surcharge |
| Reagan Moon | Petit Larceny | 7/26/98 | Reduced \$250 fine/ \$50 surcharge One year CD, Captain Program (Resentenced 10/99 to Community Service and one year CD) |
| | Consuming Alcohol Under Age 21 | 7/26/98 | One year CD, Captain Program (Resentenced 10/99 Community Service and One year CD) |
| | Ag. Unlicensed Op., 3 rd Degree | 3/24/00 | \$500 fine/\$30 surcharge 3 days jail |

| | | | |
|--------------|---|----------|---------------------------------------|
| | One Plate | 3/24/00 | \$25 fine/\$30 surcharge |
| | Imprudent Speed | 3/24/00 | 3 days jail |
| | Illegally Tinted Windows | 3/24/00 | Dismissed |
| | Failed To Keep Right | 6/13/00 | Reduced \$100 fine |
| | Speeding | 6/13/00 | Reduced \$100 fine/ \$35 surcharge |
| | Ag. Unlicensed Op., 3 rd Degree | 6/13/00 | Dismissed |
| | False Address On License | 6/13/00 | Dismissed |
| Brian Varney | No Seat Belt | 5/27/99 | \$50 fine/\$30 surcharge |
| | No Helmet | 12/16/99 | \$25 fine/\$30 surcharge |
| | Unregistered ATV | 12/16/99 | \$100 fine |
| | Unlicensed Operator | 12/16/99 | \$100 fine |
| | ATV On Roadway | 12/16/99 | \$100 fine/\$30 surcharge |
| | Open Container | 9/1/00 | \$50 fine |
| | Failed To Obey Traffic Control Device | 9/25/00 | \$100 fine/\$30 surcharge |

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **ROBERT E. WHELAN**, a Justice of the Supreme Court, 8th Judicial District, Erie County.

THE COMMISSION

| | |
|---|-------------------------------|
| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

| |
|--|
| Gerald Stern (John J. Postel, Of Counsel) for the Commission |
| Honorable Robert E. Whelan, <i>pro se</i> |

The respondent, Robert E. Whelan, a justice of the Supreme Court, 8th Judicial District, Erie County, was served with a Formal Written Complaint dated May 30, 2001. Respondent filed an answer dated June 18, 2001.

On November 19, 2001, the Administrator of the Commission and respondent counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On December 20, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Supreme Court, 8th Judicial District, since January 1, 1990.
2. On or about June 1, 2000, respondent contacted Richard S.F. Gallivan, Esq., and

requested that he contact his clients, Richard Selig and Adrienne Nalbach, and intercede on behalf of respondent's wife, Mary Lou Mancuso, in an attempt to convince the clients to pay \$399.00 that Ms. Mancuso alleged the clients owed on a home warranty policy that Ms. Mancuso, a real estate agent, had procured in connection with a house that she was assisting the clients in selling. In the course of the conversation, based on a question by Mr. Gallivan, respondent confirmed that he was a judge.

3. When Mr. Gallivan advised respondent that his clients were not obligated to pay the \$399.00, respondent requested that Mr. Gallivan ask the clients to "split" the bill with respondent's wife. Respondent stated that he would personally appreciate Mr. Gallivan's presenting this proposal to his clients.

4. On June 2, 2000, respondent again contacted Mr. Gallivan and asked whether he had contacted his clients about the matter. Mr. Gallivan responded that he had not yet

spoken to the clients. Respondent repeated his request that Mr. Gallivan contact his clients about paying the home warranty bill. Respondent stated that he would appreciate a resolution of the matter.

5. On June 5, 2000, respondent again contacted Mr. Gallivan concerning payment of the home warranty bill. Mr. Gallivan reiterated that his clients were not obligated to pay any portion of the bill. Respondent replied that Mr. Gallivan should not “be so sure of” his legal defense and told Mr. Gallivan that, based on respondent’s review of the matter, the clients could be sued and were obligated to pay the claim based upon Richard Selig’s signature on the contract.

6. In these discussions, Mr. Gallivan referred to respondent as “judge,” although respondent did not advise Mr. Gallivan to refer to him in this way. When making these calls, respondent believed that his wife, Mary Lou Mancuso, would be personally obligated to pay the \$399.00 home warranty bill if it were not paid by the clients.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 (B) and 100.2(C) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent’s misconduct is established.

Respondent’s personal intervention into a business dispute involving his spouse was improper. Three times within five days, respondent contacted an attorney to urge the attorney to convince his clients to pay a bill related to a real estate transaction handled by respondent’s spouse, a real estate agent. When the attorney responded that the clients were not obligated to pay, respondent first suggested that the clients “split” the bill with respondent’s wife, then warned the attorney

that, based on respondent’s review of the matter, the clients were obligated to pay the bill and could be sued.

Because of respondent’s inappropriate intervention in the matter, the attorney was placed in the awkward position of negotiating with a Supreme Court justice who was acting as an advocate for his wife’s business interests. Although respondent did not explicitly invoke his judicial status, the attorney was aware of respondent’s judicial position and referred to him as “judge” throughout the discussions. Respondent’s heavy-handed efforts to negotiate a result that would benefit his spouse, a real estate professional who was presumably capable of negotiating on her own behalf, created the appearance that he was using the prestige of his judicial status to advance the private interests of another, in violation of the ethical standards (Section 100.2[C] of the Rules Governing Judicial Conduct). As the Court of Appeals has stated:

[N]o judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. Members of the judiciary should be acutely aware that any action they take, on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved. There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary. [Citations omitted.]

Matter of Lonschein v. State Commn on Jud Conduct, 50 NY2d 569, 571-72 (1980); *see also* Matter of Ohlig (NY Commn on Jud Conduct, Nov. 19, 2001).

By advising the attorney that he had reviewed the matter, offering his opinion as to the clients’ liability and reminding the

attorney that he would “personally appreciate” a resolution of the dispute, respondent, whether intentionally or not, was implicitly drawing on the full power of his judicial status. His actions were inherently coercive and showed insensitivity to the special ethical obligations of judges.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Ciardullo, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Marshall did not participate.

Mr. Coffey was not present.

Dated: December 27, 2001

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **EDWARD J. WILLIAMS**, a Justice of the Kinderhook Town Court and Valatie Village Court, Ulster County.

THE COMMISSION

| | |
|---|-------------------------------|
| Henry T. Berger, Esq., Chair | Christina Hernandez, M.S.W. |
| Honorable Frederick M. Marshall, Vice Chair | Honorable Daniel F. Luciano |
| Honorable Frances A. Ciardullo | Honorable Karen K. Peters |
| Stephen R. Coffey, Esq. | Alan J. Pope, Esq. |
| Lawrence S. Goldman, Esq. | Honorable Terry Jane Ruderman |

APPEARANCES

| |
|--|
| Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission |
| Gerstenzang, O’Hern, Hickey & Gerstenzang (By Thomas J. O’Hern) for Respondent |

The respondent, Edward J. Williams, a justice of the Kinderhook Town Court and Valatie Village Court, Columbia County, was served with a Formal Written Complaint dated September 5, 2000, containing four charges. Respondent filed an answer dated September 25, 2000.

On June 8, 2001, the Administrator of the Commission, respondent and respondent’s counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On June 18, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Valatie Village Court since 1982 and a justice of the Kinderhook Town Court since 1984. He is not a lawyer. Respondent has

attended and successfully completed all required training sessions for judges.

As to Charge I of the Formal Written Complaint:

2. In or about September 1998, respondent conveyed the appearance that he was engaged in partisan political activity by providing transportation for his court clerk, although respondent knew that his court clerk was delivering posters for John Sweeney’s campaign for the U.S. House of Representatives to the Republican booth at the Columbia County Fair. Respondent transported his court clerk and the posters in his van to the Republican booth at the County Fair, where the political posters were unloaded by others. Respondent parked his vehicle and waited until the delivery was completed.

As to Charge II of the Formal Written Complaint:

3. In or about March 1999, in People v. Bruce Kruppenbacker, after the defense attorney rejected an offer of a plea bargain whereby the defendant would plead guilty to the charge of Sexual Misconduct in satisfaction of that charge and a charge of Unlawfully Dealing With A Child, respondent stated in court to the assistant district attorney in a loud voice that he was tired of the district attorney's office's refusal to offer adequate plea bargains and, without a basis for the comment, alleged that the district attorney's office was making prosecutorial decisions for political reasons.

As to Charge III of the Formal Written Complaint:

4. On or about April 12, 1999, without basis and in violation of Section 4 of the Judiciary Law, respondent ordered the victim's attorney to leave the courtroom during the public trial of People v. Walter Baker, Jr. and Kelly Baker. The victim's attorney wanted to attend the trial only as an observer, but respondent refused to permit him to be in the courtroom.

As to Charge IV of the Formal Written Complaint:

5. On or about January 18, 2000, in Patricia Betar v. Mary Ballard and Kirt George, respondent held a summary proceeding on the plaintiff landlord's petition for eviction and back rent. The plaintiff was represented by counsel, but the defendants were *pro se*. After a discussion at the bench, in which the defendants agreed to leave the premises but raised a defense that the past due rents should be abated due to inadequate heat, respondent signed a judgment, awarding the plaintiff possession and \$6,300 plus costs, which was the full amount of the claim, without according the defendants full opportunity to be heard on the issue of the abatement of the rent. The

defendants did not agree to the judgment, and respondent failed to conduct a hearing on the contested issues.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(3), 100.3(B)(6), 100.5(A)(1)(c), 100.5(A)(1)(d) and 100.5(A)(1)(e) of the Rules Governing Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained insofar as they are consistent with the above facts, and respondent's misconduct is established.

By his actions both on and off the bench, respondent failed to observe high standards of conduct and violated well-established ethical precepts (Section 100.1 of the Rules Governing Judicial Conduct).

By providing transportation for his court clerk, who was delivering campaign posters in support of a candidate for public office, respondent conveyed the impression that he was engaged in partisan political activity, which is prohibited by Section 100.5(A)(1)(c) of the Rules. Respondent, who was aware that his clerk was delivering campaign materials, drove his van to the Republican booth at the County Fair and waited in the van while the political posters were unloaded. Under such circumstances, an observer might reasonably conclude that respondent himself was engaging in political activity in support of the candidate. As the Court of Appeals has stated: "...Judges must hold themselves aloof and refrain from engaging in political activity, except to the extent necessary to pursue their candidacies during their public election campaigns." Matter of Maney v. State Commn on Jud Conduct, 70 NY2d 27, 30 (1987); *see also* Matter of Rath, 1990 Ann Report of NY Comm. on Jud Conduct 150.

Respondent's unwarranted public criticism of the prosecutor in the Kruppenbacker case was also inappropriate. By ascribing political motives to the prosecutor, apparently because of his dissatisfaction with a plea offer he deemed inadequate, respondent himself injected politics into the case 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. Such conduct also violated his obligation to be patient, dignified and courteous to an attorney with whom he dealt in an official capacity (Section 100.3[B][3] of the Rules).

It was also improper for respondent to bar an attorney from the courtroom in a criminal case. "The sittings of every court within this state shall be public, and every citizen may freely attend the same..." (Jud Law §4). The right to public proceedings belongs not only to a defendant, but to the public and press as well. Westchester Rockland Newspapers v. Leggett, 48 NY2d 430, 437 (1979). Only when public proceedings would jeopardize a defendant's right to a fair trial may they be closed (*Id.* at 438).

In Betar v. Ballard, respondent failed to comply with the law by signing a judgment without holding a hearing on the contested issues or according the *pro se* defendants full opportunity to be heard. Every judge -- lawyer or non-lawyer -- is required to be competent in the law and to insure that all those with a legal interest in a proceeding have a full opportunity to be heard according to law. Matter of Curcio, 1984 Ann Report of NY Comm. on Jud Conduct 80. As a judge since 1982, respondent should be fully familiar with basic procedures of law as well as the ethical rules.

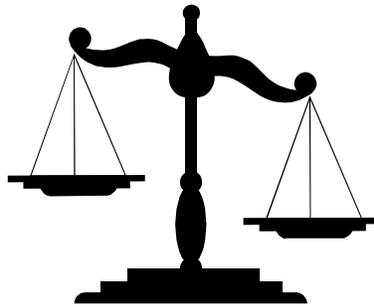
By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters and Judge Ruderman concur.

Judge Marshall and Mr. Pope were not present.

Dated: November 19, 2001

Statistical Analysis of Complaints



2002 Annual Report
New York State
Commission on Judicial Conduct

COMPLAINTS PENDING AS OF DECEMBER 31, 2000

| SUBJECT OF COMPLAINT | DISMISSED ON FIRST REVIEW | STATUS OF INVESTIGATED COMPLAINTS | | | | | | TOTALS |
|----------------------------------|---------------------------|-----------------------------------|-----------|---------------------|----------|---------|---------|--------|
| | | PENDING | DISMISSED | DISMISSAL & CAUTION | RESIGNED | CLOSED* | ACTION* | |
| <i>INCORRECT RULING</i> | | | | | | | | |
| <i>NON-JUDGES</i> | | | | | | | | |
| <i>DEMEANOR</i> | | 8 | 16 | 6 | 4 | 0 | 12 | 46 |
| <i>DELAYS</i> | | 2 | 0 | 1 | 0 | 0 | 0 | 3 |
| <i>CONFLICT OF INTEREST</i> | | 1 | 4 | 3 | 0 | 1 | 4 | 13 |
| <i>BIAS</i> | | 0 | 5 | 3 | 1 | 0 | 3 | 12 |
| <i>CORRUPTION</i> | | 5 | 2 | 0 | 1 | 1 | 0 | 9 |
| <i>INTOXICATION</i> | | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| <i>DISABILITY/QUALIFICATIONS</i> | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>POLITICAL ACTIVITY</i> | | 2 | 7 | 7 | 0 | 0 | 4 | 20 |
| <i>FINANCES/RECORDS/TRAINING</i> | | 2 | 6 | 7 | 4 | 1 | 1 | 21 |
| <i>TICKET-FIXING</i> | | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| <i>ASSERTION OF INFLUENCE</i> | | 1 | 3 | 0 | 0 | 0 | 5 | 9 |
| <i>VIOLATION OF RIGHTS</i> | | 4 | 12 | 7 | 3 | 1 | 14 | 41 |
| <i>MISCELLANEOUS</i> | | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| TOTALS | | 26 | 55 | 34 | 14 | 4 | 44 | 177 |

*Matters are “closed” upon vacancy of office for reasons other than resignation. “Action” includes determinations of admonition, censure and removal from office by the Commission since its inception in 1978, as well as suspensions and disciplinary proceedings commenced in the courts by the temporary and former commissions on judicial conduct operating from 1975 to 1978.

NEW COMPLAINTS CONSIDERED BY THE COMMISSION IN 2001

| SUBJECT OF COMPLAINT | DISMISSED ON FIRST REVIEW | STATUS OF INVESTIGATED COMPLAINTS | | | | | | TOTALS |
|----------------------------------|---------------------------|-----------------------------------|-----------|---------------------|----------|---------|---------|--------|
| | | PENDING | DISMISSED | DISMISSAL & CAUTION | RESIGNED | CLOSED* | ACTION* | |
| <i>INCORRECT RULING</i> | 487 | | | | | | | 487 |
| <i>NON-JUDGES</i> | 183 | | | | | | | 183 |
| <i>DEMEANOR</i> | 138 | 41 | 11 | 3 | 0 | 0 | 1 | 194 |
| <i>DELAYS</i> | 44 | 7 | 1 | 1 | 0 | 0 | 0 | 53 |
| <i>CONFLICT OF INTEREST</i> | 23 | 18 | 1 | 1 | 0 | 0 | 0 | 43 |
| <i>BIAS</i> | 74 | 11 | 2 | 0 | 0 | 0 | 0 | 87 |
| <i>CORRUPTION</i> | 10 | 5 | 1 | 0 | 0 | 0 | 0 | 16 |
| <i>INTOXICATION</i> | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 3 |
| <i>DISABILITY/QUALIFICATIONS</i> | 2 | 2 | 1 | 0 | 0 | 0 | 0 | 5 |
| <i>POLITICAL ACTIVITY</i> | 18 | 17 | 3 | 2 | 0 | 0 | 0 | 40 |
| <i>FINANCES/RECORDS/TRAINING</i> | 5 | 25 | 2 | 1 | 1 | 0 | 0 | 34 |
| <i>TICKET-FIXING</i> | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 2 |
| <i>ASSERTION OF INFLUENCE</i> | 2 | 7 | 0 | 2 | 0 | 0 | 0 | 11 |
| <i>VIOLATION OF RIGHTS</i> | 109 | 27 | 7 | 1 | 2 | 0 | 1 | 147 |
| <i>MISCELLANEOUS</i> | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| TOTALS | 1100 | 162 | 29 | 12 | 3 | 0 | 2 | 1308 |

*Matters are "closed" upon vacancy of office for reasons other than resignation. "Action" includes determinations of admonition, censure and removal from office by the Commission since its inception in 1978, as well as suspensions and disciplinary proceedings commenced in the courts by the temporary and former commissions on judicial conduct operating from 1975 to 1978.

ALL COMPLAINTS CONSIDERED IN 2001: 1308 NEW & 177 PENDING FROM 2000

| SUBJECT OF COMPLAINT | DISMISSED ON FIRST REVIEW | STATUS OF INVESTIGATED COMPLAINTS | | | | | | TOTALS |
|----------------------------------|---------------------------|-----------------------------------|-----------|---------------------|----------|---------|---------|--------|
| | | PENDING | DISMISSED | DISMISSAL & CAUTION | RESIGNED | CLOSED* | ACTION* | |
| <i>INCORRECT RULING</i> | 487 | | | | | | | 487 |
| <i>NON-JUDGES</i> | 183 | | | | | | | 183 |
| <i>DEMEANOR</i> | 138 | 49 | 30 | 9 | 4 | 0 | 11 | 240 |
| <i>DELAYS</i> | 44 | 9 | 1 | 2 | 0 | 0 | 0 | 56 |
| <i>CONFLICT OF INTEREST</i> | 23 | 19 | 6 | 4 | 0 | 1 | 3 | 56 |
| <i>BIAS</i> | 74 | 11 | 8 | 3 | 1 | 0 | 2 | 99 |
| <i>CORRUPTION</i> | 10 | 10 | 3 | 0 | 1 | 1 | 0 | 25 |
| <i>INTOXICATION</i> | 2 | 1 | 0 | 0 | 1 | 0 | 0 | 4 |
| <i>DISABILITY/QUALIFICATIONS</i> | 2 | 2 | 1 | 0 | 0 | 0 | 0 | 5 |
| <i>POLITICAL ACTIVITY</i> | 18 | 19 | 10 | 9 | 0 | 0 | 4 | 60 |
| <i>FINANCES/RECORDS/TRAINING</i> | 5 | 27 | 8 | 8 | 5 | 1 | 1 | 55 |
| <i>TICKET-FIXING</i> | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 3 |
| <i>ASSERTION OF INFLUENCE</i> | 2 | 8 | 4 | 2 | 0 | 0 | 4 | 20 |
| <i>VIOLATION OF RIGHTS</i> | 109 | 31 | 23 | 8 | 5 | 1 | 10 | 188 |
| <i>MISCELLANEOUS</i> | 3 | 0 | 0 | 0 | 0 | 0 | 1 | 4 |
| TOTALS | 1100 | 188 | 94 | 46 | 17 | 4 | 36 | 1485 |

*Matters are “closed” upon vacancy of office for reasons other than resignation. “Action” includes determinations of admonition, censure and removal from office by the Commission since its inception in 1978, as well as suspensions and disciplinary proceedings commenced in the courts by the temporary and former commissions on judicial conduct operating from 1975 to 1978.

ALL COMPLAINTS CONSIDERED SINCE THE COMMISSION'S INCEPTION IN 1975

| SUBJECT OF COMPLAINT | DISMISSED ON FIRST REVIEW | STATUS OF INVESTIGATED COMPLAINTS | | | | | | TOTALS |
|----------------------------------|---------------------------|-----------------------------------|-----------|---------------------|----------|---------|---------|--------|
| | | PENDING | DISMISSED | DISMISSAL & CAUTION | RESIGNED | CLOSED* | ACTION* | |
| <i>INCORRECT RULING</i> | 10,563 | | | | | | | 10,563 |
| <i>NON-JUDGES</i> | 3,152 | | | | | | | 3,152 |
| <i>DEMEANOR</i> | 2,306 | 49 | 821 | 237 | 83 | 78 | 184 | 3,758 |
| <i>DELAYS</i> | 1,006 | 9 | 93 | 48 | 15 | 12 | 16 | 1,199 |
| <i>CONFLICT OF INTEREST</i> | 479 | 19 | 346 | 124 | 43 | 20 | 101 | 1,132 |
| <i>BIAS</i> | 1,442 | 11 | 200 | 43 | 24 | 14 | 24 | 1,758 |
| <i>CORRUPTION</i> | 327 | 10 | 83 | 8 | 30 | 13 | 20 | 491 |
| <i>INTOXICATION</i> | 42 | 1 | 32 | 7 | 8 | 3 | 19 | 112 |
| <i>DISABILITY/QUALIFICATIONS</i> | 45 | 2 | 29 | 2 | 16 | 10 | 6 | 110 |
| <i>POLITICAL ACTIVITY</i> | 221 | 19 | 195 | 135 | 10 | 15 | 27 | 622 |
| <i>FINANCES/RECORDS/TRAINING</i> | 197 | 27 | 214 | 138 | 103 | 78 | 86 | 843 |
| <i>TICKET-FIXING</i> | 22 | 2 | 71 | 156 | 38 | 61 | 159 | 509 |
| <i>ASSERTION OF INFLUENCE</i> | 131 | 8 | 106 | 55 | 9 | 7 | 41 | 357 |
| <i>VIOLATION OF RIGHTS</i> | 2,055 | 31 | 272 | 132 | 55 | 28 | 44 | 2,617 |
| <i>MISCELLANEOUS</i> | 668 | 0 | 225 | 78 | 25 | 38 | 57 | 1,091 |
| TOTALS | 22,656 | 188 | 2,687 | 1,163 | 459 | 377 | 784 | 28,314 |

*Matters are "closed" upon vacancy of office for reasons other than resignation. "Action" includes determinations of admonition, censure and removal from office by the Commission since its inception in 1978, as well as suspensions and disciplinary proceedings commenced in the courts by the temporary and former commissions on judicial conduct operating from 1975 to 1978.