STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JAMES P. GILPATRIC,

a Judge of the Kingston City Court,
Ulster County.

DETERMINATION

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THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Nina M. Moore
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Thea Hoeth, Of Counsel) for the Commission

James E. Long for the Respondent

The respondent, James P. Gilpatric, a Judge of the Kingston City Court, Ulster County, was served with a Formal Written Complaint dated August 8, 2008, containing one charge. The Formal Written Complaint alleged that respondent failed to

render decisions in a timely manner in 47 cases despite having received a confidential cautionary letter from the Commission in February 2004 for having delayed in rendering decisions.

On September 8, 2008, respondent filed an Answer and a motion to dismiss the Formal Written Complaint on the ground that, pursuant to *Matter of Greenfield*, 76 NY2d 293, 297 (1990), delayed decisions did not constitute misconduct absent certain aggravating factors not present in the instant case (namely, where the judge "defied administrative directives or has attempted to subvert the system by, for instance, falsifying, concealing or persistently refusing to file records indicating delays"). On October 6, 2008, the Administrator opposed the motion and cross-moved for summary determination. By decision and order dated December 16, 2008, the Commission denied respondent's motion and granted the Administrator's cross-motion.

After written and oral argument, the Commission rendered a determination dated June 5, 2009, sustaining the charge and determining that respondent should be admonished.

Pursuant to Section 44, subdivision 7, of the Judiciary Law, respondent requested review of the Commission's determination by the Court of Appeals. On December 15, 2009, after written and oral argument, the Court held that the *Greenfield* doctrine was "not workable" and that, notwithstanding the absence of the specific aggravating factors articulated in *Greenfield*, formal discipline could be appropriate for "delays [that] are lengthy and without valid excuse." *Matter of Gilpatric*, 13 NY3d 586,

590 (2009). Noting that the summary proceedings in this matter did not present a sufficient factual record for the Court to determine the appropriateness of an admonition, the Court remitted the matter to the Commission for further proceedings.

On April 7, 2010, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, waiving further submissions and oral argument and recommending that respondent be admonished.

On April 15, 2010, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent is a Justice of the Supreme Court, Third Judicial District, having been elected in November 2009 to a 14-year term that commenced on January 1, 2010.

2. From 1994 through 2009 respondent served as a Judge of the Kingston City Court. Until April 1, 2007, respondent's position as a City Court judge was part-time, with a judicial salary of $54,400 per year. From April 1, 2007, until January 1, 2010, respondent was a full-time judge of the City Court, with a judicial salary of $108,800 per year.

3. Respondent was admitted to the practice of law in New York in 1977. While a part-time judge of the Kingston City Court, respondent maintained a private law practice. Upon becoming a full-time judge, respondent closed his private law

practice.

4. On February 5, 2004, the Commission issued a confidential letter of dismissal and caution to respondent for failing to render decisions in a timely manner in two cases and failing to report one delayed case to his administrative judge as required by the Rules of the Chief Judge. The letter cautioned respondent that he must "dispose of all judicial matters promptly, efficiently and fairly." The Commission also advised respondent that the letter "may be used in a future disciplinary proceeding based on a failure to adhere to [its] terms" and that the Commission "may also consider the letter... in determining sanction in any future disciplinary proceeding, in the event formal charges are sustained and misconduct is established."

5. Respondent recognizes that the letter of dismissal and caution should have prompted him to render future decisions in a more timely manner.

6. Notwithstanding this caution, from July 2004 to March 2008, in 26 matters as set forth on Schedule A annexed to the Agreed Statement of Facts, respondent failed to render decisions in a timely manner, either within 30 days of final submission as required by Section 1304 of the Uniform City Court Act or within 60 days of final submission as required by Section 1001 of the Uniform City Court Act and Section 4213(c) of the Civil Practice Law and Rules.

7. Not counting the first 30 or 60 days after final submission, as the case may be, respondent's delays in rendering decisions in these 26 cases ranged from 136 days (over four months) to 935 days (over two and a half years). In ten of the cases,

respondent delayed his decisions more than 240 days (eight months) beyond the 30 days authorized by Section 1304 of the Uniform City Court Act.

8. Of the 26 delayed matters, 22 were small claims actions awaiting decisions, three were summary proceedings awaiting decisions, and one was a motion in a civil case. The delayed cases did not involve particularly complex legal or factual issues. Most were typical small claims matters involving debt, damage or breach of contract claims between two parties, such as a landlord and tenant, contractor and client, or vendor and client. For example:

A. In *Velez v. Birchwood Village*, respondent delayed more than eleven months before deciding whether the defendant was entitled to $450 in attorney's fees.

B. In *Glass v. Krakle, LLC*, respondent took eight months to decide whether a tenant was entitled to the return of her $800 security deposit.

C. In *Riviello v. Time Out Hair Salon*, respondent took nine months to decide a customer's action to recover $90 from a hair salon for a "botched color job."

D. In *Rose v. Lockwood*, respondent took seven months to decide a small claims matter in which the claimant sought reimbursement for a $1,900 loan he had made to his stepdaughter, who admitted accepting the loan.

9. Respondent's decisions in the 26 matters were generally from two to three pages in length, contained summaries of the claims and the evidence and at most contained a very brief discussion of any legal issues, often without citation to any legal authority.

10. In four cases, litigants or their attorneys wrote to respondent inquiring about the delayed decisions, as set forth below.

A. Two months after *Fabrico v. Eaton*, a small claims action, was fully submitted on May 10, 2006, the defendant's attorney sent respondent a letter dated July 10, 2006, inquiring about the delayed decision. Respondent did not reply to the letter. Without excuse or explanation for the delay, respondent issued a decision on February 2, 2007, almost seven months after that letter was sent and nearly eight months (238 days) beyond the statutory time frame.

B. Five months after *Nace v. Klein*, a small claims action, was fully submitted on February 23, 2007, the claimant's attorney sent respondent a letter dated July 23, 2007, inquiring about the delayed decision. Respondent did not reply to the letter. Without excuse or explanation for the delay, respondent issued a decision on October 30, 2007, three months after that letter was sent and seven months (219 days) beyond the statutory time frame.

C. Nearly one year after *Rosenbaum v. Miller* was fully submitted on March 9, 2007, the claimant's attorney sent respondent a letter dated February 18, 2008, inquiring about the delayed decision. Without excuse or explanation for the delay, respondent issued a decision on February 26, 2008, more than ten months (324 days) beyond the statutory time frame.

D. More than six months after *Riviello v. Time Out Hair Salon*, a small claims action, was fully submitted on February 3, 2006, the claimant sent respondent a

letter dated August 14, 2006, inquiring about the delayed decision. Respondent did not reply to the letter. Without excuse or explanation for the delay, respondent issued a decision on November 3, 2006, eight months (243 days) beyond the statutory time frame, after receiving two letters from his administrative judge, Supreme Court Justice George B. Ceresia, Jr., inquiring about the case (*infra* par. 11[B]).

11. In two cases, Administrative Judge Ceresia communicated with respondent about delayed decisions, as set forth below.

A. Judge Ceresia sent a letter to respondent on June 22, 2005, inquiring about the status of *Morales v. Lopez*, which was fully submitted on November 5, 2004. Judge Ceresia enclosed a letter from the plaintiff, who requested that he intervene on her behalf. Respondent did not reply to Judge Ceresia, who sent a second letter to respondent on August 1, 2005, asking for a response "within one week." Respondent replied on August 10, 2005, stating that he had been out of town assisting his wife on a business trip. On the same date, respondent issued a decision in *Morales*, 248 days (eight months) later than required by Section 1304 of the Uniform City Court Act.

B. Judge Ceresia sent a letter to respondent on September 7, 2006, inquiring about the status of *Riviello v. Time Out Hair Salon*, which was fully submitted on February 3, 2006. Judge Ceresia enclosed a letter from the plaintiff, who stated that she had written to respondent "pleading for a decision." Respondent did not reply, prompting Judge Ceresia to send a second letter to respondent on October 2, 2006, requesting that he respond "immediately." Again respondent did not reply. A month

later, on November 3, 2006, without excuse or explanation for the delay, respondent issued a decision.

12. During the time periods set forth on Schedule A (July 2004 through March 2008), respondent was also engaged in the private practice of law (up to April 2007) and in two campaigns for election to public office. In 2004 respondent sought his party's nomination for Supreme Court Justice, and in 2007 respondent ran for Kingston City Court Judge. Respondent recognizes that neither the obligations of his law practice nor his political activity was an excuse for failing to render decisions in a timely manner and that pursuant to Section 100.3(A) of the Rules Governing Judicial Conduct ("Rules"), the judicial duties of a judge take precedence over all the judge's other activities.

13. Respondent continued to delay issuing decisions in cases even after taking the bench full-time on April 1, 2007. As of that date, five of the cases on Schedule A were pending and already late. Litigants in three of those cases waited for periods of seven or eight months, until October and November 2007, for decisions in their cases. The litigants in *Tripp v. Meehan* waited until February 2008, 13 months after the decision was due.

14. Respondent also delayed unduly in deciding a case that was fully submitted to him after he became a full-time judge. He issued a decision in *Robles v. Anson*, a small claims case, 258 days (more than eight months) beyond the statutory time frame.

Mitigating Factors

15. Respondent reported all delayed matters on his quarterly reports to his administrative judge as required by the Rules of the Chief Judge (22 NYCRR §4.1).

16. There is no indication that respondent attempted to conceal the delays or to subvert the efforts of court administrators to monitor the delayed matters.

17. In the spring of 2006, while a part-time judge, respondent assumed additional adjudicative responsibilities by instituting a domestic violence court. Nine of the delays for which he was responsible pre-dated his assumption of that assignment.

18. Respondent now recognizes and acknowledges that "the judicial duties of a judge take precedence over all the judge's other activities" (Rules, §100.3[A]) and that whether serving part-time or full-time, he was obliged to perform his judicial duties diligently and to establish procedures and priorities to ensure that decisions are not unduly delayed. During the time respondent was receiving a salary of $54,400 per year for serving as a half-time judge, he continued to engage in the private practice of law, as permitted by the Rules. On seven of the eight quarterly reports of pending matters that respondent submitted to his administrative judge in 2005 and 2006, respondent stated that his delays were due to "insufficient time." Respondent concedes that because of his private practice of law, he was not devoting the time necessary to reduce his backlog of undecided cases.

Withdrawal of Specifications

19. After careful consideration of the Court of Appeals' decision in

Matter of Gilpatric, *supra*, and further examination of the facts in light of that decision, the Administrator withdraws 21 specifications from the Formal Written Complaint.[1] Although respondent delayed rendering decision in each of these 21 cases beyond the time required by statutory mandates, the Administrator notes that the delays in these 21 matters ranged between 60 and 120 days and that respondent was contemporaneously rendering decisions in other matters and was otherwise attending to a busy calendar.

20. The Administrator does not suggest that decisional delays of less than 120 days can never be misconduct or that there is any fixed numerical standard that establishes when delay rises to the level of misconduct. Each case must be examined individually. As to these 21 cases of lesser delay, the Administrator respectfully submits that withdrawal is appropriate.

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) and 100.3(B)(7) of the Rules and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions, and respondent's misconduct is

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[1] *Little v. Herdman, McCausland v. Sands and Rizzo, Hanowitz v. Troeger, Peppers v. Mehl, Mathis v. Olen, McMahon v. Wilkie, Rogers v. Ellenridge, Horowitz v. Chernick, Bohan v. Koltz, Miller v. Terpening, Cammarata v. Malik, Clarke v. White, Dinoris v. Vandemark, Puffer v. Gokey, Goralewski v. Brewer, Goralewski v. Kingston Pontiac, Hamberger v. Winkler, Kapilevich v. E3, Inc., Boyd v. Oakley, Ulster Credit Union v. Baker* and *Fairjohn Realty v. IPE.*

established.

Within 18 months of receiving a confidential letter of dismissal and caution from the Commission for failing to issue decisions in a timely manner, respondent developed a sizeable backlog of delayed cases that persisted over several years. Respondent's failure to render timely decisions in 26 cases over a period of more than three and a half years constitutes a pattern of "persistent or deliberate neglect of his judicial duties" (*Matter of Greenfield*, 76 NY2d 293, 295 [1990]), which is aggravated by numerous factors, including that: (1) respondent failed to heed the Commission's previous cautionary warning about such delays; (2) respondent received numerous letters from litigants or their attorneys inquiring about the delayed decisions; (3) in three cases in which litigants or their attorneys had written to him about the delays, respondent did not issue a decision until several months after receiving such letters; (4) in two cases, respondent received letters from his administrative judge inquiring about the delayed decisions; (5) in each of those two cases, respondent did not respond to his administrative judge's inquiry or issue a decision promptly, which necessitated a follow-up letter from the administrative judge; and (6) after his administrative judge's intervention, respondent did not eliminate his backlog of delayed cases and continued to have delays in subsequent matters. These persistent delays evidence deliberate neglect that warrants public discipline.

Respondent's delays were contrary to ethical standards and statutory mandates. A judge is required to "dispose of all judicial matters promptly, efficiently and

fairly" (Rules, §100.3[B][7]). Contrary to the time limits imposed by law (30 days for small claims and 60 days for motions[2]), respondent delayed decisions for periods ranging from more than four months to (in two cases) more than a year. In *Quick v. Viviani*, a civil case consolidated with small claims, respondent's decision was delayed for over two and a half years.

We view such delays as significant misconduct because of the adverse consequences on individual litigants, who are deprived of the opportunity to have their claims resolved in a timely manner, and on public confidence in the administration of justice. Twenty-two of the delayed matters were small claims actions, which generally involve relatively simple issues and do not require a lengthy analysis. The "informal and simplified" procedures for small claims are intended to provide litigants with an efficient and just resolution to their legal disputes (Uniform City Court Act §1804). This goal is thwarted and litigants are adversely affected when decisions are unduly delayed. Litigants in such matters, who are often unrepresented and are hoping to receive a prompt adjudication of their claims, have little recourse when months pass without a decision; understandably, they may be concerned that if they complain about the delay, they risk antagonizing the judge who will be deciding their case.

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[2] Uniform City Court Act §1304 ("Time for rendering judgment or decision. If a jury trial is not demanded or directed as provided in §1303, the court must render judgment within thirty days from the time when the case is submitted for that purpose, except when further time is given by the consent of the parties"); CPLR §4213(c) ("Time for decision. The decision of the court shall be rendered within sixty days after the cause or matter is finally submitted or within sixty days after a motion under rule 4403, whichever is later, unless the parties agree to extend the time").

The cases depicted in this record offer a cross-section of the kinds of disputes that the "informal and simplified" procedures of small claims are intended to resolve expeditiously. In cases where the law required a decision to be issued within 30 days, a man claiming he was owed $1,900 by a relative had to wait seven months for a judgment; a tenant seeking the return of her $800 security deposit had to wait eight months for respondent's decision; and respondent took nine months to decide a customer's claim seeking $90 from a hair salon. To the litigants who filed these claims, the sums at issue were significant and the delays onerous. Moreover, for some litigants such cases may represent their only personal involvement with the courts, and an unduly delayed resolution of their dispute would necessarily have the effect of leaving them with the impression that our judicial system is inefficient and insensitive to their concerns.

Here, the record indicates that in several cases litigants or their attorneys who finally wrote to respondent inquiring about the delayed decisions did not receive any response from the court and still had to wait months for a decision. In two cases, litigants in delayed matters were constrained to contact respondent's administrative judge, who wrote to respondent; yet, even after hearing from his administrative judge, respondent did not issue a decision promptly or even reply to the administrative judge's letter, and a follow-up letter from the administrative judge was required before respondent finally issued a decision. Significantly, the inquiries from his administrative judge, which occurred in the summer of 2005 and in the fall of 2006, had no apparent effect in inducing respondent to issue prompt decisions in other delayed matters or to avoid delays

in the future.

In considering this record of delays, we find of particular significance respondent's failure to heed a Commission letter of dismissal and caution issued in February 2004, which addressed respondent's failure to render timely decisions in two cases as well as his failure to report a delayed case as required on his administrative reports. The Commission's directive, which warned that the letter "may be used in a future disciplinary proceeding based on a failure to adhere to [its] terms," reminded respondent of his obligation to "dispose of all judicial matters promptly, efficiently and fairly." Respondent has acknowledged that this cautionary letter should have prompted him to issue decisions in a more timely manner. A judge's disregard of a prior warning in a letter of dismissal and caution that his or her conduct was contrary to the Rules is a significant aggravating factor in disciplinary proceedings. *Matter of Cerbone*, 2 NY3d 479 (2004); *Matter of Assini*, 94 NY2d 26, 30-31 (1999) ("[r]ather than scrupulously following the letter and spirit of the Commission's caution, [the judge] continued the [prohibited activity]"); *Matter of Robert*, 89 NY2d 745, 747 (1997).

Despite this cautionary letter, despite receiving numerous inquiries from litigants about delays and despite the involvement of his administrative judge, respondent continued to have persistent delays. Therefore, based on the particular facts presented here, we conclude that respondent's conduct was contrary to the ethical rules and warrants a disciplinary sanction.

In making this determination, we are mindful of *Matter of Gilpatric*, 13

NY3d 586, 589-90 (2009), in which the Court of Appeals, reviewing the prior determination filed in this case, held that while "a judge's failure to promptly dispose of pending matters is primarily a matter for administrative correction," formal discipline could be appropriate "where the delays are lengthy and without valid excuse." In that decision, the Court expanded the parameters previously imposed on the Commission's jurisdiction over decisional delays by *Matter of Greenfield*, *supra*, where the Court had rejected a disciplinary sanction and dismissed a charge that a Supreme Court justice had engaged in misconduct by failing to render timely decisions in eight civil cases. In *Greenfield*, the Court identified specific aggravating factors as a jurisdictional predicate for a finding of misconduct based on delays in issuing decisions, namely, a judge's "defi[ance of] administrative directives" or "attempt[ ] to subvert the system by, for instance, falsifying, concealing or persistently refusing to file records indicating delays" (*supra*, 76 NY2d at 297). In *Gilpatric*, the Court modified those jurisdictional boundaries in light of the facts presented therein, stating:

> [A]fter nearly twenty years of experience with *Greenfield*, we think it is not workable to exclude completely the possibility of more formal discipline for such behavior, in cases where the delays are lengthy and without valid excuse ...We now hold that lengthy, inexcusable delays may also be the subject of disciplinary action, particularly when a judge fails to perform judicial duties despite repeated administrative efforts to assist the judge and his or her conduct demonstrates an unwillingness or inability to discharge those duties. (*Matter of Gilpatric*, *supra*, 13 NY3d at 589-90)

Finding the factual record insufficient for the Court to determine the appropriateness of the sanction, the Court remitted the matter for further proceedings in which "the context

in which the delays occurred [would] be fully explored," especially the judge's total caseload and other responsibilities, the involvement of administrative personnel and the judge's response to administrative intervention (*Id.* at 590). As the Court stated:

> Statistics alone are insufficient to support a finding of misconduct; disciplinary action must be based on a record demonstrating a judge's persistent lack of action in response to administrative recommendations or warnings (*Id.*).

In light of these guidelines, we have carefully considered the facts presented in this case. Based on the number of delayed decisions as well as the factors noted above (*i.e.*, respondent's failure to heed the Commission's cautionary warning, his failure to issue a decision promptly even after litigants had contacted his court about the delays, his failure in two cases to issue a decision promptly after receiving a letter from his administrative judge or even to respond to the administrative judge's inquiry, and his inability to eliminate his persistent backlog of delayed cases or to avoid further delays after his administrative judge's intervention), we find that respondent's behavior falls within the parameters of misconduct established in *Greenfield* and *Gilpatric*.

In *Greenfield*, which involved delayed decisions in eight cases, the Court found that there was "no persistent or deliberate neglect" of judicial duties and that "[i]n the context of [the judge's] over-all performance these were isolated incidents" (*supra*, 76 NY2d at 295, 299). In contrast, the instant case involves a sustained pattern of delayed decisions in 26 cases over a period of more than three and a half years. Those delays were neither isolated nor inadvertent. There is no claim that respondent was unaware of the delayed matters; indeed, he reported all of the delayed cases, as he was required to do,

on his quarterly reports to his administrative judge. Yet, notwithstanding that he had identified the delayed cases, respondent permitted numerous cases to linger for an additional three-month reporting period – and, in some cases, for several such periods – before finally disposing of the matters.

As respondent has acknowledged, neither the obligations of his law practice nor his political activity during two campaigns for election to judicial office excuses the delays depicted in this record. The judicial duties of a judge take precedence over all the judge's other activities (Rules, §100.3[A]). Every judge, whether part-time or full-time, is obligated to perform his or her duties appropriately with the resources provided and to establish priorities to ensure that decisions are not unduly delayed.

In considering an appropriate sanction, we note that respondent has acknowledged his misconduct and concedes that the Commission's letter of dismissal and caution should have prompted him to issue decisions in a more timely manner. We also note that respondent reported all the delayed matters as required on his quarterly reports. Thus, there is no indication that he attempted to conceal the delays or to subvert the efforts of court administrators to monitor the delayed matters. *Compare*, *Matter of Washington*, 100 NY2d 873 (2003). It has also been stipulated that during this period respondent assumed additional adjudicative responsibilities.

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

Judge Klonick, Mr. Coffey, Judge Acosta, Mr. Emery, Mr. Harding, Ms. Hubbard, Ms. Moore and Judge Ruderman concur in the above determination.

Mr. Belluck concurs in the result.

Judge Peters did not participate.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: April 27, 2010

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct