NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

ANNUAL REPORT

2014

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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*Denotes staff who left in 2013

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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March 1, 2014

To Governor Andrew M. Cuomo,
Chief Judge Jonathan Lippman, 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, 2013.

Respectfully submitted,

Robert H. Tembeckjian, Administrator
On Behalf of the Commission

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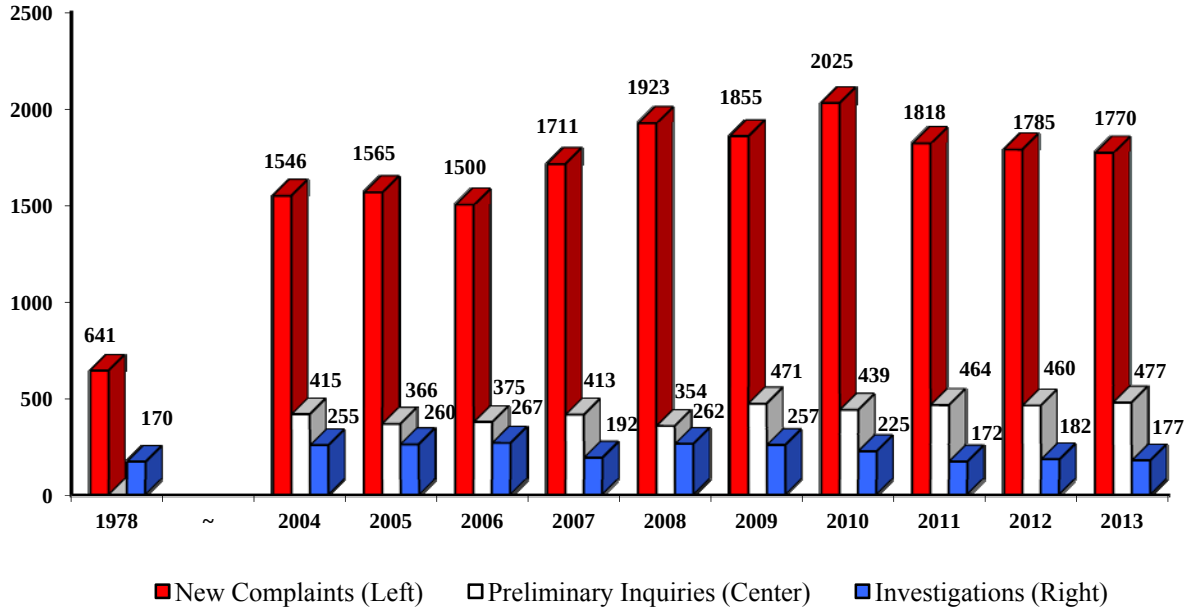
INTRODUCTION TO THE 2014 ANNUAL REPORT

The New York State Commission on Judicial Conduct is the independent agency designated by the State Constitution to review complaints of misconduct against judges and justices of the State Unified Court System and, where appropriate, render public disciplinary determinations of admonition, censure or removal from office. There are approximately 3,300 judges and justices in the system.

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 should they commit misconduct. The text of the Rules Governing Judicial Conduct, promulgated by the Chief Administrator of the Courts on approval of the Court of Appeals, is annexed.

The number of complaints received annually by the Commission in the past 10 years has substantially increased compared to the first two decades of the Commission's existence. Since 2004, the Commission has averaged 1,750 new complaints per year, 424 preliminary inquiries and 224 investigations. Last year, 1,770 new complaints were received. Every complaint was reviewed by investigative and legal staff, and a report was prepared for each complaint. All such complaints and reports were reviewed by the entire Commission, which then voted on which complaints merited opening full-scale investigations. As to these new complaints, there were 477 preliminary reviews and inquiries and 177 investigations.

This report covers Commission activity in the year 2013.



COMPLAINTS, INQUIRIES & INVESTIGATIONS IN THE LAST TEN YEARS

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ACTION TAKEN IN 2013

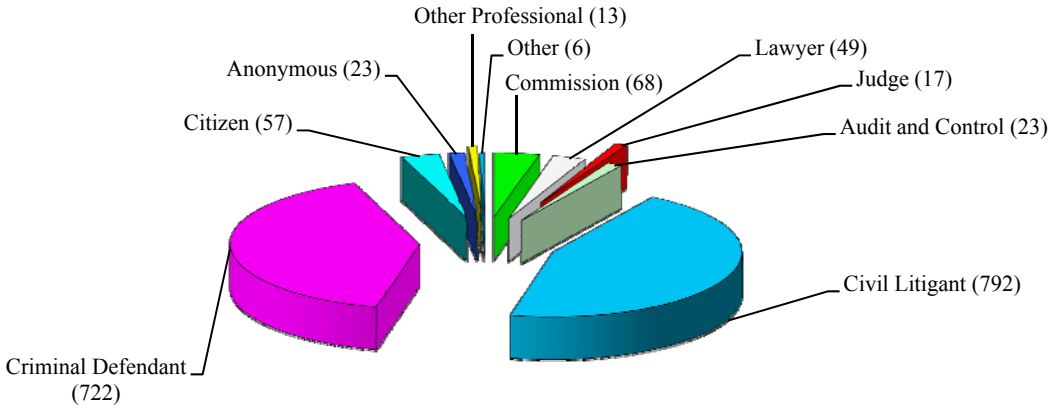
Following are summaries of the Commission's actions in 2013, including accounts of all public determinations, summaries of non-public decisions, and various numerical breakdowns of complaints, investigations and other dispositions.

COMPLAINTS RECEIVED

The Commission received 1,770 new complaints in 2013. All complaints are summarized and analyzed by staff and reviewed by the Commission, which votes whether to investigate.

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 non-judges, federal judges, administrative law judges, judicial hearing officers, referees 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 intervene in a pending case, or reverse or remand trial court decisions.

A breakdown of the sources of complaints received by the Commission in 2013 appears in the following chart.



COMPLAINT SOURCES IN 2013

PRELIMINARY INQUIRIES AND INVESTIGATIONS

The Commission's Operating Procedures and Rules authorize "preliminary analysis and clarification" and "preliminary fact-finding activities" by staff upon receipt of new complaints, to aid the Commission in determining whether an investigation is warranted. In 2013, staff conducted 477 such preliminary inquiries, requiring such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts.

In 177 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.

During 2013, in addition to the 177 new investigations, there were 183 investigations pending from the previous year. The Commission disposed of the combined total of 360 investigations as follows:

- 113 complaints were dismissed outright.
- 17 complaints involving 17 different judges were dismissed with letters of dismissal and caution.
- 12 complaints involving 8 different judges were closed upon the judge's resignation.
- 11 complaints involving 10 different judges were closed upon vacancy of office due to reasons other than resignation, such as the expiration of the judge's term.
- 22 complaints involving 17 different judges resulted in formal charges being authorized.
- 185 investigations were pending as of December 31, 2013.

FORMAL WRITTEN COMPLAINTS

As of January 1, 2013, there were pending Formal Written Complaints in 23 matters involving 14 different judges. In 2013, Formal Written Complaints were authorized in 22 additional matters involving 17 different judges. Of the combined total of 45 matters involving 31 judges, the Commission acted as follows:

- 16 matters involving 12 different judges resulted in formal discipline (admonition, censure or removal from office).
- One matter involving one judge resulted in a letter of caution after formal disciplinary proceedings that resulted in a finding of misconduct.
- Eight matters involving five different judges were closed upon the judge's resignation from office, all five resignations becoming public by stipulation.
- Three matters involving two different judges were closed due to the expiration of the judge's term.
- In one matter involving one judge, the Formal Written Complaint was withdrawn and the complaint was dismissed.
- 16 matters involving 10 different judges were pending as of December 31, 2013.

SUMMARY OF ALL 2013 DISPOSITIONS

The Commission's investigations, hearings and dispositions in the past year involved judges of various courts, as indicated in the following ten tables.

TABLE 1: TOWN & VILLAGE JUSTICES – 2,115,* ALL PART-TIME

	Lawyers	*Non-Lawyers*	*Total*
Complaints Received	115	146	261
Complaints Investigated	37	65	102
Judges Cautioned After Investigation	3	7	10
Formal Written Complaints Authorized	5	8	13
Judges Cautioned After Formal Complaint	1	0	1
Judges Publicly Disciplined	2	5	7
Judges Vacating Office by Public Stipulation	1	3	4
Formal Complaints Dismissed or Closed	1	0	1

NOTE: Approximately 750 town and village justices are lawyers.

*Refers to the approximate number of such judges in the State Unified Court System.

TABLE 2: CITY COURT JUDGES – 385, ALL LAWYERS

	Part-Time	*Full-Time*	*Total*
Complaints Received	42	273	315
Complaints Investigated	2	13	15
Judges Cautioned After Investigation	1	0	1
Formal Written Complaints Authorized	0	1	1
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	0	1	1
Judges Vacating Office by Public Stipulation	0	1	1
Formal Complaints Dismissed or Closed	0	0	0

NOTE: Approximately 60 City Court judges serve part-time.

TABLE 3: COUNTY COURT JUDGES – 127, FULL-TIME, ALL LAWYERS*

Complaints Received	203
Complaints Investigated	8
Judges Cautioned After Investigation	1
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

* Includes seven who also serve as Surrogates, five who also serve as Family Court judges, and 37 who also serve as both Surrogates and Family Court judges.

TABLE 4: FAMILY COURT JUDGES – 127, FULL-TIME, ALL LAWYERS

Complaints Received	174
Complaints Investigated	11
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 5: SURROGATES – 76, FULL-TIME, ALL LAWYERS

Complaints Received	30
Complaints Investigated	6
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	1
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 6: DISTRICT COURT JUDGES – 49, FULL-TIME, ALL LAWYERS

Complaints Received	23
Complaints Investigated	0
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	1
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 7: COURT OF CLAIMS JUDGES – 78, FULL-TIME, ALL LAWYERS

Complaints Received	59
Complaints Investigated	1
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 8: SUPREME COURT JUSTICES – 296, FULL-TIME, ALL LAWYERS*

Complaints Received	310
Complaints Investigated	32
Judges Cautioned After Investigation	5
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	1
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	1

* Includes 14 who serve as justices of the Appellate Term.

TABLE 9: COURT OF APPEALS JUDGES – 7, FULL-TIME, ALL LAWYERS; APPELLATE DIVISION JUSTICES – 46, FULL-TIME, ALL LAWYERS

Complaints Received	82
Complaints Investigated	2
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	1
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 10: NON-JUDGES AND OTHERS NOT WITHIN THE COMMISSION'S JURISDICTION*

Complaints Received	313

* 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, 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, hearings 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 2013. The actual texts are appended to this Report in Appendix F.

OVERVIEW OF 2013 DETERMINATIONS

The Commission rendered 12 formal disciplinary determinations in 2013: two removals, five censures and five admonitions. In addition, five matters were disposed of by stipulation made public by agreement of the parties. Eight of the seventeen respondents were non-lawyer trained judges and nine were lawyers. Eleven of the respondents were town or village justices and six were judges of higher courts.

DETERMINATIONS OF REMOVAL

The Commission completed two formal proceedings in 2013 that resulted in a determination of removal. The cases are summarized below and the full text of the determinations can be found in Appendix F.

Matter of Glen R. George

On May 1, 2013, the Commission determined that Glen R. George, a Justice of the Middletown Town Court, Delaware County, should be removed from office for two acts of misconduct: dismissing a ticket for a seat belt violation issued to his friend and former employer, in the absence of the prosecutor and notwithstanding a prior warning that he not preside over matters involving his friend's family, and making improper statements to a prospective litigant in a small claims matter. In its determination the Commission stated that Judge George "engaged in serious misconduct by dismissing a ticket issued to his former employer and long-time friend, contrary to fundamental ethical precepts and procedural rules." Judge George, who is not an attorney, requested review by the Court of Appeals, which accepted the Commission's determination of removal.

Matter of Cathryn M. Doyle

On November 8, 2013, the Commission determined that Cathryn M. Doyle, a Judge of the Surrogate's Court, Albany County, should be removed from office for presiding over matters involving her close friend, her former attorney, and a lawyer who had acted as her campaign manager. In imposing the sanction of removal, the Commission underscored that the misconduct began soon after she was censured by the Commission in 2007 for giving testimony that among

other things was "evasive and deceptive." In its determination the Commission stated: "if not for her disciplinary history, [Judge Doyle] may have had a more credible argument to retain her judgeship." The Commission concluded: "Under the circumstances, we are constrained to view [Judge Doyle's] misconduct with particular severity since, in view of her censure in 2007, she should have been especially sensitive to her ethical obligations, including her duty to avoid even the appearance of impropriety." Judge Doyle requested review by the Court of Appeals and the matter is pending.

DETERMINATIONS OF CENSURE

The Commission completed five formal proceedings in 2013 that resulted in public censure. The cases are summarized below and the full text of the determinations can be found in Appendix F.

Matter of David McAndrews

On June 18, 2013, the Commission determined that David McAndrews, a Judge of the District Court, Nassau County, should be censured for failing to file a mandatory financial disclosure statement in a timely fashion and failing to cooperate with the Commission investigation. Judge McAndrews stipulated that he had "no valid excuse" for his late filing. The Commission stated that the judge's misconduct was "seriously exacerbated by his failure to cooperate with the Commission's inquiry into his dilatory filing." Judge McAndrews did not request review by the Court of Appeals.

Matter of Terrence C. O'Connor

On August 12, 2013, the Commission determined that Terrence C. O'Connor, a Judge of the Civil Court of New York, Queens County, should be censured for continuing to serve as a fiduciary after becoming a full-time judge and for misrepresenting his financial liabilities on four separate applications for fiduciary appointments. For three years after becoming a full-time judge, Judge O'Connor continued to serve as a court-appointed fiduciary in several matters. In addition, on his fiduciary application and three re-application forms which he submitted prior to assuming judicial office, the judge failed to disclose a pending foreclosure action against him regarding his residence, despite a specific question requiring applicants to reveal foreclosure judgments or pending foreclosure proceedings. The Commission found that Judge O'Connor should have made "a diligent effort to be replaced as fiduciary or to conclude the matters expeditiously," and that "ignorance" of the ethical rules is no excuse. Judge O'Connor did not request review by the Court of Appeals.

Matter of Michael A. Torregiano

On August 26, 2013, the Commission determined that Michael A. Torregiano, a Justice of the Avon Town Court, Livingston County, should be censured for conveying the appearance that a disposition in a traffic case was based on favoritism. When the daughter of an Avon Town Board member appeared before the judge for a speeding violation, the judge reduced the charge to a parking violation and imposed a $25 fine. Three years later, at a Town Board meeting, after the Board had decided not to raise his pay, Judge Torregiano told the Board member, in words or substance, "I took care of a ticket for [your] daughter," and "this is the thanks I get." The

Commission concluded that the judge's "poorly chosen words justly deserve a strong public rebuke" and stated that "even if it cannot be proved that the lenient disposition of the Speeding charge was the result of favoritism, [Judge Torregiano's] pointed reference to the case in chastising the defendant's father strongly implied that it was based on favoritism." Judge Torregiano, who is not an attorney, did not request review by the Court of Appeals.

Matter of Mary Brigantti-Hughes

On December 17, 2013, the Commission determined that Mary Brigantti-Hughes, a Justice of the Supreme Court, 12th Judicial District, Bronx County, should be censured for having her staff perform non-work-related personal tasks for her several times a year for several years, such as looking after her young child in chambers or picking the child up from school, and for inviting members of her staff to participate in religious observances and activities, including prayer sessions in her chambers and religious events at her church after regular business hours. The Commission found that the judge's use of her staff for extra-judicial activities was not "*de minimis* and went well beyond the professional courtesies or occasional acts of personal assistance that might ordinarily be provided in emergency situations by subordinates to supervisors, or vice versa." Although Judge Brigantti-Hughes had received permission from the Office of Court Administration to use court facilities during the lunch hour for bible study/prayer group meetings, the Commission found that the judge "violated the letter and spirit" of the advice in that the prayer meetings took place at times other than the lunch hour and at the judge's invitation, and admittedly "were implicitly coercive given her role as judge and employer." Judge Brigantti-Hughes did not request review by the Court of Appeals.

Matter of Thomas J. Newman, Jr.

On December 18, 2013, the Commission determined that Thomas J. Newman, Jr., a Justice of the Sloatsburg Village Court, Rockland County, should be censured for driving after consuming alcohol in excess of the legal limit, which resulted in a minor accident and his conviction for Driving While Ability Impaired. Judge Newman, while under the influence of alcohol, rear-ended another vehicle that was stopped at a traffic light. Upon the arrival of law enforcement officers the judge became combative and uncooperative. At the time of his arrest the judge repeatedly stated that he wanted to die and wanted an officer to shoot him. In its determination the Commission stated that Judge Newman "violated his ethical obligation to respect and comply with the law and endangered public safety by operating a motor vehicle while under the influence of alcohol." In determining the appropriate sanction, the Commission noted that since Judge Newman's arrest over two years earlier, the judge had abstained from alcohol, had undergone counseling and regularly attends Alcoholics Anonymous meetings. The Commission stated that, "we give appropriate weight to the record of these rehabilitative efforts." The Commission also noted that "there is no indication that [the judge] invoked his judicial office during his arrest in an attempt to secure favorable treatment." Judge Newman, who is an attorney, did not request review by the Court of Appeals.

DETERMINATIONS OF ADMONITION

The Commission completed five proceedings in 2013 that resulted in public admonition. The cases are summarized below and the full text of the determinations can be found in Appendix F.

Matter of Joseph Temperato

On March 20, 2013, the Commission determined that Joseph Temperato, a Justice of the Avon Village Court, Livingston County, should be admonished for improperly issuing a warrant of eviction and money judgment, despite being cautioned only one month earlier for similar conduct. The judge's disregard of a Letter of Dismissal and Caution was an aggravating factor in the Commission's determination of the appropriate sanction. In its determination the Commission stated that "while an isolated or inadvertent legal error might not ordinarily rise to the level of judicial misconduct," in this case the judge's error "cannot be overlooked" in view of his receipt of the cautionary letter only a month earlier. Judge Temperato, who is not an attorney, did not request review by the Court of Appeals.

Matter of Nancy E. Smith

On June 19, 2013, the Commission determined that Nancy E. Smith, a Justice of the Appellate Division, Fourth Department, should be admonished for sending an unsolicited letter on behalf of an inmate who was applying for parole. Judge Smith wrote the letter on her judicial stationery to the New York State Division of Parole expressing support for the inmate. The judge, who sent the letter at the request of the inmate's mother (a friend of the judge's relative), had never met the inmate but had corresponded with him. In her letter, to the Parole Board, the judge referred to the inmate as her "friend" and described him as a "good person." The Commission found that describing the inmate as a "friend" was "deceptive and disguises the limited nature of the relationship; by not disclosing those facts and circumstances…the entire letter is misleading." The Commission stated that the judge's actions were "inconsistent with well-established ethical standards prohibiting a judge from lending the prestige of judicial office to advance private interests." Judge Smith did not request review by the Court of Appeals.

Matter of Kenneth J. Marbot

On August 6, 2013, the Commission determined that Kenneth J. Marbot, a Justice of the Pittstown Town Court, Rensselaer County, should be admonished for disposing of a traffic case involving his nephew. Judge Marbot presided over the case involving a speeding ticket issued to the son of his wife's sister. The judge did not disclose the relationship with the defendant. After the defendant pleaded not guilty, the judge sent the matter to the Assistant District Attorney, who made a plea offer reducing the charge to a parking violation. Judge Marbot imposed a $25 fine and ordered the defendant to complete a defensive driving course. The Commission found that the lenient sentence, although recommended by the ADA and notwithstanding the judge's "assertion that the ticket was handled no differently than any similar ticket," conveyed an appearance of favoritism, which "undermines public confidence in the integrity and impartiality of the judiciary." Judge Marbot, who is not an attorney, did not request review by the Court of Appeals.

Matter of Andrew P. Fleming

On September 30, 2013, the Commission determined that Andrew P. Fleming, a Justice of the Hamburg Village Court, Erie County, should be admonished for acting as an attorney for a rape victim and her family notwithstanding that he had presided over prior proceedings in the underlying criminal case. Judge Fleming arraigned the defendant on the felony rape charge. After the judge's court was divested of jurisdiction, the victim's father, with whom the judge was acquainted, asked the judge for information on various legal aspects of the criminal case which was pending in Erie County Supreme Court. In addition to providing information about the justice system and legal procedures, the judge had several additional conversations with the victim's family and spoke to the Assistant District Attorney prosecuting the case. Prior to sentencing the judge contacted the judge presiding over the criminal case concerning alleged harassment of the victim. Judge Fleming also sent a letter on his law firm stationery to a friend and family member of the defendant, noting that he had been retained as counsel for the victim and her family to commence a civil suit and demanded that they "cease and desist" from any further harassment. The Commission found that having arraigned the defendant, Judge Fleming "should have recognized that it was improper for him to represent the victim in any related matters." Judge Fleming did not request review by the Court of Appeals.

Matter of David A. Prince

On December 18, 2013, the Commission determined that David A. Prince, a Justice of the Pomfret Town Court and the Fredonia Village Court, Chautauqua County, should be admonished for his conduct at an arraignment in a domestic violence case, in that he failed to advise the defendant of his right to assigned counsel, made comments that appeared to prejudge the defendant's guilt and made critical comments about the alleged victim upon learning that she wished to drop the charges. In its determination the Commission stated that the judge's conduct "violated basic tenets of fairness in the administration of justice and a judge's obligation to be an exemplar of neutrality and courtesy in court proceedings." Judge Prince, who is not an attorney, did not request review by the Court of Appeals.

OTHER PUBLIC DISPOSITIONS

The Commission concluded five other proceedings in 2013 that resulted in public dispositions upon the judges' resignations. The cases are summarized below and the full text can be found in Appendix F.

Matter of John S.R. Bartlett

On March 14, 2013, pursuant to a stipulation, the Commission discontinued a proceeding involving John S.R. Bartlett, a Justice of the Lebanon Town Court, Madison County, who resigned from office after being charged with failing to make timely reports to the State Comptroller with regard to the collection of fines and penalties as required by law. The judge was also charged with failing to cooperate with the Commission with regard to its investigation of the matters. Judge Bartlett, who is not an attorney, affirmed that he would neither seek nor accept judicial office at any time in the future.

Matter of Thomas E. Ramich

On March 14, 2013, pursuant to a stipulation, the Commission discontinued a proceeding involving Thomas E. Ramich, a Judge of the Elmira City Court, Chemung County, who resigned from office after being charged with: (1) instructing his part-time court attorney to perform personal legal services without compensation and run personal errands; (2) telling a sexually graphic and demeaning joke about a co-judge during an award dinner; (3) requiring defendants to make contributions to local charities as a condition of an Adjournment in Contemplation of Dismissal or Conditional Discharge; and (4) empanelling his daughter as a juror in his court and discussing the case with her prior to sentencing. Judge Ramich had been censured by the Commission in 2002 for, *inter alia,* practicing law while a full-time judge, seeking *ex parte* information from the police, and failing to disqualify himself from a case after an *ex parte* discussion with the defendant's relative. Judge Ramich affirmed that he would neither seek nor accept judicial office in the future.

Matter of James P. Roman

On June 6, 2013, pursuant to a stipulation, the Commission discontinued a proceeding involving James P. Roman, a Justice of the Sullivan Town Court, Madison County, who resigned from office after being served with a Formal Written Complaint alleging that he engaged in misconduct when he publicly and physically confronted a fifteen-year-old boy who was riding his bicycle in his neighborhood, yelled profanities at the boy, took unauthorized possession of and damaged the boy's bicycle, and recommended to a local landlord that he evict a family because of their relationship with the boy. Judge Roman, who is an attorney, affirmed that he would neither seek nor accept judicial office at any time in the future.

Matter of Howard Riley

On August 1, 2013, pursuant to a stipulation, the Commission discontinued a proceeding involving Howard Riley, a Justice of the Harrietstown Town Court, Franklin County, who resigned from office after being charged with: (1) engaging in inappropriate conversations with unrepresented defendants, predominantly Vehicle and Traffic Law violators, at their arraignments and other appearances before him and allowing them to make potentially incriminating statements; (2) dismissing or reducing charges against defendants without notice to or consent of the district attorney, as required by law; (3) making statements that appeared to coerce defendants to enter guilty pleas; and (4) directing a defendant in a small claims action to present his defense first, before the claimant presented his case. Judge Riley, who is not an attorney, affirmed that he would neither seek nor accept judicial office at any time in the future.

Matter of Robert E. Alexander

On October 31, 2013, pursuant to a stipulation, the Commission discontinued a proceeding involving Robert E. Alexander, a Justice of the Pembroke Town Court, and a former Justice of the Corfu Village Court, Genesee County, who resigned from office after being charged, *inter alia,* with: failing to properly supervise his court clerk which resulted in missing court funds, failing to provide receipts for funds received in over 370 traffic cases, and failing to report cases

and remit funds to the State Comptroller in a timely matter. The judge was also charged with routinely granting reductions in traffic cases for the purpose of directing fine revenues to the Corfu Village Court rather than the state treasury, and failing to obtain prior approval by the Chief Administrator of the Courts for the employment of his daughter to serve as court clerk. Judge Alexander, who is not an attorney, affirmed that he would neither seek nor accept judicial office at any time in the future.

OTHER DISMISSED OR CLOSED FORMAL WRITTEN COMPLAINTS

The Commission disposed of three Formal Written Complaints in 2013 without rendering public dispositions. One complaint was 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. Two complaints were closed because the judges' terms had expired.

MATTERS CLOSED UPON RESIGNATION

In 2013, eight judges resigned while under investigation. Five judges resigned while under formal charges by the Commission, pursuant to a public stipulation, and the matters pertaining to these judges were closed. By statute, the Commission may continue an inquiry for 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 2013, the Commission referred 32 matters to other agencies. Twenty-seven matters were referred to the Office of Court Administration, typically dealing with relatively isolated instances of delay, poor record-keeping or other administrative issues. Five matters were referred to attorney grievance committees.

PUBLIC REPORT AND RECOMMENDATIONS

In May 2013, the Commission issued a public Report on the ethical and public policy implications of license plates that identify the owner of a motor vehicle as a judge. The Commission intended for the Report to "generate a serious discussion" of the matter, with the "hope that every judge would weigh the issues carefully when considering whether to opt for judicial license plates."

The Report addressed various pros and cons of judicial license plates and concluded *inter alia* that: displaying a judicial license plate on a personal vehicle does not *per se* violate any ethics rules or create an appearance of impropriety; asserting one's judicial status in order to avoid the consequences of a lawful traffic stop subjects the judge to discipline; a judge should advise family and friends who may use the vehicle not to assert the owner's judicial office if stopped for

a traffic violation; and for security or courthouse parking, alternatives such as dashboard placards should be made available for those judges who prefer them. The Commission concluded that abuse of such placard, such as displaying it when not on official business but to park illegally, may subject the judge to a confidential caution or public discipline.

The Report recommended that the Office of Court Administration and the Judicial Institute put the subject of judicial license plates on the agenda of judicial education and training programs, to facilitate informed decisions on whether to display them.

The full text of the Report can be found on the Commission's website: www.cjc.ny.gov.

LETTERS OF DISMISSAL AND CAUTION

A Letter of Dismissal and Caution contains 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) and (m). They serve as an educational tool and, when warranted, allow the Commission to address a judge's conduct without making the matter public.

In 2013, the Commission issued 17 Letters of Dismissal and Caution and one Letter of Caution. Eleven town or village justices were cautioned, including four who are lawyers. Seven judges of higher courts – all lawyers, as required by law – were cautioned. The caution letters addressed various types of conduct as indicated below.

Assertion of Influence. Four judges were cautioned for lending the prestige of judicial office to advance private interests. One judge utilized his judicial title to promote his private law practice, and another judge invoked his judicial title during a minor out-of-court dispute.

Political Activity. The Rules Governing Judicial Conduct prohibit judges from attending political gatherings, endorsing other candidates, making political contributions or otherwise participating in political activities except for a certain specifically-defined "window period" when they themselves are candidates for elective judicial office. Two judges were cautioned for isolated and relatively minor violations of the applicable rules. For example, one judge made political contributions outside of his "window period."

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. Three judges were cautioned for various conflicts of interest. One part-time judge who presides over criminal cases and who also practices law failed to disclose that his law firm was representing the District Attorney in a civil suit. Another judge improperly presided over a matter in which the complaining witness was a Town Board member who set the judge's salary.

Inappropriate Demeanor. The Rules require every judge to be patient, dignified and courteous to litigants, attorneys and others with whom the judge deals in an official capacity. One judge was cautioned for sending an overtly political email using his judicial email account.

Financial Disclosures. Two judges were cautioned for failing to file a financial disclosure statement with the Ethics Commission for the Unified Court System in a timely manner. Section 211(4) of the Judiciary Law and Section 40.2 of the Rules of the Chief Judge require judges to file an annual financial disclosure statement by May 15th of each succeeding year.

Audit and Control. Two judges were cautioned for failing to file monthly reports and remittances with the State Comptroller in a timely manner. One judge was cautioned for failing to properly supervise the court clerk, which resulted in misappropriated funds.

Delay. One judge was cautioned for excessive delay in rendering decisions in small claims cases, notwithstanding the statutory requirement that a decision in such matters be issued within 30 days. Section 100.3(B)(7) of the Rules Governing Judicial Conduct requires a judge to dispose of all judicial matters promptly, efficiently and fairly.

Violation of Rights. One judge was cautioned for holding court proceedings in his chambers, thus impeding the public's ability to "freely attend and view court proceedings."

Record-Keeping. One judge was cautioned for failing to mechanically record court proceedings as required. Pursuant to Section 30.1 of the Rules of the Chief Judge and Administrative Order 245-08 of the Chief Administrative Judge, all town and village court proceedings must be recorded.

Follow Up on Caution Letters. Should the conduct addressed by a cautionary letter continue or be repeated, the Commission may authorize an investigation on a new complaint, which may lead to formal charges and further disciplinary proceedings. In certain instances, the Commission will authorize a follow-up review of the judge's conduct to assure that promised remedial action was indeed taken. In 1999, the Court of Appeals, in upholding the removal of a 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, a respondent-judge has 30 days to request review of a Commission determination by the Court of Appeals, or the determination becomes final. In 2013, the Court of Appeals upheld the Commission's determination of removal in two cases. Another judge requested review by the Court of Appeals of a Commission determination, and the matter is pending.

Matter of Bryan R. Hedges

On August 17, 2012, the Commission determined that Bryan R. Hedges, a Judge of the Family Court, Onondaga County, should be removed from office for engaging in a sexual encounter in 1972 with his then five-year-old, deaf and communications-challenged niece. Judge Hedges, who had resigned, filed a request for review with the Court of Appeals, asking the Court to reject the Commission's determination that he be removed from office. In a decision dated April 25, 2013, the Court upheld the Commission's findings and issued an Order removing him from the bench. The Court of Appeals found that Judge Hedges "engaged in misconduct warranting removal from office by committing an act of moral turpitude involving a child" (*Matter of Hedges,* 20 NY3d 677, 680 [2013]). The Court noted that although it "is troubling that the petition is based solely on conduct that occurred 40 years ago," and 13 years before Judge Hedges became a judge, "the misconduct alleged is grave by any standard" (*Id.*). The sanction of removal renders a judge ineligible to hold judicial office in the future.

Matter of Glen R. George

On May 1, 2013, the Commission determined that Glen R. George, a Justice of the Middletown Town Court, Delaware County, should be removed from office for dismissing a seat belt ticket issued to his friend and former employer, in the absence of the prosecutor and notwithstanding a prior caution by the Commission that he not preside over matters involving his friend's family. The Commission also found that the judge made improper statements to a prospective litigant in a small claims matter (*supra* at 8).

Judge George filed a request for review with the Court of Appeals, asking the Court to reject the Commission's determination that he be removed from office. In a decision dated December 10, 2013, the Court upheld the Commission's findings and issued an Order removing him from the bench. The Court of Appeals rejected Judge George's argument that though his conduct displayed poor judgment, it was not sufficiently egregious to justify his removal from office. The Court found that while the charge against the judge's friend was relatively minor, the judge's decision to hear the case was no small matter. The Court wrote: "A judge's perception of the nature or seriousness of the subject matter of the litigation has no bearing on the duty to recuse or disclose a relationship with a litigant or attorney when necessary to avoid the appearance of bias or favoritism" (*Matter of George,* 22 NY3d 323, 328 [2013]). The Court noted the judge's prior caution as an aggravating factor.

Matter of Cathryn M. Doyle

On November 8, 2013, the Commission determined that Cathryn M. Doyle, a Judge of the Surrogate's Court, Albany County, should be removed from office for presiding over matters involving her close friend, her personal attorney, and a lawyer who had acted as her campaign manager (*supra* at 8). Judge Doyle filed a request for review with the Court of Appeals, and the matter is pending.

CHALLENGES TO THE COMMISSION'S PROCEDURES

Matter of Piraino v Commission on Judicial Conduct

Salina Town Court Justice Andrew Piraino brought this Article 78 petition seeking an order permanently enjoining the Commission from investigating or adjudicating charges that in over 900 traffic cases he imposed fines and surcharges that exceeded statutory maximums or fell below statutory minimums. Judge Piraino argued that the Commission had no jurisdiction over "non-venal misapplication or misinterpretation of the law."

On February 7, 2011, Onondaga County Supreme Court Justice John Cherundolo signed a temporary order prohibiting the Commission from taking any action in prosecution of the Formal Written Complaint and ordered the matter sealed. On February 18, 2011, the Commission filed an Answer and Memorandum of Law in opposition asserting, *inter alia,* that a writ of prohibition does not lie and that, in any event, the Commission clearly has jurisdiction to adjudicate whether a judge has been "faithful to the law" and has maintained "professional competence in it." *See* Rules Governing Judicial Conduct, 22 NYCRR § 100.3(B)(1).

On April 26, 2011, Justice Cherundolo denied Judge Piraino's application for a writ of prohibition "vacating" the Commission's Formal Written Complaint and dismissed his petition. The trial court found that

> it is unclear whether the petitioner ultimately committed misconduct or violated the canons of judicial ethics. What is clear is that this is a determination to be made by the NYS Commission on Judicial Conduct. Petitioner's imposition of improper fines in over 900 cases certainly warrants a hearing and a full record through which the Commission can reach a decision.

On June 6, 2011, Judge Piraino served a notice of appeal to the Appellate Division, Fourth Department, together with a motion directed to Justice Cherundolo for renewal and reargument.

On June 30, 2011, Justice Cherundolo issued a bench decision reversing his prior ruling, re-instated the stay of the Commission proceeding and implicitly re-sealed the Article 78 proceeding. In a lengthy decision read from the bench, Justice Cherundolo stated that he "did not understand" or "didn't appreciate the facts and the law" until he read local newspaper accounts of his decision and that he needed additional information to decide whether there was "adequate mens rea … to bring the Commission into play here." He also wanted information as to the District Attorney's recommendations in the cases described in the Formal Written Complaint so that he could decide "who might be really at fault" for the fines imposed by Judge Piraino in these cases.

Although Judge Piraino had never requested discovery, Justice Cherundolo directed the parties to confer and to provide the court with, among other things, information regarding: (1) Commission staff's position as to Judge Piraino's *mens rea* in each of the 900 cases listed in the Formal Written Complaint, (2) the recommendation of the District Attorney in all 900 cases, (3) how

many of the 900 defendants were represented by counsel and the position taken by counsel with respect to the fines imposed, (4) whether there is a "computer program in effect" that would prohibit judges from issuing illegal fines, which "would be something easy to make happen," (5) information as to "whether or not there is…an administrative overview in place and if there is how it operates," (6) information regarding whether or how the judge is required to report to OCA and/or DMV and "the responsibility of the persons that they go to to evaluate whether or not they are consistent with … the fine and surcharge guidelines," (7) the Commission's position with respect to the "ability or the obligation" of OCA to "administer or review, evaluate and give feedback to judges who submit the reports that they submit," and (8) a memorandum of law from the Commission regarding "what connotes a judiciary ethics violation and what level of mens rea is necessary before someone can be charged by the Commission."

On December 7, 2011, the Appellate Division granted the Commission's motion for leave to appeal. On November 9, 2012, after briefing and oral argument, the Appellate Division reversed. *Matter of Doe v NYS Commission on Judicial Conduct,* 100 AD3d 1346 (4th Dept 2012). The Appellate Division found that the Commission "has jurisdiction to investigate and discipline [Judge Piraino] for the alleged judicial misconduct," and that "even assuming, arguendo" that Justice Cherundolo properly granted leave to renew and reargue, his decision to reverse his initial order was error. Judge Piraino was not entitled to a writ of prohibition because his right to review by the Court of Appeals of any Commission determination provided an adequate remedy at law. As a result, the Appellate Division reinstated the May 2011 order that dismissed Judge Piraino's petition and unsealed the matter.

On February 12, 2013, the Court of Appeals denied Judge Piraino's motion for leave to appeal on the ground that the order appealed from did not finally determine the proceeding within the meaning of the Constitution. *Matter of Doe v NYS Commission on Judicial Conduct,* 20 NY3d 1030 (2013).

In the Matter of Releasing Records to the NYS Commission on Judicial Conduct, People v Seth Rubenstein

On May 17, 2012, Seth Rubenstein brought an Order to Show Cause seeking to vacate a May 2010 unsealing order signed by Administrative Judge Fern Fisher and to restrain Commission staff from using any "records … or information" obtained pursuant to that order "in any pending investigation." Judge Fisher's order unsealed records in *People v Nora Anderson and Seth Rubenstein,* a criminal case in which Rubenstein and Manhattan Surrogate Nora Anderson were acquitted of two counts of filing a false instrument with the Board of Elections. Rubenstein argued that the Commission was not entitled to an unsealing order because it did not fall within any of the provisions of CPL 160.50.

In June 2011, the Commission authorized service of a Formal Written Complaint upon Judge Anderson alleging acts of misconduct related to the conduct for which she was indicted. Judge Anderson's hearing before Commission Referee Hon. Richard D. Simons was scheduled to begin in July 2012. In early April 2012, Rubenstein was served with a subpoena to testify at Judge Anderson's hearing as a Commission witness, prompting his motion to vacate the unsealing order.

On May 17, 2012, Acting Supreme Court Justice Larry Stephen signed Rubenstein's proposed Order to Show Cause, including the temporary restraining order staying Commission staff from "using" any documents from the criminal trial. The matter was made returnable before Judge Fisher on May 24, 2012.

On May 23, 2012, the Attorney General's office submitted papers on behalf of the Commission. Oral argument was held in Judge Fisher's chambers on May 24th. On May 25, 2012, Judge Fisher issued an order denying Rubenstein's application in its entirety on the grounds that: (1) Rubenstein's application to overturn an "administrative order" by order to show cause was procedurally improper, (2) Rubenstein had failed to establish any of the grounds for vacatur set forth in CPLR 5015, and (3) the Commission was authorized to receive the criminal records by Judiciary Law § 42(3) and the public interest in the Commission's effective performance could "not be stymied by the statutory constraints of CPL 160.50."

Rubenstein filed a Notice of Appeal on June 11, 2012. On June 12, 2012, Rubenstein's counsel moved in the Appellate Division, First Department, for a preliminary injunction barring Commission staff from using records from his criminal trial in any proceeding. The Attorney General filed papers in opposition on June 19, 2012. On August 28, 2012, the Appellate Division issued an order denying Rubenstein's application for a preliminary injunction.

Rubenstein perfected his appeal on July 9, 2012. Oral argument was held on October 3, 2012. On October 10th, the Attorney General's office notified the court that the Commission had released a determination in *Matter of Nora S. Anderson,* 2013 NYSCJC Annual Report 75 (October 1, 2012) and that as a result, Rubenstein's appeal was moot.

On November 21, 2012, the Attorney General made a formal motion to have the appeal dismissed on the ground that it was moot. Rubenstein opposed the motion. On February 5, 2013, the Appellate Division granted the motion to dismiss, finding that "the matter has been rendered moot." *NYS Commission on Judicial Conduct v Rubenstein,* 103 AD3d 409 (1st Dept 2013).

On May 7, 2013, the Court of Appeals granted Rubenstein's motion for leave to appeal. As of the date of this Report, the matter is pending.

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 its attention in the course of considering complaints. It does so for public education purposes, to advise the judiciary as to potential misconduct that may be avoided, and pursuant to its statutory authority to make administrative and legislative recommendations.

ALCOHOL-RELATED CONDUCT AND DRIVING OFFENSES

Over the years, the Commission has publicly disciplined a number of judges for having committed various alcohol-related driving offenses and, on occasion, discharging or attempting to discharge judicial duties while under the influence of alcohol. These problems are of such gravity and arise with sufficient regularity to warrant discussion in this Annual Report.

Driving Under the Influence of Alcohol

Section 100.2(A) of the Rules Governing Judicial Conduct requires a judge to respect and comply with the law. That rule is violated whenever a judge is convicted of an offense. Not all offenses are of sufficient gravity to warrant investigation or public discipline – for example, a judge who receives and pays an ordinary parking ticket, with no evidence of having deliberately flouted the law or asserted the influence of office to avoid paying the fine. But drinking-and-driving offenses almost always should and will result in disciplinary action.

As the Commission has said in a recent disciplinary determination pertinent to the subject, operating a motor vehicle while under the influence of alcohol creates a significant risk to the lives of the driver and others and is a serious social problem. *Matter of Newman*, 2014 NYSCJC Annual Report 164. According to the National Highway Traffic Safety Administration, in 2012 there were 344 deaths in traffic accidents in New York State due to drunk driving. Nationwide, there were 10,332 such fatalities, accounting for 31% of all traffic deaths in the United States.

In view of the increasing recognition of the seriousness of driving under the influence of alcohol and the toll it takes on society, disciplinary commissions are treating the subject with more severity than in the past. Throughout the United States, public admonition or its equivalent is the standard disciplinary punishment for alcohol-related driving offenses, assuming there are no aggravating circumstances. Aggravating circumstances – such as the judge asserting his/her judicial title to avoid arrest, causing an accident, obstructing the police as they carry out their duties or committing repeated alcohol-related offenses – would likely elevate the level of discipline to censure and, if truly egregious, result in the judge's departure from the bench.

For example, in *Matter of Quinn*, 54 NY2d 386 (1981), the Commission determined to remove from office a Supreme Court Justice who had two alcohol-related convictions and other alcohol-related incidents, was uncooperative, belligerent and abusive to the arresting officers and repeatedly referred to his judicial position. On review, the Court of Appeals reduced the removal to censure in view of the fact that the judge had retired between issuance of the Commission determination and adjudication of the review by the Court.

Other cases in which the Commission censured a judge for an alcohol-related driving offense include *Matter of Newman*, 2014 NYSCJC Annual Report 164, where a judge was censured for driving while ability impaired by alcohol (DWAI), in the course of which he caused a minor accident and, on arrival of the police, behaved in an unruly, self-destructive and suicidal manner, *inter alia* threatening to take the arresting officer's gun. In *Matter of Apple*, 2013 NYSCJC Annual Report 95, a judge was censured for driving while intoxicated (DWI) and in the process causing a minor accident. The same judge thereafter left office after another DWI episode a short time later. In *Matter of Maney*, 2011 NYSCJC Annual Report 106, a judge was censured for DWAI and in the process making an illegal U-turn to avoid a sobriety checkpoint and repeatedly invoking his judicial office while asking for special "consideration" and "professional courtesy" from the police. In *Matter of Martineck,* 2011 NYSCJC Annual Report 116, a judge was censured for DWI and in the process driving erratically and hitting a mile marker post. In *Matter of Burke,* 2010 NYSCJC Annual Report 110, a judge was censured *inter alia* for DWAI and causing a minor accident. In *Matter of Stelling,* 2003 NYSCJC Annual Report 165, a judge was censured for two alcohol-related convictions. In *Matter of Barr,* 1981 NYSCJC Annual Report 139, a judge was censured for two alcohol-related convictions, asserting his judicial office with police officers and being abusive and uncooperative during his arrests, after which he made "a sincere effort to rehabilitate himself."

Cases in which the Commission has admonished a judge for an alcohol-related driving offense include *Matter of Pajak,* 2005 NYSCJC Annual Report 195, where a judge was admonished for DWI and causing an accident with property damage. In *Matter of Burns,* 1999 NYSCJC Annual Report 83, a judge was admonished for DWAI. In *Matter of Henderson,* 1995 NYSCJC Annual Report 118, a judge was admonished for DWI and referring to his judicial office during the arrest and asking, "Isn't there anything we can do?" In *Matter of Siebert,* 1994 NYSCJC Annual Report 103, a judge was admonished for DWAI and causing a three-car accident. In *Matter of Innes*, 1985 NYSCJC Annual Report 152, a judge was admonished for DWAI and causing damage to a patrol car while backing up.

Alcohol-Influenced Behavior on the Bench

As serious as it is for a judge to commit an alcohol-related driving offense, it can be even more troubling when a judge attempts to exercise the powers of judicial office while under the influence of alcohol. Litigants and the public can have little faith in the decisions and judgments of a judge who appears in court while under the influence of alcohol.

In *Matter of Aldrich*, 58 NY2d 279 (1983), a judge was removed from office for presiding over two sessions of court while under the influence of alcohol and, in the process, uttering racist, vulgar and otherwise grossly offensive and inappropriate comments and at one point brandishing a knife and threatening a security guard with it while uttering racial slurs.

In *Matter of Wangler*, 1985 NYSCJC Annual Report 241, a judge was removed *inter alia* for being intoxicated and belligerent in court and at a meeting with court auditors. In *Matter of Giles*, 1998 NYSCJC Annual Report 127, a judge was censured for twice presiding over off-hours arraignments while under the influence of alcohol. In *Matter of Bradigan*, 1996 NYSCJC Annual Report 71, a judge was censured *inter alia* for twice presiding while under the influence

of alcohol. In *Matter of Purple*, 1998 NYSCJC Annual Report 149, a judge was censured for DWI and for presiding under the influence of alcohol on one occasion. In *Matter of Gilpatric*, 2006 NYSCJC Annual Report 160, a judge was censured for appearing in court as an attorney while under the influence of alcohol and, later that day, taking the bench while under the influence of alcohol, although court staff and a co-judge intervened and the judge left for the day without adjudicating any matters.

Seeking Treatment for an Alcohol Problem

In *Newman* and *Gilpatric*, as in other cases, the judges in question sought assistance for their alcohol problems after being arrested for DWI or diverted from taking the bench while intoxicated. In appropriate situations, the Commission Administrator has given the judge time to complete such a program before submitting a recommendation to the Commission as to disposition of the complaint. The successful completion of such a program would not obviate public discipline, but depending on the severity of the alcohol-fueled misbehavior, it could mitigate the degree of discipline imposed.

Unfortunately, it too often takes an arrest or other serious public event for a judge to seek treatment for alcoholism or alcohol-fueled behavior. Yet there are programs available to assist those who seek help even before the problem manifests itself on the bench or behind the wheel of an automobile. For example, the New York State Bar Association has a Judicial Assistance Program, a Lawyer Assistance Program and a Judicial Wellness Committee that are available to provide assistance to those willing to avail themselves of the opportunity. The New York City Bar Association has a Lawyer Assistance Program. County bar associations throughout the state also offer assistance programs. These various programs offer such services as evaluation and assessment, counseling, referrals and mentoring. Many provide services not only to the alcoholic but to members of his/her family. There are also any number of private and/or non-profit assistance programs such as Alcoholics Anonymous and Alanon/Alateen that are available to help.

Although the Commission does not endorse one such program over others, we do encourage all who need assistance to take advantage of the opportunities that exist, before the effects of alcoholism exhibit themselves in behavior that must be addressed in a disciplinary setting.

IMPERMISSIBLE LETTERS OF REFERENCE OR RECOMMENDATION

There is a significant and disciplinable difference between a judge's assertion of influence to obtain special consideration for a friend or acquaintance with business before the courts or other entities, and an ordinary letter of reference or recommendation. The former is never permissible, while the latter, with some caveats, may be permissible.

The Assertion of Influence for a Private Benefit

In *Matter of Smith*, 2014 NYSCJC Annual Report 208, the Commission admonished a judge who wrote a letter on judicial stationery to the State Parole Board, unsolicited by the Board,

advocating on behalf of an incarcerated felon whose application for parole was scheduled for consideration. Public discipline was consistent with precedents of the Commission and the courts dating back to 1979.

Section 100.2(C) of the Rules prohibits a judge from lending the prestige of judicial office to advance the private interests of the judge or others. In the same vein, the rule prohibits a judge from testifying voluntarily as a character witness. (Testifying when subpoenaed to do so *is* permissible.) A request for special consideration on behalf of any person, made by a judge to another public official or agency, "is wrong, and always has been wrong." *Matter of Byrne*, 47 NY2d (b), 420 NYS2d 70, 71 (Ct on the Jud 1979). 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. 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.] *Matter of Lonschein*, 50 NY2d 569, 571 (1980).

For more than three decades, judges have been disciplined for transgressing this principle. For example, in *Matter of Kiley*, 74 NY2d 364 (1989), a judge was censured for orally requesting favorable treatment from prosecutors and another judge on behalf of acquaintances. In *Matter of Martin*, 2002 NYSCJC Annual Report 121, a judge was admonished for sending two unsolicited letters to sentencing judges in other courts on behalf of defendants awaiting sentencing. *See also, Matter of Dixon*, 47 NY2d 523 (1979); *Matter of Sharlow*, 2006 NYSCJC Annual Report 232; *Matter of Engle*, 1998 NYSCJC Annual Report 125; and *Matter of Freeman*, 1992 NYSCJC Annual Report 44, among others.

Consistent with these court and Commission decisions, the Advisory Committee on Judicial Ethics has repeatedly opined that a judge may not send an unsolicited letter on behalf of an inmate seeking parole, a criminal defendant prior to sentencing or an attorney facing disciplinary charges; but the judge may respond to an official request for his or her views, "provided that the response is based upon the judge's knowledge of the defendant and is designated 'personal and unofficial'" (Opinions 99-07, 97-92, 90-156, 89-73). But in no instance may the judge initiate communication with those entities in order to convey information about the accused. To do so would both be and appear to be improper, as it would use the prestige of judicial office to vouch for someone. Such impropriety would not be nullified by marking the letter "personal and unofficial." In *Smith*, the judge conceded that while she had written prior letters to the Division of Parole offering her opinions on behalf of inmates, all those other letters were written in response to direct inquiries by the Division of Parole and involved inmates over whose trials she had presided and/or whom she had sentenced.

The "Ordinary" Letter of Reference or Recommendation

The matter of whether, when and under what circumstances a judge may write a reference letter has for years been the subject of Advisory Opinions, continuing education and training lectures, and articles. The answer almost always depends on the individual circumstances at play. Ultimately, there is no "ordinary" judicial recommendation letter.

The cautious judge will evaluate each request for a recommendation individually, consider the various ramifications and consult published Advisory Opinions before going forward. If the situation has not specifically been addressed by the Advisory Committee, requesting an opinion before providing a reference letter would be wise. If it is permissible for the judge to write the type of letter requested, it should be based on the judge's personal knowledge of the individual and contain an honest appraisal of the individual's character and abilities, such as a judge might provide for a former court employee in support of a job or law school application. Any such letter written on judicial stationery should be marked "personal and unofficial." (Opinions 88-10, 88-166, 90-46, 91-14, 95-153, 06-10).

Sometimes, writing an otherwise permissible letter may raise an issue for the judge to address in another forum. For example, while generally a judge may write a reference letter for an applicant to law school, if the applicant or his/her relatives are involved in a pending case before the judge, the judge would be wise to disclose the relationship to all parties and attorneys. While generally a judge may provide a job recommendation for a former employee, presiding over future cases involving the former staff member's new employer may be problematic and could trigger disqualification (Opinions 10-07, 01-114). While generally a judge may submit a letter to the appropriate character and fitness committee on behalf of an applicant for admission to the bar, the judge may not do so on behalf of a disbarred attorney seeking readmission (Opinion 95-75). While generally a judge may submit a reference to a coop board evaluating a potential purchaser, the judge should not do so if the coop, purchaser or resident are parties to litigation before the judge (Opinion 98-103).

A judge who reviews the pertinent published opinions and applies common sense to a particular request for a recommendation will likely reach the same conclusion the Advisory Committee would if confronted with the same facts. Any reasonable doubt and lack of relevant precedent should engender a request for an Advisory Opinion.

FINANCIAL DISCLOSURE

In its 2013 Annual Report, the Commission commented extensively on the obligation of all judges of courts of record – that is, all courts except town and village courts – and of all non-incumbent candidates seeking election to courts of record – to file annual financial disclosure statements, similar to those filed by other state officials and state government employees. Section 211(4) of the Judiciary Law and Section 40.2 of the Rules of the Chief Judge require judges to file an annual financial disclosure statement by May 15 of each succeeding year.

Since 1990, the Ethics Commission for the Unified Court System (UCS Ethics) has been responsible for administering the distribution, collection, review and maintenance of annual financial disclosure statements. The powers, duties and procedures of UCS Ethics are set forth in 22 NYCRR Parts 40 and 7400.

When a judge is late in submitting the annual statement and fails to respond to notices to cure, UCS Ethics is obliged to issue a notice of delinquency, and to notify the Commission, pursuant to Section 40.1(k) of the Rules of the Chief Judge. Where investigation by the Commission reveals a valid excuse, discipline would not be imposed. Where the explanations are not persuasive – *e.g.*, the judge was busy, or misplaced the disclosure form, or did not check the mail carefully enough for it, or was distracted by personal matters – the Commission has typically issued a Letter of Dismissal and Caution, reminding the judge of the obligation to file and to do so promptly. Two such letters were issued in 2013, four in 2012 and three each in 2011 and 2010.

However, in 2013 there was a first-time public discipline for failure to file a single financial disclosure statement in a timely manner. In *Matter of McAndrews*, 2014 NYSCJC Annual Report 157, a District Court judge was censured for being nearly eleven months late in filing and for failing to respond to inquiry letters from the Commission, which resulted in his being summoned to testify about both the underlying complaint and the failure to cooperate. There was no evidence that the tardy *McAndrews* disclosure statement itself was materially inaccurate.

Filing a materially inaccurate statement would subject the judge to public discipline, particularly if the disclosure violation were coupled with other misconduct. *Matter of Joseph S. Alessandro*, 13 NY3d 238 (2009); *Matter of Francis M. Alessandro, Id.*; and *Matter of Nora S. Anderson*, 2013 NYSCJC Annual Report 75.

THE COMMISSION'S BUDGET

In 2007, for the first time in more than a generation, the Commission's budget was significantly increased by the Legislature, commensurate with its constitutional mandate and caseload. From 2007 to 2013 the annual complaint load increased by 23% (more than 340 a year), to an annual average of 1,841 complaints. The number of preliminary inquiries increased by 27% over that period (from 375 to 477), which has obviated full investigation in a significant number of cases, leading to fewer investigations and a continuing decrease in the number of complaints pending at year end. At the same time, however, the percentage of new complaints processed in the same year as received has dropped from a high of 97% in 2008 to 88% in 2013. This is attributable to the steady diminution of resources caused by years of "flat" budgeting.

Since 2008, the Commission's budget has remained constant at just under $5.4 million. To meet annual increases in mandated costs such as rent, while keeping up with a growing caseload, compensating economies have been made, the most significant of which has been the reduction in authorized full-time employees from 55 to 50, of which only 46 are filled. That represents a 13% reduction in workforce. In order to keep current and prevent even further cuts and delays in the disposition of matters, for the first time in six years the Commission has requested a modest increase of $270,000 for the fiscal year beginning April 1, 2014.

A comparative analysis of the Commission's budget and staff over the years appears below.

SELECTED BUDGET FIGURES: 1978 TO PRESENT

Fiscal Year	Annual Budget[1]	New Complaints[2]	Prelim Inquiries	New Investig'ns	Pending Year End	Public Disciplines	Attorneys on Staff[3]	Investig'rs ft/pt	Total Staff
1978	1.6m	641	N.A.	170	324	24	21	18	63
1988	2.2m	1109	N.A.	200	141	14	9	12/2	41
1996	1.7m	1490	492	192	172	15	8	2/2	20
2000	1.9m	1288	451	215	177	13	9	6/1	27
2006	2.8m	1500	375	267	275	14	10	7	28½
2007	4.8m	1711	413	192	238	27	17	10	51
2008	5.3m	1923	354	262	208	21	19	10	49
2009	5.3m	1855	471	257	243	24	18	10	48
2010	5.4m	2025	439	225	226	15	18	10	48
2011	5.4m	1818	464	172	216	14	17	9	49
2012	5.4m	1785	460	182	206	20	19	9	49
2013	5.4m	1770	477	177	201	17	19	9	50
2014	5.6m[4]	~	~	~	~	~	19	7	46

[1] Budget figures are rounded off; budget figures are fiscal year (Apr 1 – Mar 31)
[2] Complaint figures are calendar year (Jan 1 – Dec 31)
[3] Number includes Clerk of the Commission, who does not investigate or litigate cases
[4] Proposed

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CONCLUSION

Public confidence in the independence, integrity, impartiality and high standards 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 those ideals, 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,

HON. THOMAS A. KLONICK, *CHAIR*
HON. TERRY JANE RUDERMAN, *VICE CHAIR*
HON. ROLANDO T. ACOSTA
JOSEPH W. BELLUCK, ESQ.
JOEL COHEN, ESQ.
JODIE CORNGOLD
RICHARD D. EMERY, ESQ.
PAUL B. HARDING, ESQ.
RICHARD A. STOLOFF, ESQ.
HON. DAVID A. WEINSTEIN

APPENDIX A: BIOGRAPHIES OF COMMISSION MEMBERS

There are 11 members of the Commission on Judicial Conduct. Each serves a renewable four-year term. Four members are appointed by the Governor, three by the Chief Judge, and one each by the Speaker of the Assembly, the Minority Leader of the Assembly, the Temporary President of the Senate (Majority Leader) and the Minority Leader of the Senate.

Of the four members appointed by the Governor, one shall be a judge, one shall be a member of the New York State bar but not a judge, and two shall not be members of the bar, judges or retired judges. Of the three members appointed by the Chief Judge, one shall be a justice of the Appellate Division, one shall be a judge of a court other than the Court of Appeals or Appellate Division, and one shall be a justice of a town or village court. None of the four members appointed by the legislative leaders shall be judges or retired judges.

The Commission elects a Chair and a Vice Chair from among its members for renewable two-year terms, and appoints an Administrator who shall be a member of the New York State bar who is not a judge or retired judge. The Administrator appoints and directs the agency staff. The Commission also has a Clerk who plays no role in the investigation or litigation of complaints but assists the Commission in its consideration of formal charges, preparation of determinations and related matters.

Member	Appointing Authority	Year First App'ted	Expiration of Present Term
Thomas A. Klonick	Chief Judge Jonathan Lippman	2005	3/31/2017
Terry Jane Ruderman	Chief Judge Jonathan Lippman	1999	3/31/2016
Rolando T. Acosta	Chief Judge Jonathan Lippman	2010	3/31/2014
Joseph W. Belluck	Governor Andrew M. Cuomo	2008	3/31/2016
Joel Cohen	Assembly Speaker Sheldon Silver	2010	3/31/2014
Jodie Corngold	Governor Andrew M. Cuomo	2013	3/31/2015
Richard D. Emery	(Former) Senate Minority Leader John L. Sampson	2004	3/31/2016
Paul B. Harding	Assembly Minority Leader Brian M. Kolb	2006	3/31/2017
Richard A. Stoloff	Senate President Pro Tem Dean Skelos	2011	3/31/2015
David A. Weinstein	Governor Andrew M. Cuomo	2012	3/31/2014
Vacant	Governor		3/31/2017

Honorable Thomas A. Klonick, *Chair of the Commission,* is a graduate of Lehigh University and the Detroit College of Law, where he was a member of the Law Review. He maintains a law practice in Fairport, New York, with a concentration in the areas of commercial and residential real estate, corporate and business law, criminal law and personal injury. He was a Monroe County Assistant Public Defender from 1980 to 1983. Since 1995 he has served as Town Justice for the Town of Perinton, New York, and has also served as an Acting Rochester City Court Judge, a Fairport Village Court Justice and as a Hearing Examiner for the City of Rochester. From 1985 to 1987 he served as a Town Justice for the Town of Macedon, New York. He has also been active in the Monroe County Bar Association as a member of the Ethics Committee. Judge Klonick is the former Chairman of the Prosecuting Committee for the Presbytery of Genesee Valley and is an Elder of the First Presbyterian Church, Pittsford, New York. He has also served as legal counsel to the New York State Council on Problem Gambling, and on the boards of St. John's Home and Main West Attorneys, a provider of legal services for the working poor. He is a member of the New York State Magistrates Association, the New York State Bar Association and the Monroe County Bar Association. Judge Klonick is a former lecturer for the Office of Court Administration's continuing Judicial Education Programs for Town and Village Justices.

Honorable Terry Jane Ruderman, *Vice Chair of the Commission*, 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 a 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. She has served as President of the New York State Association of Women Judges, the Presiding Member of the New York State Bar Association Judicial Section, as a Delegate to the House of Delegates of the New York State Bar Association and on the Ninth Judicial District Task Force on Reducing Civil Litigation Cost and Delay. Judge Ruderman is also a board member and former Vice President of the Westchester Women's Bar Association, was President of the White Plains Bar Association and was a State Director of the Women's Bar Association of the State of New York. She also sits on the Cornell University President's Council of Cornell Women.

Honorable Rolando T. Acosta is a graduate of Columbia College and the Columbia University School of Law. He served as a Judge of the New York City Civil Court from 1997 to 2002, as an Acting Justice of the Supreme Court from 2001 to 2002, and as an elected Justice of the Supreme Court from 2003 to present. He presently serves as an Associate Justice of the Appellate Division, First Department, having been appointed in January 2008. Prior to his judicial career, Judge Acosta served in various capacities with the Legal Aid Society, including Director of Government Practice and Attorney in Charge of the civil branch of the Brooklyn office. He also served as Deputy Commissioner and First Deputy Commissioner of the New York City Commission on Human Rights.

Joseph W. Belluck, Esq., graduated *magna cum laude* from the SUNY-Buffalo School of Law in 1994, where he served as Articles Editor of the Buffalo Law Review and where he was an adjunct lecturer on mass torts. He is a partner in the Manhattan law firm of Belluck & Fox, LLP, which focuses on asbestos, consumer, environmental and defective product litigation. Mr. Belluck previously served as counsel to the New York State Attorney General, representing the State of New York in its litigation against the tobacco industry, as a judicial law clerk for Justice Lloyd Doggett of the Texas Supreme Court, as staff attorney and consumer lobbyist for Public Citizen in Washington, D.C., and as Director of Attorney Services for Trial Lawyers Care, an organization dedicated to providing free legal assistance to victims of the September 11, 2001 terrorist attacks. Mr. Belluck has lectured frequently on product liability, tort law and tobacco control policy. He is an active member of several bar associations is a recipient of the New York State Bar Association's Legal Ethics Award.

Joel Cohen, Esq., is a graduate of Brooklyn College and New York University Law School, where he earned a J.D. and an LL.M. He is Of Counsel at Stroock & Stroock & Lavan LLP in Manhattan, which he joined in 1985. Mr. Cohen previously served as a prosecutor for ten years, first with the New York State Special Prosecutor's Office and then as Assistant Attorney-in-Charge with the US Justice Department's Organized Crime & Racketeering Section in the Eastern District of New York. He is a member of the Federal Bar Council and is an Adjunct Professor of Law teaching Professional Responsibility at Fordham Law School, having previously done so at Brooklyn Law School. He widely lectures on Professional Responsibility. Mr. Cohen is the author of three books dealing with religion -- *Moses: A Memoir* (Paulist Press 2003), *Moses and Jesus: A Conversation* (Dorrance Publishing 2006) and *David and Bathsheba: Through Nathan's Eyes* (Paulist Press 2007). He also authored *Truth Be Veiled: A Justin Steele Murder Case* (Coffeetown Press, 2010), a novel on legal ethics and truth. Mr. Cohen has authored over 200 articles in legal periodicals, including a bimonthly column on "Ethics and Criminal Practice" for the New York Law Journal, and columns for Law.com and Huffington Post.

Jodie Corngold graduated from Swarthmore College. She is Director of Communications for the Berkeley Carroll School, a college preparatory school in Brooklyn, and the Director of Public Relations for Givology, an educational philanthropy marketplace. She previously served as Director of Public Relations for Allied Urological Services in New York, as Director of Communications for the National Hemophilia Foundation in New York and as an editor for a number of health and medical publications in New York and California. Ms. Corngold has been engaged in a variety of civic activities associated with her alma mater, her synagogue and the Brooklyn Public Library.

Richard D. Emery, Esq., is a graduate of Brown University and Columbia Law School (*cum laude)*, where he was a Harlan Fiske Stone Scholar. He is a founding partner of Emery Celli Brinckerhoff & Abady LLP. His practice focuses on commercial litigation, civil rights, election law and litigation challenging governmental actions. Mr. Emery enjoys a national reputation as a litigator, trying and handling cases at all levels, from the U.S. Supreme Court to federal and state appellate and trial courts in New York, Washington, D.C., California, Washington state, and others. While a partner at Lankenau Kovner & Bickford, he successfully challenged the structure

of the New York City Board of Estimate under the one-person, one-vote doctrine, resulting in the U.S. Supreme Court's unanimous invalidation of the Board on constitutional grounds. Before then, he was a staff attorney at the New York Civil Liberties Union and director of the Institutional Legal Services Project in Washington state, which represented persons held in juvenile, prison, and mental health facilities. He was also a law clerk for the Honorable Gus J. Solomon of the U.S. District Court for the district of Washington. He has taught as an adjunct at the New York University and University of Washington schools of law. Mr. Emery was a member of Governor Cuomo's Commission on Integrity in Government, sat on Governor Eliot Spitzer's Transition Committee for Government Reform Issues and was appointed to the New York State Commissions on Judicial Conduct and Public Integrity. He is a founding member of the City Club, which addresses New York City preservation issues. He also is a founder and president of the West End Preservation Society, which has achieved the landmarked West End-Riverside Historic District. His honors include Landmark West's 2013 Unsung Heroes Award for his preservation work; the 2008 Children's Rights Champion Award for his civil rights work and support of children's rights; the Common Cause/NY, October 2000, "I Love an Ethical New York" Award for recognition of successful challenges to New York's unconstitutionally burdensome ballot access laws and overall work to promote a more open democracy; the Park River Democrats Public Service Award, June 1989; and the David S. Michaels Memorial Award, January 1987, for Courageous Effort in Promotion of Integrity in the Criminal Justice System from the Criminal Justice Section of the New York State Bar Association.

Paul B. Harding, Esq., is a graduate of the State University of New York at Oswego and the Albany Law School at Union University. He is the Managing Partner in the law firm of Martin, Harding & Mazzotti, LLP in Albany, New York. He is on the Board of Directors of the New York State Trial Lawyers Association and the Marketing and Client Services Committee for the American Association for Justice. He is also a member of the New York State Bar Association and the Albany County Bar Association. He is currently on the Steering Committee for the Legal Project, which was established by the Capital District Women's Bar Association to provide a variety of free and low cost legal services to the working poor, victims of domestic violence and other underserved individuals in the Capital District of New York State.

Richard A. Stoloff, Esq., graduated from the CUNY College of the City of New York, and Brooklyn Law School. He is a partner in the law firm of Stoloff & Silver, LLP, in Monticello, New York. He also served for 19 years as Town Attorney for the Town of Mamakating. Mr. Stoloff is a past President of the Sullivan County Bar Association and has chaired its Grievance Committee since 1994. He is a member of the New York State Bar Association and has served on its House of Delegates. He is also a member of the American Bar Association and the New York State Trial Lawyers Association.

Honorable David A. Weinstein is a graduate of Wesleyan University and Harvard Law School, where he was Notes Editor for the Harvard Human Rights Journal. He is a Judge of the Court of Claims, having been appointed by Governor Andrew M. Cuomo in 2011 for a term ending in 2018. Judge Weinstein served previously as Assistant Counsel and First Assistant Counsel to Governors Cuomo, David A. Paterson and Eliot L. Spitzer, as a New York State Assistant Attorney General, as an Associate in the law firm of Debevoise & Plimpton, as Law Clerk to

United States District Court Judge Charles S. Haight (SDNY) and as *Pro Se* Law Clerk to the United States Court of Appeals for the Second Circuit. He also served as an Adjunct Professor of Legal Writing at New York Law School and has written numerous articles for legal and other publications.

RECENT MEMBERS

Nina M. Moore received her B.A. from Knox College (*Magna Cum Laude, Phi Beta Kappa*) and her M.A. and Ph.D. in political science from the University of Chicago. She is an Associate Professor of Political Science at Colgate University, where she has headed the Research Council and the Faculty Development Council. She was appointed to the endowed Arnold R. Sio Chair in Diversity and Community for 2009-2011, as part of which she spearheaded campus-wide initiatives promoting faculty and student research on diversity. Moore previously held teaching positions at DePaul University, the University of Minnesota and Loyal University of Chicago. A member of the American Political Science Association, Moore was selected to chair the Constitutional Law and Jurisprudence Division of the national organization for 2011-2012. Professor Moore is the author of *Racial Tracking and Criminal Justice in America: Policy Makers, the Public, and Law Enforcement* (Cambridge University Press, forthcoming), *Governing Race: Politics, Policy and the Politics of Race* (Praeger 2000), and various articles and papers on the Supreme Court, Congress and public policy matters. She has served on the editorial board of the *Ralph Bunche Journal of Public Affairs*, and is also a member of the New York State Advisory Council on Underage Alcohol Consumption and Youth Substance Abuse.

APPENDIX B: BIOGRAPHIES OF COMMISSION ATTORNEYS

Robert H. Tembeckjian, *Administrator and 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 constitutional law and ethics at the American University of Armenia and Yerevan State University. Mr. Tembeckjian served on the Advisory Committee to the American Bar Association Commission to Evaluate the Model Code of Judicial Conduct from 2003-07. He is on the Board of Directors of the Association of Judicial Disciplinary Counsel and previously served as a Trustee of the Westwood Mutual Funds and the United Nations International School, and on the Board of Directors of the Civic Education Project. Mr. Tembeckjian has served on various ethics and professional responsibility committees of the New York State and New York City Bar Associations, and he has published numerous articles in legal periodicals on judicial ethics and discipline. He was a member of the editorial board of the Justice System Journal, a publication of the National Center for State Courts, from 2007-10.

Cathleen S. Cenci, *Deputy Administrator in Charge of the Commission's Albany office*, is a graduate of Potsdam College *(summa cum laude)* and the Albany Law School of Union University. In 1979, she completed the course superior at the Institute of Touraine in Tours, France. Ms. Cenci joined the Commission staff in 1985. She has been a judge of the Albany Law School moot court competitions and a member of Albany County Big Brothers/Big Sisters.

John J. Postel, *Deputy Administrator in Charge of the Commission's Rochester office*, is a graduate of the University of Albany and the Albany Law School of Union University. He joined the Commission staff in 1980. 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.

Edward Lindner, *Deputy Administrator for Litigation*, is a graduate of the University of Arizona and Cornell Law School, where he was a member of the Board of Editors of the Cornell International Law Journal. Prior to joining the Commission's staff, he was an Assistant Solicitor General in the Division of Appeals & Opinions for the New York State Attorney General. He has been a Board Member and volunteer for various community organizations, including Catholic Charities, The Children's Museum at Saratoga, the Saratoga Springs Public Library and the Saratoga Springs Preservation Foundation.

Mark Levine, *Deputy Administrator in Charge of the Commission's New York office*, is a graduate of the State University of New York at Buffalo and Brooklyn Law School. He previously served as Principal Law Clerk to Acting Supreme Court Justice Jill Konviser and Supreme Court Justice Phylis Skloot Bamberger, as an Assistant Attorney General in New York,

as an Assistant District Attorney in Queens, and as law clerk to United States District Court Judge Jacob Mishler. Mr. Levine also practiced law with the law firms of Patterson, Belknap, Webb & Tyler, and Weil, Gotshal & Manges.

Mary C. Farrington, *Administrative Counsel*, is a graduate of Barnard College and Rutgers Law School. She previously served as an Assistant District Attorney in Manhattan, most recently as Supervising Appellate Counsel, until April 2011, when she joined the Commission staff. She has also served as Law Clerk to United States District Court Judge Miriam Goldman Cedarbaum, and as an associate in private practice with the law firm of Fried, Frank, Harris, Shriver & Jacobson in Manhattan.

Pamela Tishman, *Principal Attorney*, is a graduate of Northwestern University and New York University School of Law. She previously served as Senior Investigative Attorney in the Office of the Inspector General at the Metropolitan Transportation Authority. Ms. Tishman also served as an Assistant District Attorney in New York County, in both the Appeals and Trial Bureaus, where she prosecuted felonies and misdemeanors.

M. Kathleen Martin, *Senior Attorney*, is a graduate of Mount Holyoke College and Cornell Law School (*cum laude*). Prior to joining the Commission's staff, she was an attorney at the Eastman Kodak Company, where among other things she held positions as Legal Counsel to the Health Group, Director of Intellectual Property Transactions and Director of Corporate Management Strategy Deployment. She also served as Vice President and Senior Associate Counsel at Chase Manhattan Bank, and in private practice with the firm of Nixon, Hargrave, Devans & Doyle.

Roger J. Schwarz, *Senior Attorney*, is a graduate of Clark University (*Phi Beta Kappa*) and the State University of New York at Buffalo Law School (*honors*), where he served as editor of the *Law and Society Review* and received the Erie County Trial Lawyers' award for best performance in the law school's trial practice course. For 23 years, Mr. Schwarz practiced law in his own firm in Manhattan, with an emphasis on criminal law and criminal appeals, principally in the federal courts. Mr. Schwarz has also served as an associate attorney for the Criminal Defense Division of the Legal Aid Society in New York City, clerked for Supreme Court Justice David Levy (Bronx County) and was a member of the Commission's staff from 1975-77.

Jill S. Polk, *Senior Attorney*, is a graduate of the State University of New York at Buffalo and the Albany Law School. Prior to joining the Commission staff, she was Senior Assistant Public Defender in Schenectady County. Ms. Polk has also been in private practice, served as Senior Court Attorney to two judges, and was an attorney with the Legal Aid Society of Northeastern New York.

David M. Duguay, *Senior Attorney*, is a graduate of the State University of New York at Buffalo (*summa cum laude*) and the SUNY at Buffalo Law School. Prior to joining the Commission's staff, he was Special Assistant Public Defender and Town Court Supervisor in the Monroe County Public Defender's Office. He served previously as a staff attorney with Legal Services, Inc., of Chambersburg, Pennsylvania.

Thea Hoeth, *Senior Attorney*, is a graduate of St. Lawrence University and Albany Law School. After practicing law with Adams & Hoeth in Albany, she served in public sector posts including Executive Director of the New York State Ethics Commission, Special Advisor to the Governor for Management and Productivity, Deputy Director of State Operations, and Executive Director of the New York State Office of Business Permits and Regulatory Assistance. She has lectured and written on public sector ethics and taught legal ethics at The Sage Colleges. She is a former member of the Advisory Committee of Albany Law School's Government Law Center and has extensive not-for-profit management experience.

Brenda Correa, *Senior Attorney*, is a graduate of the University of Massachusetts at Amherst and Pace University School of Law in New York (*cum laude*). Prior to joining the Commission staff, she served as an Assistant District Attorney in Manhattan and was in private practice in New York and New Jersey focusing on professional liability and toxic torts respectively. She is a member of the New York State Bar Association and the New York City Bar Association.

Stephanie A. Fix, *Staff Attorney*, is a graduate of the State University of New York at Brockport and Quinnipiac College School of Law in Connecticut. Prior to joining the Commission staff she was in private practice focusing on civil litigation and professional liability in Manhattan and Rochester. She serves on the Executive Committee of the Monroe County Bar Association Board of Trustees, and the Bishop Kearney High School Board of Trustees. Ms. Fix received the President's Award for Professionalism from the Monroe County Bar Association in 2004 for her participation with the ABA "Dialogue on Freedom" initiative. She is a member of the New York State Bar Association and Greater Rochester Association of Women Attorneys (GRAWA). Ms. Fix is an adjunct professor at St. John Fisher College.

Kelvin S. Davis, *Staff Attorney*, is a graduate of Yale University and the University of Virginia Law School. Prior to joining the Commission staff, he served as an Assistant Staff Judge Advocate in the United States Air Force and as Judicial Law Clerk to a Superior Court Judge in New Jersey.

S. Peter Pedrotty, *Staff Attorney*, is a graduate of St. Michael's College (*cum laude*) and the Albany Law School of Union University (*magna cum laude*). Prior to joining the Commission staff, he served as an Appellate Court Attorney at the Appellate Division, Third Department, and was engaged in the private practice of law in Saratoga County and with the law firm of Clifford Chance US LLP in Manhattan.

Erica K. Sparkler, *Staff Attorney*, is a graduate of Middlebury College (*cum laude*) and Fordham University School of Law (*magna cum laude*). Prior to joining the Commission staff, she was an associate in private practice with the law firms of Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer and Gibson, Dunn & Crutcher. Ms. Sparkler also served as law clerk to United States District Court Judge Peter K. Leisure.

Daniel W. Davis, *Staff Attorney*, is a graduate of New York University (*cum laude*), earned a Masters in Public Administration at NYU and graduated from the Benjamin N. Cardozo School

of Law, where he was Articles Editor on the law review and a teaching assistant. Prior to joining the Commission staff, he was Senior Consultant with a business advisory firm.

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Alan W. Friedberg, *Special Counsel*, 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 Chief Counsel to the Departmental Disciplinary Committee of the Appellate Division, First Department, as Deputy Administrator in Charge of the Commission's New York City Office, as a Senior Attorney at the Commission, as a staff attorney in the Law Office of the New York City Board of Education, as an adjunct professor of business law at Brooklyn College, and as a junior high school teacher in the New York City public school system.

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Karen Kozac, *Chief Administrative Officer*, is a graduate of the University of Pennsylvania and Brooklyn Law School. Prior to re-joining the Commission staff in June 2007, she was an administrator in the nonprofit sector. She previously served as a Staff Attorney at the Commission, as an Assistant District Attorney in New York County, and in private practice as a litigator.

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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 until being appointed Clerk of the Commission in 2000. Ms. Savanyu teaches in the legal studies program at Hunter College and previously taught legal research and writing at Marymount Manhattan College. Prior to joining the Commission staff, she was a travel writer and editor.

APPENDIX C: REFEREES WHO SERVED IN 2013

Referee	City	County
Eleanor B. Alter, Esq.	New York	New York
Hon. Frank J. Barbaro	Watervliet	Albany
Peter Bienstock, Esq.	New York	New York
Linda J. Clark, Esq.	Albany	Albany
Bruno Colapietro, Esq.	Binghamton	Broome
Paul A. Feigenbaum, Esq.	Albany	Albany
David M. Garber, Esq.	Syracuse	Onondaga
Victor J. Hershdorfer, Esq.	Syracuse	Onondaga
H. Wayne Judge, Esq.	Glens Falls	Warren
Nancy Kramer, Esq.	New York	New York
Roger Juan Maldonado, Esq.	New York	New York
Margaret B. McMullen, Esq.	Rochester	Monroe
Gregory S. Mills, Esq.	Clifton Park	Saratoga
Hugh H. Mo, Esq.	New York	New York
Gary Muldoon, Esq.	Rochester	Monroe
Malvina Nathanson, Esq.	New York	New York
Steven E. North, Esq.	New York	New York
Edward J. Nowak, Esq.	Penfield	Monroe
Michael Whiteman, Esq.	Albany	Albany

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

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

Hon. Rolando T. Acosta (2010-present)
Hon. Fritz W. Alexander, II (1979-85)
Hon. Myriam J. Altman (1988-93)
Helaine M. Barnett (1990-96)
Herbert L. Bellamy, Sr. (1990-94)
Joseph W. Belluck (2008-present)
*Henry T. Berger (1988-2004)
*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)
Hon. Frances A. Ciardullo (2001-05)
Hon. Carmen Beauchamp Ciparick (1985-93)
E. Garrett Cleary (1981-96)
Stephen R. Coffey (1995-2011)
Joel Cohen (2010-present)
Jodie Corngold (2013-present)
Howard Coughlin (1974-76)
Mary Ann Crotty (1994-98)
Dolores DelBello (1976-94)
Colleen C. DiPirro (2004-08)
Richard D. Emery (2004-present)
Hon. Herbert B. Evans (1978-79)
*Raoul Lionel Felder (2003-08)
*William Fitzpatrick (1974-75)
*Lawrence S. Goldman (1990-2006)
Hon. Louis M. Greenblott (1976-78)
Paul B. Harding (2006-present)
Christina Hernandez (1999-2006)
Hon. James D. Hopkins (1974-76)
Elizabeth B. Hubbard (2008-2011)
Marvin E. Jacob (2006-09)
Hon. Daniel W. Joy (1998-2000)
Michael M. Kirsch (1974-82)
*Hon. Thomas A. Klonick (2005-present)

Hon. Jill Konviser (2006-10)
*Victor A. Kovner (1975-90)
William B. Lawless (1974-75)
Hon. Daniel F. Luciano (1995-2006)
William V. Maggipinto (1974-81)
Hon. Frederick M. Marshall (1996-2002)
Hon. Ann T. Mikoll (1974-78)
Mary Holt Moore (2002-03)
Nina M. Moore (2009-13)
Hon. Juanita Bing Newton (1994-99)
Hon. William J. Ostrowski (1982-89)
Hon. Karen K. Peters (2000-12)
*Alan J. Pope (1997-2006)
*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)
Richard A. Stoloff (2011-present)
Hon. William C. Thompson (1990-98)
Carroll L. Wainwright, Jr. (1974-83)
Hon. David A. Weinstein (2012-present)

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, 48,710 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 40,365 were dismissed upon initial review or after a preliminary review and inquiry, and 8,345 investigations were authorized. Of the 8,345 investigations authorized, the following dispositions have been made through December 31, 2013:

- 1,088 complaints involving 826 judges resulted in disciplinary action. (See details below and on the following page.)
- 1,639 complaints resulted in cautionary letters to the judge involved. The actual number of such letters totals 1,516, 89 of which were issued after formal charges had been sustained and determinations made that the judge had engaged in misconduct.
- 699 complaints involving 493 judges were closed upon resignation of the judge during investigation or in the course of disciplinary proceedings.
- 537 complaints were closed upon vacancy of office by the judge other than by resignation.
- 4,181 complaints were dismissed without action after investigation.
- 201 complaints are pending.

Of the 1,088 disciplinary matters against 826 judges as 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.) These figures take into account the 94 decisions by the Court of Appeals, 16 of which modified a Commission determination.

- 166 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);

- 340 judges were censured publicly;
- 255 judges were admonished publicly;
- 59 judges were admonished confidentially by the temporary or former Commission; and
- 1 matter was dismissed by the Court of Appeals upon the judge's request for review.

Court of Appeals Reviews

Since 1978, the Court of Appeals, on request of the respondent-judge, has reviewed 94 determinations filed by the present Commission. Of these 94 matters:

- The Court accepted the Commission's sanctions in 78 cases (69 of which were removals, 6 were censures and 3 were admonitions);
- The Court increased the sanction from censure to removal in 2 cases;
- The Court reduced the sanction in 13 cases:
  - 9 removals were modified to censures;
  - 1 removal was modified to admonition;
  - 2 censures were modified to admonitions; and
  - 1 censure was rejected and the charges were dismissed.
- The Court remitted 1 matter to the Commission for further proceedings.
- One request for review is pending.

APPENDIX E: RULES GOVERNING JUDICIAL CONDUCT

22 NYCRR § 100 *et seq.*

Rules of the Chief Administrator of the Courts Governing Judicial Conduct

Preamble

The rules governing judicial conduct are rules of reason. They should be applied consistently with constitutional requirements, statues, 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.

Section 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 more than a *de minimis* legal or equitable interest, 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

(5) "*de minimis*" denotes an insignificant interest that could not raise reasonable questions as to a judge's impartiality.

(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) "Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic 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, nonpartisan 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.

(R) "Impartiality" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

(S) An "independent" judiciary is one free of outside influences or control.

(T) "Integrity" denotes probity, fairness, honesty, uprightness and soundness of character. "Integrity" also includes a firm adherence to this Part or its standard of values.

(U) A "pending proceeding" is one that has begun but not yet reached its final disposition.

(V) An "impending proceeding" is one that is reasonably foreseeable but has not yet been commenced.

Historical Note
Sec. filed Feb. 1, 1996 eff. Jan. 1, 1996.
Amended (D) and (D)(5) on Sept. 9, 2004.
Added (R) - (V) on Feb. 14, 2006

Section 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.

Historical Note
Sec. filed Aug. 1, 1972; renum. 111.1, new added by renum. and amd. 33.1, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

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

Historical Note
Sec. filed Aug. 1, 1972; renum. 111.2, new added by renum. and amd. 33.2, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Section 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, religion, national origin, disability, marital status 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:
(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;
(b) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(10) 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.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic 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 fourth 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 fourth 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 Administrator 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 (i) 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;

(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 or is likely to be a material witness in the proceeding.

(f) the judge, while a judge or while a candidate for judicial office, has made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or has made a public statement not in the judge's adjudicative capacity that commits the judge with respect to
(i) an issue in the proceeding; or
(ii) the parties or controversy in the proceeding.

(g) 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 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 make 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.

Historical Note
Sec. filed Aug.1, 1972; amd. Filed Nov. 26, 1976; renum. 111.3, new added by renum. and amd. 33.3, filed Feb. 2, 1982; amds. filed: Nov. 15, 1984; July 14, 1986; June 21, 1988; July 13, 1989; Oct. 27, 1989; replaced, new filed Feb. 1, 1996 eff. Jan. 1, 1996.
Amended 100.3 (B)(9)-(11) & (E)(1)(f) - (g) Feb. 14, 2006
Amended 100.3(C)(3) and 100.3(E)(1)(d) & (e) Feb. 28, 2006

Section 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 appear 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) 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 designated 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 in excess of $150, 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.

Historical Note
Sec. filed Aug. 1, 1972; amd. filed Nov. 26, 1976; renum. 111.4, new added by renum. and amd. 33.4, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996; amds. filed: Feb. 27, 1996; Feb. 9, 1998 eff. Jan. 23, 1998. Amended (C)(3)(b)(ii).

Section 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 improve 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, provided that the cost of the ticket to such dinner or other function shall not exceed the proportionate cost of the dinner or function. The cost of the ticket shall be deemed to constitute the proportionate cost of the dinner or function if the cost of the ticket is $250 or less. A candidate may not pay more than $250 for a ticket unless he or she obtains a statement from the sponsor of the dinner or function that the amount paid represents 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 impartiality, 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 that are inconsistent with the impartial performance of the adjudicative duties of the office;
(ii) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office;
(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).

(f) shall complete an education program, either in person or by videotape or by internet correspondence course, developed or approved by the Chief Administrator or his or her designee within 30 days after receiving the nomination or 90 days prior to receiving the nomination for judicial office. The date of nomination for candidates running in a primary election shall be the date upon which the candidate files a designating petition with the Board of Elections. This provision shall apply to all candidates for elective judicial office in the Unified Court System except for town and village justices.

(g) shall file with the Ethics Commission for the Unified Court System a financial disclosure statement containing the information and in the form, set forth in the Annual Statement of Financial Disclosure adopted by the Chief Judge of the State of New York. Such statement shall be filed within 20 days following the date on which the judge or non-judge becomes such a candidate; provided, however, that the Ethics Commission for the Unified Court System may grant an additional period of time within which to file such statement in accordance with rules promulgated pursuant to section 40.1(t)(3) of the Rules of the Chief Judge of the State of New York (22 NYCRR). Notwithstanding the foregoing compliance with this subparagraph shall not be necessary where a judge or non-judge already is or was required to file a financial disclosure statement for the preceding calendar year pursuant to Part 40 of the Rules of the Chief Judge. This requirement does not apply to candidates for election to town and village courts.

(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.

(6) A judge or a non-judge who is a candidate for public election to judicial office may not permit the use of campaign contributions or personal funds to pay for campaign-related goods or services for which fair value was not received.

(7) Independent Judicial Election Qualifications Commissions, created pursuant to Part 150 of the Rules of the Chief Administrator of the Courts, shall evaluate candidates for elected judicial office, other than justice of a town or village court.

(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 fund-raising activity of a political candidate, political party, or partisan political club; or

(4) political conduct prohibited by section 50.5 of the Rules of the Chief Judge (22 NYCRR 50.5).

Historical Note
Sec. filed Aug. 1, 1972; renum. 111.5, new added by renum. and amd. 33.5, filed Feb. 2, 1982; amds. filed: Dec. 21, 1983; May 8, 1985; March 2, 1989; April 11, 1989; Oct. 30, 1989; Oct. 31, 1990; repealed, new filed; amd. filed March 25, 1996 eff. March 21, 1996. Amended (A)(2)(v).

Amended 100.5 (A)(2)(v), (A)(4)(a), (A)(4)(d)(i)-(ii), (A)(4)(f), (A)(6), (A)(7) Feb. 14, 2006; 100.5(A)(4)(g) Sept. 1, 2006.

Section 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 section 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.

(5) Nothing in this rule shall further limit the practice of law by the partners or associates of a part-time judge in any court to which such part-time judge is temporarily assigned to serve pursuant to section 106(2) of the Uniform Justice Court Act or Section 107 of the Uniform City Court Act in front of another judge serving in that court before whom the partners or associates are permitted to appear absent such temporary assignment.

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

Historical Note
Sec. filed Aug. 1, 1972; repealed, new added by renum. 100.7, filed Nov. 26, 1976; renum. 111.6, new added by renum. and amd. 33.6, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Amended 100.6(E) Feb. 14, 2006

Added 100.6(B)(5) March 24, 2010

APPENDIX F:

DETERMINATIONS RENDERED BY THE COMMISSION IN 2013

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

– –

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

ROBERT E. ALEXANDER,

a Justice of the Pembroke Town Court
and former Justice of the Corfu Village
Court, Genesee County.

DECISION
AND
ORDER

– –

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (David M. Duguay, Of Counsel) for the Commission

Honorable Robert E. Alexander, *pro se*

The matter having come before the Commission on October 31, 2013; and the Commission having before it the Stipulation dated October 29, 2013, with appended

exhibits; and respondent having resigned from judicial office by letter dated October 29, 2013, effective November 15, 2013, and having affirmed that upon vacating his judicial office he will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law §45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending proceeding is discontinued and the matter closed pursuant to the terms of the Stipulation; and it is

SO ORDERED.

Dated: October 31, 2013

Jean M Savanyu

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

ROBERT E. ALEXANDER,

STIPULATION

A Justice of the Pembroke Town Court and
former Justice of the Corfu Village Court,
Genesee County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, and the Honorable Robert E. Alexander ("Respondent"), as follows:

1. Respondent was a Justice of the Corfu Village Court, Genesee County, from April 3, 1989, until April 1, 2013. He has been a Justice of the Pembroke Town Court, Genesee County, since January 1, 2006. Respondent's current term expires on December 31, 2013. By order of the Court of Appeals dated August 22, 2013, Respondent was suspended with pay from the office of Justice of the Pembroke Town Court. By order of the Court of Appeals dated September 17, 2013, Respondent's suspension, with pay, was continued. Respondent is not an attorney.

2. Respondent was served with a Formal Written Complaint dated September 12, 2013, containing three charges.

3. The Formal Written Complaint is appended as Exhibit 1.

4. Respondent denied the allegations in the Formal Written Complaint.

5. Respondent submitted his letter of resignation from judicial office dated October 29, 2013, effective at the close of business on November 15, 2013. A copy of Respondent's resignation letter is annexed as Exhibit 2.

6. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of a judge's resignation to complete proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.

7. Respondent affirms that, after he vacates his judicial office, he will neither seek nor accept judicial office at any time in the future.

8. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time, the present proceeding before the Commission will be revived and the matter will proceed to a hearing before a referee.

9. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

10. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated:

Honorable **Robert E. Alexander**
Respondent

Dated: Oct. 29, 2013

Robert H. Tembeckjian
Administrator and Counsel to the Commission
(David M. Duguay, Of Counsel)

EXHIBIT 1: FORMAL WRITTEN COMPLAINT
Available at www.cjc.ny.gov
EXHIBIT 2: RESPONDENT'S LETTER OF RESIGNATION
Available at www.cjc.ny.gov

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- -

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

JOHN S.R. BARTLETT,

DECISION
AND
ORDER

a Justice of the Lebanon Town Court,
Madison County.

- -

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Nina M. Moore
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Kathleen Martin, Of Counsel) for the Commission

Honorable John S.R. Bartlett, *pro se*

The matter having come before the Commission on March 14, 2013; and the Commission having before it the Stipulation dated March 1, 2013, with appended

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exhibits; and respondent having tendered his resignation from judicial office by letter dated February 21, 2013, effective March 1, 2013, and having affirmed that he will neither seek nor accept judicial office in the future; and respondent having waived confidentiality as provided by Judiciary Law §45 to the limited extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending proceeding be discontinued and the matter closed pursuant to the terms of the Stipulation; and it is

SO ORDERED.

Dated: March 14, 2013

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

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JOHN S. R. BARTLETT, **STIPULATION**

a Justice of the Lebanon Town Court,
Madison County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, and the Honorable John S. R. Bartlett ("respondent"), as follows.

1. Respondent has served as a Justice of the Lebanon Town Court, Madison County, since January 2011. His current term of office expires on December 31, 2014.

2. Respondent was personally served by the Commission with a Formal Written Complaint dated January 2, 2013, containing two charges, which alleged *inter alia* that:

A. From in or about January 2011 through in or about January 2012 respondent failed to make timely reports to the State Comptroller with regard to the collection of fines and penalties, contrary to the requirements of Section 1803 of the Vehicle and Traffic Law, Section 27(1) of the Town Law; and

B. Respondent failed to cooperate with the Commission's investigation of the matters set forth in Charge I of the Formal

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Written Complaint, in that he failed to respond to three letters of inquiry from the Commission; failed to respond to a letter requesting that he contact Commission staff; and failed to appear on two scheduled occasions to give testimony.

3. The Formal Written Complaint is appended hereto as Exhibit 1.

4. Respondent enters into this Stipulation in lieu of filing a verified Answer to the Formal Written Complaint.

5. There is no evidence that respondent converted any court funds for his or anyone else's personal use.

6. Respondent tendered his resignation from judicial office effective ~~February~~ March 1st, 2013, and affirms that he has vacated judicial office as of 3/1/13. A copy of respondent's resignation letter is appended hereto as Exhibit 2.

7. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of a judge's resignation to complete the proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.

8. Respondent affirms that he will neither seek nor accept judicial office in the future.

9. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time, the present proceedings

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before the Commission will be revived and the matter will proceed to a hearing before a referee.

10. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

11. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 2/21/13

Honorable John S. R. Bartlett
Respondent

Dated: March 1, 2013

Robert H. Tembeckjian, Esq.
Administrator & Counsel to the Commission
(**Kathleen Martin,** Of Counsel)

EXHIBIT 1: FORMAL WRITTEN COMPLAINT
Available at www.cjc.ny.gov
EXHIBIT 2: RESPONDENT'S LETTER OF RESIGNATION
Available at www.cjc.ny.gov

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- -

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

DETERMINATION

MARY BRIGANTTI-HUGHES,

a Justice of the Supreme Court, 12th
Judicial District, Bronx County.

- -

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Pamela Tishman, Of Counsel) for the Commission

Gair, Gair, Conason, Steigman, Mackauf, Bloom & Rubinowitz (by Ben B. Rubinowitz) for the Respondent

The respondent, Mary Brigantti-Hughes, a Justice of the Supreme Court, 12th Judicial District, Bronx County, was served with a Formal Written Complaint dated

June 13, 2013, containing one charge. The Formal Written Complaint alleged that on numerous occasions respondent asked and/or caused her court staff to perform non-work-related personal tasks for her and to participate in religious and secular activities associated with her religion or church.

On November 8, 2013, the Administrator, respondent's counsel and respondent 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, recommending that respondent be censured and waiving further submissions and oral argument. The Commission had rejected an earlier Agreed Statement.

On December 12, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Supreme Court, 12th Judicial District, Bronx County, since 2005. She served as a Judge of the New York City Civil Court from 1998 to 2004 and, during a portion of her term as a Civil Court Judge, also served as a Judge of the New York City Criminal Court. Respondent's current term expires on December 31, 2018. Respondent was admitted to the practice of law in New York in 1987.

2. From in or about 2006 to in or about 2011, respondent lent the prestige of judicial office to advance her own and others' private interests and/or failed to conduct her extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that, during regular business hours, she asked and/or caused court staff (A)

to perform non-work-related personal tasks for her and (B) to participate in religious and secular activities associated with her religion or church, as indicated in the succeeding paragraphs.

3. From in or about 2006 through in or about 2009, on approximately five occasions, respondent asked her secretary, Maria Figueroa, to pick up respondent's young daughter from school. On those occasions, Ms. Figueroa left work early, drove her personal car to the school, picked up the child and then looked after the child at either her own home or respondent's home until the end of the day when someone relieved her.

4. From in or about 2006 through in or about 2011, on multiple occasions during regular business hours in the months of July and August, respondent brought her child to court during the day. In these years respondent's child was between the ages of six and eleven. There is evidence sufficient to establish that on approximately five such occasions, respondent's court staff supervised the child when respondent was on the bench.

5. From in or about January 2010 to in or about February 2011, on approximately four occasions during regular business hours, respondent had her court attorney, Marguerite Wells, pick up respondent's daughter from school. Ms. Wells would leave work, drive respondent's car to the school, park nearby and then go into the school to get the child. She would then bring the child to the courthouse. If respondent was not in chambers, Ms. Wells would watch the child until respondent returned.

6. From in or about 2006 through in or about 2009, on about three

occasions, respondent had her secretary, Maria Figueroa, drive her to a hair salon, wait and then drive respondent home or to the courthouse.

7. From in or about 2006 to in or about 2009, on at least one occasion during regular business hours, respondent had her secretary, Maria Figueroa, drive her to New Jersey so respondent could go shopping.

8. From in or about 2006 through in or about 2011, on as many as nine occasions during regular business hours, respondent had or permitted court staff, such as her secretary Maria Figueroa, her court attorney Marguerite Wells and assistant Supreme Court librarian Yesenia Santiago, to do personal typing, printing and/or copying of religious material, for respondent's personal use.

9. In or about 2010 or early 2011, respondent had her court attorney, Marguerite Wells, accompany her to a Home Depot during regular business hours to help respondent purchase soil and plants for a function at respondent's church. When they returned to chambers, respondent had Ms. Wells assist her in repotting the plants.

10. In or about 2003, respondent obtained permission from the Office of Court Administration for a Bible study/prayer group to meet in the courthouse during the lunch hour. However, from in or about 2006 to in or about 2011, during regular business hours other than the lunch hour, respondent often asked court staff to join her in prayer in chambers.

A. From in or about 2006 to in or about 2009, on about six occasions, respondent asked Maria Figueroa and/or respondent's court attorney, Brenda Torres, to

pray with respondent in chambers. Respondent and her court staff often joined hands during the prayers.

B. From in or about 2010 to in or about 2011, on about seven occasions, respondent asked Marguerite Wells and/or her other court attorney, Yvonne Baez, to pray with respondent in chambers. Respondent and her court staff often joined hands during the prayers.

11. From in or about 2006 to in or about 2011, in the courthouse during regular business hours, respondent occasionally invited members of her court staff, including Maria Figueroa, Marguerite Wells, Yvonne Baez, and Brenda Torres, to attend church and religious events after regular business hours. As a result of respondent's invitations:

A. Ms. Figueroa attended a Friday church service and a Saturday church event;

B. Ms. Torres attended a church fund-raiser at her own expense, one or two church services, a Saturday religion class and an evening prayer group; and

C. Ms. Wells attended a church service, a church event for women and, at her own expense, a weekend retreat in Pennsylvania sponsored by respondent's church.

Additional Factors

12. With regard to respondent's requests that her court staff assist her in some personal tasks not related to their official duties, such as photocopying religious material and assisting with care for respondent's child:

A. Most of the conduct engaged in by respondent predated *Matter of Ruhlmann*, 2010 NYSCJC Annual Report 213 (Feb 9, 2009), in which the Commission censured a judge for having her secretary perform various personal services, such as typing for her husband and child care for her children. Respondent asserts that while she was not previously familiar with the Commission's determination in *Ruhlmann*, she promises to abide by it and acknowledges that it was improper for her to ask her staff to perform non-work-related personal tasks for her, especially during work hours. Respondent asserts that, in making some of these requests of her staff, she was motivated by the belief that she was maximizing her time in the courtroom. While respondent did not believe at the time that her requests took substantial time away from her staff's discharge of their official duties, she now realizes that she created at least the appearance of using public resources for her personal benefit and promises not to do so in the future. As to personal tasks performed during non-working hours, respondent now recognizes that she created the appearance of impropriety, placed her own interests above those of her staff and failed to consider whether her requests were implicitly coercive given her role as judge and employer.

B. The Administrator notes that, as stated in the Preamble to the Rules Governing Judicial Conduct, these are "rules of reason," and it is "not intended…that every transgression will result in disciplinary action." It is not the Administrator's position that, absent aggravating circumstances, occasional acts of personal assistance by a court employee toward a judge should result in discipline. For example, ordinary

professional courtesies and emergencies sometimes result in extra-curricular assistance being provided by subordinates to supervisors and vice versa. In this case, however, respondent called upon her subordinates to perform personal tasks more than occasionally in non-emergency circumstances, requiring public discipline.

C. There is evidence sufficient to establish that respondent requested her staff to assist her with personal tasks on average fewer than five times a year. The Administrator is not aware of any case in which similar conduct of this type and limited number was found to comprise a "scheme constituting a systemic ongoing course of conduct with intent to [ ] defraud the state" in violation of Penal Law Section 195.20 (punctuation omitted), or otherwise found to be a crime.

13. With regard to respondent's invitations to court staff to pray with her in the courthouse and to attend or participate in various meetings or events of a religious nature:

A. The Administrator notes that in 2003, in interpreting applicable First Amendment law, the Office of Court Administration opined that respondent may use "available court facilities during the lunch hour" "to hold bible study and other religiously oriented meetings" so long as "they [did] not interfere with the performance of duties in the workplace" and were not "otherwise … disturbing to others, including the potential to coerce or intimidate others to join." The Administrator does not suggest any impropriety in respondent's privately and discreetly engaging in personal prayer, at or in the workplace, alone or with others who voluntarily join her.

B. The Administrator and respondent agree, however, that in the workplace, respondent's right to the free exercise of her religious beliefs must be balanced with the right of her subordinates to freely exercise their own religious beliefs and to be free of coercion to engage in the religious practices of others. Federal courts have struggled with this delicate balance. *See, e.g., Venters v. City of Delphi,* 123 F3d 956 (7th Cir 1997); *Brown v. Polk County, Iowa,* 61 F3d 650 (8th Cir 1995).

C. Respondent asserts that she did not intend to coerce any employee into engaging in religious activity and never suggested explicitly or implicitly that any employee would suffer adverse consequences for declining her invitations to pray or to attend religious events. The Commission's investigation did not reveal any evidence to the contrary. Respondent now recognizes, however, that such requests are inherently coercive when made by a judge to her personal appointees or other court employees, and she understands that some staff did feel pressure to participate in prayer or to attend events sponsored by respondent's church.

D. Respondent acknowledges that the Rules prohibit judges from participating in fund-raising activities, even for a religious purpose, and that it was improper for her to invite employees to events requiring them to expend funds for the benefit of her church. She promises not to extend such invitations in the future.

E. Respondent also acknowledges that she should not have invited her staff to attend various religious functions sponsored by her church. While respondent extended these invitations out of her sincere devotion to her religious principles, she now

recognizes that she failed to consider the rights and interests of her staff, including whether her invitations were implicitly coercive given her role as judge and employer. She promises not to extend such invitations in the future.

14. The Administrator notes that suspension from office is not a sanction available to the Commission under the Constitution.

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(C)(2), 100.4(A)(2), 100.4(A)(3) and 100.4(C)(3)(b)(i) and (iv) of the Rules Governing Judicial Conduct ("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, and respondent's misconduct is established.

On multiple occasions from 2006 to 2011, respondent misused her judicial position by asking and/or causing court staff to perform personal tasks for her and to participate in activities associated with her religion or church.

By repeatedly using her court staff to perform child care and other personal services, respondent misused court resources and engaged in conduct that was implicitly coercive and inconsistent with the ethical rules. As respondent has acknowledged, on numerous occasions she called upon her court staff, including her secretary and court attorney, to pick up respondent's young child from school and look after her until

respondent was available. On other occasions, when respondent brought her child to work during the summer months, her court staff supervised the child when respondent was on the bench. At respondent's behest, members of her staff drove her or otherwise assisted her on personal errands such as shopping trips during business hours, and performed other non-work-related services for her such as typing, printing and/or copying religious material for her personal use. The record before us amply demonstrates that these extra-judicial services were not *de minimis* and went well beyond the professional courtesies or occasional acts of personal assistance that might ordinarily be provided in emergency situations by subordinates to supervisors, or vice versa. Rather, they reflect an egregious misuse of court resources that violated respondent's obligation to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (Rules, §100.2[A]; *Matter of Ruhlmann*, 2010 NYSCJC Annual Report 213 [2009]).

"The public is entitled to expect that judges will conscientiously use resources paid for by the taxpayers only for the purpose for which those resources were intended" (*see Matter of Watson*, Public Admonishment by California Commission on Judicial Performance [2006], citing Rothman, California Judicial Conduct Handbook §3.33 [2d ed. 1999]). Care of a judge's children is a personal responsibility that clearly "falls beyond the scope of duties for which the taxpayers have provided staff to members of the judiciary" (*Matter of Neely*, 364 SE2d 250, 254 [W Va 1987] [disciplining a judge for requiring his secretary to care for the judge's child). As we stated in *Matter of*

Ruhlmann, *supra* (censuring a judge for requiring her secretary to provide child care services and do personal typing for the judge's husband):

> Such extra-judicial use of court staff is improper regardless of whether the employee objects or feels compelled to perform such personal tasks without protest. It is wrong even if the judge believes it does not interfere with the performance of the court's work. It is disruptive to court administration and sets a poor example for court staff. It is a breach of the public trust and damages public confidence in the integrity of the judiciary.

Requiring a court employee under the judge's supervision to perform personal favors not only is inherently coercive, but complicates any evaluation of the employee's job performance and adversely affects the nature of the employment relationship.

As to respondent's assertion that in making such requests of her staff, she was motivated by the belief that she "was maximizing her time in the courtroom" (Agreed Statement, par 14A), such a belief is neither mitigating nor acceptable. Tasks of a personal nature remain a judge's personal responsibilities and should not be discharged using public resources. Nor is it mitigating that, as stipulated, most of the conduct engaged in by respondent predated *Matter of Ruhlmann* or that respondent was not previously familiar with that decision, which was issued in February 2009. Every judge should know that routinely performing personal tasks and favors for the judge is not part of a court employee's duties.[1]

[1] Reflecting the seriousness of such conduct, we note that in some circumstances the misuse of government resources can constitute a crime (*see* Penal Law §195.20). In issuing this determination, we make no conclusion as to whether respondent's conduct might subject her to civil or criminal liability since such matters are properly determined in a court of appropriate jurisdiction.

Over the same six-year period, respondent also asked members of her court staff to pray with her in chambers on multiple occasions. She and her staff often held hands as they prayed during such sessions, which took place during business hours. Respondent also invited some members of her court staff to attend religious services and other events associated with respondent's church, as a result of which her secretary and two court attorneys attended several such events on evenings and weekends.

We note that in 2003 the Office of Court Administration had advised respondent that using "available court facilities during the lunch hour" for "bible study and other religiously oriented meetings" was permissible so long as such meetings "[did] not interfere with the performance of duties in the workplace" and were not "otherwise … disturbing to others, including the potential to coerce or intimidate others to join" (Agreed Statement, par 11, 15A). The prayer sessions to which respondent invited her staff, as described in this record, clearly went beyond the parameters of OCA's advice in that: (i) they took place at times other than the lunch hour and (ii) respondent did not simply attend, but held the meetings in her chambers and asked court staff to attend. Under such circumstances, repeatedly asking her staff to join her in such sessions misused the prestige of her judicial position, added an element of implicit coercion and crossed the line into impropriety (Rules, §100.2[C]). Moreover, inviting members of her court staff to attend church-related events after court hours clearly went beyond the permission afforded by administrative authorities and was also implicitly coercive, as respondent has acknowledged. Inevitably, some staff felt pressure to participate in prayer and attend

events at respondent's invitation. Belatedly, respondent now recognizes that such requests are inherently coercive when made by a judge to her appointees and other court employees. In addition, since some of the after-hours events required the employee to expend funds for the benefit of respondent's church, making such invitations involved respondent in fund-raising, which is strictly prohibited by the ethical rules (Rules, §100.4[C][3][b][i], [iv]).

Although we recognize that respondent extended these invitations "out of her sincere devotion to her religious principles" (Agreed Statement, par 15E), it is clear that she should have been more sensitive to the serious potential for impropriety in injecting her religious practices into the workplace in such a manner. As stated in the stipulated facts, "in the workplace, respondent's right to the free exercise of her religious beliefs must be balanced with the right of her subordinates to freely exercise their own religious beliefs and to be free of coercion to engage in the religious practices of others" (Agreed Statement, par 15B). By creating an environment in which some staff felt pressure to engage in religious activities, her actions impinged on the important separation between church and state, one of the most basic tenets of the federal and state constitutions.

While it is clear from the foregoing that a severe public sanction is appropriate, there are several factors in mitigation. In particular, we note that the advice respondent received from administrative authorities about engaging in religious practices on court premises gave support to prayer meetings at "available court facilities during the

lunch hour." Although we find that respondent's conduct went beyond the letter and spirit of that advice, she may have believed that her religious activities in the workplace were consistent with the advice she received and with her First Amendment right to exercise her religious beliefs. We also note that respondent has acknowledged that her conduct was improper, both as to her use of court staff to perform personal tasks and her religious activities in the workplace, and has promised to refrain from such activity in the future. Based on the foregoing, we believe that the sanction of public censure is appropriate.

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen, Ms. Corngold, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

Mr. Emery did not participate.

CERTIFICATION

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

Dated: December 17, 2013

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

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

CATHRYN M. DOYLE,

a Judge of the Surrogate's Court,
Albany County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci, Of Counsel) for the Commission

Dreyer Boyajian LLP (by William J. Dreyer) for the Respondent

The respondent, Cathryn M. Doyle, a Judge of the Surrogate's Court, Albany County, was served with a Formal Written Complaint dated September 17, 2012, containing three charges. The Formal Written Complaint alleged that respondent

presided over matters involving a lawyer who was her close friend and personal attorney (Charge I), a lawyer who was or had been her campaign manager (Charge II), and a lawyer who was her former attorney (Charge III). Respondent filed a verified answer dated October 11, 2012.

By Order dated January 17, 2013, the Commission designated H. Wayne Judge, Esq., as referee to hear and report to the Commission with respect to the charges. A hearing was held on March 19, 20 and 28, 2013, in Albany. The referee filed a report dated June 25, 2013.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Commission counsel's brief recommended the sanction of removal, and respondent's brief argued that removal was too harsh.

On September 19, 2013, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Judge of the Surrogate's Court, Albany County, since January 2001. At times, she has been designated an Acting Supreme Court Justice and Acting County Court Judge. From 1980 through December 2000, respondent served as Chief Clerk of the Albany County Surrogate's Court. She was admitted to the practice of law in New York in 1979. Her current term expires on December 31, 2020.

2. Respondent was an adjunct professor at Albany Law School, where she taught courses on Trusts and Estates and Surrogate's Court Practice. She has been a

frequent lecturer for the New York State Bar Association, the Surrogate Judges Association, and the Office of Court Administration. Respondent testified that she reviews all the published opinions of the Advisory Committee on Judicial Ethics and the latest court decisions on a regular basis.

3. From 2007 through 2010, the Albany County Surrogate's Court processed an average of approximately 3,500 proceedings per year.

As to Charge I of the Formal Written Complaint:

4. From in or about February 2008 through December 2009, respondent did not disqualify herself from, and took judicial action in, four matters in which Thomas J. Spargo represented the petitioners, notwithstanding that Mr. Spargo was respondent's close personal friend and that, beginning in March 2008, he was also acting as her lawyer.

5. Respondent and Mr. Spargo have been close friends for almost 40 years. Respondent described her relationship with Mr. Spargo as "as close as a friend can get" and testified that their relationship was "well known to everybody in Albany."

6. By Determination dated February 26, 2007, respondent was censured for giving "inconsistent, misleading and evasive" testimony during disciplinary proceedings concerning her alleged involvement in raising funds for a legal defense trust fund for Mr. Spargo, who was then a Supreme Court Justice facing disciplinary proceedings before the Commission.

7. On March 20, 2008, Mr. Spargo filed a summons and complaint on

respondent's behalf in Supreme Court, Albany County, in *Cathryn M. Doyle v. Windsor Properties*, a personal injury action. The case was still pending when Mr. Spargo was disbarred in December 2009. It was discontinued in November 2012.

8. On July 29, 2008, Mr. Spargo filed a notice of petition, verified petition and request for judicial intervention on behalf of respondent and her husband in *Matter of the Application of Cathryn M. Doyle and Timothy Doyle v. Town of New Scotland, Board of Assessment Review and Julie Nooney, Assessor*, in Supreme Court, Albany County. Prior to filing the petition, Mr. Spargo had met informally with the assessor and later, in May 2008, Mr. Spargo appeared on behalf of respondent and her husband before the town board of assessment review. Mr. Spargo represented respondent and her husband in the matter through settlement in October 2009.

Matters Handled by Mr. Spargo in Surrogate's Court

9. On February 20, 2008, a year after respondent's censure by the Commission, Mr. Spargo filed a petition for letters of administration c.t.a. after probate on behalf of Vernon Wagoner regarding the will of William S. Wagoner. On the same date, respondent signed the decree granting administration c.t.a. after probate.

10. Mr. Spargo filed the papers in person. Respondent handed the petition to court staffer Kelli Bonaquisti and told her that it was okay to issue the decree and letters; Ms. Bonaquisti wrote "Okay per CMD" in the court file to indicate respondent's approval. This was a departure from the usual procedure, which was for the papers to be filed by mail or in person with the record room, where they would be entered and given to the Chief Clerk to review.

11. The proceeding for administration c.t.a. was uncontested. All interested persons joined the petitioner and requested that Vernon Wagoner be appointed administrator c.t.a. Surrogate's Court Procedure Act ("SCPA") section 1418 provides that "upon the application of any person who may petition for the probate of the will under 1402 the court must issue letters of administration" according to the specified priority.

12. On February 29, 2008, Mr. Spargo filed two petitions on behalf of Garry L. Porter for letters of administration for the estates of Robert Porter and Esther May Porter. On the same date, respondent signed a decree granting letters of administration to Garry L. Porter for each estate.

13. Both proceedings were uncontested. The petitioner was the only party to the proceeding, and no interested party filed a responsive pleading. All interested persons joined the petitioner and requested that Garry L. Porter be appointed administrator of both estates, and all interested persons signed duly executed waivers of citation and consents to the relief requested in the petition. Pursuant to SCPA Article 10, the appointment of an administrator is a "must" and the priority of appointment is non-discretionary.

14. On or about April 23, 2008, Mr. Spargo filed a petition on behalf of Mark C. Pangburn for probate of the will of Mildred J. Johansson, and on the same date, respondent signed a decree admitting the will to probate.

15. In January 2009 Mr. Spargo wrote to the Surrogate's Court requesting a six-month extension of time in which to file the inventory of assets in

Johansson, and respondent granted the request. On or about May 20, 2009, Mr. Spargo filed the inventory of assets in Surrogate's Court.

16. In presiding over the *Wagoner*, *Porter* and *Johansson* estates, respondent did not disclose that Mr. Spargo was her close friend or (in *Johansson*), that he was contemporaneously acting as her attorney.

17. Respondent testified that she regularly disqualified herself in Mr. Spargo's cases in Supreme Court. She testified that she did not do so in Surrogate's Court matters since the matters were uncontested and her role was "ministerial," and that she did not give his cases any preferential treatment. She testified that she "kind of forgot" about the personal injury lawsuit since no action was taken in the matter after it was filed.

As to Charge II of the Formal Written Complaint:

18. From in or about 2007 through 2011, respondent did not disqualify herself from, and took judicial action in, four matters in which Matthew J. Kelly represented the petitioners notwithstanding that, as set forth below, Mr. Kelly had a leadership role in respondent's campaign for nomination as Supreme Court Justice in 2007 and was manager of her 2010 campaign for re-election as Surrogate.

Mr. Kelly's Role in Respondent's Campaigns

19. On June 19, 2007, respondent publicly announced her candidacy for Supreme Court Justice. Mr. Kelly attended the announcement. At or around the same time, respondent met with Bernard Brown, her personal accountant, and asked him to

serve as her campaign treasurer. Respondent told Mr. Brown, who had no experience as a campaign treasurer, that if he had questions he could talk to Mr. Kelly and that Lisa Buccini, her court attorney, could help Mr. Brown file appropriate reports with the Board of Elections. Mr. Brown's notes of that conversation contain the phrase, "JIM KELLY CAMPAIGN MGR," along with Mr. Kelly's phone number and Ms. Buccini's name, home address and phone number.

20. On July 18, 2007, respondent signed a Board of Elections form CF-16 affirming that she was a candidate for election to the office of Supreme Court Justice and authorizing the "Friends of Judge Cathryn Doyle" to file all campaign disclosure statements on her behalf. On August 9, 2007, Mr. Brown filed with the Board of Elections the CF-16 form, a CF-02 form registering the "Friends of Judge Cathryn Doyle" as a political committee and a CF-03 form indicating that respondent had authorized the committee to take part in her election.

21. After Mr. Brown's initial meeting with respondent, he had no communications with her regarding the campaign. In the ensuing months, he spoke to Ms. Buccini only once relative to the campaign. In contrast, Mr. Brown had numerous communications with Mr. Kelly about the campaign's funds and expenses.

22. Mr. Kelly personally arranged and ran a fundraiser for respondent's campaign at Crossgates Restaurant on August 14, 2007. Mr. Kelly placed an advertisement for the fundraiser in the *Times Union*, which recorded Mr. Kelly's name as the advertiser. Mr. Kelly paid up front for the advertisement, and respondent's campaign reimbursed him for his costs. Mr. Kelly ordered the printing of 2,000 invitations for the

fundraiser and organized the mailing of the invitations, and his law firm paid the postage for the mailings. Mr. Kelly sent the invitations to lawyers, law firms and others included on a mailing list he had previously compiled while managing other campaigns.

23. Mr. Kelly also ordered 2,500 lawn signs for respondent's campaign. The bills for the invitations and lawn signs were addressed to respondent's campaign committee, "Friends of Judge Cathryn Doyle," at Mr. Kelly's office address. Mr. Kelly sent the bill for the lawn signs to Mr. Brown for payment.

24. Mr. Kelly instructed an individual who had arranged a second campaign fundraiser for respondent to send the bill to him. Mr. Kelly forwarded all the invoices for respondent's campaign expenditures to Mr. Brown. Mr. Brown did not attend any campaign events and had no personal knowledge of any of the campaign's expenditures other than from the documents supplied to him by Mr. Kelly.

25. The Democratic Party's Judicial Nominating Convention was held in late September 2007. Respondent did not get the Party's nomination for Supreme Court and did not run in the general election.

26. After respondent failed to receive the nomination, Mr. Kelly advised Mr. Brown that unspent campaign contributions had to be refunded. At Mr. Kelly's direction, Mr. Brown prepared the refund checks and delivered them to Mr. Kelly. Mr. Kelly signed the cover letters enclosing the refund checks and sent them to the contributors. When Mr. Brown discovered that his office had made a clerical error and had calculated incorrect refund amounts for some contributors, he asked Mr. Kelly how to proceed. Mr. Kelly advised him to write to the contributors who received the incorrect

amounts and request that the overpayments be returned; the letters went out under Mr. Kelly's name. Mr. Kelly's supervision of the refunding process continued through at least October 2008.

27. In September 2008 Mr. Kelly approved Mr. Brown's fee for acting as campaign treasurer.

28. At the hearing in this proceeding, respondent testified that in 2007, "I was in charge of the campaign and it wasn't a campaign"; she was only "testing the waters" and "you don't have a campaign until you have a nomination." Respondent testified that she asked Mr. Kelly "if he would be interested in being a manager, if I had a campaign, but I never had a campaign"; that he declined but said he would help run a fundraiser for her; that he was "a volunteer" in 2007; and that she was not aware of his activities on her behalf except for the mailing and advertising for the fundraiser. She testified that she was familiar with the guidelines of the Advisory Committee on Judicial Ethics that a judge's campaign manager should not appear before the judge during the campaign and for a period of time thereafter.

29. In 2010 respondent ran in a contested primary and general election and was re-elected to a ten-year term as Surrogate. Mr. Kelly had a leadership role in and served as manager of respondent's 2010 campaign.

30. On March 17, 2010, respondent publicly announced her candidacy for re-election as Surrogate and a fundraiser for her campaign was held on that date. Mr. Kelly's firm mailed the invitations to the fundraiser, and the public announcement for the fundraiser named Mr. Kelly as the contact person and provided Mr. Kelly's phone

number.

Matters Handled by Mr. Kelly in Surrogate's Court

31. In the *Estate of William J. Smith*, Mr. Kelly filed a petition for probate and letters testamentary on behalf of Jerold Nadel in 2003, and respondent admitted the will to probate in 2006. In May 2007 Mr. Kelly filed a petition and in October 2007 he filed an amended petition for judicial settlement of the account of the executor. On October 4, 2007, respondent issued an order (signed a citation) for service upon all persons interested in the estate, requiring them to show cause on November 20, 2007, why a decree should not be issued settling the account of the executor and allowing commissions and attorneys' fees.

32. On November 20, 2007, Mr. Kelly appeared before respondent in Surrogate's Court. Mr. Kelly thereafter filed the affidavits of service. On November 30, 2007, respondent issued an order appointing a guardian ad litem for the infant distributees.

33. In September 2008, the guardian ad litem filed a report. On January 12, 2009, respondent issued a decision, determining that 14 infants were the intended trust beneficiaries of the decedent's will and directing Mr. Kelly to submit a decree in accordance with the ruling. On January 21, 2009, respondent signed the submitted decree.

34. By letter dated September 1, 2009, Mr. Kelly wrote to the court requesting that distributions be made directly to the beneficiaries in lieu of a trust. In November 2009 respondent's law clerk advised Mr. Kelly that he would need to bring a

petition to terminate the trust.

35. In January 2010 Mr. Kelly filed on behalf of the executor a petition to terminate the trust, and in June 2010 he filed an amended petition to terminate the trust. By email dated June 7, 2010, respondent advised the court clerk that she had "referred the case to Judge Walsh for any further proceedings."

36. In the *Estate of Maxcy J. Kelly*, in July 2005 Mr. Kelly filed in Surrogate's Court a petition for appointment of himself and his brother as successor trustees for his grandfather's testamentary trust for the benefit of their disabled aunt. On July 20, 2005, respondent issued an order appointing them successor trustees.

37. On or about March 28, 2007, Mr. Kelly and his co-trustee petitioned to invade the corpus of the trust. By decision and order dated August 28, 2007, respondent granted the petition. While presiding over Mr. Kelly's petition, respondent knew that Mr. Kelly was active in her 2007 campaign for nomination to Supreme Court. Respondent issued her decision and order two weeks after the campaign fundraiser at the Crossgates Restaurant, which Mr. Kelly had arranged.

38. In the *Estate of Evelyn G. Redick*, in April 2006 Mr. Kelly filed in Surrogate's Court a petition for probate and letters testamentary on behalf of the petitioner, Shirley Smith. Mr. Kelly was a witness to the will, which was executed in 2001. Mr. Kelly filed an amended petition on September 25, 2006.

39. On September 25, 2006, respondent issued a citation in *Redick*, returnable on October 17, 2006. On the return date, respondent signed an order appointing James P. Milstein, Esq., as guardian ad litem for one of the distributees.

40. On April 9, 2007, the guardian ad litem filed a report, indicating, *inter alia*, that Shirley Smith may have exerted undue influence over the decedent and recommending that a proceeding pursuant to SCPA §1404 be conducted to determine the decedent's mental capacity at the time the will was executed.

41. By letter dated April 18, 2007, Mr. Kelly requested respondent's permission to make an application to have the estate pay the decedent's funeral bill. A handwritten notation on the letter indicates, "No estate yet – Ltrs not issued. Should get prelims."

42. By letter dated April 19, 2007, respondent's secretary advised Mr. Kelly and Mr. Milstein that an SCPA §1404 hearing was scheduled for May 21, 2007. On May 21, 2007, respondent presided over the hearing, at which Mr. Kelly testified.

43. On June 15, 2007, Mr. Milstein wrote to respondent requesting that she postpone the requirement for filing objections to the probate of the will and allow him to subpoena the decedent's medical records. On June 27, 2007, respondent's law clerk notified Mr. Milstein that respondent had extended the time for objections to 20 days from receipt of the decedent's medical records.

44. By letter dated December 14, 2007, respondent's secretary advised the attorneys that the court had heard nothing regarding the estate since the June extension was granted, and requested a status report.

45. By letter dated December 17, 2007, Mr. Kelly advised respondent that he was responsible for the delay in providing the requested records and that Mr. Milstein had no objection to the payment of the funeral bill. By order dated January 30,

2008, respondent directed Mr. Kelly's law firm to pay the funeral bill. In February 2008, respondent signed several subpoenas *duces tecum* for the decedent's medical records, returnable on March 28, 2008.

46. On August 13, 2008, respondent held a conference with the attorneys, at which it was determined that Mr. Milstein would file a report. On March 30, 2009, at Mr. Kelly's request, respondent held another conference, at which the attorneys reported that they would discuss settlement and report back to the court.

47. On October 1, 2009, Mr. Kelly filed an application for preliminary letters testamentary on behalf of Shirley Smith. The Chief Clerk notified Mr. Kelly that his papers were insufficient. On April 20, 2010, Mr. Kelly filed a petition for probate and letters testamentary, and by letter dated April 26, 2010, the Chief Clerk advised him how to correct his application. On May 21, 2010, Mr. Kelly filed another application for preliminary letters testamentary, on notice to Mr. Milstein. The Chief Clerk's notes indicate that she sent the file to respondent's chambers for decision.

48. In January 2011 Administrative Judge George B. Ceresia, Jr., assigned the *Redick* estate to Judge Jonathan Nichols after respondent disqualified herself.

49. In the *Estate of Ida M. Tassarotti*, in January 2010 Mr. Kelly filed in Surrogate's Court an amended petition for probate and supporting records with regard to the decedent's will. On January 28, 2010, respondent issued a citation to all interested persons requiring them to show cause on March 2, 2010, why the will should not be admitted to probate and why letters testamentary should not be issued to Anthony G. Tassarotti; respondent also issued a citation to a beneficiary who was in a nursing home.

50. By letter dated February 16, 2010, Mr. Kelly asked respondent for permission to retain a real estate broker to list the decedent's home for sale to take advantage of a tax credit. A handwritten note on the letter indicates, "Will send in appl for prelim letters." Mr. Kelly filed an application for preliminary letters testamentary dated February 22, 2010, on behalf of Anthony G. Tassarotti. On February 24, 2010, respondent issued an order granting preliminary letters with limitations to Mr. Tassarotti.

51. On March 2, 2010, respondent presided over the return of citation. Mr. Kelly appeared in court. Respondent determined that service was complete and assigned Thomas Latin, Esq., as guardian ad litem for a distributee who was a nursing home resident. On March 18, 2010, Mr. Latin filed a report recommending that the will be admitted to probate.

52. On March 19, 2010, two days after respondent's campaign fundraiser, respondent signed a decree admitting the *Tassarotti* will to probate. At the time, Mr. Kelly was actively working on respondent's campaign.

53. In December 2010 Mr. Kelly filed an amended petition for judicial settlement of the account of the executor.

54. By letter dated January 7, 2011, respondent advised Administrative Judge Ceresia that she was recusing herself from the *Tassarotti* matter. A letter dated January 13, 2011, from Judge Ceresia to the Chief Clerk of the Surrogate's Court indicates that respondent had recused herself and that the proceeding was assigned to Judge George Pulver, Jr.

55. In presiding over the *Smith*, *Kelly*, *Redick* and *Tassarotti* matters,

respondent did not disclose Mr. Kelly's role in her 2007 or 2010 campaign.

56. At the hearing in this proceeding, respondent testified that Mr. Kelly was not her campaign manager in 2007 since "it wasn't a campaign" and, as far as she knew, his activities on her behalf were minimal; therefore, her disqualification was not required in 2007 and for the next two years. She also testified that she asked Mr. Kelly to serve as campaign manager of her 2010 campaign for re-election in late March or April of that year and that she disqualified herself and took no action in Mr. Kelly's cases after he agreed to accept that position.

As to Charge III of the Formal Written Complaint:

57. William J. Cade, Esq., represented respondent in the disciplinary proceeding before the Commission which ended in a determination of censure dated February 26, 2007.

58. On or about January 30, 2008, Mr. Cade filed a petition for letters of administration on behalf of Cynthia Gould Becker in the estate of her son, Alexander Raymond Gould. On February 5, 2008, respondent signed a decree granting limited letters of administration to Ms. Becker so that she could bring a wrongful death action on behalf of the estate. Respondent did not disclose that Mr. Cade had represented her in the Commission proceedings that concluded a year earlier.

59. Ms. Becker was the decedent's sole distributee and was the only interested person in this proceeding and the only party to the proceeding. The administration proceeding was uncontested.

60. In July 2008 Mr. Cade filed a petition to compromise and settle the wrongful death action. Respondent disqualified herself and sent the matter to a Family Court Judge who was cross-designated as an acting Surrogate.

61. Respondent testified that she regularly disqualified herself in Mr. Cade's cases in Supreme Court. She testified that she did not do so in *Gould* since the action she took was ministerial and mandated by law, and that she disqualified herself on the petition to settle the wrongful death action, even though it was uncontested, since it would have required her to approve Mr. Cade's legal fees.

Additional Finding

62. Respondent testified that she sees no impropriety in presiding over the matters involving Mr. Spargo, Mr. Kelly and Mr. Cade. She testified that she believed that her impartiality could not reasonably be questioned as to matters that were uncontested, one-party, non-discretionary proceedings, and that since the only actions she took in those matters were "ministerial" and mandated by law, there was no favoritism and could be no appearance of impropriety.

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) and 100.3(E)(1) of the Rules Governing Judicial Conduct ("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. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

By presiding over multiple matters involving lawyers with whom she had close personal and professional ties, respondent violated well-established ethical standards requiring disqualification in any proceeding in which a judge's "impartiality might reasonably be questioned" (Rules, §100.3[E][1]). Her failure to recuse in each of these matters, or even to disclose the relationships that cast doubt on her ability to be impartial, created an appearance of impropriety that undermines public confidence in the integrity and independence of the judiciary as a whole (Rules, §100.2). Exacerbating the impropriety, respondent's misconduct began within months after her previous censure by the Commission, demonstrating "an unacceptable degree of insensitivity to the demands of judicial ethics" (*Matter of Conti*, 70 NY2d 416, 419 [1987]) that was underscored by her failure to recognize the impropriety of her actions and by her evasive testimony at the hearing before the referee. Viewed in its entirety, and especially in light of her disciplinary history, respondent's conduct shows an inability or unwillingness to adhere to the high standards of conduct required of judges and thus requires the sanction of removal.

It is well-settled that a judge's disqualification is required in matters involving the judge's close friends and personal attorney in order to avoid even the appearance of impropriety. *Matter of Intemann*, 73 NY2d 580, 582 (1989); *Matter of Conti*, *supra*, 70 NY2d at 418-19. Yet, only a year after respondent was censured by the Commission after proceedings focusing on her actions in support of her close friend Thomas J. Spargo, respondent failed to disqualify herself in three estate matters in which Mr. Spargo represented the petitioners. When Mr. Spargo's petitions came before her in

February 2008 – in one case, after he personally delivered the papers to her – respondent took judicial action in her friend's matters, on the same day the papers were filed, by signing the decrees. Even after Mr. Spargo began representing respondent in a personal injury lawsuit a month later, respondent did not disqualify herself: she signed a decree granting his petition for probate in *Johansson* a month after he had filed the lawsuit on her behalf. Several months later, she granted his request for an adjournment, though by that time he was also representing her in a second legal matter. Respondent never disclosed her close personal ties with Mr. Spargo, and all four estate matters in which he was the attorney of record were still pending in her court when he was disbarred in late 2009. The fact that her relationship with Mr. Spargo was well known to her court staff is irrelevant to her obligations regarding disclosure and disqualification.

In February 2008 – a year after her censure – respondent also failed to disqualify herself when the attorney who had represented her in the earlier disciplinary proceedings filed a petition for letters of administration. Under guidelines provided in numerous opinions of the Advisory Committee on Judicial Ethics ("Advisory Committee"), disqualification in matters involving the judge's personal attorney is required for two years after the representation concludes (*see* Adv Ops 92-54, 93-09, 97-135, 99-67; *see also Matter of Ross*, 1990 NYSCJC Annual Report 153; *Matter of Phillips*, 1990 NYSCJC Annual Report 145). Without disclosing her relationship to the attorney, respondent signed a decree for Mr. Cade's client and did not disqualify herself until several months later when the attorney filed a petition that would have required her to approve his fee.

Finally, between 2007 and 2011 respondent took judicial action in four estate matters involving attorney Matthew J. Kelly without disclosing that he had a significant leadership role in her 2007 campaign for a Supreme Court nomination (he was her *de facto* campaign manager and was so regarded by her staff [*see* Ex 7]) and was manager of her 2010 campaign for re-election as Surrogate. Notably, in May 2007, just three months after her censure and a month before she publicly announced her candidacy for Supreme Court, respondent presided over an SCPA §1404 hearing in *Redick* at which Mr. Kelly testified; in June, ten days after she announced her candidacy, she granted the guardian's request for subpoenas and postponed the requirement for filing objections to the will; and in August 2007, two weeks after a campaign fundraiser Mr. Kelly had personally organized, she granted his petition to invade the corpus of his grandfather's testamentary trust.

Under the Advisory Committee's guidelines, whether disqualification is required in matters involving an attorney who has worked on the judge's campaign depends on the degree of the individual's participation in the campaign, which "may range from very minimal levels of involvement, that do not even require disclosure, to very active conduct in support of a judge's candidacy which warrants disqualification when the attorney appears before the judge" (Adv Op 09-245). For example, as to an attorney who co-hosted a fundraiser and whose participation in the campaign is "more than minimal but not at the formal leadership level," a judge must disqualify during the campaign and then disclose for two years but need not disqualify (*Id.*). For a campaign manager or other individual with a "leadership role" in the campaign, disqualification is

required, subject to remittal, during the judge's campaign and for a period of two years thereafter (*see* Adv Ops 06-54, 94-12, 89-07). Although respondent was familiar with the ethical restrictions – she testified that she scrupulously reviewed the Advisory Committee's opinions – she failed to disqualify herself in Mr. Kelly's cases and never disclosed his role in her campaigns.

In view of her close personal and professional ties with these attorneys that, by any objective standard, cast doubt on her ability to be impartial and thus required her disqualification, respondent should have recognized that her recusal was necessary when the attorneys' cases came before her. While disqualification based on her relationships with the attorneys was subject to remittal (*see* Rule 100.3[F]), remittal was not an available option in one-party matters in which the only attorney appearing before her triggered the need for her recusal (*see* Adv Ops 11-43, 87-08). By failing to disqualify herself or even to disclose the relationships[1], respondent did not act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Rules, §100.1).

We reject respondent's contention that her decision not to disqualify herself was an exercise of discretion that, even if incorrect, cannot constitute misconduct (citing

[1] In several cases the Court of Appeals has inferred a disclosure requirement based on the obligation to avoid the appearance of impropriety and has cited the failure to disclose as a factor in misconduct. *See Matter of Roberts*, 91 NY2d 93, 96 (1997) ("we note particularly the serious failure to inform a litigant of a potential basis for recusal …which evokes an impermissible appearance of impropriety"); *see also Matter of Young*, 19 NY3d 621, 626 (2012) ("Petitioner neither disqualified himself nor disclosed his relationship to the defendant or complaining witness"); *Matter of La Bombard*, 11 NY3d 294, 298 (2008) ("petitioner neither disqualified himself nor disclosed his relationship with defendant's mother to all interested parties"); *Matter of Fabrizio,* 65 NY2d 275, 277 (1985) (judge handled his dentist's case "without disclosing the relationship or offering to disqualify himself").

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People v. Moreno, 70 NY2d 403 [1987]). Notwithstanding the dictum in *Moreno* that a judge "is the sole arbiter of recusal" absent a legal disqualification mandated by Judiciary Law §14 (*id* at 405), the Court of Appeals, in numerous disciplinary cases in the 26 years since *Moreno*, has found misconduct for failing to disqualify under the general ethical standard in Rule 100.3(E)(1) ("impartiality might reasonably be questioned") and/or Rule 100.2(A) (the appearance of impropriety) notwithstanding that the judge believed he or she could be impartial.[2] When a judge's failure to disqualify is inconsistent with clear standards established by case law and ethical guidelines interpreting Rule 100.3(E)(1), a finding of misconduct is appropriate.

We are also unpersuaded by respondent's contention that misconduct should not be found because she reasonably believed that her conduct was consistent with the ethical rules. In rejecting respondent's argument, we need not determine whether it reflects a good faith determination that her conduct was consistent with the rules or a convenient, after-the fact rationalization for her decision to accommodate attorneys who had done favors for her. If, as she maintains, she analyzed the applicable mandates and determined that her actions were permissible, her conduct shows exceedingly poor

[2] *See* M*atter of Conti*, 70 NY2d 416 (1987) (Speeding case in which defendant was judge's personal attorney); *Matter of VonderHeide*, 72 NY2d 658 (1988) (judge was a witness to the events underlying the criminal charges); *Matter of Intemann*, 73 NY2d 580 (1989) (cases involving a lawyer who was judge's close friend, business associate and personal attorney); *Matter of Robert*, 89 NY2d 745 (1997) (cases prosecuted by law enforcement personnel who were judge's close friends); *Matter of Roberts*, 91 NY2d 93 (1997) (civil claim filed by judge's dentist); *Matter of Assini*, 94 NY2d 26 [1999) (cases involving a lawyer with whom judge shared office space); *Matter of LaBombard*, 11 NY3d 294 (2008) (cases involving judge's stepgrandchildren and arraignment of a former co-worker's son); *Matter of Young*, 19 NY3d 621 (2012) (cases of judge's girlfriend's relatives). In several cases, the Court emphasized the judge's failure to disclose the conflict (*see* fn 1, *supra*).

judgment and an inability to recognize impropriety.

While respondent readily acknowledges that Mr. Spargo and Mr. Cade could not appear before her and notes that she disqualified herself from their cases when she sat in Supreme Court, she argues that her disqualification was not required in the cases here since they were uncontested, one-party matters and her acts were non-discretionary and "ministerial"; thus, she maintains, since she only did what the law required her to do, there could be no appearance of impropriety. By law, acts such as admitting a will to probate and issuing letters of administration require the exercise of judicial authority, which necessarily includes resolving "fundamental and highly significant" issues (Adv Op 11-43) – the quintessential exercise of judicial discretion. Even if such matters often are or appear to be routine, the standards for disqualification do not distinguish between "ministerial" proceedings and others, and provide no exception for uncontested or one-party matters; "it is manifestly improper for a judge to sit on a case in which the judge's personal attorney appears, regardless of the nature of the case" (*Matter of Ambrecht*, 2009 NYSCJC Annual Report 60). If respondent's disqualification was required in these attorneys' cases in Supreme Court, where she routinely recused herself, it was equally required in Surrogate's Court (*see* Adv Ops 94-12, 11-43; *see also Matter of Intemann*, 73 NY2d 580 [1989] [finding misconduct for failing to disqualify in numerous matters in Surrogate's Court involving the judge's close friend, business associate and personal attorney]). Moreover, it can be argued that the duty to observe the most exacting ethical standards and to avoid even the appearance of impropriety is especially important in one-party, uncontested matters, when no one is

present to object to or inhibit the judge's conduct.

As to Mr. Kelly's cases, respondent concedes that at least some of her actions were not "ministerial" but argues that her disqualification was not required because he was not her campaign manager in 2007 and that she took no action in any of his cases after he agreed to become her campaign manager in late March or April 2010. As the referee found and as our factual findings demonstrate, her argument is refuted by the testimonial and documentary proof. As the evidence of Mr. Kelly's extensive activities on respondent's behalf in 2007 conclusively establishes, he had a significant leadership role in her 2007 campaign, even without a formal title, requiring her disqualification in his cases in 2007 and for two years thereafter under the Advisory Committee's guidelines. The evidence also establishes that Mr. Kelly was already playing a leadership role in respondent's campaign in 2010 when she signed a decree on March 19 admitting the *Tassarotti* will to probate (his firm had mailed invitations to a fundraiser held two days earlier, for which he was the contact person).

In the face of persuasive evidence to the contrary, respondent attempted to minimize Mr. Kelly's role in her 2007 campaign, insisted that he was not her campaign manager, testified that she had little knowledge of his extensive activities on her behalf, and even maintained that her seven-week effort to seek the Supreme Court nomination "wasn't a campaign" at all (though it included two fundraisers, one of which she attended) since she was only "testing the waters" and ended her effort before the convention. While we give due deference to the referee's finding that respondent was "a credible and candid witness" (Rep 13), we find that her evasive and misleading hearing

testimony, as in her prior disciplinary proceeding, violated her obligation to be forthright and candid.

Based upon the foregoing, we conclude that respondent's failure to disqualify herself requires a severe sanction, reflecting the seriousness with which we view such conduct. Under the circumstances, we are constrained to view respondent's misconduct with particular severity since, in view of her censure in 2007, she should have been especially sensitive to her ethical obligations, including the duty to avoid even the appearance of impropriety. If not for her disciplinary history, respondent may have had a more credible argument to retain her judgeship. Pursuant to our mandate to enforce the ethical rules for judges and, where necessary, to impose the ultimate sanction of removal to protect the bench from unfit incumbents, we conclude that respondent should be removed from office.

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen, Ms. Corngold, Mr. Emery and Mr. Stoloff concur.

Mr. Harding and Judge Weinstein dissent only as to the sanction and vote that respondent be censured. Mr. Harding files an opinion, in which Judge Weinstein concurs.

CERTIFICATION

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

Dated: November 12, 2013

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

– –

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

CATHRYN M. DOYLE,

a Judge of the Surrogate's Court,
Albany County.

OPINION BY MR. HARDING, WHICH JUDGE WEINSTEIN JOINS, DISSENTING AS TO THE SANCTION

– –

Having carefully considered the entire record, I respectfully dissent from the sanction of removal. As a general proposition, I do not think the sum of respondent's actions justify the extreme sanction of removal, even in light of her prior censure. While she should not have handled these attorneys' cases, it is important to note that for the most part, these Surrogate's Court proceedings were not adversarial, contested matters. There is no allegation or finding that these attorneys or their clients received any special treatment or pecuniary benefit because of her relationships with the attorneys. Her close friend Mr. Spargo and former attorney Mr. Cade would have achieved the same results before any Surrogate, and although Mr. Kelly played a role in her two campaigns, respondent did not believe that his role necessarily disqualified her. Her analysis of the law was wrong, but I credit her explanation that she made that determination in good faith.

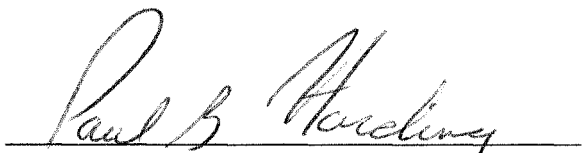
It is also significant to me that the referee who heard and saw respondent

testify at the hearing found her to be "a credible and candid witness" who "told the truth" (Rep 13). I do not believe that respondent should be penalized because we reject her testimony about her perspective on Mr. Kelly's role and her own actions in her 2007 campaign. In my opinion, the credibility issues here are not sufficiently compelling to establish that she compounded her misconduct.

Finally, while respondent's disciplinary history should be considered, I do not believe that it elevates the sanction to removal on these facts, especially since the earlier discipline was not related to the misconduct here.

The line between two sanctions is often blurred and very subjective. Even the Court of Appeals has stated that its disciplinary decisions are "essentially institutional and collective judgment calls based on assessment of their individual facts" (*Matter of Roberts*, 91 NY2d 93, 97 [1997]). The Court has often stated that the sanction of removal requires a showing of "truly egregious circumstances" (*e.g.*, *Matter of Mazzei*, 81 NY2d 568, 572 [1993]). My position is simple: if the findings of misconduct do not firmly place the judge over the line into the removal realm of "truly egregious circumstances," I think we must censure.

Dated: November 12, 2013



Paul B. Harding, Esq., Member
New York State
Commission on Judicial Conduct

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

ANDREW P. FLEMING,

a Justice of the Hamburg Village Court,
Erie County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (David M. Duguay, Of Counsel) for the Commission

Mohun & Killelea (by Michael M. Mohun) for the Respondent

The respondent, Andrew P. Fleming, a Justice of the Hamburg Village Court, Erie County, was served with a Formal Written Complaint dated June 5, 2013, containing one charge. The Formal Written Complaint alleged that respondent acted as

an attorney for an alleged rape victim and her family notwithstanding that he had presided over proceedings in the underlying criminal case. Respondent filed an answer dated June 26, 2013.

On July 29, 2013, the Administrator, respondent's counsel and respondent 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, recommending that respondent be admonished and waiving further submissions and oral argument.

On September 19, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Hamburg Village Court, Erie County, since 2006. His current term expires on April 7, 2014. He was admitted to the practice of law in New York in 1986.

2. From in or about March 2010 through in or about September 2010, respondent acted as attorney for a rape victim and her family, notwithstanding that respondent had presided over prior proceedings in the underlying criminal case.

3. On June 9, 2009, respondent issued an arrest warrant for Clarence M. Justice on charges of Rape in the Third Degree (Penal Law §130.25[2]) and Endangering the Welfare of a Child (Penal Law §260.10[1]). On June 11, 2009, respondent arraigned Mr. Justice, recalled the arrest warrant, issued an order of protection on behalf of the victim, who was then 15 years old, and set bail for Mr. Justice in the amount of $2,500 cash or $10,000 bond. Respondent adjourned the case to August 5,

2009.

4. On July 22, 2009, Mr. Justice's employer requested the records of his criminal case from the court. Respondent approved sending the public records, with the victim's name redacted, to the employer.

5. On August 5, 2009, Mr. Justice's attorney failed to appear in court, and respondent adjourned the case to August 12, 2009.

6. Subsequently, Mr. Justice waived a preliminary hearing, and the case was held for the grand jury. On or about August 14, 2009, the Hamburg Village Court was divested of jurisdiction over Mr. Justice's case.

7. Respondent has been acquainted with the family of Mr. Justice's victim since approximately the late 1990s. Both families were members of the Willow Bend Club, where their children participated on swim teams.

8. In approximately March of 2010, the victim's father telephoned respondent for information about various legal aspects of Clarence Justice's criminal case, which was pending in Erie County Supreme Court. Respondent provided the father with information about the criminal justice system and legal procedures in Mr. Justice's case.

9. Between approximately March 2010 and late July 2010, respondent engaged in several additional telephone calls with the victim's father and again provided information about the legal proceedings in Mr. Justice's case. The victim's father told respondent that members of Mr. Justice's family and other supporters were harassing the

15-year-old victim.

10. In or about July 2010, while Mr. Justice was on trial in Supreme Court, Erie County, respondent spoke with Lauren A. Gauthier, the prosecuting Assistant District Attorney, about allegedly harassing conduct at the courthouse by Mr. Justice's family members and supporters towards the victim.

11. On July 16, 2010, Mr. Justice was convicted of four class E felonies: two counts of Rape in the Third Degree (Penal Law §130.25) and two counts of Criminal Sexual Act in the Third Degree (Penal Law §130.40). On September 29, 2010, Mr. Justice was sentenced to four years in prison for each count.

12. After the conclusion of the *Justice* trial but prior to Mr. Justice's appearance for sentencing, respondent telephoned and spoke with the judge presiding over the case about the alleged conduct of the Justice family and their supporters during the trial.

13. In or about late July 2010, respondent met with the victim and her family at his law office. Respondent discussed with them legal action that could be initiated in response to the allegedly harassing conduct of members of the Justice family and their supporters.

14. On or about July 27, 2010, respondent sent a letter on his law office stationery to the home of a Justice family member and a friend of the family member who taught at the victim's school. Respondent stated in part:

> We have been retained by the [victim's] family to pursue a civil suit against Clarence Justice and to block any further

> harassment of [the victim] by either you, your families or your friends. We will be preparing the suit papers against Mr. Justice in the near future. This letter is sent though to note our representation and to demand that you ***Cease and Desist*** from any further harassment of our clients. [Emphasis in original.]

Respondent sent the letter notwithstanding that he was prohibited from representing the victim in a civil suit against Mr. Justice by section 100.6(B)(2) of the Rules Governing Judicial Conduct.

Additional Factors

15. Neither respondent nor anyone in his firm ever requested or accepted any fee or compensation for any services concerning the matter identified in this Statement.

16. Respondent has been cooperative with the Commission throughout its inquiry.

17. In his seven years on the bench, respondent has not been previously disciplined for judicial misconduct. He regrets his failure to abide by the Rules in this instance and pledges to conduct himself in accordance with the Rules for the remainder of his term as a judge.

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 100.4(A)(3) of the Rules Governing Judicial Conduct ("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, and respondent's misconduct is established.

Every judge is required to conduct his or her extra-judicial activities so as to minimize the risk of conflict with judicial obligations (Rules, §100.4[A][3]) and to avoid even the appearance of impropriety (Rules, §100.2). Pursuant to these ethical standards, a part-time judge who practices law must maintain a strict separation between the exercise of judicial duties and the judge's private practice of law.

As a part-time judge permitted to practice law, respondent violated his ethical obligations by acting as an attorney for an alleged rape victim and her family after presiding over proceedings in the underlying criminal case. Having issued an arrest warrant, arraigned the defendant, set bail and issued an order of protection on behalf of the alleged victim, respondent should have recognized that it was improper for him to represent the victim in any related matters. Instead, after his court was divested of jurisdiction over the criminal case, he acted as her lawyer when she was allegedly harassed by the defendant's supporters, speaking to the district attorney and contacting the sentencing judge on her behalf, and sending a "cease and desist" letter to the alleged harassers – acts that clearly constituted the practice of law. Respondent's letter also stated that he had been retained to pursue a civil suit against the defendant, a proceeding that would be inextricably intertwined with the matter over which he had presided. While the record does not indicate whether such an action was filed, respondent should not have threatened to commence a proceeding in which he was ethically barred from acting as a lawyer (*see* Rule 100.6[B][2]; *see also* Adv Op 95-52 [lawyer-judge may not represent

the wife in a divorce action when the judge had granted an order of protection to the wife against her husband]).

Even if respondent was motivated by a sincere desire to help the young victim of a crime whose family he knew, the ethical rules precluded him from acting as her advocate. By undertaking representation of the victim in the circumstances presented, he conveyed the appearance of using his judicial position and information gleaned in his official capacity to benefit his practice of law. *See Matter of Sims*, 61 NY2d 349, 355 (1984) (by signing orders releasing defendants who later retained the judge's husband to represent them in the matters, judge created an appearance of impropriety, conveying the "unmistakable impression" of using her judicial office to benefit her husband's law practice). As respondent has acknowledged, such an appearance is inconsistent with the ethical mandates notwithstanding that he did not seek or receive any compensation for his legal services.

Every lawyer-judge has a responsibility to scrupulously adhere to the applicable restrictions on the practice of law in order to avoid conduct that may create an appearance of impropriety and impugn the integrity and independence of the judiciary.

We note that respondent has acknowledged the impropriety of his conduct and pledges to conduct himself in accordance with the Rules in the future.

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen,

Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

CERTIFICATION

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

Dated: September 30, 2013

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

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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

DETERMINATION

GLEN R. GEORGE,

a Justice of the Middletown Town Court,
Delaware County.

- -

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Nina M. Moore[1]
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (S. Peter Pedrotty, Of Counsel) for the Commission
Thomas K. Petro for the Respondent

The respondent, Glen R. George, a Justice of the Middletown Town Court, Delaware County, was served with a Formal Written Complaint dated January 5, 2012,

[1] Ms. Moore's term expired on March 31, 2013. The vote in this matter was taken on March 14, 2013.

containing two charges. Charge I alleged that respondent: (i) failed to disqualify himself from a No Seat Belt charge against an individual with whose family he had a professional and social relationship notwithstanding that he had previously been cautioned for failing to disqualify himself from cases of another member of that family; (ii) had *ex parte* communications with the defendant; and (iii) dismissed the charge without notice to the prosecution. Charge II alleged that respondent engaged in *ex parte* communications with a prospective litigant in a small claims matter. Respondent filed a verified answer dated March 9, 2012.

By Order dated April 4, 2012, the Commission designated Linda J. Clark, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 19, 2012, in Albany. The referee filed a report dated December 4, 2012.

The parties submitted briefs and replies with respect to the referee's report and the issue of sanctions. Counsel to the Commission recommended the sanction of removal, and respondent's counsel recommended a less severe sanction or dismissal of the charges. On March 14, 2013, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Middletown Town Court, Delaware County, and has served in that position since 1985. His current term expires on December 31, 2013. He is not an attorney.

2. Lynn Johnson started Titan Drilling Corp. ("Titan Drilling") in 1965.

For more than 30 years, Mr. Johnson was Titan Drilling's owner and president. Titan Drilling employs approximately 20 employees, and many members of the Johnson family have worked for the company.

3. In 1982, when respondent was retiring from the State Police, Mr. Johnson offered him a position at Titan Drilling, which he accepted. Respondent was employed at Titan Drilling from 1983 until 1990, when he was laid off due to a slowdown in the business. Respondent remained on amicable terms with Mr. Johnson and, in 1999, spoke to Mr. Johnson about obtaining a part-time position at Titan Drilling. Mr. Johnson had sold Titan Drilling in 1997 to his sons but continued to work for the business as a consultant. Respondent was hired to work in the collections and accounts receivable departments, which, like his prior position in sales, required him to deal with the public. Respondent testified that he was grateful to be "gainfully employed again." He continued to work for Titan Drilling until May 31, 2009.

4. Respondent has described his relationship with Mr. Johnson as "very good friends, very good business associates." Respondent and Mr. Johnson have known each other since childhood. In addition to their professional relationship, they have had numerous social contacts. Respondent attended Mr. Johnson's 50th birthday celebration and a Chamber of Commerce ceremony honoring Mr. Johnson. In 1986 Mr. Johnson visited respondent's home while respondent was recuperating from surgery. Respondent and his wife were guests at the weddings of three of Mr. Johnson's children, and respondent performed the marriage ceremony for another of Johnson's children.

Respondent also socialized with Johnson family members at Titan Drilling's annual Christmas parties. On one occasion, when respondent was at the courthouse in Delhi, Mr. Johnson's wife invited respondent to attend and sit beside her at a Family Court custody proceeding involving the Johnsons' daughter, and respondent did so.

5. On May 21, 2009, State Trooper Mathew Burkert issued a ticket to Lynn Johnson for No Seat Belt in violation of Section 1229-c (3) of the Vehicle and Traffic Law. The ticket was returnable in Middletown Town Court on June 1, 2009; it states on its face that the matter "is scheduled to be handled" on that date and that "failure to respond" could result in a default judgment.

6. Trooper Burkert indicated on the ticket and in his supporting deposition that the vehicle driven by Mr. Johnson was a red Mercedes Benz, model year 2000, bearing license plate number 3106190. Trooper Burkert signed both documents and affirmed them under penalty of perjury.

7. On June 1, 2009, Lynn Johnson appeared before respondent in the Middletown Town Court with respect to the ticket. That date was not one of the two nights per month on which the prosecutor was regularly scheduled to appear in respondent's court. Neither Trooper Burkert nor the prosecutor, Assistant District Attorney John Hubbard, was present.

8. At that appearance, respondent failed to disclose his relationship with Lynn Johnson and members of the Johnson family, including that, until the previous day, respondent had been employed by the Johnson family business.

9. Mr. Johnson showed respondent a copy of a certificate of title to a model year 1976 Mercedes Benz and told respondent that he had been driving that vehicle when he was issued the ticket and that the information on the ticket was incorrect.

10. Respondent asked Mr. Johnson whether the license plate listed on the ticket was a transporter plate, and Mr. Johnson confirmed that it was. From his relationship with Mr. Johnson, respondent knew that Mr. Johnson dealt with restored vehicles and possessed a transporter plate. Respondent also knew that such a plate could be placed on any vehicle, which could be driven even if the driver did not own the vehicle or have a registration for it.

11. Based solely upon the information provided by Lynn Johnson, respondent *sua sponte* dismissed the charge, stating, "The title here shows it's a 1976 and the Information says it's a 2000. I believe it."

12. Respondent testified that he dismissed the charge because Mr. Johnson had presented him with a title for the vehicle "that showed the simplified traffic information to have erroneous information in comparison to the title of the vehicle Mr. Johnson stated he was driving." The court file contains a certificate of title to a 1976 Mercedes Benz and a handwritten note dated June 1, 2009, stating, "DISMISSED VEH IS 1976 NOT 2000 SEE TITLE." No other reason for the dismissal of the charge is indicated in the file or was mentioned in the proceeding.

13. In or about 1997 and 1998, respondent presided over and disposed of a series of cases in which the defendant was Joan Johnson, who was then Lynn Johnson's

daughter-in-law. Respondent had officiated at the defendant's marriage to Lynn Johnson's son. Though Ms. Johnson never worked for Titan Drilling, she lived with her husband next door to the business and visited him during work hours, and respondent saw her there on a weekly basis during his first period of employment with the business.

14. In the first of the *Joan Johnson* cases, in which the defendant was charged with, *inter alia,* Driving While Intoxicated, respondent disposed of the charge by accepting a plea to a reduced charge of Aggravated Unlicensed Operation in the Second Degree and sentencing her to three years' probation and a $500 fine.

15. Subsequently, respondent presided over and disposed of three cases in which Ms. Johnson was charged with violating probation. During one such case, respondent took Ms. Johnson into a conference room and spoke to her privately, telling her that, because of their "friendship," he wanted to help her with her alcohol-abuse problems. He gave her his home and court phone numbers and told her to call him whenever she wanted and that he would assist her in any way he could.

16. The Commission issued respondent a Letter of Dismissal and Caution dated April 6, 2000, with respect to his handling of the *Joan Johnson* matters, advising him that:

> "Because of your long relationship with the Johnson family, you should have considered whether presiding over [Joan Johnson's] cases gave the appearance that you could not be impartial. You should have at least disclosed the relationship on the record and entertained objections to your presiding. It was especially important to do so after you had offered to personally counsel Ms. Johnson."

Noting that respondent had presided over Joan Johnson's cases notwithstanding that he "had worked for members of the Johnson family from 1982 to 1990 and had socialized with them on occasion," the Commission cautioned respondent to adhere to the ethical rules requiring a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might be reasonably questioned and "to avoid even the appearance of impropriety."

17. Respondent testified that in presiding over Lynn Johnson's case, he considered that it had been ten years since Johnson had been his employer and thus he believed the appearance of impropriety had abated. He testified: "I felt-- I still feel that a ten-plus year separation from employer-employee relation was more than sufficient to avoid the appearance of any impropriety."

As to Charge II of the Formal Written Complaint:

18. In or around February 2010, Michael Guidice went to the Middletown Town Court and spoke to the court clerk, Cindy Waters, about filing a small claims action against his neighbor, Ron Jenkins.[2] Mr. Guidice claimed that Mr. Jenkins had been diverting water onto and causing damage to Mr. Guidice's property. Mr. Guidice, a Long Island resident, had purchased the property in or about 2007, intending to build a summer home.

[2] On February 1, 2010, Mr. Guidice filed a complaint against respondent with the Commission concerning respondent's decisions in three small claims actions in which Mr. Guidice was a litigant. The record does not indicate when respondent learned of Mr. Guidice's complaint.

19. Mr. Jenkins has lived his entire life in the Middletown area. Respondent has known Mr. Jenkins all his life.

20. Overhearing Mr. Guidice's conversation with the court clerk, respondent interjected that Mr. Jenkins could legally divert water onto Mr. Guidice's property because Mr. Jenkins was the "senior property holder" and the property deeds provided for it. He added that this was regulated by the Department of Environmental Conservation.

21. Because of respondent's statements, Mr. Guidice believed that filing his claim against Mr. Jenkins would be futile since respondent had pre-determined his claim and would side with his neighbor.

22. On January 3, 2011, Mr. Guidice called the Middletown Town Court about filing a small claims action against Mr. Jenkins. Respondent answered the telephone since the court clerk was busy. Without attempting to stop Mr. Guidice from speaking about his claim, respondent listened to Mr. Guidice, who repeated that he wanted to file a small claims action against Mr. Jenkins for diverting water onto his property.

23. Respondent acknowledged that he questioned Mr. Guidice about his claim, asking, "What was the senior parcel in that sale?" Respondent testified that he listened to Mr. Guidice in order to get "some substance of what he was gearing for in the small claims action" and "[t]o substantiate the claim when it came into small claims." He also testified that when he spoke to Mr. Guidice about the claim, he "[knew] full well…I

was not going to handle it anyway."

24. As he had done in their earlier conversation, respondent told Mr. Guidice that Mr. Jenkins was allowed to divert water onto Mr. Guidice's property because Mr. Jenkins was the "senior…property holder" and their deeds provided for it.

25. Feeling again discouraged by respondent's statements regarding the dispute, Mr. Guidice did not file his claim at that time.

26. In May 2011 Mr. Guidice again called the Middletown Town Court about his dispute with Mr. Jenkins. When respondent answered the court's phone, Mr. Guidice told respondent that he wanted to file a small claims action against Mr. Jenkins and that he did not want respondent to preside over it. Respondent told Mr. Guidice, "Not a problem. You can come in and file on Thursday morning before Judge Rosa [respondent's co-judge]."

27. On or about May 26, 2011, Mr. Guidice filed his claim in the Middletown court. Both respondent and Judge Rosa disqualified themselves, and the County Court Judge assigned it to the Roxbury Town Court.

28. Approximately a week after Mr. Guidice filed his claim, the court clerk told him that respondent had disqualified himself from the matter because he knew that Mr. Guidice had filed a complaint against him with the Commission.

29. Mr. Guidice did not pursue the claim after it was transferred. He testified that after he told Mr. Jenkins that the matter would not be heard by respondent, Mr. Jenkins stopped diverting water onto his property.

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)(6) and 100.3(E)(1) of the Rules Governing Judicial Conduct ("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. Charges I and II are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

Respondent engaged in serious misconduct by dismissing a ticket issued to his former employer and long-time friend, contrary to fundamental ethical precepts and procedural rules. Such behavior "demonstrate[s] an unacceptable degree of insensitivity to the demands of judicial ethics" (*Matter of Conti*, 70 NY2d 416, 419 [1987]).

Respondent's handling of Lynn Johnson's ticket was inconsistent with well-established procedural and ethical mandates, conveying an appearance of favoritism. It is a fundamental precept of judicial ethics that a judge may not preside over a case in which the judge's impartiality "might reasonably be questioned" (Rules, §100.3[E][1]). Moreover, judges must assiduously avoid even the appearance of impropriety (Rules, §100.2). In view of respondent's "long and deep history of personal involvement" with Lynn Johnson and his family, both professionally and personally (Referee's Report, p. 3), respondent should have recognized that his disqualification was required in Johnson's case, even if he believed he could be impartial, in order to avoid even the appearance of

impropriety. *See, e.g., Matter of Robert*, 89 NY2d 745 (1997) (judge presided over numerous cases involving his close friends); *Matter of Fabrizio*, 65 NY2d 275, 276-77 (1985) (misconduct included "sitting on a small claims case in which the defendant was his dentist for 10 years without disclosing the relationship or offering to disqualify himself").

The record establishes that respondent's relationship to Johnson and his family reflects nearly three decades of professional and social connections. Lynn Johnson, the family patriarch, initially hired respondent for his family business in the 1980s, after respondent had retired as a State trooper. In 1999, after the business was sold to Johnson's sons, respondent was re-hired in a part-time position after discussing the position with Johnson; he was "grateful" to be hired; and he held that position until the day before Johnson's court appearance before him in 2009. These professional contacts, coupled with numerous social contacts as described in the above findings, establish a relationship that went significantly beyond the casual connections that might be expected in any small community. In view of respondent's acknowledged close ties to the Johnson family and his admission that he and Johnson were "very good friends," his rationalization that he felt there was no appearance of impropriety because Johnson had not been his employer for ten years is unpersuasive.

At the least, respondent should have disclosed the relationship and adjourned the matter in order to afford the prosecutor an opportunity to be heard on the issue of whether respondent could preside. *See Matter of Fabrizio*, *supra*; *see also*

Matter of Menard, 2011 Annual Report 126; *Matter of Valcich,* 2008 Annual Report 221. (The fact that no prosecutor was present to hear the disclosure should have further underscored the need to adjourn the case to a date when the prosecutor would be present.) This is particularly so in view of respondent's having been cautioned by the Commission in 2000 for presiding over the cases of another member of the Johnson family without disclosing his relationship to the family. Respondent's disregard of "the letter and spirit" of the Commission's caution exacerbates his misconduct in this regard. *Matter of Assini*, 94 NY2d 26, 30 (1999); *see also*, *Matter of Robert*, *supra*, 89 NY2d at 747.

The lenient disposition respondent afforded to Mr. Johnson, in the absence of the prosecutor and based solely on information the defendant provided, compounds the appearance of favoritism. The record indicates that respondent dismissed the ticket because of an apparent discrepancy between the sworn information contained on the ticket and supporting deposition as to the model year of the vehicle, and the information provided to respondent by Johnson at his court appearance. Regardless of whether such a "defect" warranted dismissal, it is well-established that the prosecutor must be afforded reasonable notice and an opportunity to be heard before a charge is dismissed (CPL §§210.45, 170.45; Rules, §100.3[B][6]). Providing such notice is not merely a technical requirement, but a fundamental principle of law. By disposing of Johnson's ticket on the return date, which was not a date on which the prosecutor was regularly scheduled to be in his court to prosecute tickets, respondent deprived the prosecutor of an opportunity to be heard or to cure the purported "defect." The return date of the ticket was not a date on

which the ticket was scheduled to be adjudicated; by law, a defendant who enters a not guilty plea by mail on or before the return date must be advised of a subsequent appearance date (*see* VTL §1806). No matter how minor the charge, the moment the defendant raised a factual claim in support of an application to dismiss, respondent should have recognized the importance of having the prosecutor respond or at least be afforded an opportunity to respond. It is surprising that respondent, who has served as a judge for more than two decades, would fail to recognize the impropriety of dismissing a charge under these circumstances. While the record before us is somewhat unclear as to whether respondent has dismissed other tickets with similar errors in the absence of the prosecutor, any such practice would clearly be inconsistent with the fair and proper administration of justice.

It was also improper for respondent to speak *ex parte* with a prospective litigant about the substance of a small claims action he wished to commence. Respondent has acknowledged that when Michael Guidice telephoned the court in January 2011 and told him of his intent to file a claim against his neighbor, Ron Jenkins, respondent not only listened to Mr. Guidice describe the dispute but asked him questions about it.[3] While respondent claims that his intent was to learn the "substance" of the claim to ensure that it was within the court's jurisdiction, the record establishes that respondent's questions addressed the merits of the prospective claim and, further, that he also offered

[3] Charge II of the Formal Written Complaint alleges that this incident occurred in January 2011. The record indicates that respondent and Mr. Guidice also had a similar *ex parte* conversation about the same matter in or around February 2010.

his gratuitous opinion about the merits of the claim, declaring that the property deeds permitted the conduct that was the basis of Mr. Guidice's claim. Respondent's questions and comments conveyed the appearance that he had pre-judged the claim, and, not surprisingly, Mr. Guidice felt discouraged from commencing his claim at that time. Even if respondent had determined that he was not going to handle Mr. Guidice's claim, as he has testified, his conduct conveyed the appearance of bias against Mr. Guidice and favoritism in favor of Mr. Jenkins, a long-time local resident with whom respondent was friendly.

It is a judge's role to adjudicate matters in court proceedings, not to screen cases or otherwise pre-judge them out of court or based on *ex parte* communications. *See Matter of Merrill,* 2008 Annual Report 181. Respondent's conduct violated both the letter and spirit of Sections 100.2 and 100.3(B)(6) of the Rules.

In considering the appropriate sanction, we reject the dissent's suggestion that the misconduct presented here can be attributed to the judge's "informality," his status as a non-lawyer, or "the realities of the State's town courts" (Dissent, p. 1). The Court of Appeals has underscored that "to encourage respect for the operation of the judicial process at all levels of the system" (*Matter of Roberts*, 91 NY2d 93, 97 [1997]), the ethical rules apply equally to all judges, lawyer and non-lawyer alike (*Matter of Fabrizio*, 65 NY2d 275, 277 [1985]; *Matter of VonderHeide*, 72 NY2d 658, 660 [1988]). In rejecting the judge's contention that his "status as a non-lawyer and his lack of training" provided a basis for dismissing the charges, the Court stated in *VonderHeide*:

"Ignorance and lack of competence do not excuse violations of ethical standards. As a Judge, petitioner had an obligation to learn about and obey the Rules Governing Judicial Conduct" (*Id.*).

The Court of Appeals has declared that "[t]icket-fixing is misconduct of such gravity as to warrant removal, even if this matter were [the judge's] only transgression" (*Matter of Reedy*, 64 NY2d 299, 302 [1985]). In this case, respondent's favorable treatment of his friend's ticket and his handling of Mr. Guidice's prospective claim both bear the unmistakable taint of favoritism, which damages public confidence in his integrity and impartiality and in the judiciary as a whole (*Matter of Young*, 19 NY3d 621, 626 [2012]). As a judge for more than 20 years, respondent should have recognized that his actions were inconsistent with fundamental ethical principles. Coupled with his failure to heed the Commission's previous caution, these factors demonstrate that respondent "is not fit for judicial office" and thus the sanction of removal is warranted (*Matter of Robert*, *supra*, 89 NY2d at 747).

By reason of the foregoing, the Commission determines that the appropriate disposition is removal from office.

Judge Klonick, Judge Ruderman, Judge Acosta, Ms. Corngold, Mr. Emery, Mr. Harding, Ms. Moore and Mr. Stoloff concur.

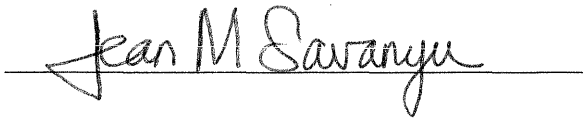
Mr. Cohen and Judge Weinstein dissent as to the sanction and vote that respondent be censured. Mr. Cohen files an opinion, which Judge Weinstein joins.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: May 1, 2013



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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

GLEN R. GEORGE,

a Justice of the Middletown Town Court,
Delaware County.

OPINION BY MR. COHEN, WHICH JUDGE WEINSTEIN JOINS, CONCURRING IN PART AND DISSENTING IN PART

While I concur that respondent engaged in misconduct, I respectfully dissent as to the sanction and vote for censure. Respondent's handling of his friend Lynn Johnson's case, while undeniably creating an appearance of impropriety and deserving of a severe rebuke, falls well short of the standard set by the Court of Appeals for imposing the extreme sanction of removal for office "only in the event of truly egregious circumstances" (*Matter of Cunningham*, 57 NY2d 270, 275 [1982]). In my view, removing this judge under these circumstances lowers the bar for removal too much and sets a troubling precedent for the future.

In some respects, this case presents the realities of the State's town courts, in microcosm. Respondent, 74 years old, is not trained as a lawyer, although he has been a Town Justice for 28 years. And this particular judge appears to treat litigants before him with a degree of informality that, even if well-intentioned, can all too easily undermine his role as a neutral magistrate. In particular, in the record before us, he has accorded such treatment to members of the Johnson family, with which he has had a

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strong, longstanding relationship, having been a longtime employee of the Johnson-owned business. Fifteen years ago, while presiding over the case of one Johnson family member, he met privately with the defendant and offered to assist her with her alcohol-abuse problems, gave her his home phone number and told her to call him anytime so he could counsel her. That conduct led to the Commission's issuance of a Letter of Dismissal and Caution and a warning that, given the circumstances, he "should have considered" disqualifying himself and "should have at least" disclosed the relationship.

Nine years later, in the matter now before us, he handled the case of another Johnson family member under circumstances that raise troubling questions as to his impartiality. With no prosecutor present, he dismissed a charge against his friend, the retired former owner of the business, ostensibly because of a technical error on the ticket. There is evidence in the record that respondent, a former state trooper, was "a stickler for errors" on tickets, had been an instructor in the "traffic science training program" for the state police, and once contacted a police supervisor to advise him about recurring errors on some tickets. Nevertheless, at the end of the day, respondent should have known better. Whether legally trained or not, he should have known that he had no business dismissing his friend's ticket *ex parte*, without giving the prosecutor a chance to be heard. That is clear, even if, as the judge maintains, he had had very limited contact with Johnson personally over the previous decade. Although the maximum sentence his friend faced for this Seat Belt violation could not have meant so much to either of them (a $50 fine plus a surcharge, and no points attaching to his driver's license), the favorable disposition under these circumstances undeniably conveys an appearance of impropriety.

Unfortunately, the record before us is unclear as to certain facts. While respondent maintains that he promptly notified the prosecutor of the dismissal, the prosecutor could not recall whether he was so notified. Nor do we know whether the prosecutor, had he been so informed, would have chosen to re-file this *de minimis* charge. And while both the judge and prosecutor testified that the judge typically notified the prosecutor prior to the disposition if there was a problem with a ticket, their testimony suggests that the judge dismissed other tickets prior to the prosecutor's involvement. If the judge dismissed similar tickets without the prosecutor's involvement against defendants with whom he had no relationship, that might diminish the appearance of favoritism here (but could establish a pattern of failing to follow the law).

Without pinning a medal on this judge – because I believe he should be censured – his misconduct, while procedurally deficient and certainly deserving of criticism, did not corrupt the system of justice, was not plainly motivated by favoritism, and thus, I believe, did not constitute "ticket fixing," at least in the traditional sense. "Ticket fixing" is generally regarded as "showing and seeking" special treatment in the disposition of traffic charges, based not on the merits, but on favoritism (*Matter of Bulger*, 48 NY2d 32, 33 [1979]; *Matter of Reedy*, 64 NY2d 299 [1985]). Typically, in such cases, the judge either requests special consideration on behalf of himself or another defendant, or grants such a request made by someone with influence, or reaches out in a case not properly before him/her to impose a lenient disposition as a favor. More than three decades ago, the Commission identified a widespread pattern of such favors (often reciprocal), and over 150 judges who had engaged in the practice – including some who

had personally engaged in *dozens* of such incidents – were disciplined.

While more recent incidents have been rightly treated with more severity since judges were – and remain – on notice that misconduct of such "gravity" will not be tolerated and that even one incident may result in removal (*Matter of Reedy*, 64 NY2d 299, 302 [1985]), the fact remains that only one judge (*Reedy*) has been removed for a single episode of ticket fixing. And in *Reedy*, the case for removal was far stronger. In that instance, the respondent judge – who had previously been censured by the Commission for ticket fixing – communicated multiple times with the judge responsible for his son's Speeding ticket, doctored the relevant ticket without the arresting officer's consent, and declined to give any testimony to the Commission in defense of his actions.

While the Court of Appeals indeed acknowledged in *Reedy* that a single episode of ticket fixing warrants removal (*id.*), for reasons stated herein I do not think this particular case falls within that pronouncement. But regardless of whether the conduct here is characterized as ticket fixing, as my colleagues urge, imposing that sanction based on the facts before us is plainly disproportionate. While I would not return to the days when ticket fixing was leniently treated and would not hesitate to vote for removal in an appropriate case, I cannot do so on the facts here.

Guided by the standards set by the Court of Appeals, I find no exacerbating factors that would constitute "truly egregious circumstances." Respondent did not reach out for a case that was not properly before him, or use his influence to dispose of a ticket he or a family member had received. He disposed of the Seat Belt ticket issued to Johnson on the return date, in open court and on the record (in contrast to several recent

cases we have seen involving questionable proceedings in which the judges conveniently "forgot" to turn on the recording equipment). There is no indication that he tried to conceal the disposition or otherwise cover up his wrongdoing. While it is clear that respondent should have heard from the prosecutor before dismissing the charge, there is evidence in this record that his failure to do so was not unusual and that his dismissal of the charge for a technical defect was neither exceptional nor plainly inappropriate – factors that somewhat diminish the appearance of favoritism.

Further, unlike the majority, I cannot find that respondent clearly "disregarded" the prior Letter of Dismissal and Caution. Significantly, the judge testified that in handling the Lynn Johnson case, he considered that it had been ten years since Johnson had been his employer and thus he believed the appearance of impropriety had diminished.[1] He stated: "I felt-- I still feel that a ten-plus year separation from employer-employee relation was more than sufficient to avoid the appearance of any impropriety" (Tr 153). While one can disagree with his judgment in that regard – and I fully concur with the majority in that respect – in my view that is not the testimony of a judge who was insensitive to his ethical obligations. I also note that, on its face, the cautionary letter does not tell the judge that he should never preside over any case involving a member of the Johnson family; rather, it states that given the totality of the circumstances in the earlier matter (including his private meeting with the defendant and

[1] After selling the business in 1997, Johnson was a "consultant" for the company (from which respondent retired the day before handling the Seat Belt charge); there is no evidence in the record as to any professional contact with respondent in that capacity.

his offer to counsel her about her alcohol problems), he "should have considered" whether his impartiality could reasonably be questioned. One can reasonably conclude, from the same facts, that almost ten years later, faced with different circumstances, a different defendant and a *de minimis* charge, the judge evaluated the circumstances and made a quick, erroneous judgment that he could dispose of the matter.[2]

The Court of Appeals has set a high threshold for removal of judges, having stated repeatedly that "[r]emoval is an extreme sanction and should be imposed only in the event of truly egregious circumstances" (*Matter of Cunningham*, 57 NY2d 270, 275 [1982]; *see also*, *Matter of Restaino*, 10 NY3d 577, 589 [2008]). In my judgment, that standard, as developed in the 70 cases in which the Court of Appeals has imposed the ultimate sanction of removal in reviewing a Commission determination, does not support removal here. As the Court has reminded us, "removal should not be ordered for conduct that amounts simply to poor judgment, or even extremely poor judgment" (*Matter of Cunningham*, *supra*, 57 NY2d at 275). Lack of fitness for judicial office has not been shown in this case; the judge has not "debased his office" (*Matter of Feinberg*, 5 NY3d 206, 216 [2005]) or "destroy[ed] [his] usefulness on the bench" (*Matter of Cohen*, 74 NY2d 272, 278 [1989]) or "irredeemably damaged public confidence in the integrity of his court" (*Matter of McGee*, 59 NY2d 870, 871 [1983]) or "shown that he poses a

[2] Aside from the Commission "warning" respondent received almost a decade earlier, the record is silent on the specific training he received on disqualification, "the appearance of impropriety" or *ex parte* proceedings. While we must presume that every judge understands these fundamental ethical principles, I would feel far more comfortable in voting for removal if I knew with some certainty that respondent had been instructed with sufficient clarity to *never* preside, particularly *ex parte*, over any case in which his impartiality might reasonably be questioned, and to *always* disclose a relationship that might be viewed as presenting a potential conflict.

threat to the proper administration of justice" (*Matter of VonderHeide*, 72 NY2d 658, 661 [1988]).

In short, I believe the conduct in the case before us falls short of the "truly egregious" circumstances in the cases described above. I am also mindful of the guidance provided for us in the cases where the Court of Appeals has rejected the Commission's recommendation of removal and reduced the sanction to censure, including *Matter of Edwards*, 67 NY2d 153, 155 (1986) ("this single incident, which was fueled by extremely poor judgment, was an aberration") and *Matter of Skinner*, 91 NY2d 142, 144 (1997) ("Removal is excessive where the misconduct amounts solely to poor judgment, even extremely poor judgment"). In *Skinner*, involving a judge who summarily disposed of two criminal cases despite knowing that he was not following the law, the Court of Appeals found the sanction of removal "unduly severe," noting that these were two "isolated incidents" in the judge's lengthy judicial career and that there was no indication that he "was motivated by personal profit, vindictiveness or ill will" (*Id.*).

To maintain a fair system, there should be some semblance of equality of sanctions. We have come a long way in holding judges responsible for their misconduct, but the case law does not support removal here. The disposition here is out of proportion to the results in other cases and overlooks the many cases in which judges have been censured for serious misconduct. The Court of Appeals has imposed "the weighty sanction of censure" for conduct that is "unquestionably serious," even when the judge "has failed to this day" to recognize the impropriety of his actions (*Matter of Hart*, 7 NY3d 1, 9, 10 [2006] ["Censure has generally been employed when a judge's conduct is

inconsistent with the role of judge or amounts to an abuse of judicial power" (*id.* at 9)]; *see also*, *Matter of Watson*, 100 NY2d 290, 303 [2003] ["Although [the] transgressions are serious, we are unpersuaded that his continued performance in judicial office presently threatens the proper administration of justice or that he has irredeemably damaged public confidence in his own impartiality or that of the state judiciary as a whole"]). If we remove this judge on the facts presented, we are charting a new course that would make it too easy to reject "the weighty sanction of censure" in future cases and to require the sanction of removal in any case that involves serious misconduct.

To the extent that other vulnerable judges – who might stand on the brink of similar violations – might learn of the Determination herein, the severe sanction of censure would surely accomplish the necessary deterrent effect.[3]

In light of the foregoing, I respectfully dissent and vote to censure respondent.[4]

Dated: May 1, 2013

Joel Cohen, Esq., Member
New York State
Commission on Judicial Conduct

[3] Or, better yet, compliance could be enhanced by ensuring that judges – at every level of our court system – receive the degree of ethics training that is so essential to ensuring public confidence in the judiciary as a whole.

[4] In my judgment, Charge II, which addresses respondent's conversation with a prospective claimant in a small claims matter, does not in any way transform this case into one warranting removal. The charge alleges that respondent had a single *ex parte* discussion with an individual about the facts of an impending claim. The five paragraphs of specifications in the charge make no reference to discouraging the claimant from filing a claim because of bias, which is the basis for the majority's finding of misconduct. Charge II is noteworthy, however, to the extent that the conduct described reiterates the need for judges to be wary of inappropriate informality, particularly as it relates to *ex parte* contacts.

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

KENNETH J. MARBOT,

a Justice of the Pittstown Town Court,
Rensselaer County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci, Of Counsel) for the Commission

Anderson, Moschetti and Taffany, PLLC (by Peter J. Moschetti, Jr.)
for the Respondent

The respondent, Kenneth J. Marbot, a Justice of the Pittstown Town Court, Rensselaer County, was served with a Formal Written Complaint dated June 13, 2013,

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containing one charge. The Formal Written Complaint alleged that respondent failed to disqualify himself from a case in which the defendant was the son of respondent's wife's sister. Respondent filed a verified answer dated June 19, 2013.

On July 25, 2013, the Administrator, respondent's counsel and respondent 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, recommending that respondent be admonished and waiving further submissions and oral argument.

On August 1, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Pittstown Town Court, Rensselaer County, since 2009. His current term expires on December 31, 2016. He is not an attorney.

2. In December 2011 and January 2012, respondent failed to disqualify himself and presided over *People v. Joshua Wysocki* notwithstanding that the defendant, who was charged with Speeding, is respondent's nephew by marriage.

3. Mr. Wysocki is the son of the sister of respondent's wife. Respondent was aware of the relationship at all times relevant to this matter and socialized with Mr. Wysocki at large family gatherings about two to three times a year.

4. On or about October 24, 2011, Joshua Wysocki received a ticket for Speeding 60 miles per hour in a 45-miles-per-hour zone. The ticket was returnable in the

Pittstown Town Court on November 16, 2011. The defendant failed to appear on the return date and failed to enter a plea by mail.

5. On or about December 16, 2011, Mr. Wysocki telephoned the Pittstown Town Court and stated to the court clerk that he had lost his ticket. The clerk advised him to appear in court on December 21, 2011.

6. On December 21, 2011, Mr. Wysocki appeared before respondent and entered a plea of not guilty to the Speeding charge. Respondent recognized the defendant as his wife's nephew, accepted the defendant's not guilty plea and adjourned the matter for action by the Assistant District Attorney.

7. Pursuant to court policy, the clerk forwarded the *Wysocki* ticket and the defendant's driving abstract to Assistant District Attorney Arthur Glass, who sent the court a written plea offer, agreeing to a reduction of the Speeding charge to a parking violation. The plea agreement provided that the fine would be determined by the court.

8. On January 18, 2012, Mr. Wysocki appeared before respondent, who accepted the defendant's guilty plea to the reduced parking violation and imposed a fine of $25. Respondent also ordered the defendant to complete a defensive driving course. The defendant later provided proof to the court that he had successfully completed the course.

9. In presiding over *Wysocki,* respondent failed to disclose his relationship with the defendant.

Additional Factors

10. Respondent has at all times been cooperative with the Commission and contrite.

11. Respondent asserts that the *Wysocki* ticket was treated no differently than any similar ticket, but he now recognizes that it was nevertheless improper for him to have presided over a matter involving his wife's nephew.

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(E)(1) and 100.3(E)(1)(d)(i) of the Rules Governing Judicial Conduct ("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, and respondent's misconduct is established.

A judge's disqualification is required when the judge's impartiality "might reasonably be questioned," including any matter in which a party to the proceeding is within the sixth degree of relationship to the judge or the judge's spouse (Rules, §§100.3[E], 100.3[E][1][d][i]). As the Court of Appeals has stated: "Few principles are more fundamental to the integrity, fair-mindedness and impartiality of the judiciary than the requirement that judges not preside over or otherwise intervene in judicial matters involving relatives" (*Matter of LaBombard,* 11 NY3d 294, 297 [2008]; *see also Matter of Wait,* 67 NY2d 15, 18 [1986]). By presiding over his nephew's Speeding case in *People*

v. Wysocki, respondent violated this well-established ethical standard.

The record indicates that respondent's nephew by marriage personally appeared before him on two occasions with respect to the charge – initially to enter a not guilty plea, and later for sentencing.[1] Seeing his relative, with whom he socialized several times a year, standing before him in the courtroom certainly should have reminded respondent – the defendant's uncle – of the clear conflict. In and of itself, the appearance of a judge's family member before the judge creates a serious appearance of impropriety, and under such circumstances the public can have no confidence in the judge's impartiality in the matter (Rules, §100.2). Compounding the impropriety, the lenient disposition respondent imposed (reducing the Speeding charge to a parking violation and imposing a low fine) could reasonably give the impression that respondent's relative received favorable treatment, notwithstanding that the prosecutor had recommended the reduction and notwithstanding respondent's assertion that his nephew's ticket was treated no differently than any similar ticket. Even the appearance of such favoritism is inconsistent with the ethical standards and undermines public confidence in the integrity and impartiality of the judiciary.

In accepting the stipulated recommendation as to the sanction, we emphasize that any involvement by a judge in a case to which a family member is a party "has been and will continue to be viewed … as serious misconduct" (*Matter of Wait*,

[1] While it has been stipulated that respondent did not disclose his relationship to the defendant, it should be noted that even with full disclosure, a conflict involving Section 100.3(E)(1)(d)(i) of the Rules is not subject to remittal (Rules, §100.3[F]).

supra, 67 NY2d at 18). Every judge must be mindful of the importance of adhering to this fundamental ethical standard so that public confidence in the judiciary may be preserved.

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

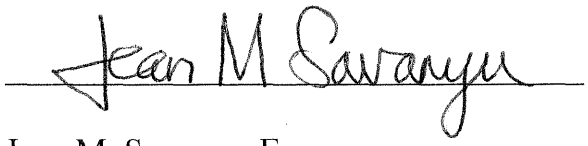
Judge Klonick, Judge Ruderman, Mr. Belluck, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

Judge Acosta was not present.

CERTIFICATION

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

Dated: August 6, 2013



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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

– –

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

DETERMINATION

DAVID McANDREWS,

a Judge of the District Court,
Nassau County.

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THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Mark Levine, Of Counsel) for the Commission

McDonough & McDonough, LLP (by Chris G. McDonough) for the Respondent

The respondent, David McAndrews, a Judge of the District Court, Nassau County, was served with a Formal Written Complaint dated November 27, 2012,

containing two charges. The Formal Written Complaint alleged that respondent failed to file his 2010 financial disclosure statement in a timely manner and failed to cooperate with the Commission investigation by not responding to numerous inquiries. Respondent filed an answer dated January 9, 2013, in which he admitted all the factual allegations.

On June 4, 2013, the Administrator, respondent's counsel and respondent 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, recommending that respondent be censured and waiving further submissions and oral argument.

On June 6, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Judge of the District Court, Nassau County, since 2010. His current term expires on December 31, 2016. He was admitted to the practice of law in New York in 1993.

As to Charge I of the Formal Written Complaint:

2. In or about 2011, respondent failed to file his 2010 financial disclosure statement with the Ethics Commission for the Unified Court System ("Ethics Commission") in a timely manner. Pursuant to 22 NYCRR Section 40.2, judges are required to file annual financial disclosure statements with the Ethics Commission by May 15th of the following year.

3. When respondent did not file his 2010 statement by the due date of

May 15, 2011, the Ethics Commission sent and respondent shortly thereafter received a Notice to Cure dated June 6, 2011.

4. When respondent did not file his 2010 statement in response to the Notice to Cure, the Ethics Commission sent and respondent shortly thereafter received a Notice of Delinquency dated June 30, 2011.

5. Respondent did not file his financial disclosure statement until on or about April 9, 2012, nearly eleven months after it was due.

6. Respondent testified that he believes that he did file or attempt to file his 2010 financial disclosure statement electronically; however, he was unable to support this claim and he could not provide details such as when he filed or attempted to file the financial disclosure statement. Moreover, he acknowledges that he has no valid excuse for failing to file his 2010 financial disclosure statement in a timely manner, or for filing it eleven months after it was due, despite the receipt of notices from the Ethics Commission and letters from the Commission regarding his failure to timely file his 2010 financial disclosure statement. Throughout the time period in issue, respondent was otherwise fulfilling his judicial responsibilities in the ordinary course.

As to Charge II of the Formal Written Complaint:

7. From in or about November 2011 through in or about April 2012, respondent failed to cooperate with the Commission during its investigation of the matters herein.

8. Judiciary Law Section 44(3) and 22 NYCRR Sections 7000.3(c) and

(e) authorize the Commission to request a written response from a judge who is the subject of a complaint and to require such judge's testimony during the investigation.

9. Respondent received but failed to respond to three letters from the Commission dated November 9, 2011, January 20, 2012, and February 8, 2012, in which the Commission posed questions to him regarding his alleged failure to file his 2010 financial disclosure statement.

10. Respondent received but failed to respond to two written requests from the Commission, dated February 29, 2012, and March 12, 2012, that he confirm his attendance at an appearance for testimony scheduled for March 16, 2012. Notwithstanding his failure to confirm, respondent appeared at the Commission on March 16, 2012, without counsel, and requested an adjournment so that he might retain and return with counsel at a later date. The request was granted and the proceeding was adjourned to April 6, 2012, at which time respondent appeared with counsel and testified.

Additional Information

11. Respondent acknowledges that he should have timely filed his 2010 financial disclosure statement.

12. Respondent acknowledges that he should have promptly responded to the letters of inquiry and the notices to appear for testimony that he received from the Commission. Respondent also acknowledges that his failure to file his financial disclosure statement in a timely manner was compounded by his failure to cooperate promptly and fully with the Commission.

13. Respondent has expressed contrition for his misconduct.

14. Respondent timely filed his 2011 financial disclosure statement and pledges to file all of his future financial disclosure statements in a timely manner.

15. Respondent pledges to cooperate fully with any future Commission inquiries.

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

Every state-paid judge is required to file an annual financial disclosure statement with the Ethics Commission by May 15th of the following year (22 NYCRR §40.2). The Legislature and the Chief Judge have determined that financial disclosure by judges serves an important public function,[1] and one of the duties of a judge is to file these reports promptly.

Respondent failed to file his financial disclosure statement for 2010 until

[1] As stated on the Unified Court System's website, the Ethics in Government Act of 1987 was enacted "in order to promote public confidence in government, to prevent the use of public office to further private gain, and to preserve the integrity of governmental institutions. The Act accomplishes those goals by prohibiting certain activities, requiring financial disclosure by certain State employees, and providing for public inspection of financial statements." *See also* Jud Law §211(4).

April 9, 2012 – nearly eleven months late. Even after the Ethics Commission had sent him a Notice to Cure and a Notice of Delinquency, and even after the Commission on Judicial Conduct had sent him three written inquiries about his alleged failure to file, he continued to delay before finally filing the required report. Respondent has stipulated that he "has no valid excuse" for his late filing.

Respondent's inattention to this important responsibility is inconsistent with his ethical obligation to diligently discharge his administrative duties (Rules, §100.3[C][1]). While a single instance of failing to file a financial disclosure statement in a timely manner without a valid excuse, standing alone, typically warrants a confidential caution, such conduct may warrant public discipline in the presence of aggravating factors (2013 NYSCJC Annual Report 25). *See*, *e.g.*, *Matter of Elliott*, 2003 NYSCJC Annual Report 107; *Matter of Russell*, 2001 NYSCJC Annual Report 121; *Matter of Burstein*, 1994 NYSCJC Annual Report 57.

Respondent's misconduct was seriously exacerbated by his failure to cooperate with the Commission's inquiry into his dilatory filing. During an investigation, the Commission is authorized to "request a written response from the judge who is the subject of the complaint" (22 NYCRR §7000.3[c]). By not responding to the Commission's written inquiries over a period of several months, respondent delayed and impeded the Commission's efforts to obtain a full record of the relevant facts and thereby obstructed the Commission's discharge of its lawful mandate. The failure to cooperate in a duly-authorized Commission investigation shows a lack of respect for the process,

created by Constitution and statute, under which the Commission is empowered to investigate the conduct of judges (*Matter of Lockwood*, 2007 NYSCJC Annual Report 123), and is a significant factor in determining sanction (*Matter of Mason*, 100 NY2d 56, 60 [2003]; *Matter of Burstein*, *supra*; *Matter of Cooley*, 53 NY2d 64, 66 [1981]). Respondent's negligence in this regard, coupled with his delay in filing his financial disclosure statement, demonstrates an unacceptable disregard for the administrative and ethical responsibilities of his judicial office.

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: June 18, 2013

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

THOMAS J. NEWMAN, JR.,

a Justice of the Sloatsburg Village Court,
Rockland County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Brenda Correa, Of Counsel) for the Commission

Burke, Miele & Golden, LLP (by Patrick T. Burke) for the Respondent

The respondent, Thomas J. Newman, Jr., a Justice of the Sloatsburg Village Court, Rockland County, was served with a Formal Written Complaint dated September 13, 2013, containing one charge. The Formal Written Complaint alleged that respondent operated his automobile while under the influence of alcohol, caused a motor vehicle

accident and was uncooperative with police during his arrest.

On November 26, 2013, the Administrator, respondent's counsel and respondent 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, recommending that respondent be censured and waiving further submissions and oral argument.

On December 12, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Sloatsburg Village Court, Rockland County, since 1981. His current term expires on December 5, 2016. He was admitted to the practice of law in New York in 1980.

2. On August 16, 2011, between 5:45 PM and 6:45 PM in the Town of Ramapo, respondent operated his automobile while under the influence of alcohol, caused a motor vehicle accident, was arrested, and was disruptive toward and uncooperative with the police, as set forth below.

3. On August 16, 2011, between 5:45 and 6:45 PM, after voluntarily consuming a number of alcoholic beverages, respondent drove his automobile in the Town of Ramapo. While approaching the intersection of Route 17 and the exit 15A ramp of the New York State Thruway, respondent drove into the rear end of another vehicle that was lawfully stopped at a traffic light.

4. The driver of the other vehicle called 911 to report the accident.

Respondent called an attorney.

5. Police Officers Robert Navarro and Jonathan Quinn were dispatched to the scene and arrived separately. When Officer Navarro approached respondent's vehicle and spoke with respondent, he detected an odor of alcohol on respondent's breath and observed that respondent had red glassy eyes and difficulty keeping his balance as he exited his vehicle. Officer Quinn also detected the odor of alcohol emanating from inside the car and observed that respondent had watery eyes, appeared wobbly as he exited the vehicle and stumbled as he stepped away from his car.

6. Officer Quinn conducted two field sobriety tests, and respondent failed both. At that point, F. Hollis Griffin, Jr., an attorney, arrived and advised respondent not to take any additional tests. Respondent refused any further tests.

7. Respondent was placed under arrest. Respondent told Officer Quinn that he did not intend to cooperate and stated in sum and substance that he wanted to die, wanted to hurt himself, and wanted the officer to shoot him.

8. As Officer Quinn walked respondent toward a police car, respondent attempted to break away from his grasp.

9. Both officers struggled with respondent to get him into the patrol car. Respondent repeatedly said that he wanted to die and that he was going to attack one of the officers so that he would shoot respondent.

10. After being put into the police car, and while being transported to the police station, respondent repeatedly slammed his head into the rear passenger-side window and the partition between the front and back seats of the patrol car.

11. At the police station, respondent was placed in a holding cell. He continued to make suicidal statements and threatened to take an officer's gun. The police called for an ambulance. Respondent was placed on a gurney with restraints and was transported to Good Samaritan Hospital.

12. By simplified traffic informations, respondent was charged with Driving While Intoxicated, a misdemeanor, under Vehicle and Traffic Law (VTL) section 1192(3); Following Too Closely, a violation, under VTL section 1129(a); and Refusal to Take a Breathalyzer Test, a violation, under VTL section 1194(1)(b).

13. On March 14, 2012, respondent appeared before Justice Laura G. Weiss in the Village of Piermont Justice Court and pled guilty to Driving While Ability Impaired by Alcohol, a violation, under VTL section 1192(1), in full satisfaction of all the charges.

14. On March 14, 2012, respondent was sentenced to a one-year Conditional Discharge and a $350 fine. Respondent was required to participate in the "Drinking Driver Program" and the Victim Impact Program, and to make restitution to the victim of the motor vehicle accident. Respondent completed the "Drinking Driver Program" and the Victim Impact Program and made restitution for the damage caused to the other vehicle in the amount of $228 and paid the fine of $350. Respondent surrendered his driver's license to the court on the date of sentence for a 90-day suspension, pending a 20-day stay granted by the court. Respondent's driving privileges have since been restored.

Additional Factors

15. Respondent acknowledges that he is an alcoholic and has been suffering from alcoholism, in various stages, for the last 15 to 20 years. Respondent states that the circumstances surrounding his arrest were a trigger for him to obtain the help that he needed to treat his condition.

16. On August 20, 2011, the day after he was discharged from the hospital, respondent met with a psychologist who specializes in the treatment of alcohol addiction. During the year following his arrest, respondent attended weekly therapy sessions with his psychologist and also attended group treatment sessions approximately three times per month.

17. On August 20, 2011, respondent attended his first Alcoholics Anonymous ("AA") meeting. During the first 90 days following that meeting, respondent attended approximately 90 AA meetings. He continues to attend AA meetings on a regular basis.

18. Respondent avers, and the Administrator does not refute, that respondent has not had an alcoholic drink since the date of his arrest.

19. Respondent's unruly, self-destructive and at times suicidal behavior at the time of the incident was instigated by the deleterious effects of alcohol, which significantly impaired his clarity and self-control. With the benefit of sobriety, respondent regrets that he did not behave in a manner consistent with the integrity and dignity required of all judges, on or off the bench, and that he was burdensome and recalcitrant with the police officers.

20. At no time did respondent invoke his judicial office to secure favorable treatment in connection with this incident.

21. Respondent has been contrite and cooperative with the Commission throughout this inquiry and has expressed embarrassment and remorse for his behavior and any diminution of respect for the judiciary it may have caused.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.4(A)(2) of the Rules Governing Judicial Conduct ("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, and respondent's misconduct is established.

Respondent violated his ethical obligation to respect and comply with the law and endangered public safety by operating a motor vehicle while under the influence of alcohol, resulting in a minor accident and his conviction for Driving While Ability Impaired ("DWAI"). Exacerbating his misconduct, he was uncooperative and disruptive during his arrest, refused to take a breathalyzer test, tried to break away from the arresting officer's grasp, had to be forced into the patrol car and threatened to take the officer's gun. Such conduct is plainly inconsistent with a judge's obligation to maintain high standards of conduct at all times, both on and off the bench, so as to promote public confidence in the integrity of the judiciary (Rules, §§100.1, 100.2[A]).

Operating a motor vehicle while under the influence of alcohol creates a

significant risk to the lives of others and is a serious social problem. According to the National Highway Traffic Safety Administration, in 2012 there were 344 deaths in traffic accidents in this state due to drunk driving; nationwide, there were 10,332 such fatalities, accounting for 31% of all traffic deaths. While it is fortunate that respondent's behavior did not result in injury, his conduct endangered the lives of others (motorists, passengers, pedestrians and law enforcement personnel) and resulted in an accident in which his car struck a vehicle stopped at a traffic light. As a judge who has handled such matters in his own court for three decades, respondent should be well aware of the consequences of such behavior. By violating the law which he is called upon to administer in his court, respondent engaged in conduct that undermines his effectiveness as a judge and brings the judiciary as a whole into disrepute.

In determining an appropriate disposition for such behavior, the Commission in prior cases has considered mitigating and/or aggravating circumstances, including the level of intoxication, whether the judge's conduct caused an accident or injury, whether the conduct was an isolated instance or part of a pattern, whether the judge was cooperative during arrest, whether the judge asserted his or her judicial office and sought preferential treatment, and the need and willingness of the judge to seek treatment. In the wake of increased recognition of the dangers of driving while impaired by alcohol and the toll it exacts on society, alcohol-related driving offenses have been regarded with increasing severity. *See*, *e.g.*, *Matter of Apple*, 2013 NYSCJC Annual Report 95 (DWI conviction after causing a minor accident [censure]); *Matter of Maney*, 2011 NYSCJC Annual Report 106 (DWAI conviction; judge had made an illegal U-turn

to avoid a sobriety checkpoint, delayed taking a breathalyzer test and repeatedly invoked his judicial office while requesting "professional courtesy" and "consideration" [censure]); *Matter of Martineck,* 2011 NYSCJC Annual Report 116 (DWI conviction after the judge drove erratically and hit a mile marker post [censure]); *Matter of Burke,* 2010 NYSCJC Annual Report 110 (DWAI conviction after causing a minor accident [censure, in part for additional misconduct]); *Matter of Pajak*, 2005 NYSCJC Annual Report 195 (DWI conviction after causing a property damage accident [admonition]); *Matter of Stelling*, 2003 NYSCJC Annual Report 165 (two alcohol-related convictions [censure]); *Matter of Burns*, 1999 NYSCJC Annual Report 83 (DWAI conviction [admonition]); *Matter of Henderson*, 1995 NYSCJC Annual Report 118 (DWI conviction; judge referred to his judicial office during the arrest and asked, "Isn't there anything we can do?" [admonition]); *Matter of Siebert*, 1994 NYSCJC Annual Report 103 (DWAI conviction after causing a three-car accident [admonition]); *Matter of Innes*, 1985 NYSCJC Annual Report 152 (DWAI conviction; judge's car caused damage to a patrol car while backing up [admonition]); *Matter of Barr*, 1981 NYSCJC Annual Report 139 (two alcohol-related convictions; judge asserted his judicial office and was abusive and uncooperative during his arrests, but had made "a sincere effort to rehabilitate himself" [censure]); *Matter of Quinn*, 54 NY2d 386 (1981) (two alcohol-related convictions and other non-charged alcohol-related incidents; judge was uncooperative, belligerent and abusive to officers during his arrest and repeatedly referred to his judicial position [removal reduced to censure in view of the judge's retirement]).

In this case, there seems little doubt that respondent, who refused to take a

breathalyzer test, was highly intoxicated and that his judgment and self-control were impaired by alcohol; he was not merely uncooperative and unruly during his arrest, but repeatedly said that he wanted to die and wanted the police to shoot him. While such behavior might call into question his fitness for the bench, the record before us indicates that respondent acknowledges that he is an alcoholic and states that this incident was "a trigger for him to obtain the help that he needed to treat his condition." It has been stipulated that since his arrest – more than two years ago – respondent has undergone counseling, regularly attends AA meetings, and has abstained from alcohol, and we give appropriate weight to the record of these rehabilitative efforts. We also note that there is no indication that respondent invoked his judicial office during his arrest in an attempt to secure favorable treatment (*compare*, *Matter of Maney*, *supra*).

Thus, while we believe that respondent's misconduct comes very close to the "truly egregious" standard that requires the sanction of removal (*Matter of Cunningham*, 57 NY2d 270, 275 [1982][citations omitted]), we conclude that in view of the totality of the circumstances presented here, the sanction of censure is appropriate. We underscore that this result and the Commission's prior decisions in matters involving alcohol-related driving offenses should not be interpreted to suggest that such behavior can never rise to a level warranting removal. For the reasons indicated above, we believe that such misconduct must be regarded with increasing severity, and we will not hesitate to impose the sanction of removal in the future in an appropriate matter. In censuring respondent on the facts presented here, we are mindful that the sanction of suspension

from office without pay is not available to us.[1]

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen, Ms. Corngold and Mr. Stoloff concur.

Mr. Emery, Mr. Harding and Judge Weinstein dissent and vote to reject the Agreed Statement of Facts on the basis that the proposed disposition is too lenient.

CERTIFICATION

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

Dated: December 18, 2013

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

[1] We have previously urged the Legislature to consider a constitutional amendment providing such a sanction as an alternative available to the Commission (Commission Annual Reports, 2011, 2010, 2009, 2006, 2002, 2000, 1997).

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

TERRENCE C. O'CONNOR,

a Judge of the Civil Court of the City of
New York, Queens County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Alan W. Friedberg, Of Counsel) for the Commission

Joseph V. DiBlasi for the Respondent

The respondent, Terrence C. O'Connor, a Judge of the Civil Court of the City of New York, Queens County, was served with a Formal Written Complaint dated December 5, 2012, containing two charges. The Formal Written Complaint alleged that:

(i) respondent served as a fiduciary in several matters while a full-time judge and that (ii) prior to becoming a judge, he filed four applications for appointment as a fiduciary in which he falsely responded to a question about his financial liabilities.

On June 17, 2013, the Administrator, respondent's counsel and respondent 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, recommending that respondent be censured and waiving further submissions and oral argument.

On August 1, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Judge of the New York City Civil Court, Queens County, since 2009. His current term expires on December 31, 2018. Respondent was admitted to the practice of law in New York in 1977.

As to Charge I of the Formal Written Complaint:

2. From January 1, 2009, when he first became a full-time judge, to on or about January 17, 2012, respondent continued to serve as a court-appointed fiduciary in several cases, notwithstanding that he needed but neither sought nor obtained the approval of the Chief Administrator of the Courts because he was a full-time judge and the individuals for whom he was serving as a fiduciary were not his family members.

Matter of Victoria Tucker

3. In or about 2005 or 2006, respondent was appointed by court order to

serve as guardian for Victoria Tucker, an incapacitated person.

4. From January 1, 2009, to on or about February 15, 2011, respondent continued to serve as court-appointed guardian for Ms. Tucker, notwithstanding that he was a full-time judge, that Ms. Tucker was not a member of his family, and that he did not seek or obtain the approval of the Chief Administrator of the Courts.

5. After Ms. Tucker's death in or about 2007, respondent, in his capacity as guardian, unnecessarily delayed filing a final accounting. The executor of Ms. Tucker's estate moved to compel an accounting, and on or about April 13, 2010, a court order was issued directing respondent to file a final accounting within 45 days. On or about December 20, 2010, respondent filed a final accounting.

6. On or about February 15, 2011, an order was signed settling the final account and releasing respondent as guardian.

7. Respondent received the following fees for his work in the *Tucker* matter: $567.16 on September 15, 2004; $4,179.29 on November 30, 2005; and $48,000 pursuant to the February 15, 2011 order settling the final account.

Matter of Cordell Murray

8. In or about 2002 or 2003, respondent was appointed by court order to serve as guardian for Cordell Murray, a disabled individual.

9. From January 1, 2009, to on or about December 9, 2011, respondent continued to serve as court-appointed guardian for Cordell Murray, notwithstanding that he was a full-time judge, that Mr. Murray was not a member of his family, and that he did

not seek or obtain the approval of the Chief Administrator of the Courts.

10. On three occasions after becoming a full-time judge -- in 2009, in or about May 2010 and in or about October 2010 -- respondent, in his capacity as guardian, traveled to Florida to visit Mr. Murray, who resides there. Respondent's expenses for each of the trips were paid from the financial assets of Mr. Murray.

11. To date, respondent has received the following fees for his work in the *Murray* matter: $3,707.86 on December 5, 2005; $3,445.07 on June 8, 2007; and $1,994.21 on May 19, 2009.

12. On or about December 9, 2011, respondent was replaced as guardian, and Michael G. Sileo, Esq., is preparing a final accounting in this matter.

Matter of Anthony Aboussouan

13. In or about May 2004, respondent was appointed by court order to be the trustee of a supplemental needs trust for Anthony Aboussouan, an incapacitated person. Mr. Aboussouan died shortly after respondent's appointment.

14. From on or about January 1, 2009, through in or about 2012, respondent continued to serve as court-appointed trustee of Mr. Aboussouan's trust, notwithstanding that he was a full-time judge, that Mr. Aboussouan was not a member of his family, and that he did not seek or obtain the approval of the Chief Administrator of the Courts.

15. Subsequent to respondent's becoming a judge, the City of New York filed a lien against the trust. On several occasions, respondent communicated with the

City's attorneys, in his capacity as trustee, with regard to the lien, and did so at times from the court facilities to which he was assigned as a full-time judge.

16. On January 17, 2012, the court ordered respondent to file a final accounting.

17. Michael G. Sileo, Esq., is in the process of completing the final accounting.

18. To date, respondent has not received any fees for his work in the *Aboussouan* matter.

As to Charge II of the Formal Written Complaint:

19. In 2002, Washington Mutual Bank commenced a foreclosure action against respondent as to his primary residence. In 2008, the bank's motion for summary judgment was denied. In 2009, the Appellate Division, Second Department, reversed. In 2010, JP Morgan Chase was substituted as the petitioner. The matter is still pending. In essence, the parties dispute the amount that respondent is required to pay on a monthly basis, and respondent has been withholding that portion of the payment which he contests.

20. On or about May 30, 2003, August 20, 2003, May 17, 2005, and May 16, 2007, respondent filed applications and re-registration applications with the Office of Court Administration, pursuant to Part 36 of the Rules of the Chief Judge, seeking to become eligible to receive fiduciary appointments.

21. On each of the applications, respondent responded "No" to question 14(f), which on each application reads as follows:

> HAVE YOU EVER BEEN, OR ARE PROCEEDINGS PENDING IN WHICH YOU MAY BE,
> * * *
> f. found liable for unpaid money judgments, liens or judgments of foreclosure?
>
> [Emphasis in original.]

22. At the time he filed each of the applications, respondent knew that he was a defendant in a foreclosure proceeding concerning his residence and that he may have been found liable in that proceeding. Respondent notes that the pertinent question on the application contained 11 subquestions, and he represents that (A) he did not read the pertinent part of the form carefully and (B) he thought the question pertained only to past findings of liability, not possible future findings of liability.

23. After filing each application, respondent was appointed as a fiduciary by the courts of New York State in numerous cases.

Additional Factors

24. Respondent acknowledges that it was his responsibility to familiarize himself with the Rules Governing Judicial Conduct and that his three trips to Florida as guardian in the *Murray* matter while he was a full-time judge should have prompted him to investigate whether such conduct was permissible. He now realizes that Rule 100.4(E) prohibited him from continuing to serve as a court-appointed fiduciary after becoming a judge. He represents that he is no longer acting as a fiduciary on any matters and will not serve as a fiduciary for a non-family member without seeking and obtaining the approval of the Chief Administrator of the Courts while serving as a judge.

25. Respondent acknowledges that he should have reported the foreclosure proceeding against him on all applications for appointment.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.4(A)(3) and 100.4(E)(1) of the Rules Governing Judicial Conduct ("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. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

The ethical rules impose certain restrictions on the extra-judicial activities of judges which are intended to minimize the risk of conflict with judicial obligations (Rules, §100.4). Among other restrictions, a full-time judge is prohibited from acting as a fiduciary except for a family member or, with the approval of the Chief Administrator of the Courts, for a person "with whom the judge has maintained a longstanding personal relationship of trust and confidence" (Rules, §100.4[E][1]). For several years after taking judicial office, respondent violated this ethical mandate by continuing to serve as a court-appointed fiduciary in three non-family matters without seeking or obtaining administrative approval.

The record of respondent's actions in *Tucker*, *Murray* and *Aboussouan* after he became a judge reflects continued involvement in the matters and sporadic, dilatory

acts, rather than a diligent effort to be replaced as fiduciary or to conclude the matters expeditiously. For example, in *Tucker*, he unnecessarily delayed filing a final accounting, and even after a court order was issued directing him to file a final accounting within 45 days, he did not do so for eight months; in *Aboussouan*, he had not filed the final accounting as of June 2013, although a court ordered him in January 2012 to do so. In *Murray*, he was not replaced as guardian until almost three years after assuming the bench; and while a judge, he made three trips to Florida in his capacity as guardian, paid for by the disabled person's assets, and continued to collect fees as a fiduciary. The record also indicates that as a fiduciary, he communicated with attorneys from the court facilities where he served as a judge. These acts presented a clear conflict with his judicial role.

Respondent's services as a fiduciary after becoming a full-time judge continued for "an inexcusably long period," and to the extent some tasks he performed may have been ministerial, "no justification appears for his failure to turn them over to another attorney" (*Matter of Moynihan*, 80 NY2d 322, 324, 325 [1992] [involving a full-time judge who continued to act as fiduciary in several estates and to perform business or legal services for clients for more than two years after assuming the bench]). Respondent should have recognized that his continued service as a fiduciary was inconsistent with the ethical rules. While it is stipulated that he "now realizes" that such conduct was prohibited, "[i]gnorance and lack of competence do not excuse violations of ethical standards" (*Matter of VonderHeide*, 72 NY2d 658, 660 [1988]; *see also Matter of Feinberg*, 5 NY3d 206, 214 [2005]).

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In addition, prior to becoming a judge, respondent filed four applications seeking to become eligible for fiduciary appointments that misrepresented his financial liabilities. In applications filed with the Office of Court Administration, he represented that there had never been and were no foreclosure proceedings pending against him, notwithstanding that at the time of such filings, he was a defendant in a foreclosure proceeding concerning his residence. Respondent's failure to disclose that significant legal proceeding against him on documents filed with the court system – through which he was seeking appointments to serve in a position of trust – cannot be condoned, notwithstanding that the conduct occurred several years before he became a judge. *See, e.g., Matter of Tamsen*, 100 NY2d 19 (2003) (prior to ascending the bench, judge misappropriated client funds and altered records as an attorney, resulting in his disbarment while serving as a judge). *See also Matter of Alessandro*, 13 NY3d 238 (2009) (judges gave inaccurate and incomplete information on loan applications and financial disclosure statements); *Matter of Esposito*, 2004 NYSCJC Annual Report 100 (judge's conduct in litigation was "deceptive" in significant respects). While respondent claims that he misread the question, he had a duty to read the form carefully in order to make sure that his responses were accurate. We note that the pertinent question specifically mentioned foreclosure proceedings – at a time when there was a pending foreclosure proceeding against him involving his home – which should have alerted him to be particularly careful in making sure that he understood the question and responded truthfully.

In accepting the jointly recommended sanction of censure, we note that respondent has acknowledged that his actions were inconsistent with the ethical standards.

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

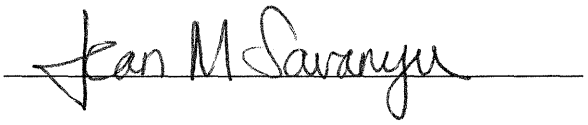
Judge Klonick, Judge Ruderman, Mr. Belluck, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

Judge Acosta was not present.

CERTIFICATION

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

Dated: August 12, 2013



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

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

DAVID A. PRINCE,

a Justice of the Pomfret Town Court
and Fredonia Village Court, Chautauqua
County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and Kathleen Martin, Of Counsel) for the Commission

Lipsitz, Green, Scime, Cambria, LLP (by Barry Nelson Covert) for the Respondent

The respondent, David A. Prince, a Justice of the Pomfret Town Court and Fredonia Village Court, Chautauqua County, was served with a Formal Written

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Complaint dated October 31, 2013, containing two charges. The Formal Written Complaint alleged that during an arraignment on charges arising out of a domestic dispute, respondent failed to advise a defendant of his right to assigned counsel, made statements that appeared to prejudge the case, and made discourteous, inappropriate statements to the alleged victim.

On December 9, 2013, the Administrator, respondent's counsel and respondent 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, recommending that respondent be admonished and waiving further submissions and oral argument.

On December 12, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Pomfret Town Court, Chautauqua County, since 1990, and a Justice of the Fredonia Village Court, Chautauqua County, since 1997. His current term as Pomfret Town Justice expires on December 31, 2015, and his current term as Fredonia Village Justice expires on April 1, 2017. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. On January 30, 2012, R. G., the father of A. G., called the Fredonia Police Department regarding an alleged domestic dispute between Ms. G. and her live-in boyfriend, C. M. When Fredonia Village police officers arrived at Ms. G.'s home, Mr.

M. was no longer there.

3. Ms. G. signed a supporting deposition alleging that there had been an altercation in which Mr. M. screamed profanities, forced open a door to her room and later shoved her into the kitchen table.

4. Mr. M. was charged with Criminal Mischief in the Fourth Degree, in violation of section 145.00 of the Penal Law, and Harassment in the Second Degree, in violation of section 240.26 of the Penal Law.

5. On January 31, 2012, respondent signed an arrest warrant for Mr. M. in connection with the incident.

6. On February 26, 2012, Fredonia Village Police Officer Mike Hodkin arrested Mr. M. and gave him an appearance ticket for February 29, 2012.

7. On February 29, 2012, respondent presided over the arraignment of the defendant in *People v C. M.* At arraignment, respondent failed to advise Mr. M. of his right to assigned counsel and made statements in which he appeared to have pre-judged Mr. M.'s case, as indicated in the following paragraphs.

8. Respondent failed to advise Mr. M. of his right to assigned counsel as required by section 170.10(3)(c) of the Criminal Procedure Law.

9. Upon learning that Ms. G., who was present in court for the arraignment, did not wish to pursue charges against Mr. M., respondent called her to the bench and said:

> "You want to drop these charges now after what he's accused of doing? Why would you want to subject your children to that, or yourself, to that type of person?"

10. When Ms. G. told respondent that she did not think Mr. M. would cause any further violent incidents, respondent said:

> A. "Let me, let me just tell you something. I'm almost 70 years old. I've been doing this for 45 years and it doesn't stop. This is not going to happen to those kids."
>
> B. "If you don't want to put your children first, then we will. We're not dismissing the charges."

11. Shortly thereafter, when the defendant in an unrelated traffic matter thanked respondent for "helping them kids," respondent replied, "Isn't that terrible?" When the defendant then said, "Sickening. And … she just stands there and looks at … you," respondent replied, "Unbelievable."

As to Charge II of the Formal Written Complaint:

12. On February 29, 2012, in presiding over the arraignment in *People v C. M.* on charges stemming from an alleged domestic violence incident, respondent spoke to the alleged victim, A. G., in an angry and discourteous manner and threatened to take action to have the victim's children taken from her home, because of her expressed desire not to pursue the criminal charges.

13. Upon learning that Ms. G. did not wish to pursue charges against Mr. M., respondent called her to the bench and stated, in a harsh and angry tone:

> "Here's what bothers me. You have two children. Is that not true?
> ***
> "You've gone through a divorce, is that correct?
> ***
> "Now, you're subjecting your children, with this individual."

14. Referring to Ms. G.'s supporting deposition, respondent said to her, in a harsh and angry tone:

> "In your statement, let me read what it says in your statement. That during this confrontation, he called you an f'ing c, okay, and when you went into the bedroom—look at me when I'm talking to you, and when you went into the bedroom to check on your children, they were under the covers crying. Here's what's going to happen, if you're going to continue to subject those children to this type of environment, I'm turning you into the state authority for the protection of children. Do you understand me? Your first obligation is your kids. Do you understand me?"

15. Respondent then demanded of Ms. G., "Why would you want to subject your children to that, or yourself, to that type of person? Answer me."

16. Respondent also stated to Ms. G., "If you don't want to put your children first, then we will. We're not dismissing the charges."

17. When Mr. M. pleaded not guilty and indicated that he wanted to go to trial, respondent replied, "So, I am, it leaves me no choice but to contact child protection."

Additional Factors

18. Respondent has no previous disciplinary history over his lengthy career on the bench.

19. Respondent has been cooperative and contrite throughout the Commission inquiry.

20. Notwithstanding that he was motivated by concerns for the safety of Ms. G. and her children, respondent realizes that such concerns do not excuse his failure

to effectuate a defendant's rights and otherwise act fairly and impartially. He regrets his failure to abide by the applicable Rules in this instance and pledges henceforth to abide by them faithfully.

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)(4) of the Rules Governing Judicial Conduct ("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. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

In handling the arraignment in *People v. C. M.*, involving charges arising out of a domestic dispute, respondent failed to advise the defendant of the right to assigned counsel, made statements that appeared to prejudge the case, and made harsh, discourteous comments to the complaining witness. Respondent's conduct violated basic tenets of fairness in the administration of justice and a judge's obligation to be an exemplar of neutrality and courtesy in court proceedings.

The right to counsel is a fundamental constitutional and statutory right, and it includes in all criminal cases the right to have an attorney assigned if the defendant is financially unable to retain counsel. At arraignment, a judge is required *inter alia* to advise a defendant of the right to assigned counsel and to "take such affirmative action as is necessary to effectuate" the defendant's rights (CPL §§170.10[3][c], 170.10[4][a]; *see Matter of Bauer*, 3 NY3d 158 [2005]). By ignoring this important responsibility,

respondent violated his ethical obligation to be faithful to the law (Rules, §100.3[B][1]).

Respondent also made statements in which he appeared to presume that the defendant had engaged in the conduct charged, including asking the complaining witness, "Why would you want to subject your children… or yourself, to that type of person?" At an arraignment, before a defendant's guilt or innocence has been adjudicated, a judge must be, and appear to be, impartial and avoid making any statements that convey the appearance of bias or prejudgment. As the Court of Appeals stated: "The ability to be impartial is an indispensable requirement for a judicial officer. Equally important is the requirement that a Judge conduct himself in such a way that the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property" (*Matter of Sardino,* 58 NY2d 286, 290-91 [1983]; *see also Matter of Austria*, 1996 NYSCJC Annual Report 51; *Matter of Wylie*, 1991 NYSCJC Annual Report 89).

Domestic violence is a serious social problem with major implications for the health and safety of women and children, and such cases present significant challenges for the courts.[1] A judge is required to protect the defendant's rights and to preside in each case as a neutral arbiter, not as an advocate or therapist, but is also required to be sensitive to the complex and difficult issues presented in such cases, including that the victim may be ambivalent or fearful about cooperating with the legal

[1] *See* Hon. Judith S. Kaye and Susan K. Knipps, "Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach," 27 Western St. Univ. L. Rev. 1 (1999-2000); *see also* Hon. Marjory D. Fields, "Practical Ideas for Trial Judges in Domestic Violence Cases," 35 *The Judges' Journal* 32 (1996).

process. Respondent's inappropriate statements about the complaining witness' desire not to pursue the charges were inconsistent with the dignity, patience and impartiality required of judges (Rules, §100.3[B][3]).

While it has been stipulated that respondent "was motivated by concerns for the safety" of the alleged victim and her children, it was not his responsibility either to align himself with the prosecutor against the defendant or to lecture or threaten the complaining witness in an angry, discourteous manner. Under the circumstances, telling her that abusive conduct "doesn't stop" and affects children in the household could only be perceived as biased and sharply disapproving of her choices. Explaining the procedures in a neutral, considerate way and indicating that she should discuss with the District Attorney's office her desire not to pursue the charges would have been far more appropriate than expressing his concerns in a harsh, angry tone and berating and threatening her in open court ("If you don't want to put your children first, then we will"). While it is entirely appropriate for a judge to make inquiries of a complaining witness to determine whether the witness' decision not to testify is voluntary and not the result of coercion, treating an alleged victim harshly for being reluctant to cooperate in the prosecution may have the effect of discouraging the individual from seeking protection from the criminal justice system in the future.

It has been stipulated that respondent now realizes that his concerns for the safety of the alleged victim and her children "do not excuse his failure to effectuate a defendant's rights and otherwise act fairly and impartially."

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

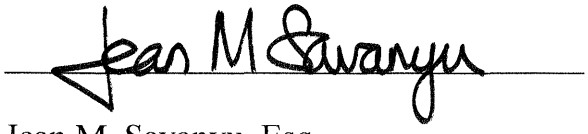
Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

Mr. Belluck dissents and votes to reject the Agreed Statement on the basis that the proposed disposition is too lenient.

CERTIFICATION

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

Dated: December 18, 2013



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

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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

THOMAS E. RAMICH,

a Judge of the Elmira City Court,
Chemung County.

DECISION
AND
ORDER

- -

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Nina M. Moore
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Kathleen Martin, Of Counsel) for the Commission

Learned, Reilly, Learned & Hughes, LLP (by Thomas E. Reilly) for the Respondent

The matter having come before the Commission on March 14, 2013; and the Commission having before it the Stipulation dated March 12, 2013, with appended

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exhibits; and respondent having announced his retirement from judicial office by letter dated March 12, 2013, effective May 1, 2013, and having affirmed that upon vacating his judicial office he will neither seek nor accept judicial office or a position as a judicial hearing officer at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law §45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending proceeding is discontinued and the matter closed pursuant to the terms of the Stipulation; and it is

SO ORDERED.

Dated: March 14, 2013

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

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

THOMAS E. RAMICH, **STIPULATION**

a Judge of the Elmira City Court,
Chemung County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission on Judicial Conduct (hereinafter "Commission"), the Honorable Thomas E. Ramich ("respondent"), and his attorney, Thomas E. Reilly, Esq., as follows:

1. This stipulation is presented to the Commission in connection with a formal proceeding pending against respondent.

2. Respondent was admitted to practice law in New York in 1976. He has been a Judge of the Elmira City Court, Chemung County, since 1982. Respondent's current term expires December 31, 2016.

3. Respondent announced his retirement by letter dated March 12, 2013. His retirement will become effective May 1, 2013. A copy of respondent's retirement letter is annexed as Exhibit 1.

4. Respondent was served with a Formal Written Complaint dated April 30, 2012, a copy of which is annexed as Exhibit 2.

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5. Respondent filed an Answer, dated May 7, 2012, in which he denied the allegations of misconduct. A copy of the Answer is annexed as Exhibit 3.

6. A hearing was held before a Commission-appointed referee, the Honorable Gary Muldoon, at the Schuyler County Courthouse, in Watkins Glen, New York, from October 16, 2012, through October 18, 2012. A copy of the hearing transcript is annexed hereto as Exhibit 4.

7. Respondent affirms that, having vacated his judicial office, he will neither seek nor accept judicial office or a position as a judicial hearing officer, at any time in the future.

8. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time, the present proceeding before the Commission will be revived.

9. Upon execution of this Stipulation by the three signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

10. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that: (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated:

Thomas E. Ramich
Honorable Thomas E. Ramich
Respondent

Dated:

Thomas E. Reilly, Esq.
Attorney for Respondent

Dated: March 12, 2013

Robert H. Tembeckjian
Robert H. Tembeckjian
Administrator and Counsel to the Commission

EXHIBIT 1: RESPONDENT'S LETTER OF RETIREMENT
Available at www.cjc.ny.gov
EXHIBIT 2: FORMAL WRITTEN COMPLAINT
Available at www.cjc.ny.gov
EXHIBIT 3: ANSWER
Available at www.cjc.ny.gov
EXHIBIT 4: HEARING TRANSCRIPT
Available at www.cjc.ny.gov

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- -

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

HOWARD RILEY,

a Justice of the Harrietstown Town
Court, Franklin County.

DECISION
AND
ORDER

- -

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

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

Honorable Howard Riley, *pro se*

The matter having come before the Commission on August 1, 2013; and the Commission having before it the Formal Written Complaint dated February 26, 2013, respondent's Answer dated April 4, 2013, and the Stipulation dated June 26, 2013; and

respondent having tendered his retirement from judicial office by letter dated June 1, 2013, effective August 1, 2013, and having affirmed that after vacating judicial office on or before August 1, 2013, he will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law §45 to the limited extent that the Stipulation and the Commission's Decision and Order thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending proceeding be discontinued and the matter closed pursuant to the terms of the Stipulation; and it is

SO ORDERED.

Judge Acosta was not present.

Dated: August 1, 2013

Jean M Savanyu

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

HOWARD RILEY, **STIPULATION**

A Justice of the Harrietstown Town Court,
Franklin County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, and the Honorable Howard Riley ("Respondent"), as follows:

1. Respondent has been a Justice of the Harrietstown Town Court, Franklin County, since January 1, 2008. His current term expires December 31, 2015. Respondent is not an attorney.

2. Respondent was served with a Formal Written Complaint dated February 26, 2013, containing two charges of alleged misconduct in his handling of cases between January 2010 and December 2011. The allegations of the Formal Written Complaint included, *inter alia*, that: (1) in numerous cases, predominantly Vehicle and Traffic Law violations, Respondent engaged in inappropriate conversations with unrepresented defendants at their arraignments and other appearances before him and allowed them to make potentially incriminating statements, (2) in numerous cases, Respondent dismissed or reduced charges against defendants without notice to or consent of the district attorney as required by law, (3) in several cases Respondent made statements that appeared to coerce defendants to enter guilty pleas, and (4) in a small claims action, Respondent

directed the defendant to present his defense first, before the claimant presented his case. Respondent filed an Answer dated April 4, 2013, in which he denied all allegations of misconduct.

3. Respondent tendered his resignation, dated June 1, 2013, a *copy of* which is annexed as Exhibit 1. Respondent affirms that he will vacate his judicial office on or before August 1, 2013.

4. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of a judge's resignation to complete proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.

5. Respondent affirms that, after vacating his judicial office on or before August 1, 2013, he will neither seek nor accept judicial office at any time in the future.

6. Respondent understands that, should he remain on the bench beyond August 1, 2013, or thereafter assume any judicial position at any time in the future, or otherwise abrogate the terms of this Stipulation, the present proceedings before the Commission will be revived and the matter will proceed to a hearing before a referee.

7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the

signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 6-24-2013

Honorable Howard Riley
Respondent

Dated: June 26, 2013

Robert H. Tembeckjian
Administrator and Counsel to the Commission
(Thea Hoeth, Of Counsel)

EXHIBIT 1: RESPONDENT'S LETTER OF RESIGNATION
Available at www.cjc.ny.gov

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- -

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

JAMES P. ROMAN,

a Justice of the Sullivan Town Court,
Madison County.

DECISION
AND
ORDER

- -

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and Kathleen Martin, Of Counsel)
for the Commission

Pope & Schrader, LLP (by Alan J. Pope) for the Respondent

The matter having come before the Commission on June 6, 2013; and the Commission having before it the Formal Written Complaint dated August 7, 2012,

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respondent's Answer dated October 30, 2012, and the Stipulation dated May 28, 2013; and respondent having tendered his resignation from judicial office by letter dated May 22, 2013, effective July 3, 2013, and having affirmed that he will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law §45 to the limited extent that the Stipulation and the Commission's Decision and Order thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending proceeding be discontinued and the matter closed pursuant to the terms of the Stipulation; and it is

SO ORDERED.

Mr. Belluck was not present.

Dated: June 6, 2013

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

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JAMES P. ROMAN, **STIPULATION**

A Justice of the Sullivan Town Court,
Madison County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission on Judicial Conduct, the Honorable James P. Roman ("respondent"), and his attorney, Alan J. Pope, Esq., of Pope & Schrader, LLP, as follows:

1. This Stipulation is presented to the Commission in connection with a formal proceeding pending against respondent.

2. Respondent was admitted to practice law in New York in 1985. He has been a Justice of the Sullivan Town Court, Madison County, since 1998. Respondent's current term expires December 31, 2013.

3. Respondent was served with a Formal Written Complaint dated August 7, 2012, a copy of which is annexed as Exhibit 1. The Formal Written Complaint contained one charge alleging *inter alia* that respondent engaged in judicial misconduct, on or about August 12, 2011, when he publicly and physically confronted a fifteen-year-old boy who was riding his bicycle in respondent's neighborhood, yelled profanities, took unauthorized possession of and damaged the

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boy's bicycle, and recommended to a local landlord that he evict a neighborhood family because of their relationship with the boy.

4. Respondent filed an Answer, dated October 30, 2012, in which he admitted in part and denied in part the allegations charged against him. A copy of the Answer is annexed as Exhibit 2.

5. Respondent submitted his letter of resignation from judicial office dated May 22, 2013, effective at the close of business July 3, 2013. A copy of respondent's resignation letter is annexed as Exhibit 3.

6. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of a judge's resignation to complete proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.

7. Respondent affirms that, after he vacates his judicial office, he will neither seek nor accept judicial office or a position as a judicial hearing officer at any time in the future.

8. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any future time, the present proceeding before the Commission will be revived and the matter will proceed to a hearing before a referee.

9. Upon execution of this Stipulation by the three signatories below, this Stipulation will be presented to the Commission with the joint recommendation

that the matter be concluded by the terms of this Stipulation, without further proceedings, as of the date respondent's resignation takes effect.

10. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that this Stipulation and the Commission's Decision and Order regarding this Stipulation will become public.

Dated:

Honorable James P. Roman
Respondent

Dated:

Alan J. Pope, Esq.
Attorney for Respondent

Dated: May 28, 2013

Robert H. Tembeckjian
Administrator and Counsel to the Commission
(John J. Postel and Kathleen Martin Of Counsel)

EXHIBIT 1: FORMAL WRITTEN COMPLAINT
Available at www.cjc.ny.gov
EXHIBIT 2: ANSWER
Available at www.cjc.ny.gov
EXHIBIT 3: RESPONDENT'S LETTER OF RESIGNATION
Available at www.cjc.ny.gov

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

NANCY E. SMITH,

a Justice of the Appellate Division,
Fourth Department.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the Commission

Geiger and Rothenberg, LLP (by David Rothenberg) for the Respondent

The respondent, Nancy E. Smith, a Justice of the Appellate Division, Fourth Department, was served with a Formal Written Complaint dated March 12, 2013, containing one charge. The Formal Written Complaint alleged that respondent sent a

letter on judicial stationery to the New York State Division of Parole expressing her support for an inmate's release on parole.

On May 9, 2013, the Administrator, respondent's counsel and respondent 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, recommending that respondent be admonished and waiving further submissions and oral argument.

On June 6, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Appellate Division since 1999, serving in the Fourth Department since 2004 and in the Second Department from 1999 to 2004. She has been a Supreme Court Justice since 1997 and served as a Judge of the Monroe County Court from 1993 to 1997. Her current term expires on December 31, 2025. Respondent was admitted to the practice of law in New York in 1982.

2. Craig Cordes was sentenced to state prison on May 14, 2008, after being convicted for vehicular manslaughter, first degree (a class C felony), for driving a boat into another boat on Skaneateles Lake, resulting in the death of two people. Mr. Cordes was then a law student who had recently completed his second year of law school. His maximum sentence expiration date is April 21, 2018. His conditional release date is December 21, 2014. He became eligible for parole on August 21, 2011. Mr. Cordes filed an initial request for parole, and a hearing was scheduled for April 19, 2011.

3. Respondent has never met Mr. Cordes. She played no role in his

criminal case. She became acquainted with his situation after his incarceration, through her brother-in-law's sister, who is a friend of Mr. Cordes's mother. Respondent spoke with Mr. Cordes's mother about Mr. Cordes's case and incarceration.

4. Respondent began communicating with Mr. Cordes by letter and, over time, formed the opinion that Mr. Cordes recognized the gravity of his crime, had gained insight as to the harm he had caused, and was genuinely contrite. At the request of his mother, respondent agreed to write to the New York State Division of Parole on Mr. Cordes's behalf.

5. On January 27, 2011, respondent signed and sent a letter on her judicial stationery to the Division of Parole on behalf of Mr. Cordes, in which *inter alia* she identified herself as a judge, stated that Mr. Cordes was her "friend" but did not disclose that she had never met him, expressed her support for Mr. Cordes's release on parole, and set forth factors that she believed demonstrated Mr. Cordes's rehabilitation.

6. Respondent took no other action on behalf of Mr. Cordes. Respondent did not contact or speak with any attorney representing Mr. Cordes. Respondent did not appear at Mr. Cordes's parole hearing. Respondent did not speak about Mr. Cordes with any member of the Division of Parole.

7. As part of her official duties, respondent had previously sent many letters in response to direct inquiries by the Division of Parole in which she offered her opinion for consideration at parole hearings involving inmates over whose trials she had presided and/or whom she had sentenced to prison. Respondent was aware that the Rules

Governing Judicial Conduct ("Rules") and applicable opinions of the Advisory Committee on Judicial Ethics ("Advisory Committee") permit such responses to inquiries from the Division of Parole.

8. Respondent acknowledges that she should have been aware that the Rules, as interpreted by the Commission and the Advisory Committee, prohibit judges from writing to the Division of Parole on an inmate's behalf voluntarily, at his or her request, or at the request of someone else. She pledges that she will refrain from such conduct in the future.

9. Mr. Cordes's request for parole was denied.

Additional Factor

10. Respondent has never previously been the subject of discipline by the Commission.

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) and 100.2(C) 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, and respondent's misconduct is established.

Respondent's unsolicited letter to the Division of Parole on behalf of the son of a family acquaintance was inconsistent with well-established ethical standards

prohibiting a judge from lending the prestige of judicial office to advance private interests (Rules, §100.2[C]). With her judicial stationery underscoring the impact of her professional clout, respondent acted as an advocate for an inmate who was seeking release on parole, describing him as her "friend" and "a good person" (although she had never met him), citing his worthy activities while incarcerated, and stating that she was "confident" of his exemplary behavior if released. Respondent's letter was clearly intended to influence the Parole Board to give favorable consideration to the inmate's application. The favoritism inherent in her letter, which she sent at the request of the inmate's mother (a friend of respondent's relative), subverts the fair and proper administration of justice since the inmate is the beneficiary of an influential plea from a sitting judge based on personal connections, a benefit not available to others who have no such connections.

A request by a judge to another public official or agency for special consideration for any person "is wrong, and always has been wrong" (*Matter of Byrne*, 47 NY2d [b], 420 NYS2d 70, 71 [Ct on the Jud 1979]). 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. 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.]

Matter of Lonschein, 50 NY2d 569, 571 (1980). In numerous cases over more than three decades, the Commission and the Court of Appeals have disciplined judges for lending the prestige of judicial office to advance private interests in violation of section 100.2(C) by, *inter alia*, using judicial stationery in connection with a private matter or otherwise asserting their judicial position while contacting a judge, law enforcement official or other person in authority in order to assist a friend or relative. *See Matter of Martin*, 2002 NYSCJC Annual Report 121 (judge sent two unsolicited letters to sentencing judges in other courts on behalf of defendants awaiting sentencing); *see also, e.g., Matter of Dixon*, 47 NY2d 523 (1979); *Matter of Sharlow*, 2006 NYSCJC Annual Report 232; *Matter of Engle*, 1998 NYSCJC Annual Report 125; *Matter of Freeman*, 1992 NYSCJC Annual Report 44. As a judge since 1993, respondent should have recognized that such communications are strictly prohibited.

Respondent's letter did not even specify that her comments were "personal and unofficial." Including that language in her letter would not have annulled the impropriety of her assertion of special influence (*see Matter of Nesbitt,* 2003 NYSCJC Annual Report 152), but at least it would have underscored the personal nature of her comments. Regardless of her intent, the letter, on its face, conveys an appearance of using her official status to advance personal interests.

The Advisory Committee has compared sending an unsolicited reference letter to testifying voluntarily as a character witness, which is specifically prohibited by section 100.2(C). As the Committee has advised, a judge may not send an unsolicited

letter on behalf of an inmate seeking parole (Adv Ops 99-07, 97-92[1]) or a criminal defendant prior to sentencing (Adv Op 89-73) or an attorney facing disciplinary charges (Adv Op 90-156), but may respond to an official request for his or her views, which is akin to responding to a subpoena. In no instance may a judge initiate communication with those entities in order to convey information.

Here, since the factual information respondent provided was not based on her personal knowledge and could have been provided by others, she should have recognized the likelihood that she was asked to write on Cordes's behalf primarily because her status as a high-ranking judge would give clout to her expression of support. This is especially so since she had never even met Cordes, had no official connection with him or his case, and was asked to write the letter by his mother. In this regard, describing him as her "friend" was deceptive and disguises the limited nature of the relationship; by not disclosing those facts and circumstances (including her relative's connection to Cordes's mother), the entire letter is misleading. Since respondent's letter, unlike character testimony, was not under oath or subject to cross-examination, the Parole Board would not have known that her optimistic assessment of his character and rehabilitative prospects was based entirely on correspondence with him (the extent of which is unclear in the record before us) and hearsay.

[1] In Opinion 97-92, the Committee advised that a judge *may respond to an official request* of the Division of Parole for a statement and/or recommendation concerning a former client who is applying for parole, "provided that the response is based upon the judge's knowledge of the defendant and is designated 'personal and unofficial.'"

The fact that respondent had written many other letters to the Division of Parole offering her opinions on behalf of inmates is irrelevant. As the stipulated facts indicate, those other letters were written "in response to direct inquiries by the Division of Parole" and "involv[ed] inmates over whose trials she had presided and/or whom she had sentenced" (Agreed Statement, par 8). Those are critical distinctions, since those previous letters were within the parameters of the criminal justice system, in which the Parole Board might wish to hear the opinions and insights of the judge who had presided at a defendant's trial. Respondent should have recognized that sending an unsolicited letter to help someone based on personal connections is critically different from responding to an official request for her views. It is difficult to believe that as a judge for 18 years she would not have known that sending such a letter was improper, in view of her ethics training as a judge, the Commission's decisions in *Matter of Martin* and other cases, the Commission's annual reports (including a special section in the 2008 Annual Report addressing the issue), and numerous Advisory Opinions on the subject. In the time it took respondent to compose the letter, she had ample opportunity to reflect on the ethical implications or seek advice as to the propriety of her planned conduct.

Upon assuming the bench, a judge surrenders certain rights and must refrain from some conduct that would be permissible for others. Even otherwise laudable acts, including fund-raising for civic or charitable activities, must be avoided if they use the prestige of judicial office to advance private interests. When asked to write a letter on behalf of an acquaintance or relative in need, every judge must be mindful of the

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importance of adhering to the ethical standards intended to safeguard the impartiality of the judiciary and to curtail the inappropriate use of the prestige of judicial office. While respondent's judgment may have been clouded by a "sincere, albeit misguided desire" to help someone who she believed merited support (*Matter of Lonschein*, *supra*, 50 NY2d at 573; *see also*, *Matter of Edwards*, 67 NY2d 153, 155 [1986]), that does not excuse the favoritism demonstrated by her letter, which undermines public confidence in the impartial administration of justice and in the integrity of the judiciary as a whole.

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

Judge Ruderman, Judge Acosta, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

Judge Klonick did not participate.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: June 19, 2013

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

JOSEPH TEMPERATO,

a Justice of the Avon Village Court,
Livingston County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Nina M. Moore
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Kathleen Martin, Of Counsel) for the Commission

Reid A. Whiting for the Respondent

The respondent, Joseph Temperato, a Justice of the Avon Village Court, Livingston County, was served with a Formal Written Complaint dated November 28,

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2012, containing two charges. The Formal Written Complaint alleged that respondent issued a warrant and judgment in an eviction proceeding notwithstanding that the notice of petition did not comply with statutory requirements and notwithstanding that he had been cautioned a month earlier for issuing a judgment that was inconsistent with the same statute. Respondent filed a verified Answer dated December 28, 2012.

On February 12, 2013, the Administrator, respondent's counsel and respondent 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, recommending that respondent be admonished and waiving further submissions and oral argument.

On March 14, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Avon Village Court, Livingston County, since 2006. His current term expires on March 31, 2014. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint:

2. *Pebble-Avon Associates v Lucy M. Rinaldi* was a 2012 summary eviction proceeding in respondent's court.

3. On January 16, 2012, Curtis R. Schultz of Schultz Properties, Inc., the agent for a landlord, Pebble-Avon Associates, served an undated Notice of Petition

and an unverified Petition to Recover Real Property upon Lucy M. Rinaldi, a tenant in one of Pebble-Avon's apartments in Avon, New York. The Notice of Petition was signed by Mr. Schultz and not by an attorney, a clerk of the court, or a judge, as required by Section 731 of the Real Property Actions and Proceedings Law (RPAPL). On January 23, 2012, Mr. Schultz filed a verified Petition with the court.

4. On January 16, 2012, Ms. Rinaldi signed a lease on a new apartment in Perry, New York. On January 17, 2012, Ms. Rinaldi vacated the apartment in Avon, leaving the door open, but taking her belongings.

5. On January 23, 2012, respondent issued a Warrant of Eviction and rendered a Judgment in the amount of $1,040 against Ms. Rinaldi, without adequately reviewing the Notice of Petition and the Petition and notwithstanding that the Notice of Petition failed to comply with RPAPL Section 731.

6. Ms. Rinaldi did not appear at the summary proceeding on January 23, 2012.

7. The Warrant of Eviction was never executed because Ms. Rinaldi had vacated the property.

As to Charge II of the Formal Written Complaint:

8. Respondent improperly rendered judgment against the tenant in *Pebble-Avon Associates v Lucy M. Rinaldi* on January 23, 2012, as indicated above, notwithstanding that he had been issued a Letter of Dismissal and Caution from the Commission dated December 13, 2011, *inter alia* for improperly rendering judgment

against the tenant in *C. Thomas Moran v Robert and Raymond Fairbank*, without a Petition ever having been filed and without the requirements of RPAPL Section 731 having been met.

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(B)(1) of the Rules Governing Judicial Conduct ("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. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Only a month after being cautioned for rendering a judgment against a tenant without a petition having been filed as required by law, respondent issued a warrant of eviction and a money judgment against a tenant based on a notice of petition that failed to comply with the requirements of the same statute. Respondent's conduct was inconsistent with the obligation of every judge to avoid impropriety and to "be faithful to the law and maintain professional competence in it" (Rules, §§100.2[A], 100.3[B][1]).

The issuance of an eviction warrant is a significant exercise of discretion which should have prompted respondent to give careful scrutiny to the documents presented to him in the *Rinaldi* case to ensure that they were valid. The fact that the tenant named in the warrant is facing the potential loss of his/her home places a special

burden on a judge to make sure that the statutory requirements are met. By imposing the requirement that the notice of petition be signed by either an attorney, a judge or a court clerk (RPAPL §731), the statute signals the importance of having such a document endorsed by an officer of the court or an impartial person, not an interested party. Had respondent carefully scrutinized the documents presented to him, he might have ascertained that the notice of petition was defective in that it had been signed by the landlord's agent.

While an isolated or inadvertent legal error might not ordinarily rise to the level of judicial misconduct, respondent's lapse in *Rinaldi* cannot be overlooked in view of his receipt of a cautionary letter, only a month earlier, for rendering a judgment which was inconsistent with the same statute. The Letter of Dismissal and Caution should have prompted respondent to review the statute and ensure that his handling of such matters in the future was in strict compliance with the statutory requirements. The Court of Appeals has held that ignoring a prior cautionary warning is an aggravating factor on the issue of sanctions (*see, e.g., Matter of Assini*, 94 NY2d 26, 30 [1999] ["Rather than scrupulously following the letter and spirit of the Commission's caution," the judge continued to engage in the prohibited conduct, which militated in favor of a strict sanction]).

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Ms. Moore, Mr. Stoloff and Judge Weinstein concur.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: March 20, 2013

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

– –

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

DETERMINATION

MICHAEL A. TORREGIANO,

a Justice of the Avon Town Court,
Livingston County.

– –

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Kathleen Martin, Of Counsel) for the Commission

Honorable Michael A. Torregiano, *pro se*

The respondent, Michael A. Torregiano, a justice of the Avon Town Court, Livingston County, was served with a Formal Written Complaint dated May 7, 2013, containing one charge. The Formal Written Complaint alleged that respondent made a

statement during a Town Board meeting indicating that because he had granted special consideration in a traffic case to the daughter of a Board member, the member should have supported respondent's pay raise. Respondent filed an answer dated May 11, 2013.

On June 17, 2013, the Administrator and respondent 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, recommending that respondent be censured and waiving further submissions and oral argument. The Commission had rejected an earlier Agreed Statement of Facts.

On August 1, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Avon Town Court, Livingston County, since January 1, 2004. His current term expires on December 31, 2015. He is not an attorney.

2. On December 30, 2010, during a meeting in executive session of the Avon Town Board, at which only town officials were present, respondent reacted to the Board's decision not to raise his pay for 2011 by making a statement implying that respondent had granted special consideration to the daughter of a Board member in a traffic case, and that as a consequence, the Board member should have voted in favor of respondent's pay raise.

3. On January 3, 2007, Alicia D. Mairs was charged with Speeding, a violation of section 1180(d) of the Vehicle and Traffic Law (VTL) in *People v. Alicia D.*

Mairs. Ms. Mairs's father, Thomas Mairs, has been a member of the Avon Town Board since 2005.

4. On January 23, 2007, Ms. Mairs appeared before respondent. Respondent reduced Ms. Mairs's Speeding violation to a parking violation under section 1201(a) of the VTL and imposed a $25 fine.

5. Respondent states that the disposition in *Mairs* was neither the result of special consideration nor inconsistent with dispositions rendered in similar cases. Examination of court records, and interviews of pertinent assistant district attorneys, court staff, and Ms. Mairs reveal nothing to the contrary.

6. On December 30, 2010, respondent attended the Avon Town Board's executive session, which was closed to the public, to discuss the Board's decision not to raise respondent's pay for 2011. Town Supervisor David LeFeber, Deputy Supervisor Kelly Cole, Town Attorney James Campbell, and Councilmen Thomas Mairs, James Blye and Donald Cook were present.

7. Respondent was angry that he was not being given a pay raise. He rebuked Mr. Mairs for not supporting respondent's pay raise, stating, in words or substance, "I took care of a ticket for [your] daughter" and "this is the thanks that I get."

8. Respondent told the Town Board that, by refusing to give him a pay raise, the Board had "shoved it up [his] ass."

Additional Factors

9. Respondent has no previous disciplinary record.

10. Respondent has been cooperative and contrite throughout the Commission inquiry.

11. Respondent recognizes that it was improper for him to link his advocacy for a pay raise with his disposition of a particular case, even if the disposition of the case had been entirely on the merits.

12. Respondent regrets his failure to abide by the applicable Rules in this instance and pledges to conduct himself in accordance with the Rules in the future.

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)(3), 100.4(A)(1) and 100.4(A)(2) of the Rules Governing Judicial Conduct ("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, and respondent's misconduct is established.

By linking a lenient disposition he had granted to the daughter of a Town Board member to the member's vote on respondent's salary, respondent conveyed the appearance that the disposition was based on favoritism and that he wanted a quid pro quo. The clear import of respondent's statements was that because of the way he "took care of" the daughter's Speeding ticket (reducing the charge to a parking violation and imposing a low fine), he expected "thanks" in return, in the form of the member's support for a pay raise.

Those words, on their face, are shocking. Even if it cannot be proved that the lenient disposition of the Speeding charge was the result of favoritism, respondent's pointed reference to the case in chastising the defendant's father strongly implied that it was based on favoritism, and it can only be assumed that that was the message respondent intended to convey. This was not a private comment; the six town officials in attendance at the Board meeting could reasonably conclude from those words that respondent was available to grant favors to others in similar positions, and that he might have done so in other matters. Compounding the appearance of favoritism, respondent linked the disposition to the member's vote on his salary. Expressing his anger at the member's lack of support by specifically referring to the disposition of his daughter's case was, at best, ill-considered. His comments conveyed not just that the disposition was based on favoritism, but that because of his handling of that case, he felt entitled to the member's support. Respondent certainly should have considered the serious implications of his words.

Even the appearance of such impropriety is inconsistent with the ethical standards and seriously damages public confidence in the integrity and independence of his court and in the judiciary as a whole (Rules, §100.2). *See Matter of Cohen,* 74 NY2d 272, 277-78 (1989) (judge was removed for depositing court monies in an institution that was granting him interest-free loans, thereby "creat[ing] the …impression, that his judicial decisions were influenced by personal profit motives in violation of the most basic ethical standards"); *Matter of Cunningham*, 57 NY2d 270 (1982) (County Court

judge was censured for sending sent two letters to a lower court judge conveying the appearance that he would never reverse the lower court judge's sentencing decisions, though he did not actually abrogate his responsibility to review the matters solely on the merits). *See also Matter of Tauscher*, 2008 NYSCJC Annual Report 217 (judge's statements indicated that he would decrease fines unless the Town raised his salary or would increase fines to help fund such a raise; there was no indication that he ever took action on his implied threats).

Although it has been stipulated that no evidence has been found that the disposition of the Speeding charge was the result of special consideration, the public should not have to wonder whether the disposition in a particular case was based on the merits or was motivated by any element of self-interest. Respondent's poorly chosen words justly deserve a strong public rebuke.

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

Judge Klonick, Judge Ruderman, Mr. Belluck, Ms. Corngold, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

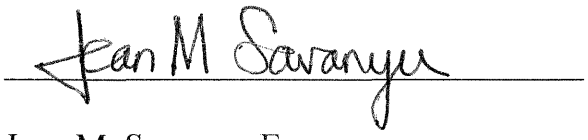
Mr. Cohen and Mr. Emery dissent in an opinion and vote to reject the Agreed Statement on the basis that the stipulated facts are insufficient for the Commission to make a determination.

Judge Acosta was not present.

CERTIFICATION

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

Dated: August 26, 2013



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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- -

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

MICHAEL A. TORREGIANO,

a Justice of the Avon Town Court,
Livingston County.

- -

DISSENTING OPINION
BY MR. COHEN AND
MR. EMERY

Our colleagues have accepted the joint recommendation of the Commission staff and the respondent-judge and, based upon the stipulated facts, they propose to censure for respondent for the conduct described therein.

It may be, at day's end, that that sanction is indeed the appropriate one for the conduct under scrutiny, and that we too would concur in it. Nonetheless, we cannot do so at this point based upon the record presented to us thus far. The stipulated facts tell us that in 2007 respondent disposed of a Speeding ticket to Alicia Mairs, the daughter of a Town Board member, by convicting her of a parking violation and imposing a $25 fine. Almost four years later, when respondent was denied a pay raise by the Board, he invoked that disposition in expressing his dissatisfaction to the Board's members.

It is clear from the stipulated facts that respondent was extremely upset at the Board's decision. While the vulgar language he used at a Board meeting to show the intensity of his anger might be viewed as a spontaneous outburst, motivated by a

temporary pique, in response to being denied a pay raise he felt he deserved[1], his gratuitous reference to the disposition of the member's daughter's case, in the context of that discussion, is startling. In the language of the Agreed Statement, respondent "rebuked" Mr. Mairs (a Board member who had voted against raising respondent's salary) by saying, in substance, "I took care of a ticket for [your] daughter" and "this is the thanks that I get."

It might be, perhaps, that that remark too was a thoughtless comment resulting from his deeply-felt anger, for which respondent has now properly apologized. On the other hand, the fact that that particular ticket's disposition loomed so large in his memory several years later may suggest that when he handled that case, he was mindful of the defendant's father's role in setting his salary[2] – supporting an inference that the disposition was not a routine result and, indeed, that in granting the lenient disposition, he hoped for an eventual pay-off in the form of the member's future support when needed. To be sure, if the latter scenario was implicated in respondent's conduct – meaning, he accorded leniency to a relative of a Board member in the hope that it might benefit him later – the sanction of censure would be far too lenient. We should not render a

[1] It is noteworthy, however, that the stipulated facts may imply that when he came to the meeting he already knew he was not getting a raise (*see* Agreed Statement, par 7). That would suggest that he had time to think about his response, and thus his comments were not a spur-of-the-moment lapse.

[2] Numerous opinions of the Advisory Committee on Judicial Ethics have advised that a judge should not preside over the cases of officials who vote on the judge's salary, subject to remittal (*e.g.*, Adv Op 88-17[b], 88-41, 88-126). This episode, involving such an official's relative, illustrates the inherent conflict presented, especially if the disposition conveys an appearance of favoritism.

determination where a more fully developed record might reveal that the judge is unfit to remain on the bench.

The Agreed Statement does not indicate whether the prosecutor had recommended the reduction of the Speeding charge, or specifically how the disposition and fine compare with others the judge has imposed in similar cases. Yet even if we were to accept that the reduction and low fine were not "inconsistent with dispositions rendered in similar cases" in the judge's court (as respondent asserts and as the staff does not dispute), we cannot evaluate the true meaning or intent of respondent's comment, or the disposition he imposed, without the benefit of respondent's testimony (subject to cross-examination) as to his state of mind when he disposed of the ticket and, equally important, when he made the offending comment years later. Was he lying to the Board member when he implied he had done him a favor?

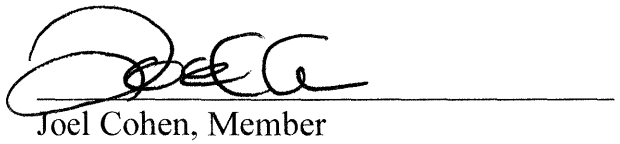
In his response to the charges, respondent does not seek to excuse his behavior, but states "there were many personal issues that had proceeded [sic] the meeting" (Answer). Additional testimony from respondent on that subject might shed meaningful light on the conduct under scrutiny, including why this matter was brought to the Commission's attention in the first place.

We also think a hearing is necessary in this case to evaluate the effect of these statements by respondent on the appearance of impropriety and whether the appearance should disqualify him from further serving as a judge. Whether said in a fit of pique without basis or whether they reflect his conscious attempt to curry favor with individuals who had the authority to fix his salary is only partially the issue here. The

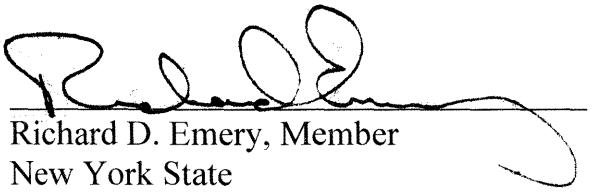
reaction of his community and the general question of whether his comments were so degrading to his function as to irretrievably damage the respect for his office necessary for him to continue to serve, also should be the focus of our decision – perhaps it is the primary damage done to the administration of justice. The other public officials who were present – and the public at large – could reasonably conclude from the judge's comments that he expected to be rewarded for the favor he had done for the member's daughter, which would mean that he was willing to use his judicial discretion to trade favors and that his decisions in other cases also may have had ulterior motives. What explanation can the judge offer to persuade us why that conclusion should not be drawn? The acceptance of the Agreed Statement precludes this essential component of our decision.

For these reasons, we respectfully dissent from according respondent the sanction of censure without further clarification of the relevant facts.

Dated: August 26, 2013



Joel Cohen, Member
New York State
Commission on Judicial Conduct



Richard D. Emery, Member
New York State
Commission on Judicial Conduct

APPENDIX G: STATISTICAL ANALYSIS OF COMPLAINTS

COMPLAINTS PENDING AS OF DECEMBER 31, 2012

SUBJECT OF COMPLAINT		STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING								
NON-JUDGES								
DEMEANOR		14	24	3	4	2	1	48
DELAYS		4	2	1	0	1	2	10
CONFLICT OF INTEREST		5	11	1	0	2	4	23
BIAS		2	3	0	0	1	1	7
CORRUPTION		2	4	0	2	0	1	9
INTOXICATION		1	1	1	2	0	1	6
DISABILITY/QUALIFICATIONS		0	0	0	0	0	0	0
POLITICAL ACTIVITY		4	3	2	1	0	1	11
FINANCES/RECORDS/TRAINING		1	5	2	2	3	1	14
TICKET-FIXING		2	0	0	0	0	0	2
ASSERTION OF INFLUENCE		6	10	2	1	1	2	22
VIOLATION OF RIGHTS		21	21	1	3	0	3	49
MISCELLANEOUS		2	3	0	0	0	0	5
TOTALS		64	87	13	15	11	16	206

*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.

NEW COMPLAINTS CONSIDERED BY THE COMMISSION IN 2013

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	1,062							1,062
NON-JUDGES	313							313
DEMEANOR	78	26	6	0	1	0	0	111
DELAYS	35	7	1	0	0	0	0	43
CONFLICT OF INTEREST	15	10	1	0	0	0	0	26
BIAS	19	6	3	0	0	0	0	28
CORRUPTION	15	4	0	0	1	0	0	20
INTOXICATION	0	0	1	0	0	0	0	1
DISABILITY/QUALIFICATIONS	1	1	1	0	0	0	0	3
POLITICAL ACTIVITY	15	10	0	0	0	1	0	26
FINANCES/RECORDS/TRAINING	9	18	7	3	2	1	0	40
TICKET-FIXING	0	0	1	0	0	0	0	1
ASSERTION OF INFLUENCE	7	17	1	2	1	1	0	29
VIOLATION OF RIGHTS	9	35	3	0	0	0	0	47
MISCELLANEOUS	15	3	2	0	0	0	0	20
TOTALS	1,593	137	27	5	5	3	0	1,770

*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.

ALL COMPLAINTS CONSIDERED IN 2013: 1770 NEW & 206 PENDING FROM 2012

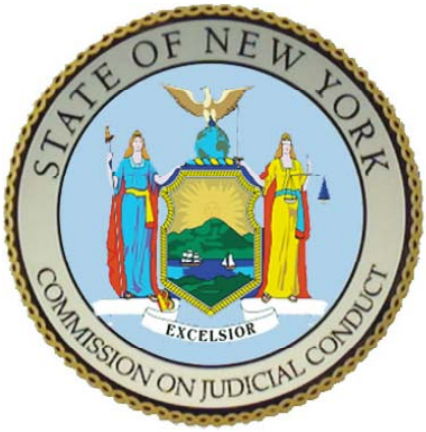
SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	1,062							1,062
NON-JUDGES	313							313
DEMEANOR	78	40	30	3	5	2	1	159
DELAYS	35	11	3	1	0	1	2	53
CONFLICT OF INTEREST	15	15	12	1	0	2	4	49
BIAS	19	8	6	0	0	1	1	35
CORRUPTION	15	6	4	0	3	0	1	29
INTOXICATION	0	1	2	1	2	0	1	7
DISABILITY/QUALIFICATIONS	1	1	1	0	0	0	0	3
POLITICAL ACTIVITY	15	14	3	2	1	2	0	37
FINANCES/RECORDS/TRAINING	9	19	12	5	4	4	1	54
TICKET-FIXING	0	2	1	0	0	0	0	3
ASSERTION OF INFLUENCE	7	23	11	4	2	2	2	51
VIOLATION OF RIGHTS	9	56	24	1	3	0	3	96
MISCELLANEOUS	15	5	5	0	0	0	0	25
TOTALS	1,593	201	114	18	20	14	16	1,976

*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.

ALL COMPLAINTS CONSIDERED SINCE THE COMMISSION'S INCEPTION IN 1975

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	20,871							20,871
NON-JUDGES	6,676							6,676
DEMEANOR	3,651	40	1,291	335	129	123	257	5,826
DELAYS	1,529	11	187	97	36	22	31	1,913
CONFLICT OF INTEREST	755	15	502	163	58	30	144	1,667
BIAS	1,930	8	289	57	31	21	34	2,370
CORRUPTION	542	6	137	14	42	23	41	805
INTOXICATION	59	1	41	8	16	4	30	159
DISABILITY/QUALIFICATIONS	64	1	34	2	18	14	6	139
POLITICAL ACTIVITY	376	14	293	194	24	34	51	986
FINANCES/RECORDS/TRAINING	305	19	332	210	141	97	104	1,208
TICKET-FIXING	27	2	90	160	44	62	169	554
ASSERTION OF INFLUENCE	242	23	185	90	31	11	64	646
VIOLATION OF RIGHTS	2,503	56	539	223	96	53	97	3,567
MISCELLANEOUS	835	5	261	86	33	43	60	1,323
TOTALS	40,365	201	4,181	1,639	699	537	1,088	48,710

* 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.



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