DETERMINATIONS

OF THE

NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

VOLUME TWO
1980-1981

COMMISSION MEMBERS

Name of Member

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Honorable Richard J. Cardamone served to
November 13, 1981, and was
succeeded by Judge Ostrowski

Michael M. Kirsch, Esq., served to
March 31, 1982, and was
succeeded by Mr. Bower

William V. Maggipinto, Esq., served to
March 31, 1981, and was
succeeded by Mr. Cleary

ADMINISTRATOR

Gerald Stern, Esq.

CLERK OF THE COMMISSION

Robert H. Tembeckjian, Esq.

COMMISSION OFFICES

801 Second Avenue
New York, New York 10017
(Principal Office)

Agency Building No. 1
Empire State Plaza
Albany, New York 12223

109 South Union Street
Rochester, New York 14607

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JURISDICTION OF THE COMMISSION

The State Commission on Judicial Conduct 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 VI, 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.

The Commission does not act as an appellate court, nor does it review judicial decisions or alleged errors of law. It does not issue advisory opinions, give legal advice or represent litigants. When appropriate, it refers complaints to other agencies.

By provision of the State Constitution (Article VI, 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. . ." The Commission may determine that a judge or justice be disciplined "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. . ." The Constitution also provides that the Commission may determine that a judge "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, intoxication, bias, prejudice, favoritism, corruption, certain prohibited political activity and other misconduct on or off the bench.

Standards of conduct are outlined primarily by 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), and the Code of Judicial Conduct (adopted by the New York State Bar Association).

If the Commission determines in accordance with due process that disciplinary action is warranted, it may render a determination to impose one of four sanctions, which are final, subject to review by the Court of Appeals upon timely request by the respondent-judge. 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 (22 NYCRR Part 7000), the Commission may also issue a confidential letter of dismissal and caution to a judge, despite a dismissal of the complaint, when it determines that the circumstances warrant comment.

MEMBERS OF THE COMMISSION

The Commission is composed of 11 members serving terms of four years. Four members are appointed by the Governor, three by the Chief Judge of the Court of Appeals and one each by the four leaders of the Legislature. The New York State 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.

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

MILTON SARDONIA,

A Justice of the Bethel Town Court, Sullivan County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Judith E. Siegel-Baum, Of Counsel) for the Commission.

Milton Sardonia, Respondent Pro Se.

The respondent, Milton Sardonia, a justice of the Town Court of Bethel, Sullivan County, was served with a Formal Written Complaint dated January 9, 1979, setting forth ten charges of misconduct pertaining to (i) the improper assertion of influence in three traffic cases and (ii) respondent's failure to disqualify himself in seven cases in which one of the parties was represented by respondent's personal attorney. In his answer dated January 23, 1979, respondent admitted the factual allegations set forth in the charges.

By notice dated September 7, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion by order dated October 3, 1979, deemed respondent's mis-

conduct established as to all ten charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction.

The Commission heard oral argument on November 13, 1979, thereafter considered the record in this proceeding, and upon that record renders this determination.

With respect to Charges I through III of the Formal Written Complaint, the Commission makes the following findings of fact.

1. On December 10, 1973, respondent sent a letter to Justice Jack Levine of the Town Court of Liberty, seeking special consideration on behalf of the defendant in *People* v. *Rose M. Albrecht*, a motor vehicle case then pending before Judge Levine.

2. On December 10, 1973, respondent sent a letter to Justice Michael Altman of the Town Court of Fallsburg, seeking special consideration on behalf of the defendent in *People* v. *Randy J. Nygard*, a motor vehicle case then pending before Judge Altman.

3. On July 8, 1975, respondent sent a letter to Justice Richard Hering of the Town Court of Liberty, seeking special consideration on behalf of the defendant in *People* v. *George Schneiderman*, a motor vehicle case then pending before Judge Hering.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

With respect to Charges IV through X of the Formal Written Complaint, the Commission makes the following findings of fact.

4. On June 4, 1975, respondent failed to disqualify himself and reduced a charge of driving while intoxicated to speeding, in *People* v. *William Nelson*, notwithstanding that the defendant's attorney, Leo Glass, was at that time acting as respondent's attorney in another matter.

5. On April 10, 1976, and thereafter, respondent failed to disqualify himself and presided over the case of *Soule* v. *Wallgreen*, notwithstanding that the plaintiff's attorney, Leo Glass, had previously represented the respondent.

6. On August 11, 1977, respondent failed to disqualify himself and dismissed or adjudicated charges of criminal mischief, harassment and resisting arrest, in *People* v. *Paul Newham*, notwithstanding that the defendant's attorney, Leo Glass, was at that time acting as respondent's attorney in another matter.

7. On January 19, 1977, respondent failed to disqualify himself and reduced a charge of assault to harassment in *People* v. *Derrick Heuduk*, notwithstanding that the defendant's attorney, Leo Glass, had previously represented the respondent.

8. On December 19, 1973, respondent failed to disqualify himself, dismissed charges of possession of a deadly weapon and harassment, and reduced a charge of assault in the second degree, a felony, to assault in the third degree, a misdemeanor, in *People* v. *Dennis Dauch*, notwithstanding that the defendant's attorney, Leo Glass, had previously represented the respondent.

9. On November 3, 1973, respondent failed to disqualify himself and adjudicated a charge of resisting arrest in *People* v. *Dennis Dauch*, notwithstanding that the defendant's attorney, Leo Glass, had previously represented the respondent.

10. On May 14, 1974, respondent failed to disqualify himself and adjudicated a charge of unregistered motor vehicle in *People* v. *Robert A. Mueller*, notwithstanding that the defendant's attorney, Leo Glass, had previously represented the respondent.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges IV through X of the Formal Written Complaint are sustained, and respondent's misconduct is established.

As to the three charges pertaining to the improper assertion of influence in traffic cases, it is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who makes such a request is guilty of favoritism, as is the judge who accedes to such a request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the applicable rules enumerated above. Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

As to the seven charges pertaining to respondent's having presided over cases in which his personal attorney appeared, the Commission makes the following observations.

The Commission has considered the context of the applicable ethical standards and respondent's argument that he had been unaware of the impropriety of his acts until the Commission had commenced its investigation.

While there are specific prohibitions against a judge presiding over cases involving his or his spouse's relatives (Jud. L. §14; Rules §33.3[c]), and case law prohibiting a judge from presiding over matters involving his former clients (*Matter of Filipowicz*, 54 AD2d 169 [2d Dept. 1976]), there is no specific prohibition against a judge presiding over a matter involving his personal attorney. The applicable ethical standards and rules, of course, cannot and should not be expected to specify every conceivable type of impropriety. The language of the Rules, where it is broad, is intended to foster among the judiciary conduct which is reasonable and appropriate in circumstances not specifically addressed. The broad language of Section 33.3(c)(1) of the Rules, which requires a judge to "disqualify himself in a proceeding in which his impartiality might reasonably be questioned," is such a standard appropriate to the instant matter.

The Commission has considered the nature of respondent's court and the nature of a relatively small town in which situations such as those which confronted respondent may be expected. Many towns and villages have few resident attorneys with whom the local citizens, including those who happen to be justices, may consult regularly and conveniently for legal services. While an appearance of impropriety is nonetheless created when a local attorney who has performed legal services for a judge appears in a case before that judge, the situation may result from the exigencies of town and village life, and misconduct may not necessarily underlie the judge's failure to disqualify himself.

The Commission acknowledges respondent's recent attempts to avoid even the appearance of impropriety. Since the investigation in the instant matter was initiated, respondent has disqualified himself in all cases in which his personal attorney has appeared before him, and he promises to do so in the future. Although the close personal ties which exist in a town or village are not within a judge's control, the character of his court is. Where the applicable rules do not specifically require disqualification, but there remains doubt as to the propriety in presiding because of a relationship to a participant, a judge should at

least disclose the relationship on the record, to allow the parties the opportunity to consent to the judge's presiding or request his recusal. In the instant case, the Commission is satisfied that respondent appreciates his responsibility and will conduct himself accordingly.

By reason of the foregoing, with respect only to the three charges involving the improper assertion of influence in traffic cases, the Commission determines that the appropriate sanction is admonition. With respect to the remaining seven charges, the Commission considers its foregoing commentary to be in lieu of a sanction.

All concur.

Dated: January 14, 1980

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

GEORGE C. SENA,

A Justice of the Civil Court of the City of New York,
New York County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Robert Straus, Of Counsel) for the Commission.

Bower & Gardner (By John J. Bower) for Respondent.

The respondent, George C. Sena, a justice of the Civil Court of the City of New York, was served with a Formal Written Complaint dated January 23, 1979, alleging in 29 charges that respondent's manner was impatient, undignified, discourteous and inconsiderate toward attorneys and litigants during the course of 30 different proceedings in his court. Respondent filed an answer dated May 11, 1979.

The administrator of the Commission and respondent entered into an agreed statement of facts on October 23, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement

on October 25, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda prior to oral argument.

The Commission heard oral argument on November 13, 1979, thereafter considered the record of this proceeding, and upon that record makes the findings and conclusions herein.

With respect to Charges I through XXII and Charges XXIV through XXIX of the Formal Written Complaint, the Commission makes the findings of fact set forth in the annexed appendix.

Upon those facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.3(a)(1), 33.3(a)(3) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2A, 3A(1), 3A(2), and 3A(3) of the Code of Judicial Conduct, and Sections 604.1(e)(1), 604.1(e)(2), 604.1(e)(3), 604.1(e)(4) and 604.1(e)(5) of the Rules of the Appellate Division, First Judicial Department. Charges I through XXII and Charges XXIV through XXIX of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Charge XXIII is not sustained and is dismissed.

The facts set forth in the appendix constitute an extremely serious record of judicial misconduct. The obligation of a judge to conduct himself in a dignified, courteous manner is essential to the effective administration of justice. The very purpose of the judicial process is thwarted by intemperate, injudicious and discourteous conduct, such as that repeatedly shown by respondent.

The record of this proceeding is replete with instances of rude and arbitrary behavior by respondent. On numerous occasions he (i) raised his voice in addressing litigants and attorneys, (ii) questioned the competence, honesty and good faith of attorneys, (iii) commented unfavorably on the motivations of those before him and the merits of their claims, (iv) without provocation announced that a litigant or attorney either was "in contempt" of court or would be held "in contempt", (v) directed individuals to "shut up" as they attempted to address the court, (vi) directed the physical removal or restraint of litigants, without apparent justification, as they attempted to address the court, and in one instance required an attorney to stand in a corner of the courtroom for several minutes, and (vii) inappropriately ascribed racial prejudice to those before him.

Respondent's misconduct was not an isolated instance of discourtesy that might be excused as a lapse in judicial temperament. It occurred over the 26-month period between July 1975 and November 1977, while respondent was sitting in the housing part of Civil Court or otherwise adjudicating landlord-tenant matters.

It is improper for a judge to evince discourtesy and rudeness, even if occasionally provoked by a difficult litigant or lawyer. It should be noted that many of the attorneys whom respondent chastised in the matters before him are experienced litigators, and it would have been more appropriate for him to have exhibited more patience with the young and inexperienced attorneys who appeared before him. Moreover, Part 604 of the Rules of the Appellate Division, First Department, entitled "Special Rules Concerning Court Decorum", sets forth rules by which a judge must be guided in response to provocative conduct.

> The judge should be the exemplar of dignity and impartiality. He shall suppress his personal predilections, control his temper, and emotions, and otherwise avoid conduct on his part which tends to demean the proceedings or to undermine his authority in the courtroom. When it becomes necessary during trial for him to comment upon the conduct of witnesses, spectators, counsel, or others, or upon the testimony, he shall do so in a firm and polite manner, limiting his comments and rulings to what is reasonably required for the orderly progress of the trial, and refraining from unnecessary disparagement of persons or issues. [Section 604.1(e)(5), Rules of the Appellate Division, First Judicial Department.]

In *Matter of Waltemade*, the Court on the Judiciary noted that "[r]espondent's excoriation of lawyers and witnesses alike was frequently accompanied by angry threats of 'sanctions' and sometimes of contempt proceedings in particular. . . [though] not one of these violent denunciations was ever followed by a contempt citation or any other disciplinary action." *Matter of Waltemade*, 37 NY2d (nn), (iii) (Ct. on the Judiciary 1975).

In *Matter of Mertens*, the Appellate Division stated that "[s]elf-evidently, breaches of judicial temperament are of the utmost gravity," and went on as follows:

> As a matter of humanity and democratic government, the seriousness of a Judge, in his position of power and authority, being rude and abusive to persons under his authority—litigants, witnesses, lawyers—needs no elaboration.
>
> It impairs the public's image of the dignity and impartiality of courts, which is essential to their fulfilling the court's role in society.
>
> One of the most important functions of a court is to give litigants confidence that they have had a chance to tell their story to an impartial, open-minded tribunal willing to listen to them. And lawyers must feel free to advance their client's cause—within the usual ethical limitations—without abuse, or threats. Parties must not be driven to settle cases out of such fear. [*Matter of Mertens*, 56 AD2d 456, 470 (1st Dept. 1977).]

It is deplorable that respondent's misconduct violated specific standards of judicial behavior. Moreover, the fact that this behavior continued long after the censures in *Waltemade* and *Mertens, supra*, indicates a disregard of judicial directives regarding courtroom demeanor. Such conduct undermines public confidence in the judiciary.

With respect to sanction, removal under the circumstances would be too severe and the Constitution does not provide for a more appropriate sanction, such as a suspension from office. Suspension would have impressed upon respondent the severity with which we view his conduct while affording him an opportunity to reflect on his conduct before returning to the bench. Absent such option, the Commission has concluded that a severe censure should be imposed.

All concur.

Dated: January 18, 1980

APPENDED FINDINGS OF FACT

Following are the Commission's findings of fact in the matter herein, as noted on page 2 of this determination.

1. On or about July 21, July 23 and July 24, 1975 in Civil Court, New York County, Trial Term, Part 52, during the non-jury trial of *Freidus* v. *Duluna*, respondent, in open court:

(a) frequently interrupted tenant-respondents' counsel and prevented him from speaking;

(b) addressed tenant-respondents' counsel in a loud, intemperate manner;

(c) in denying a motion for adjournment, stated that tenant-respondents' counsel was "playing around";

(d) stated that tenant-respondents' counsel was "wasting the court's time";

(e) refused to hear certain statements and arguments of tenant-respondents' counsel;

(f) deprived tenant-respondents and their attorney of the opportunity to be heard fully; and

(g) was impatient, undignified, inconsiderate and discourteous to tenant-respondents and their attorney.

2. (a) On or about July 28, 1975, in Civil Court, New York County, Trial Term, Part 49, prior to and during the non-jury trial of *Silverman* v. *Blanco*, respondent, in open court:

(1) exhibited anger to tenant-respondent's counsel in response to her request for a trial by jury;

(2) stated that tenant-respondent's counsel was "wasting time and money" by requesting a jury trial;

(3) stated, in a loud, intemperate voice, after tenant-respondent's counsel refused to withdraw the demand for a jury trial, that he would try the case himself after all other matters on his calendar had been disposed of; and

(4) stated, after tenant-respondent's counsel offered to waive a jury trial if an immediate non-jury trial could be had in a different part of the court, that a jury trial had been waived and that he would try the case himself after he had disposed of the other cases on his calendar.

(b) During the non-jury trial which followed, respondent:

(1) stated that tenant-respondent's counsel was "abus[ing] and us[ing]" the court;

(2) threatened tenant-respondent's counsel with charges of contempt and with physical removal from the courtroom;

(3) denied a request by tenant-respondent's counsel to make a record of what had occurred at the bench;

(4) addressed tenant-respondent's counsel in a loud and intemperate manner;

(5) stated that tenant-respondent's counsel had engaged in reprehensible conduct;

(6) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(7) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorney.

3. On or about July 29, 1975, in Civil Court, New York County, Trial Term, Part 49, during the argument of motions in *Harlem Savings Bank* v. *Lucas, Marber* v. *Hernandez* and *Granada Hills* v. _____, respondent, in open court:

(a) repeatedly denied the requests of tenant-respondents' counsel for a record of the proceedings;

(b) stated, in a loud and intemperate manner, that tenant-respondents' counsel was disrespectful;

(c) directed tenant-respondents' counsel to "shut-up";

(d) stated that tenant-respondents' counsel was "in contempt" of court;

(e) stated that tenant-respondents' counsel lacked the requisite knowledge to represent his clients;

(f) stated that tenant-respondents' counsel was not acting in the best interests of his client;

(g) after the arrival of a court reporter, stated his version of what had occurred earlier, while denying a request by tenant-respondents' counsel to make a record of those events;

(h) stated that the conduct of tenant-respondents' counsel was directed at him because respondent was black;

(i) deprived tenant-respondents and their attorney of the opportunity to be heard fully; and

(j) was impatient, undignified, inconsiderate and discourteous to tenant-respondents and their attorney.

4. On or about November 20, 1975, in Civil Court, New York County, Trial Term, Part 46, during the calendar call of *Ker-Men Realty Corp.* v. *Liebowitz and Butler*, respondent, in open court:

(a) addressed landlord-petitioner's counsel in a loud and intemperate manner;

(b) responded to the requests of landlord-petitioner's counsel for a record of the proceedings by stating that he was holding counsel in contempt of court;

(c) ordered the physical removal of landlord-petitioner's counsel from the courtroom;

(d) in a loud, intemperate manner, interrupted the efforts of landlord-petitioner's counsel to address the court;

(e) deprived landlord-petitioner's attorney of the opportunity to be heard fully; and

(f) was impatient, undignified, inconsiderate and discourteous to landlord-petitioner's attorney.

5. (a) On or about January 6, 1976, in Civil Court, New York County, Trial Term, Part 49, during the argument of motions in *Silbe* v. *Olney*, respondent, in open court:

(1) refused, in a loud and intemperate manner, to hear the legal arguments of tenant-respondent's counsel;

(2) repeatedly interrupted tenant-respondent's counsel when he attempted to address the court;

(3) in a loud, intemperate manner, directed tenant-respondent's counsel to appear in court later that day while refusing to state the purpose of that appearance.

(b) When tenant-respondent's counsel appeared later that day as directed, respondent, in open court:

(1) in a loud, intemperate manner, stated that tenant-respondent's counsel had engaged in reprehensible and unethical conduct;

(2) stated: "—I'm black and I feel, sir, that your conduct was directed against me, personally";

(3) repeatedly directed counsel to apologize for his behavior while refusing to respond to the inquiries of counsel's attorney about the nature of the proceedings which were being conducted;

(4) repeatedly interrupted counsel's attorney during his presentation to the court;

(5) conducted the proceedings in a loud, intemperate manner;

(6) ordered tenant-respondent's counsel and his attorney to appear on a subsequent date while refusing to state the purpose of that appearance;

(7) failed to appear on the subsequent date; and

(8) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel and to his personal attorney.

6. On or about January 13, 1976, in Civil Court, New York County, Trial Term, Part 52, during a hearing in *Booke* v. *Liffman*, respondent, in open court:

(a) on several occasions, addressed tenant-respondent's counsel in a disrespectful manner;

(b) rose from his chair, and, in a loud, intemperate manner, interrupted tenant-respondent's counsel and restricted her from addressing the court; and

(c) engaged in the following improper colloquy with tenant-respondent's counsel:

The Court:	Madam, why do you argue. The Court has ruled.
Ms. Biberman:	I really don't understand the Court's ruling.
The Court:	I am suggesting that you may not show that to the witness for him to make a comparison.
Ms. Biberman:	Yes, but—
The Court:	Don't you understand my ruling? Be seated or continue your cross-examination, one or the other.
Ms. Biberman:	Your Honor, there is—
The Court:	Do you wish to cross-examine?
Ms. Biberman:	I wish to cross-examine whether or not he can tell what signature is his and what is not. He is attempting to

testify that he has not—he was not present when this lease was signed.

The Court: I am going to advise you at this time that you will now continue your cross-examination of this witness or I will conclude it; it's that simple.

Ms. Biberman: Your Honor, if you are telling me that I can't cross-examine—

The Court: I just told you—

Ms. Biberman: Your Honor—

The Court: I hold you in contempt, and now that is the end of that.

Ms. Biberman: Your Honor—

The Court: That is all. Do as you please.

Ms. Biberman: Your Honor, I don't—

The Court: Madam, I don't know how long you have been practicing, but one of the things you don't do—and one of the things that holds this country today is the fact that this is a land of law, and I am the judge. When I make rulings, you will abide by my rulings. If you think I am in error, you have a procedure to follow; do you understand?

Ms. Biberman: I understand.

The Court: Now, either continue your cross-examination now or take your seat.

Ms. Biberman: Your Honor—

The Court: One or the other. I am not asking you for argument. I don't know how many cases you've tried, but it's apparent you haven't tried too many, and I would recommend to you whether you like it or not, I am the judge of this court, and I would recommend that one of the things you should do is read the Canons of Ethics which advises you when a Court has ruled, you abide by the ruling, and if you have any argument about the rulings, you have your avenues on which you may make a motion to reargue. The C.P.L.R. is full of things you may do. You may appeal. Now move ahead.

(d) and was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel.

7. (a) On or about May 6, 1976, in Civil Court, New York County, Trial Term, Part 49, during oral argument of pre-trial motions in *Dastu Realty Co.* v. *Pearson*, respondent, in open court:

(1) addressed tenant-respondent's counsel in a loud and intemperate manner, while criticizing him for making pre-trial

motions;

(2) stated, in a loud, intemperate manner, in response to the attempts of tenant-respondent's counsel to cite legal authority, that counsel was being disrespectful;

(3) ordered tenant-respondent's counsel to cease argument and when counsel did so and left the area of the bench demanded to know, in a loud, intemperate voice, why counsel had turned his back on the court;

(4) refused to allow tenant-respondent's counsel to respond to his remarks;

(5) declared that tenant-respondent's counsel's conduct was directed against him personally because respondent was black;

(6) directed a court officer to seat tenant-respondent's counsel at the side of the courtroom;

(7) threatened to hold tenant-respondent's counsel in contempt of court;

(8) directed tenant-respondent's counsel to return later that day with his personal attorney;

(9) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(10) was impatient, undignified, inconsiderate, and discourteous to tenant-respondent's attorney.

(b) When counsel appeared later that day with his attorney, as directed, respondent, in open court:

(1) while addressing the courtroom audience in a loud, intemperate manner, stated that he was putting the fact that he was black on the record, then gave his version of the earlier conduct of tenant-respondent's counsel;

(2) demanded an apology from tenant-respondent's counsel;

(3) barred tenant-respondent's counsel from ever again appearing in a court in which respondent presided;

(4) responded to a request of tenant-respondent's counsel for permission to consult with his attorney by stating:

The Court: You may consult with whom you wish. You know what

summary contempt is. He doesn't have to be represented for that.

Mr. Klein: Your Honor, I missed the last thing you said.

The Court: I'm just putting something on the record so he will understand.

I would say this: I am not heaping any praise on myself. I have practiced law for twenty years. I have tried over sixty homicides. I tried cases all over this country. I have never had the temerity to do what he did.

I say this: When Blacks, Puerto Ricans, Whites, who, I will admit, are ignorant as to the law, see something like that happen by a member of the Bar, they believe that's the course of conduct they should follow.

I won't accept it. I would never hold a lawyer in contempt unless he did something which I thought was so flagrant he had to be. But, I think, sir, you had better take yourself in check and if this is the manner in which people from your office are going to conduct themselves, then, perhaps, you would do better if you remained in the hallway.

All right. That's the end of it.

Mr. Jaffe: May I consult with my attorney?

The Court: The matter is closed. I am barring you from this courtroom.

Mr. Klein: I'm sorry. What was that part? I didn't hear it.

The Court: I said that I am barring him from my courtroom, sir.

(5) unduly restricted counsel's attorney from addressing the court;

(6) engaged in the following improper colloquy:

The Court: Are you representing this man? There is nothing to represent him about.

All right. I just say he is barred from my courtroom, period.

Mr. Jaffe: He is representing me.

The Court: That's the end of it. If you wish to take it further, you do as you please. If you wish me to hold him in contempt—

Mr. Klein: I wish you would not.

May I ask, respectfully, if you will withdraw the barring of him from the courtroom?

The Court:	I ruled. Once I say something, I mean it. I don't play games. It's not a game.
Mr. Klein:	I asked if you would, respectfully—
The Court:	That's the end of it.
Mr. Klein:	I don't mean to be disrespectful.
Mr. Jaffe:	May I respond to your remarks on the record?
The Court:	No, you may not. That's the end of it.
Mr. Klein:	May I make an objection? I think—
The Court:	Sir—
Mr. Klein:	May I have an opportunity to reply?
The Court:	There is nothing to reply to.
Mr. Klein:	Is that a unilateral decision?
The Court:	That's the end of it. Thank you. You may step out.

(7) and was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel and to his personal attorney.

8. On or about May 6, 1976, in Civil Court, New York County, during oral argument of motions in *Michlick* v. *Hickey*, respondent, in open court:

(a) loudly interrupted tenant-respondent's counsel and prevented him from speaking;

(b) stated that tenant-respondent's counsel's motion was a waste of time;

(c) stated that tenant-respondent's counsel lacked the requisite knowledge to practice law;

(d) ordered an immediate trial although neither attorney was prepared for nor had requested one;

(e) ordered a court officer to seat tenant-respondent's counsel;

(f) deprived tenant-respondent and his attorney of the opportunity to be heard fully; and

(g) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel.

9. On or about August 26, 1976, in Civil Court, New York County, Trial Term, Part 49B, prior to the trial of *Popp* v. *Flenyol*, respon-

dent, in open court:

(1) in a loud, intemperate manner, questioned several persons present in the courtroom, then directed them to cease taking notes; and

(2) over tenant-respondent's counsel's objections, conducted a portion of the trial in chambers while excluding the public.

(b) During the trial of *Popp* v. *Flenyol* respondent:

(1) at one point in the proceedings, in a loud, intemperate manner, denied the request of tenant-respondent's counsel to record an objection to the court's decision to conduct a non-public trial;

(2) directed tenant-respondent's counsel to "shut (his) mouth";

(3) interrupted the cross-examination of landlord-petitioner to direct tenant-respondent to testify;

(4) questioned tenant-respondent about an *ex parte* conversation respondent allegedly had with her on a previous occasion;

(5) implied that tenant-respondent was lying and had made damaging admissions during her *ex parte* conversation with respondent;

(6) in a loud, intemperate manner, denied counsel's request that respondent disqualify himself;

(7) in a loud and intemperate voice, told tenant-respondent's counsel never to bring lawyers into court to take notes on him because respondent was not frightened;

(8) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(9) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorney.

10. (a) On or about August 27 and 31, 1976, and September 14, 1976, in Civil Court, New York County, Trial Term, Part B, during pre-trial discussions at the bench in *Oxford Associates* v. *Reynolds*, respondent:

(1) stated, in a loud, intemperate manner, that petitioner's premises were "not a slum," and, therefore, tenant-respondents had no defense unless the holes in their ceiling were enormous;

(2) stated that tenant-respondents' defenses would be "a waste of time."

(b) During the trial of *Oxford Associates* v. *Reynolds*, respondent:

(1) in a loud, intemperate voice, stated that counsel for both parties were "playing games" and "wasting time";

(2) threatened to hold tenant-respondents' counsel in contempt;

(3) repeatedly implied that tenant-respondents' counsel was engaging in unethical conduct;

(4) deprived tenant-respondents and their attorney of the opportunity to be heard fully; and

(5) was impatient, undignified, inconsiderate and discourteous to the attorneys and to tenant-respondents.

11. (a) On or about September 1, 1976, in Civil Court, New York County, Trial Term, Part B, prior to and during the trial of *Long* v. *Adams*, respondent, in open court:

(1) when tenant-respondent's counsel requested a continuance, denied the request, stating, in a loud, intemperate manner, that welfare checks which counsel sought to obtain "could not be found in 10,000 years";

(2) demeaned tenant-respondent's counsel and her associate by stating to the courtroom audience that her organization provided inadequate legal assistance and did a disservice to their clients; and

(3) interrupted tenant-respondent's counsel's attempts to state that she required the assistance of a more experienced associate.

(b) During the trial of *Long* v. *Adams*, respondent, in open court:

(1) after the supervisor of tenant-respondent's counsel attempted to join her at the counsel table, engaged in the following improper colloquy with him:

The Court:	Sir, are you trying this case. That's a direct question.
Mr. Jaffe:	I am helping Miss Davidson.
The Court:	If you want to substitute for her, do that. Don't say anything in my courtroom. Put your name on the record.

Mr. Jaffe: Robert J. Jaffe. I am the supervisor in the office which Miss Davidson is an attorney of. She is a new attorney, just being—

The Court: I just asked you to identify yourself. That is sufficient. Now I am directing you. There will be no conversation before me with this lady. If you want a recess to talk to her—

Mr. Jaffe: May I have a recess to talk to Miss Davidson?

The Court: Any time you want to. You have no standing in this case.

Mr. Jaffe: Your Honor, may I have a recess to discuss this case with Miss Davidson.

The Court: No, sir.

Miss Davidson: May I have a recess to discuss this case with Mr. Jaffe?

The Court: No.

(2) when the supervisor of tenant-respondent's counsel attempted to substitute for counsel, engaged in the following improper colloquy:

Mr. Jaffe: Your Honor, I am going to substitute for Miss Davidson now.

The Court: You don't make decisions for your client.

Mr. Jaffe: Unfortunately we do.

The Court: Step back and remove yourself. You have no standing. You don't represent anyone here.

Mr. Jaffe: I represent this client, yes, I do.

The Court: Officer, if this gentleman opens his mouth again, restrain him and place him over here with me.

Miss Davidson: I wish to be excused as attorney at this time.

The Court: You will state on the record why you wish to be excused. If you wish to withdraw from this case, you may do so.

Miss Davidson: At this time I would like to have Mr. Jaffe substituted as attorney.

The Court: You had better go and read the Canons of Ethics. Move ahead. Denied.

(3) throughout the proceedings, refused to permit the supervisor of tenant-respondent's counsel to conduct or participate in the trial, despite the statements of tenant-respondent's counsel that it would be in the best interests of her client to do so;

(4) in a loud, intemperate manner, stated that tenant-respondent's motions, including those for continuances and adjournments, would be made "at the end of the case";

(5) repeatedly interrupted tenant-respondent's attorneys when they attempted to address the court;

(6) engaged in the following improper colloquy with the attorneys for tenant-respondent:

Miss Davidson: I would just like—

The Court: I direct you to ask your first question.

Mr. Jaffe: May I be heard?

The Court: You are not involved in this case. Ask your first question. The court finds there are no questions. The Court directs the attorney for the respondent to ask questions. Attorney for respondent has seen fit to remain mute.

Mr. Goldstein: Petitioner rests.

The Court: All right. What is your motion. You don't play games in this courtroom. If you don't feel you are efficient enough to represent these people, don't do it. You don't cut your eye teeth in here. Your office has had more than sufficient time to prepare this case. This lady has a right to have her case heard. All right. You are on the case now. Your motion—

Miss Davidson: I think that my client has a right to counsel representing—

The Court: Your motion.

Miss Davidson: I made my motions.

The Court: What is your motion at the end of the petitioner's case?

Mr. Jaffe: Your Honor, may I be heard?

The Court: You have. What is your motion, ma'am? Your move to dismiss the petition for failure to make out a prima facie case. Denied. You may step down.

(7) stated to counsel, in a loud voice: "One doesn't play games in this courtroom";

(8) engaged in the following improper colloquy:

The Court: The Court takes note that the respondent has seen fit to leave the courtroom. Call your first witness. Sir, I am not speaking to you. If you open your mouth again, I will hold you in contempt. All right. Call your first witness, ma'am. Do you have any witnesses? The Court

requested of the respondent's attorney to call her first witness.

Miss Davidson: Your Honor, I can't.

Mr. Jaffe: She is not counsel in this case any more.

The Court: Do you know how to make substitution?

Mr. Jaffe: We are both of counsel to Mr. Glen.

The Court: There being no response from the respondent, call your first witness.

Mr. Jaffe: We have a response. We are asking for a continuance to properly prepare this case.

The Court: Denied.

Mr. Jaffe: We do not—

The Court: I am directing—

Mr. Jaffe: Your Honor, at this time we ask that you excuse yourself from this case, because the remarks you have made concerning Miss Davidson, myself and the Legal Aid Society, indicate a total prejudice against us and our clients, and—

The Court: Sir, I happen to be black and I feel badly because that man is sitting there and this lady is sitting here.

Mr. Jaffe: And you are denying him a fair trial.

The Court: The only issue in this case is payment.

Mr. Jaffe: We could not prove payment unless you give us a chance or time to subpoena the records. You have refused to do that.

The Court: I direct you to shut your mouth. The Court has given the respondent such time to put in its answer. Final judgment—

Mr. Jaffe: Your Honor, may we be heard as to why—

The Court: Don't you recognize I am dictating to this lady? The next time you speak to me you had better be on your feet.

Landlord, $334.50 for rent through July 31. Ten day stay.

(9) responded to the requests of the supervisor of tenant-respondent's counsel for permission to be heard by stating that the supervisor had been "derelict" in assigning the case to her;

(10) deprived tenant-respondent and his attorneys of the oppor-

tunity to be heard fully; and

(11) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and his attorneys.

12. (a) On or about September 3, 1976, in Civil Court, New York County, Trial Term, Part B, in the matter of *Suphal* v. *Walker*, respondent, in open court, prior to trial:

(1) stated in a loud, intemperate manner, that tenant-respondent's counsel had misrepresented facts to the court;

(2) repeatedly interrupted tenant-respondent's counsel and prevented him from speaking;

(3) directed a court officer to seat tenant-respondent's counsel and to prevent him from leaving the courtroom;

(4) in a loud, intemperate manner, denied the requests of tenant-respondent's counsel that a record be made of his application for a continuance; and

(5) engaged in the following improper colloquy with tenant-respondent's counsel:

The Court:	And you told the Court you were actually engaged in Family Court, is that correct?
Mr. Evans:	I told—
The Court:	Is that correct, yes or no?
Mr. Evans:	Let me say that—
The Court:	If you want to play games, you're in a Court and—
Mr. Evans:	That's right.
The Court:	Just don't answer, I'm making a record and—
Mr. Evans:	Let me tell you what my application—

* * *

The Court:	Tell that Judge that Mr. whatever his name is, is before me, and he'll appear as soon as this case is over.
Mr. Evans:	Judge—
The Court:	Sit down.
Mr. Evans:	—may I be heard on the record for one moment?
The Court:	Sit down now, that's the end of it. Seat that man, please sir.

Mr. Evans: I'll be seated out of courtesy to the Court Officers.

The Court: Thank you very much. See, one of the things that you don't recognize and I'm going to say for the benefit of every one here, is that if we allow lawyers to function the way you do, in a vain belief that they're representing their clients, you do no more than devoid the respect that a Court and a Judge should have. Now I would recommend to you that if you don't know what common sense and courtesy means, that reflects back on you and your upbringing. What I think, this is preliminary, and when I grew up, I learned something. And I would recommend further that there are many people here who look at me and recognize what I have and I recognize what you do and—

Mr. Evans: May I make one statement?

The Court: Sit down, will you have a seat.

Mr. Evans: I merely want to say—

The Court: Seat him please. I direct you not to say anything. I now hold you in contempt, and I, when this is over, you'll sit over there, and we'll—

Mr. Evans: I—

The Court: Now, if you want to play games—

Mr. Evans: I just—

The Court: Seat him please.

Mr. Evans: Judge—

The Court: Sit down sir, that's all, you have nothing further to say except in the defense of your client, in representing your client.

(b) During the trial of *Suphal* v. *Walker*, respondent:

(1) when tenant-respondent's counsel requested permission to state the grounds for his objections to questions, responded that counsel should "make a note" of them;

(2) stated that tenant-respondent's counsel did not know the rules of evidence;

(3) stated that tenant-respondent's counsel could state the grounds for his objections at the end of landlord-petitioner's case, then interrupted him when he attempted to do so;

(4) when tenant-respondent's counsel attempted to make motions at the close of landlord-petitioner's case, directed him to "shut (his) mouth" and threatened to "put him out. . ." because he

didn't "know how to try a case";

(5) when tenant-respondent's counsel requested permission to renew an application, directed him to appear at the offices of the Administrative Judge of Civil Court, with a representative from his office;

(6) after repeatedly interrupting the efforts of tenant-respondent's counsel to address the court and preventing him from speaking, respondent engaged in the following improper colloquy:

The Court:	This is the most obnoxious and most disturbing commission of conduct I've seen in my life. Now, I see a lot of my black friends here, and it's disturbing that you could come in a Courtroom and act as you have. And it's my intent to see that it doesn't happen again. And I apologize to every one assembled, because this man, a member of the Bar and—
Mr. Evans:	Judge—
The Court:	You may leave sir, or you'll have to be escorted—
Mr. Evans:	I merely want to know if I may make an application on the record?
The Court:	Sir, you may leave now.

(7) deprived tenant-respondent and his attorney of the opportunity to be heard fully; and

(8) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel.

13. On or about March 1, 1977, in Civil Court, New York County, Trial Term, Part 52, after testimony had been taken the previous day in the jury trial of *Shabot* v. *Mitchell*, respondent, in open court:

(a) addressed tenant-respondent's counsel in an intemperate manner;

(b) dismissed the petition without prejudice on his own motion, while stating, in an angry, intemperate manner, that he was doing so because the attorneys had been disrespectful to him by not being present in the courtroom;

(c) in a loud, intemperate manner, ordered all litigants and attorneys connected with the case to get out of the courtroom immediately; and

(d) was impatient, undignified, inconsiderate and discourteous

to litigants and to tenant-respondent's counsel and, by his conduct, caused a waste of court time and resources.

14. (a) On or about March 2, 1977, in Civil Court, New York County, Trial Term, Part 52, during the jury trial of *Lincoln Square Home for Adults* v. *Sajnani*, respondent, in the presence of the jury:

(1) instructed tenant-respondent's counsel to make her preliminary motions "after the trial is over";

(2) unduly restricted the efforts of tenant-respondent's counsel to address the court;

(3) frequently directed tenant-respondent's counsel to sit down in response to her requests for permission to speak;

(4) frequently addressed tenant-respondent's counsel in a disrespectful manner;

(5) after stating that he had given tenant-respondent's counsel every opportunity to call a witness, stated, in a loud, intemperate manner:

> Now, Madam, go and get the C.P.L.R. and I'm going to read you the Code of Professional Ethics and I am going to submit this to the Bar Association.

(6) stated that tenant-respondent's counsel did not wish to put in a defense and directed a verdict for landlord-petitioner;

(7) deprived tenant-respondent and his attorney of the opportunity to be heard fully; and

(8) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and his attorney.

(b) At the conclusion of landlord-petitioner's case in *Lincoln Square Home for Adults* v. *Sajnani*, respondent, in open court, out of the presence of the jury in response to the request of tenant-respondent's counsel to "say something that would preclude the jury," threatened to hold counsel in contempt of court.

(c) After dismissing the jury and granting judgment for landlord-petitioner in *Lincoln Square Home for Adults* v. *Sajnani*, respondent, in open court:

(1) stated that counsel for tenant-respondent had done her client a disservice;

(2) stated that counsel for tenant-respondent could now present whatever evidence she wished; and

(3) addressed the following remarks to tenant-respondent's counsel:

> Now I don't know where you got your law training, but whatever defense you have you may bring it up. No one ever tells you to do it. You do it. I don't know who's training you or who's suggesting what procedure you should follow in a Court of Law and I've tried cases for over twenty years and I have never seen anything like this.
>
> You don't have to respond. Your conduct here is sufficient. Be seated.

(d) A few days after the trial of *Lincoln Square Home for Adults* v. *Sajnani*, respondent telephoned tenant-respondent's counsel and, in a harsh and intemperate manner, directed her to bring the official court files of the case to him immediately, while ignoring her attempts to state that she did not have the files.

15. On or about March 22, 1977, in Civil Court, New York County, Trial Term, Part 49, during the oral argument of motions in *Robinson* v. *Blackwell*, respondent, in open court:

(a) frequently interrupted tenant-respondent's counsel when he attempted to address the court;

(b) stated that tenant-respondent's counsel was not representing his client properly and that his client should seek assistance elsewhere;

(c) in an intemperate manner, ordered tenant-respondent's counsel to sit down and to step aside or he would be held in contempt of court;

(d) ordered a court officer to seat tenant-respondent's counsel;

(e) stated that tenant-respondent's counsel was being disrespectful;

(f) deprived tenant-respondent and his attorney of the opportunity to be heard fully; and

(g) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel.

16. (a) On or about March 24, 1977, in Civil Court, New York

County, Trial Term, Part 49, in *Riverbend Housing Co.* v. *Lewis*, respondent, prior to trial, at the bench:

(1) stated that he had a certain familiarity with the premises that were the subject of the action;

(2) stated that no condition existed in the premises which would justify tenant-respondent's non-payment of rent; and

(3) addressed tenant-respondent's counsel in a disrespectful and intemperate manner, questioning his understanding of English and his ability to hear.

(b) During a hearing on tenant-respondent's motions in *Riverbend Housing Co.* v. *Lewis*, respondent, in open court:

(1) questioned tenant-respondent's counsel's knowledge of courtroom decorum;

(2) stated that tenant-respondent's counsel was representing his client in an inadequate fashion;

(3) stated that tenant-respondent's defenses were frivolous and a waste of the court's time;

(4) repeatedly interrupted tenant-respondent's counsel in a loud, intemperate manner;

(5) inquired, in a sarcastic manner, whether tenant-respondent's counsel "wanted to bet" on the fact that tenant-respondent was not qualified to testify about the conditions in her apartment;

(6) interrupted tenant-respondent's testimony to state, in a loud and intemperate manner, that the witness ". . . could take her rug and throw it out of the window. . .";

(7) stated in a loud, intemperate voice, that the behavior of tenant-respondent's counsel was a "crime" and that he was "destroying" his client and was not "worth his salt";

(8) interrupted the proceedings to state that he was "going to grant a traverse"; directed the tenant to post rent with the Clerk of the Court; and stated that "poverty is not a defense," that other tenants would be required to pay the tenant-respondent's rent, that this was not a "socialistic land," that the court could not help tenant-respondent and that she could have a trial if she was able to pay for it;

(9) stated to tenant-respondent's counsel, "Don't try to make a

supreme court case out of this small proceeding'';

(10) when tenant-respondent's counsel requested a clarification of the court's direction that he ''sit down and step out. Just step out,'' directed counsel to be seated at the side of the courtroom because, ''I'm holding you in contempt. You don't understand English'';

(11) in a loud, intemperate manner, after stating that counsel was in contempt of court, stated that he would ''submit this to the Bar Association'' and that counsel had committed a ''travesty'' upon his client; invited counsel to read the Canons of Ethics; and stated that ''. . . if this is the manner in which you are representing the people from Harlem then maybe something ought to be done about it'';

(12) in a loud, intemperate manner, made disrespectful remarks to an associate of tenant-respondent's counsel, indicating that counsel's agency was being used to do ''horrible'' things and was violating its duty to be truthful with the court;

(13) stated to tenant-respondent, in reference to her attorney:

> Ask this guy over here who brought you here and told you to tell this horrendous thing, to take up a collection for you. That's what you need. Poverty is not a defense, ma'am.
>
> All right. You should go back to my black brothers.

(14) stated to the attorneys for the parties that he had engaged in an *ex parte* conversation with the tenant-respondent concerning the pending case;

(15) stated, in a loud, intemperate manner, in reference to his *ex parte* conversation with tenant-respondent:

> . . . and don't tell me that you have paid the rent, Madam. I spoke to her in the corridor and don't you ever tell me that because you know darn well she hasn't.

(16) failed to rule on tenant-respondent's motion that he disqualify himself;

(17) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(18) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorney.

17. On or about March 25, 1977, in Civil Court, New York County, Trial Term, Part 49, during a non-jury trial in *Riverbend Housing Co.* v. *Lewis*, respondent, in open court:

(a) interrupted the motion of tenant-respondent's counsel that he disqualify himself; directed court officers to seat tenant-respondent's counsel; and stated that all motions would be reserved until the trial was over;

(b) repeatedly interrupted tenant-respondent's counsel in a loud, intemperate manner;

(c) stated, in a loud, intemperate manner, that tenant-respondent's counsel was arguing with the court and that if he continued, ". . . I will take care of you, sir";

(e) stated that tenant-respondent's counsel was urging arguments on the court with knowledge that they had no basis;

(f) in a loud, intemperate manner, stated during the renewal of tenant-respondent's motion for the court to disqualify itself, ". . . I don't want to hear that nonsense. Don't you ever say that again";

(g) implied that tenant-respondent's counsel had not been truthful with the court;

(h) implied that tenant-respondent's counsel had not provided competent legal assistance to his client;

(i) in a loud, intemperate manner, engaged in the following colloquy with tenant-respondent's counsel:

The Court: I am going to give you twenty days to move and I recommend this—and I am putting this on record—I think it is a travesty to urge defenses in a matter where you know that is not so and I urge you to read the Canons of Ethics.

Mr. Loines: I would urge all concerned—

The Court: You better watch your mouth.

One of the things I have noted in this case, if you had a defense, you didn't raise it. If you don't know sufficient to submit things in evidence so the Court may look at it, then you are not doing your client any good at all.

If it's necessary, maybe you should look into your education, as far as the law is concerned.

Mr. Loines: The only thing I would like to add, for the record—

The Court: You have to pay for it.

Mr. Loines: I am offering for the record—certain proof that we had hoped to offer in evidence.

The Court: That is your problem. You prepared the case.

Let me tell you a little secret, the way you did not serve your client was by not doing your duty to her.

(j) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(k) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorney.

18. On or about May 24, 1977, in Civil Court, New York County, Trial Term, Part 16, during the non-jury trial of *Brew* v. *Shalom Brokerage, Inc.*, respondent, in open court:

(a) frequently interrupted defendant's counsel in a loud, intemperate manner;

(b) repeatedly directed defendant's counsel to "shut up";

(c) offered to assist the plaintiffs in bringing the conduct of the defendants to the attention to the office of the district attorney;

(d) deprived the defendants and their attorneys of the opportunity to be heard fully; and

(e) was impatient, undignified, inconsiderate and discourteous to the defendants and their attorneys.

19. On or about August 2, 1977, in Civil Court, New York County, Trial Term, Part 49D, respondent stated in open court that a litigant was in contempt of court and directed that she be seated and that a court officer bring a Legal Aid Society or Legal Services attorney into the courtroom. In response, a law student, practicing law under the supervision of counsel, pursuant to an order of the Appellate Division, First Department, was brought by a court officer into the courtroom. Thereafter, respondent, in open court:

(a) stated to the student, in a loud, intemperate manner, "Explain to your client the meaning of contempt" and "I am making her your client";

(b) stated, in a loud, intemperate manner, that neither the student nor his "client" would be permitted to leave the courtroom until the matter was resolved;

(c) interrupted the efforts of the student to speak with his "client" by stating, in a loud, intemperate manner, "Contempt is when I fine you or imprison you or both";

(d) in response to the student's efforts to address the court, asked, in a loud, intemperate manner, if the student wanted to be held in contempt of court;

(e) interrupted the student's efforts to explain the reasons for the litigant's appearance in court by stating that she was using the court "as a toy" and "was wasting the court's time";

(f) on several occasions interrupted the regular business of the court to address improper remarks to the litigant, the student and to those seated in the audience of the courtroom; and

(g) was impatient, undignified, inconsiderate and discourteous to the litigant and the student.

20. On or about August 2, 1977, in Civil Court, New York County, Trial Term, Part 49D, during a non-jury trial in *Donzelli Realty Corp.* v. *Sonnenschein, et al.,* respondent, in open court:

(a) frequently interrupted tenant-respondents' counsel and unduly restricted him from addressing the court;

(b) prevented tenant-respondents' counsel from stating the basis of objections;

(c) engaged in an unrecorded conversation at the bench with both attorneys, then refused to permit tenant-respondents' counsel to make a record of what had been said;

(d) questioned the legal training and hearing ability of tenant-respondents' counsel;

(e) stated, in a loud, intemperate manner, that tenant-respondents' counsel might state the grounds for his objections "at the proper time" while declining to indicate when that time would be;

(f) addressed tenant-respondents and their attorney in a loud and intemperate manner;

(g) deprived tenant-respondents and their attorney of the opportunity to be heard fully; and

(h) was impatient, undignified, inconsiderate and discourteous to tenant-respondents and their attorney.

21. On or about August 4, 1977, in Civil Court, New York County, Trial Term, Part 49D, during the calendar call of *202 St. Nicholas* v. *Sutton*, respondent, in open court:

(a) directed tenant-respondent to deposit money with the court while interrupting the attempts of her attorney to state that she was ready for trial and was not requesting an adjournment;

(b) interrupted tenant-respondent's counsel when he attempted to cite legal authorities;

(c) denied tenant-respondent's counsel's request to have the official court reporter, who was present, make a record of the proceedings;

(d) stated, when tenant-respondent's counsel continued his attempts to address the court, that counsel was in contempt of court;

(e) in a loud, intemperate manner, ordered tenant-respondent's counsel to stand in the corner of the courtroom and required him to remain there for several minutes;

(f) when counsel's supervising attorney attempted to represent the tenant-respondent, ordered him, in a loud, intemperate voice "to move";

(g) indicated that if the supervisor of tenant-respondent's counsel did not move, he would be standing in the corner with tenant-respondent's counsel;

(h) in a loud, intemperate manner, directed a court officer to remove the supervisor of tenant-respondent's counsel from the courtroom;

(i) refused to permit the supervisor of tenant-respondent's counsel to address the court;

(j) stated to the courtroom audience that tenant-respondent's attorneys made ". . . a Supreme Court case out of a matter that could be resolved in five minutes. . .," did a disservice to their clients and were not concerned with the welfare of their client or her children;

(k) stated to tenant-respondent's counsel, at the bench, that counsel had been ". . . putting on a show for the white attorneys and the white people in the court. . .," was doing a disservice to the clients in "our community" and was being trained improperly by his agency;

(l) declared that the contempt citation was withdrawn, referred counsel to the Canons of Ethics and stated, "You can go back to your office. That seems to be the problem. Serve people, don't come down here and make capital cases";

(m) during a subsequent conversation conducted in a corridor of the courtroom, in a loud, intemperate manner criticized the attorney in charge of the office of tenant-respondent's counsel for the poor quality of the legal training provided to his staff;

(n) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(o) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorney.

22. On or about August 4, 1977, in Civil Court, New York County, Trial Term, Part 49D, during the non-jury trial of *Riverside* v. *Simmons*, respondent, in open court:

(a) engaged in the following improper colloquy with tenant-respondent's counsel:

Mr. Smollins:	May I look at the books and records.
The Court:	You may not.
Mr. Smollins:	Judge, I'm entitled to look at it. The next question—
The Court:	You may not. If you wish to ask me, "Judge, may I have a moment to peruse this book—"
Mr. Smollins:	May I have a moment to peruse these books and records?
The Court:	Yes. Off-the-record.

(b) engaged in the following improper colloquy with tenant-respondent's counsel:

The Court:	There is no question outside what is due and owing. This man was not there prior to April and I understand that the book will speak for itself. So, why are you asking him what was there.
Mr. Smollins:	The book cannot speak for itself. It's blotted out or

whited out.

The Court: That's your problem.

Mr. Smollins: No, that's the Court's problem.

The Court: Next question.

Q. In March you indicated—

The Court: The book does. He indicated nothing. The book does.

Mr. Smollins: Your Honor—

The Court: I'm telling you now, the book is involved. The book speaks for itself.

Mr. Smollins: I understand that.

The Court: That's the end of it, sir.

Mr. Smollins: Will the Court peruse the book?

The Court: Don't be concerned with what the Court does. If you want the book take it with you.

Next question.

(c) engaged in the following improper colloquy with tenant-respondent's counsel:

The Court: Anything further?

Sir, I asked for an offer of proof. Maybe your legal training hasn't indicated to you what that means—

The Witness: Judge I—

The Court: Just a moment, sir. What do you intend to prove, if anything?

Mr. Smollins: From the books and—

The Court: I asked you W-H-A-T. Do you know what that means?

Mr. Smollins: Yes.

The Court: Tell me how—

Mr. Smollins: From the books and records I—

The Court: Show me in the books and records where there should be any reduction in this tenant's rent from what has been claimed. Show me the books and records right now.

Mr. Smollins: Books and records are incorrect to this extent. They indicate whited out areas.

The Court: The Court has indicted to this attorney, there is no witness here in his behalf to substantiate anything. It ap-

pears to the Court to be a grand fishing expedition and the Court will curtail cross-examination.

You're through. Is that the petitioner's case?

(d) engaged in the following improper colloquy with tenant-respondent's counsel:

Mr. Smollins: Judge, I'd like to voir dire on this.

The Court: Sir, don't waste my time. Don't waste my time.

Mr. Smollins: Judge, I'll ask only two questions.

The Court: Don't waste my time. Are you denying the lease?

Mr. Smollins: I haven't even asked any questions.

The Court: You're denying it, right?

Mr. Smollins: I may very well concede this in evidence.

The Court: You may ask him if you can look at the lease. You're not going to conduct a voir dire.

Mr. Smollins: Were you present at the signing of this lease?

The Witness: No, I wasn't.

The Court: You know that I don't know—

Mr. Smollins: He says he wasn't employed then. I don't know if he was there.

The Court: Do you want to play games now?

(e) engaged in the following improper colloquy with tenant-respondent's counsel:

Q. What is the notation 31—in the books and records already in evidence?

The Court: Sustained. Sir, before I asked for a Notice of Proof. You stand when I'm talking to you. What it means is this: The Court is asking you how, H-O-W, that spelled how, you intend to sustain whatever position you have. You gave me no answer except for some nonsense about what you plan to do with Mr. Ferguson. I'm not going to allow you to play games. I have asked you, you have not answered. So, I'm precluding you. That's the end of that. Payment is an affirmative defense. You're not going to find it there.

Mr. Smollins: Judge, I have not rested, my witness is still on the stand.

The Court: You may do what you wish to do. The Court finds as a matter of law that you're wasting this Court's time.

Mr. Smollins: Judge, my witness is still on the stand. Are you

precluding me?

The Court: You find out when you leave here—you stand when you address this Court—

Mr. Smollins: I have recently undergone a knee operation.

The Court: Then with difficulty, right?

(f) engaged in the following improper colloquy with tenant-respondent's counsel:

The Court: I'll tell you what you do sir. You listen to me carefully. I don't know whether you think you did your client any good by doing what you have done—

Mr. Smollins: I believe I did my best in this case.

The Court: If you think you—

Mr. Smollins: Mr. Goldstein needed his money right away—

The Court: Let me tell you a story. This business of people being owed something because they're poor is nonsense. I was poor. My mother raised six of us. My mother went out to work every day. She picked chickens and took lice out of my hair—This is a Court of Law, not a social agency.

Mr. Smollins: To my knowledge the denial of my request for ten days is based upon your Honor once was poor?

The Court: Don't be smart sonny. Stay ahead of the game which you are right now. This case is over. Remove yourself.

(g) deprived tenant-respondent's attorney of the opportunity to be heard fully; and

(h) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's attorney.

23. On or about August 12, 1977, in Civil Court, New York County, Trial Term, Part 52, during the non-jury trial of *Mercer-Greene Investment Associates* v. *Vicale-Catania Clothing, Ltd.,* respondent, in open court:

(a) during cross-examination by tenant-respondent's counsel, engaged in the following improper colloquy:

Mr. Pravda: Any partner has authority under the law to bind the partnership.

The Court: Offer of proof, sir. Do you say that the 30 day notice was rescinded?

Mr. Pravda: I don't necessarily say that.

The Court: Sit down. I asked you for an offer of proof. What is

your proof? What is the evidence you wish to offer this Court in support of your client's position? Offer of proof, put in on the record.

Mr. Pravda: I don't have any further questions of this witness.

Mr. Lerner: Petitioner rests, your Honor.

The Court: Motions.

Mr. Pravda: At the close of the case, your Honor, the respondent moves to dismiss the petition on the grounds that the petitioner has failed to prove a prima facie case.

The Court: Denied, you have an exception.

Mr. Pravda: I think there are substantial questions, your Honor, although your Honor has not permitted me to develop it—

The Court: I am going to tell you now, if you don't know what an offer of proof means, and if you can't respond to it, then you don't know what you are doing, simple to me. Now, don't you ever throw the blame on the Court, do you understand that? I resent it. Move on to your case.

Mr. Pravda: Can we have a two minute recess?

The Court: No, sir, move on to your case right now. Call your witness now.

Mr. Pravda: If your Honor pleases—

The Court: You don't hold a discussion after I gave you a direction, call your witness.

Mr. Pravda: Your Honor, I have to discuss with the client whether or not he wishes to take the stand.

The Court: Do you wish to take the stand? I am not going to play games, you didn't prepare this case before you got here?

Mr. Pravda: If your Honor pleases—

The Court: Did you prepare this case before you got here?

Mr. Pravda: Your Honor, I full—

The Court: Call this case again at 12 o'clock, you want a recess?

Mr. Pravda: I asked for two minutes.

The Court: It's inconsiderate to all of those people. Now, I direct you to put your offer of proof on the record right now. No games in this courtroom.

Mr. Pravda: On which issue?

The Court: Any issue, the man has established that he has served a

30 day notice. The lease term has ended. What is your defense?

Mr. Pravda: Our defense is, your Honor, that the ownership of the property is not as it appears.

The Court: You will do it right now. You won't do it through him. Call your next witness. We are not going to play games. Call your next witness. Do you have proof to establish that they don't own it? Submit your proof. Let's not play games. He is from the Registrar's Office?

(b) terminated counsel's direct examination of tenant-respondent by ordering the witness to step down and responded to counsel's objection by stating:

The Court: When you leave here you ask what an offer of proof means. And, if you feel that you are going to stand here and waste their time and this Court's time, I am not going to allow it. I would suggest to you that you read the Canons of Ethics with respect to what an attorney must do when he is asked by the Court to do something. Don't play with the court. That is what you are doing.

(c) engaged in the following improper colloquy with tenant-respondent's counsel:

The Court: One of the things that bothers me greatly is this, why don't people resolve their own problems? Why do you put the landlord to the task of bringing a plenary action—

Mr. Pravda: Your Honor, we—

The Court: He doesn't have the money, work something out with the landlord. You just clutter up the court with a lot of nonsense. I think you should, and I refer you to the Canons of Ethics again. That is one of the obligations of attorneys is to see that litigation is cut down to a minimum.

Mr. Pravda: I also have an obligation to—

The Court: Why would your client be entitled to withhold the money? He says, this gentleman says that there are certain monies due and owing, more back rent; is that what he is saying?

Mr. Pravda: Yes, he is saying that.

The Court: Now you tell me well the tenant tendered money. Would that be a defense to a plenary action? The answer is no, no, unless your client did not use the space, something of that nature. What would your defense be, zero, so what you are saying is start another action.

I refer you again to the Canons of Ethics. You may do what you wish. If your client just wants to bring a lawsuit for the sake of bringing it, that is your position and your duty is you do it.

(d) engaged in the following improper colloquy with counsel for tenant-respondent:

The Court: What are you asking? You're asking the landlord to extend to him some security, is that it?

Mr. Pravda: That's correct.

The Court: Yet, you still want to pinch him right in his eye with regard to money?

Mr. Pravda: No, I don't get a chance to finish.

The Court: Why do you play games with the court now, sir?

* * *

The Court: You will get any consideration from the court because I heard you. If you want to change your position, that is your business. Do you understand? One hand washes the other. . . I have the urge to bring up the Canons of Ethics and read them to you.

Mr. Pravda: Don't I have to vigorously assert a claim?

The Court: The Court will hear you.

Mr. Pravda: They haven't claimed rent in this proceeding.

The Court: Do you want time?

Mr. Pravda: Of course, we don't want to put 105 people out of work and be out of business.

The Court: This is not a social agency. I am obliged to do what I am obliged to do as a judge. If I offered a final judgment of possession, he is entitled to the property now, n-o-w; you think about that.

Mr. Pravda: If your Honor pleases—

the Court: Sir, step out; what would you like to do? If you have a position which you think is applicable, submit a memorandum of law to me.

Mr. Pravda: May we discuss the stay, your Honor.

The Court: Discuss anything with me. Judgment for possession for the landlord.

(e) engaged in the following improper colloquy with tenant-respondent's counsel:

Mr. Pravda: May I be heard?

The Court: You may be heard. I hear you.

Mr. Pravda: Judge, you asked me before if I had something to submit on the question of the stay to do so. I would like to hand you these papers, I served a copy. It indicates, if your Honor—

The Court: I heard what you said, 105 people out of work. You will now do some work for your client. One hand washes the other. I never heard of such nonsense in a long time. Do you know what you are asking this landlord to do is to extend a security to your client. Now, the facts are, I told you, if the rent had not been paid, you should turn it over to this gentleman in an escrow account, hold it in escrow, simple, but you wouldn't do it, so be stubborn.

Mr. Pravda: Your Honor—

The Court: In behalf of your client, step out.

Mr. Pravda: May I—

The Court: I've ruled, I've made my determination. I think it is absolutely ridiculous for any attorney to conduct himself in this manner. I think the interest of your client is not in front of you. . .

(f) throughout the proceedings, criticized tenant-respondent's counsel's preparedness, legal competence and concern for his client's interests;

(g) on numerous occasions implied that counsel was engaging in unethical conduct;

(h) deprived tenant-respondent and its attorney of the opportunity to be heard fully; and

(i) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's attorney.

24. On or about August 30, 1977, in Civil Court, New York County, Trial Term, Part 49, during argument of pre-trial motions in *R., G., J. and L. Realty Corp.* v. *Bovier*, respondent, in open court:

(a) frequently interrupted tenant-respondent's counsel when she attempted to address the court;

(b) pointed to a representative of landlord-petitioner and stated: "Look at this lady. She doesn't look like a slumlord, like one who would grab money from your people";

(c) stated, in a loud, intemperate manner, that tenant-respondent's counsel was employed by a legal services orga-

nization which did a disservice to its clients by leading them to think that they were not required to pay rent and, as a result, the neighborhoods served by the organization were deteriorating;

(d) implied that tenant-respondent's counsel was wasting the court's time;

(e) made disparaging and insulting remarks concerning the legal ability and competence of tenant-respondent's counsel and the legal services agency which employed her;

(f) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(g) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel.

25. (a) On or about September 2, 1977, in Civil Court, New York County, Trial Term, Part 52, prior to a hearing in *Federman* v. *Martinez*, respondent, in open court:

(1) in an intemperate manner, interrupted the efforts of tenant-respondent's counsel to address the court; and

(2) engaged in the following improper colloquy with tenant-respondent's counsel:

Miss Rand: Your Honor, may I make a statement for the record first?

The Court: You are ahead of the game. You know where you are. Stop it. Make a statement about what?

Miss Rand: I just want to put on the record that I request an adjournment on behalf of Mr. Englard on the basis that he had to be at a funeral.

The Court: Let me say that the thing that bothers me greatly with Legal Aid and with MFY is the fact that they fail to recognize that they represent people and what they do, in many instances, is cause poor people, who are ignorant of what their rights are, to believe that their rights are greater than what they really are and one thing I will not allow and I will tell you this now and you better read the Canons of Ethics, there must be absolute truth to the Court, absolute disclosure to the Court, and don't flirt with that, Miss.

Miss Rand: Your Honor, may I respond to your comments?

The Court: That is sufficient. You may not.

(To Mr. Roth) Call your first witness.

(b) During the subsequent hearing in *Federman* v. *Martinez,* respondent:

(1) frequently referred to tenant-respondent's counsel in a disrespectful manner;

(2) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorney.

(c) After the hearing had been concluded, respondent, in open court:

(1) in a loud, intemperate manner and while directing his remarks to the courtroom audience, stated:

> One of those things most disturbing to me and I am saying this for the people in the audience, New York City is going to pot and it is going to pot simply because people who live in certain areas don't pay rent, but they expect the landlord to give them palaces. It is obvious to me that this woman hasn't paid rent but she is living on this man's property. Why should that be? Will you tell me? Now the horror is I happen to live not too far from where she lives and I see what happens to these areas. The landlords can't do anything there because they don't have the money. All right.

(2) when tenant-respondent's attorney objected to providing the landlord's counsel with her client's name and address, stated that he would hold her in contempt if she made "another outburst" and that she was "not involved in this proceeding at all. Do you understand that?";

(3) engaged in the following improper colloquy with tenant-respondent's counsel while speaking in a loud, intemperate manner:

The Court: Now give the name and address to the landlord and the apartment.

What bothers me, and I am saying this clearly, I do know what service you believe your agency is performing. What I am certain is that this is a business on Manhattan Avenue, which these people could inhabit. The machinery in this court will give this woman the opportunity to have a palace there, if she wants to, because she can bring this landlord to court under a 7-A Proceeding and many other proceedings where her rent could be used to appoint her apartment in any fashion that the

law says he can. What you are telling her is that she is entitled to live there for nothing.

Miss Rand: Your Honor, you don't even know what I told her. I told her nothing.

The Court: It is obvious to me if you would speak to her landlord and work something out. In this instance all that you are doing is requiring the Court to hear another case because there is no doubt in my mind he plans to bring another proceeding. Come on, what she is doing is living there for free.

Next case.

(4) addressed loud, intemperate remarks to the managing attorney of a legal services office who was seated in the courtroom audience and directed him to "step outside" while pointing in the direction of a courtroom corridor; and

(5) while standing in close proximity to the managing attorney in the courtroom corridor, in a loud and intemperate manner stated that "Legal Services" was obstructing the courts and training its attorneys improperly.

26. On September 23, 1977, in Civil Court, New York County, Trial Term, Part 16, during the non-jury trial of *Judson Jewelry Corp.* v. *Simon*, respondent, in open court:

(a) frequently interrupted defendant, in a loud intemperate manner when she attempted to address the court;

(b) frequently addressed defendant in a loud and intemperate manner;

(c) unduly restricted defendant's opportunity to be heard fully; and

(d) was impatient, undignified, inconsiderate and discourteous to defendant.

27. (a) In the case of *U.P.A.C.A. Houses* v. *Velez*, which commenced on November 9, 1977, in Civil Court, New York County, Trial Term, Part 52 and was concluded on November 30, 1977, respondent:

(1) deprived tenant-respondent and her attorneys of the opportunity to be heard fully; and

(2) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorneys.

(b) On or about November 9, 1977, in the case of *U.P.A.C.A. Houses* v. *Velez*, respondent, prior to trial, in open court:

(1) interrupted tenant-respondent's counsel's statements relating to the defenses of rat and roach infestation of the premises to state to the courtroom audience, in a loud, intemperate manner, that counsel should not tell the court about rats and roaches and "Has anybody heard of Black Flag?"; and

(2) stated that he had personal knowledge of the premises which were the subject of the case.

(c) On or about November 9, 1977, in the case of *U.P.A.C.A. Houses* v. *Velez*, during jury selection, respondent:

(1) in a loud, intemperate manner, barred tenant-respondent's attorney-of-record (trial counsel's supervising attorney) from entering the jury room;

(2) stated that tenant-respondent's counsel was "playing games";

(3) stated that the attempts of tenant-respondent's counsel to question prospective jurors about their expressions of prejudice against tenant-respondent were "nonsense"; and

(4) in a loud, intemperate manner criticized tenant-respondent's attorneys for discussing the case in front of the prospective jurors.

(d) On or about November 9, 1977, in the case of *U.P.A.C.A. Houses* v. *Velez*, respondent:

(1) interrupted his opening address to engage in the following improper colloquy with tenant-respondent's attorney-of-record, in the presence of the jury:

> I understand further that there is a counterclaim in this case. And I would assume that something was said to you—sir, are you taking notes of what I'm saying?
>
> Mr. York: Yes, sir.
>
> The Court: All right. It's on the record.
>
> Mr. York: I understand that, Judge.
>
> The Court: All right, sir. I don't like that. Don't take notes in my courtroom of what I do. If you want to put it on the record, I'll put it on the record, because I'm not going to be bound by what you write. You understand that, sir? You want it on the record?
>
> Mr. York: That I can't take notes?

The Court: Did you hear what I said?

Mr. York: Yes, I think it should be on the record.

The Court: All right. If you want it on the record.

(2) in response to the request of tenant-respondent's counsel for an interpreter for her client during the opening address of counsel, conducted side-bar conference, then engaged in the following improper colloquy in the presence of the jury:

—the Court conducted an inquiry of the respondent, and the Court finds that this person is able to understand the English language sufficiently for counsel to open, and when the case commences, the Court will then allow the interpreter.

Miss Hilgeman: Your Honor, I have a motion to make.

The Court: Madam, you will do it later. Sit down and let's proceed.

Miss Hilgeman: I would like to make a motion at side-bar.

The Court: Will you step down, please.

Miss Hilgeman: Well, I would like it noted for the record that I tried to make it on the record.

The Court: Step down, please. This is the second time I have asked this young lady to step down and I won't ask you again.

All motion will be heard at the proper time, you understand that?

All right. You may continue, sir. And excuse me for the interruption.

(3) in an intemperate manner, stated to tenant-respondent's counsel during her opening address, in the presence of the jury:

The Court: Now, madam, I'm going to stop you because I suggested to you that payment is an affirmative defense, that is something for you to establish. Now, either you have paid it or you have not. I suggested to you, and perhaps—step up, please. Step up, Mr. Raines, please.

Mr. Raines: Thank you.

(4) after side-bar conference conducted out of the hearing of the jury, respondent, in a loud, intemperate manner, engaged in the following improper colloquy with tenant-respondent's counsel, at the sidebar:

The Court: On the record. Now, I'm not trying to be harsh with you, but the fact of the matter is if I ask for an offer of

proof, you give it to me, you understand? And I told you this earlier today, do you have a trial memorandum for the Court?

Miss Hilgeman: Yes, sir.

The Court: And have you given it to the Court?

Miss Hilgeman: You told me you didn't want it.

The Court: Madam, did you hear what I said?

Miss Hilgeman: Yes.

The Court: Simple. So you will not allude to that when I asked you for an offer of proof and you haven't given it to me.

Miss Hilgeman: Your Honor, I offered to give you the memorandum.

The Court: Madam, don't you tell me that, because I am very specific in when I ask for something, and if you don't know what an offer of proof means, I'll teach you; you understand? All right, you may continue. Is that on the record, sir? So I'm precluding you at this time from going into that. I am running the law and I told you this.

Miss Hilgeman: Will you please state exactly what you are referring to?

The Court: Let me ask you, what is an offer of proof, ma'am?

Miss Hilgeman: An offer of proof is when you tell what kind of evidence—

The Court: How you plan to do it and what you want to do?

Miss Hilgeman: Yes. I said my client's testimony—

The Court: And you know what you told me? You told me that it was the landlord's obligation to apply for a subsistence for this woman. That's exactly what you said; you know that? Is that correct, Mr. Raines?

Mr. Raines: That's correct.

Miss Hilgeman: I'm sorry, I disagree with you.

The Court: Well, let's not go into that.

Miss Hilgeman: I'd like to note for the record—

The Court: You may continue, madam. You may continue, Miss.

Miss Hilgeman: Thank you.

(5) interrupted tenant-respondent's counsel's opening address to engage in the following improper colloquy in the presence of the jury:

Miss Hilgeman: —where a Federal grant—

The Court: Sustained.

Miss Hilgeman: Will you state the basis?

The Court: No, madam. If you don't know by now, you'll never know.

Members of the jury, payment is an affirmative defense. When the question arises as to whether or not a debt has been paid, it is the obligation and duty of the person who is the debtor to establish that he or she has paid.

You know that, madam, Miss? All right. Now you may continue. And I told you just a moment ago what my position was and what you are about to do, didn't I just tell you that?

Miss Hilgeman: You have made nothing clear—

The Court: Madam, I direct you not to allude to that until you have satisfied me as to your position.

Miss Hilgeman: Yes. Well, I'd like to do that.

The Court: Madam, continue with your opening. We are not going to stop and do it now. All right, you may continue.

(6) at the conclusion of the opening remarks of both attorneys, respondent, in the presence of the jury, engaged in the following improper colloquy with tenant-respondent's counsel:

The Court: All right. Anything further, ma'am?

Miss Hilgeman: No.

The Court: All right.

Miss Hilgeman: I'd like to approach the bench.

The Court: The Court will take judicial notice of this: UPACA is an organization nonprofit formed under the auspices of the Federal government to rehabilitate and build in areas that were depressed, and this building is in that area. This woman is a tenant in one of those buildings.

All right. Let's proceed. You may call your first witness.

Miss Hilgeman: Your Honor, I have several motions to make before.

The Court: Madam, would you please be seated. I told you earlier on, I will give you time to make motions at the proper time, didn't I? And I will indicate to you when the proper time is. All right. So you will reserve all motions. The Court has noted that.

(e) On or about November 9, 1977, in the case of *U.P.A.C.A. Houses* v. *Velez*, during direct-examination by counsel for

landlord-petitioner, respondent:

(1) in the presence of the jury, requested tenant-respondent's counsel to concede certain elements of the landlord-petitioner's case;

(2) in the absence of the jury, addressed the following statements to tenant-respondent's counsel:

The Court: That's all. And I would submit to you, Miss, listen to me carefully, with regard to this business of being on welfare, there is something in the Department of Social Services where they seek to give dignity, lend dignity to recipients where rent used to be paid directly to the landlord with the landlord's name on it, that's no longer so. And I would submit to you that when this woman made application for welfare, that she was budgeted, they took everything into consideration, including her rent. And if she did not go back to the welfare department in an effort to increase her rent when she received rent increases, that's her business, not the landlord's business, and I see nothing in that lease that obliges the landlord to do anything with regard to seeking that she received subsistence from anywhere.

Now, that's something that has to be initiated from somebody, because, you see, what I don't like, and will not allow, is for this court to be used for other purposes.

Now, there is no doubt in my mind that every New Yorker is interested in one thing: making the city a better place to live, and the only way it's going to be a better place to live is where we all, all, landlords and tenants, try to do that. And there are certain rights that people have to advance for themselves. You can waive whatever right you have. You can waive your right to live just by jumping off the Empire State Building and not missing the sidewalk, head first.

So all I'm suggesting to you is this: We cannot be the leaders of people, hands and feet, and so on and I'm not going to allow it in my courtroom.

Now, I think this is a matter that should be resolved. Resolved. There is no doubt in my mind that this lady could not pay her rent, $2,000, $1,000 today if she had to. You know it and I know it.

So what are we doing with her? She winds up in the street unless there's some arrangement made with management.

Now, you think that you're helping her? I don't think so.

(3) prevented tenant-respondent's counsel from responding to the above-quoted remarks;

(4) stated that he knew the building which was the subject of the case;

(5) stated that tenant-respondent's counsel should have gone to the building to verify what her client had said, as the court had done;

(6) implied that tenant-respondent's counsel had represented her client in an improper fashion;

(7) stated that tenant-respondent's counsel had not represented her client to the best of her ability;

(8) questioned tenant-respondent's counsel's concern for her client;

(9) stated that, on his own motion, he would direct the tenant to deposit two months' rent with the court while he adjourned the case for a building inspection;

(10) when tenant-respondent's counsel objected to the requirement of a deposit, questioned whether she was acting in her client's best interest;

(11) engaged in the following improper colloquy:

Miss Hilgeman:	I don't mind the inspection, but requiring her to put up the money as a term of that.
The Court:	Well, let me ask you this Miss: Has she lived there since May and not paid the rent? Do you know why the buildings in Harlem are falling apart and the South Bronx are falling apart?
Miss Hilgeman:	You have already prejudged this case, and I think you should excuse yourself.
The Court:	I'm not prejudging anything. You have told me so.
Miss Hilgeman:	You keep telling me my client is responsible for buildings in Harlem falling apart.
The Court:	Do you know why? Because we have had the situation—I have lived in Harlem all my life, so don't tell me what is not so. What is so is that people have have lived in buildings are not paid and as a consequence, landlords have walked away from them.

(12) Stated that tenant-respondent's claim for a rent abatement was "nonsense";

(13) unduly restricted tenant-respondent's counsel when she attempted to address the Court;

(14) while ordering the return of the jury to the courtroom, stated to tenant-respondent's counsel, "Madam, we'll just waste time and sit here for the rest of our lives for absolute nonsense";

(15) when tenant-respondent's counsel objected to the fact that respondent was conducting direct examination of a witness for landlord-petitioner, responded by requesting certain concessions from her in the presence of the jury;

(16) in the presence of the jury, questioned the sincerity of the request of tenant-respondent's counsel for permission to conduct a *voir dire*;

(17) engaged in the following improper colloquy in the presence of the jury:

The Court:	All right. Let's hear the questions.
Miss Hilgeman:	Have these been identified, this paper?
The Court:	He just said what they are. Now, what questions do you wish to put to him?
Miss Hilgeman:	Well, for the record, I would identify two long sheets of paper, the first one is headed—
The Court:	Madam, why don't you have them marked for identification, if that's what you wish to do.
Miss Hilgeman:	I think you should.
The Court:	That's absolutely unnecessary. You wish to ask some questions about it, do so.
Miss Hilgeman:	Okay. Well, could we have it marked then?
The Court:	I'm not going to have it marked. Ask your questions, please.
Miss Hilgeman:	Well, it's going to be difficult for the record to know which is which.
The Court:	Miss, ask your questions, please.
Miss Hilgeman:	All right.

(18) stated to landlord-petitioner's counsel, "Did you hear that Mr. Raines? And you're going to request to be permitted to open your case?";

(19) stated that the motions of tenant-respondent's counsel were a

waste of time and that tenant-respondent's counsel had not grasped the fact that this was ". . . a very busy court, and this court does not waste the time of six jurors and myself and the court personnel for technicalities and I'm not going to do it";

(20) in responding to the motion of tenant-respondent's counsel to dismiss the petition for failure to prove exemption of the premises from rent control, stated in open court: "Well, I'm not going to go into all that. The Court will certainly take judicial notice of all of that";

(21) engaged in the following improper colloquy, in open court:

Miss Hilgeman:	I'd like to also make a motion that you excuse yourself.
The Court:	Oh, how many times have I heard that? Why don't you put in on paper and then I will have it for all time.
Miss Hilgeman:	Well, that paper is fine.
The Court:	All right. Thank you. Anything further? Denied.
Miss Hilgeman:	Can I state the basis for the motion?
The Court:	No, I didn't ask you to. Denied. For any reason that you may think of. All reasons that may be factually supported—
Miss Hilgeman:	I can't hear what you are saying, your Honor.
The Court:	Well, I heard it. I said denied. Anything further?

(22) during a conference at the bench, stated that tenant-respondent's counsel's objections were "frivolous" and "obstructionist" and that she had violated the Canons of Ethics by making them;

(f) On about November 10, 1977, in the case of *U.P.A.C.A. Houses* v. *Velez*, respondent, in open court:

(1) implied that tenant-respondent's counsel was interested neither in having necessary repairs made nor in the best interests of her client;

(2) stated repeatedly that he had "been to the building" and "had seen the building";

(3) prior to the completion of landlord-petitioner's prima facie case, stated that he was inclined to grant motions severing the counterclaims and directing a verdict for the landlord-petitioner and demanded that tenant-respondent's counsel make an offer of proof;

(4) stated that he had lived within three blocks of the premises in question "until very recently," that he had been in the building that day and that he, "as a judge, may go and look at anything";

(5) engaged in the following improper colloquy with tenant-respondent's counsel:

The Court: What did you tell her to do?

Miss Hilgeman: It's privileged.

The Court: Oh, privileged, my toe nails. Didn't you think to inform the landlord and find out whether there was any liability insurance coverage on that? Were you protecting your client's right, Miss?

And I would submit to you that if there's such insurance, he has a right to have his insurance company come in and defend him on each and every such claim, and that's enough to sever your counterclaim.

Miss Hilgeman: Well, I would object to that.

The Court: I see. Now you have learned something, now you object. Is that correct? And that's what you are urging on the Court; is that a part of your counterclaim?

Miss Hilgeman: What, the property damage?

The Court: Yes, Miss.

Miss Hilgeman: Yes, it is.

The Court: All right. Based on that the Court hereby severs the counterclaim because there is a right on the part of the landlord to have his insurance carrier, if any, come in and defend him with regard to those questions. Is there a liability insurance carrier?

(6) unduly restricted tenant-respondent's counsel from addressing the Court and from making a full and orderly presentation of her case;

(7) in a loud and intemperate manner, repeatedly requested that tenant-respondent's counsel make offers of proof relating to her entire case, and interrupted her efforts to do so;

(8) repeatedly prevented tenant-respondent's counsel from commenting upon or responding to the Court's narrative statements relating to the history of the case, the facts or the legal issues;

(9) repeatedly questioned the competence, earnestness, preparedness, devotion, intelligence and legal knowledge of tenant-

respondent's counsel;

(10) made rulings which contradicted previous rulings, then denied the requests of tenant-respondent's counsel for clarification;

(11) on his own motion, excused the jury, "suspended" the trial, directed tenant-respondent to deposit "every nickel that's due and owing" and stated that he would declare a mistrial and order an immediate inspection of the premises;

(12) when tenant-respondent's attorney of record requested permission to ask a question about procedure, responded:

The Court: Well, don't be concerned about it at this moment. I'll make that determination. Because it's astounding to me that the fact is that this lady has been living under these conditions and you have known about it since June. The question in my mind is whether you have serviced her.

(13) stated that tenant-respondent's attorneys had "not done well by their client" and had been "derelict" in their representation of her; and

(14) in a loud and intemperate manner, over the objection of tenant-respondent's counsel, on his own motion, discharged the jury, declared a mistrial, ordered the tenant-respondent to post $1,150.00 with the Clerk of the Court and stated that if she failed to do so a final order for the landlord-petitioner would be granted.

(g) On or about November 10, 1977, in the case of *U.P.A.C.A. Houses* v. *Velez*, respondent, in the presence of the jury:

(1) engaged in the following improper colloquy:

Miss Hilgeman: Your Honor, may I have the original of the petitioner?

The Court: You may.

(The document was handed to Miss Hilgeman.)

Miss Hilgeman: Thank you.

Would you mark this as Respondent's 1.

The Court: Madam, that's a part of the record of the court.

Miss Hilgeman: But I want it as part of the trial record.

The Court: Now, madam, look, do you ask or do you tell somebody what to do in this court? Pardon me?

Miss Hilgeman: I'm sorry, your Honor.

(2) spoke to tenant-respondent's counsel in a disrespectful manner;

(3) when tenant-respondent testified that there were rats in her apartment, stated: "Now the difference between rats and mice, I don't know";

(4) in a loud and intemperate manner, engaged in the following improper colloquy:

Q.	How much rent do you receive from the Department of Social Services?
Mr. Raines:	I object to that.
The Court:	Sustained. And I'm telling you now, I directed you earlier on not to raise this question. I directed you. I told you it was not a part of this case. And if you insist upon acting in this fashion, I'll have to take the appropriate steps, because I think to bring this before the jury is not appropriate, Miss.
Miss Hilgeman:	Well, then, I have no further questions.
The Court:	Be seated. Now I'll have some conversation with you when this case is over.

(h) On November 30, 1977, in the jury room of Civil Court, New York County, Trial Term, Part 16, in the absence of the jury, respondent, while granting landlord-petitioner's application to withdraw the petition without prejudice:

(1) ignored or denied the requests of tenant-respondent's attorneys for permission to clarify, correct or comment upon respondent's statements regarding the history of the case;

(2) stated that he had personally "looked at the building" where tenant-respondent resided and "found the conditions not to prevail"; that tenant-respondent's counsel had engaged in unethical conduct in preparing the Answer; and that he had found matters contained in the Answer which caused him to believe that one of tenant-respondent's major problems was "the inability to pay rent whatever the rent might be";

(3) made the following improper remarks:

> Now, I submit to you that if it is not the fault of this agency to protect the life and limbs of the parties who are involved, then I think we ought to have another agency there. That's my belief. And I have a great concern, and I take argument with the attitude that these people can be brought into this court and led to believe that they can just ignore their obligation as tenants

(4) made the following improper remarks to tenant-respondent's counsel:

> And I'll tell you now, roaches don't kill people. And if you knew anything about the people that you serve, the black and the Puerto Ricans, you'll find that there is a broth made from roaches for colds; do you know that.

(5) stated that in his personal visit to the building, what he saw was "in no way" what was alleged by tenant-respondent and that it was "a travesty on the Court"; and implied that tenant-respondent's counsel had failed in her duty to be honest and truthful in dealings with the Court;

(6) made the following improper remarks to tenant-respondent's counsel:

> And I would submit to you and I am speaking to the Administrative Judge, he suggested that perhaps you lack the expertise to do what you are about, and I sincerely believe that.

(7) Implied that tenant-respondent's counsel was not "truly concerned" about her client's interests.

28. (a) On or about November 18, 1977, and November 30, 1977, in Civil Court, New York County, Trial Term, Part 52, throughout the non-jury trial of *52 East 19th Street Company* v. *Tesciuba*, respondent, in open court:

(1) unduly restricted tenant-respondent's counsel from addressing the court;

(2) deprived tenant-respondent and his attorney of the opportunity to be heard fully; and

(3) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and his attorney.

(b) On or about November 18, 1977, in the case of *52 East 19th Street Company* v. *Tesciuba*, respondent, in open court:

(1) during the presentation of landlord-petitioner's case, stated, in an impatient manner, that the only issue was whether or not the tenant-respondent had paid rent, while repeatedly interrupting the attempts of tenant-respondent's counsel to submit offers of proofs concerning the defenses raised by the pleadings;

(2) in a loud and intemperate manner, stated to tenant-

respondent's counsel:

> And the next time you don't ask questions, I'm going to hold you in contempt. Now, try me. Ask your next question.

(3) engaged in the following improper colloquy:

Mr. Cataldo:	I want to be sure that I'm offering to prove then that at the time of the visit—
The Court:	Sir, I told you before, if you don't ask questions, I'm going to hold you in contempt, because that's your only function at this time.
Mr. Cataldo:	I also have a function of making an offer of proof.
The Court:	Sir, I have asked you four times for an offer of proof.
Mr. Cataldo:	And you have never allowed me to make it.
The Court:	All right. You believe that then. All right. Next question.
Mr. Cataldo:	I'll answer you now.
The Court:	Your next question, sir.
Mr. Cataldo:	That's what you said before I said.
The Court:	I hold you in contempt. All right? Now, you can do what you want to do. You wish to get another lawyer, sir? Because one of the things that you have done in this courtroom is try to bait the Court. Now, if you feel that is your function—
Mr. Cataldo:	You are—you are mistaken. I'm not trying to bait the Court. Your Honor asked a question and then you don't permit me to answer it. Now, that's not baiting the Court.
The Court:	Sir, you may continue with the case, but I hold you in contempt, and I tell you now, I will hold you in contempt again. Your next question.
By Mr. Cataldo:	
Q.	Did you—
The Court:	This case will be heard at 3:00 o'clock. That's the end of it, to be continued at 3:00 o'clock.
Q.	Did you or did you not—
The Court:	That's all, sir. You may do what you want to do, I'm sorry.

The Witness: Your Honor, I can't—

The Court: You know, and I'll put this on the record, I have asked you on four separate occasions and, sir, if you don't know what an offer of proof is, that is your concern. And I would recommend, sir, that you speak to your attorney because I'm not going to waste the time here.

Mr. Cataldo: Now, may I—

The Court: All right. That's the end of it.

Mr. Cataldo: —may I make a statement?

The Court: You will be here at 2:00 o'clock.

Mr. Cataldo: —in justification of my action?

The Court: Sir, you may do whatever you wish to do, but you're not going to waste—look at all these people who have been seated here.

Mr. Cataldo: I didn't waste their time—

The Court: Sir, step aside.

The Court: 2:00 o'clock.

Mr. Cataldo: May I make my statement?

The Court: You may not, sir. 2:00 o'clock you may do whatever you wish to.

The Witness: Your Honor—

The Court: All right. let's have the next case, please.

The Witness: I can't be here.

The Court: Well, then, we'll put it over.

Mr. Davis: No, no.

The Court: Well, look, I have waited here for all of you. This is nonsense now. You want to play games, play games someplace else. I'm not going to play games in this courtroom.

2:00 o'clock.

(Whereupon the trial was then recessed until 2:00 o'clock p.m.)

(4) stated on several occasions, that tenant-respondent's counsel was wasting the Court's time;

(5) after landlord-petitioner's attorney had removed an exhibit from the courtroom, engaged in the following improper colloquy:

The Court: All right. Ask you question, sir.

Mr. Cataldo: I can't go on without the lease.

The Court: All right. This case is adjourned, continued until Monday at 9:30 in my chambers, room 448. Now, that's the end of it.

Mr. Cataldo: I take exception to that.

The Court: Well, sir, you may do as you please. The Court is not here to be tampered with.

Mr. Cataldo: I am not tampering with you and you must not penalize me and my time. I'm a lawyer, responsible—

The Court: And I'm a judge who's responsible.

Mr. Cataldo: Yes, you are. Everyone recognizes that. I do, too, whether you think so or not. But being pushed around all week on this matter—

The Court: All right. Well, that's your business.

Mr. Cataldo: It's not my business.

The Court: Here, did you have a copy of this, sir?

Mr. Davis: I think he gave it to him.

The Court: That's at 9:30 in my chambers, room 448. You better write that down, sir, because I'll be there at 9:30 and we will move ahead expeditiously that day.

Where is Mr. Flam?

Mr. Davis: I think he went to the men's room—Oh, here he is right now.

(Mr. Flam enters the courtroom.)

The Court: Do you have the lease, Mr. Flam?

Mr. Flam: Yes, your Honor.

The Court: Oh, come on.

Mr. Davis: Give counsel a copy of the lease.

Mr. Flam: He has a copy.

Mr. Davis: I know, but he prefers to use the one that's in evidence.

Mr. Flam: Oh, I'm sorry.

Mr. Davis: I take it that your suggestion about adjournment has been rescinded?

The Court: No, well, I'm going to leave in a very few minutes because I think this is absolutely ridiculous.

Ask your question now, sir.

(6) engaged in the following improper colloquy:

Mr. Davis: Now, how can he in God's name contest when he's attorned to the landlord?

The Court: I don't know, sir. But he says this is what he wishes to do, so we'll learn something in the hope that this matter will terminate soon.

Mr. Davis: All right, sir.

The Court: All right. You may continue, sir.

By Mr. Cataldo:

Q. All right. Explain that portion of the premises.

Mr. Cataldo: And, by the way, I don't subscribe to his—

The Court: Sir, why argue about it? I suggest to you—

Mr. Cataldo: Well, I don't want—

The Court: —at the very inception that what you should do is submit a memorandum of law supporting any positions that you may take in this case.

Mr. Cataldo: I have submitted a memorandum of law.

The Court: Well, sir, all right. It's here. I have it, so ask questions.

Mr. Cataldo: I know. But when a man makes a statement against my interests—

The Court: Well, sir, I'm not—this matter is put over until Monday, 9:30. I'm not going to have that. That's the end of that.

Mr. Cataldo: —and you didn't permit me to explain my interests. 9:30 I was here.

Mr. Davis: Could we put this—

The Court: That's what it's put over to, because I'm going to take care of something that concerns my family.

Mr. Cataldo: Oh, I'm sorry.

The Court: All right. That's the end of it.

(c) On or about November 30, 1977, in the case of *52 East 19th Street Company* v. *Tesciuba*, respondent, in open court:

(1) engaged in the following improper colloquy:

The Court: —you told me that you have practiced law for God knows how long?

Mr. Cataldo: Forty-five years.

The Court: And, sir, if this is the way you have practiced law, you

have not acquitted yourself well.

(2) engaged in the following improper colloquy:

Mr. Cataldo: I only have one or two questions, your Honor.

The Court: All right, sir. One.

Mr. Cataldo: One?

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

LAWRENCE FINLEY,

A Judge of the Oneida City Court, Madison County,
and Sherrill City Court, Oneida County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jeanne A. O'Connor, Of Counsel) for the Commission.

Hugh C. Humphreys for Respondent.

Respondent, Lawrence Finley, a judge of the City Court of Oneida in Madison County and the City Court of Sherrill in Oneida County, was served with a Formal Written Complaint dated April 30, 1979, setting forth 20 charges of misconduct. Respondent filed an answer dated May 15, 1979.

By notice dated October 9, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent submitted an affidavit in response to the motion for summary determination. The Commission granted the motion on October 25, 1979, found respondent's misconduct established with respect to all 20 charges in the Formal Written Complaint, and set a date for oral argument on

the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted a letter from his attorney on the issue of sanction.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on December 23, 1976, respondent reduced a charge of speeding to disorderly conduct with a motor vehicle in *People* v. *Jerry Saunders* as a result of a written communication he received from Acting Justice William F. Gleason of the Village Court of Clinton, seeking special consideration on behalf of the defendant, Judge Gleason's cousin.

2. As to Charge II, on April 1, 1975, respondent reduced a charge of speeding to "unnecessary noise—muffler" in *People* v. *Bernard Bacon* as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

3. As to Charge III, on August 12, 1976, respondent reduced a charge of speeding to disorderly conduct with a motor vehicle in *People* v. *Brian Barr* as a result of a written communication he received from Justice Joseph Cristiano of the Village Court of Middleville, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on February 26, 1974, respondent imposed an unconditional discharge in *People* v. *Jay Cowan* as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

5. As to Charge V, on August 5, 1975, respondent reduced a charge of speeding to "unnecessary noise—muffler" in *People* v. *James A. Crawford* as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, a judge in Madison County who is permitted to practice law, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

6. As to Charge VI, on May 22, 1975, respondent reduced a charge of failure to yield right of way to "unnecessary noise—muffler" in *People* v. *John Delekta* as a result of a communication he received from Trooper Mike Donagan seeking special consideration on behalf of the defendant.

7. As to Charge VII, on February 23, 1977, respondent reduced a charge of speeding to "unnecessary noise—muffler" in *People* v. *Arthur C. Keller* as a result of a written communication he received from Justice Malcolm W. Knapp of the Town Court of Lafayette, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on July 12, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Jerome Miller* as a result of a written communication he received from Justice Donald F. Havens of the Town Court of Brookfield, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on August 8, 1976, respondent reduced a charge of speeding to failure to obey a traffic signal in *People* v. *Raymond Brown* as a result of a written communication he received from Justice Thomas F. Malecki of the Village Court of Vernon, seeking special consideration on behalf of the defendant.

10. As to Charge X, on October 21, 1976, respondent reduced a charge of speeding to "unnecessary noise—muffler" in *People* v. *Charles Teeps* as a result of a written communication he received from Justice Thomas F. Malecki of the Village Court of Vernon, seeking special consideration on behalf of the defendant.

11. As to Charge XI, on November 30, 1976, respondent reduced a charge of speeding to "unnecessary noise—muffler" in *People* v. *Cynthia Thurston* as a result of a written communication he received from Justice Michael Perretta of the town Court of Lenox, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

12. As to Charge XII, on November 7, 1974, respondent reduced a charge of driving to the left of pavement markings to "unnecessary noise—muffler" in *People* v. *Debra L. Valerio* as a result of a written communication he received from Trooper T.S. Santora, seeking special consideration on behalf of the defendant.

13. As to Charge XIII, on May 22, 1975, respondent reduced a charge of speeding to "unnecessary noise—muffler" in *People* v. *Carl*

Webster as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

14. As to Charge XIV, on February 10, 1977, respondent reduced a charge of speeding to disorderly conduct with a motor vehicle in *People* v. *David E. Pianka* as a result of a communication he received from Army Carinci, seeking special consideration on behalf of the defendant.

15. As to Charge XV, on March 13, 1975, respondent reduced a charge of speeding to "unnecessary noise—muffler" in *People* v. *John M. Sroka* as a result of a written communication he received from Justice Stanley C. Wolanin of the Town Court of New York Mills, seeking special consideration on behalf of the defendant.

16. As to Charge XVI, on September 25, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler and imposed an unconditional discharge in *People* v. *Marion Barrett* as a result of a written communication he received from Justice Carlton M. Chase of the Village Court of Chittenango, seeking special consideration on behalf of the defendant.

17. As to Charge XVII, on May 13, 1976, respondent reduced a charge of speeding to disorderly conduct with a motor vehicle in *People* v. *Timothy Samson* as a result of a communication he received from Justice Thomas Malecki of the Village Court of Vernon, seeking special consideration on behalf of the defendant.

18. As to Charge XVIII, on June 20, 1974, respondent sent a letter which identified him as a Judge of the Oneida City Court to Justice Federspiel of the Town Court of Pembroke, Genesee County, on behalf of the defendant in *People* v. *Jesse H. Ramage*, and received $50 from the defendant as a legal fee.

19. As to Charge XIX, from 1967 to 1978, respondent, in the regular conduct of his legal practice, used stationery which identified him as a Judge of the Oneida City Court.

20. As to Charge XX, on December 6 and 8, 1977, in connection with *People* v. *Karl Kroth*, a case then pending before respondent in which the defendant was charged with driving while intoxicated and driving with more than .10% blood alcohol, respondent spoke by

telephone with William Kroth, the defendant's father, and stated in substance:

(1) that it would be in the defendant's best interest to plead guilty to a reduced charge of driving while ability impaired; and

(2) that defendant's lawyer, Lewis Hoffman, agreed with this assessment of the case.

On January 11, 1978, respondent granted defendant's motion to dismiss the case of *People* v. *Karl Kroth* in the interest of justice, in response to the defendant's claim that respondent, in his two conversations with William Kroth, had indicated prejudgment of the case and had improperly interfered with the defendant's relationship with his attorney.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(4) and 33.3(c) of the Rules Governing Judicial Conduct, Canons 1, 2, 3A and 3C of the Code of Judicial Conduct, Canons 4 and 31 of the Canons of Judicial Ethics, and permitted a violation of Section 33.5(f) of the Rules Governing Judicial Conduct and Section 839.5 of the Rules of the Appellate Division, Third Judicial Department. Charges I through XX of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's misconduct in the matters herein falls into three categories: (i) acceding to special influence on behalf of defendants in traffic cases, (ii) identifying himself as a judge on the stationery he used in the regular conduct of his legal practice and (iii) involving himself in the preparation of the defendant's case in a particular matter.

As to the traffic cases, the Commission concludes that it is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By granting *ex parte* requests for favorable dispositions for defendants in traffic cases, from judges and others in a special position to influence him, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*, at 71-72.

As to his practice of identifying himself as a judge on the stationery used in his private law practice, respondent's conduct was clearly improper. Canon 31 of the Canons of Judicial Ethics cautions a judge who is permitted to practice law to "be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success." By his conduct, respondent in effect used his judicial office and title in pursuit of entirely private ends. He thereby diminished public confidence in the in-

tegrity and independence of the judiciary. Respondent knew or should have known that routinely identifying himself as a judge in his law practice could have an intimidating effect on those with whom he dealt and might otherwise enure to his benefit.

As to his conduct in *People* v. *Kroth,* respondent initiated an *ex parte* communication with the defendant's father, in violation of Section 33.3(a)(4) of the Rules Governing Judicial Conduct. His advising the defendant's father as to how the defendant should plead in this case was improper and interfered with the relationship between defendant and defense counsel. Furthermore, by virtually acting as a lawyer in the proceeding, respondent compromised the impartial role required of a presiding judge and effectively created a climate in which he should have disqualified himself, inasmuch as "his impartiality might reasonably be questioned" (Section 33.3[c] of the Rules).

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

All concur.

Dated: February 11, 1980

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 MILLER,

A Justice of the Town Court of Cairo, Greene County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern for the Commission.

Carpenter & Keefe (By James F. Keefe) for Respondent.

Respondent, a justice of the Town Court of Cairo, Greene County, was served with a Formal Written Complaint dated May 24, 1979, setting forth one charge of misconduct. Respondent filed an amended answer dated July 26, 1979.

By notice dated October 1, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on October 25, 1979, found respondent's misconduct established with respect to the charge in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. From October 6, 1977, to May 16, 1978, respondent failed to serve a summons or give notice of a hearing in the Small Claims Court case of *Singer* v. *Antonucci*, because of his personal feelings of irritation with the plaintiff, Robert Singer.

2. Respondent did not reply to two letters dated April 12, 1978, and May 3, 1978, from the Office of Court Administration, and three letters dated December 13, 1978, January 9, 1979, and January 22, 1979, from this Commission, inquiring into his delay in proceeding with the *Singer* case.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(5) and 33.3(b)(1) of the Rules Governing Judicial Conduct, and Canons 1, 2, 3A(5) and 3B(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

By failing to serve a summons or give notice of a hearing in the *Singer* case for more than seven months, respondent (i) contravened Section 4500.2(c) of the Uniform Justice Court Rules for Small Claims Procedures, which requires that the date for a hearing be not less than 15 nor more than 30 days from the date the action is commenced, and (ii) thereby violated Section 33.3(a)(5) of the Rules Governing Judicial Conduct, which requires a judge to dispose promptly the business of the court.

In allowing his personal dislike for the plaintiff in the *Singer* case to interfere with the proper discharge of his judicial responsibilities, respondent violated the applicable sections of the Rules, in that he allowed a personal relationship to influence his judicial conduct and judgment (Section 33.2[b]). Neither justice nor public confidence in the integrity of the judiciary is served when a judge delays commencement of a proceeding because of his personal irritation with one of the parties.

Respondent's failure to reply to two inquiries from the Office of Court Administration and three from this Commission in the course of a duly authorized investigation compounds the initial misconduct. Failure to cooperate with a Commission investigation has been held to be serious misconduct. *Matter of Jordan*, N.Y.L.J., Aug. 7, 1979, p.

5, col. 1 (Ct. on the Judiciary, 1979; judge suspended without pay for four months).

By reason of the foregoing, the Commission determines that the appropriate sanction is censure. Mr. Kirsch dissents only with respect to sanction and votes that the appropriate sanction is admonition.

Dated: February 11, 1980

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

GEORGE J. BREIGLE,

A Justice of the Sand Lake Town Court, Rensselaer County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
Hon. Richard J. Cardamone
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Robert Straus, Of Counsel) for the Commission.

Arnold C. Peer for Respondent.

Respondent, George J. Breigle, a justice of the Town Court of Sand Lake, Rensselaer County, was served with a Formal Written Complaint dated October 10, 1978, setting forth five charges relating to the improper assertion of influence in traffic cases. Respondent filed an amended answer dated July 17, 1979.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on October 2, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts, as submitted, on October 25, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts

establish misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum on the issues herein. The Commission heard oral argument on December 13, 1979, thereafter, in executive session, considered the record in this proceeding, and upon that record makes the following findings of fact.

1. As to Charge I, on June 17, 1974, respondent sent a letter to the judge of the Albany City Court, seeking special consideration on behalf of the defendant, his son, in *People* v. *Thomas Breigle*, a case then pending in the Albany City Court.

2. As to Charge II, on August 13, 1976, respondent sent a letter to the justice of the Greenfield Town Court, seeking special consideration on behalf of the defendant in *People* v. *Robert J. Thrasher*, a case then pending in the Greenfield Town Court.

3. As to Charge III, on July 28, 1975, respondent sent a letter to the justice of the Greenfield Town Court, seeking special consideration on behalf of the defendant in *People* v. *James Dally*, a case then pending in the Greenfield Town Court.

4. As to Charge IV, on April 4, 1977, respondent sent a letter to the justice of the Queensbury Town Court, seeking special consideration on behalf of the defendant in *People* v. *Joseph Griffith, Jr.*, a case then pending in the Queensbury Town Court.

5. As to Charge V, on May 10, 1976, respondent reduced a charge of speeding to illegal parking in *People* v. *Edward Benesch* as a result of a communication he received from Judge Thomas J. Delaney of the Rensselaer City Court seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such a request, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.2]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

In his letters to other judges, respondent also indicated his willingness to accommodate requests for consideration similar to those he himself was making. Such offers of reciprocity only compound respondent's misconduct.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

By reason of the foregoing, the Commission determines by vote of 10 to 1 that the appropriate sanction is censure. Judge Rubin dissents only with respect to sanction and votes that the appropriate sanction is admonition.

Dated: March 11, 1980

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

HARVEY W. CHASE,

A Justice of the Cicero Town Court, Onondaga County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Robert Straus, Of Counsel) for the Commission.

Richard V. Hunt for Respondent

Respondent, a justice of the Town Court of Cicero, Onondaga County, was served with a Formal Written Complaint dated February 2, 1979, setting forth seven charges relating to the improper assertion of influence in traffic cases. Respondent filed an amended answer dated September 19, 1979.

By notice dated October 12, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on October 25, 1979, found respondent's misconduct established with respect to all seven charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral

argument. Respondent waived oral argument but submitted a letter from his attorney on the issue of sanction.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on June 30, 1974, respondent, or someone at his request, communicated with Justice Harry H. Bushnell of the Town Court of Sullivan, seeking special consideration on behalf of the defendant in *People* v. *David E. Rankin*, a case then pending before Judge Bushnell.

2. As to Charge II, on March 8, 1976, respondent reduced a charge of speeding to failing to keep right in *People* v. *Peter Bogdanski* as a result of a written communication he received from Justice Frank L. Giza of the Town Court of Wawayanda, seeking special consideration on behalf of the defendant.

3. As to Charge III, on May 1, 1974, respondent reduced a charge of failing to stop for a stop sign to driving with an inadequate muffler in *People* v. *Donald E. Banks* as a result of a communication he received from Police Chief William Slattery, or someone at Chief Slattery's request, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on May 1, 1974, respondent reduced a charge of passing a red light to driving with an inadequate muffler in *People* v. *Alan W. Humphreys* as a result of a communication he received from Police Chief William Slattery, or someone at Chief Slattery's request, seeking special consideration on behalf of the defendant.

5. As to Charge V, on February 10, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Anthony N. Mustille* as a result of a communication he received from Justice William B. Van Nostrand of the Town Court of Ovid, or someone at Judge Van Nostrand's request, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on February 24, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Virgil L. Patchen* as a result of a communication he received from Justice Peter V.N. Bodine of the Town Court of Waterloo, or someone at Judge Bodine's request, seeking special consideration on behalf of the defendant.

7. As to Charge VII, on March 3, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *David I. Phelps* as a result of a communication he received from Justice H. Lee Gill of the Town Court of Orleans or someone at Judge Gill's request, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, and 3A of the Code of Judicial Conduct. Charges I through VII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making an *ex parte* request of another judge for a favorable disposition for a defendant in a traffic case, and by granting such requests from judges and other persons of influence, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in

it. . . [Section 33.3(a)(1)]

> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

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

All concur.

Dated: March 11, 1980

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

MICHAEL W. CIENAVA,

A Justice of the New York Mills Village Court, Oneida County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern for the Commission.

Ray & LaFache (By Anthony J. LaFache) for Respondent.

Respondent, a justice of the Village Court of New York Mills, Oneida County, was served with a Formal Written Complaint dated May 9, 1979, setting forth nine charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated June 19, 1979.

By notice dated October 17, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on November 13, 1979, found respondent's misconduct established with respect to all nine charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument but submitted a letter from his attorney on the issue of sanction.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on April 8, 1975, respondent, or someone at his request, communicated with Justice Vincent Scholl of the Town Court of Kirkland, seeking special consideration on behalf of the defendant in *People* v. *William Rowlands*, a case then pending before Judge Scholl.

2. As to Charge II, on September 18, 1975, respondent, or someone at his request, communicated with Justice Fred Schrader of the Village Court of Canajoharie, seeking special consideration on behalf of the defendant in *People* v. *Stanley J. Potrzeba*, a case then pending before Judge Schrader.

3. As to Charge III, on September 9, 1974, respondent reduced a charge of speeding to failure to keep right in *People* v. *Arthur R. Mann, Jr.* as a result of a written communication he received from Justice Vincent P. Scholl of the Town Court of Kirkland, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on December 8, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Michael J. Costello* as a result of a written communication he received from Justice Philip S. Caponera of the Town Court of Colonie, seeking special consideration on behalf of the defendant.

5. As to Charge V, on September 10, 1974, respondent dismissed a charge of no inspection in *People* v. *Carol A. Comenale* as a result of a written communication he received from Trooper Maynard A. Cosnett, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on January 7, 1975, respondent reduced a charge of speeding to disobedience of traffic laws in *People* v. *Michael W. Reynolds* as a result of a written communication he received from Trooper A.L. Broccoli, seeking special consideration on behalf of the defendant.

7. As to Charge VII, on January 28, 1975, respondent reduced a charge of passing a red light to failure to obey traffic laws in *People* v. *Theresa L. Campbell* as a result of a written communication he received from Justice Stanley Wolanin of the Town Court of Whitestown, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on January 14, 1975, respondent reduced a charge of passing a red light to driving with an unsafe tire in *People* v.

Gary P. Kennerknecht as a result of a written communication he received from Police Officer Donald Wolanin, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on April 13, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Richard E. Braun* as a result of a written communication he received from Casimer Krul, Chief of Police of the Village of New York Mills, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through IX of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests from judges and other persons of influence, respondent violated the Rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

All concur.

Dated: March 11, 1980.

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 G. GAMBLE,

A Justice of the Lewiston Town Court, Niagara County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Emily Needle, Of Counsel) for the Commission.

Fuller & Jackson (By Harry O. Fuller) for Respondent.

Respondent, John G. Gamble, a justice of the Town Court of Lewiston, Niagara County, was served with a Formal Written Complaint dated July 27, 1978, setting forth seven charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated October 5, 1978.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on September 28, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts, as submitted, on October 25, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the

facts establish misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum in lieu of oral argument. Respondent did not appear and did not submit a memorandum. The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on May 4, 1976, respondent sent a letter on his judicial stationery to the Justice of the Town Court of Wheatfield, seeking special consideration on behalf of the defendant in *People* v. *Duane Olds*, a case then pending in that court.

2. As to Charge II, on November 4, 1972, respondent imposed an unconditional discharge in *People* v. *Patsy Di Bartolomeo* as a result of a communication he received from Judge Sebastian Lombardi, his co-justice, seeking special consideration on behalf of the defendant.

3. As to Charge III, on March 21, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Charles Modden* as a result of a written communication he received from Justice Theodore J. Cantanucci of the Village Court of Richmondville, seeking special consideration on behalf of the defendant.

4. As to Charge V, on March 26, 1973, respondent sent a letter on his "Judges and Police Executives Conference of Niagara County" stationery to Justice Thomas O'Connell of the Town Court of Brutus, seeking special consideration on behalf of the defendant, his cousin, in *People* v. *Eugene Harvey*, a case then pending before Judge O'Connell.

5. As to Charge VI, on November 19, 1972, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of driving to the left of pavement markings in *People* v. *Joseph Cirillo*, as a result of a written communication he received from Judge Sebastian Lombardi, his co-justice, seeking special consideration on behalf of the defendant.

6. As to Charge VII, on January 2, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Rose Venturella* as a result of a written communication he received from Judge Sebastian Lombardi, his co-justice, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3A of the Code of Judicial Conduct and Canons 4, 5, 13, 14, 17

and 34 of the Canons of Judicial Ethics. Charges I through III and V through VII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Charge IV is not sustained and therefore is dismissed.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

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

All concur.

Dated: March 11, 1980

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

CHARLES PERSONS,

A Justice of the Florida Town Court, Montgomery County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jeanne A. O'Connor, Of Counsel) for the Commission.

Campbell & White (By Ronald A. Campbell).

Respondent, a justice of the Town Court of Florida, Montgomery County, was served with a Formal Written Complaint dated January 29, 1979, setting forth ten charges relating to the improper assertion of influence in traffic cases. Respondent, in a letter from his attorney dated August 20, 1979, withdrew his amended answer.

By notice dated October 3, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on October 25, 1979, found respondent's misconduct established with respect to all ten charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on April 2, 1976, respondent sent a letter to Justice James Davidson of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in *People* v. *Leon A. Gray*, a case then pending before Judge Davidson.

2. As to Charge II, on February 10, 1976, respondent sent a letter to Justice James Corkland of the Town Court of Lake George, seeking special consideration on behalf of the defendant in *People* v. *Carl Graziane*, a case then pending before Judge Corkland.

3. As to Charge III, on December 7, 1974, respondent sent a letter to Justice Joseph Thomson of the Town Court of Cornwall, seeking special consideration on behalf of the defendant in *People* v. *Peter J. Parisi*, a case then pending before Judge Thomson.

4. As to Charge IV, on March 18, 1976, respondent communicated with Judge Edward Lahey of the Newburgh Town Court seeking special consideration on behalf of the defendant in *People* v. *Timothy A. Quinn*, a case then pending before Judge Lahey.

5. As to Charge V, on April 23, 1976, respondent communicated with Justice James Brookman of the Town Court of Glen, seeking special consideration on behalf of the defendant in *People* v. *Robert J. Phelps*, a case then pending before Judge Brookman.

6. As to Charge VI, on July 10, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Michael A. Conforti* as a result of a written communication he received from Justice Steve A. Skramko of the Town Court of Warren, seeking special consideration on behalf of the defendant.

7. As to Charge VII, on October 15, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Ronald S. Miga* as a result of a written communication he received from Justice Stanley Wolanin of the Town Court of Whitestown, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on April 12, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Wayne Sparre* as a result of a written communication he received from Justice Richard A. Folmsbee of the Town Court of Princetown, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on November 16, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Harry M. Huyck* as a result of a communication he received from Justice Raymond W. Cashman of the Town Court of German Flatts or someone at Judge Cashman's request, seeking special consideration on behalf of the defendant.

10. As to Charge X, on December 6, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Salvatore J. Guarino* as a result of a communication he received from Justice Frank Politano of the Town Court of Perth or someone at Judge Politano's request, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through X of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such requests, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

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

All concur.

Dated: March 11, 1980

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

ANGELO ROOT,

A Justice of the Bolton Town Court, Warren County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jeanne A. O'Connor, Of Counsel) for the Commission.

William W. Millington for Respondent.

Respondent, Angelo Root, a justice of the Town Court of Bolton, Warren County, was served with a Formal Written Complaint dated June 1, 1979, setting forth six charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated June 14, 1979.

By notice dated October 22, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on November 13, 1979, found respondent's misconduct established with respect to all six charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The ad-

ministrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument but submitted letters on the issue of sanction.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on April 16, 1975, respondent communicated with Justice James Corkland of the Town Court of Lake George, seeking special consideration on behalf of the defendant in *People* v. *Raymond J. Ciccarelli*, a case then pending before Judge Corkland.

2. As to Charge II, on August 27, 1974, respondent sent a letter to Justice John S. Carusone of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in *People* v. *Sheldon Diamond*, a case then pending before Judge Carusone.

3. As to Charge III, on July 30, 1974, respondent sent a letter to Justice John Carusone of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in *People* v. *William T. Pfau*, a case then pending before Judge Carusone.

4. As to Charge IV, on February 2, 1977, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Walter Chapman* as a result of a written communication he received from Justice James H. West of the Town Court of Newcomb, seeking special consideration on behalf of the defendant.

5. As to Charge V, on March 9, 1977, respondent reduced a charge of speeding to parking on the pavement in *People* v. *Robert M. Garrow* as a result of a written communication he received from Justice Joseph Johnson of the Town Court of North Hudson, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on January 26, 1977, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Lawrence Capozzi* as a result of a written communication he received from Peter J. Savago, Ulster County Legislature Chairman, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through VI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by granting such requests from judges and other persons of influence, respondent violated the Rules enumerated above.

In one of his letters to another judge, respondent also indicated his willingness to accommodate a request for consideration similar to the one he himself was making. Such an offer of reciprocity only compounds respondent's misconduct.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

All concur.

Dated: March 11, 1980

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

FRED H. SCHRADER,

A Justice of the Canajoharie Town Court, Montgomery County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jeanne A. O'Connor, Of Counsel) for the Commission.

Charles H. Clark for Respondent.

Respondent, a justice of the Town Court of Canajoharie, Montgomery County, was served with a Formal Written Complaint dated August 16, 1979, setting forth five charges relating to the improper assertion of influence in traffic cases. Respondent, in a letter from his counsel dated August 21, 1979, waived his opportunity to file an answer.

By notice dated October 11, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent submitted an affidavit in opposition to the motion. The Commission granted the motion on October 25, 1979, found respondent's misconduct established with respect to all five charges in the Formal Written Complaint, and set a date for oral argument on the issue of an ap-

propriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent wavied oral argument but submitted a letter from his attorney on the issue of sanction.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on June 27, 1975, respondent sent a letter to Justice Richard Lips of the Town Court of Clifton Park, seeking special consideration on behalf of the defendant in *People* v. *Barbara F. Gisinger*, a case then pending before Judge Lips.

2. As to Charge II, on December 26, 1974, respondent sent a letter to Justice Andre Bergeron of the Town Court of Lewis, seeking special consideration on behalf of the defendant in *People* v. *Anthony D. Gisondi*, a case then pending before Judge Bergeron.

3. As to Charge III, on April 5, 1976, respondent sent a letter to Judge George Mulligan of the Johnstown City Court, seeking special consideration on behalf of the defendant in *People* v. *Maude Van Arsdal*, a case then pending before Johnston City Court Judge Mario Costa.

4. As to Charge IV, on November 18, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Arthur R. Smith* as a result of a written communication he received from Marie Oakes, Bethlehem Town Court Clerk, seeking special consideration on behalf of the defendant.

5. As to Charge V, on September 20, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Stanley J. Potrzeba* as a result of a communication he received from Justice Michael Cienava of the Village Court of New York Mills, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of

other judges for favorable dispositions for defendants in traffic cases, and by granting such requests from a judge and another person of influence, respondent violated the Rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

All concur.

Dated: March 11, 1980

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

MARIO M. ALBANESE,

A Judge of the County Court, Fulton County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission.

Michael F. Geraghty for Respondent.

Respondent, a judge of the Fulton County Court, was served with a Formal Written Complaint dated December 12, 1978, setting forth five charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated January 5, 1979.

By order dated January 30, 1979, the Commission appointed the Honorable Simon Liebowitz to hear and report to the Commission with respect to the facts in this proceeding. The hearing was conducted on March 6 and April 24, 1979, and the report of the referee was filed with the Commission on September 20, 1979.

On December 12, 1979, the Commission heard oral argument on a motion and cross-motion to confirm in part and disaffirm in part the report of the referee. Thereafter, in letters dated January 8, January 21 and January 25, 1980, respondent requested that the record be opened and that the Commission consider an affidavit not theretofore

a part of the record. The motion is considered and is denied.

On February 26, 1980, the Commission, in executive session, considered the record of this proceeding, and upon that record makes the findings of fact and conclusions of law herein.

Charge II of the Formal Written Complaint is not sustained and therefore is dismissed.

With respect to Charges I, III, IV and V of the Formal Written Complaint, the Commission makes the following findings of fact.

1. As to Charge I, on July 19, 1974, respondent sent a letter to Justice Richard Willis of the Village Court of Addison, improperly intervening on behalf of the defendant in *People* v. *Patricia Albanese*, a case then pending before Judge Willis.

2. As to Charge III, on May 30, 1975, respondent improperly intervened in the case of *People* v. *Daniel Rooney*, by sending a letter to Justice Michael Riccio of the Amsterdam City Court.

3. As to Charge IV, on September 7, 1976, respondent improperly intervened in the case of *People* v. *Carl Albanese*, a case pending in the Gloversville City Court, by requesting an adjournment from the court clerk.

4. As to Charge V, on March 4, 1975, respondent improperly intervened in the case of *People* v. *Jennifer Rooney*, a case pending in the Gloversville City Court, by requesting an adjournment from the court clerk.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A and 5F of the Code of Judicial Conduct. Charges I, III, IV and V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to intervene in a proceeding before another judge or court clerk, on the basis of personal interest. By making *ex parte* requests of other judges or their court clerks for information or adjournments for the defendants in traffic cases, respondent violated the rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

All concur.

Dated: March 19, 1980

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

DAVID H. RIVENBURGH,

A Justice of the Ghent Town Court, Columbia County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jeanne A. O'Connor, Of Counsel) for the Commission.

Robert G. Leyden for Respondent.

Respondent, a justice of the Town Court of Ghent, Columbia County, was served with a Formal Written Complaint dated May 31, 1979, setting forth three charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated July 27, 1979.

By notice dated October 22, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on November 13, 1979, found respondent's misconduct established with respect to all three charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument but submitted a letter on sanction from his attorney.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on January 15, 1976, respondent sent a letter to Justice George E. Carl of the Town Court of Catskill, seeking special consideration on behalf of the defendant in *People* v. *Robert J. Boll*, a case then pending before Judge Carl.

2. As to Charge II, on July 29, 1975, respondent sent a letter to Justice James B. Lamb of the Town Court of Nassau, seeking special consideration on behalf of the defendant in *People* v. *Charles March,* a case then pending before Judge Lamb.

3. As to Charge III, on July 16, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Michael Drawjchak* as a result of a communication he received from Justice Marvin Pechtel of the Town Court of Kinderhook, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such a request, respondent violated the Rules enumerated above.

In one of his letters to another judge, respondent also indicated his willingness to accommodate a request for consideration similar to the one he himself was making. Such an offer of reciprocity only compounds respondent's misconduct.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

All concur.
Dated: March 19, 1980

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

JEROME L. STEINBERG,

A Judge of the Civil Court of the City of New York, Kings County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Robert Straus and Emily Needle, Of Counsel) for the Commission.

Nathan R. Sobel for Respondent.

Respondent, Jerome L. Steinberg, a judge of the Civil Court of the City of New York, was served with a Formal Written Complaint dated February 1, 1979, setting forth seven charges of misconduct. Respondent filed an answer dated March 11, 1979.

By notice of motion dated May 10, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). Respondent opposed the motion in papers served on June 19, 1979, and cross moved for the Commission (i) to appoint a referee to hear and report findings of fact and conclusions of law or, in the alternative, (ii) to dismiss the Formal Written Complaint or determine that respondent be "privately 'admonished'." The administrator opposed respondent's cross motions in an affirmation dated June 19, 1979.

On June 26, 1979, the Commission denied the motion as well as the cross motion and ordered that the matter be referred to a referee to hear and report with respect to findings of fact. On the same date, the Commission appointed the Honorable Bertram Harnett as referee to hear and report. The hearing was held on July 23, 24 and 26, 1979, and Judge Harnett submitted his report to the Commission on September 12, 1979.

By notice of motion dated October 10, 1979, the administrator moved to confirm the referee's report and to render a determination. Respondent cross moved on December 4, 1979, to dismiss the Formal Written Complaint.

The Commission heard oral argument with respect to the issues herein on December 12, 1979. The Commission considered the record of this proceeding, in executive session, and upon that record makes the determination herein.

Preliminarily, the Commission finds that respondent assumed office as a judge of the Civil Court of the City of New York in January 1970, that respondent was admitted to the bar of the State of New York in 1955, practiced law in this state and held a number of public positions prior to becoming a judge.

With respect to Charge I of the Formal Written Complaint, the Commission makes the following findings of fact.

1. While in private practice, respondent had arranged and serviced loans for Toshi Miyazaki and businesses controlled by Mr. Miyazaki. Mr. Miyazaki is a travel agent whose clientele are primarily people from Japan and those of Japanese descent. (Throughout these findings, Mr. Miyazaki and his various companies are referred to as "Miyazaki.")

2. As young men, respondent and Miyazaki had been fellow Olympic class wrestling competitors. They have been friends for 30 years.

3. Respondent was friendly with Jerome Silverman, a CPA who was Miyazaki's accountant. Before coming to the bench, respondent had arranged loans with which Silverman was familiar.

4. Silverman approached respondent in June 1970 and asked respondent to assist Miyazaki in refinancing some loans.

5. In response to Silverman's request, respondent spoke to Melvin Ditkowitch on Miyazaki's behalf. Prior to coming to the bench, respondent had arranged loans between Miyazaki and Ditkowich. Respondent and Ditkowich were neighbors and were friends since about 1954.

6. Respondent caused Ditkowich to make a $90,000 loan to Miyazaki with an interest rate of 24 per cent per annum.

7. At respondent's request, Vincent Pizzuto, respondent's law secretary, prepared security, collateral, and guarantee agreements and other documents relating to a transaction in which Ditkowich and Jack Volk lent $90,000 to two Miyazaki corporations. These sums were to be repaid at an annual interest rate of 24 per cent.

8. Mr. Pizzuto acted as attorney for Ditkowich and Volk in closing the loan transaction.

9. The closing took place on or about June 5, 1970, in respondent's chambers or in a room adjoining his chambers, in respondent's presence. The documents pertaining to the loan were there signed and witnessed.

10. At the closing, approximately $90,000, including checks payable to the order of respondent, "as attorney," and endorsed by respondent, or with his authority, were transferred between the loan parties. In this context, it is found, "attorney" denominated the status of "attorney-in-fact."

11. At the closing, respondent's law secretary, Pizzuto, received principal and interest payments delivered by Miyazaki and turned them over to respondent.

12. Respondent from time to time, while he was a judge of the Civil Court, collected principal and interest payments on the loan at Miyazaki's place of business and in chambers and delivered them to Ditkowich at the latter's home.

13. From time to time Pizzuto, while still respondent's law secretary and at respondent's request, also went to Miyazaki's place of business to receive principal and interest payments which he delivered to respondent in the courthouse.

14. Respondent maintained the written records relied upon by the parties to the loan.

15. As compensation for his participation in the transaction, respondent received one-eighth of the 24 per cent annual interest paid. This sum was expressed as "3%."

16. Prior to signing of the loan agreement in June 1970, respondent was aware that there were statutory provisions fixing the maximum rate of interest for certain loans at 25 per cent.

17. Following the discussions with Silverman and Miyazaki, initiated by Silverman, the interest on the loan was subsequently increased to 27 per cent per year.

18. After the interest rate was increased to 27 per cent, respondent continued to participate in the transaction by receiving and delivering loan and interest payments and by maintaining the written records pertaining to the loan.

19. Respondent continued to receive payments, now one-ninth the interest (still "3%") as compensation for his participation in the transaction.

20. The compensation to respondent was known to Miyazaki and was in fact considered by Miyazaki as his payment to respondent for his initial role in originating the loans and for his activities in servicing them.

21. During 1970, respondent earned income from his participation in the loan transaction which he failed to report in 1971 on his 1970 federal, state, and city income tax returns.

22. During 1971, respondent earned income from his participation in the loan transaction which he failed to report in 1972 on his 1971 federal, state, and city income tax returns.

23. During 1972, respondent earned income from his participation in the loan transaction which he failed to report in 1973 on his 1972 federal, state, and city income tax returns.

24. It is found that respondent's failure to report income from the loan transactions on his 1970, 1971, and 1972 federal, state, and city income tax returns was intentional.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4, 24, 25 and 34 of the Canons of Judicial Ethics. Charge I, subdivisions (a) through (j) and subdivisions (l) through (p) are sustained and respondent's misconduct is established. As to subdivision (k) of Charge I, insofar as it is found that a gross charge of 27 per cent was paid by the borrower, Miyazaki, that portion of the subdivision so alleging is sustained. It cannot be determined upon this record, however, whether the loan transactions recited were, in fact, legally usurious as defined under the Penal Law. Requisite elements of intent and collateral circumstances were not developed. That portion of subdivision (k) of Charge I alleging that the interest on the loan exceeded the maximum permissible legal rate of 25 per cent per year is not sustained and it therefore is dismissed.

Also dismissed are those portions of Charge I alleging that the loan transaction constituted the practice of law by respondent (Formal Written Complaint, par. 6, reference to Canon 31 and the Constitution).

With respect to Charge II, the Commission finds that the charge is not sustained and therefore is dismissed.

With respect to Charge III, the Commission makes the following findings of fact.

25. In 1971, and in response to Miyazaki's request for additional financial assistance, respondent communicated with Daniel Bukantz, a dentist who had treated respondent, and arranged for Dr. Bukantz to lend $5,000 to Miyazaki, which was to be repaid at an annual interest rate of 27 per cent.

26. Before arranging this loan transaction, respondent had knowledge of legal provisions fixing the permissible rates of interest.

27. Respondent received principal and interest payments, usually in cash, at Miyazaki's place of business and at chambers. Respondent thereafter wrote personal checks payable to the order of Dr. Bukantz which represented principal and interest payments to Dr. Bukantz by Miyazaki.

28. Respondent kept the written records relied upon by the parties to the loan.

29. Respondent received 9 per cent (i.e. one-third) of the interest sum per annum as payment for his participation in the transaction.

30. During 1971, respondent earned income from his participation in the loan transaction which he failed to report in 1972 on his 1971 federal, state and city income tax returns.

31. During 1972, respondent earned income from his participation in the loan transaction which he failed to report in 1973 on his 1972 federal, state and city income tax returns.

32. In 1972, on his 1971 federal, state, and city income tax returns, respondent listed as personal medical or dental expenses the principal and interest payments paid by Miyazaki to respondent, usually in cash, and forwarded by respondent by his personal checks to Dr. Bukantz.

33. In 1973, respondent listed on his 1972 federal, state and city income tax returns as medical or dental expenses principal and interest payments made by Miyazaki which respondent had forwarded to Dr.

Bukantz.

34. Respondent's failure to report income from the loan transaction on his 1971 and 1972 federal, state and city income tax returns, and respondent's treatment of principal and interest payments as dental expenses on his 1971 and 1972 federal, state and city income tax returns were intentional.

35. Respondent's participation in the loan transaction constituted the business practice of arranging for loans and servicing the payments.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4, 24, 25 and 34 of the Canons of Judicial Ethics. Charge III, subdivisions (b) through (i), is sustained and respondent's misconduct is established, except as to that portion of the charge alleging that respondent's acts constituted the practice of law (Formal Written Complaint, par. 10, reference to Canon 31 and the Constitution), which is dismissed. Subdivision (a) of Charge III is sustained, insofar as it is alleged that a gross charge of 27 per cent was paid by the borrower, Miyazaki. It cannot be determined from the record, however, whether the loan transaction recited was, in fact, legally usurious as defined under the Penal Law. Requisite elements of intent and collateral circumstances were not developed. Therefore, that portion of subdivision (a) of Charge III alleging that the interest on the loan exceeded the maximum permissible legal rate of 25 per cent per year is not sustained and it therefore is dismissed.

With respect to Charge IV, the Commission makes the following findings of fact.

36. In the spring of 1973, Jerome Silverman, a good friend of respondent's, asked respondent on behalf of Silverman's client, Merrick Harbor Drugs, Inc., for help with a loan.

37. Respondent communicated with his neighbor, David Gilman, and arranged for Mr. Gilman and his wife, Lynn Gilman, to lend $10,000 to Merrick Harbor which was to be repaid at an annual interest rate of 24 per cent.

38. On or about April 1, 1973, respondent personally drafted and typed the Merrick Harbor loan documents, which included two corporate powers of attorney and a stock power.

39. Respondent personally guaranteed this Gilman loan.

40. Respondent delivered the $10,000 principal in cash to Merrick Harbor at its place of business.

41. While delivering the $10,000 to Merrick Harbor, with the intent of concealing his identity as a judge and without the prior authorization of his law secretary, respondent represented himself as "V. Pizzuto".

42. Respondent received principal and interest payments on the loan from Merrick Harbor at its place of business on a monthly basis, retained 1 per cent per month of the 2 per cent interest paid for himself, and delivered the remaining portion to the Gilmans.

43. When receiving principal and interest payments on the loan from Merrick Harbor, respondent, with the intent of concealing his identity and without the prior authorization of his law secretary, Vincent Pizzuto, represented himself as "Vincent Pizzuto" or "V. Pizzuto" and signed receipts as "V. Pizzuto" or "Vincent Pizzuto".

44. In 1973, respondent earned approximately $600 from his participation in this loan transaction. He failed to report this amount on his federal, state and city income tax returns for 1973.

45. Respondent's failure to report this income on his 1973 income tax returns was intentional.

46. The Merrick Harbor transaction was a loan transaction entered into for profit in which respondent was an active and managing participant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4, 24, 25 and 34 of the Canons of Judicial Ethics, Canons 1, 2 and 6C of the Code of Judicial Conduct, and Sections 33.1, 33.2(a), 33.2(c), 33.5(c)(1) and 33.5(c)(2) of the Rules Governing Judicial Conduct. Charge IV of the Formal Written Complaint is sustained and respondent's misconduct is established, except as to those portions of the charge alleging that respondent engaged in the practice of law (Formal Written Complaint, par. 12, reference to Canon 31 of the Canons, Canon 5F of the Code, and the Constitution), and involving failure to report to the clerk of his court certain compensation and income (Formal Written Complaint, par. 12, reference to Section 33.6[c] of the Rules), which is dismissed.

With respect to Charge V, the Commission makes the following findings of fact.

47. In response to a request in 1973 from Silverman on behalf of his accounting client Logitek, respondent communicated with Ditkowich and Gilman for the purpose of arranging financial assistance for Logitek.

48. At respondent's request, Gilman agreed to lend $15,000 to Logitek.

49. At respondent's request, Ditkowich agreed to lend $65,000 to Logitek.

50. At respondent's request, his law secretary, Vincent Pizzuto, prepared loan, security, guarantee and collateral documents pertaining to the transaction.

51. In the loan papers, the lender was shown as Sandra Steinberg "as agent for undisclosed principals." Sandra Steinberg is respondent's wife.

52. On or about January 5, 1974, in respondent's presence, documents pertaining to the loan were signed and witnessed and approximately $80,000 was transferred to Logitek, who was to repay the loan at an interest rate of 20 per cent.

53. In response to a further request by Silverman, respondent communicated with Ditkowich for the purpose of arranging an additional loan to Logitek.

54. At respondent's request, Ditkowich agreed to lend an additional $20,000 to Logitek.

55. Either Logitek would deliver principal and interest payments to respondent's home or to respondent, or respondent and his wife would drive to Suffolk County to pick up the payments.

56. Respondent and his wife received a portion of the interest paid to both Gilman and Ditkowich as payment for their participation in the transaction.

57. By his participation in the loan interest, respondent engaged in a business transaction for profit.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4, 24, 25, and 34 of the Canons of Judicial Ethics, Canons 1, 2 and 6C of the Code of Judicial Conduct, and Sections 33.1, 33.2(a), 33.2(c), 33.5(c)(1) and 33.5(c)(2) of the Rules Governing Judicial Conduct. Charge V of the Formal Written Complaint is sustained, and respondent's misconduct is established, except as to those portions of the charge alleging that

respondent engaged in the practice of law (Formal Written Complaint, par. 14, reference to Canon 31 of the Canons, Canon 5F of the Code, and the Constitution), and involving failure to report to the clerk of his court certain compensation and income (Formal Written Complaint, par. 14, reference to Section 33.6[c] of the Rules), which are dismissed.

With respect to Charge VI, the Commission finds the charge is not sustained and therefore is dismissed.

With respect to Charge VII, the Commission makes the following findings of fact.

58. In 1971, respondent received a $5,545.50 forwarding fee from Nishman & DeMarco, from his terminated legal practice, which fee he failed to report in 1972 on his 1971 federal, state and city income tax returns.

59. On at least two other occasions, forwarding fees came to respondent from referrals apparently predating his ascending the bench, which were reported on his income tax.

60. Respondent's failure to report the $5,545.50 fee in his 1971 tax returns was intentional.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4 and 34 of the Canons of Judicial Ethics. Charge VII is sustained, and respondent's misconduct is established.

The obligation to avoid both impropriety and the appearance of impropriety is fundamental to the fair and proper administration of justice. The canons and rules of ethical behavior cited above state that obligation. They propound the requirement of propriety by judges in conduct both on and off the bench. They also express standards as to the avoidance of business and other activities, which do in fact or may appear to conflict with the judge's exercise of judicial responsibilities.

Canon 4 of the Canons, for example, states that a judge's "official conduct should be free from impropriety and the appearance of impropriety," that "he should avoid infractions of law," and that his personal behavior on the bench and "also in his every-day life, should be beyond reproach."

Canon 24 of the Canons states that a judge should neither accept inconsistent duties nor incur pecuniary or other obligations "which will in any way interfere or appear to interfere with his devotion to the ex-

peditious and proper administration of his official duties."

Canon 25 of the Canons states that a judge should avoid the appearance of lending the prestige of his office to persuade others to contribute to private business ventures, and that a judge therefore should not enter into such private business or pursue a course of conduct that would create such an appearance or could reasonably be expected to bring his personal interests in conflict with his official duties.

Canon 34 of the Canons states that a judge should not administer his office "for the purpose of advancing his personal ambitions. . ."

The corresponding sections of the Rules Governing Judicial Conduct and the Code of Judicial Conduct also express these standards and in some instances are more explicit. For example, Section 33.6(c)(2) of the Rules, states that "[n]o judge. . . of. . . the Civil Court of the City of New York. . . shall be a managing or active participant in any form of business enterprise organized for profit. . ."

By participating in the various loan transactions recited above, respondent violated the applicable canons and rules which prohibit judges from direct and active participation in business activity.

By conducting such private business in his chambers and by enlisting the participation of his law secretary in private business matters which respondent knew would enure to his own financial benefit, respondent violated the applicable canons and rules which caution a judge against using the prestige of his office in the pursuit of private business ventures, and which caution a judge against administering his office "for the purpose of advancing his personal ambitions."

By concealing his own identity at numerous business meetings and using his law secretary's name instead of his own, respondent violated the applicable canons and rules that require a judge to conduct himself in a manner beyond reproach and in a way that avoids impropriety and the appearance of impropriety. While a definition of "beyond reproach" concededly will vary with differing circumstances, it is clear to us that by masquerading as his law secretary, respondent acted improperly and brought discredit to the integrity of the judiciary.

By intentionally failing to report his business income, and by misstating certain transactions as personal dental or medical deductions, respondent violated the canons and rules that require a judge to respect and comply with the law at all times. The Commission finds patently implausible respondent's assertion before the referee that he

"simply forgot" to report his income. These business dealings wre extensive and time consuming, the amounts of money involved were great, the nature of the business dealings were complicated and the concealment of his identity and calling himself "Pizzuto" were too significant for this Commission to believe that somehow, in several years at income tax time, respondent "simply forgot."

The Commission notes that it sustains four charges in which it was alleged that respondent failed to report income on his tax returns, and finds that all of the omissions were intentional. The referee had recommended a finding of intentional omission as to three charges and unintentional omission as to the fourth (Charge VII). Charge VII involves a $5,545.50 forwarding fee received by respondent in 1971 from his terminated legal practice. The record shows (i) that respondent bought a used Cadillac with the money, (ii) that the forwarding fee was a substantial part of his income in 1971, and (iii) when asked why he did not report it for tax purposes, respondent replied that he "obviously" forgot the check when reporting his income and that "[i]t wasn't there to remind me" (Tr. 464-66).*

We do not believe it credible that respondent could forget so substantial a fee. The check itself may not have been "there to remind" him, as respondent asserts, but the Cadillac surely was reminder enough that respondent had recently received a large amount of reportable income. We also find it significant that respondent made similar omissions of income as alleged with respect to Charges I, III and IV.

The referee regarded as a "persuasive factor" in this case "[r]espondent's manifest driving force to make more money[,]. . . his preoccupation with making supplementary money, and his constant characterization of his activity as business income. . ." (Rep. 26).** Not only was respondent's devotion to these business activities time consuming, some of his private business was conducted in chambers and, at respondent's request, involved his law secretary in services that respondent well knew would enure to his own profit.

Respondent emerges as one whose pursuit of private business and profit compromised the administration of his office and the obligation to report income from such activities on his tax returns according to law. Furthermore, as evidence that perhaps he himself was aware of the impropriety of a judge acting in this fashion, but nevertheless motivated by the "driving force to make more money," respondent on numerous occasions concealed his identity.

Such conduct establishes respondent's lack of moral fitness to serve as a judicial officer.

A judge is obliged to conduct himself "at all times" in a manner that promotes public confidence in the integrity of the judiciary (Section 33.2[a] of the Rules). The applicable ethical standards do not apply only to those periods a judge is on the bench. Public confidence in the judiciary, and the entire legal system as well, may be affected adversely as much by what a judge does off the bench as what he does on it. By his conduct herein, respondent has shown he is neither willing nor able to discharge this obligation which is indispensible to the promotion of public confidence in our courts and the integrity and impartiality of the administration of justice.

The Commission concludes that cause exists for disciplining respondent according to Article VI, Section 22, of the Constitution and Article 2-A of the Judiciary Law. The Commission also concludes that respondent has evinced an utter disregard for the sanctity of the trust reposed in him as a judicial officer.

Although the misconduct found herein was for conduct engaged in while respondent was off the bench, such circumstance is not a bar to removing respondent from office, considering the serious and substantial breach of the applicable canons and rules. Article VI, Section 22, of the Constitution. See also: *Matter of Sobeck*, N.Y.L.J., Aug. 8, 1979, p. 8, col. 5 (Comm. on Jud. Conduct, July 2, 1979); *Matter of Kuehnel*, NYLJ, Sept. 26, 1979, p. 12, col. 5 (Com. on Jud. Conduct, Sept. 6, 1979); *Matter of Friedman*, 12 NY2d(a)(d) (Ct. on the Judiciary 1963); *Matter of Pfingst*, 33NY2d(a)(ii) (Ct. on the Judiciary 1973); and *Matter of Sarisohn*, 26 AD2d 388 (2d Dept. 1966).

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

Dated: March 21, 1980

NOTE—The Court of Appeals, upon review, accepted the Commission's determination to remove the judge from office. 51 NY2d 74 (1980).

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*"Tr." refers to the transcript of the hearing before the referee.

**"Rep." refers to the report of the referee to the Commission.

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

PATRICK J. CUNNINGHAM,

A Judge of the County Court, Onondaga County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

Leonard H. Amdursky for Respondent

Respondent, a judge of the County Court, Onondaga County, was served with a Formal Written Complaint dated March 27, 1979, setting forth two charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated April 17, 1979.

On November 21, 1979, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination upon the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts, as submitted, on December 12, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any.

Both the administrator and respondent submitted a memorandum on the issue of sanction. On January 23, 1980, after hearing oral argument, the Commission, in executive session, considered the record in this proceeding and upon that record makes the following findings of fact.

Charge I: Respondent sent a letter on his judicial stationery to Justice James E. Jerome of the Town Court of Geddes, seeking special consideration on behalf of the defendant in *People* v. *Kenneth P. Williams*, a case then pending before Judge Jerome. The defendant is an acquaintance of respondent who worked in respondent's election campaign for county court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Charge II of the Formal Written Complaint is not sustained and is therefore dismissed.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. Respondent is a judge who sits full-time in a court of record and was obliged to know that his conduct was improper. By making an *ex parte* request of another judge for a favorable disposition for a defendant in a traffic case, respondent violated the Rules enumerated above.

Courts in this and other states have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

By reason of the foregoing, the Commission determines by vote of 8 to 1 that the appropriate sanction is admonition. Mr. Kirsch dissents only with respect to sanction, and votes that a letter of dismissal and caution be sent to respondent.

Dated: March 26, 1980

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

EDWARD J. FLYNN,

A Justice of the Clarkstown Town Court, Rockland County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Emily Needle, Of Counsel) for the Commission

McCormack & Damiani (By Gilbert E. McCormack) for Respondent

Respondent, a justice of the Town Court of Clarkstown, Rockland County, was served with a Formal Written Complaint dated January 5, 1979, setting forth (i) eight charges of misconduct relating to his failure to disqualify himself in cases in which his impartiality reasonably might be questioned and (ii) five charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated February 7, 1979.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on October 19, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission made its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts, as submitted, on November 14, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts

establish misconduct and (ii) an appropriate sanction, if any, and invited memoranda thereupon. The administrator submitted a memorandum.

The Commission heard oral argument on January 23, 1980, thereafter, in executive session, considered the record in this proceeding, and upon that record makes the determination herein.

Preliminarily, the Commission finds that respondent is a part-time justice who is permitted to engage in the practice of law.

As to Charges I through IX and Charge XIII(a), the Commission makes the following findings of fact.

1. Charge I: On March 24, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *John B. Juliano* as the result of an oral request and a written communication received by a clerk of the Town Court of Clarkstown from Justice Edmund V. Caplicki, Jr., of the Town Court of LaGrange. In a note addressed to respondent, the Clarkstown Town Court clerk referred to Judge Caplicki's request for "consideration."

2. Charge II: On May 15, 1975, respondent imposed an unconditional discharge in *People* v. *Jerome Thiese* as the result of a written communication he received from a clerk of the Town Court of Clarkstown, seeking special consideration on behalf of the defendant.

3. Charge III: On March 12, 1975, respondent imposed an unconditional discharge in *People* v. *Carl J. Holback, Jr.*, as the result of a written communication he received from a clerk of the Town Court of Clarkstown, seeking special consideration on behalf of the defendant.

4. Charge IV: On May 15, 1975, respondent imposed an unconditional discharge in *People* v. *Joann Cortese* as the result of a written communication he received from a clerk of the Town Court of Clarkstown, seeking special consideration on behalf of the defendant.

5. Charge V: On May 9, 1975, respondent imposed an unconditional discharge in *People* v. *Lorraine Schlemmer* as the result of a written communication he received from a clerk of the Town Court of Clarkstown, seeking special consideration on behalf of the defendant.

6. Charge VI: On November 14, 1974, respondent failed to disqualify himself and adjourned in contemplation of dismissal a charge of speeding in *People* v. *Daniel C. Harm*, notwithstanding (i) that the defendant's mother was then employed by the law firm of Mendelson & Flynn, of which respondent was then a partner, (ii) that the defen-

dant's parents had been clients of the firm and (iii) that the defendant's mother had referred several clients to the firm.

7. Charge VII: On November 21, 1974, respondent failed to disqualify himself and adjourned in contemplation of dismissal a charge of speeding in *People* v. *Michael Harm*, notwithstanding (i) that the defendant's mother was then employed by the law firm of Mendelson & Flynn, of which respondent was then a partner, (ii) that the defendant's parents had been clients of the firm and (iii) that the defendant's mother had referred several clients to the firm.

8. Charge VIII: On July 24, 1975, respondent failed to disqualify himself and imposed an unconditional discharge on a charge of speeding in *People* v. *Michaele V. Vandernoth*, notwithstanding that, at the time of respondent's disposition, the law firm of Mendelson & Flynn, of which respondent was then a partner, was representing the defendant in another matter.

9. Charge IX: On March 26, 1974, respondent failed to disqualify himself and imposed an unconditional discharge on a charge of passing in a no-passing zone, notwithstanding that, at the time of respondent's disposition, the law firm of Mendelson & Flynn, of which respondent was then a partner, was representing the defendant in another matter.

10. Charge XIII(a): On November 24, 1976, respondent failed to disqualify himself and adjourned in contemplation of dismissal a charge of leaving the scene of an incident without reporting it in *People* v. *Harold Mitchell*, notwithstanding that the defendant and the defendant's wife had been clients of the law firm of Mendelson & Flynn at a time when respondent was a partner in that firm.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(4) and 33.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(4) and 3C(1) of the Code of Judicial Conduct. Charges I through IX and Charge XIII(a) of the Formal Written Complaint are sustained and respondent's misconduct is established.

Charges X through XII and Charge XIII(b) of the Formal Written Complaint are not sustained and therefore are dismissed.

Respondent's misconduct in the matters herein falls into two categories: (i) acceding to special influence on behalf of defendants in traffic cases and (ii) failing to disqualify himself in cases in which his impartiality reasonably might be questioned.

As to the accession to special influence in traffic cases, it is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the individual who made the request. By granting *ex parte* requests for favorable dispositions for defendants in traffic cases, from a judge and others in a special position to influence him, respondent violated the applicable sections of the Rules enumerated above.

Courts in this state and other jurisdictions, and this Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

As to those matters pertaining to respondent's failure to disqualify himself, it is improper for a judge to preside over matters in which his impartiality reasonably might be questioned because of his relationship to one or more of the parties.

Public confidence in the integrity and impartiality of the judiciary is not maintained where a judge who presides over matters in which his clients, former clients and relatives of his law firm's employee appear as parties. By presiding over such cases, respondent envinced a disregard of the specific Rules which required his disqualification, as well as those which require all judges to conduct themselves in such a manner as to promote public confidence in the judiciary and to avoid even the appearance of impropriety. As noted by the Appellate Division in *Matter of Filipowicz*:

> While we realize that in small communities, part-time Judges or Justices, many of whom are principally engaged in the practice of law, know many, if not most, of the people in their community, and may, in exigent circumstances, be required to preside over arraignments and bail applications, we cannot countenance the apparently prevailing practice in which such judicial officers sit in judgment in cases in which they formerly had an attorney-client relationship with the litigant. *Matter of Filipowicz*, 54 AD2d 348, 350 (2d Dept. 1976).

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

All concur, except for Mr. Bromberg, who votes that the appropriate sanction is censure.

Dated: March 26, 1980

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

R. DOUGLAS HIRST,

A Justice of the Fishkill Village Court, Dutchess County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Edith Holleman and Richard Granofsky, Of Counsel) for the Commission.

Bernard Kessler for Respondent.

Respondent, a justice of the Village Court of Fishkill, Dutchess County, was served with a Formal Written Complaint dated July 27, 1978, setting forth five charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated August 25, 1978.

By an amended notice dated December 4, 1978, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent submitted an affirmation in opposition to the motion for summary determination. The Commission denied the motion on January 24, 1979.

By order dated March 5, 1979, the Commission appointed the Honorable Caroline K. Simon as referee to hear and report with respect to the facts herein. A hearing was conducted on July 20, 1979, and the report of the referee dated October 2, 1979, was filed with the Commission.

By notice dated December 18, 1979, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent filed an affirmation in opposition to the motion dated December 24, 1979, and the administrator filed a reply dated January 3, 1980. Respondent waived oral argument before the Commission on this matter.

The Commission considered the record in this proceeding on January 24, 1980, and upon that record makes the following findings of fact.

1. Charge I: On March 12, 1974, respondent sent a letter to Justice William Bulger of the Town Court of Wappinger, seeking special consideration on behalf of the defendant in *People* v. *Brian Altic*, a case then pending before Judge Bulger.

2. Charge II: On June 7, 1973, respondent sent a letter to Justice John T. Baldwin of the Town Court of Pine Plains, seeking special consideration on behalf of the defendant in *People* v. *Curtis Andujar*, a case then pending before Judge Baldwin.

3. Charge III: On June 19, 1974, respondent sent a letter to Justice William Bulger of the Town Court of Wappinger, seeking special consideration on behalf of the defendant in *People* v. *Marylou Caccetta*, a case then pending before Judge Bulger.

4. Charge IV: On April 11, 1974, respondent sent a letter to Justice Behrend Goossen of the Town Court of Southeast, seeking special consideration on behalf of the defendant in *People* v. *George Pullis*, a case then pending before Judge Goossen.

5. Charge V: On August 18, 1976, respondent reduced a charge of passing a red light to failure to obey a sign in *People* v. *Lillian M. Harris* as a result of a communication he received from Justice Francois Cross of the Town Court of Fishkill, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, and 3A of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as

is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, and by granting such a request from another judge, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

By reason of the foregoing, the Commission determines by vote of 7 to 3 that the appropriate sanction is censure. Mr. Kirsch, Judge Rubin and Mr. Wainwright dissent only with respect to sanction and vote that the appropriate sanction is admonition.

Dated: March 26, 1980

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 H. CORKLAND,

A Justice of the Lake George Town Court, Warren County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jeanne A. O'Connor, Of Counsel) for the Commission.

James H. Corkland,
Respondent Pro Se.

Respondent, a justice of the Town Court of Lake George, Warren County, was served with a Formal Written Complaint dated July 18, 1979, setting forth 51 charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated August 25, 1979.

By notice dated October 17, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on November 13, 1979, found respondent's misconduct established with respect to all 51 charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The Administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted a letter on sanction.

The Commission considered the record in this proceeding on De-

cember 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on January 3, 1973, respondent reduced a charge of speeding to driving with inadequate directional signals in *People* v. *Leonard T. Sample* as a result of a written communication he received from Justice William Begor of the Town Court of Mooers, seeking special consideration on behalf of the defendant.

2. As to Charge II, on December 6, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Percy Drovin* as a result of communications he received from Justice Wayde Earl of the Village Court of Lake George and Justice Ronald MacKenzie of the Town Court of North Elba or someone at their request, seeking special consideration on behalf of the defendant.

3. As to Charge III, on December 19, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Clifford Belden* as a result of a communication he received from Justice Fred DeVries of the Town Court of Warrensburg, or someone at Judge DeVries request, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on April 16, 1975, respondent reduced a charge of passing a stop sign to driving with an inadequate muffler in *People* v. *Raymond Ciccarelli* as a result of a written communication he received from Justice Angelo Root of the Town Court of Bolton, seeking special consideration on behalf of the defendant.

5. As to Charge V, on February 18, 1977, respondent reduced a charge of speeding to failure to keep right in *People* v. *Susan McGinn* as a result of a communication he received from Justice Kenneth Fitzgerald of the Village Court of Schuylerville, seeking special consideration on behalf of the defendant.

6. As to Charge VI, on April 20, 1977, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Robert McKie* as a result of a written communication he received from Carl DeSantis, Warren County Republican Chairman, seeking special consideration on behalf of the defendant.

7. As to Charge VII, on December 15, 1976, respondent reduced a charge of speeding to driving with unsafe tires and imposed an unconditional discharge in *People* v. *Martin Chase* as a result of a written communication he received from Justice Charles Leggett of the Town Court of Chester, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on April 27, 1976, respondent reduced a charge of speeding to failure to keep right in *People* v. *Carl Graziane* as a result of a written communication he received from Justice Charles Persons of the town Court of Florida, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on October 27, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Paul Schaefer* as a result of a communication he received from Justice Wayde Earl of the Village Court of Lake George, or someone at his request, seeking special consideration on behalf of the defendant.

10. As to Charge X, on January 5, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Truman Davis* as a result of a communication he received from Justice Joseph Johnson of the Town Court of North Hudson, seeking special consideration on behalf of the defendant.

11. As to Charge XI, on January 5, 1973, respondent reduced a charge of speeding to driving with inadequate directional signals in *People* v. *Raymond Bauer* as a result of a written communication he received from Justice Wilfred Doolittle of the Town Court of Rosendale, seeking special consideration on behalf of the defendant.

12. As to Charge XII, on July 21, 1975, respondent reduced a charge of speeding to driving with inadequate directional signals and imposed an unconditional discharge in *People* v. *Russell Hunt* as a result of a written communication he received from Justice George Roland of the Town Court of Colonie, seeking special consideration on behalf of the defendant.

13. As to Charge XIII, on January 1, 1977, respondent reduced a charge of speeding to failure to keep right in *People* v. *Joseph Kilburn* as a result of a written communication he received from Justice Ronald Bailey of the Town Court of Chesterfield, seeking special consideration on behalf of the defendant.

14. As to Charge XIV, on June 25, 1975, respondent imposed an unconditional discharge in *People* v. *Roland Saucier* as a result of a written communication he received from Justice Philip Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

15. As to Charge XV, on February 25, 1976, respondent reduced a charge of speeding to failure to keep right in *People* v. *Leonard O'Sullivan* as a result of a written communication he received from Justice Philip Drollette of the Town Court of Plattsburgh, seeking

special consideration on behalf of the defendant.

16. As to Charge XVI, on April 7, 1976, respondent reduced a charge of speeding to unnecessary smoke in *People* v. *Amarjit Gill* as a result of a communication he received from Justice William Foltman of the Town Court of Princetown, seeking special consideration on behalf of the defendant.

17. As to Charge XVII, on September 19, 1974, respondent reduced a charge of speeding to failure to keep right in *People* v. *Josephine Burgess* as a result of a written communication he received from Justice Sylvester Albano of the Town Court of Coeymans, seeking special consideration on behalf of the defendant.

18. As to Charge XVIII, on July 2, 1974, respondent reduced a charge of speeding to driving with unsafe tires and imposed an unconditional discharge in *People* v. *Thomas Cholakis* as a result of a written communication he received from Ralph Brown, Lake George Town Court Clerk, seeking special consideration on behalf of the defendant.

19. As to Charge XIX, on December 13, 1976, respondent reduced a charge of speeding to driving with inadequate directional signals in *People* v. *Eugene A. Murphy* as a result of a communication he received from New York State Assemblyman Gerald B. Solomon, seeking special consideration on behalf of the defendant.

20. As to Charge XX, on February 12, 1975, respondent reduced a charge of speeding to failure to keep right in *People* v. *Jon Martin* as a result of a communication he received from New York State Assemblyman Andrew W. Ryan, Jr., seeking special consideration on behalf of the defendant.

21. As to Charge XXI, on April 23, 1975, respondent reduced a charge of speeding to unnecessary smoke in *People* v. *George Castiglione* as a result of a communication he received from Gary Schermerhorn, seeking special consideration on behalf of the defendant.

22. As to Charge XXII, on May 7, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Donald McIntyre* as a result of a written communication he received from the defendant, who identified himself as the Mayor and Police Chief of the Village of Westport, seeking special consideration.

23. As to Charge XXIII, on November 16, 1973, respondent reduced a charge of speeding to driving with unsafe tires in *People* v.

Charles R. Lord as a result of a communication he received seeking special consideration on behalf of the defendant.

24. As to Charge XXIV, on August 6, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *John Poole* as a result of a communication he received from Robert Flacke, Town Supervisor of Lake George and an official of the Adirondack Park Agency, or someone at Mr. Flacke's request, seeking special consideration on behalf of the defendant.

25. As to Charge XXV, on March 25, 1975, respondent reduced a charge of passing a red light to driving with inadequate directional signals in *People* v. *Earl Bump* as a result of a communication he received from Robert Flacke, Town Supervisor of Lake George and an official of the Adirondack Park Agency, or someone at Mr. Flacke's request, seeking special consideration on behalf of the defendant.

26. As to Charge XXVI, on March 26, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *John Buyce* as a result of a communication he received from Robert Flacke, Town Supervisor of Lake George and an official of the Adirondack Park Agency, or someone at Mr. Flacke's request, seeking special consideration on behalf of the defendant.

27. As to Charge XXVII, on June 12, 1974, respondent reduced a charge of speeding to driving with no horn in *People* v. *Edwin Baker, Jr.* as a result of a written communication he received from Robert Flacke, Town Supervisor of Lake George and an official of the Adirondack Park Agency, seeking special consideration on behalf of the defendant.

28. As to Charge XXVIII, on May 28, 1975, respondent reduced a charge of speeding to driving with inadequate directional signals in *People* v. *Frank Malinoski* as a result of a written communication he received from Trooper R.H. Manss, seeking special consideration on behalf of the defendant.

29. As to Charge XXIX, on March 11, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Donald Vincent* as a result of a written communication he received from Charles B. Wheeler, Crime Control Coordinator, Lake Champlain Lake George Regional Planning Board, seeking special consideration on behalf of the defendant.

30. As to Charge XXX, on April 4, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v.

William Dee, Jr. as a result of a written communication he received from Ralph Brown, Lake George Town Court Clerk, seeking special consideration on behalf of the defendant.

31. As to Charge XXXI, on July 16, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Harrison Karp* as a result of a written communication he received from Lieutenant Andrew DeLuca of the Schenectady Police Department, or someone at Lieutenant DeLuca's request, seeking special consideration on behalf of the defendant.

32. As to Charge XXXII, on February 17, 1976, respondent reduced a charge of speeding to passing a red light and imposed an unconditional discharge in *People* v. *Marjorie Swan* as a result of a written communication he received from Howard Swan, Chester Town Supervisor, seeking special consideration on behalf of the defendant.

33. As to Charge XXXIII, on May 17, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Charles A. Leonelli* as a result of a written communication he received from Trooper W.W. Pearson, seeking special consideration on behalf of the defendant.

34. As to Charge XXXIV, on July 11, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *John Desidoro* as a result of a communication he received from State Police Investigator J.J. Wood, or someone at Investigator Wood's request, seeking special consideration on behalf of the defendant.

35. As to Charge XXXV, on August 20, 1975, respondent reduced a charge of speeding to failure to keep right in *People* v. *Albert Bailey, Jr.* as a result of a communication he received from Investigator C. Fountain, or someone at Investigator Fountain's request, seeking special consideration on behalf of the defendant.

36. As to Charge XXXVI, on November 10, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *David Slutzky* as a result of a communication he received from State Police Sergeant Bentley, or someone at Sergeant Bentley's request, seeking special consideration on behalf of the defendant.

37. As to Charge XXXVII, on November 23, 1976, respondent reduced a charge of speeding to driving with inadequate directional signals in *People* v. *Carmelo Panzera* as a result of a communication he received from Trooper Devine, or someone at Trooper Devine's request, seeking special consideration on behalf of the defendant.

38. As to Charge XXXVIII, on November 18, 1976, respondent reduced a charge of speeding to driving with unsafe tires and imposed an unconditional discharge in *People* v. *George R. Pensel* as a result of a communication he received from Trooper Duell, or someone at Trooper Duell's request, seeking special consideration on behalf of the defendant.

39. As to Charge XXXIX, on June 28, 1977, respondent reduced a charge of speeding to driving with inadequate directional signals in *People* v. *Gladys Andrews* as a result of a written communication he received on behalf of the defendant.

40. As to Charge XL, on June 18, 1975, respondent reduced a charge of speeding to failure to keep right in *People* v. *Curtis Dettling* as a result of a communication he received from Trooper Harry Sealy, or someone at Trooper Sealey's request, seeking special consideration on behalf of the defendant.

41. As to Charge XLI, on March 8, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Martin Hapgood* as a result of a communication he received from Trooper Hamchett, or someone at Trooper Hamchett's request, seeking special consideration on behalf of the defendant.

42. As to Charge XLII, on February 23, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler and imposed an unconditional discharge in *People* v. *Thomas E. McMahon* as a result of a written communication he received from Ralph Brown, Lake George Town Court Clerk, seeking special consideration on behalf of the defendant.

43. As to Charge XLIII, on January 10, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Nicholas J. Schoendorf* as a result of a written communication he received from Trooper W.G. Murray, seeking special consideration on behalf of the defendant.

44. As to Charge XLIV, on June 18, 1973, respondent reduced a charge of speeding to driving with inadequate directional signals in *People* v. *Lynne Root* as a result of a communication he received from Trooper P.J. Nadig, or someone at Trooper Nadig's request, seeking special consideration on behalf of the defendant.

45. As to Charge XLV, on June 24, 1974, respondent reduced a charge of speeding to driving with inadequate directional signals in *People* v. *Robert Parkinson* as a result of a written communication he

received from Bill Kiernan, seeking special consideration on behalf of the defendant.

47. As to Charge XLVII, on February 12, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Timothy Fiato* as a result of written communications he received from Gary Schermerhorn, aide to State Senator Ronald Stafford, and Hugh Gilbert, seeking special consideration on behalf of the defendant.

48. As to Charge XLVIII, on February 3, 1977, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Mickey J. Carpenter* as a result of a written communication he received from Gary Schermerhorn, aide to State Senator Ronald Stafford, seeking special consideration on behalf of the defendant.

49. As to Charge XLIX, on February 18, 1976, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Ray Hayes* as a result of a written communication he received from Thomas E. Durkish, elementary principal at North Warren Central School, seeking special consideration on behalf of the defendant.

50. As to Charge L, on November 23, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Ronald W. Cook* as a result of a communication he received seeking special consideration on behalf of the defendant.

51. As to Charge LI, on January 31, 1977, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Walter Doyle* as a result of a communication he received from Justice Robert Vines of the Town Court of Moreau, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3A of the Code of Judicial Conduct and Canons 4, 5, 13, 14, 17 and 34 of the Canons of Judicial Ethics. Charges I through LI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By granting *ex parte* requests from judges and other persons of influence, including his court clerk, for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

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

All concur. Mr. Kirsch concurs in accord with his concurring opinion in *Matter of Haberneck*, NYLJ Aug. 10, 1979, p. 12, col. 5, (Com. on Jud. Conduct, July 10, 1979).

Dated: April 1, 1980

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

VERNON F. TROYER,

A Justice of the Wheatfield Town Court, Niagara County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Richard Granofsky, Of Counsel) for the Commission.

Findlay, Hackett, Reid and Wattengel (By Glenn S. Hackett) for Respondent.

Respondent, a justice of the Town Court of Wheatfield, Niagara County, was served with a Formal Written Complaint dated July 27, 1978, setting forth nine charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated September 5, 1978.

On October 18, 1979, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination upon the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts, as submitted, on November 13, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts established misconduct and (ii) an appropriate sanction, if any.

The administrator submitted a memorandum on the issues herein. Respondent submitted a letter from his attorney on the issues herein. On January 23, 1980, after hearing oral argument, the Commission, in executive session, considered the record in this proceeding and upon that record makes the following findings of fact and conclusions of law.

Charge IX of the Formal Written Complaint is not sustained and therefore is dismissed.

1. Charge I: On June 29, 1976, respondent sent a letter on judicial stationery to Justice Edward L. Robinson of the Town Court of Amherst, on behalf of the defendant in *People* v. *Randy L. Adams*, a case then pending before Judge Robinson, confirming a telephone conversation he had had with the Amherst Town Court Clerk.

2. Charge II: On June 10, 1976, respondent sent a letter on judicial stationery to Justice Edward L. Robinson of the Town Court of Amherst, on behalf of the defendant in *People* v. *Boutros J. Gatas*, a case then pending before Judge Robinson, confirming a telephone conversation he had had with the Amherst Town Court Clerk.

3. Charge III: On July 1, 1976, respondent sent a letter on judicial stationery to Justice Edward L. Robinson of the Town Court of Amherst, on behalf of the defendant in *People* v. *Susan M. Leslie*, a case then pending before Judge Robinson, confirming a telephone conversation he had had with the Amherst Town Court Clerk.

4. Charge IV: On August 22, 1973, respondent sent a letter on judicial stationery to Justice Thomas J. O'Connell of the Town Court of Brutus, confirming an earlier telephone conversation with Judge O'Connell in which he had requested special consideration on behalf of the defendant in *People* v. *Harold L. Peters*, a case then pending before Judge O'Connell.

5. Charge V: On May 20, 1975, respondent reduced a charge of passing a red light to driving with an inadequate muffler in *People* v. *David J. Mahar* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston seeking special consideration on behalf of the defendant.

6. Charge VI: On January 4, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Arthur Schuler* as a result of a written communication he received from the arresting officers seeking special consideration on behalf of the defendant.

7. Charge VII: On November 27, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Donald Harrington* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston seeking special consideration on behalf of the defendant.

8. Charge VIII: On February 14, 1974, respondent reduced a charge of passing a stopped school bus to driving with an inadequate muffler in *People* v. *Marguerite H. Kirk* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, and 3A of the Code of Judicial Conduct. Charges I through VIII are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by granting such requests from judges and other persons of influence, respondent violated the Rules enumerated above.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

All concur.

Dated: April 1, 1980

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

THEODORE WORDON,

A Justice of the Town Court of Durham, Greene County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jeanne A. O'Connor, Of Counsel) for the Commission.

Theodore Wordon, Respondent Pro Se.

The respondent, Theodore Wordon, a justice of the Town Court of Durham, Greene County, was served with a Formal Written Complaint dated February 15, 1979, alleging misconduct in that he sent a letter on court stationery to a debtor on behalf of a creditor. Respondent submitted an answer dated April 5, 1979.

The administrator of the Commission and respondent entered into an agreed statement of facts on November 21, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement on December 13, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument

and did not submit a memorandum.

The Commission considered the record in this proceeding on January 24, 1980, and upon that record makes the following findings of fact.

1. Mr. and Mrs. Thomas McGoldrick are the owners of the Weldon House, a hotel in East Durham, New York.

2. Some time between July 23, 1978, and August 6, 1978, the McGoldricks communicated with respondent concerning a check received by the McGoldricks from Mr. Hugh Hughes, who had been a guest at the Weldon House, as payment for services. A "stop payment" order had been issued on the check because of a dispute over services. The McGoldricks asked respondent to write a letter to Mr. Hughes.

3. On August 6, 1978, respondent sent a letter on his court stationery to Mr. Hughes, stating (i) that Mr. Hughes had stopped payment on a check to the Weldon House, (ii) that Mr. Hughes therefore was subject to a charge of theft of services under New York Penal Law and (iii) that a warrant could be issued for his arrest if the matter was not settled.

4. On August 10, 1978, Mr. Hughes sent a replacement check in the amount of $317.69, which was received by the Weldon House. The check had been sent by Mr. Hughes prior to his receipt of the letter from respondent.

5. Respondent sent his letter to Mr. Hughes in order to "avoid a court case that could have happened if the problem was reported to the N.Y. state police" (Ex. E appended to the agreed statement of facts).

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

The obligation to avoid impropriety and the appearance of impropriety is fundamental to the fair and proper administration of justice. In using his judicial office in this case for what in essence was a debt-collecting purpose, and in threatening the purported debtor with arrest, respondent's conduct not only had the appearance of impropriety but was, in fact, clearly improper. As such, it undermined

the integrity of the judiciary. The reasonable inference to be drawn from respondent's letter to Mr. Hughes is that a judge of the court in which a purported debtor could be sued was playing an adversarial role on behalf of a party to the dispute and thus appeared to have prejudged the merits of the matter.

The Rules Governing Judicial Conduct state that "[n]o judge shall lend the prestige of his office to advance the private interests of others; nor shall any judge convey or permit others to convey the impression that they are in a special position to influence him" (Section 33.2[c]). Respondent's actions violated this standard.

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

All concur.

Dated: April 1, 1980

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

HENRY B. WRIGHT,

A Justice of the Pavilion Town Court, Genesee County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Richard Granofsky, Of Counsel) for the Commission.

Henry B. Wright,
Respondent Pro Se.

Respondent, a justice of the Town Court of Pavilion, Genesee County, was served with a Formal Written Complaint dated July 18, 1979, setting forth 14 charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated August 11, 1979.

By notice dated October 25, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on November 13, 1979, dismissed Charge XIII of the Formal Written Complaint, found respondent's misconduct established with respect to the remaining 13 charges, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent, in a letter dated November 24, 1979, waived oral argument, and did not submit a memorandum.

The Commission considered the record in this proceeding on December 13, 1979, and January 24, 1980, and upon that record makes the following findings of fact.

1. Charge I: On April 14, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Charles R. Kahl* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston seeking special consideration on behalf of the defendant.

2. Charge II: On March 25, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Raymond L. Mensch* as a result of a written communication he received from Henry E. Groff, Chief of Police of Boyertown, Pennsylvania, seeking special consideration on behalf of the defendant.

3. Charge III: On June 27, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Albert J. Minicucci* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston seeking special consideration on behalf of the defendant.

4. Charge IV; On July 20, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Edward R. Switzer* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston seeking special consideration on behalf of the defendant.

5. Charge V: On April 27, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Louis S. Chickos* as a result of a communication he received from a member of the State Police seeking special consideration on behalf of the defendant.

6. Charge VI: On March 27, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Robert L. Dilcher* as a result of a communication he received from a Justice of the Town Court of Elba seeking special consideration on behalf of the defendant.

7. Charge VII: On July 3, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *John C. Hooker* based upon his friendship with the defendant and not on the merits of the case.

8. Charge VIII: On September 13, 1973, respondent reduced a charge of speeding to failure to keep right in *People* v. *Thomas Hooker* as a result of a communication he received from Justice

Sebastian Lombardi of the Town Court of Lewiston seeking special consideration on behalf of the defendant.

9. Charge IX: On September 15, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Roger D. Hurlbut* as a result of a communication he received from a member of the State Police seeking special consideration on behalf of the defendant.

10. Charge X: On January 6, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Angus W. Miller* based upon the defendant's status as a state park police officer.

11. Charge XI: On April 16, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Dennis N. Miller* based upon the status of the defendant's brother as a state police officer.

12. Charge XII: On April 17, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *F.X. Recktenwald* based upon the status of the defendant's two brothers as state police officers.

13. Charge XIV: On November 22, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Richard M. Whalen* based upon respondent's friendship with the defendant and the defendant's status as a candidate for an appointment in the Genesee County Sheriff's Department.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 1, 2 and 3A of the Code of Judicial Conduct, Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 4, 5, 13, 14 and 34 of the Canons of Judicial Ethics. Charges I through XII and Charge XIV are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By granting *ex parte* requests from judges and other persons of influence for favorable dispositions for defendants in traffic cases, and by rendering such favorable dispositions based upon his friendship with the defendants, or the fact that either the defendant or the defendant's relatives were state police officers, respondent violated the Rules enumerated above, which read in part as follows:

> Each judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

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

All concur.

Dated: April 1, 1980

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

BRENT ROGERS,

A Justice of the Town Court of Brookfield, Madison County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern for the Commission.

Brent Rogers, Respondent Pro Se.

The respondent, Brent Rogers, a justice of the Town Court of Brookfield, Madison County, was served with a Formal Written Complaint dated September 6, 1979, alleging (i) that he had failed to report and remit to the State Comptroller monies received in his judicial capacity from January 1978 to September 6, 1979, and (ii) that he had failed to cooperate with an investigation conducted by this Commission with respect thereto. Respondent filed an unverified answer in the form of a letter dated November 4, 1979. Thereafter, respondent was requested by the Commission's senior attorney to verify his answer pursuant to Section 44, subdivision 4, of the Judiciary Law. To date respondent has not done so.

By notice of motion dated January 2, 1980, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. By determination and order dated January 30, 1980, the Commission granted the motion, finding respondent's misconduct established and setting a date for oral argu-

ment on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived both oral argument and a memorandum.

On February 24, 1980, in executive session, the Commission considered the record of this proceeding, and upon that record makes the following findings of fact.

1. From January 5, 1978, through August 1, 1979, respondent received at least $1,896 in fines from his disposition of at least 70 tickets written by the Madison County Sheriff's Department.

2. From June 1978 to September 6, 1979, respondent failed to report or remit to the State Comptroller any monies he received in his judicial capacity, including the $1,896 heretofore noted, thereby violating Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27 of the Town Law and Section 1803 of the Vehicle and Traffic Law.

3. From June 11, 1979, to September 6, 1979, respondent failed to cooperate with a duly authorized investigation by this Commission with respect to his failure to report and remit monies to the State Comptroller, in that he failed to respond to written inquiries issued pursuant to Section 42, subdivision 3, of the Judiciary Law on June 11, 1979, June 20, 1979, and June 28, 1979.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Section 2021 of the Uniform Justice Court Act requires all justices to report and remit to the State Comptroller all collected fines "on or before the tenth day of the month next succeeding their collection." Failure to do so constitutes serious misconduct, justifying removal of the judge from office. See *Bartlett* v. *Flynn*, 50 AD 2d 401 (4th Dept. 1976), *app dism* 39 NY2d 946 (1976).

Failure to cooperate with a Commission investigation is also serious misconduct. In *Matter of Robert W. Jordan,* NYLJ Aug. 7, 1979, p. 5, col 1, the Court on the Judiciary suspended a judge for four months without pay for failing to appear before the Commission in the course of a duly authorized investigation. The Court stated as follows:

> [R]espondent's refusals to cooperate were clearly improper. Although the respondent is not an attorney, as a judicial officer he is charged with knowledge of his responsibilities, which include cooperating with statutorily authorized Commission investigations. *Id.*

Respondent's failure to cooperate was not limited to the Commission. The record of this proceeding shows that, prior to the Commission's inquiry, the State Department of Audit and Control and the director of administration for the Third Judicial Department had attempted to elicit from respondent an explanation of his failure to report and remit monies according to law. Respondent failed to respond to those inquiries.

By failing to report and remit monies for as many as 15 months, by failing to respond to appropriate inquiries from three state agencies, and by failing to respond to a simple request that his answer in this proceeding be verified, respondent has evinced repeatedly his inability or unwillingness to discharge the responsibilities of judicial office. As such he has violated those provisions of the Rules Governing Judicial Conduct which require diligent attention to administrative duties (Section 33.3[b][1]) and conduct promoting public confidence in the judiciary (Sections 33.1 and 33.2[a]).

The Commission notes from the record (i) that respondent filed in October 1979 the overdue reports from June 1978 through August 1979 and (ii) that his reports for September through November 1979, were filed on December 28, 1979, up to two and a half months later than required by law.

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

All concur.

Dated: April 9, 1980

NOTE: The Court of Appeals, upon review, modified the Commision's determination to censure. 51 NY2d 224 (1980).

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

NORMAN H. SHILLING,

A Judge of the Civil Court of the City of New York, Kings County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Stanley A. Bass and Susan Shapiro, Of Counsel) for the Commission.

Stanley D. Steinhaus for Respondent.

The respondent, Norman H. Shilling, a judge of the Civil Court of the City of New York, was served with a Formal Written Complaint dated June 4, 1979, alleging that he improperly interfered in the course of a proceeding before another judge and that he lent the prestige of his office to advance the interests of a third party, a not-for-profit corporation with which he was associated. Respondent filed an answer dated June 22, 1979.

By order dated September 4, 1979, the Commission designated the Honorable James Gibson referee to hear and report with respect to the issues herein. Pursuant to Section 44, subdivision 4, of the Judiciary Law, respondent waived confidentiality in this proceeding and requested that any hearing be public.

By notice of motion dated September 19, 1979, respondent moved to dismiss the Formal Written Complaint for failure to state a cause of action. By order dated October 26, 1979, the Commission denied the

motion.

A public hearing was held on October 29, 30, and 31 and November 1, 1979, and the report of the referee was filed on January 23, 1980.

By notice of motion dated February 1, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination of misconduct and sanction. Respondent's opposition papers were filed on February 7, 1980.

The Commission heard oral argument on the issues herein on February 26, 1980. Thereafter, in executive session, the Commission considered the record of this proceeding, and now upon that record makes the following findings of fact.

1. In December, 1977, three summonses were issued against Mr. John Esteves, an employee of Associated Humane Societies of New Jersey (A.H.S.), who manages the A.H.S. facility at 224 Atlantic Avenue, Brooklyn, New York.

2. One summons was issued by the New York City Department of Health, charging operation of the Atlantic Avenue facility without a permit. The other two summonses were issued by agents of the American Society for the Prevention of Cruelty to Animals (A.S.P.C.A.), charging lack of health certificates for dogs shipped from New Jersey to New York, and lack of single cages for dogs over three months old.

3. Between December 1977 and December 1978, respondent contacted Dr. John Kullberg, Executive Director of the A.S.P.C.A., and Eric Plasa, Director, Humane Law Enforcement of the A.S.P.C.A.

4. In his telephone conversation with Dr. Kullberg, respondent identified himself as a judge and requested that Dr. Kullberg intercede and have the A.S.P.C.A. summonses dropped and the charges dismissed. Dr. Kullberg declined, and offered instead to have his agents make an unannounced visit to the A.H.S. facility, but respondent requested a visit with notice.

5. In his telephone conversation with Eric Plasa, respondent also asked for dismissal of the charges against Mr. Esteves.

6. Respondent also contacted Dr. Alan Beck of the New York City Department of Health, Bureau of Animal Affairs, and Dr. Howard Levin, Chief Veterinarian of the City Department of Health.

7. In his telephone conversations with Dr. Beck, respondent identified himself as a judge and questioned why the permit was not being

granted to A.H.S. Dr. Beck told respondent that he was doubtful as to the wisdom of having New Jersey animals brought into New York City and vice versa, because of health, social and administrative problems. Respondent dismissed Dr. Beck's arguments, became angry, and yelled and screamed at Dr. Beck to such an extent that Dr. Beck was not able to keep the phone to his ear.

8. In a subsequent telephone call to Dr. Beck, respondent was angry that the permit still had not been issued to A.H.S. Dr. Beck explained that the site was not zoned for a kennel, and respondent yelled, screamed and said that Dr. Beck should "stop f-----g around with the Humane Society."

9. Respondent reminded Dr. Beck at least twice that respondent was a judge and also told Dr. Beck that he had more political clout than Dr. Beck. Dr. Beck perceived the telephone calls to be fraught with "attempted intimidation."

10. In his telephone conversation with Dr. Levin, respondent identified himself as a judge and asked, in a loud voice, to have the permit issued to A.H.S. Respondent questioned the reasons for the summons. He was upset and angry, and accused the Department of abusing its authority. Dr. Levin perceived respondent's tone of voice as "threatening."

11. On July 10, 1978, the case of *A.S.P.C.A. and New York City Department of Health* v. *Esteves* came before Judge Eugene Nardelli, sitting at New York City Criminal Court in Manhattan. After the case had been called, and while a settlement discussion was in progress at the bench, Judge Nardelli saw respondent sitting in the rear of the courtroom.

12. During the course of the settlement negotiations, Harry Brown, attorney for A.H.S. and Mr. Esteves, mentioned that respondent sat on the board of A.H.S.

13. After the *Esteves* matter was adjourned, respondent approached the bench and commented to Judge Nardelli about the case, to the effect that if the A.S.P.C.A. and Department of Health were really interested in animals, they would not be proceeding in such a manner. Judge Nardelli did not respond.

14. Respondent did not consider the impropriety of entering another judge's courtroom during the pendency of a case in which he was interested and talking to the presiding judge about the matter.

15. When the persons involved in the *Esteves* case left the courtroom, respondent also left. In the corridor, Mr. Brown introduced respondent to Dr. Levin. Respondent spoke to Dr. Levin about the permit and why it was being stopped. Dr. Levin replied that the problem was a zoning one. Respondent stated that zoning was not relevant, and that he had obtained this information from the building department. When Ms. Elinor Molbegott, attorney for the A.S.P.C.A., stated, "We will check into that," respondent said, "Listen, I am a juge of the Civil Court. When I make a statement of fact, it's a fact."

16. At the time of this conversation, respondent was angry and was talking in a loud tone of voice and waving his arms. Ms. Molbegott testified that respondent also made reference to "political friends." Dr. Levin considered respondent's tone to be "authoritative," perhaps "menacing."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.2(c), 33.5(a) and 33.5(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 5A and 5C of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

It was improper for respondent (i) to intercede in the *Esteves* case by attempting to persuade two officials of the A.S.P.C.A. with law enforcement authority to withdraw the summonses which commenced the proceeding and to have identified himself as a judge while so doing, (ii) to interfere on behalf of the A.H.S. with officials of the New York City Department of Health as to their decision not to issue a permit to A.H.S., to have identified himself as a judge while so doing, and to have addressed the City officials in a hostile, profane and loud manner, (iii) to speak in a loud voice in the courthouse corridor with the attorney for the A.S.P.C.A. and to make reference to political influence, and (iv) to interfere in the court's consideration of the *Esteves* case by speaking to the presiding judge on behalf of the defendants. Judge Nardelli appropriately did not respond or allow himself to be engaged in conversation with respondent on this matter.

Respondent has exhibited a disturbing disregard of the ethical obligations required of all judges. He has used the prestige of his office to assert special influence on behalf of a third party and brought disrepute to the judiciary by his vulgar and abrasive public manner.

Respondent has shown little or no understanding of the standards of demeanor incumbent upon all judges as expressed in the Rules

Governing Judicial Conduct. A judge's obligation to adhere to those standards is not limited to the courtroom. *Matter of Kuehnel* v. *State Commission on Judicial Conduct*, _____ NY2d_____ (Mar. 18, 1980).

The Commission finds the blatant impropriety respondent has evinced to be seriously compounded by his refusal in this record to acknowledge that his actions even appeared improper. Respect for the judiciary has been diminished both by respondent's conduct and the appearance of impropriety thereby engendered.

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

All concur.

Dated: April 9, 1980

NOTE: The Court of Appeals, upon review, did not accept the Commission's determination and removed the judge from office. 51 NY2d 397 (1980).

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 M. KING,

A Justice of the Town Court of Granville, Washington County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission.

Robert M. King,
Respondent Pro Se.

The respondent, Robert M. King, a justice of the Town Court of Granville, Washington County, was served with a Formal Written Complaint dated November 29, 1979, alleging that respondent, over a 15-month period, had (i) failed to make timely deposits in official court accounts of monies received in his judicial capacity and (ii) failed to report or remit to the State Comptroller $2,480 in fines received in his judicial capacity. Respondent did not file an answer but submitted to the Comission a letter dated January 23, 1980, stating he had remitted to the State all funds due and had resigned his judicial office.

By notice dated February 6, 1980, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion by order

dated March 6, 1980, found respondent's misconduct established and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum and waived oral argument. Respondent neither submitted a memorandum nor appeared for oral argument.

On April 23, 1980, in executive session, the Commission considered the record of this proceeding and makes the following findings of fact.

1. From July 1978 to September 1979, respondent made two deposits in his official court bank account of fines received totalling $414.60, although he had actually received fines totalling $2,480 in that period, as set forth below.

Month and Year	Fine Money Received	Bank Deposit Relating to Fines
(a) July 1978	$ 90	$ 0
(b) August 1978	490	0
(c) September 1978	125	374.60
(d) October 1978	340	40.00
(e) November 1978	55	0
(f) December 1978	145	0
(g) January 1979	50	0
(h) February 1979	30	0
(i) March 1979	25	0
(j) April 1979	355	0
(k) May 1979	35	0
(l) June 1979	80	0
(m) July 1979	170	0
(n) August 1979	40	0
(o) September 1979	450	0
	$2,480	$414.60

Respondent's failure to deposit these monies violated Section 30.7 of the Uniform Justice Court Rules, which requires deposit of all such funds within 72 hours of receipt.

2. From July 1978 to September 1979, respondent failed to report or remit to the State Comptroller any part of said $2,480, in violation of Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27 of the Town Law and Section 1803 of the Vehicle and Traffic Law.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct, and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

By failing to deposit official receipts in official court accounts, and by failing for 15 months to report and remit $2,480 to the State Comptroller as required by law and court rules, respondent failed to discharge diligently his administrative responsibilities and to honor his obligations as provided by law.

For months at a time respondent kept court-related funds in his briefcase or at his home, evincing an inexcusable disregard for the public money entrusted to him as well as for those rules which required the prompt deposit of those funds in an official account.

Respondent's misconduct is not excused by his having remitted to the State all funds due after this proceeding was commenced. Public confidence in the integrity of the judiciary, undermined by such serious misconduct by respondent, cannot be reclaimed merely by balancing his accounts in the face of a disciplinary proceeding.

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

All concur.

Dated: April 29, 1980

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

EDWIN P. SEATON,

A Justice of the Town Court of Chautauqua, Chautauqua County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Christopher B. Ashton, Of Counsel) for the Commission.

Edwin P. Seaton, Respondent Pro Se.

The respondent, Edwin P. Seaton, a justice of the Town Court of Chautauqua, Chautauqua County, from 1962 to the present, and formerly a justice of the Village Court of Mayville, Chautauqua County, from April 6, 1964, to December 20, 1977, was served with a Formal Written Complaint dated August 10, 1979, alleging (i) that he presided over two motor vehicle cases in 1974 in which his son was the defendant and (ii) that from July 1969 through June 1979 he has failed to observe numerous fiduciary and record keeping obligations and statutory requirements. Respondent's answer was received and filed on September 9, 1979.

By notice dated December 19, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent submitted a letter in response to the motion.

By order dated January 30, 1980, the Commission granted the administrator's motion, found respondent's misconduct established and

set a date for oral argument with respect to an appropriate sanction. The administrator submitted a memorandum and respondent submitted correspondence in lieu of oral argument.

The Commission considered the record of this proceeding in executive session on March 20, 1980, and now upon that record makes the following findings of fact.

1. On January 5, 1974, respondent presided over and disposed of two charges involving the improper use of a snowmobile in *People* v. *Daniel P. Seaton*, notwithstanding that the defendant is respondent's son, in violation of Section 14 of the Judiciary Law. Respondent dismissed one charge and imposed a $5 fine on the other.

2. On September 28, 1974, respondent presided over and disposed of a charge of driving with a modified muffler in *People* v. *Daniel P. Seaton*, notwithstanding that the defendant is respondent's son, in violation of Section 14 of the Judiciary Law. Respondent imposed an unconditional discharge.

3. From August 1, 1969, to February 1, 1978, respondent, as town court justice of Chautauqua, failed to maintain properly his official court records in that he did not enter numerous cases in his docket books and did not take measures to ensure that court records would not be lost.

4. From September 1, 1974, to December 20, 1977, respondent, as village court justice of Mayville, failed to maintain properly his official court records in that he did not enter numerous cases in his docket books and did not maintain proper safeguards to ensure that court records would not be lost.

5. From July 1969 to November 1977, on 74 occasions as set forth in Schedule A appended hereto, respondent failed to report and remit to the State Comptroller monies he had received in his capacity as town court justice of Chautauqua in the first ten days of the month following collection, in violation of Section 2021(1) of the Uniform Justice Court Act.

6. From April 1972 to November 1977, on 42 occasions as set forth in Schedule B appended hereto, respondent failed to report and remit to the State Comptroller monies he had received in his capacity as village court justice of Mayville in the first ten days of the month following collection, in violation of Section 2021(1) of the Uniform Justice Court Act and Section 4-410 of the Village Law.

7. From September 12, 1972, to November 2, 1978, respondent failed to deposit in his official court bank account within 72 hours of receipt all monies received in his capacity as town court justice of Chautauqua and village court justice of Mayville, in violation of Section 30.7(a) of the Uniform Justice Court Rules.

8. From June 25, 1976, to February 1, 1978, respondent failed to correct the record keeping deficiencies and failed to perform the fiduciary duties noted in paragraphs 3 through 7 herein, despite being advised by the State Department of Audit and Control, and this Commission, of the deficiencies and breaches of fiduciary duties heretofore noted, in violation of Section 31 of the Town Law and Sections 107, 2019 and 2019-a of the Uniform Justice Court Act.

9. From September 12, 1972, to November 2, 1978, respondent failed to issue consecutively-numbered receipts for all monies received in his capacity as town court justice of Chautauqua and village court justice of Mayville, in violation of Section 99-b of the General Municipal Law.

10. From May 1, 1971, through October 31, 1978, respondent failed to docket an undetermined number of traffic cases and in certain of these cases (i) took no action to effect a final disposition, or (ii) sent notices of license suspensions to the Department of Motor Vehicles but took no other action to effect final dispositions and made no record that such notices had been sent or (iii) effected final dispositions and collected fines but made no record of the dispositions, in violation of Sections 107, 2019 and 2019-a of the Uniform Justice Court Act.

11. As of January 1, 1979, respondent had (i) failed to report the disposition of the cases below to the State Comptroller and the Department of Motor Vehicles, (ii) failed to remit to the State Comptroller the monies received therefrom, and (iii) failed to enter these cases in his official dockets, in violation of Sections 107, 2019, 2020 and 2021(1) of the Uniform Justice Court Act, Section 514(1)(a) of the Vehicle and Traffic Law, Section 4-410(1) of the Village Law and Section 91.12 of the Regulations of the Commissioner of Motor Vehicles.

In the Town Court of Chautauqua:

People v. *Ivan Hannold*, June 20, 1972;
People v. *Danny L. Kelly*, June 23, 1973;
People v. *Debra Hanson*, February 15, 1975;
People v. *Gerald Near*, October 4, 1975;
People v. *R.E. Jordan*, October 7, 1975; and
People v. *Daniel J. Kelly*, March 13, 1976.

In the Village Court of Mayville:

People v. *Danny L. Kelly*, October 30, 1973;
People v. *Michael Moss*, September 6, 1975;
People v. *David Batchelar*, October 7, 1975;
People v. *John Fergus*, October 7, 1975;
People v. *Rolland Pierce*, October 7, 1975;
People v. *McCleary*, October 11, 1975; and
People v. *Edna Brown*, October 25, 1975.

12. Respondent commingled with his personal funds and converted to his own use $105 properly belonging to his town court cash and assets account, in violation of Section 2020 of the Uniform Justice Court Act, thus producing a deficiency of liabilities over assets in said account of $105 as of November 2, 1978.

13. Respondent commingled with his personal funds and converted to his personal use $528 that properly belonged in his village court cash and assets account, in violation of Section 2020 of the Uniform Justice Court Act and Section 4-410(1)(a) of the Village Law, thus producing a deficiency of liabilities over assets in said account of $528 as of November 2, 1978.

14. As of June 14, 1979, notwithstanding that respondent resigned as village court justice of Mayville on December 20, 1977, and notwithstanding the abolition of the village court by the Village Board of Mayville on April 1, 1978, respondent (i) failed to deliver the records of the village court to the clerk of the village (ii) retained control over the records and (iii) retained control over the village court bank account, in violation of Section 2019-a of the Uniform Justice Court Act.

15. On June 13, 1977, respondent received $150 in cash from the town clerk of Chautauqua to be remitted as partial restitution to Victor Sawkins, the complaining witness in *People* v. *Weary*. Respondent failed to deposit the $150 in his official court account within 72 hours of receipt, in violation of Section 2020 of the Uniform Justice Court Act and Section 30.7(a) of the Uniform Justice Court Rules, and he did not remit the money to Mr. Sawkins until December 13, 1978.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.3(b)(1) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct, Canons 1, 2A 3B(1) and 3C(1)(d)(i) of the Code of Judicial Conduct and Canons 6 and 8 of the Canons of Judicial Ethics. Charges I through XII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to render a decision in any judicial proceeding on the basis of a personal, and in this case a familial, relationship with one of the parties. By presiding over two cases in which his son was the defendant, respondent violated those provisions of the Judiciary Law and the Rules Governing Judicial Conduct which prohibit a judge from presiding over a case if he is related within the sixth degree of consanguinity to one of the parties (Jud. L. §14; Rules §33.3[c][1][iv][a].) Even in the absence of specific statutory and ethical prohibitions, a judge should know that presiding over cases involving a relative is improper and diminishes public confidence in the integrity and impartiality of the judiciary.

Section 33.3(b)(1) of the Rules requires a judge to "diligently discharge his administrative responsibilities, [and] maintain professional competence in judicial administration. . ." The record herein demonstrates that for nearly ten years respondent has been unable or unwilling to comply with the most elementary administrative responsibilities required of a judge: docketing cases, disposing of cases in a timely manner, depositing court receipts in official accounts, reporting and remitting all receipts promptly to the State Comptroller, issuing receipts to litigants, maintaining a proper record of monies received and disbursed, and maintaining a balance between court assets and liabilities. Despite notice as early as 1976, by the Commission and the State Department of Audit and Control, that his court records and accounts were deficient to a serious degree, respondent did not take steps to reform his administrative procedures or improve the state of his court records. Indeed, respondent's failure to meet his administrative obligations resulted in the conversion to his own use of $633 in court funds and a delay of 18 months in remitting $150 due as partial restitution to the complaining witness in a criminal case.

In *Bartlett* v. *Flynn*, 50 AD2d 401, 404, the Appellate Division stated:

> Although. . . [respondent] did not misuse public monies for his own profit, the careless manner in which he handled funds entrusted to his care and the disdain he demonstrated, not only for statutory record keeping but also for deposit and remittance requirements constituted a breach of trust and violation of Canon 3B [of the Code of Judicial Conduct] requiring his removal from office.

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

All concur, except that Mrs. Robb, Judge Rubin and Mr. Wainwright dissent only with respect to sanction and vote that the appropriate sanction is censure.

Dated: May 8, 1980

SCHEDULE A

Month of Collection	Date of Filing
June 1969	July 13, 1969
July 1969	August 11, 1969
September 1969	October 12, 1969
November 1969	December 21, 1969
December 1969	January 18, 1970
January 1970	February 17, 1970
February 1970	March 17, 1970
March 1970	April 28, 1970
April 1970	June 1, 1970
May 1970	July 1, 1970
June 1970	August 1, 1970
July 1970	September 1, 1970
August 1970	October 2, 1970
September 1970	November 10, 1970
October 1970	December 20, 1970
November 1970	January 18, 1971
December 1970	January 18, 1971
January 1971	March 24, 1971
February 1971	March 24, 1971
March 1971	May 18, 1971
April 1971	May 18, 1971
May 1971	July 12, 1971
June 1971	July 12, 1971
July 1971	September 7, 1971
September 1971	November 16, 1971
October 1971	November 16, 1971
November 1971	January 19, 1972
December 1971	January 19, 1972
January 1972	March 14, 1972
February 1972	March 14, 1972
March 1972	May 2, 1972
May 1972	June 21, 1972

June 1972	August 5, 1972
September 1972	November 11, 1972
October 1972	November 11, 1972
November 1972	January 3, 1973
January 1973	February 28, 1973
May 1973	July 26, 1973
June 1973	July 19, 1973
August 1973	September 21, 1973
September 1973	October 23, 1973
October 1973	November 24, 1973
November 1973	December 27, 1973
January 1974	February 11, 1974
February 1974	March 26, 1974
April 1974	May 16, 1974
September 1974	October 22, 1974
December 1974	January 21, 1975
January 1975	February 14, 1975
February 1975	March 25, 1975
March 1975	April 14, 1975
April 1975	May 20, 1975
May 1975	June 16, 1975
August 1975	October 1, 1975
September 1975	October 20, 1975
October 1975	December 2, 1975
November 1975	January 16, 1976
December 1975	January 16, 1976
January 1976	February 12, 1976
February 1976	March 15, 1976
March 1976	April 17, 1976
April 1976	May 17, 1976
May 1976	June 17, 1976
June 1976	July 11, 1976
July 1976	August 12, 1976
August 1976	September 12, 1976
September 1976	October 16, 1976
October 1976	November 13, 1976
November 1976	December 13, 1976
May 1977	June 14, 1977
July 1977	August 20, 1977
August 1977	September 16, 1977
September 1977	October 19, 1977
October 1977	November 17, 1977

SCHEDULE B

Month of Collection	Date of Filing
March 1972	May 2, 1972
May 1972	June 21, 1972
June 1972	August 5, 1972
August 1972	September 12, 1972
September 1972	November 11, 1972
October 1972	November 11, 1972
November 1972	January 3, 1973
January 1973	February 27, 1973
October 1973	November 24, 1973
November 1973	December 27, 1973
January 1974	February 11, 1974
February 1974	March 26, 1974
April 1974	May 16, 1974
September 1974	October 22, 1974
November 1974	January 4, 1975
December 1974	January 21, 1975
January 1975	February 14, 1975
February 1975	March 25, 1975
April 1975	May 20, 1975
May 1975	June 16, 1975
June 1975	August 22, 1975
July 1975	September 16, 1975
August 1975	October 1, 1975
September 1975	October 20, 1975
October 1975	December 2, 1975
December 1975	January 16, 1976
January 1976	February 12, 1976
February 1976	March 15, 1976
March 1976	April 17, 1976
April 1976	May 17, 1976
May 1976	June 17, 1976
June 1976	July 11, 1976
July 1976	August 12, 1976
August 1976	September 12, 1976
September 1976	October 16, 1976
October 1976	November 13, 1976
November 1976	December 18, 1976
May 1977	June 14, 1977
July 1977	August 20, 1977

August 1977	September 16, 1977
September 1977	October 19, 1977
October 1977	November 17, 1977

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

HENRY R. GABRYSZAK,

A Justice of the Sloan Village Court and Cheektowaga
Town Court, Erie County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Lester C. Goodchild and John W. Dorn, Of Counsel) for the Commission.

John P. Bartolomei for Respondent

Respondent, Henry R. Gabryszak, a justice of the Village Court of Sloan and the Town Court of Cheektowaga, Erie County, was served with a Formal Written Complaint dated July 27, 1978, setting forth 17 charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated August 22, 1978.

By order dated November 16, 1978, the Commission appointed Carman F. Ball, Esq., as referee to hear and report to the Commission with respect to the facts herein. A hearing was held on June 6, 7, 8, 25 and July 11, 1979, and the report of the referee, dated September 28, 1979, was filed with the Commission.

By notice dated January 14, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination

that respondent be censured. By notice dated January 28, 1980, respondent cross-moved to disaffirm the referee's report and for a dismissal of the Formal Written Complaint. The administrator filed an affirmation dated February 14, 1980, in opposition to the respondent's cross-motion. Respondent waived oral argument with respect to the motion.

The Commission considered the record in this proceeding on February 26, 1980, and upon that record makes the following findings of fact and conclusions of law.

Charge XI is not sustained, and therefore is dismissed.

1. Charge I: On February 19, 1976, respondent sent a letter on his judicial stationery to Justice Samuel Trippi of the Village Court of Mount Morris, seeking special consideration on behalf of the defendant in *People* v. *Joseph Radwan*, a case then pending before Judge Trippi.

2. Charge II: On April 5, 1976, respondent communicated with Justice Norman E. Kuehnel of the Town Court of Hamburg, seeking special consideration on behalf of the defendant in *People* v. *Daniel Rustowicz*, a case then pending before Judge Kuehnel.

3. Charge III: On February 5, 1975, respondent dismissed a charge of speeding in *People* v. *William N. Denman* as a result of a communication he received from Trooper Dykas seeking special consideration on behalf of the defendant, a justice of the Town Court of Niles.

4. Charge IV: On June 20, 1975, respondent reduced a charge of speeding to illegal parking in *People* v. *Michael Cavalcanti* as a result of a written communication he received from Justice Wesley T. Wooden of the Town Court of Greece, seeking special consideration on behalf of the defendant.

5. Charge V: On November 12, 1974, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Marcus W. Crahan* as a result of a communication he, or someone under his direction, initiated with the arresting officer, seeking special consideration on behalf of the defendant.

6. Charge VI: On February 6, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Linda Fiorella* as a result of a communication he received from Justice J.M. Kelleher of the Town Court of Lancaster, seeking special consideration on behalf of the defendant.

7. Charge VII: On August 4, 1976, respondent reduced a charge of failure to yield to illegal parking in *People* v. *Armand U. Garafalo* as a result of a written communication he received from Justice Richard Lips of the Town Court of Clifton Park, seeking special consideration on behalf of the defendant.

8. Charge VIII: On April 18, 1977, respondent reduced a charge of speeding to illegal parking in *People* v. *Gerald P. Szostak* as a result of a communication he received from the arresting officer seeking special consideration on behalf of the defendant.

9. Charge IX: On June 8, 1976, respondent reduced a charge of passing a red light to illegal parking in *People* v. *Mary L. Jegierski* as a result of a communication he received seeking special consideration on behalf of the defendant.

10. Charge X: On February 23, 1976, respondent reduced a charge of speeding to illegal parking in *People* v. *Adam Kaczanowski* as a result of a communication he received seeking special consideration on behalf of the defendant.

11. Charge XII: On March 22, 1975, respondent reduced a charge of speeding to illegal parking in *People* v. *David R. Mazurowski* as a result of a written communication he received from Patrolman D.J. Tolsma seeking special consideration on behalf of the defendant.

12. Charge XIII: On September 17, 1975, respondent reduced a charge of backing on expressway to illegal parking in *People* v. *Oscar A. Patrignani* as a result of a written communication he received from Police Captain John T. Maccarone seeking special consideration on behalf of the defendant.

13. Charge XIV: On July 13, 1976, respondent reduced a charge of speeding to illegal parking in *People* v. *Russel H. Schepp* as a result of a written communication he received from Judge R.D. Wilson of the Minoa Police Court, seeking special consideration on behalf of the defendant.

14. Charge XV: On March 17, 1976, respondent reduced a charge of driving with an overloaded axle to improper use of a restricted highway by an overweight vehicle in *People* v. *Robert C. Schultz* as a result of a written communication he received from Justice Herbert Titus of the Town Court of Ira, seeking special consideration on behalf of the defendant.

15. Charge XVI: On June 11, 1976, respondent reduced a charge of speeding to driving to the left of pavement markings in *People* v. *Paul*

F. Smith as a result of a written communication he received from Justice Andrew Lang of the Town Court of Pembroke, seeking special consideration on behalf of the defendant.

16. Charge XVII: On November 6, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *John J. Syracuse, Jr.*, as a result of a written communication he received from James R. Burke, Town and Village Court Case Screener for the Monroe County District Attorney's office, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that the respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through X and XII through XVII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges and persons of influence, for favorable dispositions for defendants in traffic cases, and by granting such requests, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

By reason of the foregoing, the Commission determines by vote of 7 to 3 that the appropriate sanction is censure. Judge Cardamone, Mr. Wainwright and Judge Rubin dissent only with respect to sanction and vote that the appropriate sanction is admonition.

Dated: May 9, 1980

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

GORDON GUSHEE,

A Justice of the Porter Town Court, Niagara County.

Before: Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Lester C. Goodchild and John W. Dorn, Of Counsel) for the Commission.

John P. Bartolomei for Respondent.

Respondent, Gordon Gushee, a justice of the Town Court of Porter, Niagara County, was served with a Formal Written Complaint dated July 27, 1978, setting forth 20 charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated August 8, 1978.

By order dated November 16, 1978, the Commission appointed Carman F. Ball, Esq., as referee to hear and report to the Commission with respect to the facts herein. A hearing was held on April 23, through 26 and May 7 through 9, 1979, and the report of the referee, dated August 16, 1979, was filed with the Commission.

By notice dated February 13, 1980, the administrator moved to confirm the referee's report and for a determination that respondent be censured. By notice dated March 12, 1980, respondent cross-moved to disaffirm the referee's report and for a determination dismissing the Formal Written Complaint. The administrator filed an affirmation in

opposition to respondent's cross-motion. Respondent waived oral argument.

The Commission considered the record in this proceeding on March 21, 1980, and upon that record makes the following findings of fact and conclusions of law.

1. Charge I: On or about September 11, 1976, respondent sent a letter to Justice Carl Timko of the Town Court of Niagara, seeking special consideration on behalf of the defendant in *People* v. *Donald Stock*, a case then pending before Judge Timko.

2. Charge II: On or about March 2, 1977, respondent communicated with Justice Donald Bemis of the Town Court of Porter, seeking special consideration on behalf of the defendant in *People* v. *Charles Ruble*, a case then pending before Judge Bemis.

3. Charge III: On or about March 2, 1977, respondent communicated with Justice Donald Bemis of the Town Court of Porter, seeking special consideration on behalf of the defendant in *People* v. *Evelyn Ruble*, a case then pending before Judge Bemis.

4. Charge IV: On or about October 16, 1973, respondent reduced a charge of passing a stop sign to driving with an inadequate muffler in *People* v. *John Baldassara* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

5. Charge V: On or about August 11, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Hellen S. Helmich* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

6. Charge VI: On or about May 14, 1973, respondent imposed an unconditional discharge in *People* v. *Edward Fraser* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

7. Charge VII: On or about August 12, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Richard Johnson* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

8. Charge VIII: On or about January 23, 1973, respondent reduced

a charge of speeding to driving with unsafe tires in *People* v. *Charles Schumacher* as a result of a written communication he received from Trooper Fechner seeking special consideration on behalf of the defendant.

9. Charge IX: On or about March 20, 1973, respondent imposed a conditional discharge in *People* v. *Sharon L. Sesto* as a result of a communication he received from Gloria A. Donovan, Clerk of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

10. Charge X: On or about July 30, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Michael Veillette* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

11. Charge XI: On or about September 18, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Arthur E. Girasole* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

12. Charge XII: On or about May 7, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *James Tingue* as a result of a written communication he received from Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

13. Charge XIII: On or about November 30, 1971, respondent accepted the forfeiture of bail in lieu of further prosecution of charges of speeding and passing a stop sign in *People* v. *Raymond C. Cournyea* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

14. Charge XIV: On or about March 23, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Mary J. Steiner* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

15. Charge XV: On or about November 11, 1976, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Nancy E. Gombert* as a result of a written

communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

16. Charge XVI: On or about October 20, 1976, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Cecile Brownell* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

17. Charge XVII: On or about April 23, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Rebecca I. Geltz* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

18. Charge XVIII: On or about November 18, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of driving to the left of the pavement markings in *People* v. *Betty J. Schmoyer* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

19. Charge XIX: On or about April 23, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Steven Weintraub* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

20. Charge XX: On or about November 17, 1976, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Anna E. Kendall* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3A of the Code of Judicial Conduct and Canons 4, 5, 13, 14, 17 and 34 of the Canons of Judicial Ethics. Charges I through XX of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by granting such requests from judges and other persons of influence, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's

court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

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

All concur.

Dated: May 9, 1980

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

FLOYD E. LINN,

A Justice of the Town Court of Clay, Onondaga County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Alan W. Friedberg and Judith Siegel-Baum, Of Counsel) for the Commission.

Jon W. Brenizer for Respondent.

Respondent, Floyd E. Linn, a justice of the Town Court of Clay, Onondaga County, was served with a Formal Written Complaint dated January 26, 1979, setting forth nine charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated March 23, 1979.

By order dated May 7, 1979, the Commission appointed Saul H. Alderman, Esq., as referee to hear and report to the Commission with respect to the facts herein. A hearing was held on July 18, 1979, and the report of the referee, dated October 17, 1979, was filed with the Commission.

By notice dated January 9, 1980, the administrator moved to confirm the referee's report and for a determination that respondent be censured. By notice dated January 16, 1980, respondent cross-moved

for a determination dismissing the Formal Written Complaint. The administrator filed a reply memorandum. Respondent waived oral argument.

The Commission considered the record in this proceeding on February 26, 1980, and upon that record makes the following findings of fact and conclusions of law.

Charge III of the Formal Written Complaint is not sustained, and therefore is dismissed.

1. Charge I: On April 23, 1975, respondent communicated with Justice Duane Algire of the Town Court of Barker, seeking special consideration on behalf of respondent's brother, the defendant in *People* v. *Carl E. Linn*, a case then pending before Judge Algire.

2. Charge II: On February 27, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Michael L. Goglia* as a result of a written communication he received from Justice Frank Stritter of the Village Court of Cazenovia, seeking special consideration on behalf of the defendant.

3. Charge IV: On August 9, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Denise C. Pickens* as a result of a communication he received from Police Chief Bastable of the Village of Minoa, or someone at Chief Bastable's request, seeking special consideration on behalf of the defendant.

4. Charge V: On August 28, 1973, respondent reduced a charge of speeding to passing in a no passing zone in *People* v. *Kimberly A. Dwyer* as a result of a communication he received from Harvey Chase, Town Justice of Cicero, seeking special consideration on behalf of the defendant.

5. Charge VI: On January 8, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Michael L. Roder* as a result of a communication he received from Police Officer Benedict of the Town of Clay, seeking special consideration on behalf of the defendant.

6. Charge VII: On June 4, 1974, respondent reduced a charge of passing a red light to driving with an inadequate muffler in *People* v. *Peter A. Black* as a result of a communication he received from Police Chief John Kerr of the Town of Clay, seeking special consideration on behalf of the defendant.

7. Charge VIII: On August 7, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Patricia A. Krisak* as a result of a written communication he received from Assistant District Attorney Morris Schneider seeking special consideration on behalf of the defendant.

8. Charge IX: On January 25, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Robert A. Tringali* as a result of a communication he received from Trooper Fiscoe seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3A of the Code of Judicial Conduct and Canons 4, 5, 13, 14, 17 and 34 of the Canons of Judicial Ethics. Charges I, II and IV through IX of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By granting *ex parte* requests from other judges and persons of influence, for favorable dispositions for defendants in traffic cases, and by making such requests, respondent violated the Rules enumerated above.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

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

All concur.

Dated: May 9, 1980

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

RONALD V. BAILEY,

A Justice of the Chesterfield Town Court, Essex County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Robert Straus, Of Counsel) for the Commission.

Bradford H. Brinton for Respondent.

Respondent, Ronald V. Bailey, a justice of the Town Court of Chesterfield, Essex County, was served with a Formal Written Complaint dated October 12, 1979, setting forth four charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated November 30, 1979.

By notice dated December 20, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. By determination and order dated January 30, 1980, the Commission granted the motion, found respondent's misconduct established with respect to all four charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum.

The Commission considered the record in this proceeding on February 27, 1980, and upon that record makes the following findings of fact.

1. Charge I: On December 15, 1975, respondent sent a letter to Justice Andre Bergeron of the Town Court of Lewis, seeking special consideration on behalf of the defendant in *People* v. *Everett Ammerman,* a case then pending before Judge Bergeron.

2. Charge II: On December 27, 1976, respondent sent a letter to Justice James Corkland of the Town Court of Lake George, seeking special consideration on behalf of the defendant in *People* v. *Joseph Kilburn*, a case then pending before Judge Corkland.

3. Charge III: On June 1, 1977, respondent, or someone at his request, communicated with Justice James Brookman of the Town Court of Glen, seeking special consideration on behalf of the defendant in *People* v. *Darlene A. LaMountain*, a case then pending before Judge Brookman.

4. Charge IV: On November 24, 1976, respondent sent a letter to Justice John Carusone of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in *People* v. *Peter J. Douglas*, a case then pending before Judge Carusone.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times

> in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

In one of his letters to another judge, respondent also indicated his willingness to accommodate a request for consideration similar to the one he himself was making. Such an offer of reciprocity only compounds respondent's misconduct.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

By reason of the foregoing, the Commission determines by vote of 6 to 4 that the appropriate sanction is censure. Mrs. Robb, Judge Cardamone, Judge Rubin and Judge Shea dissent only with respect to sanction and vote that the appropriate sanction is admonition.

Dated: May 20, 1980

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

FRANK L. GIZA,

A Justice of the Wawayanda Town Court, Orange County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Barry M. Vucker, Of Counsel) for the Commission.

Michael A. Gurda for Respondent

Respondent, Frank L. Giza, a justice of the Town Court of Wawayanda, Orange County, was served with a Formal Written Complaint dated April 16, 1979, setting forth three charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated June 1, 1979.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on December 13, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, thus waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement of facts, as submitted, on January 24, 1980, determined that no outstanding issue of fact remained and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any.

The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted a written statement.

The Commission considered the record in this proceeding on February 26, 1980, and upon that record makes the following findings of fact.

1. Charge I: On February 23, 1976, respondent sent a letter to Justice Harvey W. Chase of the Town Court of Cicero, seeking special consideration on behalf of the defendant in *People* v. *Peter Bogdanski*, a case then pending before Judge Chase.

2. Charge II: On April 23, 1976, respondent sent a letter to Justice Charles Shaughnessy of the Town Court of Chester, seeking special consideration on behalf of the defendant in *People* v. *John Quidone*, a case then pending before Judge Shaughnessy.

3. Charge III: On January 15, 1977, respondent sent a letter to Justice James McMahon of the Town Court of Wallkill, seeking special consideration on behalf of the defendant in *People* v. *Arlene M. Scott*, a case then pending before Judge McMahon.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the Rules enumerated above.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

All concur.

Dated: May 20, 1980

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 W. KEEGAN,

A Judge of the Albany City Police Court, Albany County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

Robert G. Lyman for Respondent.

Respondent, Thomas W. Keegan, a judge of the Albany City Police Court, Albany County, was served with a Formal Written Complaint dated October 26, 1978, setting forth eleven charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated November 17, 1978.

By order dated June 14, 1979, the Commission appointed James A. O'Connor, Esq., as referee to hear and report to the Commission with respect to the facts herein. A hearing was held on August 21, 1979, and the report of the referee, dated December 20, 1979, was filed with the Commission.

By notice dated February 7, 1980, the administrator of the Commission moved to confirm the report of the referee, and for a determination that respondent be censured. Respondent waived oral argument and did not submit any papers.

The Commission considered the record in this proceeding on February 26, 1980, and upon that record makes the following findings of fact.

1. Charge I: Between March 5, 1974, and April 25, 1974, respondent sent three letters on his judicial stationery to Justice George Carl of the Town Court of Catskill, seeking special consideration on behalf of the defendant in *People* v. *Gerald Klein*, a case then pending before Judge Carl.

2. Charge II: On October 3, 1974, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in *People* v. *William J. Prescott*, a case then pending before Judge Holt-Harris.

3. Charge III: On October 29, 1974, respondent sent a letter on his judicial stationery to Justice Joseph Thomson of the Town Court of Cornwall, seeking special consideration on behalf of the defendant in *People* v. *John J. Thompson*, a case then pending before Judge Thomson.

4. Charge IV: On December 16, 1974, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in *People* v. *Harley Strauss*, a case then pending before Judge Holt-Harris.

5. Charge V: On June 14, 1975, respondent, or someone at his request, communicated with a justice of the Town Court of Catskill, seeking special consideration on behalf of the defendant in *People* v. *John J. Thompson*, a case then pending in the Town Court of Catskill.

6. Charge VI: On December 11, 1975, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in *People* v. *Fred R. Chavin*, a case then pending before Judge Holt-Harris.

7. Charge VII: On December 11, 1975, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in *People* v. *Arthur Armstrong*, a case then pending before Judge Holt-Harris.

8. Charge VIII: On December 15, 1975, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in *People* v. *William Paraso, Jr.*, a case then pending before Judge Holt-Harris.

9. Charge IX: On August 13, 1976, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in *People* v. *Thomas Martinez*, a case then pending before Judge Holt-Harris.

10. Charge X: On February 3, 1977, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in *People* v. *Linda Jordan*, a case then pending before Judge Holt-Harris.

11. Charge XI: On February 24, 1977, respondent sent a letter to Judge John Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in *People* v. *Raymond Roger*, a case then pending before Judge Holt-Harris.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through XI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for the defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit

> others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

In one of his letters to another judge, respondent also indicated his willingness to accommodate a request for consideration similar to the one he himself was making. Such an offer of reciprocity only compounds respondent's misconduct.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

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

All concur.

Dated: May 20, 1980

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 J. O'CONNELL,

A Justice of the Brutus Town Court, Cayuga County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Stanley A. Bass, Of Counsel) for the Commission.

Thomas J. O'Connell, Respondent Pro Se.

Respondent, Thomas J. O'Connell, a justice of the Town Court of Brutus, Cayuga County, was served with a Formal Written Complaint dated February 6, 1979, setting forth 20 charges relating to the improper assertion of influence in traffic cases. Respondent filed an amended answer dated November 9, 1979.

By notice dated December 6, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. By determination and order dated January 30, 1980, the Commission granted the motion, found respondent's misconduct established with respect to all 20 charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted a letter on sanction.

The Commission considered the record in this proceeding on February 26, 1980, and upon that record makes the following findings of fact.

1. Charge I: On November 18, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Ellen M. Antinelli* as a result of a written communication he received from Anthony J. Casamassima, Chief of Police of Seneca Falls, seeking special consideration on behalf of the defendant.

2. Charge II: On March 8, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Anthony V. Bankit* as a result of a written communication he received from Justice Steve A. Skramko of the Town Court of Warren, seeking special consideration on behalf of the defendant.

3. Charge III: On January 8, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Gino C. Cracolici* as a result of a written communication he received from Justice Edward A. Lahey of the Town Court of New Windsor, seeking special consideration on behalf of the defendant.

4. Charge IV: On November 6, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Vincent L. Fedele* as a result of a written communication he received from James R. Burke of the Monroe County District Attorney's office, seeking special consideration on behalf of the defendant.

5. Charge V: On November 27, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Edward Funda* as a result of a written communication he received from Justice James S. Jerome of the Town Court of Geddes, seeking special consideration on behalf of the defendant.

6. Charge VI: On August 3, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Leo S. Greaser* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

7. Charge VII: On April 11, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Eugene Harvey* as a result of a written communication he received from Justice John G. Gamble of the Town Court of Lewiston, seeking special consideration on behalf of the defendant, Judge Gamble's cousin.

8. Charge VIII: On July 16, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Sam Jowdy* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

9. Charge IX: On April 10, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *James Milne* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

10. Charge X: On June 30, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Anthony Mustille* as a result of a written communication he received from Justice William B. Van Nostrand of the Town Court of Ovid, seeking special consideration on behalf of the defendant.

11. Charge XI: On August 24, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Harold L. Peters* as a result of a written communication he received from Justice Vernon F. Troyer of the Town Court of Wheatfield, seeking special consideration on behalf of the defendant.

12. Charge XII: On January 27, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Julia J. Quarcini* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

13. Charge XIII: On November 25, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Samuel V. Sicilia, Jr.*, as a result of a written communication he received from Justice Michael A. Perretta of the Town Court of Lenox, seeking special consideration on behalf of the defendant.

14. Charge XIV: On January 31, 1975, respondent reduced a charge of speeding 90 m.p.h. in a 55 m.p.h. zone to speeding 75 m.p.h. in a 55 m.p.h. zone in *People* v. *Angelo Sparaco* as a result of a written communication he received from Justice Arthur A. Reilly of the Town Court of Ulster, seeking special consideration on behalf of the defendant.

15. Charge XV: On January 20, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Valere H. Upchurch* as a result of a written communication he received from Justice

Carlton M. Chase of the Village Court of Chittenango, seeking special consideration on behalf of the defendant.

16. Charge XVI: On April 24, 1974, respondent reduced a charge of speeding to failing to keep right in *People* v. *Peter A. Weitzman* as a result of a written communication he received from Justice Helen Burnham of the Town Court of Salina, seeking special consideration on behalf of the defendant.

17. Charge XVII: On October 23, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *James A. Coogan* as a result of a written communication he received from Ralph C. Bagnett, Public Safety Commissioner of the Town of Clay, or someone at Commissioner Bagnett's request, seeking special consideration on behalf of the defendant.

18. Charge XVIII: On October 30, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Thomas D. Joseph* as a result of a communication he received from Justice Edward Jones of the Town Court of Coeymans, or someone at Judge Jones' request, seeking special consideration on behalf of the defendant.

19. Charge XIX: On April 14, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Ray F. Martino, Jr.*, as a result of a communication he received from Justice Michael Perretta of the Town Court of Lenox, or someone at Judge Perretta's request, seeking special consideration on behalf of the defendant.

20. Charge XX: On May 17, 1973, respondent imposed an unconditional discharge in *People* v. *Albert Zalatan* as a result of a written communication he received from Justice Ina Sowle of the Town Court of Providence, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3A of the Code of Judicial Conduct and Canons 4, 5, 13, 14, 17 and 34 of the Canons of Judicial Ethics. Charges I through XX of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic

ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By granting *ex parte* requests from judges and other persons of influence, for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.*

at 71-72.

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

All concur.

Dated: May 20, 1980

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 W. RADLOFF,

A Justice of the Lake George Town Court, Warren County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jeanne A. O'Connor, Of Counsel) for the Commission.

Robert W. Radloff, Respondent Pro Se.

Respondent, Robert W. Radloff, a justice of the Town Court of Lake George, Warren County, was served with a Formal Written Complaint dated October 3, 1979, setting forth 43 charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated October 22, 1979.

By notice dated November 29, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. By determination and order dated January 30, 1980, the Commission granted the motion, found respondent's misconduct established with respect to all 43 charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum.

The Commission considered the record in this proceeding on February 27, 1980, and upon that record makes the following findings of fact.

1. Charge I: On July 30, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Peter Bishko* as a result of a communication he received from former Justice Frank Tate of the Town Court of Colonie, seeking special consideration on behalf of the defendant.

2. Charge II: On January 28, 1977, respondent reduced a charge of speeding to driving with an inadequate directional signal in *People* v. *Jan Vanwingerden* as a result of a communication he received from Judge Constantine Cholakis of the Rensselaer County Court, seeking special consideration on behalf of the defendant.

3. Charge III: On October 23, 1974, respondent reduced a charge of driving to the left of pavement markings to driving with an inadequate muffler in *People* v. *Lawrence J. Freedella* as a result of a written communication he received from Justice John Carusone of the Town Court of Queensbury, seeking special consideration on behalf of the defendant.

4. Charge IV: On February 27, 1975, respondent reduced a charge of speeding to failure to keep right in *People* v. *Loyce O. McMillan* as a result of a written communication he received from Justice C. Ross Daniels, Jr., of the Town Court of Pawling, seeking special consideration on behalf of the defendant.

5. Charge V: On September 15, 1975, respondent reduced a charge of speeding to passing a red light and granted an unconditional discharge in *People* v. *Verna S. Bain* as a result of a communication he received from Judge John G. Dier of the Warren County Court, seeking special consideration on behalf of the defendant.

6. Charge VI: On April 10, 1974, respondent reduced a charge of speeding to failure to keep right in *People* v. *Raymond A. Rabideau* as a result of a written communication he received from Justice Philip Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

7. Charge VII: On August 6, 1975, respondent reduced a charge of speeding to failure to keep right in *People* v. *Robert V. St. Louis* as a result of a written communication he received from Justice Philip Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

8. Charge VIII: On November 10, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Wayne M. Bressette* as a result of a written communication he received from Justice Philip Drollette of the Town Court of Plattsburgh, seeking special consideration on behalf of the defendant.

9. Charge IX: On January 5, 1976, resondent reduced a charge of speeding to driving with an inadequate directional signal in *People* v. *Marcel Breton* as a result of a written communication he received from Justice Anthony G. Ellis of the Village Court of Tupper Lake, seeking special consideration on behalf of the defendant.

10. Charge X: On November 8, 1974, respondent reduced a charge of speeding to driving with an inadequate directional signal in *People* v. *Theode Desmaris* as a result of a written communication he received from Justice Anthony G. Ellis of the Town Court of Altamont, seeking special consideration on behalf of the defendant.

11. Charge XI: On August 21, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *George E. LaClaire, Jr.*, as a result of a written communication he received from Justice M. Leo Friedman of the Town Court of Schroon, seeking special consideration on behalf of the defendant.

12. Charge XII: On October 4, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Robert L. Cervera* as a result of a written communication he received from Justice Edward Longo of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant.

13. Charge XIII: On December 4, 1974, respondent reduced a charge of speeding to failure to keep right in *People* v. *Robert E. Ford, Sr.*, as a result of a written communication he received from Justice Clarence G. Hallenbeck of the Village Court of Hudson Falls, seeking special consideration on behalf of the defendant.

14. Charge XIV: On January 17, 1973, respondent reduced a charge of passing a stop sign to driving with an unsafe tire in *People* v. *Frank P. Orsini* as a result of a communication he received from Justice Clarence G. Hallenbeck of the Village Court of Hudson Falls, or someone at his request, seeking special consideration on behalf of the defendant.

15. Charge XV: On July 16, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Charles A. DePasquale* as a result of a written communication he received from Justice Clarence G. Hallenbeck of the Village Court of Hudson Falls, seeking

special consideration on behalf of the defendant.

16. Charge XVI: On January 24, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Gerald R. Thomsen* as a result of a written communication he received from Justice Clarence G. Hallenbeck of the Village Court of Hudson Falls, seeking special consideration on behalf of the defendant.

17. Charge XVII: On April 21, 1976, respondent reduced a charge of speeding to driving with an inadequate directional signal and granted an unconditional discharge in *People* v. *Robert R. Catlin* as a result of a written communication he received from Justice Duncan MacAffer of the Village Court of Menands, seeking special consideration on behalf of the defendant.

18. Charge XVIII: On July 17, 1975, respondent reduced a charge of speeding to failure to keep right in *People* v. *Christopher Coward* as a result of a written communication he received from Justice Duncan MacAffer of the Village Court of Menands, seeking special consideration on behalf of the defendant.

19. Charge XIX: On September 19, 1974, respondent reduced a charge of speeding to failure to keep right in *People* v. *LeRoy F. Tyler* as a result of a written communication he received from Justice Matthew Mataraso of the Town Court of Guilderland, seeking special consideration on behalf of the defendant.

20. Charge XX: On August 27, 1974, respondent imposed a conditional discharge in *People* v. *Richard H. Gaines* as a result of a written communication he received from Justice Stanley N. Moore of the Town Court of Champlain, seeking special consideration on behalf of the defendant.

21. Charge XXI: On July 9, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *William E. Santos* as a result of a written communication he received from Justice Frank Santos of the Town Court of Florida, seeking special consideration on behalf of the defendant, Judge Santos' nephew.

22. Charge XXII: On May 5, 1976, respondent reduced a charge of speeding to unnecessary smoke in *People* v. *Pincus P. Peller* as a result of a written communication he received from Justice Morris Strauss of the Village Court of Scotia, seeking special consideration on behalf of the defendant.

23. Charge XXIII: On May 14, 1974, respondent reduced a charge of speeding to driving with an unsafe tire and granted an uncondi-

tional discharge in *People* v. *Vernon G. Williams* as a result of a written communication he received from Justice Vernon Williams of the Town Court of Palatine, seeking special consideration on behalf of the defendant, Judge Williams' son.

24. Charge XXIV: On March 31, 1977, respondent imposed an unconditional discharge in *People* v. *Timothy T. Breeyear* as a result of a written communication he received from Justice Paul Brown of the Village Court of Hudson Falls, seeking special consideration on behalf of the defendant.

25. Charge XXV: On March 10, 1977, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Donald Mortimer* as a result of a communication he received from Carl DeSantis, Warren County Republican Committee Chairman, seeking special consideration on behalf of the defendant.

26. Charge XXVI: On November 5, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *George E. Linsky* as a result of a written communication he received from Alan Linsky, Clerk of the Village Court of Atlantic Beach, seeking special consideration on behalf of the defendant, Alan Linsky's brother.

27. Charge XXVII: On February 5, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Geraldine L. Wirth* as a result of a communication he received seeking special consideration on behalf of the defendant.

28. Charge XXVIII: On October 3, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Edward M. Kirby* as a result of a communication he received from Trooper P.J. Nadig seeking special consideration on behalf of the defendant.

29. Charge XXIX: On January 24, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Gesa Tatarko* as a result of a communication he received from Joe Stafford, Chief of Police of the Town of Bolton, seeking special consideration on behalf of the defendant.

30. Charge XXX; On July 25, 1975, respondent reduced a charge of speeding to driving with a inadequate muffler in *People* v. *Frank W. Dunham* as a result of a communication he received from Robert Flacke, Lake George Town Supervisor, or someone at his request, seeking special consideration on behalf of the defendant.

31. Charge XXXI: On January 2, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Salvatore Rinaldi* as a result of a communication he received from Thomas Marzola, Jr., Glens Falls City Councilman, seeking special consideration on behalf of the defendant.

32. Charge XXXII: On March 3, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler and granted an unconditional discharge in *People* v. *Raymond P. Calcagne* as a result of a communication he received from Justice James Ross of the Town Court of Bolton, seeking special consideration on behalf of the defendant.

33. Charge XXXIII: On May 15, 1974, respondent reduced a charge of speeding to driving with an unsafe tire and granted an unconditional discharge in *People* v. *Leo Fertal* as a result of a communication he received from Trooper Win Grange seeking special consideration on behalf of the defendant.

34. Charge XXXIV: On November 10, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Richard Jablonski* as a result of a communication he received from Trooper J.J. Cuddie seeking special consideration on behalf of the defendant.

35. Charge XXXV: On July 16, 1975, respondent reduced a charge of speeding to driving with an inadequate directional signal and granted an unconditional discharge in *People* v. *Frank J. Moynihan* as a result of a communication he received from Trooper Nadig seeking special consideration on behalf of the defendant.

36. Charge XXXVI: On January 7, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Arthur J. Ingersoll* as a result of a communication he received from Trooper Mahar, or someone at his request, seeking special consideration on behalf of the defendant.

37. Charge XXXVII: On April 13, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Michael J. Joyce* as a result of a communication he received from Trooper G.J. Head, or someone at his request, seeking special consideration on behalf of the defendant.

38. Charge XXXVIII: On July 27, 1976, respondent reduced a charge of speed not reasonable and prudent to driving with an unsafe tire in *People* v. *Mark F. Chrzanowski* as a result of a communication he received from Trooper G.J. Head, or someone at his request, seeking special consideration on behalf of the defendant.

39. Charge XXXIX: On November 5, 1973, respondent reduced a charge of speeding to driving with an unsafe tire and granted an unconditional discharge in *People* v. *Bernard A. Smith* as a result of a written communication he received from Trooper Norm Kilfoyle seeking special consideration on behalf of the defendant.

40. Charge XL: On September 12, 1974, respondent reduced a charge of speeding to driving with an inadequate directional signal in *People* v. *George A. Mason* as a result of a communication he received from Trooper Robert Werthmuller, or someone at his request, seeking special consideration on behalf of the defendant.

41. Charge XLI: On September 3, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Ludwig J. Huttig* as a result of a written communication he received from Trooper C.J. Phillips seeking special consideration on behalf of the defendant.

42. Charge XLII: On February 18, 1976, respondent reduced a charge of speeding to unnecessary smoke in *People* v. *Gary R. Johnston* as a result of a communication he received from Trooper Jim Tedesco, or someone at Trooper Tedesco's request, seeking special consideration on behalf of the defendant.

43. Charge XLIII: On May 21, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Samuel Snyder*, as a result of a communication he received from Trooper Ted Rehm, or someone at his request, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3A of the Code of Judicial Conduct and Canons 4, 5, 13, 14, 17 and 34 of the Canons of Judicial Ethics. Charges I through XLIII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By granting *ex parte* requests from judges and other persons of influence, for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

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

All concur. Mr. Kirsch concurs in accord with his concurring opinion in *Matter of Haberneck*, NYLJ Aug. 10, 1979, p. 12, col 5, (Com. on Jud. Conduct, July 10, 1979).

Dated: May 20, 1980

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

STEVE A. SKRAMKO,

A Justice of the Warren Town Court, Herkimer County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Stephen F. Downs and Jack J. Pivar, Of Counsel) for the Commission.

Steve Skramko, Respondent Pro Se.

Respondent, Steve A. Skramko, a justice of the Town Court of Warren, Herkimer County, was served with a Formal Written Complaint dated March 1, 1979, setting forth six charges relating to the improper assertion of influence in traffic cases. Respondent filed an answer dated March 17, 1979.

By order dated July 30, 1979, the Commission appointed Herbert W. Holtz, Esq., as referee to hear and report to the Commission with respect to the facts herein. A hearing was held on September 19, 1979, and the report of the referee, dated November 21, 1979, was filed with the Commission.

By notice dated January 7, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent waived oral argument and did not submit any papers.

The Commission considered the record in this proceeding on February 26, 1980, and upon that record makes the following findings of fact.

1. Charge I: On July 7, 1976, respondent sent a letter to Justice Charles Persons, Jr., of the Town Court of Florida, seeking special consideration on behalf of the defendant in *People* v. *Michael A. Conforti*, a case then pending before Judge Persons.

2. Charge II: On January 17, 1975, respondent communicated with Justice James B. Lamb of the Town Court of Nassau, seeking special consideration on behalf of the defendant in *People* v. *Charles M. Demorest*, a case then pending before Judge Lamb.

3. Charge III: On February 23, 1973, respondent sent a letter to Justice Thomas O'Connell of the Town Court of Brutus, seeking special consideration on behalf of the defendant in *People* v. *Anthony V. Bankit*, a case then pending before Judge O'Connell.

4. Charge IV: On June 28, 1974, respondent sent a letter to Justice Fred J. DeVries of the Town Court of Warrensburg, seeking special consideration on behalf of the defendant in *People* v. *Steven De Young*, a case then pending before Judge DeVries.

5. Charge V: On March 10, 1977, respondent sent a letter to Justice James A. Davidson of the Town Court of Queensbury, seeking special consideration on behalf of the defendant in *People* v. *Thomas Meehan*, a case then pending before Judge John Carusone, a co-justice.

6. Charge VI: On September 23, 1973, respondent reduced a charge of driving to the left of pavement markings to driving with an inadequate muffler in *People* v. *Charlotte Szaresko* as a result of a written communication he received from Justice Harry J. Enea of the Village Court of Herkimer, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, and 3A of the Code of Judicial Conduct. Charges I through VI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as

is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by granting such a request, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

In his letters, respondent also indicated his willingness to accommodate requests for consideration similar to those he himself was making. Such offers of reciprocity only compound respondent's misconduct.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's

court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

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

All concur.

Dated: May 20, 1980

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

ANTHONY G. ELLIS,

A Justice of the Altamont Town Court and the Tupper Lake Village Court, Franklin County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Robert Straus, Of Counsel) for the Commission.

William J. Cade for Respondent.

Respondent, Anthony G. Ellis, a justice of the Town Court of Altamont, and the Village Court of Tupper Lake, Franklin County, was served with a Formal Written Complaint dated May 31, 1979, setting forth seven charges of improper influence in traffic cases. Respondent filed an answer dated October 2, 1979.

The administrator of the Commission, respondent and respondent's counsel, entered into an agreed statement of facts on February 11, 1980, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts agreed upon. The Commission approved the agreed statement of facts, as submitted, on February 26, 1980 determined that no outstanding issue of fact remained and scheduled oral argument to determine (i) whether the facts

establish misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum and waived oral argument. Respondent did not appear for oral argument and did not submit a memorandum.

The Commission considered the record in this proceeding on April 23, 1980, and upon that record makes the following findings of fact.

1. Charge I: On or about September 8, 1975, respondent communicated with Justice Richard Lips of the Town Court of Clifton, seeking the reduction of a charge from speeding to a non-moving violation on behalf of the defendant in *People* v. *Kathleen J. Specchio*, a case then pending before Judge Lips.

2. Charge II: On or about April 12, 1975, respondent sent a letter on his judicial stationery to Justice Karl Griebsch of the Village Court of Saranac Lake, on behalf of the defendant in *People* v. *Francis Bourdage, Jr.*, a case then pending before Judge Griebsch. In the letter, respondent explained to Judge Griebsch why, in respondent's opinion, the defendant was not guilty of the charges under the circumstances of the case.

3. Charge III: On or about September 19, 1975, respondent sent a letter on his judicial stationery to Justice Karl Griebsch of the Village Court of Saranac Lake, requesting the reduction of a charge from speeding to a non-moving violation on behalf of the defendant in *People* v. *Germain D. Carriere*, a case then pending before Judge Griebsch.

4. Charge IV: On or about June 23, 1976, respondent sent a letter on his judicial stationery to Justice Karl Griebsch of the Town Court of Harrietstown, requesting the reduction of a charge from speeding to a non-moving violation on behalf of the defendant in *People* v. *Germain D. Carriere*, a case then pending before Judge Griebsch.

5. Charge V: On or about October 31, 1974, respondent sent a letter on his judicial stationery to Justice Robert Radloff of the Town Court of Lake George, requesting the reduction of a charge from speeding to a non-moving violation on behalf of the defendant in *People* v. *Theode Desmarais*, a case then pending before Judge Radloff.

6. Charge VI: On or about December 29, 1975, respondent sent a letter on his judicial stationery to Justice Robert Radloff of the Town Court of Lake George, requesting the reduction of a charge from speeding to a non-moving violation on behalf of the defendant in *People* v. *Marcel Breton*, a case then pending before Judge Radloff.

7. Charge VII: On or about September 9, 1976, respondent sent a letter on his judicial stationery to Justice Thomas Haberneck of the Town Court of Newstead, requesting the reduction of a charge from speeding to a non-moving violation on behalf of the defendant in *People* v. *Gilles Vaillancourt*, a case then pending before Judge Haberneck.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through VII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]

> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

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

All concur.

Dated: June 4, 1980

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 J. MILLER,

A Justice of the Town Court of Warsaw, Wyoming County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Lester C. Goodchild and John W. Dorn, Of Counsel) for the Commission.

Michael F. Griffith for Respondent.

Respondent, Howard J. Miller, a justice of the Town Court of Warsaw, Wyoming County, was served with a Formal Written Complaint dated August 7, 1978, setting forth four charges alleging various financial record keeping improprieties and deficiencies. Respondent filed an answer dated August 18, 1978.

By order dated December 14, 1978, the Commission designated Michael Whiteman, Esq., referee to hear and report with respect to the issues herein. The hearing was held on May 10, 1979, and the report of the referee dated December 19, 1979, was filed with the Commission.

By notice dated March 12, 1980, the administrator of the Commission moved to confirm the report of the referee and to determine that respondent be censured. By affidavit filed on April 7, 1980, respondent opposed the motion and moved for the Commission to issue a let-

ter of dismissal and caution in lieu of a public sanction. The administrator replied by memorandum dated April 14, 1980. Both the administrator and respondent waived oral argument.

The Commission considered the record of this proceeding on April 23, 1980, and makes the following findings of fact.

1. Charge I: On June 1, 1976, respondent drew a check on his town court account in the sum of $110.00, payable to Alan D. Hale, an accountant, in payment of a personal debt and not for official court business.

2. Charge II: From July 1, 1974, to July 1, 1978, respondent failed to maintain a chronologically itemized cashbook of all receipts and payments.

3. Charge III: Respondent failed to report to the State Comptroller the dispositions of 10 motor vehicle cases from January 1976 through February 1978, and he failed to remit to the State Comptroller the monies collected therefrom within the time required by law.

4. Charge IV: Respondent failed to deposit in his town court account within 72 hours of receipt monies received in his official capacity in 18 cases from June 1976 to March 1978.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 27(1) of the Town Law, Section 1803(8) of the Vehicle and Traffic Law, Section 2021(1) of the Uniform Justice Court Act, Sections 30.7(b) and 30.9 of the Uniform Justice Court Rules, Section 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct, and Canons 1, 2 and 3B(1) of the Code of Judicial Conduct. Charge I, Charge II, subdivisions 1 and 4 through 12 of Charge III and subdivisions 1, 4 through 14 and 19 through 24 of Charge IV are sustained, and respondent's misconduct is established.

Subdivisions 2 and 3 of Charge III and subdivisions 2, 3, 15 through 18 and 25 through 28 of Charge IV are dismissed.

By failing to keep an official cashbook of all receipts and payments, and by failing to report to the State Comptroller the dispositions of 10 motor vehicle cases, and further by failing to make timely deposits and remittances of monies collected in his official capacity, respondent failed to discharge diligently the administrative and financial obligations required of him by the laws and rules cited herein.

The Commission notes in mitigation of the misconduct herein (i) that the use of court funds to pay the personal debt was inadvertent and the deficiency was corrected by respondent upon his discovery of the error and (ii) that the delays in submitting required reports were for relatively short periods of time.

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

All concur, except Mrs. Robb and Judge Rubin, who dissent only as to sanction and vote that the appropriate disposition is a letter of dismissal and caution.

Dated: June 4, 1980

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

EMMETT J. RASKOPF,

A Justice of the Cambria Town Court, Niagara County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll Wainwright, Jr., Esq.

Appearances: Gerald Stern (Lester C. Goodchild and Christopher R. Ashton, Of Counsel) for the Commission.

John P. Bartolomei for Respondent.

Respondent, Emmett J. Raskopf, a justice of the Cambria Town Court, Niagara County, was served with a Formal Written Complaint dated October 10, 1978, setting forth eleven charges of improper influence in traffic cases. Respondent filed an answer dated October 19, 1978.

By order dated March 9, 1979, the Commission appointed Albert Hessberg, Esq., as referee to hear and report to the Commission with respect to the facts herein. A hearing was held on June 12 and 13, 1979, and the report of the referee, dated November 30, 1979, was filed with the Commission.

By notice dated April 1, 1980, the administrator moved to confirm the referee's report and for a determination that respondent be cen-

sured. By notice dated April 17, 1980, respondent cross-moved to disaffirm the referee's report and for a determination dismissing the Formal Written Complaint. The administrator filed an affirmation in opposition to respondent's motion.

The Commission heard oral argument on May 21, 1980, thereafter, in executive session, considered the record in this proceeding, and upon that record makes the following findings of fact and conclusions of law.

Charge I of the Formal Written Complaint is not sustained, and therefore is dismissed.

1. Charge II: On or about April 4, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Charles E. Snyder* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

2. Charge III: On or about April 1, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Jane M. Terrameo* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

3. Charge IV: On or about May 7, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Kevin C. Allen* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

4. Charge V: On or about April 17, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Peter A. Anderson* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

5. Charge VI: On or about December 11, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *John J. Baldassara* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

6. Charge VII: On or about March 13, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Philip D. Bosso, Jr.*, as a result of a written

communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

7. Charge VIII: On or about December 3, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *N.A. Christopher* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

8. Charge IX: On or about February 13, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Martin M. Gerbasi* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

9. Charge X: On or about March 27, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Mary E. Lops* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

10. Charge XI: On or about July 11, 1972, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Wilhelm Jakobi* as a result of a written communication he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3(A) of the Code of Judicial Conduct and Canons 4, 5, 13, 14, 17 and 34 of the Canons of Judicial Ethics. Charges II through XI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By granting *ex parte* requests from another judge for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

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

All concur.

Dated: June 26, 1980

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 R. SNOW,

A Justice of the Town Court of Schodack, Rensselaer County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

George H. Dush for Respondent.

Respondent, Thomas R. Snow, a justice of the Town Court of Schodack, Rensselaer County, was served with a Formal Written Complaint dated July 5, 1979, setting forth three charges of improper influence in traffic cases. Respondent filed an answer dated September 7, 1979.

By order dated October 12, 1979, the Commission designated Bruno Colapietro, Esq., referee to hear and report with respect to the issues herein. The hearing was held on November 16, 1979, December 14, 1979, and December 27, 1979, and the report of the referee was filed on March 5, 1980.

At the hearing, respondent moved for dismissal of Charge II of the Formal Written Complaint. The referee did not pass on the motion, pursuant to Section 7000.6(f) of the Commission's rules (22 NYCRR 7000.6[f]), reserving jurisdiction for the Commission to consider motions to dismiss. Upon due consideration, the Commission hereby denies the motion.

By notice of motion dated April 8, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination of misconduct and sanction. Respondent did not submit opposing papers.

The Commission heard oral argument on the administrator's motion on May 22, 1980. Thereafter, in executive session, the Commission considered the record of this proceeding, and upon that record makes the following findings of fact.

Preliminarily, we note that respondent is a practicing attorney and serves part-time as a town court justice.

1. Charge I: On November 17, 1976, respondent caused a letter on judicial stationery to be sent in his name to Justice Philip Caponera of the Town Court of Colonie, requesting special consideration on behalf of the defendant in *People* v. *Richard Hunsdorfer*, a case then pending before Justice Caponera. The letter was prepared and signed by respondent's secretary, with respondent's knowledge and permission. The defendant was a client of respondent's at the time.

2. Charge II: On October 15, 1973, respondent sent a letter on judicial stationery to Justice George Briegle of the Town Court of Sand Lake, requesting special consideration on behalf of the defendant in *People* v. *John Lesovich*, a case then pending before Justice Briegle.

3. Charge III: On April 11, 1977, respondent sent a letter on judicial stationery to a judge of the City Court of Syracuse, requesting special consideration on behalf of the defendant in *People* v. *Russell Cummings*, a case then pending in the Syracuse City Court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, respondent engaged in favoritism and violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

Respondent's misconduct is exacerbated by the fact that, as both a judge and a practicing lawyer, he should be especially sensitive to the applicable rules and canons.

In oral argument before the Commission, respondent suggested a similarity between the instant case and *Dixon* v. *State Commission on Judicial Conduct*, 47 NY2d 523 (1979), in which the Court of Appeals upheld a finding of judicial misconduct but modified to admonition a Commission determination that a town court justice be censured. In *Dixon*, the Commission had found that the respondent, a lay justice, had sought special consideration from other judges on behalf of the defendants in two traffic cases.

We find the instant proceeding analogous to *Dier* v. *State Commission on Judicial Conduct*, 48 NY2d 874 (1979), in which the Court of Appeals upheld both the Commission's finding of judicial misconduct and its determination that the respondent be censured. In *Dier*, the Commission had found that the respondent, a lawyer judge, had sought special consideration from other judges on behalf of the defendants in two traffic cases.

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

All concur.

Dated: June 26, 1980

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 HOPECK,

A Justice of the Town Court of Halfmoon, Saratoga County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern for the Commission.

David L. Riebel for Respondent.

The respondent, James Hopeck, a justice of the Town Court of Halfmoon, Saratoga County, was served with a Formal Written Complaint dated July 3, 1979, alleging misconduct in that respondent (i) directed his wife to preside in court over ten traffic cases in his absence one evening, (ii) failed to disqualify himself and encouraged *ex parte* communication in a case involving a defendant with a familial relationship to his wife and (iii) left the bench and argued with an attorney over the attorney's conduct in court. Respondent filed an answer dated September 6, 1979.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on April 7, 1980, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved

the agreed statement as submitted, determined that no outstanding issue of fact remained and scheduled oral argument to determine (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. Both the administrator and respondent waived oral argument and submitted memoranda on the issues.

The Commission considered the record in this proceeding in executive session on June 18, 1980, and upon that record makes the following findings of fact.

With respect to Charge I:

1. On August 24, 1977, respondent was suddenly taken ill and realized he would be unable to attend the session of his court scheduled for that evening.

2. The court calendar on the evening of August 24, 1977, consisted of ten Uniform Traffic Tickets returnable before respondent that evening: *People* v. *LaFontaine, People* v. *Egan, People* v. *Gonyea, People* v. *Lincham, People* v. *Berthiaume, People* v. *Fernet, People* v. *Rigney, People* v. *DiNola, People* v. *DiCenzo* and *People* v. *Capra.*

3. Upon taking ill, respondent directed his wife, who was also his court clerk, to attend his court that evening and to advise those who would be present that (i) the court would allow two-week adjournments to defendants who so requested or (ii) defendants could plead guilty under procedures for pleading guilty by mail by signing the back of the Uniform Traffic Ticket and paying a fine which respondent's wife would collect.

4. On the margin of the court's copy of each Uniform Traffic Ticket returnable on the evening of August 24, 1977, respondent wrote the amount of the fine which would be imposed in the event of a guilty plea.

5. Respondent also told his wife that if anyone objected to the procedure set forth in paragraph 3 above, the objecting party should be granted an adjournment to discuss the matter with respondent.

6. On the evening of August 24, 1977, respondent's wife appeared in court and made the announcement as directed by respondent. Seven defendants thereupon pled guilty to the original charges filed against them and paid fines in the amount respondent had previously written on the margins of the respective tickets.

7. Three other defendants consulted with the assistant district attorney, who was present, and requested to plea bargain the charges against them. Respondent's wife thereupon telephoned respondent,

and respondent and the assistant district attorney discussed the three cases over the telephone and agreed to reductions in each case.

8. No announcement had been made by respondent's wife or anyone else that plea bargaining would be permissible under the circumstances or that the defendants could discuss the merits of their cases over the telephone with the judge.

9. At least six of the ten defendants who were present in court on the evening of August 24, 1977, and who heard the announcement by respondent's wife and observed the reduction of charges and the collection of fines by respondent's wife, believed that respondent's wife was setting fines and reducing charges on her own authority as though she were an acting judge.

10. Respondent acknowledged to the Commission (i) that his actions created an appearance of impropriety in that members of the public in his court on the evening of August 24, 1977, might reasonably have concluded that respondent's wife was acting as a judge in his place and (ii) that the telephone discussion between respondent and the assistant district attorney, as to plea bargaining, was improper.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a) and 33.3(b) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A and 3B of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charges II and III:

11. On November 26, 1977, criminal charges were filed in respondent's court returnable December 7, 1977, against Walter Boleski, charging Mr. Boleski with "Taking A Wild Deer Without Antlers During The Open Season."

12. Mr. Boleski's wife is related to respondent's wife by consanguinity in that Mr. Boleski's wife and respondent's wife are first cousins.

13. Respondent granted adjournments in the *Boleski* case on December 7, 1977, December 28, 1977, and January 11, 1978, during which time settlement by way of civil compromise was discussed among the defendant, his attorney and representatives of the Environmental Conservation Department. Respondent was aware that settlement discussions were taking place but he did not participate in them.

14. On December 8, 1977, respondent asked his wife to call the defendant's wife, "as a courtesy," to encourage the defendant and the defendant's wife to discuss the case *ex parte* with respondent if they so wished. Respondent's wife thereafter telephoned and spoke with Mrs. Boleski in accordance with respondent's instructions.

15. On January 18, 1978, the parties informed respondent that they had reached a civil compromise requiring the defendant to pay $300. Respondent recorded the settlement in his civil docket and dismissed the criminal action against the defendant "in the interest of justice."

16. Respondent acknowledged to the Commission that it was improper (i) not to have disqualified himself immediately from the case and (ii) to have encouraged *ex parte* communication by the defendant and the defendant's wife.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(4), 33.3(c)(1)(i) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3C(1)(a) and 3C(1)(d)(i) of the Code of Judicial Conduct. Charges II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

With respect to Charge IV:

17. On the evening of January 11, 1978, while presiding in court, respondent became irritated at a remark made by Donald Carola, an attorney representing a client in a case before respondent. After Mr. Carola left the courtroom, respondent excused himself from the bench, followed Mr. Carola to a parking lot outside the courthouse and said to Mr. Carola, "Look, I am only going to tell you once, I don't need any more of your smart remarks in this court and it better not happen again." Mr. Carola thereupon became very angry and he and respondent argued for approximately five minutes.

18. Respondent acknowledged to the Commission that it was improper to have left the bench during a session of court to engage in an argument with one of the attorneys appearing in a case in that court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(2) and 33.3(a)(3) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(2) and 3A(3) of the Code of Judicial Conduct. Charge IV of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge I, by directing his wife to conduct business of the court in his absence, in the manner set forth above, respondent created the appearance of improperly having delegated his adjudicatory responsibilities to his wife. By noting in advance of any hearing the amounts of the fines to be collected by his wife in ten traffic cases, respondent appeared to have pre-judged the merits of the cases and to have set fines without regard to the rights of the defendants to be heard. By engaging in an *ex parte* communication with the assistant district attorney as to three of those ten traffic cases, respondent violated that section of the Rules Governing Judicial Conduct which prohibits such communications (Section 33.3[a][4]).

With respect to Charges II and III, by presiding over a criminal matter in which his wife was related by consanguinity to the defendant's wife, and by encouraging *ex parte* communication by the defendant, respondent violated those provisions of the Rules Governing Judicial Conduct (i) which require disqualification when a judge or his spouse is related to a defendant or his spouse within the sixth degree of consanguinity or affinity (Section 33.3[c][1][iv][a]), and (ii) which prohibit a judge from initiating or considering *ex parte* communications concerning a pending proceeding, except as authorized by law (Section 33.3[a][4]).

With respect to Charge IV, by leaving the bench during a session of the court to argue with an attorney outside the courthouse, respondent failed in his obligations to maintain order in proceedings before him and to be patient and dignified toward one with whom he deals in his official capacity (Sections 33.3[a][3] and [4] of the Rules).

In determining the appropriate sanction, the Commission has considered the varied nature of the misconduct and the cumulative effect it will have both on public confidence in the integrity of respondent's court and on respondent's fitness to serve. The Commission has also considered that in 1976 the Appellate Division, Third Department, censured respondent for sentencing a defendant whom "he believed to be involved in a prior incident of a personal nature" involving respondent and for threatening "to deal personally with said defendant if a future incident should occur involving respondent's family." *Matter of Hopeck*, 54 AD2d 35 (3d Dept 1976).

Had the Constitution provided for suspension from office as a sanction, the Commission would have done so in this case. Suspension would have impressed upon respondent the severity with which we view his conduct while affording him an opportunity to reflect on his conduct before returning to the bench. Absent such option, the Com-

mission determines that respondent should be severely censured.

All concur, except (i) Mr. Kirsch dissents as to Charge I and votes to dismiss the charge and (ii) Judge Alexander, Mr. Bromberg, Mrs. DelBello, Mr. Maggipinto and Judge Shea dissent only with respect to sanction and vote that the appropriate sanction is removal from office.

Dated: August 15, 1980.

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

PATRICIA COOLEY,

A Justice of the Village Court of Alexandria Bay, Jefferson County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission.

Patricia Cooley, Respondent Pro Se.

The respondent, Patricia Cooley, a justice of the Village Court of Alexandria Bay, Jefferson County, was served with a Formal Written Complaint dated February 13, 1980, alleging (i) that she failed to report and remit to the State Comptroller in a timely manner monies received in her judicial capacity from January 1979 to January 1980, (ii) that she failed to make entries in her docket or cash books from April 1979 to December 1979 and (iii) that she failed to respond to inquiries by the Office of Court Administration and by this Commission with respect thereto. Respondent did not file an answer.

By motion dated April 30, 1980, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not respond to the motion. By determination and order dated June 23, 1980, the Commission granted the motion, found respondent's misconduct established and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. By telephone respondent waived both oral argument and a memorandum.

The Commission considered the record of this proceeding in executive session on July 24, 1980, and upon that record makes the following findings of fact.

1. From January 1979 to January 1980, respondent failed to report or remit to the State Comptroller monies she received in her judicial capacity within the time required by law, in that she:

(a) reported and remitted in April 1979 monies she collected in January and February 1979;

(b) reported and remitted in June 1979 monies she had collected in March and April 1979;

(c) reported and remitted in January 1980 monies collected from June through December 1979.

2. From April 1979 to December 1979, respondent failed to make complete entries in her docket or cash books although she disposed of at least 300 motor vehicle cases in that period.

3. Respondent failed to answer two letters from the director of administration, Fourth Judicial Department, dated June 27, 1979, and November 16, 1979, inquiring into her failure to report and remit monies to the State Comptroller.

4. Respondent failed to cooperate with a duly authorized investigation by this Commission with respect to her failure to make docket and cash book entries and her failure to report and remit monies in a timely manner to the State Comptroller, in that (i) she failed to respond to three written inquiries dated October 9, 1979, October 24, 1979, and November 1, 1979, sent by the Commission's senior attorney pursuant to Section 42, subdivision 3, of the Judiciary Law, and (ii) she failed on two occasions to appear to testify before a member of the Commission on December 18, 1979, and January 8, 1980, although she had been duly requested to appear pursuant to Section 44, subdivision 3, of the Judiciary Law in letters dated November 26, 1979, and December 26, 1979.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 4-410 of the Village Law, Sections 107, 2019, 2019-a, 2020 and 2021 of the Uniform Justice Court Act, Section 30.9 of the Uniform Justice Court Rules, Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial

Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The applicable reporting laws and rules cited above require a town or village court justice (i) to maintain proper docket books of matters on the court's calendar, (ii) to maintain a cashbook and (iii) to report and remit to the State Comptroller all collected monies on or before the tenth day of the month following collection. Failure to do so constitutes misconduct and may result in removal of the judge from office. See *Bartlett* v. *Flynn*, 50 AD2d 401 (4th Dept. 1976), *app dism* 39 NY2d 946 (1976).

In the instant case, by consistently filing late reports and by not maintaining a cashbook, respondent has evinced a tardiness and carelessness inconsistent with her position of trust and responsibility as a judicial officer.

Respondent's record keeping deficiencies are exacerbated by her failure to cooperate with an inquiry by the Office of Court Administration and a duly authorized investigation by this Commission. Failure to cooperate with a Commission investigation is serious misconduct. In *Matter of Robert W. Jordan*, NYLJ Aug. 7, 1979, p. 5, col. 1, the Court on the Judiciary suspended a judge for four months without pay for failing to appear before the Commission in the course of a duly authorized investigation. The Court stated as follows:

> [R]espondent's refusals to cooperate were clearly improper. Although the respondent is not an attorney, as a judicial officer he is charged with knowledge of his responsibilities, which include cooperating with statutorily authorized Commission investigations. *Id.*

By failing to keep appropriate court records, by failing to file timely reports and remittances to the State Comptroller, and by failing to respond to appropriate inquiries from two state agencies, respondent has exhibited an inability or unwillingness to discharge the obligations of judicial office in a responsible manner. She thus has violated those provisions of the Rules Governing Judicial Conduct which require diligent attention to administrative duties (Section 33.3[b][1]) and conduct promoting public confidence in the judiciary (Sections 33.1 and 33.2[a]).

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

All concur.

Dated: September 9, 1980

NOTE: The Court of Appeals, upon review, accepted the Commission's determination to remove the judge from office. 53 NY2d 64 (1981).

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

ANTHONY P. ERRICO,

A Justice of the Town Court of Gates, Monroe County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Lester C. Goodchild and John W. Dorn, Of Counsel) for the Commission.

DiPasquale and Speranza (Donn A. DiPasquale) for Respondent.

The respondent, Anthony P. Errico, a justice of the Town Court of Gates, Monroe County, was served with a Formal Written Complaint dated March 22, 1979, setting forth 11 charges of improper influence in motor vehicle and other cases. Respondent filed an answer dated May 9, 1979.

By order dated June 14, 1979, the Commission designated the Honorable Harry D. Goldman referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on December 4, 5, 20 and 21, 1979. The referee filed his report to the Commission on March 27, 1980.

By motion dated June 5, 1980, the administrator of the Commission moved to confirm the report of the referee, and for a determination that respondent be admonished. Respondent cross-moved for a determination that the Formal Written Complaint be dismissed. Both the

administrator and respondent submitted memoranda on the motions and waived oral argument.

The Commission considered the record of this proceeding in executive session on July 24, 1980, and upon that record makes the determination herein.

Charges III through VIII and Charge X of the Formal Written Complaint are dismissed. As to the remaining charges, the Commission makes the following findings of fact.

1. Charge I: On March 2, 1973, respondent sent a letter to Justice Robert W. Northrup of the Town Court of Sweden, seeking special consideration on behalf of the defendant, who was charged with loitering, in *People* v. *John T. Valenti*, a case then pending before Judge Northrup. Thereafter, respondent discussed the *Valenti* case with Judge Northrup. On March 12, 1973, the return date of the charge, respondent accompanied the defendant to Judge Northrup's court and was observed and recognized by Judge Northrup.

2. Charge II: On November 19, 1975, respondent sent a letter to Justice Andrew L. Lang of the Town Court of Pembroke, seeking special consideration on behalf of the defendant, who was charged with speeding, in *People* v. *Samuel A. Vallerian*, a case then pending before Judge Lang.

3. Charge IX: On April 2, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Herbert C. Reiter* as a result of written communications he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

4. Charge XI: On May 12, 1976, respondent reduced a charge of speeding to failing to keep right in *People* v. *Evelyn V. Megali* as a result of a communication he received from Justice Saverio C. Alesi of the Town Court of Perinton, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3A of the Code of Judicial Conduct and Canons 4, 5, 13, 14, 17 and 34 of the Canons of Judicial Ethics. Charges I, II, IX and XI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who makes the request. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by acceding to such requests from other judges, respondent violated the Rules and Canons enumerated above.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

All concur.

Dated: September 18, 1980

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

CULVER K. BARR,

A Judge of the County Court, Monroe County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Robert Straus, of Counsel) for the Commission.

Alfred P. Kremer for Respondent

The respondent, Culver K. Barr, a judge of the County Court, Monroe County, was served with a Formal Written Complaint dated February 19, 1980, alleging various acts of misconduct arising from his arrest on two occasions for, *inter alia*, driving while intoxicated. Respondent filed an answer dated March 7, 1980.

The administrator of the Commission, respondent and respondent's attorney entered into an agreed statement of facts on May 16, 1980, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission render its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement and heard oral argument on July 23, 1980, to determine whether the agreed upon facts establish misconduct and, if so, an appropriate sanction. Thereafter in executive session the Commission considered the record of this proceeding and upon that record makes the following findings of fact.

1. On December 10, 1978, while being arrested by the New York State Police in the Town of Palmyra, New York (Wayne County), on charges of Driving While Intoxicated, a misdemeanor, and Failure to Keep Right, a violation of the Vehicle and Traffic Law, respondent:

(a) stated repeatedly to the arresting officers that he was a Monroe County Court Judge and wanted "consideration";

(b) asked Trooper Nelson Baker, one of the arresting officers: "Do you realize who I am?", and stated that respondent's reputation as a judge would be adversely affected by the arrest and if the trooper did not arrest him, respondent would give the trooper "anything";

(c) refused to fake a field sobriety test;

(d) repeatedly refused to take a breathalyzer test at the New York State Police substation in Newark, New York;

(e) stated to the troopers at the substation that he does not "get mad," he "just get(s) even"; and

(f) stated to Trooper Slingerland at the substation that a County Court Judge should not be subject to arrest.

2. (a) On March 19, 1979, respondent was (i) convicted after a jury trial in the Town Court of Palmyra of Driving While Ability Impaired, and (ii) convicted of Failure To Keep Right by Palmyra Town Court Justice Harry White.

(b) On May 7, 1979, respondent was given a conditional discharge on his conviction of Driving While Ability Impaired and fined $25 on his conviction of Failure To Keep Right.

(c) The conditions of respondent's sentence of conditional discharge were: (i) that he attend an alcohol rehabilitation course approved by the Department of Motor Vehicles and (ii) that he lead a law-abiding life.

(d) From May 29, 1979, to July 29, 1979, respondent's license to operate a motor vehicle was suspended by the Department of Motor Vehicles as a result of his conviction.

3. On August 12, 1979, while being arrested by the Monroe County Sheriff's Department in the Town of Chili, New York (Monroe County), on charges of Driving While Intoxicated, a misdemeanor, and Refusal To Take A Breath Test and Moving From Lane Unsafely, violations of the Vehicle and Traffic Law, respondent:

(a) stated repeatedly to the arresting officers that he was a Monroe County Court Judge and wanted "consideration";

(b) refused to enter the Monroe County Sheriff's mobile processing van to be fingerprinted and otherwise processed in the course of arrest;

(c) repeatedly refused to take a breathalyzer test;

(d) stated: "F--- you" to the arresting deputies after being told that he was going to be handcuffed for failing to cooperate; and

(e) stated to the arresting officers that he hoped he would "have the opportunity to repay this back someday."

4. Respondent's arrest on August 12, 1979, for Driving While Intoxicated occurred while he was still serving the sentence of conditional discharge imposed for his prior conviction on March 19, 1979, of Driving While Ability Impaired; accordingly by his conduct on August 12, 1979, respondent violated the conditions of his sentence of May 7, 1979.

5. On August 20, 1979, respondent was convicted on his plea of guilty to the charges of Driving While Intoxicated and Moving From Lane Unsafely. Thereafter, on October 29, 1979, respondent was sentenced to serve three years probation, was ordered to attend an alcohol rehabilitation program, was fined $250 and had his license revoked.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent engaged in conduct prejudicial to the administration of justice, attempted to use the prestige of his office to obtain special consideration for himself, conducted himself in a manner which would tend to bring the judiciary into disrepute, failed to observe high standards of conduct, failed to conduct himself in a manner which would promote public confidence in the integrity and impartiality of the judiciary, and detracted from the dignity of his office, in violation of Article VI, Section 22, subvidision a, of the Constitution of the State of New York, Sections 33.1, 33.2(a) and 33.5(a) of the Rules Governing Judicial Conduct and Canons 1, 2A and 5A of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

In determining the appropriate sanction to be imposed upon a judge found guilty of misconduct, the Commission must balance its responsibility to insure to the public a judiciary beyond reproach and its responsibility to deal humanely and fairly with the individual judge. In some cases, the misconduct is so serious and so clearly reflects a lack of fitness that public confidence in the integrity of the individual

judge is irretrievably lost. The public interest can be adequately protected in such cases only by removal of the judge from office.

In other cases, the misconduct, though serious and not in any sense to be condoned, is such that a lesser sanction permits both a vindication of the public interest and an opportunity for the judge to reform his conduct while continuing to serve effectively in judicial office. Under the New York Constitution, the only such lesser sanctions available to the Commission are censure and admonition.

The considerations that justify distinguishing one such type of case from the other are not always capable of precise formulation; rather, each case of misconduct must be carefully examined in all of its components so that a proper balance can be struck between the competing interests.

Here, the misconduct in which respondent engaged is undisputed. He was arrested twice for driving while intoxicated, the second time while under condition of the discharge from the first arrest. He identified himself as a judge and sought to use that to his advantage with the arresting officers. He refused to take the sobriety tests or submit to the processing routinely administered by the police in such cases. He became verbally abusive. Such conduct is reprehensible and brings the judiciary into disrepute. A judge may not flout the laws he is sworn to uphold when they are applied to him personally and expect to sustain the confidence and trust of the people in whose name he administers justice.

The psychological evaluation respondent submitted to the Commission concludes that respondent is an alcoholic. The record of this proceeding reveals a number of poignant circumstances, unnecessary to recite here, which contributed to the development of his condition. It is important to note, however, that respondent's alcoholism, whatever its source, does not excuse his conduct. However sympathetic we may be to the cause, the effect of respondent's illness has been to cast doubt as to his efficacy as a judicial officer and to cast a shadow over an otherwise umblemished record of nearly 13 years on the bench. Respondent appears to have made a sincere effort to rehabilitate himself since his second arrest, and while it is too soon to measure the success of these efforts, he appears to be making progress.

Our determination of an appropriate sanction in this case should consider whether the prospect of respondent's rehabilitation is worth the risk of leaving him on the bench.

One of the risks to be weighed in this consideration is the degree to which the administration of justice would be compromised, if at all, by allowing respondent to retain his office. There is no indication that respondent's alcoholism has ever manifested itself while respondent was on the bench or otherwise executing his office during regular court hours. The evidence before the Commission indicates that respondent is a dedicated judge whose demeanor on the bench is marked by sobriety and diligence.

Nevertheless, in at least one respect, his alcoholism and the consequent misconduct have affected the performance of his duties. By agreement between respondent and the district attorney of Monroe County, concurred in by individual defendants to date, respondent does not and will not preside over contested felony charges of driving while intoxicated (DWI). He continues to perform all his other judicial duties, including those which involve uncontested felony DWI matters, such as presiding over arraignments, accepting pleas and passing sentences.

This limitation upon respondent's availability to hear all cases in his court raises hard questions as to the administration of justice in respondent's court. For example, is the public well served by a judge who cannot hear a particular type of case? Is the burden on the other judges of the county court likely to be increased significantly as a result? Will public confidence be undermined in respondent's ability to pass sentence impartially in undisputed DWI matters, given his own personal experience with the same charge? Will respondent feel obliged or otherwise beholden to the district attorney, in DWI or other cases, as a result of this disqualification agreement? Will his disagreeable experience with the officers who arrested him color his perspective of police officers whose testimony or affidavits he may later evaluate in uncontested DWI or contested non-DWI matters?

In the limited time since respondent's second arrest, the answers to these questions are not yet conclusive. Whether they will be resolved in respondent's favor, and indeed whether respondent will be successful in his effort to rehabilitate himself from alcoholism, remain to be seen. To resolve them against respondent at this stage would be premature.

Were suspension from office an alternative sanction available to us under the Constitution, we would impose it in this case, to allow a longer period of time within which to measure the success of respondent's rehabilitative efforts. Absent that alternative, and having given full consideration to the risks involved in permitting respondent to re-

tain his judicial office, we conclude that the interests of both the public and this judge as an individual may be adequately served by allowing respondent the opportunity to reclaim public confidence in his performance.

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

All concur, except for Mr. Kovner, who dissents in a separate opinion only with respect to sanction and votes that the appropriate sanction is removal from office.

Dated: October 3, 1980

Mr. Kovner dissents in the following opinion.

The facts set forth in the Commission's determination present a clear case for removal from office. Respondent's criminal conduct in Driving While Ability Impaired and Driving While Intoxicated, standing alone, would warrant censure. When viewed in the context of the two instances of abuse of office, however, the vulgar threats of reprisal to the police officers require removal. Respondent's alcoholism should not relieve him of the consequences of this intolerable behavior. Furthermore, I do not accept the notion that a judge who refuses to take either a field sobriety test or a breathalyzer test could be unaware of the import of his statements.

It should be noted that the Commission has determined, and the Court of Appeals has affirmed, that judges whose conduct off the bench involves serious abuse of office should be removed. In *Steinberg* v. *State Commission on Judicial Conduct*, _____ NY2d_____ (1980), a New York City Civil Court Judge was removed, *inter alia*, for engaging in numerous prohibited business transactions. In *Kuehnel* v. *State Commission on Judicial Conduct*, 49 NY2d 465 (1980), a town court justice was removed, *inter alia*, for threats to misuse his judicial office in connection with four youths with whom he had had an altercation.

Moreover, in my view, the questions raised by respondent's current practices regarding DWI matters constitute an unacceptable burden on the administration of justice in respondent's court.

For the foregoing reasons, I respectfully vote that the appropriate sanction should be removal from office.

Dated: October 3, 1980

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

JACK SCHULTZ,

A Justice of the Town Court of DeWitt, Onondaga County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Raymond S. Hack and Stephen F. Downs, Of Counsel) for the Commission.

Brennan, Centner, Palermo & Blauvelt (Thomas E. Goldman, Of Counsel) for Respondent.

The respondent, Jack Schultz, a justice of the Town Court of DeWitt, Onondaga County, was served with a Formal Written Complaint dated March 1, 1979, setting forth 13 charges of improper influence in traffic cases. Respondent filed an answer dated April 6, 1979.

By order dated May 7, 1979, the Commission designated Paul C. Gouldin, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on August 28, 1979, and September 12, 1979. The referee filed his report to the Commission on February 29, 1980.

By motion dated May 12, 1980, the administrator of the Commission moved to confirm in part and to disaffirm in part the report of the referee, and for a determination that respondent be censured. By

cross-motion dated May 29, 1980, respondent moved to disaffirm in part and to confirm in part the report of the referee, and for dismissal of the Formal Written Complaint. The Commission heard oral argument on the motions on July 24, 1980, thereafter in executive session considered the record of this proceeding, and upon that record makes the determination herein.

Charges I, XI and XII of the Formal Written Complaint are dismissed. As to the remaining charges, the Commission makes the following findings of fact.

1. Charge II: On December 8, 1975, respondent sent a letter to Justice Norman E. Kuehnel of the Town Court of Hamburg, seeking special consideration on behalf of the defendant in *People* v. *Pamela P. Williams*, a case then pending before Judge Kuehnel.

2. Charge III: On February 22, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Dennis P. Donovan* as a result of a written communication he received from Trooper Pater Pazone, seeking special consideration on behalf of the defendant.

3. Charge IV: On July 26, 1975, respondent reduced a charge of speeding to failing to keep right in *People* v. *Dawn V. Hallinan* as a result of a written communication he received from Justice Carlton M. Chase of the Village Court of Chittenango, seeking special consideration on behalf of the defendant.

4. Charge V: On December 31, 1974, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Thomas L. Kelly, Jr.*, as a result of a written communication he received from William F. O'Brien, III, district attorney of Madison County, seeking special consideration on behalf of the defendant.

5. Charge VI: On July 7, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Edward J. Keough* as a result of a written communication he received from Trooper R.F. McCorry, seeking special consideration on behalf of the defendant.

6. Charge VII: On September 10, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Manuel M. Martinez* as a result of a written communication he received from Justice James S. Jerome of the Town Court of Geddes, seeking special consideration on behalf of the defendant.

7. Charge VIII: On December 1, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *David J. Masterpolo* as a result of a written communication he received from the issuing officer, seeking special consideration on behalf of the defendant.

8. Charge IX: On October 7, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Agnes M. Smith* as a result of a written communication he received from third party identified as "R.G.B.," seeking special consideration on behalf of the defendant.

9. Charge X: On July 12, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Louis W. LaFrance* as a result of a written communication he received from Justice Stanley C. Wolanin of the Town Court of New York Mills, seeking special consideration on behalf of the defendant.

10. Charge XIII: On July 25, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *James E. Callahan* as a result of a communication he received from Richard A. Hennessy, Jr., senior assistant district attorney in Onondaga County, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges II through X and Charge XIII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making an *ex parte* request of another judge for a favorable disposition for the defendant in a traffic case, and by acceding to such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times

> in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Respondent's misconduct in this case is exacerbated by the fact that he is an attorney who should have been especially sensitive to both the impropriety and appearance of impropriety in his actions. In addition, in his letter to another judge (Charge II), respondent indicated his willingness to accommodate a request for consideration similar to the one he himself was making, stating "if I can reciprocate at all please do not hesitate to call upon me." Such an offer of reciprocity compounds respondent's misconduct.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 420 NYS2d 70 (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at 71-72.

In the instant case, respondent argued that the "mere showing of reductions made as a result of communications" from, *inter alia*,

police officers, is insufficient as a basis for judicial discipline, citing *Matter of William J. Bulger* v. *State Commission on Judicial Conduct*, 48 NYS2d 32 (1979). We believe that *Bulger* is inapposite.

In *Bulger*, the Court reviewed a determination that a town court justice be censured for misconduct relating to improper influence in traffic cases. The Court accepted the Commission's determination, but dismissed four of the fourteen charges in which the Commission found that the judge had reduced traffic charges against each of four defendants "as a result of a communication he received on behalf of the defendant." The four communications were sent by a New York State police investigator, a village police officer, a New York State police sergeant and a defendant's attorney. The essence of the Court's finding was not that all communications from such individuals are permissible but that, absent a finding based on the record that a particular letter sought special consideration, such a communication alone could not support a finding of misconduct. In *Bulger*, such a finding was not made. Here, however, such findings based on the record are made as to all the sustained charges.

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

All concur, except for Mrs. Robb, who dissents only as to Charge VI and votes to dismiss the charge.

Dated: October 8, 1980

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

DAVID L. HOLLEBRANDT,

A Justice of the Town Court of Sodus, Wayne County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission.

Thomas P. Gilmore, Jr., for Respondent.

The respondent, David L. Hollebrandt, a justice of the Town Court of Sodus, Wayne County, since 1972, was served with a Formal Written Complaint dated February 11, 1980, (i) alleging numerous financial and reporting deficiencies in his court accounts and records and (ii) alleging that he had pled guilty to Official Misconduct, a misdemeanor, as a result of these deficiencies. Respondent filed an answer dated March 11, 1980, denying all the charges.

By order dated March 21, 1980, the Commission designated the Honorable Morton B. Silberman as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on May 20 and 21, 1980. The referee filed his report to the Commission on July 15, 1980.

By motion dated August 19, 1980, the administrator of the Commission moved to confirm the report of the referee and for a determination that respondent be removed from office. Respondent did not oppose the motion and waived oral argument before the Commission.

The Commission considered the record of this proceeding on September 17, 1980, and upon that record makes the determination herein.

Charges III, IV and X of the Formal Written Complaint are dismissed. As to the remaining charges, the Commission makes the findings of fact and conclusions of law below.

With respect to Charge I, the Commission makes the following findings of fact.

1. As of July 19, 1976, respondent's court account liabilities exceeded his cash on hand and monies in his official bank account by a total of $635.55. On September 17, 1976, to make up the deficiency, respondent paid $635.55 into his official bank account.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 2020 of the Uniform Justice Court Act, Section 33.3(b)(1) of the Rules Governing Judicial Conduct and Canon 3B(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint, as amended at the hearing, is sustained and respondent's misconduct is established.

With respect to Charge II, the Commission makes the following findings of fact.

2. The State Department of Audit and Control audited respondent's records and dockets for the period of July 19, 1976, through October 4, 1979. As of October 4, 1979, respondent's court account liabilities exceeded his cash on hand and monies in his official bank account by the sum of $8,872.18. This sum included $3,137.78 which had also been listed as liabilities as of July 19, 1976.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 2020 of the Uniform Justice Court Act, Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charge II of the Formal Written Complaint, as amended at the hearing, is sustained and respondent's misconduct is established.

With respect to Charge V, the Commission makes the following findings of fact.

3. From July 19, 1976, through October 4, 1979, respondent failed to deposit monies received in his official capacity into his official bank account within 72 hours of receipt, frequently making such deposits on a monthly basis.

4. An audit by the Department of Audit and Control of respondent's accounts and records up to July 19, 1976, had also cited respondent's failure to deposit official monies within 72 hours of receipt.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 30.7 of the Uniform Justice Court Rules, Section 33.3(b)(1) of the Rules Governing Judicial Conduct and Canon 3B(1) of the Code of Judicial Conduct. Charge V of the Formal Written Complaint is sustained, and respondent's misconduct is established.

With respect to Charge VI, the Commission makes the following findings of fact.

5. From January 1976 to September 1979, except for a brief period in 1976, respondent failed to maintain a cashbook chronologically itemizing all monies received and disbursed in his official capacity. During this period respondent was aware of the directives of the Office of Court Administration and of the Uniform Justice Court Rules requiring a town justice to maintain a cashbook.

6. An audit by the Department of Audit and Control of respondent's accounts and records up to July 19, 1976, had also cited respondent's failure to maintain a cashbook as required by the Rules of the Administrative Board of the Judicial Conference.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 107 and 2019 of the Uniform Justice Court Act, Section 30.9 of the Uniform Justice Court Rules, Section 33.3(b)(1) of the Rules Governing Judicial Conduct and Canon 3B(1) of the Code of Judicial Conduct. Charge VI of the Formal Written Complaint is sustained, and respondent's misconduct is established.

With respect to Charge VII, the Commission makes the following findings of fact.

7. From January 1, 1976, to October 4, 1979, respondent failed to issue consecutively-numbered receipt forms for all monies received by him as a town justice.

8. Respondent, who serves part-time as town court justice, owns and operates a retail variety store with 12 part-time employees in the Village of Sodus. Between January 1, 1976, and October 4, 1979, various employees of respondent's retail store collected monies due to respondent as town justice. These employees issued unofficial receipts

from common receipt form books, pursuant to authority granted by respondent. Respondent thereafter prepared official receipt forms for such monies and made corresponding entries in his official receipt book, but he did not issue the receipts to the persons who had paid such monies and in fact discarded the official receipt forms after having prepared them.

9. In some instances respondent did not issue receipts for monies received.

10. An audit by the Department of Audit and Control of respondent's dockets and records for the period from January 1, 1976, through July 19, 1979, cited respondent's failure to issue receipts to acknowledge collection of monies in various cases.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 99-b of the General Municipal Law, Section 33.3(b)(1) of the Rules Governing Judicial Conduct and Canon 3B(1) of the Code of Judicial Conduct. Charge VII of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge VIII, the Commission makes the following findings of fact.

11. On May 2, 1977, in the case of *People* v. *Carol Brown*, respondent failed to record accurately the fine collected, in that he entered on his docket that a fine of $80.00 was not paid although it in fact had been paid and received by respondent. The $80.00 was neither reported nor remitted by respondent to the Department of Audit and Control.

12. On September 13, 1978, in the case of *People* v. *Ensley T. Brooks*, respondent failed to record accurately the fine collected, in that he indicated on his docket that a fine of $25.00 was not paid, although it in fact had been paid. The $25.00 was neither reported nor remitted by respondent to the Department of Audit and Control.

13. On September 13, 1978, in the case of *People* v. *Sidney A. Miller*, respondent failed to record accurately the fine collected, in that he entered on his docket a disposition of conditional discharge although in fact a fine of $30.00 had been paid by the defendant and received by respondent. The $30.00 was neither reported nor remitted to the Department of Audit and Control.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 107 and 2019 of the

Uniform Justice Court Act, Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charge VIII of the Formal Written Complaint as it pertains to the *Brown, Brooks* and *Miller* cases, is sustained and respondent's misconduct is established. That part of Charge VIII which pertains to the case of *People* v. *Leon Smith* is not sustained and therefore is dismissed.

With respect to Charge IX, the Commission makes the following findings of fact.

14. As of October 4, 1979, respondent had not reported to the State Comptroller the dispositions of 69 cases, dating back to November 1976, which he was required to so report. Twenty-four of those cases involved fines totalling $1,105.00 collected by respondent but neither reported nor remitted to the State Comptroller.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 27 of the Town Law, Section 2021 of the Uniform Justice Court Act, Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charge IX of the Formal Written Complaint is sustained and respondent's misconduct is established as to 69 of the 88 cases listed in the charge. The charge is not sustained and therefore is dismissed as to the following 19 cases: *People* v. *C.E. McMullen, People* v. *Edward Lawrenz, People* v. *Frederick Potter, People* v. *Randall Derks* and *People* v. *Kathy Britt*, three cases entitled *People* v. *Harold Farren*, two cases entitled *People* v. *James Corlombe*, four cases entitled *People* v. *Charles Rogers*, two cases entitled *People* v. *Scott Vanderwell* and three cases entitled *People* v. *Steven Huff*.

With respect to Charge XI, the Commission makes the following findings of fact.

15. Respondent presided over the civil case of *James Stow* v. *William McKinney* in 1976 and rendered judgment in favor of the plaintiff in the amount of $330.77. From February 8, 1976, to March 29, 1976, respondent received from the defendant installment payments totalling $110.00. In April 1977 respondent received an additional payment of $10.00 from the defendant. Respondent did not remit the $120.00 to the plaintiff until April 1979.

16. Respondent's failure to remit the $120.00 to the plaintiff was due to his faulty record keeping and his having forgotten that he had indeed collected it.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charge XI of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge XII, the Commission makes the following findings of fact.

17. On July 19, 1976, the Department of Audit and Control apprised respondent of the results of its audit of his court accounts and records. Respondent was advised (i) that he had a deficiency of $630.55, (ii) that in certain instances he had not deposited court monies within 72 hours of receipt, (iii) that in certain instances he had failed to issue proper receipts to acknowledge collection of monies, (iv) that he failed to maintain a required cashbook and (v) that he failed to make monthly reconciliations of his cash on hand with his official liabilities.

18. The Department of Audit and Control conducted a second audit of respondent's court accounts and records, for the period from July 19, 1976, to October 4, 1979. The second audit revealed the same deficiencies as were noted in the audit for the period up to July 19, 1976, as well as additional deficiencies.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charge XII of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge XIII, the Commission makes the following findings of fact.

19. On August 31, 1977, in the case of *People* v. *Albert J. Bennett*, on July 19, 1978, in the case of *People* v. *James L. Harris*, and on October 25, 1978, in the case of *People* v. *Dennis A. Brown*, respondent accepted pleas of guilty to Vehicle and Traffic Law offenses, imposed monetary fines but did not certify the convictions to the Department of Motor Vehicles.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 514, subdivision 1(a) of the Vehicle and Traffic Law, Section 91.12 of the Regulations of the Commissioner of the Department of Motor Vehicles, Sections 33.1,

33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charge XIII of the Formal Written Complaint is sustained and respondent's misconduct is established as to three of the five cases listed in the charge. The charge is not sustained and therefore is dismissed as to the following two cases: *People* v. *Richard D. Bolton* and *People* v. *James C. Hartranft.*

With respect to Charge XIV, the Commission makes the following findings of fact.

20. On February 14, 1980, in the Town Court of Macedon, respondent pleaded guilty to Official Misconduct, a misdemeanor under Section 195.00 of the Penal Law, in a proceeding predicated on his official court account deficiencies.

21. Respondent was sentenced to probation for three years. One of the terms of his probation was that he make restitution for all his official court account deficiencies as determined by the Department of Audit and Control.

22. By check dated February 14, 1980, respondent deposited $6,100 into his official court account, and by check dated February 20, 1980, respondent deposited $2,000 into his official court account.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 195.00 of the Penal Law of the State of New York, Sections 33.1 and 33.2(a) of the Rules Governing Judicial Conduct and Canons 1 and 2A of the Code of Judicial Conduct. Charge XIV of the Formal Written Complaint is sustained and respondent's misconduct is established.

For more than three years, respondent failed (i) to reconcile substantial court account deficits, resulting in a deficiency which at one point exceeded $8,000.00 in public funds, (ii) to deposit official funds in the manner prescribed by law and (iii) to maintain a cashbook. He improperly authorized the employees of his retail business to collect court monies and issue informal receipts therefor, and he failed to issue proper official receipts thereafter. Respondent failed on numerous occasions for nearly three years to record accurately monies collected in his official capacity and to report properly to the State Comptroller the dispositions of traffic cases.

By his misconduct herein, respondent has demonstrated a gross neglect of the responsibilities of judicial office. By failing to correct his financial and record keeping deficiencies after reports by the Department of Audit and Control and directives from the Office of

Court Administration, respondent has exhibited an unwillingness or inability to discharge the administrative and fiduciary obligations of his office. As such, he has engaged in conduct destructive of public confidence in the integrity of his court and prejudicial to the administration of justice. Respondent's conviction on a charge of Official Misconduct has further served to bring the judiciary into disrepute.

That respondent has made restitution for the substantial deficiencies does not mitigate his misconduct. The administration of justice is compromised at the moment public funds entrusted to a judge are handled in a careless and irresponsible manner. When such carelessness involves substantial amounts of money and continues for more than three years, despite reports and directives from official state agencies, the damage to public confidence in that judge and his court is irreparable, even if restitution is made.

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

This determination is made pursuant to Section 47 of the Judiciary Law, notwithstanding respondent's resignation from the bench on September 19, 1980.

All concur.

Dated: November 12, 1980

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

ALLAN T. BROWN,

A Justice of the Town Court of Halfmoon, Saratoga County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission.

David L. Riebel for Respondent.

The respondent, Allan T. Brown, a justice of the Town Court of Halfmoon, Saratoga County, was served with a Formal Written Complaint dated December 20, 1979, alleging that in 1972, he performed a marriage ceremony outside his jurisdiction and failed to take steps to ensure that a valid ceremony was performed. Respondent filed an answer dated January 11, 1980.

The administrator of the Commission, respondent and respondent's attorney entered into an agreed statement of facts on May 9, 1980, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement of facts and received memoranda from both the administrator and respondent as to whether the facts establish misconduct and, if so, an appropriate sanction. Oral argument was wavied.

The Commission considered the record of the proceeding on September 17, 1980, and makes the following findings of fact.

1. On June 18, 1972, respondent gave the appearance of performing a marriage in Albany County for James Mitchell and Sheila Coughlin, for which he received a sum of money from Mr. Mitchell. Respondent knew he was acting outside the territorial jurisdiction of his office and that as such he was not authorized to perform a wedding ceremony in Albany County.

2. Prior to performing the mock ceremony, respondent told Mr. Mitchell and Mr. Mitchell's best man, Peter Enzien, that he was not legally authorized to perform the ceremony and that after the mock ceremony the couple would have to come to Saratoga County for a valid ceremony to be performed. Respondent believed that Ms. Coughlin overheard these remarks and so was aware that the ceremony would not be valid. Respondent did not speak to Ms. Coughlin about this matter.

3. Ms. Coughlin did not know that respondent was unauthorized to perform a wedding in Albany County. Ms. Coughlin believed the ceremony on June 18, 1972, was valid.

4. On two occasions after the mock ceremony, while Mr. Enzien was appearing as an attorney on unrelated matters in respondent's court, respondent asked him when the Mitchells were coming to Saratoga County to have their marriage solemnized. Except for these two conversations, respondent failed to take any steps to ensure that a valid marriage ceremony was performed.

5. On June 22, 1976, James Mitchell died without a valid marriage ceremony having been performed.

6. On several occasions after Mr. Mitchell's death, respondent informed Ms. Coughlin that he had not filed a marriage certificate and could not do so because he had not been authorized to perform a valid marriage in Albany County.

7. After the Commission commenced its investigation of the matter, respondent, on advice of counsel, signed a certificate pursuant to Section 2132 of the Unconsolidated Laws, which had the effect of deeming the marriage solemnized *nunc pro tunc.*

8. Respondent acknowledges that his conduct was improper in that he should not have performed a wedding ceremony which he was unauthorized to perform.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 1, 2, 3, 4, 5, 32 and 34 of the Canons of Judicial Ethics, Sections 33.1, 33.2(a) and 33.3(a)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

The issue in this case is not that respondent performed a ceremonial marriage per se. It is not uncommon for a judge to solemnize a marriage in private in an appropriate jurisdiction and then later officiate at a ceremonial wedding outside his jurisdiction.

In the instant case, respondent officiated at the ceremonial affair in Albany County, knowing the marriage had not already been solemnized and knowing the marriage had not already been solemnized and knowing that his jurisdiction did not extend to that county. Furthermore, respondent accepted payment for his services, but he did not take appropriate steps to ensure that the marriage was properly solemnized according to law.

By his conduct, respondent violated the rules and canons noted above, in that *inter alia* he failed in his obligations to respect, comply with and be faithful to the law and to maintain professional competence in it (Sections 33.2[a] and 33.3[a][1] of the Rules).

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

All concur.

Dated: December 2, 1980

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

WAYDE EARL,

A Justice of the Village Court of Lake George, Warren County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

Wayde Earl, Respondent
Pro Se.

The respondent, Wayde Earl, a justice of the Village Court of Lake George, Warren County, was served with a Formal Written Complaint dated June 26, 1979, alleging three charges of improper influence in traffic cases. Respondent filed an answer dated July 12, 1979.

By order dated September 4, 1979, the Commission designated the Honorable Raymond Reisler as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on November 27, 1979. The referee filed his report to the Commission on June 20, 1980.

By motion dated August 15, 1980, the administrator of the Commission moved to confirm the report of the referee and for a determination that respondent be censured. Respondent did not oppose the motion. Oral argument was not requested. The Commission considered the record of this proceeding on September 17, 1980, and upon that record makes the following findings of fact.

1. Charge I: On August 7, 1975, respondent sent a letter to Justice Robert Vines of the Town Court of Moreau, confirming an earlier telephone conversation and seeking special consideration on behalf of the defendant in *People* v. *Todd Earl*, a case then pending before Judge Vines. The defendant Todd Earl is respondent's son.

2. Charge II: On November 24, 1976, respondent telephoned Ralph E. Brown, Clerk of the Town Court of Lake George, seeking special consideration for the defendant in *People* v. *Percy Drovin*, a case then pending before Justice James Corkland of that court. Respondent expected Mr. Brown to transmit his request for special consideration to Judge Corkland and Mr. Brown did so.

3. Charge III: Sometime after October 12, 1976, respondent telephoned Ralph E. Brown, Clerk of the Town Court of Lake George, seeking special consideration for the defendant in *People* v. *Paul Schaefer*, a case then pending before Justice James Corkland of that court. Respondent advised Mr. Brown that the defendant had been instrumental in restoration work done to the town court building. Respondent expected Mr. Brown to transmit his request for special consideration to the presiding judge, and Mr. Brown did so.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who makes such a request is guilty of favoritism, as is the judge who accedes to it. By making *ex parte* requests of another judge and a court clerk for favorable dispositions for the defendants in three traffic cases, one of which involved his son as the defendant, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confi-

> dence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 47 NY2d(b) (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at (c).

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

All concur.

Dated: December 2, 1980

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

MORTEN B. MORRISON,

A Justice of the Town Court of Pomfret, Chautauqua County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Christopher B. Ashton, Of Counsel) for the Commission.

Smith, Murphy & Schoepperle (Victor Alan Oliveri, Of Counsel) for Respondent.

The respondent, Morten B. Morrison, a justice of the Town Court of Pomfret, Chautauqua County, was served with a Formal Written Complaint dated October 10, 1979, alleging eight charges of improper influence in traffic cases. Respondent filed an answer dated December 1, 1979.

By order dated March 6, 1979, the Commission designated George M. Zimmermann, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on December 11, 1979. The referee filed his report to the Commission on April 26, 1980.

By motion dated July 22, 1980, the administrator of the Commission moved to confirm in part and to disaffirm in part the report of the referee, and for a determination that respondent be censured. By cross-motion dated August 5, 1980, respondent moved to disaffirm in part and to confirm in part the report of the referee, and for dismissal

of the Formal Written Complaint. Oral argument was waived. The Commission considered the record of this proceeding on September 17, 1980, and upon that record makes the following findings of fact.

1. Charge I: On May 17, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Clifford L. Borst* as a result of a request he received from Justice Edward H. Snyder of the Village Court of Brockton, seeking special consideration on behalf of the defendant. Judge Snyder's communications were *ex parte*, unauthorized by law and conveyed information unrelated to the guilt or innocence of the defendant. Respondent's disposition was unrelated to the guilt or innocence of the defendant and was not based upon the facts or the law.

2. Charge II: On August 30, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Jerome C. Lutz* as a result of a request he received from New York State Trooper D.E. Flynn, seeking special consideration on behalf of the defendant, who is Trooper Flynn's father-in-law. Trooper Flynn's communication was *ex parte*, unauthorized by law and conveyed information unrelated to the guilt or innocence of the defendant. Respondent's disposition was unrelated to the guilt or innocence of the defendant and was not based upon the facts or the law.

3. Charge III: On July 13, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *William Vickers* and thereafter disposed of the case by accepting forfeiture of $25.00 posted as bail on behalf of the defendant, as the result of his communications with Justice Sebastian Lombardi of the Town Court of Lewiston, who sought special consideration on behalf the defendant. The communications between respondent and Judge Lombardi were *ex parte*, unauthorized by law and unrelated to the guilt or innocence of the defendant. Respondent's disposition of this case was not based upon the facts or the law but was the result of an agreement between him and Judge Lombardi that the defendant would not be required to appear in respondent's court, that the defendant would post $25.00 to be called bail, that the $25.00 would be forfeited and that the defendant would not be prosecuted further on the charge. Respondent thereafter took no action to secure the appearance of the defendant in his court or to ensure a final disposition of the charge against the defendant.

4. Charge IV: On May 5, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Lester E. Bernett* as a result of a request he received from Justice Rollin L. Fancher of

the Town Court of Dunkirk, seeking special consideration on behalf of the defendant, who is a friend of Judge Fancher's. Judge Fancher's communication was *ex parte*, unauthorized by law and conveyed information unrelated to the guilt or innocence of the defendant. Respondent's disposition of the case was unrelated to the guilt or innocence of the defendant and was not based upon the facts of the case or the law.

5. Charge V: On April 5, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Thomas Gawel*, as the result of a request he received from New York State Trooper Thornton, seeking special consideration on behalf of the defendant. Trooper Thornton's communication was *ex parte*, unauthorized by law and conveyed information unrelated to the guilt or innocence of the defendant. Respondent's disposition was unrelated to the guilt or innocence of the defendant and was not based on the facts of the case or the law.

6. Charge VI: On June 15, 1976, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Richard A. Manning* as the result of a request he received from Police Chief John A. Kohler of the Town of Hanover, seeking special consideration on behalf of the defendant, who is a personal friend of Chief Kohler. Chief Kohler's communication was *ex parte*, unauthorized by law and conveyed information unrelated to the guilt or innocence of the defendant. Respondent's disposition of the case was unrelated to the guilt or innocence of the defendant and was not based upon the facts of the case or the law.

7. Charge VII: On August 5, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Kenneth G. Waite*, and thereafter granted an unconditional discharge, as the result of a request he received from New York State Trooper G.C. Bentley, seeking special consideration on behalf of the defendant. Trooper Bentley's communication was *ex parte*, unauthorized by law and conveyed information unrelated to the guilt or innocence of the defendant. Respondent's disposition was unrelated to the guilt or innocence of the defendant and was not based upon the facts of the case or the law.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through VII of the Formal Written Complaint are sustained, and respondent's mis-

conduct is established. Charge VIII of the Formal Written Complaint is not sustained and therefore is dismissed.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By acceding to such *ex parte* requests for special consideration from judges and others with influence, respondent violated the Rules and canons enumerated above.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 47 NY2d (b) (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at (c).

Respondent suggests that his actions in the instant matter are mitigated by his having secured "consent" to the reductions by the arresting officers in the various traffic cases discussed herein. The Commission concludes that by securing such "consents", respondent exacerbated rather than mitigated his misconduct. By becoming an intermediary between the seekers of special consideration and the arresting officers, respondent became an active participant.

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

Dated: December 2, 1980

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

C.J. ZYGMONT,

A Justice of the Town Court of Niagara, Niagara County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (John W. Dorn and Jeanne A. O'Connor, Of Counsel) for the Commission.

John R. Minicucci for Respondent.

The respondent, Casimer J. Zygmont, a justice of the Town Court of Niagara, Niagara County, was served with a Formal Written Complaint dated February 5, 1979, alleging 20 charges of improper influence in traffic cases. Respondent filed an answer dated March 13, 1979.

By order dated May 10, 1979, the Commission designated Paul C. Gouldin, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on February 28, 1980. The referee filed his report to the Commission on March 13, 1980.

By motion dated July 17, 1980, the administrator of the Commission moved to confirm the report of the referee and for a determination that respondent be censured. Respondent did not oppose the motion. Oral argument was not requested. The Commission considered the record of this proceeding on September 17, 1980, and makes the following findings of fact.

1. Charge I: On April 2, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Henry M. Sloma* as a result of a letter he received from Gloria A. Donovan, Clerk of the Town Court of Lewiston, seeking special consideration on behalf of the defendant, a member of the Lewiston Town Board.

2. Charge II: On December 15, 1972, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Louis Amoretti* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

3. Charge III: On March 10, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Hedwig Book* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

4. Charge IV: On September 19, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Anthony R. Cappello* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

5. Charge V: On January 26, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Mary R. Fleming* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant:

6. Charge VI: On October 17, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of moving from a lane unsafely in *People* v. *Rose Gellman* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

7. Charge VII: On October 31, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Donald W. Helsdon* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

8. Charge VIII: On November 17, 1972, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of passing a red light in *People* v. *Francis A. Linza* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

9. Charge IX: On January 31, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of failing to yield the right of way to an emergency vehicle in *People* v. *Anthony M. Marino* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

10. Charge X: On January 31, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Anthony M. Marino* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

11. Charge XI: On August 29, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Philip A. Savage, Jr.*, as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

12. Charge XII: On September 8, 1972, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of changing lanes without signaling in *People* v. *Joseph P. Scibilia* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

13. Charge XIII: On October 1, 1976, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Jennie Sieczka* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

14. Charge XIV: On November 26, 1976, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Patrick L. Stanley* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

15. Charge XV: On May 3, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of driving left of pavement markings in *People* v. *Mary S. Welch* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

16. Charge XVI: On January 10, 1975, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Donna J. West* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking

special consideration on behalf of the defendant.

17. Charge XVII: On December 8, 1972, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Geri-Linda Wheeler* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

18. Charge XVIII: On July 27, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Kenneth L. Winter* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

19. Charge XIX: On June 12, 1973, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Armand A. Forgione* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

20. Charge XX: On November 25, 1975, respondent accepted the forfeiture of bail in lieu ot further prosecution of a charge of speeding in *People* v. *Clifford Van Blargan* as a result of a letter he received from Justice Sebastian Lombardi of the Town Court of Lewiston, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3A of the Code of Judicial Conduct, and Canons 4, 5, 13, 14, 17 and 34 of the Canons of Judicial Ethics. Charges I through XX of the Formal Written Complaint are sustained and respondent's misconduct is established. The referee's report is confirmed insofar as it finds that counsel for the Commission met the burden of proof on each charge. The Commission thereupon concludes that respondent's misconduct constitutes both impropriety and the appearance of impropriety.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By acceding to *ex parte* requests for special influence by another judge and a court clerk, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 47 NY2d (b) (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at (c).

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

All concur.

Dated: December 2, 1980

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

ERNEST DEYO,

A Justice of the Town Court of Beekmantown, Clinton County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

Holcombe & Dame (Kenneth H. Holcombe, Of Counsel) for Respondent.

The respondent, Ernest Deyo, a justice of the Town Court of Beekmantown, Clinton County, was served with a Formal Written Complaint dated March 5, 1980, alleging impropriety in his conduct in presiding over ten cases in 1978 and 1979, eight of which included his brother, Rufus Deyo, as a party. Respondent filed an answer dated March 13, 1980.

By order dated April 21, 1980, the Commission designated the Honorable Harold A. Felix as referee to hear and report proposed findings of fact and conclusions of law. The hearing was conducted on May 28, 1980, and the report of the referee was filed on July 24, 1980.

By motion dated August 29, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent did not oppose

the motion. Oral argument was waived.

The Commission considered the record of this proceeding on October 30, 1980, and makes the following findings of fact.

1. On March 15, 1978, Rufus Deyo filed a claim for $339.80 against Russell Baker in respondent's court. On March 18, 1978, respondent presided over the case, notwithstanding his relationship to the plaintiff. During the course of the proceeding, the following occurred.

(a) Respondent advised Mr. Baker of his relationship to the plaintiff but refused Mr. Baker's request that he disqualify himself.

(b) Respondent advised Mr. Baker that it was not necessary for the plaintiff to be present.

(c) No witnesses were heard and no evidence was received in support of the plaintiff's claim.

(d) Mr. Baker stated the claim already had been paid but that the work he had contracted plaintiff to do was unsatisfactory.

(e) Respondent ordered that the claim be paid, and he told Mr. Baker that if it were not paid Mr. Baker would "have to be picked up."

(f) On February 12, 1979, respondent entered judgment against Mr. Baker when the latter failed to satisfy the claim.

2. In March 1978 Rufus Deyo filed a claim for $162.25 against James Bell in respondent's court. Respondent presided over the case, notwithstanding his relationship to the plaintiff. During the course of the proceeding, the following occurred.

(a) Between March 16, 1978, and February 12, 1979, Mr. Bell telephoned respondent and asked that he disqualify himself from the proceeding because of his relationship to the plaintiff. Respondent refused Mr. Bell's request and stated that Mr. Bell had to appear in court before a decision would be made.

(b) Mr. Bell did not appear in court and had no other communication with respondent.

(c) On February 12, 1979, respondent entered judgment in favor of the plaintiff in the amount of $196.25.

3. On December 13, 1978, Rufus Deyo filed a claim for $272.16 against Tom Lange in respondent's court. Respondent presided over the case, notwithstanding his relationship with the plaintiff. During the course of the proceeding, the following occurred.

(a) On December 27, 1978, the defendant appeared in court, did not deny the indebtedness and satisfied the claim. The plaintiff was not present.

(b) Respondent did not offer to disqualify himself, nor did he offer the defendant an opportunity to request his disqualification.

4. On March 10, 1978, Rufus Deyo filed a claim for $75 against Roy Provost in respondent's court. On March 18, 1978, Mr. Provost appeared before respondent and satisfied the claim. The plaintiff did not appear. At no time did respondent ask for objections to his presiding in the case, notwithstanding his relationship to the plaintiff.

5. On August 30, 1978, Rufus Deyo filed a claim for $150 against David Supernault in respondent's court. Thereafter, Mr. Supernault appeared before respondent and agreed to satisfy the claim in weekly installments of $10. Respondent entered judgment to that effect. The plaintiff was not present. At no time did respondent ask for objections to his presiding in the case, notwithstanding his relationship to the plaintiff.

6. In March 1978 Rufus Deyo filed a claim for $94.14 against Allan Sanger in respondent's court. The claim was settled before respondent by the defendant's wife, out of court. Neither the plaintiff nor the defendant appeared before respondent. At no time did respondent ask for objections to his entertaining the claim, notwithstanding his relationship with the plaintiff.

7. On March 15, 1978, Rufus Deyo filed a claim for $58 against Thomas Kelly in respondent's court. Thereafter the claim was settled between the parties. Respondent entered judgment as per the settlement. At no time did respondent ask for objections to his acting in the case, notwithstanding his relationship with the plaintiff.

8. On September 12, 1979, Rufus Deyo filed a claim for $670.44 against Roland Lapier in respondent's court. On September 27, 1979, Mr. Lapier appeared before respondent. The plaintiff arrived thereafter, whereupon Mr. Lapier paid the claim. At no time did respondent ask for objections to his acting in the case, notwithstanding his relationship with the plaintiff.

9. In November 1978 Thomas Peryea filed claims in respondent's court for arrears in rent against Ray Rakes and Gilbert Thomas. During the course of the proceeding, the following occurred.

(a) Mr. Rakes and Mr. Thomas appeared in court before respondent on November 15, 22, and 29, 1978, and disputed the claims. Mr.

Peryea was not present on any of these occasions, having been told by respondent that his presence was not necessary.

(b) No witnesses were sworn, and no testimonial or other evidence was taken at any of these occasions.

(c) On February 15, 1979, respondent entered judgments against Mr. Rakes and Mr. Gilbert without having given them prior notice.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 14 of the Judiciary Law, Sections 33.1, 33.2, 33.3(a) and 33.3(c)(1)(iv) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A and 3C(1)(d) of the Code of Judicial Conduct. Charges I through VI of the Formal Written Complaint are sustained and respondent's misconduct is established.

By presiding over eight cases in which his brother was the plaintiff, by refusing requests that he disqualify himself and by finding in his brother's favor in each case, even where the validity of the claim was contested and apparently without any evidence or proof of the validity of the claim, respondent has engaged in serious misconduct. His actions are in clear violation of the absolute prohibition against presiding over matters involving a relative within the sixth degree of consanguinity or affinity (Judiciary Law, Section 14). Respondent has used his judicial office for the private benefit of his brother.

Respondent's lack of fitness for office, as exemplified by his action in his brother's cases, is further demonstrated by the egregiously inappropriate manner in which he conducted himself with respect to the *Peryea* claims. Respondent prejudged the matters, acted as attorney for the plaintiff whom he excused, ignored the defendant's objections to his conduct and entered judgments against them without a trial or notice.

Public confidence in the integrity of the judiciary is essential to the administration of justice. Judicial office is not a personal vehicle to be used to advance familial or other private interests. It is a fundamental public trust to be discharged diligently and fairly. By his conduct herein, respondent has violated that trust. He has used the prestige of his office to benefit private interests and he has irreparably diminished public confidence in the integrity and impartiality of his court. He has thereby severely prejudiced the administration of justice and established that he lacks the moral judgment and fitness requisite to service on the bench.

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

This determination is rendered pursuant to Section 47 of the Judiciary Law, notwithstanding respondent's resignation from the bench on September 30, 1980.

All concur.

Dated: December 18, 1980

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

CLAUDE C. BARCLAY,

A Justice of the Town Court of Parma, Monroe County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Christopher B. Ashton, Of Counsel) for the Commission.

William G. Easton for Respondent.

The respondent, Claude C. Barclay, a justice of the Town Court of Parma, Monroe County, was served with a Formal Written Complaint dated April 20, 1979, alleging misconduct in three traffic cases. Respondent filed an answer on May 15, 1979.

By order dated November 19, 1979, the Commission designated the Honorable John J. Darcy as referee to hear and report proposed findings of fact and conclusions of law. The hearing was conducted on April 25, 1980, and the report of the referee was filed on July 9, 1980.

By motion dated September 17, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be admonished. Respondent opposed the motion on October 10, 1980, and cross-moved to dismiss the Formal Written Complaint or, in the alternative, for a non-public sanction.

The Commission heard oral argument on the motions on October 31, 1980, thereafter considered the record of the proceeding and now makes the following findings of fact.

1. Respondent serves part-time as justice of the Town Court of Parma. His principal occupation is as a public accountant.

2. On March 31, 1976, respondent sent a letter to Justice Leroy Ramsey of the Town Court of Greece, confirming an earlier conversation and requesting special consideration on behalf of the defendant in *People* v. *Dean F. Strussenberg*, in which the charge was speeding. The defendant was the son of one of respondent's clients.

3. On January 29, 1975, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Alvin B. Clement*, as a result of a letter he received from Justice Charles M. Betts of the Town Court of Hartland, seeking special consideration on behalf of the defendant.

4. On May 1, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Douglas F. Taylor*, as a result of a letter he received from Justice Roy J. Burley of the Town Court of Ogden, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who makes the request. By making an *ex parte* request of another judge for a favorable disposition for the defendant in a traffic case, and by acceding to such requests from other judges, respondent violated the Rules and Code canons enumerated above.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

Respondent suggests that, by the standards of the community in which he presides, his actions do not constitute misconduct, and he submitted a written resolution to that effect from the Town Board of Parma.

The standard to which respondent must be held is not one to be defined by the community in which he sits. The Rules Governing

Judicial Conduct are a statewide standard and apply equally to all judges in the state. Those standards are not meant to be applied unevenly throughout the state by this Commission or selectively observed by judges in individual communities. Public confidence in our legal system requires that there be one set of standards for ethical judicial behavior, and that it be of the highest order.

Respondent has failed to observe the applicable standards.

The Commission considered that censure might be appropriate in light of the recalcitrance and apparent insensitivity to these issues by respondent. However, in view of the limited number of specific transgressions with which respondent was charged, admonition is more appropriate.

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

All concur.

Dated: January 6, 1981

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

LEONARD J. LITZ,

A Judge of the Family Court, Schenectady County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

Frank J. Litz for Respondent.

The respondent, Leonard J. Litz, a judge of the Family Court, Schenectady County, was served with a Formal Written Complaint dated March 27, 1979, alleging impropriety in three traffic cases. Respondent filed an answer dated April 16, 1979.

By order dated June 18, 1979, the Commission designated the Honorable Raymond Reisler as referee to hear and report proposed findings of fact and conclusions of law. The hearing was conducted on November 28, 1979, and the report of the referee was filed on July 7, 1980.

By motion dated September 24, 1980, the administrator of the Commission moved to confirm the report of the referee and for a determination that respondent be censured. Respondent opposed the motion on October 10, 1980, and cross-moved for dismissal of the Formal Written Complaint.

The Commission heard oral argument on the motions on October 31, 1980, thereafter considered the record of this proceeding and now makes the following findings of fact.

1. On March 12, 1975, respondent sent a letter to Justice Richard A. Lips of the Town Court of Clifton Park, confirming a previous telephone conversation and seeking special consideration on behalf of the defendant, who was charged with speeding, in *People* v. *Robert M. Valletta*, a case then pending before Judge Lips. The defendant is respondent's nephew.

2. On January 15, 1976, respondent communicated with Justice Edward J. Longo of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant, who was charged with speeding, in *People* v. *John F. Carlson*, a case then pending before Judge Longo. At the time the defendant was respoondent's prospective son-in-law.

3. On April 18, 1974, respondent communicated with Justice Edward J. Longo of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant, who was charged with speeding, in *People* v. *John P. Grecco*, a case then pending before Judge Longo. The defendant is respondent's brother-in-law.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 47 NY2d(b) (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was wrong and has always been wrong." *Id.* at (c).

Respondent, as the judge of a court of record and one who is trained in the law, must be particularly sensitive to the ethical standards applicable to a judge. His argument before the Commission that there was no special consideration demonstrated in his communications on behalf of relatives is unpersuasive. It evinces a basic failure to recognize the nature of his misconduct. Requests for favored treatment on behalf of any defendants are improper. Such requests on behalf of relatives are especially offensive to the standards of judicial conduct.

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

All concur except for Judge Cardamone and Mr. Kirsch, who dissent in a separate opinion only with respect to sanction and vote that the appropriate sanction is admonition.

Dated: January 6, 1981

Judge Cardamone and Mr. Kirsch dissent in the following opinion.

Censure is too harsh for the misconduct here found. In view of respondent's otherwise unblemished record, we believe admonition to be a more appropriate sanction.

Dated: January 6, 1981

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

JOSEPH W. DALLY,

A Justice of the Town and Village Courts of Monroe, Orange County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin (abstaining)
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission.

Robert T. Hartmann for Respondent.

The respondent, Joseph W. Dally, a justice of the Town and Village Courts of Monroe, Orange County, was served with a Formal Written Complaint dated August 13, 1979, alleging (i) that between 1973 and 1978, respondent presided over 11 cases in which he was related to the defendants and (ii) that between 1975 and 1977 respondent failed to meet various record keeping and financial reporting requirements. Respondent filed an answer dated October 1, 1979.

By order dated November 19, 1979, the Commission designated the Honorable Joseph F. Hawkins as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on February 7 and March 18 and 19, 1980, and the report of the referee was filed on May 14, 1980.

By motion dated September 8, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination

that respondent be censured. Respondent opposed the motion on October 3, 1980, and cross-moved for dismissal of a substantial portion of the Formal Written Complaint.

The Commission heard oral argument on the motions on October 30, 1980, at which respondent and his counsel were heard, thereafter considered the record of the proceeding and now makes the determination herein.

With respect to Charges I through XI of the Formal Written Complaint, the Commission makes the following findings of fact.

1. From February 18, 1974, to February 27, 1974, respondent presided over the case of *People* v. *Douglas Dally*, in which the defendant was charged with operating a vehicle with a broken windshield, notwithstanding that the defendant was his son. The defendant was fined $10.

2. From March 28, 1973, to December 6, 1973, respondent presided over the case of *People* v. *Arthur Daniel Dally*, in which the defendant was charged with burglary in the third degree, notwithstanding that the defendant was the son of respondent's first cousin. The charge was reduced to petty larceny, and the defendant was sentenced to probation for three years as a youthful offender.

3. From March 30, 1973, to December 6, 1973, respondent presided over the case of *People* v. *Arthur Daniel Dally*, in which the defendant was charged with public intoxication, notwithstanding that the defendant was the son of respondent's first cousin. Respondent granted an unconditional discharge in the case.

4. From June 1, 1973, to December 6, 1973, respondent presided over the case of *People* v. *Arthur Daniel Dally*, in which the defendant was charged with harassment, notwithstanding that the defendant was the son of respondent's first cousin. Respondent granted an unconditional discharge in the case.

5. From October 22, 1977, to November 30, 1977, respondent presided over the case of *People* v. *Arthur Daniel Dally*, in which the defendant was charged with disorderly conduct, notwithstanding that the defendant was the son of respondent's first cousin. Respondent imposed a conditional discharge in the case.

6. On August 9, 1978, respondent presided over the case of *People* v. *Arthur Daniel Dally*, in which the defendant was charged with driving while intoxicated, notwithstanding that the defendant was the son of respondent's first cousin. Respondent imposed a conditional dis-

charge in the case, requiring the defendant to attend a "drinking driver" program.

7. From August 6, 1974, to March 19, 1975, respondent presided over the case of *People* v. *Lawrence A. Dally*, in which the defendant was charged with operating a motor vehicle without insurance and driving a vehicle with an expired registration, notwithstanding that the defendant was the son of respondent's first cousin. The insurance charge was dismissed upon presentation of proof of insurance. The defendant was fined $50 on the remaining charge.

8. From November 2, 1974, to March 19, 1975, respondent presided over the case of *People* v. *Lawrence A. Dally*, in which the defendant was charged with operating a motor vehicle without insurance, operating a vehicle with a broken windshield and operating an unregistered vehicle, notwithstanding that the defendant was the son of respondent's first cousin. The insurance charge was dismissed upon presentation of proof of insurance. The defendant was fined $50 on each of the remaining two charges.

9. From December 19, 1975, to February 17, 1976, respondent presided over the case of *People* v. *Lawrence A. Dally*, in which the defendant was charged with operating a motor vehicle without insurance and with operating an unregistered vehicle, notwithstanding that the defendant was the son of respondent's first cousin. The insurance charge was dismissed upon presentation of proof of insurance. The defendant was fined $10 on the remaining charge.

10. On October 12, 1973, respondent presided over the case of *People* v. *William L. Dally, Jr.*, in which the defendant was charged with drinking in a park, notwithstanding that the defendant was the son of respondent's first cousin. The defendant was fined $25.

11. From March 26, 1973, to May 2, 1973, respondent presided over the case of *People* v. *David M. Dally*, in which the defendant was charged with operating a truck with an overload, notwithstanding that the defendant was respondent's first cousin. The defendant was fined $100.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated (i) Section 14 of the Judiciary Law as to each charge, (ii) Sections 33.1, 33.2, 33.3(a)(1) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct as to Charge I and Charges V through IX, and (iii) Sections 1, 2, 3A(1) and 3C(1)(d)(i) of the Code of Judicial Conduct as to Charge I. Charges I through XI of the Formal Written Complaint are sustained, and

respondent's misconduct is established. The affirmative defenses interposed by respondent's answer are without merit and are dismissed.

With respect to Charges XII and XIII of the Formal Written Complaint, the Commission makes the following findings of fact.

12. From June 4, 1975, to December 31, 1977, respondent's court records were deficient as noted below, thus making impossible a full audit of the records by the Department of Audit and Control.

(a) The cash receipts record had not been properly maintained.

(b) A monthly listing of outstanding bail was not maintained.

(c) Monthly reconciliations of official bank accounts were not prepared and lists of outstanding checks were not prepared.

(d) The criminal dockets were incomplete in that the receipt and disbursement of bail was not recorded therein.

(e) Duplicate forfeitures of bail were made in some instances, and in other instances bail was refunded in amounts greater than that received, resulting in deficits in the bail account.

(f) Monthly reconciliations of respondent's assets and liabilities were not prepared.

(g) Disbursement of monies from specific cases was made from the town court account when the deposit had been to the village court account, and vice versa.

(h) Several outstanding bails dating back to April 1971 were unresolved.

13. From June 4, 1975, to December 31, 1977, respondent failed to deposit all monies received in his official capacity into his official bank accounts within 72 hours of receipt.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 30.7 of the Uniform Justice Court Rules, Sections 33.1, 33.2, and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3B(1) of the Code of Judicial Conduct. Charges XII and XIII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The applicable provisions of the Judiciary Law and the Rules Governing Judicial Conduct, cited above, prohibit a judge from presiding over any matter in which he is related by consanguinity or affinity to a party in the proceeding, within the sixth degree. By

presiding over matters in which the defendants were his son, his first cousin and the sons of his first cousin, respondent violated those provisions.

Respondent's assertion that he was unaware of the applicable statute, rules and canons is not persuasive. Respondent's misconduct was clearly improper, and he knew or should have known the impropriety of presiding over cases involving his relatives, even in the absence of a specific prohibition. Professed ignorance of so fundamental a rule of conduct is no excuse. Indeed, Section 33.3(c)(1) of the Rules generally requires a judge to "disqualify himself in a proceeding in which his impartiality might reasonably be questioned. . ."

Although in most of the cases herein respondent imposed fines or conditional discharges on the defendants consistent with usual court practice, the prohibitions of the relevant statute and rules apply irrespective of the eventual outcome of the matter. Respondent's misconduct in these cases is, however, in part mitigated by the apparent impartiality with which he dealt with his relatives.

With respect to his records keeping deficiencies and his failure to deposit court money in a timely fashion, respondent has failed to discharge diligently his administrative responsibilities. His records are so poorly maintained that a thorough review by the Department of Audit and Control is virtually impossible, thus contributing further to a lack of confidence in respondent's court.

Having considered the nature of respondent's misconduct and the factors in mitigation, the Commission determines that removal from office would be too severe in this case. Respondent should be given the opportunity to conform his conduct to the applicable standards.

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

All concur.

Dated: January 28, 1981

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

WILLIAM J. FOLTMAN,

A Justice of the Town Court of Princeton, Schenectady County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Seth A. Halpern, Of Counsel) for the Commission.

Gordon, Siegel, Mullaney & Gordon (Arnold M. Gordon, Of Counsel) for Respondent.

The respondent, William J. Foltman, a justice of the Town Court of Princeton, Schenectady County, was served with a Formal Written Complaint dated June 25, 1979, alleging misconduct in three traffic cases. Respondent filed an answer dated July 12, 1979.

By order dated September 4, 1979, the Commission designated the Honorable Raymond Reisler as referee to hear and report proposed findings of fact and conclusions of law. The hearing was conducted on June 24, 1980, and the report of the referee was filed on August 25, 1980.

By motion dated September 24, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be admonished. Respondent submitted an answering affidavit dated October 7, 1980. Oral argument was waived.

The Commission considered the record of this proceeding on October 30, 1980, and makes the following findings of fact.

1. Respondent serves part-time as justice of the Town Court of Princeton. He is not an attorney. His principal occupation is as a mechanical designer.

2. On September 27, 1973, respondent communicated with Justice Edward J. Longo of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant, who was charged with failing to obey a red light, in *People* v. *Vincent C. Trimarchi*, a case then pending before Judge Longo. The defendant is one of respondent's co-workers. Respondent believed that his request as a town court justice would carry more weight with Judge Longo than the request of one who is not a town court justice.

3. On October 18, 1973, respondent communicated with Justice Edward J. Longo of the Town Court of Rotterdam, seeking special consideration on behalf of the defendant, who was charged with failing to stop at a stop sign, in *People* v. *Gary F. Rackowski*, a case then pending before Judge Longo. The defendant and respondent are cousins. Respondent believed that his request as a town court justice would carry more weight with Judge Longo than the request of one who is not a town court justice.

4. Between January 25, 1976, and April 2, 1976, respondent communicated with State Trooper O.J. Barr and with officials of the Town Court of Lake George, seeking special consideration on behalf of the defendant, who was charged with speeding, in *People* v. *Amarjit S. Gill*, a case then pending before Justice James Corkland of that court. The defendant is one of respondent's co-workers.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who makes such a request is guilty of favoritism. By making an *ex parte* request of another judge for a favorable disposition for the defendant in a traffic case, respondent violated the Rules and Code canons enumerated above.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

All concur.

Dated: February 6, 1981

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

BURTON LEDINA,

A Justice of the Village Court of Monticello, Sullivan County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Barry M. Vucker, Of Counsel) for the Commission.

Oppenheim, Drew & Kane (Stephen L. Oppenheim, Of Counsel) for Respondent.

The respondent, Burton Ledina, was served with a Formal Written Complaint dated November 27, 1978, alleging misconduct with respect to 15 traffic cases. Respondent filed an answer on November 29, 1978.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on July 1, 1980, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement and scheduled oral argument as to whether the facts establish misconduct and, if so, an appropriate sanction. Both counsel submitted memoranda on the issues. The Commission heard

oral argument on October 30, 1980, thereafter considered the record of this proceeding and now makes the determination herein.

Charges XII and XIV of the Formal Written Complaint are not sustained and therefore are dismissed. With respect to the remaining charges, the Commission makes the following findings of fact.

1. Respondent was a justice of the Village Court of Monticello, Sullivan County, from April 1969 to January 1978 and has been a justice of the Town Court of Thompson, Sullivan County, since November 1977. He serves on the bench part-time and is a practicing attorney in Sullivan County.

2. Charge I: On June 26, 1973, respondent sent a letter on behalf of the defendant in *People* v. *Richard Kazansky* to Fallsburg Town Court Justice Michael Altman, before whom the case was pending. Judge Altman serves as a justice part-time and is also a practicing attorney in Sullivan County. Respondent's letter (i) referred to a prior telephone conversation he had with Judge Altman about the case and (ii) advised Judge Altman that the defendant would plead guilty to a reduced charge of driving with an inadequate muffler. By his actions in conversing with and writing to Judge Altman, respondent sought special consideration on behalf of the defendant.

3. Charge II: On May 28, 1978, respondent sent a letter on behalf of his client, the defendant in *People* v. *Ilse Brassat*, to Liberty Town Court Justice Jack Levine, before whom the case was pending. Respondent's letter (i) referred to a prior discussion with Judge Levine about the case and (ii) advised Judge Levine that the defendant would be willing to enter a plea to a non-moving violation. Respondent thus acted as an attorney in a criminal proceeding within the county of his residence in violation of Section 839.3 of the Rules of Practice of the Appellate Division, Third Department.

4. Charge III: On February 5, 1975, respondent dismissed a charge of speeding and accepted a plea of guilty to a charge of failure to keep right in *People* v. *Peter J. Sanfilippo* as result of a letter he received on judicial stationery from Wappingers Falls Village Court Justice Harold H. Reilly, seeking special consideration on behalf of the defendant.

5. Charge IV: On April 10, 1974, respondent dismissed a charge of passing a stop sign in *People* v. *Saul Polonsky* as a result of a communication he received from Wawarsing Town Court Justice Joseph Polonsky, seeking special consideration on behalf of his father, the defendant.

6. Charge V: On September 25, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Saul Margolies* as a result of a letter he received on judicial stationery from Bethel Town Court Justice Stanley Liese, seeking special consideration on behalf of the defendant.

7. Charge VI: On September 25, 1973, respondent reduced a charge of passing a red light to driving with an unsafe tire in *People* v. *Saul Margolies* as a result of a letter he received from Bethel Town Court Justice Stanley Liese, seeking special consideration on behalf of the defendant.

8. Charge VII: On November 23, 1976, respondent reduced a charge of speeding to failure to keep right in *People* v. *Douglas Ketcham* as a result of a communication he received from Wawarsing Town Court Justice Joseph Polonsky, seeking special consideration on behalf of the defendant.

9. Charge VIII: On November 18, 1976, respondent reduced a charge of speeding to failure to keep right in *People* v. *Edward C. Silver* as a result of a communication he received from Myron Blackman, seeking special consideration on behalf of the defendant.

10. Charge IX: On December 2, 1975, respondent dismissed a charge of speeding in *People* v. *Juan C. Voldina* as a result of a communication he received from Police Officer Gonzales, seeking special consideration on behalf of his nephew, the defendant.

11. Charge X: On November 18, 1976, respondent reduced a charge of speeding to failure to keep right in *People* v. *Francis Striffler* as a result of a communication he received from Nat Mandel, seeking special consideration on behalf of the defendant.

12. Charge XI: On May 10, 1974, respondent reduced a charge of speeding to driving with an inadequate muffler in *People* v. *Kenneth Curry* as a result of a communication he received from Patrolman Paul Goldman, who was not the arresting officer, seeking special consideration on behalf of the defendant.

13. Charge XIII: On August 21, 1975, respondent sent a letter on behalf of his client, the defendant in *People* v. *Andres DiMarco*, to Liberty Town Court Justice Richard Hering, before whom the case was pending. Respondent thereby acted as an attorney in a criminal proceeding within the county of his residence in violation of Section 839.3 of the Rules of Practice of the Appellate Division, Third Department.

14. Charge XV: On May 11, 1977, respondent reduced a charge o passing a red light to driving with unsafe tires in *People* v. *Dosi Walker* as a result of a communication he received from Patrolmai Robert Martin, seeking special consideration on behalf of the defen dant, whom the patrolman identified as a relative of another police of ficer.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1 and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3A of the Code of Judicial Conduct and Section 839.3 of th Rules of Practice of the Appellate Division, Third Department Charges I through XI and Charges XIII and XV of the Formal Writ ten Complaint are sustained, and respondent's misconduct i established.

It is improper for a judge to seek to persuade another judge, on th basis of personal or other special influence, to alter or dismiss a traffi ticket. A judge who makes such a request is guilty of favoritism, as i the judge who accedes to it. By making *ex parte* requests of othe judges for favorable dispositions for defendants in traffic cases, an by acceding to such requests from judges and others with influence respondent violated the Rules enumerated above, which read in par as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]

> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 47 NY2d(b) (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at (c).

As one who is trained in and practices law, respondent must be especially sensitive to the applicable ethical provisions incumbent on a judge as well as the Appellate Division rules pertinent to the practice of law by part-time justices, which state that a judge "who is permitted to practice law shall not appear or act as an attorney in any criminal action or proceeding within the county of his residence" (Section 839.3 of the Rules of the Appellate Division, Third Department).

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

All concur.

Dated: February 6, 1981

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 T. RACICOT,

A Justice of the Town Court of Champlain, Clinton County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission.

Gary L. Favro for Respondent.

The respondent, John T. Racicot, a justice of the Town Court of Champlain, Clinton County, was served with a Formal Written Complaint dated December 14, 1979, alleging impropriety in his conduct in two cases. Respondent filed an answer dated January 4, 1980.

On June 25, 1980, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement and scheduled oral argument as to whether the facts constitute misconduct and, if so, an appropriate sanction. Both the administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record of this proceeding on October 30, 1980, and upon that record makes this determination.

With respect to Charge I of the Formal Written Complaint, the Commission makes the following findings of fact.

1. From December 1976 to October 1977, two cases entitled *People* v. *Stephen Barge* were pending in respondent's court, one charging the defendant for driving while license suspended, the other for operating an uninsured and unregistered motor vehicle.

2. Mr. Barge had contended in other proceedings that he was a resident of Ohio and thus was not required to obtain a New York State driver's license.

3. While the two cases against Mr. Barge were pending in respondent's court, respondent had *ex parte* communications with Mr. Barge's fellow employees, neighbors and others, including Mary Lou Bernard, Mrs. Joseph Papin, Robert Marra and Sandra Hanfield, to determine whether Mr. Barge was a resident of Stony Point. The purpose of these *ex parte* communications was to determine where Mr. Barge resided and to test the validity of the defense he had offered pertaining to his Ohio residency.

4. On October 6, 1977, after Mr. Barge had pled guilty before respondent on the charges at issue, and after Mr. Barge had taken an appeal from his conviction based in part on his claim that he was a resident of Ohio and had a valid Ohio driver's license and insurance, respondent wrote a letter, *ex parte*, to Robert Marra, who was Mr. Barge's employer, in an attempt to obtain proof of Mr. Barge's employment and residence in New York State.

5. Respondent acknowledged that it was improper to have had *ex parte* communications with the employer, fellow employees and neighbors of a defendant in his court to obtain personal knowledge of disputed evidentiary matters.

With respect to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact.

6. On March 31, 1978, Stephen Barge was issued a summons for speeding, returnable before respondent on April 12, 1978.

7. On March 31, 1978, at the request of counsel for Mr. Barge, respondent adjourned the trial date to May 6, 1978, but made no written notation of the adjournment.

8. On April 26, 1978, notwithstanding the adjournment he had granted, respondent signed a warrant for Mr. Barge's arrest for failure to obey the speeding summons.

9. Respondent acknowledged that his conduct with respect to this incident was negligent and improper.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(4), 33.3(a)(6), and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A and 3B of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

By not only receiving but soliciting *ex parte* communications concerning disputed evidentiary matters in a case pending before him, respondent prejudiced the impartiality of the adjudicatory process and violated a specific prohibition that a judge "except as authorized by law neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings" (Section 33.3[a][4] of the Rules).

By communicating about the *Barge* cases with numerous individuals not parties to the proceedings, respondent compromised the integrity of the court and also violated a specific obligation to "abstain from public comment about a pending or impending proceeding" (Section 33.3[a][b] of the Rules).

By his conduct in these matters, respondent exhibited insensitivity to his obligation to be an impartial arbiter of the issues before him. Moreover, Section 33.3(c)(1)(i) of the Rules requires a judge to disqualify himself from any proceeding in which he has personal knowledge of disputed evidentiary facts.

With respect to the charge involving the arrest warrant, respondent was negligent in the performance of his administrative duties and as a result created hardship for the defendant and prejudiced his case. He thus failed in his obligation to discharge diligently his administrative responsibilities (Section 33.3[b][1] of the Rules).

In determining sanction, the Commission notes that respondent acknowledges his misconduct, appears to appreciate the issues underlying this disciplinary proceeding and concurs in the request by counsel to the Commission for censure.

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

All concur.

Dated: February 6, 1981

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 A. REED,

A Justice of the Town Court of Pleasant Valley, Dutchess County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Barry M. Vucker, Of Counsel) for the Commission.

Bernard Kessler for Respondent.

The respondent, Thomas A. Reed, a justice of the Town Court of Pleasant Valley, Dutchess County, was served with a Formal Written Complaint dated April 16, 1979, alleging misconduct with respect to three traffic cases. Respondent filed an answer dated June 26, 1979.

By order dated December 7, 1979, the Commission designated Barbara L. Kaiser, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on February 14, 1980, and the report of the referee was filed on July 15, 1980.

By motion dated September 8, 1980, the administrator of the Commission moved to confirm the report of the referee and for a determination that respondent be admonished. Respondent did not oppose the motion. Oral argument was waived.

The Commission considered the record of this proceeding on October 30, 1980. The report of the referee is confirmed. The claim inter-

posed by respondent's answer alleging that the Commission exceeded its authority during the investigation of this matter is without merit and therefore is dismissed. Respondent's objection at the hearing to the introduction of certain documents is without merit and therefore is overruled. Respondent's objection at the hearing to the entire proceeding is without merit and also is overruled. The Commission makes the following findings of fact.

1. Respondent serves part-time as justice of the Town Court of Pleasant Valley. Respondent is also an attorney permitted to practice law in this state.

2. On June 21, 1974, respondent sent a letter on court stationery to Justice Morgan Bloodgood of the Town Court of Malta, seeking special consideration on behalf of the defendant, who was charged with speeding, in *People* v. *Walter Klein*, a case then pending before Judge Bloodgood. Respondent's letter identified the defendant as a "close personal friend and client" and specifically requested reduction of the speeding charge to a no-point violation. On July 17, 1974, respondent sent a second letter on court stationery to Judge Bloodgood, thanking him for the consideration shown to the defendant.

3. On March 21, 1974, respondent sent a letter on court stationery to Justice Joseph Thomson of the Town Court of Cornwall, seeking special consideration on behalf of the defendant, who was charged with speeding, in *People* v. *Robert J. Lama*, a case then pending before Judge Thomson. Respondent's letter identified the defendant as a "close personal friend" and specifically requested reduction of the speeding charge to a non-moving violation. On April 9, 1974, respondent sent a second letter on court stationery to Judge Thomson, thanking him for the consideration shown to the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

Charge III of the Formal Written Complaint is not sustained and therefore is dismissed.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making *ex parte* requests of

other judges for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

Respondent's contention is unpersuasive that he inadvertently used court stationery instead of his legal stationery in sending the letters in question. As one who is trained in and practices law, respondent must be particularly sensitive to the applicable ethical provisions incumbent on a judge.

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

All concur.

Dated: February 11, 1981

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

JUDSON WRIGHT,

A Justice of the Town Court of Coxsackie, Greene County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Robert H. Straus, Of Counsel) for the Commission.

Donald F. Larson for Respondent.

The respondent, Judson Wright, a justice of the Town Court of Coxsackie, Greene County, was served with a Formal Written Complaint dated November 1, 1979, alleging misconduct with respect to seven traffic cases. Respondent filed an answer dated January 4, 1980.

By order dated February 6, 1980, the Commission designated the Honorable Francis Bergan as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on April 8 and May 28, 1980, and the report of the referee was filed on September 9, 1980.

By motion dated October 21, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be admonished. Respondent did not oppose the motion. Oral argument was waived.

The Commission considered the record of this proceeding on October 30, 1980. The report of the referee is confirmed, and the Commission makes the following findings of fact.

1. Charge I: On June 7, 1973, respondent sent an *ex parte* letter on his judicial stationery to Catskill Village Court Justice Frank McDonald, seeking special consideration on behalf of the defendant, who was charged with speeding in *People* v. *Warner A. Berge*, a case then pending before Judge McDonald. Respondent's letter confirmed his earlier telephone conversation with Judge McDonald in which he had identified himself as a judge and requested a reduction of the speeding charge to an equipment violation.

2. Charge II: On July 12, 1975, respondent reduced a charge of speeding to a Thruway violation and imposed an unconditional discharge in *People* v. *Jack Gioacchini* as a result of an *ex parte* letter he received from Catskill Town Court Justice Charles Crommie, seeking special consideration on behalf of the defendant, notwithstanding the defendant's plea of guilty, in writing, to the original speeding charge.

3. Charge III: On July 19, 1975, respondent reduced a charge of speeding to a Thruway violation and imposed a fine of $25 in *People* v. *Daniel R. Fera* as a result of an *ex parte* telephone call and letter he received from Durham Town Court Justice Theodore Wordon, seeking special consideration on behalf of the defendant.

4. Charge IV: On August 20, 1974, respondent reduced a charge of speeding to a Thruway violation and imposed an unconditional discharge in *People* v. *Stewart South* as a result of an *ex parte* telephone call and letter he received from Cairo Town Court Justice Nicholas Bier, seeking special consideration on behalf of the defendant.

5. Charge VI: On March 9, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler and imposed a fine of $25 in *People* v. *Ronald J. Truesdell* as a result of an *ex parte* letter he received from Greene County Clerk Neil Brandow, seeking special consideration on behalf of the defendant.

6. Charge VII: On March 9, 1976, respondent reduced a charge of speeding to driving with an inadequate muffler and imposed a conditional discharge in *People* v. *Lestar H. Dudley* as a result of an *ex parte* letter he received from Ravena Town Court Justice Edward Jones, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1)

and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through IV and Charges VI and VII of the Formal Written Complaint are sustained and respondent's misconduct is established. Charge V of the Formal Written Complaint is not sustained and therefore is dismissed.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By making an *ex parte* request of another judge for favorable dispositions for the defendant in a traffic case, and by acceding to such requests from judges and others with influence, respondent violated the Rules enumerated above.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

All concur.

Dated: February 11, 1981

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

HAROLD B. CARPENTER,

A Justice of the Town Court of Hounsfield, Jefferson County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission.

Giles, Maloney, Marsh, Swartz & Goodwin (By Michael W. Schell) for Respondent.

The respondent, Harold B. Carpenter, a justice of the Town Court of Hounsfield, Jefferson County, was served with a Formal Written Complaint dated May 30, 1980, charging him with (i) failing to make timely deposits of court funds, (ii) failing to report or remit to the State Comptroller monies received in his official capacity and (iii) withdrawing court funds by writing checks payable to himself. Respondent, in a letter from his counsel dated June 18, 1980, waived an answer.

By motion dated November 5, 1980, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's operating procedures and rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion, found respondent's misconduct established and set a schedule for memoranda and oral argument with respect to an appropriate sanction. The administrator submitted a

memorandum. Respondent submitted a letter. Oral argument was waived.

The Commission considered the record of this proceeding on December 17, 1980, and makes the following findings of fact.

1. On September 7, 1979, the State Department of Audit and Control directed the Supervisor of the Town of Hounsfield to defer payment of respondent's salary, pursuant to Section 27 of the Town Law, for respondent's failure to file with the State Comptroller the financial reports of his court activity for June and July 1979 required by Section 27 of the Town Law.

2. From July 1979 to March 1980, respondent failed to report or remit to the State Comptroller any monies he received in his judicial capacity, in violation of Section 27 of the Town Law, Sections 2020 and 2021(1) of the Uniform Justice Court Act and Section 1803 of the Vehicle and Traffic Law. During this period respondent received $996 in fines, as detailed in Column 1 of Schedule A appended hereto.

3. From May 1979 to March 1980, respondent received monies in his official capacity totaling $1,426, as detailed in Column 1 of Schedule A appended hereto. During this period respondent made only three deposits totaling $764 into his official court account, as detailed in Column 2 of Schedule A appended hereto. In so doing, respondent violated Section 30.7 of the Uniform Justice Court Rules, which requires the deposit of all official funds within 72 hours of receipt. A total of $662 was undeposited and remains unaccounted for, as detailed in Column 3 of Schedule A appended hereto.

4. Between March 5, 1978, and February 8, 1980, respondent withdrew a total of $225 from his official court account by making four checks payable to himself, as detailed in Schedule B appended hereto.

5. In the investigation of this matter prior to service of the Formal Written Complaint, respondent appeared on April 30, 1980, before a member of the Commission to testify with respect to his reporting and remitting deficiencies. At that appearance, respondent refused to answer questions about certain court records or accounts, citing his Fifth Amendment privilege against self-incrimination. Respondent specifically refused to account for the $662 in undeposited funds noted in paragraph 3 above and for the $225 in withdrawn funds noted in paragraph 4 above.

6. On April 29, 1980, respondent deposited his personal check for $843 into his official court account. On April 30, 1980, respondent forwarded to the State Comptroller a check for $843 from his official

court account, representing fines received in his official capacity from August 1979 to March 1980.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained and respondent's misconduct is established.

By his persistent failure to make timely deposits of monies received in his official capacity, and by his equally persistent failure to report and remit these monies to the State Comptroller in the time and manner required by law, respondent has exhibited a callous disregard of the financial reporting and remitting responsibilities of his office.

By refusing to account for specific deficiencies amounting to $887, and by invoking his Fifth Amendment privilege in so doing, respondent has irreparably undermined the integrity of his judicial office. Public confidence in the judiciary requires a full and satisfactory accounting of the public funds entrusted to a judge's care.

Respondent's misconduct is not mitigated by his returning a portion of the missing funds with his personal check more than two years after the irregularities in his court finances began, after notice of the Commission's investigation into this matter and on the same day he appeared to testify on these matters before a member of the Commission. Whether or not we were to conclude that the missing money had been converted to respondent's own use—and the indications of such a conversion are persuasive—respondent's conduct has prejudiced the administration of justice and demonstrated his lack of fitness for judicial office.

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

All concur.

Dated: February 18, 1981

SCHEDULE A

Month	Column 1 Fine Money Received By Respondent	Column 2 Bank Deposits Attributable To Fine Money	Column 3 Unaccounted For Funds
May 1979	$ 175	$ 0	$175
June 1979	255	206	49
July 1979	153	150	3
August 1979	125	0	125
September 1979	55	0	55
October 1979	188	408	(+220)
November 1979	180	0	180
December 1979	15	0	15
January 1980	110	0	110
February 1980	65	0	65
March 1980	105	0	105
	$1,426	$764	$662

SCHEDULE B

Date of Check From Official Court Account	Check Number	Amount Of Check	Payee
March 5, 1978	133	$145	Harold B. Carpenter
January 30, 1980	154	30	Harold B. Carpenter
February 6, 1980	155	25	Harold B. Carpenter
February 8, 1980	156	25	Harold B. Carpenter
TOTAL		$225	

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

DAVID W. PETRIE,

A Justice of the Town Court of Danube, Herkimer County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission.

David W. Petrie,
Respondent Pro Se.

The respondent, David W. Petrie, a justice of the Town Court of Danube, Herkimer County, was served with a Formal Written Complaint dated July 8, 1980, alleging various acts of misconduct with respect to court funds entrusted to his care. Respondent did not file an answer.

By motion dated October 3, 1980, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's operating procedures and rules (22 NYCRR 7000.6[c]). Respondent submitted a letter in response to the motion.

The Commission granted the administrator's motion, found respondent's misconduct established and set the matter down for oral argument on the question of sanction. The administrator filed a memorandum. Respondent did not. Oral argument was waived.

The Commission considered the record of this proceeding on De-

cember 18, 1980, and makes the following findings of fact.

1. Between January 1, 1976, and December 31, 1978, respondent failed to deposit in his court account money received in his official capacity within 72 hours of receipt as required by Section 30.7 of the Uniform Justice Court Rules.

2. Between January 1, 1976, and December 31, 1978, respondent's court account was deficient by an average of $4,813, with the deficiency totaling as much as $9,860 in one month, as detailed in Schedule A appended hereto.

3. Respondent's practice was to keep in a box in his home, for an indeterminate period of time, the money he received in his official capacity, prior to depositing it in his official court account.

4. Respondent alleges that on September 6, 1976, his home was burglarized and that the only item stolen was the box containing court money. Respondent had not kept records of the money he kept in the box and so could not account for the actual amount allegedly stolen, though he indicated the figure was approximately $2,500.

5. Between October 1976 and March 1977, respondent made six deposits in his official court accounts, including $17,937 from more than 213 checks issued prior to the date of the alleged burglary. Respondent stated that at the time of the alleged burglary, the additional checks were probably in envelopes on top of the desk from which the box was stolen.

6. Notwithstanding the alleged theft of court funds from the box in his home on September 6, 1976, respondent allowed at least 28[illegible] checks totaling $6,220 in fines to accumulate in his home throughout the remainder of September 1976, as detailed in Schedule B appended hereto. Some of these checks were not deposited in respondent's official court account for up to six months thereafter.

7. Between April 1978 and September 1978, respondent accumulated in his home at least 30 checks in payment of fines totaling $977 as detailed in Schedule C appended hereto. In September 1978 respondent's overall court account deficit was $2,601.

8. To date, respondent's court accounts remain unreconciled.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I and II of the

Formal Written Complaint are sustained and respondent's misconduct is established.

Respondent has been more than simply careless in his handling of public money entrusted to his care. His failure to make timely deposits of official funds resulted in an average monthly deficiency of $4,813 over a three-year period. His allowing thousands of dollars in court funds to accumulate in his home for months at a time, unrecorded and unprotected, is utterly without justification. We do not credit respondent's explanation that a burglary of his home resulted in the disappearance of a substantial amount of court funds since the record establishes that respondent subsequently deposited a number of checks issued prior to the theft. His complete failure to account properly following the purported burglary, as well as his failure to reconcile his court accounts to date, are evidence either of respondent's unwillingness or inability to discharge the responsibilities of judicial office.

Respondent's gross neglect of these fiduciary obligations is serious misconduct. In *Bartlett* v. *Flynn*, 50 AD2d 401 (4th Dept 1976), *app dism* 30 NY2d 942 (1976), a judge was removed from office for "the careless manner in which he handled funds entrusted to his care and the disdain he demonstrated, not only for statutory record keeping, but also for deposit and remittance requirements."

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

All concur.

Dated: February 18, 1981

NOTE: The Court of Appeals, upon review, accepted the Commission's determination in this matter. 54 NY2d 807 (1981).

SCHEDULE A

	Receipts A&C	Payments A&C	Balance At Month's End Should Have Been	Balance At Month's End Was At Least	Approx. Deficiency
October, 1975	$ 1,405		$ 1,405		
November, 1975	3,810		5,215	$ 7,907	
December, 1975	2,213		7,428	1,610	$5,818
January, 1976	2,135		9,563	1,610	7,953
February, 1976	2,300	$ 5,215 (Oct, Nov)	6,648	2,758	3,890
March, 1976	1,140		7,788	2,673	5,115
April, 1976	1,320		9,108	5,448	3,660
May, 1976	3,240		12,348	7,283	5,065
June, 1976	1,415		13,763	6,468	7,295
July, 1976	2,070		15,833	9,863	5,970
August, 1976	2,875	11,028 (Dec, Jan, Feb, March, May)	7,680	1,160	6,520
September, 1976	2,840		10,520	660	9,860
October, 1976	745	2,735 (April, June)	8,530	955	7,575

SCHEDULE A—Continued

November, 1976	230		8,760	5,155	3,605
December, 1976	380	4,945 (July, Aug)	4,195	2,105	2,090
January, 1977	4,220	1,355 (Oct, Nov. Dec)	7,060	920	6,140
February, 1977	2,435	4,220 (Jan)	5,275	1,490	3,785
March, 1977	2,565	2,435 (Feb)	5,405	3,138	2,267
April, 1977	2,870	2,565 (March)	5,710	738	4,972
May, 1977	1,810		7,520	3,234	4,286
June, 1977	2,510	2,870 (April)	7,160	4,034	3,126
July, 1977	3,232		10,392	4,324	6,068
August, 1977	2,560	1,810 (May)	11,142	3,559	7,583
September, 1977	2,465	2,510 (June)	11,097	4,319	6,778
October, 1977	1,845	8,257 (July, Aug, Sept.)	4,685	69	4,616

SCHEDULE A—Continued

November, 1977	2,120		6,805	2,543	4,262
December, 1977	1,080	1,845 (Oct.)	6,040	2,414	3,626
January, 1978	2,225	2,120 (Nov.)	6,145	2,415	3,730
February, 1978	1,385	1,080 (Dec.)	6,450	703	5,747
March, 1978	800	2,225 (Jan.)	5,025	542	4,483
April, 1978	849	1,385 (Feb.)	4,489	2,857	1,632
May, 1978	1,700	800 (March)	5,389	2,823	2,566
June, 1978	2,752	849 (April)	7,292	2,803	4,489
July, 1978	1,235		8,527	2,803	5,724
August, 1978	2,337	1,700 (May)	9,164	3,068	6,096
September, 1978	3,186	6,324 (June, July, August)	6,026	3,425	2,601

SCHEDULE A—Continued

October, 1978	1,413		7,439	4,150	3,289
November, 1978	599		8,038	3,145	4,893
December, 1978	1,220	4,599 (Sept. Oct)	4,659	1,960	2,699
January, 1979	1,503	599 (Nov.)	5,563	1,248	4,315
February, 1979	1,099	1,220 (Dec.)	5,442	1,923	3,519

SCHEDULE B

Checks Deposited on October 4, 1976

Date of Check	Name	Amount of Check
6/28/76	Barbara Dolyak	$ 20
6/29/76	Richard F. Lavigue	15
6/29/76	Raymond E. Furlong	40
6/26/76	Alan Busley	20
7/14/76	Austin ?	20
6/21/76	Henry Belise	15
6/18/76	Charles Lavine	20
6/18/76	Anthony Tadale	20
5/14/76	Robert Loomis	20
6/22/76	Spencer Feldman, Jr.	20
5/17/76	David W. Laughlin	15
5/17/76	Henry Lukasik	20
5/19/76	Richard Lawrence	10
6/16/76	Richard Cowan	30
6/23/76	V. Catlin, Sr.	20
6/?/76	Eugene Gasdale	15
6/30/76	Phyllis Card	20
5/17/76	Ronald W. Moyer	15
5/17/76	Cheryl A. Marek	20
5/13/76	Albert Joseph Melita	20
5/05/76	George Marshall	15
6/12/76	Larry D. Benge	10
5/12/76	Edward Kuszynski	15
5/15/76	George Mallory	25
6/29/76	Bradley M. Emerson	10
6/14/76	Mrs. H.O. Haines, Sr.	10
6/22/76	Gladys Katz	15
6/22/76	Estelle A. Lynne	30
6/22/76	Ronald Dankowitz	15
6/15/76	Mark A. Bloomer	15
6/16/76	Louis J. Perko	20
5/14/76	Edward Meagher	15
5/18/76	Julie M. Masher	20
5/03/76	Lynn M. Mosley	15
5/01/76	Edward H. Latten, Jr.	15

SCHEDULE B—Continued

Checks Deposited on October 4, 1976 (continued)

Date of Check	Name		Amount of Check
5/19/76	Helen Lajaie		20
4/30/76	Ray ?		30
7/02/76	?		15
5/17/76	?		20
5/19/76	Mary L. Locy		15
6/18/76	Joan LaPate		20
6/02/76	T. Kloosterman		20
6/30/76	Ellen Lindsay		20
6/23/76	Mildred E. Ferris		10
6/25/76	Felice M. Gasorl		25
6/18/76	Joanne Birks		20
6/17/76	David H. Beiman		20
5/21/76	S.W. Beaureguard		20
6/18/76	Donald R. Baumfield		25
6/18/76	Lawrence Boyd		20
6/17/76	Lawrence R. Masse		10
8/09/76	Richard W. Folts		25
7/26/76	?		500
		Subtotal	$1,475

Checks Deposited on November 23, 1976

Date of Check	Name	Amount of Check
7/10/76	Glen Winkel	$ 20
7/13/76	Elissa Simmons	25
7/27/76	Mary Snapp	20
7/06/76	?	20
7/12/76	Alan Richardson	20
7/09/76	Martha Rio	20
7/21/76	Rebecca J. Reed	30
7/02/76	Joseph ?	15
6/30/76	Joseph O'Connor	20
7/27/76	Robert T.D. Liguiri	5
7/02/76	?	20
7/02/76	?	20
7/02/76	Marjorie Dormail	20
7/06/76	Ignacio L. Wust	25
7/29/76	John L. Fraser, J.P.	25
7/15/76	Robert C. Reimann	15
7/9/76	?	25
7/?/76	John Walter Plonkim	10
7/15/76	Vivian C. Nashold	20
6/06/76	Matina	25
7/11/76	Laurice Larochelle	20
7/15/76	Darlene B. Konifka	20
7/09/76	Michael S. Rogers	25
7/01/76	Cory E. ?	20
7/13/76	Alan Corueretto	15
7/28/76	Josephine L. Flood	20
7/17/76	Robert Enis, Jr.	15
7/22/76	Lloyd J. Ernst	25
7/20/76	Helen Miller	25
7/01/76	Linda C. Paiola	15
7/02/76	Marie L. ?	30
7/07/76	James L. Aallen	15
7/03/76	Diane Schall	20
6/30/76	?	20
7/09/76	Ralph P. Williams	10
7/01/76	William W. Stauton	20
7/01/76	James R. Rundell, Jr.	15
7/06/76	?	10

SCHEDULE B—Continued

Checks Deposited on November 23, 1976 (Continued)

Date of Check	Name		Amount of Check
7/?/76	Gerald Mainville		15
7/02/76	?		15
7/15/76	Paul James		25
7/12/76	David Allen		25
7/01/76	Raymond Seika		20
7/02/76	Vincent J. Germano		15
7/09/76	Clem Gintini		20
7/13/76	Edna Greenwood		10
7/15/76	Barbara G. Fradin		15
7/13/76	Arthur J. Ferry		25
7/07/76	Eleanor Finnegan		15
7/26/76	Linda C. Conklin		20
7/08/76	Henry Richard Baum		20
7/02/76	Eugene F. Deil, Sr.		20
7/19/76	Melvin D. Chaiken		30
7/16/76	Edmond J. Caputo		15
		Subtotal	$1,045

SCHEDULE B—Continued

Checks Deposited on November 30, 1976

Date of Check	Name	Amount of Check
8/24/76	Jerry B. ?	$ 15
8/20/76	Laurel F. Ward	15
8/23/76	Richard A. Frary	15
8/25/76	?	25
8/30/76	Joseph A. Rodrigues	25
6/18/76	Bruce ?	20
8/06/76	Lenwood E. Rider	10
8/02/76	Jack S. Gooker	15
7/06/76	Bruce Cole	15
7/30/76	Kathleen Conroy	15
7/02/76	Patricia J. Kinyon	15
7/12/76	A.E. Bradstreet	10
7/07/76	Daniel C. Brown	20
7/07/76	Milton Bailey	25
4/21/76	Edward Walsh	10
6/17/76	Peter Todesco	20
6/15/76	John C. Sherman III	10
6/22/76	Michael Strole	20
6/08/76	Arthur ?	10
6/21/76	Lawrence Dunn	15
5/25/76	John Zelko, Jr.	20
7/26/76	Elizabeth Deo	20
7/30/76	Victor Irving	15
8/07/76	Walter Arend	20
6/17/76	William B. Williams	10
6/08/76	R. Oppenheim	25
7/20/76	Walter P. Coleman	15
7/25/76	Joseph L. Cometa	10
5/06/76	Desiree L. Williams	30
7/22/76	Christine L. Bolden	25
7/15/76	Dennis Brooks	15
7/15/76	William ?	15
8/06/76	Margaret Peringer	15
7/09/76	John H. May	15
7/27/76	Kathleen M. Brennan	50

SCHEDULE B—Continued

Checks Deposited on November 30, 1976 (Continued)

Date of Check	Name	Amount of Check
7/23/76	Steven Banks	$ 15
7/15/76	Bill Brust	15
7/17/76	B.A. Bertoloui	15
7/02/76	William Brilbeck	15
7/19/76	Dave Acker	30
7/22/76	Phil Aiello	25
7/02/76	Susan M. Dipsiner	25
8/20/76	Lawrence F. Didsbury	15
8/28/76	?	35
8/30/76	Fred B. Grimaldi	20
6/18/76	Celio Vinagre	25
6/23/76	Ann Mills	15
7/19/76	Fabio E. Borda	20
8/26/76	Joseph A. Wolfe	20
8/28/76	Anthony Cammarata	10
8/31/76	? Casilla	15
8/30/76	Peter C. Fray	20
7/23/76	J. Allan Boyle	20
6/21/76	?	15
9/01/76	Dudley Loftman	25
4/05/76	John Dehulent	15
7/19/76	Gloria Osborurne	15
8/26/76	Ronald C. Powers	25
8/31/76	David Lew	25
8/30/76	David L. ?	30
8/06/76	?	30
8/23/76	Ernest H. Williams	20
8/04/76	Johnnie West	20
8/29/76	Barry G. Trahan	15
8/18/76	David R. Allan	20
8/23/76	Jean Ciomeek	20
8/02/76	? Newcome	15
6/21/76	James A. Kingsbury	15
8/23/76	Dale A. Kinas	15
8/21/76	Anthony J. Finaldi	20
7/24/76	Barbara Goldstein	15

9/01/76	Charles Freihofer		10
8/21/76	Victoria Biondo		15
9/02/76	Paul Bakos		15
8/23/76	James A. Bean		15
8/24/76	Jorge W. Palma		20
8/24/76	James D. O'Connor		20
8/24/76	Mary Ann Roy		15
7/20/76	Donald Cranston		25
7/10/76	?		20
7/20/76	Glenn A. Werry		15
7/15/76	Paul Bullock		10
7/26/76	Roland ?		35
7/10/76	Robert G. Brossica		20
7/08/76	Leonard ?		15
8/30/76	Joan Leydau		15
8/24/76	Ms. L. DeGennow		20
8/25/76	Georgina L. DeFilippo		20
8/30/76	Angela Oplaute		25
8/31/76	Dorothy Nichols		20
8/23/76	Charles Chodsey		15
6/25/76	John Wechten		15
6/28/76	Edgar N. Jackson		20
6/11/76	?		40
6/15/76	Mark H. Oldfield		15
8/27/76	Eric Leighton		20
		Subtotal	$1,810

SCHEDULE B—Continued

Checks Deposited on December 29, 1976

Date of Check	Name	Amount of Check
8/29/76	Berta Pupons	$ 15
8/30/76	L. ?	15
7/31/76	Patricia Stonesifer	10
5/17/76	John C. Rossi	20
9/04/76	?	10
9/01/76	Joel Makawing	15
9/03/76	Philip A. Hartwell	20
8/31/76	Anne-Marie Masse	25
8/30/76	Rodman Maul	25
8/30/76	John Meecipk	15
8/23/76	Christopher Saddewiki	30
8/25/76	?	20
8/24/76	Juan Santos	15
8/30/76	Locksly A. Smith	20
7/07/76	?	30
9/03/76	Salvatore Ativello, Jr.	25
9/03/76	Bert E. West	25
8/01/76	Mrs. Michael P. Uk?	15
9/04/76	?	15
8/28/76	Guido Varisio	20
8/28/76	Marguerite Mirante	15
8/30/76	Peter M. Strauss	15
9/03/76	?	30
	Subtotal	$445

SCHEDULE B—Continued

Checks Deposited on February 16, 1977

Date of Check	Name	Amount of Check
6/17/76	Sylvia Landry	$ 20
5/14/76	M.P. Markus	20
6/18/76	Donna Clock	20
7/02/76	Unsigned	15
9/06/76	Mrs. Song	15
9/01/76	Nathan Perry	20
9/03/76	Robert Soloni, Jr.	35
8/17/76	John G. Chuatal, Sr.	25
6/16/76	Henry G. Schwinn	15
6/14/76	Celeste F. Lawler	20
9/02/76	?	25
6/16/76	Frederick L. Smith	15
6/14/76	Susan G. Friday	20
6/16/76	Mary June Moran	30
6/22/76	Francis P. Davis	15
6/02/76	Robin J. Kieves	10
6/06/76	Leo Ladidus	20
6/16/76	?	35
8/05/76	Elaine Cahien	15
6/14/76	?	40
6/14/76	Dominic Gigliotti	20
6/18/76	Mary D. Barthomala	20
6/18/76	D. Noone	25
7/21/76	Freida Gaines	20
9/02/76	Patrice E. Hinds	30
9/03/76	Joseph N. Cugini	15
9/02/76	?	50
9/04/76	George C. Hansen, Jr.	20
6/21/76	Charlotte W. Pierce	30
6/22/76	Marc A. Dupius	15
6/10/76	Stephen M. Liana	20
6/15/76	Linda J. Anthony	15
6/21/76	Ronald Freund	15

SCHEDULE B—Continued

6/18/76	Kathleen Knihl	25
6/21/76	Jeff B. Munz	15
6/16/76	Mark W. Dunne	25
6/23/76	Frank Rinto	20
6/21/76	Dorothy Ostman	20
6/18/76	Linda Poruero	20
6/21/76	Maureen Ryan	25
6/15/76	?	20
6/15/76	Robert W. Richards	20
6/22/76	David F. Ray	20
6/29/76	Patricia Balch	25
6/17/76	?	20
6/15/76	George Schultz	20
	Subtotal	$1,000

Checks Deposited on March 21, 1977

Date of Check	Name	Amount of Check
9/03/76	Herbert Brown	$ 30
9/03/76	Charles Grysman	15
9/04/76	Phrmile Jones	10
9/03/76	?	20
9/02/76	Joseph F. Baite	15
9/04/76	Raga Johnson	40
9/04/76	James Bello	25
9/03/76	Charane Moon	25
4/22/76	?	200
9/04/76	Donna M. Flynn	10
9/02/76	James A. Fizzinglis	20
9/02/76	Carmen Esper	20
9/02/76	Eddie Bryant	15
	Subtotal	$ 445
	TOTAL	$6,220

SCHEDULE C

Date of Check	Name	Amount Check
6/08/78	Fedele	$ 40
6/07/78	Romando	15
6/09/78	Giordano	40
6/09/78	Hamkamp	15
8/21/78	Richman Filts	100
2/14/78	Richman Filts	100
5/23/78	Richman Filts	200
6/07/78	Michael Gurdo	15
6/08/78	David Indivers	15
6/08/78	Money Order (First Trust)	40
6/10/78	Money Order (J. Jones)	20
6/05/78	Rooney Jordan	17
6/08/78	Money Order (Marine Midland)	15
6/08/78	Money Order (Kaplan)	5
6/09/78	Money Order (Kelly)	15
6/09/78	Money Order (Luz)	25
6/07/78	Lloyd	25
6/09/78	Lemanski	15
6/09/78	Levis	20
6/09/78	Maenza	15
6/09/78	Ruell	30
6/10/78	Russell	20
6/08/78	Sherman	20
6/07/78	N. Tsimekles	50
6/09/78	Jannenbaum	20
6/08/78	Segar	20
6/09/78	Skamns	20
6/10/78	Enright	10
6/08/78	Money Order	15
?/16/78	Schenectady Savings Bank	20
	Total	$ 977

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

CHARLES R. LEGGETT,

A Justice of the Town Court of Chester, Warren County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

Smith, Monroe & Cubley (By Daniel T. Smith) for Respondent.

The respondent, Charles R. Leggett, a justice of the Town Court of Chester, Warren County, was served with a Formal Written Complaint dated June 26, 1979, alleging misconduct with respect to two traffic cases. Respondent filed an answer dated July 12, 1979.

By order dated March 21, 1980, the Commission designated the Honorable Raymond Reisler as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on June 16, 1980, and the report of the referee was filed October 2, 1980.

By motion dated November 3, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent filed an answering affidavit dated November 13, 1980, and moved for dismissal of the Formal Written Complaint with a letter of dismissal and caution or, in the alternative, for a determination that respondent be admonished. Oral argument on the motions was waived.

The Commission considered the record of the proceeding on December 17, 1980, and makes the following findings of fact.

1. Respondent serves part-time as town justice and is an attorney permitted to practice law in the State of New York.

2. Charge I: On July 1, 1975, respondent sent a letter on his judicial stationery to Clifton Park Town Court Justice Richard Lips, seeking special consideration on behalf of the defendant, who was charged with speeding, in *People* v. *Gregory Boggia*, a case then pending before Judge Lips.

3. Charge II: Between November 18 and November 30, 1976, respondent spoke with Lake George Town Clerk Ralph Brown with respect to *People* v. *Martin L. Chase*, a case then pending before Lake George Town Court Justice James Corkland. Thereafter, on November 30, 1976, respondent sent a letter on official stationery to Judge Corkland, seeking special consideration on behalf of the defendant, who was charged with speeding in that case.

By reason of the foregoing, respondent violated Sectons 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. By making *ex parte* requests of other judges for favorable dispositions for the defendants in two traffic cases, respondent violated the rules and canons enumerated above and engaged in misconduct.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

As one trained in and permitted to practice the law, respondent should have been especially sensitive to the applicable standards.

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

All concur.

Dated: February 25, 1981

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

GEORGE R. MURTAUGH,

A Justice of the Town Court of Frankfort, Herkimer County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

Dominic J. Zito for Respondent.

The respondent, George R. Murtaugh, a Justice of the Town Court of Frankfort, Herkimer County, was served with a Formal Written Complaint dated May 22, 1979, alleging misconduct with respect to five traffic cases. Respondent filed an answer dated June 28, 1979.

By order dated September 4, 1979, the Commission designated Gray Thoron, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on January 17, 1980, and the report of the referee was filed on July 2, 1980.

By motion dated October 1, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent did not submit papers in response. The Commission heard oral argument on the motion on December 17, 1980, at which respondent and his counsel were heard, thereafter considered the record of the proceeding and now makes the following findings of fact.

> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 47 NY2d(b) (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at (c).

While every instance of ticket-fixing is wrong and must be condemned, respondent's request for favorable consideration in the *Pizzo* case is particularly disturbing, coming as it did nearly five months after the first Commission censure of a judge for ticket-fixing (*Matter of Edmund Quinones*, Dec. 31, 1977), over eleven months after the Commission's widely-reported interim report on ticket-fixing (Interim Report: June 20, 1977), and over eight months after respondent had received an inquiry from the Commission concerning his conduct in

1. Charge I: On May 23, 1978, respondent sent a letter on official stationery to Lancaster Town Court Justice J. Michael Kelleher, seeking special consideration on behalf of the defendant in *People* v. *John F. Pizzo*, a case then pending before Judge Kelleher. Respondent stated that in writing the letter he "hoped that the presiding magistrate would not levy an excessive fine."

2. Charge II: On September 12, 1973, respondent sent a letter on official stationery to Plattekill Town Court Justice Wayne Smith, seeking special consideration on behalf of the defendant in *People* v. *Joseph DeLuke*, a case then pending before Judge Smith.

3. Charge III: On November 10, 1975, respondent communicated with Glen Town Court Justice James Brookman, seeking special consideration on behalf of the defendant in *People* v. *John J. Caruso*, a case then pending before Judge Brookman.

4. Charge IV: Between July 29, 1973, and April 16, 1974, respondent communicated with Kirkland Town Court Justice Vincent P. Scholl, seeking special consideration on behalf of the defendant in *People* v. *Anthony Farouche*, a case then pending before Judge Scholl.

5. Charge V: On September 18, 1973, respondent communicated with Lafayette Town Court Justice Malcolm W. Knapp, seeking special consideration on behalf of the defendant in *People* v. *Frank Grippe*, a case then pending before Judge Knapp.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to grant special consideration to a defendant. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

the *DeLuke* case (Charge II). In the instant proceedings, respondent has said both that he had merely forwarded Mr. Pizzo's ticket to the presiding judge and that he had written hoping the fine on Mr. Pizzo would not be excessive. In either event, there was no excuse for respondent's sending the *ex parte* letter. Furthermore, we note that there is no explanation in the record why it was respondent who "forwarded" the plea instead of some relative or other friend of the defendant's.

It is not necessary for a judge specifically to request a favor in order for his interest in a favorable result to be conveyed. The inevitable result of an *ex parte* letter from one judge to another on behalf of a defendant is to establish that the writing judge has a special interest in the outcome of the case and to convey that special interest to the receiving judge. Whether or not the receiving judge then actually accommodates the result of the case by granting special consideration to the defendant is irrelevant to the misconduct of the writing judge.

By May 23, 1978, when he wrote the letter in the *Pizzo* case, respondent knew or should have known the impropriety and appearance of impropriety inherent in his action. Whatever uncertainty there may have been in the past about the propriety of one judge writing an *ex parte* letter to another judge on behalf of a traffic defendant, the public record condemning such conduct had been unequivocally established well before the date of respondent's letter in *Pizzo*.

The *Pizzo* case represents the first time the Commission has found misconduct in a ticket-fixing incident which occurred after publication of the Commission's Interim Report in June 1977 and after a public determination of censure by the Commission in a ticket-fixing case.

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

All concur.

Dated: February 25, 1981

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

PHILIP S. CAPONERA,

A Justice of the Town Court of Colonie, Albany County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

William J. Cade for Respondent.

The respondent, Philip S. Caponera, a justice of the Town Court of Colonie, Albany County, was served with a Formal Written Complaint dated July 16, 1979, alleging misconduct with respect to seven traffic cases and related matters. Respondent filed an answer dated September 7, 1979.

By order dated March 6, 1980, the Commission designated Bruno Colapietro, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was conducted on June 6, 1980, and the report of the referee was filed on October 16, 1980.

By motion dated December 22, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent did not oppose the motion. Oral argument was not requested.

The Commission considered the record of this proceeding on January 21, 1981, and makes the following findings of fact.

1. Respondent serves part-time as town court justice of Colonie and is an attorney permitted to practice in the State of New York.

2. Charge I: On April 7, 1976, respondent sent a letter on official town stationery to Niskayuna Town Court Justice Theodore Reinhard, seeking special consideration on behalf of the defendant in *People* v. *James Gillis*, a case then pending before Judge Reinhard.

3. Charge II: On December 8, 1975, respondent sent a letter on official town stationery to New York Mills Village Justice Michael Cienava, seeking special consideration on behalf of the defendant, who was the nephew of one of respondent's law practice clients, in *People* v. *Michael J. Costello*, a case then pending before Judge Cienava.

4. Charge III: On August 29, 1975, respondent sent a letter to Moreau Town Court Justice Robert Vines, confirming a telephone conversation in which respondent had sought special consideration on behalf of the defendant, his client, in *People* v. *Jeff DiStefano*, a case then pending before Judge Vines.

5. Charge IV: On September 3, 1976, respondent sent a letter on official town stationery to Guilderland Town Court Justice Mathew Mataraso, seeking special consideration on behalf of the defendant, his client, in *People* v. *Darcy Belgiano*, a case then pending before Judge Mataraso.

6. Charge V: On September 7, 1976, respondent sent a letter on official town stationery to Albany City Traffic Court Judge John E. Holt-Harris, seeking special consideration on behalf of the defendant, a friend of respondent's, in *People* v. *Eugene Audi*, a case then pending before Judge Holt-Harris.

7. Charge VI: On October 13, 1976, respondent sent a letter to Queensbury Town Court Justice James Davidson, seeking special consideration on behalf of the defendant, a friend of respondent's in *People* v. *James Burkhard*, a case then pending before Judge Davidson.

8. Charge VIII: Between January 1974 and November 1976, the clerks of the Town Court of Colonie, with respondent's general knowledge but without his consent in individual cases, made it a practice to reduce certain speeding cases to lesser charges, enter dispositions and stamp respondent's name in court docket books. Respondent thereby improperly delegated his judicial responsibilities to the

clerks and failed in his obligation to supervise his court personnel.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(4) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A and 3B of the Code of Judicial Conduct. Charges I through VI and Charge VIII of the Formal Written Complaint are sustained and respondent's misconduct is established.

Charge VII of the Formal Written Complaint is not sustained and therefore is dismissed.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to grant special consideration to a defendant. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . .

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 47 NY2d(b) (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at (c).

As an experienced lawyer, respondent should have been fully aware of the applicable standards of conduct, both with respect to his requests to other judges for special consideration for others, including his own clients, and his improper delegation to the clerks of the town court of judicial responsibilities reposed solely in him.

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

All concur.

Dated: April 21, 1981

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 V. TEPEDINO,

A Judge of the Family Court, Albany County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

O'Connell & Aronowitz (By Stephen R. Coffey) for Respondent.

The respondent, Michael V. Tepedino, a judge of the Family Court, Albany County, was served with a Formal Written Complaint dated July 18, 1979, alleging misconduct in two traffic cases. Respondent filed an answer dated August 23, 1979.

By order dated November 19, 1979, the Commission designated the Honorable Joseph F. Hawkins as referee to hear and report proposed findings of fact and conclusions of law. The hearing was conducted on May 5, 1980, and the report of the referee was filed on June 12, 1980.

By motion dated November 3, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the administrator's motion and cross-moved to disaffirm the referee's report and to dismiss the Formal Written Complaint.

The Commission heard oral argument by opposing counsel on the motions on January 21, 1981, thereafter considered the record of this proceeding and now makes the following findings of fact.

Charge I: On April 30, 1976, respondent telephoned Clifton Park Town Court Justice Richard Lips, seeking special consideration on behalf of the defendant in *People* v. *Olive E. Monticup*, a traffic case then pending before Judge Lips. The defendant, who was charged with failure to stop at a stop sign, is a cousin by marriage of respondent's daughter. On May 1, 1976, respondent sent Judge Lips a letter on official court stationery, confirming the conversation. On May 4, 1976, the charge consequently was changed to driving with an inadequate muffler and the defendant was fined $10.00.

Charge II: On or about November 2, 1976, respondent spoke with New Scotland Town Court Justice Harold Schultz, seeking special consideration on behalf of the defendant in *People* v. *Munir T. Jabbur*, a traffic case then pending before Judge Schultz. The defendant, who was charged with speeding, was a former neighbor and former client of respondent's. The charge consequently was changed to driving with an inadequate muffler and the defendant was granted an unconditional discharge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. Respondent is a judge who sits full-time in a court of record and was obliged to know that his conduct was improper. The inevitable result of such an *ex parte* communication from one judge to another is to convey the requesting judge's special interest in the outcome of the case. Courts in this and other states have found that seeking favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

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

All concur.

Dated: April 21, 1981

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

WILLIAM J. QUINN,

A Justice of the Supreme Court, Fourth Judicial District.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.*
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

Thomas J. McDonough for Respondent.

The respondent, William J. Quinn, a justice of the Supreme Court, Fourth Judicial District, was served with a Formal Written Complaint dated November 27, 1979, alleging misconduct with respect to respondent's operating a motor vehicle while under the influence of alcohol. Respondent filed an answer dated January 19, 1980.

By order dated March 18, 1980, the Commission designated the Honorable Bertram Harnett referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on August 18 and 19, 1981, and the referee filed his report to the Commission on December 23, 1980.

By motion dated January 9, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. By cross-motion dated Feb-

ruary 17, 1981, respondent moved to disaffirm the referee's report and for dismissal of the Formal Written Complaint.

The Commission heard oral argument on the motions on March 10, 1981, thereafter considered the record of the proceeding and makes the following findings of fact.

1. On May 4, 1975, respondent was found by an officer of the Lake George Village Police to be asleep behind the wheel of his automobile. Upon being awakened, respondent was found to be under the influence of alcohol, was taken to a police station, and, upon confirmation of his identify, was driven home.

2. On May 16, 1975, respondent was found by an officer from the Warren County Sheriff's office to be asleep behind the wheel of his automobile. Upon being awakened, respondent was found to be under the influence of alcohol. After his identity was confirmed, he was driven home.

3. On May 22, 1975, respondent drove his automobile while his ability to operate a vehicle was impaired by the consumption of alcohol. His car entered the southbound lane on the Northway (Interstate 87), going north. He continued in the wrong direction until he was stopped and arrested by New York State Troopers.

4. On May 29, 1975, respondent pleaded guilty in the Town Court of Moreau to driving while his ability was impaired on May 22, 1975, in violation of Section 1192.1 of the Vehicle and Traffic Law.

5. On November 10, 1977, respondent was admonished by the State Commission on Judicial Conduct, concerning his drinking habits.

6. After receiving the admonition, respondent continued to have at least one or two alcoholic drinks on several occasions each week outside his home. On some of these occasions respondent was in an inebriated condition and was seen to be so in public.

7. On January 16, 1979, respondent had several drinks at a private club in mid-afternoon and then drove home in an intoxicated condition. By his conduct, respondent acted in disregard of the Commission's admonition.

8. While driving home on January 16, 1979, respondent's car stopped, blocking traffic. Respondent had passed out at the wheel with the motor running and the car in gear.

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*Mr. Maggipinto's term as a member of the Commission expired on March 31, 1981. The vote on this determination was taken on March 10, 1981.

9. A number of witnesses observed respondent in an inebriated condition and summoned the police.

10. When a police officer arrived, respondent refused to give his identification, insulted the officer, and attempted to invoke the authority of his office by making such statements as, "Do you know who I am?" Respondent was arrested.

11. After his arrest, respondent, in plain view, urinated on the police car.

12. Thereafter at the stationhouse, in the presence of at least four police employees, respondent displayed his checkbook and asked what he would have to do to "get this straightened out," repeatedly referred to his judicial position and said, "Let's get this thing settled now." He also stated, "My name is not Mr. Quinn; it's Judge Quinn and don't forget it."

13. Respondent was belligerent and uncooperative in taking a breathalyzer test.

14. The breathalyzer test showed that respondent's blood alcohol content was .19%, well above the .10% needed to demonstrate intoxication.

15. Respondent threatened the arresting police officers by making such statements as, "I know where you were Saturday night;" "I've got files on all you Glenville cops;" and "Your ex-Chief tried the same thing and you know what happened to him."

16. Respondent refused on January 16, 1979, to cooperate in having his fingerprints taken.

17. On February 16, 1979, respondent pleaded guilty to driving with more than .10% blood alcohol, and, accordingly, entered a plea of guilty to Section 1192.2 of the Vehicle and Traffic Law in the Town Court of Glenville. He was given a conditional discharge. One of the conditions was that he submit to fingerprinting.

18. Between January 16, 1979, and August 23, 1979, in connection with his arrest for and conviction of driving with more than .10% blood alcohol, respondent refused to make himself available for fingerprinting pursuant to Section 160.10 of the Criminal Procedure Law, notwithstanding that he was ordered by the court, as part of the terms under which his plea of guilty was accepted, to make himself available to the Glenville Police for the purpose of taking his fingerprints.

19. On August 23, 1979, at the urging of the District Attorney, respondent agreed to have his fingerprints taken in his chambers by a police officer. He was, however, not cooperative with the police officer and a clear set of fingerprints could not be obtained.

20. No adequate fingerprints of respondent were ever obtained in connection with his arrest on January 16, 1979.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.5(a) of the Rules Governing Judicial Conduct and Canons 1, 2A and 5A of the Code of Judicial Conduct. Charges I through IX of the Formal Written Complaint are sustained and respondent's misconduct is established. The affirmative defenses raised by respondent are not sustained and therefore are dismissed.

Respondent's misconduct has been serious and continuing since 1975. More than once he was found by police to be asleep at the wheel of his car while under the influence of alcohol. He was arrested twice for driving while intoxicated or while his ability to drive was impaired by alcohol, once having been stopped while driving the wrong way on a major highway. He identified himself as a judge and asserted the prestige of his judicial position, attempted to influence the police who arrested him, directed abusive language toward the police and refused to cooperate as they attempted to discharge their official responsibilities. He refused for several months to obey a court order to be fingerprinted and, when he finally did submit to the process, he was so uncooperative that the administering police officer was unable to obtain a legible set of prints.

A judge may not flout the laws he is sworn to uphold. By his conduct respondent has cast grave doubt on his fitness to serve. He has demeaned the dignity of his office and has acted in a manner that has brought shame and disrepute to the judiciary.

In determining the appropriate sanction in a disciplinary proceeding, the Commission must balance its responsibility to insure to the public a judiciary in whose integrity it may have confidence and its responsibility to deal fairly with the individual judge. In this case, the circumstances involve a judge whose serious drinking problem underlay the uncontroverted acts of misconduct and on whom a prior admonition has had no discernible reforming effect.

In the circumstances of this case, the Commission concludes that public confidence in respondent is irretrievably lost and that the public interest can be protected only by removal of respondent from office.

The manifestations of misconduct engendered by respondent's alcoholism are so serious as to reflect clearly respondent's lack of fitness to serve as a judge. The risks inherent in permitting respondent to remain on the bench far outweigh the prospects of his regaining the public's confidence in his performance.

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

All concur, except for Judge Rubin, who abstains.

Dated: May 1, 1981

NOTE: The Court of Appeals, upon review, noted the judge's recent retirement and modified the Commission's determination to censure. 54 NY2d 386 (1981).

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

MORGAN BLOODGOOD,

A Justice of the Town Court of Malta, Saratoga County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission.

William F. McDermott for Respondent.

The respondent, Morgan Bloodgood, a justice of the Town Court of Malta, Saratoga County, was served with a Formal Written Complaint dated September 11, 1979, alleging that respondent intentionally directed an ethnic religious slur at a defendant in a pending case. Respondent filed an answer dated October 4, 1979.

By order dated January 9, 1980, the Commission designated the Honorable H. Hawthorne Harris as referee to hear and report proposed findings of fact and conclusions of law. The hearing was conducted on March 10 and 11, 1980, and the report of the referee was filed on June 26, 1980.

By motion dated August 19, 1980, the administrator of the Commission moved (i) to confirm in part and to disaffirm in part the referee's report, (ii) for a determination that respondent's misconduct

is established and (iii) that oral argument be scheduled as to appropriate sanction. Respondent cross-moved on September 5, 1980, to dismiss the Formal Written Complaint.

The Commission heard oral argument on the motions on October 30, 1980, and thereafter found respondent's misconduct established.

Oral argument on sanction was heard on April 22, 1981, having been adjourned to that date due to the hospitalization of respondent's counsel.

Now upon consideration of the record of this proceeding, the Commission makes the following findings of fact.

1. On February 13, 1979, David Rosenblum, a resident of Pennsylvania, was issued a traffic summons for speeding, returnable on February 21, 1979, in respondent's court. Mr. Rosenblum failed to respond to the summons on its return date.

2. On March 27, 1979, Mr. Rosenblum entered a plea of guilty by completing and signing the appropriate portions of the traffic summons and mailing it to respondent with a personal check for $15, in payment of the appropriate fine as stated on the summons. Respondent received the plea and check at his court on March 29, 1980.

3. On March 30, 1979, respondent sent the record of the conviction to the Department of Motor Vehicles, deposited the $15 check in his official court account and transmitted $15 in payment of the fine to the Department of Audit and Control.

4. On April 10, 1979, respondent received from the bank handling his court account a notice that Mr. Rosenblum's check had been returned, unpaid, by reason of an order by Mr. Rosenblum to stop payment.

5. On April 11, 1979, respondent personally typed a letter on official court stationery to Mr. Rosenblum, acknowledging the stopped payment. Respondent's letter was sarcastic in tone and concluded with the words "So long Kikie". Respondent mailed the letter the following day.

6. Respondent did not know Mr. Rosenblum prior to the incident herein. Respondent "assumed" Mr. Rosenblum is Jewish. Respondent, knowing the term "kike" is an ethnic religious slur used to characterize Jewish people, invoked it to shock, irritate and provoke Mr. Rosenblum into replacing the $15 stopped check.

7. Respondent did not notify the motor vehicle departments of either New York or Pennsylvania about the return of Mr. Rosenblum's check. Respondent did not file the appropriate scofflaw notices against Mr. Rosenblum, nor did he take any other appropriate action on Mr. Rosenblum's license to drive an automobile.

8. On April 14, 1979, Mr. Rosenblum received respondent's letter and was angered and irritated by it. He telephoned respondent, said he would send another check for $15, and expressed his anger to respondent.

9. On April 16, 1979, Mr. Rosenblum sent a money order to respondent, to make up for the $15 check on which payment had been stopped. On May 24, 1979, respondent sent a letter to Mr. Rosenblum, apologizing for the "poor choice of words" in his letter of April 11, 1979.

By reason of the foregoing, respondent violated Sections 33.1, 33.2 and 33.3(a)(3) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Ethnic or religious slurs, offensive to decorum and decency under ordinary circumstances, are particularly intolerable when spoken or written by a judge. When a judge demonstrates prejudice by deliberately using the term "kikie", public confidence in the integrity of the courts is diminished, and the administration of justice is seriously compromised.

Respondent's use of the offensive term was neither accidental nor spontaneous. Respondent called Mr. Rosenblum "kikie" in a letter which he himself typed on court stationery one day and did not mail until the next. Although there was time for respondent to reconsider his action and not mail the letter, he chose to send it.

By his conduct, respondent has demeaned the high office he holds and has demonstrated a remarkable insensitivity to his obligation to conduct himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The Commission notes that, prior to this incident, respondent had been disciplined four times for other matters. He had been admonished for misconduct twice by the Appellate Division, Third Department, once by the Temporary State Commission on Judicial Conduct, and censured once by the Court on the Judiciary.

Standing alone, respondent's conduct in the instant case warrants severe discipline. In the context of his extensive record of prior discipline, the Commission concludes that respondent lacks the requisite fitness to serve as a judge.

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

All concur.

Dated: June 11, 1981

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

DUNCAN S. MacAFFER,

A Justice of the Village Court of Menands, Albany County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
E. Garrett Cleary
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

Victor A. Caponera for Respondent.

The respondent, Duncan S. MacAffer, is a part-time justice of the Village Court of Menands, Albany County, and is an attorney permitted to practice law in this state. He was served with a Formal Written Complaint dated October 31, 1979, alleging that he sought special consideration for the defendants in five traffic cases, granted two such requests and practiced law before other part-time lawyer-justices in Albany County in violation of the Rules Governing Judicial Conduct. Respondent filed an answer dated November 26, 1974.

By order dated January 10, 1980, the Commission designated Richard M. Daily, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on March 7, 1980, and the referee filed his report to the Commission on January 5, 1981.

By motion dated January 21, 1981, the administrator of the Commission moved to disaffirm the referee's report, for a finding that respondent's misconduct was established and for a determination that respondent be censured. Respondent cross-moved on February 17, 1981, to confirm the referee's report, for a finding that respondent's misconduct was not established and for dismissal of the Formal Written Complaint.

The Commission heard oral argument on the motions on April 23, 1981. Respondent appeared with his counsel. Therefter, the Commission considered the record of the proceeding and now makes the determination herein.

Charges I and VI of the Formal Written Complaint are not sustained and therefore are dismissed.

With respect to Charges II through V, the Commission makes the following findings of fact.

1. Charge II: On September 25, 1975, Werner Kopp received a ticket for speeding in the Town of Moreau. Mr. Kopp had been a law client of respondent's. Some time between September 25 and October 10, 1975, respondent communicated *ex parte* with the clerk of the Moreau Town Court regarding Mr. Kopp's ticket. On October 10, 1975, respondent caused an *ex parte* letter to be sent to Justice Robert Vines of the Moreau Town Court, seeking special consideration on behalf of the defendant. The letter was prepared on respondent's judicial stationery and signed in respondent's name, with his knowledge and permission, by his secretary.

2. Charge III: On April 15, 1976, Robert R. Catlin received a ticket for speeding in the Town of Lake George. Mr. Catlin was a trustee of the Village of Menands and a friend of respondent's. Some time between April 15 and 19, 1976, respondent communicated *ex parte* by telephone with Ralph E. Brown, clerk of the Lake George Town Court, regarding Mr. Catlin's ticket. On April 19, 1976, respondent signed and sent an *ex parte* letter on his judicial stationery to Mr. Brown, confirming the telephone conversation and seeking special consideration on behalf of the defendant.

3. Charge IV: On June 17, 1975, Christopher Coward received a ticket for speeding in the Town of Lake George. Mr. Coward was a client of a lawyer with whom respondent was then sharing law offices. On June 23 and 26, 1975, two *ex parte* letters bearing respondent's name on his judicial stationery were sent to Justice Robert Radloff of

the Lake George Town Court, seeking special consideration on behalf of the defendant. Respondent had authorized both letters to be signed with his name.

4. Charge V: On July 15, 1975, respondent reduced a charge of speeding to driving with an unsafe tire and granted an unconditional discharge to the defendant in *People* v. *Robert Herb* as a result of an *ex parte* request he received from Poestenkill Town Court Justice Donald A. Gutbrodt, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges II through V of the Formal Written Complaint are sustained and respondent's misconduct is established.

With respect to Charges VII and VIII of the Formal Written Complaint, the Commission makes the following findings of fact.

5. Charge VII: From March 9 to March 29, 1976, respondent, a part-time lawyer-justice, represented the plaintiff before Justice Philip S. Caponera in *Hull* v. *Ostrander* in the Colonie Town Court, Albany County. Judge Caponera is and was at that time a part-time lawyer-justice in the same county as repsondent's own court.

6. Charge VIII: In September 1973, respondent represented Elliot A. Leberman in a traffic matter pending before Albany Traffic Court Judge John E. Holt-Harris. Judge Holt-Harris was at that time a part-time lawyer-judge in the same county as respondent's own court. On September 19, 1973, respondent sent an *ex parte* letter to Judge Holt-Harris, confirming their conversation earlier that day and seeking special consideration for the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(4) and 33.5(f) (formerly Section 20.18) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges VII and VIII of the Formal Written Complaint are sustained and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to grant special consideration to a defendant. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by

granting such a request, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 47 NY2d(b) (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at (c).

As an experienced lawyer, respondent should have been fully aware

of the applicable standards of conduct, with respect to both his seeking special consideration for traffic defendants and his accommodating similar requests.

As a part-time judge permitted to practice law while holding office, respondent was obliged to adhere to the applicable rule governing such practice. Section 33.5(f) of the Rules Governing Judicial Conduct specifically prohibits a part-time lawyer-judge from practicing before another part-time lawyer-judge in the same county as his own court. By twice representing clients before other part-time lawyer-judges in Albany County, respondent violated the applicable rule.

In addition to the misconduct alleged in the Formal Written Complaint and herein sustained, the Commission notes that although Charge I was not sustained, respondent's testimony with respect thereto requires comment.

Charge I alleged that a letter had been sent by respondent to another judge, seeking special consideration for a traffic defendant. During the Commission's investigation of the matter, respondent stated that "through a mix-up in the office. . . due to the inexperience of our secretary, the letter was sent out on my court stationery without my knowledge" (Hearing Exhibit 2). It appears, however, that when he made that statement to the Commission, respondent knew that the letter had been authorized and sent over his name by his law partner. At the hearing, when asked about the inaccuracy of his earlier explanation, respondent said that since his "partner was also under investigation [by the Commission] for his conduct as an attorney justice. . . I didn't feel that I had to reveal all of the details involved" (Tr. 42-43).

Respondent's earlier statement evinced a lack of candor and hindered the Commission's investigations of both respondent and his partner at the time. Respondent was obliged to be candid and cooperative with the Commission.

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

The Commission records the following votes in this matter.

Charge I is dismissed by vote of 10 to 1. Mrs. DelBello dissents and votes to sustain the charge.

Charge II is sustained by vote of 7 to 4. Judge Cardamone, Mr. Cleary, Mr. Kovner and Mr. Wainwright dissent and vote to dismiss the charge.

Charge III is sustained by unanimous vote.

Charge IV is sustained by vote of 7 to 4. Judge Cardamone, Mr. Cleary, Judge Rubin and Mr. Wainwright dissent and vote to dismiss the charge.

Charge V is sustained by unanimous vote.

Charge VI is dismissed by vote of 8 to 3. Mr. Bromberg, Mrs. DelBello and Mr. Kirsch dissent and vote to sustain the charge.

Charges VII and VIII are sustained by unanimous vote.

With respect to sanction, all concur that the appropriate sanction is censure.

Dated: June 11, 1981.

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

ANGELO DARRIGO,

A Justice of the Town Court of Newburgh, Orange County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
Hon. Richard J. Cardamone
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: Gerald Stern (Robert Straus, Of Counsel) for the Commission.

Finkelstein, Mauriello, Kaplan and Levine (By Andrew M. Mauriello) for Respondent.

The respondent, Angelo Darrigo, a justice of the Town Court of Newburgh, Orange County, was served with two Formal Written Complaints. The first, dated September 21, 1978, alleged that respondent failed to appear before the Commission during a duly authorized investigation, despite being so requested three times, and that he failed to reply to a letter from the Commission inquiring into his failure to appear. Respondent filed an answer dated October 5, 1978.

The second Formal Written Complaint, dated January 26, 1981, alleged misconduct with respect to (i) respondent's making and granting requests for special consideration for defendants in traffic cases, (ii) his presiding over cases involving clients and former clients of his law practice and (iii) his practicing law before other part-time lawyer-justices of the same county as his own court, and his permitting them to practice before him, in violation of the Rules Governing Judicial Conduct.

By order dated November 16, 1978, the Commission designated Francis L. Valente, Jr., Esq., referee to hear and report to the Commission with respect to the first Formal Written Complaint. The hearing was conducted on December 20, 1978, and February 9, 1979, and the report of the referee was filed on June 12, 1979.

On March 10, 1981, pursuant to Section 44, subdivision 5, of the Judiciary Law, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts with respect to both Formal Written Complaints, waiving a hearing as to the second Formal Written Complaint and stipulating that the Commission make its determination on the pleadings, the referee's report as to the first Formal Written Complaint and the facts as agreed upon.

The Commission approved the agreed statement of facts and heard oral argument on May 27, 1981, as to whether respondent's misconduct was established and, if so, the appropriate sanction. Respondent appeared with counsel for oral argument, admitted his misconduct and joined in the administrator's recommendation that censure would be an appropriate sanction. Thereafter the Commission considered the record of the proceeding and now makes the determination herein.

With respect to the first Formal Written Complaint, the Commission makes the following findings of fact.

1. On June 28, 1978, respondent, having been duly requested to appear before the Commission, failed to appear.

2. On July 18, 1978, respondent, having been duly requested to appear before the Commission, failed to appear.

3. On July 27, 1978, respondent, having been duly requested to appear before the Commission, failed to appear.

4. Respondent, having been requested by letter dated July 26, 1978, to state in writing the reasons for his repeated failure to appear before the Commission, failed to reply.

5. Respondent's repeated failure to appear before the Commission, and his failure to reply to its request for a written explanation of that conduct, resulted from (i) his misreading and misunderstanding of documents sent to him by the Commission, (ii) his reliance on the advice of his attorney and (iii) his mistaken but honest belief that his appearances and explanation were sought by the Commission on a voluntary basis.

6. Respondent acknowledges that he should have been more careful in reading the papers sent to him by the Commission, that he should have appeared before the Commission as requested and that he should have replied to the Commission's letter of July 26, 1978, as requested.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 42, subdivision 3, and Section 44, subdivision 3, of the Judiciary Law, Sections 33.1, 33.2(a) and 33.3(a)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3A of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint dated September 21, 1978, are sustained and respondent's misconduct is established.

With respect to the second Formal Written Complaint, the Commission makes the following findings of fact.

7. On February 20, 1973, respondent sent a letter to Newburgh Town Court Justice Thomas Byrne, seeking special consideration on behalf of the defendant in *People* v. *Raymond Saracino*, a traffic case then pending before Judge Byrne.

8. On March 12, 1975, respondent sent a letter to New Windsor Town Court Justice Jerald Fiedelholtz, seeking special consideration on behalf of the defendant in *People* v. *Isabella A. Russo*, a traffic case then pending before Judge Fiedelholtz. At the time both respondent and Judge Fiedelholtz were part-time lawyer-judges in Orange County.

9. On May 8, 1975, respondent sent a letter to Cornwall Town Court Justice John DeMicell, seeking special consideration on behalf of the defendant in *People* v. *Cohen Tart,* a traffic case then pending before Judge DeMicell.

10. On September 8, 1975, respondent sent a letter to the presiding justice of the Town Court of Thompson, seeking special consideration on behalf of the defendant in *People* v. *Joseph A. Catania*, a case then pending in that court.

11. On June 17, 1976, respondent sent a letter to Plattekill Town Court Justice Wayne G. Smith, seeking special consideration on behalf of the defendant in *People* v. *Charles DiDea*, a traffic case then pending before Judge Smith.

12. On October 18, 1974, respondent sent a letter to New Windsor Town Court Justice Jerald Fiedelholtz, seeking special consideration on behalf of the defendant in *People* v. *William Sangster*, a traffic case then pending before Judge Fiedelholtz. At the time both respon-

dent and Judge Fiedelholtz were part-time lawyer-judges in Orange County.

13. On April 11, 1974, respondent dismissed a charge of passing a red light in *People* v. *Dennis McCormick* as a result of a written communication he received from New Windsor Town Court Justice Edward A. Lahey, seeking special consideration on behalf of the defendant.

14. On April 22, 1974, respondent reduced a charge of speeding to failure to signal in *People* v. *Edward W. Diller* as a result of a written communication he received from Maybrook Village Court Justice Kenneth Petzold, seeking special consideration on behalf of the defendant.

15. On July 3, 1974, respondent reduced a charge of speeding to illegal parking in *People* v. *Charles Levinson* as a result of a written communication he received from New Windsor Town Court Justice Jerald Fiedelholtz, seeking special consideration on behalf of the defendant. At the time both respondent and Judge Fiedelholtz were part-time lawyer-judges in Orange County.

16. On July 25, 1974, respondent dismissed a charge of speeding in *People* v. *William F. Liguori* as a result of a written communication he received from Poughkeepsie City Court Judge Edward J. Filipowicz, seeking special consideration on behalf of the defendant.

17. On November 22, 1974, respondent reduced a charge of speeding to failure to signal in *People* v. *Kathleen E. McGrath* as a result of a written communication he received from Bethlehem Town Court Clerk Marie E. Oakes, seeking special consideration on behalf of the defendant.

18. On November 25, 1974, respondent granted an unconditional discharge in *People* v. *John R. Farrett* as a result of a written communication he received from Montgomery Town Court Clerk Rose Abrahams, seeking special consideration on behalf of the defendant.

19. On December 6, 1974, respondent reduced a charge of speeding to parking on the pavement in *People* v. *James Spiconardi* as a result of a written communication he received from New Windsor Town Court Justice Jerald Fiedelholtz, seeking special consideration on behalf of the defendant. At the time both respondent and Judge Fiedelholtz were part-time lawyer-judges in Orange County.

20. On August 29, 1975, respondent reduced a charge of speeding

to driving with an unsafe tire in *People* v. *Charles Levinson* as a result of a written communication he received from New Windsor Town Court Justice Jerald Fiedelholtz, seeking special consideration on behalf of the defendant. At the time both respondent and Judge Fiedelholtz were part-time lawyer-justices in Orange County.

21. On October 20, 1975, respondent reduced a charge of speeding to failure to signal in *People* v. *Theron Woolsey* as a result of a written communication he received from Plattekill Town Court Justice Frank E. Berean, seeking special consideration on behalf of the defendant.

22. On November 5, 1975, respondent reduced a charge of speeding to driving with unsafe tires in *People* v. *Robert D. Birkhead* as a result of a written communication he received from New Windsor Town Court Justice Jerald Fiedelholtz, seeking special consideration on behalf of the defendant. At the time both respondent and Judge Fiedelholtz were part-time lawyer-judges in Orange County.

23. On November 25, 1975, respondent reduced a charge of speeding to failure to signal in *People* v. *Matthew A. Chrystal* as a result of a written communication he received from Cornwall Town Court Justice Joseph Thomson, seeking special consideration on behalf of the defendant.

24. On October 12, 1976, respondent reduced a charge of speeding to failure to signal in *People* v. *Robert Coisson* as a result of a written communication he received from Esopus Town Court Justice Andrew Aurigemma, seeking special consideration on behalf of the defendant.

25. On March 26, 1971, respondent failed to disqualify himself and granted an unconditional discharge in *People* v. *Amy Osusky*, notwithstanding that respondent had represented the defendant's family.

26. On March 1, 1973, respondent failed to disqualify himself and granted an unconditional discharge in *People* v. *Sebastian Pistone*, notwithstanding that respondent had represented the defendant.

27. On February 3, 1974, respondent failed to disqualify himself and dismissed a charge of insufficient lights in *People* v. *Robert DeToro*, notwithstanding that respondent had represented the defendant.

28. On January 30, 1975, respondent failed to disqualify himself and reduced a charge of speeding to failure to signal in *People* v. *Michael J. Hubych*, notwithstanding that respondent had represented the defendant.

29. On March 27, 1975, respondent failed to disqualify himself and granted an unconditional discharge in *People* v. *Robert W. Bennett*, notwithstanding that respondent had represented the defendant.

30. On July 7, 1975, respondent failed to disqualify himself and granted an unconditional discharge in *People* v. *Dorothy J. Catania*, notwithstanding that respondent had represented the defendant.

31. On March 16, 1976, respondent failed to disqualify himself and imposed an unconditional discharge in *People* v. *Orazio S. Napoli*, notwithstanding that respondent had represented the defendant.

32. On May 28, 1976, respondent failed to disqualify himself and granted an unconditional discharge in *People* v. *Donald S. Youngs*, notwithstanding that respondent had represented the defendant's family.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(4), 33.3(c)(1) and 33.5(f) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A and 3C(1) of the Code of Judicial Conduct. Charges I through XXVI of the Formal Written Complaint dated January 28, 1981, are sustained and respondent's misconduct is established.

By failing to appear before the Commission as requested during a duly authorized investigation, and by failing to respond to a Commission inquiry as to his reasons for failing to appear, respondent violated those provisions of the Judiciary Law requiring his appearance and cooperation (Sections 42[3] and 44[3]). That respondent honestly misunderstood the nature of the Commission's requests mitigates but does not excuse his misconduct. A judge is required to be faithful to the law and maintain professional competence in it (Sections 33.2[a] and 33.3[a][1] of the Rules Governing Judicial Conduct).

Failure by a judge to cooperate with a Commission inquiry is a factor to be considered as to sanction. *Cooley* v. *State Commission on Judicial Conduct*, _____NY2d_____ (No. 263, June 4, 1981); *Matter of Jordan*, 47 NY2d (xxx) (Ct. on the Judiciary 1979). In the instant case, in addition to the misunderstanding, respondent's misconduct is mitigated by his subsequent concession that he was in error. His conduct is further mitigated by his now apparent appreciation of his obligation to cooperate with Commission inquiries, and by the referee's finding that respondent would not have disregarded the Commission's directives had he realized what was required of him.

With respect to his making and granting requests for special consideration for defendants in 18 traffic cases, respondent again admitted his misconduct.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to grant special consideration to a defendant. By making *ex parte* requests of other judges for favorable dispositions for defendants in traffic cases, and by granting such requests from judges and others with influence, respondent violated the Rules enumerated above, which read in part as follows:

> Every judge. . . shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]
>
> A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]
>
> No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]
>
> No judge. . . shall convey or permit others to convey the impression that they are in a special position to influence him. . . [Section 33.2(c)]
>
> A judge shall be faithful to the law and maintain professional competence in it. . . [Section 33.3(a)(1)]
>
> A judge shall. . . except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings. . . [Section 33.3(a)(4)]

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 47 NY2d(b) (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at (c).

As an experienced lawyer, respondent should have been fully aware of the applicable standards of conduct.

With respect to his presiding over traffic matters involving his law clients, respondent violated the applicable provision of the Rules Governing Judicial Conduct, which require a judge to disqualify himself in proceedings where his impartiality may reasonably be questioned (Section 33.3[c]). By presiding over such cases, respondent compromised the very essence of the judge's role as impartial arbiter, and he undermined public confidence in the integrity of the judiciary (Sections 33.1 and 33.2 of the Rules).

With respect to his practicing law before another part-time lawyer-judge in Orange County and allowing that judge to practice before him, respondent violated that section of the Rules which specifically prohibits part-time lawyer-judges whose courts are in the same county from practicing before each other (Section 33.5[f]). Such misconduct not only contravenes a specific rule, it also gives rise to an appearance that two part-time lawyer-judges appearing in proceedings before each other have an unfair advantage over their adversaries.

Upon measuring the totality of respondent's misconduct against the contrition he has shown and the renewed understanding he appears to have of his proper role as a judge, we are persuaded that respondent should not be removed from office.

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

All concur.

Dated: June 25, 1981

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

CHARLES P. GARVEY,

A Judge of the County Court, Family Court and Surrogate Court,
Essex County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.*
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

Ainsworth, Sullivan, Tracy & Knauf (By John E. Knauf) for Respondent.

The respondent, Charles P. Garvey, a judge of the County, Family and Surrogate Courts of Essex County, was served with a Formal Written Complaint dated October 19, 1979. The complaint alleged misconduct with respect to respondent's (i) failure to prepare and maintain adequate records concerning payments he had received from his court stenographer, and his failure to explain them adequately to the Commission, (ii) receiving loans on four occasions from attorneys who practiced before him, (iii) understating his indebtedness on applications for bank loans on four occasions, (iv) maintaining an interest in licensed racehorses and (v) signing his wife's name to a notarized application for a racing license. Respondent filed an answer dated December 7, 1979, in part admitting, in part denying, and in

part neither admitting nor denying these allegations.

By order dated January 9, 1980, the Commission designated William F. FitzPatrick, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 23, 1980, and the referee filed his report to the Commission on December 1, 1980.

By motion dated December 24, 1980, the administrator of the Commission moved to confirm in part and to disaffirm in part the referee's report, and for a determination that respondent be removed from office. By motion dated January 26, 1981, respondent cross-moved to disaffirm in part and confirm in part the referee's report, for a finding that respondent had not engaged in misconduct, and for a determination that the Formal Written Complaint be dismissed or, in the alternative, that respondent be disciplined confidentially.

The Commission heard oral argument on the motions on February 5, 1981. Respondent appeared with his counsel. Thereafter and on March 10, 1981, the Commission considered the record of the proceeding and makes the determination herein.

Charge I of the Formal Written Complaint is not sustained and therefore is dismissed.

With respect to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact.

1. On March 29, 1977, respondent asked John Manning for a $1,000 loan, and shortly thereafter Mr. Manning made a $1,000 interest free loan to respondent.

2. Mr. Manning is an attorney who practiced before respondent prior to and subsequent to the making of the loan.

3. Respondent repaid Mr. Manning the $1,000 within two months. Respondent kept no records of the loan. Respondent did keep a record of the repayment, in the form of a cancelled note showing the dates of repayment.

4. While the loan was outstanding, Mr. Manning appeared before respondent on numerous occasions on *ex parte* matters.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2 and 33.5(c) of the Rules Governing Judicial Conduct and Canons 1, 2 and 5C of the Code of Judicial Conduct. Charge II of the Formal Written Com-

plaint is sustained and respondent's misconduct is established.

With respect to Charge III of the Formal Written Complaint, the Commission makes the following findings of fact.

5. On February 6, 1978, respondent solicited and obtained a loan of $6,500 from John Manning.

6. Mr. Manning is an attorney who practiced before respondent prior to and subsequent to the making of the loan.

7. On April 26, 1976, respondent solicited and obtained a loan of $1,500 from James Murphy.

8. Mr. Murphy is an attorney who practiced before respondent prior to and subsequent to the making of the loan.

9. Carlton King was an attorney practicing in a firm with Mr. Murphy, under the firm name of Murphy, King and Douval. The firm had appeared on numerous occasions before respondent.

10. On August 1, 1977, respondent solicited and obtained a loan of $2,700 from Mr. King. Although Mr. King was no longer a member, the firm continued under the name of Murphy, King and Douval.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2 and 33.5(c) of the Rules Governing Judicial Conduct and Canons 1, 2 and 5C of the Code of Judicial Conduct. Charge III of the Formal Written Complaint is sustained and respondent's misconduct is established.

Charges IV and V of the Formal Written Complaint are not sustained and therefore are dismissed.

With respect to Charge VI of the Formal Written Complaint, the Commission makes the following findings of fact.

11. Jane K. Garvey is respondent's spouse.

12. On April 14, 1977, respondent signed the name "Jane K. Garvey" to an application to the New York State Racing and Wagering Board for a racing license. Thereafter respondent had the signature notarized by a court employee and had the application filed with the Racing and Wagering Board.

13. Respondent could not lawfully obtain a racing license under his own name.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1 and 33.2 of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct. Charge VI of the Formal Written Complaint is sustained and respondent's misconduct is established.

A judge's obligation to be and appear impartial in the matters coming before him is fundamental to public confidence in the administration of justice. By soliciting and obtaining substantial sums of money from attorneys who appeared before him or who were associated with a firm which appeared before him, respondent acted in a manner which both was improper and appeared to be improper, even in the absence of any evidence that respondent gave preferred treatment to his attorney-creditors. The applicable rules and canons expressly prohibit a judge from accepting loans from persons whose interests have or are likely to come before him.

By signing his wife's name to an application for a racing license which he then had notarized and filed with a state agency, respondent acted improperly, knowing that statements in the application attesting to his wife's swearing to the truth thereof by her signature were false. Respondent's assertion that he signed the application on his wife's behalf pursuant to a power of attorney is irrelevant to the issue here considered. The fact is that he signed his wife's name, not his own, as her attorney-in-fact, thus creating the false impression that she was the actual signatory thereto.

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

With respect to the particular charges in the Formal Written Complaint, the Commission records the following votes.

Charge I was dismissed by vote of 9 to 2, with Mr. Bromberg and Mrs. DelBello dissenting and voting to sustain the charge.

Charges II and III were sustained by unanimous vote.

Charge IV was dismissed by vote of 6 to 5, with Mr. Bromberg, Mrs. DelBello, Mr. Kirsch, Mrs. Robb and Judge Shea dissenting and voting to sustain the charge.

Charge V was dismissed by unanimous vote.

Charge VI was sustained by vote of 6 to 5, with Judge Alexander, Judge Cardamone, Mr. Kovner, Judge Shea and Mr. Wainwright dissenting and voting to dismiss the charge.

Mrs. Robb and Judge Shea dissent in a separate opinion with respect to the majority's finding as to Charge IV.

With respect to sanction, the following members of the Commission voted that the appropriate sanction is censure: Judge Alexander, Judge Cardamone, Mr. Kovner, Mr. Maggipinto, Mrs. Robb, Judge Robin, Judge Shea and Mr. Wainwright. Mr. Kirsch votes that the appropriate sanction is removal and dissents in a separate opinion. Mr. Bromberg and Mrs. DelBello also vote that the appropriate sanction is removal and also dissent in a separate opinion.

With respect to the dissenting views expressed on sanction, the majority notes that the sanction the dissenters would impose is based in part on charges which the majority of the Commission has found not to be sustained.

In view of the dissenters' views on Charge IV in particular, it seems appropriate to comment on the dismissal of the charge. The banks which made personal loans to respondent had authorization to do so under the banking law and were required to keep records of the loans in such form as the superintendent of banking prescribed (Banking Law, §108 subd. 4[a] and §202). The regulations promulgated and published pursuant to this statute specify the personal loan records to be kept (3 NYCRR, Banking, §320.1). Based upon the record the loans made to respondent were classified under the cited regulations either as "secured" or "unsecured" (3 NYCRR, Banking, 320.1[a][1]).

The President of the Essex County-Champlain National Bank was called as the Commission's witness. He testified that the financial statements that were filed were obtained to show the reason for the loan and that he, as President of the bank, had authority to make loans on his own authority up to $50,000. He further testified that respondent Garvey had been a customer of his bank for over 25 years and that these financial statements were filed to support a line of credit that had been extended to respondent Garvey and also in connection with his loan application for a second mortgage. In response to a question as to the basis on which the bank made a loan, he stated: "I as a bank examiner consider character, the number of years experience we have had with a customer. Certainly in this case we are not particularly concerned and have never been concerned about the financial status on paper of a borrower such as our experience dictated over the years with Judge Garvey and as an individual prior to that." It was this experience over many, many years

and the fact that Judge Garvey in all those years had never reneged on a loan either as to principal or interest that prompted the bank to make loans to respondent. He stated that the key was that loans are made on the basis of character, credibility and the standing of the individual borrower and that the bank was in no way misled by the financial statements presented by respondent. The Commission called no other witnesses relative to the loans obtained at the other two banks.

Moreover, the statement is an unsworn written representation that the borrower has a net worth sufficient to support the credit he seeks. While the statements were not fully accurate as to respondent's liabilities and assets—indeed, it is obvious they were negligently prepared—it does appear that they satisfactorily met the requirements of the lending institutions. Concededly a statement of net worth was required to be filed by a borrower periodically and kept by the bank for its files in connection with such loans, even though that requirement is not specifically set forth either in the statute or the published regulations. The record is devoid, however, of any evidence of any intent on the part of respondent either to defraud the bank or to induce the making of the loan through material misrepresentations. It is significant in our view that the bank did not rely upon such statements in making the loans.

Under these circumstances, to find judicial misconduct after the fact appears to us would place an unfair and onerous burden on respondent, who filed his financial statements in the customary, though hasty, manner. An unwary judicial officer should not later learn that he acted at his peril when applying for a loan in a manner consistent with the requirements of and satisfactory to the lending institution. We cannot find, as do the dissenters, sufficient evidence on this record to prove judicial misconduct on Charge IV.

Dated: June 23, 1981

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*Mr. Maggipinto's term as a member of the Commission expired on March 31, 1981. The votes enumerated on page 6 were taken on March 10, 1981.

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

CHARLES P. GARVEY,

A Judge of the County Court, Family Court and
Surrogate Court, Essex County.

DISSENTING OPINION BY MR. KIRSCH

I respectfully dissent from the Commission's determination that respondent should be censured. Specifically, I concur with the findings that Charges II, III and VI are sustained and that Charges I and V are dismissed. I respectfully disagree, however, with the Commission's dismissal of Charge IV, pertaining to the financial statements filed by respondent with three banks from which he sought loans. In my view, the totality of respondent's misconduct on the sustained charges and his conduct pertaining to the financial statements warrants the extreme sanction of removal from office.

With respect to soliciting and receiving loans from attorneys who practiced before him, respondent exhibited a disturbing disregard of the specific prohibition against such financial activity as set forth in the Rules Governing Judicial Conduct (Section 33.5[c]). Respondent compounded this violation of the Rules by thereafter presiding over numerous matters involving the attorneys who had extended him loans, in violation of Sections 33.2, 33.3(c) of the Rules. Notwithstanding the *ex parte* nature of many of these matters, respondent's conduct was plainly in violation of the applicable rules. Moreover, in one contested will probate proceeding at which respondent disclosed his personal friendship with one of the attorneys who lent him money, respondent made no mention of the loan itself, which at the time was outstanding. By soliciting and obtaining these loans from attorneys who appeared before him, the referee concluded, and I agree, that

> . . . respondent acted in a manner that could cast serious doubt as to his impartiality and that created a serious appearance of impropriety; failed to observe high standards of conduct; failed to con-

duct himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary; and was in violation of Sections 33.1, 33.2 and 33.5(c) of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct.

With respect to signing his wife's name to an application for a racing license which he then had notarized by a court employee and filed with a state agency, respondent engaged in serious misconduct. There was no dispute as to the facts. The referee found that respondent could not lawfully obtain a racing license in his own name (prohibited to him as a public officer or employee under Sec. 8052 of the Unconsolidated Laws), and that respondent secured his wife's name to the application, had it notarized by his court stenographer, an employee under his supervision, and caused it to be filed with the New York State Racing and Wagering Board. The application is in the name of Jane K. Garvey, as the applicant, and ends with the printed statement immediately above the signature, "I hereby certify that this application is true and complete". It is then signed, "Jane K. Garvey" and notarized by his stenographer under the printed jurat "Sworn to before me" with the date inserted.

Pursuant to Sec. 137 of the Executive Law, the certificate of a notary public over his signature is received as presumptive evidence of the facts contained therein.

In *Case* v. *The People*, 76 NY 242, 245 (1879), the court held that in an affidavit sworn to before a notary public, the certificate of the notary that the affidavit has been sworn to indicates *prima facie* that the officer has done his duty.

In *O'Reily* v. *The People*, 86 NY 154, 161 (1881), the court held that a notary's certificate pre-supposes an oath already taken, of which fact it furnishes the evidence.

In my view, respondent's act approaches a violation of the Penal Law (Section 210.00), which states that a "person 'swears falsely' when he intentionally makes a false statement which he does not believe to be true . . . under oath in a subscribed instrument . . . (which) is delivered by its subscriber, or by someone acting in his behalf, to another person with intent that it be uttered or published as true." The result of respondent's act is that the signature of "Jane K. Garvey" on official file with the State Racing and Wagering Board is false.

The argument that respondent was simply signing as his wife's agent under a power of attorney is specious. As the court said in *46 Downing Street Corp.* v. *Loren*, 324 NYS 2d 932, (Civil Ct. NY, 1971), the right to deputize an attorney-in-fact contemplates granting a power to act in the name of the principal, "but not a power to swear in the name of the principal". No one would even suggest that the respondent could be permitted under any circumstances to testify in a court or by deposition as "Jane K. Garvey", and it is no different here where he acted for Jane K. Garvey in swearing to the truth of the facts contained in her application for a racing license. Moreover, he compounded the wrong by having his court reporter, over whom he had administrative responsibility, certify that his wife had sworn to the instrument.

In attorney disciplinary cases, the courts have considered it to be a very serious matter for an attorney to take an acknowledgement or affidavit as a notary public without the person actually appearing before him whose signature he has certified as having been signed or sworn to before him. *Matter of Neuwirth*, 39 AD2d 365 (2d Dept. 1972); *Matter of Barnard*, 151 AD 580 (1st Dept. 1912).

The essence of the misconduct is that respondent failed in his obligation to be faithful to the law and indeed prompted his employee to violate the laws and the high standards incumbent upon a notary public. Moreover, one may draw a reasonable inference from his conduct that respondent signed his wife's name to obtain a license for which by law he himself was ineligible. (The record of this proceeding is replete with examples of extensive financial interests managed by respondent himself, including ownership of several racehorses which he transferred to his wife upon ascending the bench in 1974, and continuing thereafter to act in his wife's name under a power of attorney from her.)

With respect to the financial statements filed by respondent with various banks, I respectfully disagree with the Commission's dismissal of the charge (Charge IV). There were four financial statements filed with three banks relating to loan applications made by respondent. As the referee found, on each statement respondent substantially understated his indebtedness and substantially overstated his net worth, as follows.

—A statement on November 1, 1977, to the Essex County-Champlain National Bank understated respondent's debts by $45,200 and overstated his net worth by the same amount. (His net worth had been listed as $65,950. An accurate reflection of his indebtedness would have reduced his net worth to $20,750.)

—A statement on May 1, 1979, to the Essex County-Champlain National Bank understated respondent's debts by $75,200 and overstated his net worth by the same amount. (His net worth had been listed as $73,500. An accurate reflection of his indebtedness would have reduced his net worth to a deficit of $1,700.)

—A statement on December 20, 1978, to the Keeseville National Bank understated respondent's debts by $61,700 and overstated his net worth by the same amount. (His net worth had been listed as $87,000. An accurate reflection of his indebtedness would have reduced his net worth to $15,300.)

—A statement dated December 28, 1978, to Farmer's National Bank understated respondent's debts by $78,700 and overstated his net worth by the same amount. (His net worth had been listed as $151,850. An accurate statement of his indebtedness would have reduced his actual net worth to $73,150.)

In addition to the foregoing inaccuracies, on his statements to each bank respondent either understated or entirely omitted loans from other banks which were outstanding, as follows:

—In the November 1977 statement to the Essex County-Champlain National Bank, respondent listed $7,500 as outstanding to that bank. He omitted $15,000 then outstanding to the Keeseville National Bank and reported $1,400 as outstanding to the

State Bank of Albany as guarantor when in fact the outstanding amount was $15,000.

—In the May 1978 statement to the Essex County-Champlain National Bank, respondent listed $9,500 as outstanding to that bank. He omitted $30,000 then outstanding to the Keeseville National Bank, $10,000 to the Farmer's National Bank and $15,000 to the State Bank of Albany as guarantor.

—In the December 1978 statement to the Keeseville National Bank, respondent listed $15,000 as outstanding to that bank. He omitted $10,000 then outstanding to the Essex County-Champlain National Bank and $15,000 to the State Bank of Albany as guarantor.

—In the December 1978 statement to the Farmers National Bank, respondent listed $6,500 in outstanding notes payable to banks. He omitted $30,000 then outstanding to the Keeseville National Bank, $15,000 to the Bank of Albany as guarantor and $10,000 to the Essex County-Champlain National Bank.

Respondent offered no credible explanation for the foregoing misstatements and omissions, and the referee concluded that respondent had falsely stated his debts. When asked at the hearing whether it was coincidental that the debts listed on individual statements were only those outstanding to the particular bank, respondent replied "I don't know. I haven't thought about it" (Tr. 187-88).

Phillips, the president of Essex County-Champlain National Bank, testified he had dealt with respondent as a customer for twenty-five years; that respondent maintained a "line of credit" with the bank, and that the financial statement dated November 1, 1977 (Comm. Exh. 3) "was to support our line of credit" with respondent and that they normally require "information updating our credit files". Loans by the bank, he stated, are made on the basis of character, credibility and standing of the individual, and experience over the years as a prime guideline for advancing credit, and the financial statement is

just one element to which they give some consideration.

He testified, concerning the November 1, 1977 statement, that they are required by the bank examiners to keep their credit files as current as possible and so (Tr. 30),

> . . . we do require on certain loan borrowings customers to submit a yearly statement to us or thereabouts. This is also to meet the requirements of the bank examiner.

The May 2, 1979 statement (Comm. Exh. 4) was submitted by respondent to the bank prior to a loan application made by him for a second mortgage.

All of the financial statements, Commission's Exhibits 3, 4, 15 and 16 were on a printed form boldly headed "Financial Statement", with the printed preamble (name of bank written in):

> I make the following statement of all my assets and liabilities at the close of business on the date indicated above to Essex County-Champlain National Bank and give other material information for the purpose of obtaining advances on notes and bills bearing my signature, endorsement, or guaranty, and for obtaining credit generally upon present and future applications.

The evidence with respect to the bank loan transactions, particularly the two statements dated only eight days apart in December 1978 with such great variance, one setting forth his net worth at $87,000 and the other at $151,850, indicates at the very least a reckless disregard for the truth by respondent, bordering on fraud. Whether reckless or fraudulent, respondent's conduct in this regard is inexcusable. He has engaged in business dealings that reflect adversely on the judiciary. He has failed to conduct himself in a manner that promotes public confidence in the integrity of the judiciary. His acts, when not in themselves improper, have appeared to be improper.

The seriousness of each act of misconduct by respondent, and the grave proportions they assume in their totality, reflect adversely on respondent's capacity for the administration of justice and cast doubt on his moral fitness to serve on the bench. For these reasons I vote

that respondent should be removed from office.

Dated: June 23, 1981

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

CHARLES P. GARVEY,

A Judge of the County Court, Family Court
and Surrogate Court, Essex County.

DISSENTING OPINION
BY MR. BROMBERG
AND MRS. DELBELLO

We concur with the findings of the Commission that Charges II, III and VI should be sustained and that Charge V should be dismissed.

We respectfully dissent from the Commission's dismissal of Charge I. We vote that Charge I should be sustained.

We join with Michael M. Kirsch in respectfully dissenting from the Commission's dismissal of Charge IV and we vote that Charge IV should be sustained. We join in the opinion of Mr. Kirsch in that regard.

We join with Mr. Kirsch in respectfully dissenting from the Commission's determination that respondent should be censured, and we vote that he be removed. We join in the opinion of Mr. Kirsch in that regard.

With regard to Charge I: The gravamen of Charge I is that, between April 1979 and July 1979, respondent's court stenographer made unaccounted-for deposits of more than $50,000 in a checking account maintained by respondent. Respondent attempted to explain those deposits by testifying that they represented a mixture of (a) payments on an office building of which respondent's stenographer was buying one-half from respondent, (b) a loan to respondent of some of the money which had previously been deposited by the stenographer as part payment for the building, (c) money deposited by the stenographer for respondent's personal use and (d) money deposited by the stenographer as part payment for the building which was later withdrawn by her for her own personal use. The referee found that respondent offered no testimony and had no reliable record or document which accounted for or explained the deposits in the account or

supported the explanations advanced by respondent. Among other things, of the $14,500 supposedly deposited by the stenographer for her own personal use, at least $5,000 was used by respondent for his own purposes. The referee, therefore, rejected respondent's explanation as being inadequate and not consonant with the known and objective facts. We see no reason that the referee's findings—made after extensive hearings—should be discarded. The referee concluded as follows, as we agree, that

> [b]y reason of his conduct, respondent failed to observe high standards of conduct, failed to conduct himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary; engaged in a business transaction that could reflect adversely on the judiciary; and was in violation of Sections 33.1, 33.2 and 33.5(c) of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct.

The totality of respondent's misconduct has compromised the integrity of the judiciary and the administration of justice. It reveals a serious lack of understanding by the respondent of his obligations as a member of the judiciary. His continued presence on the bench can only serve to erode public confidence in the courts.

For the reasons set forth herein and in the opinion of Michael Kirsch, we vote that respondent should be removed from office.

Dated: June 23, 1981

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

CHARLES P. GARVEY,

A Judge of the County Court, Family Court
and Surrogate Court, Essex County.

DISSENTING OPINION
BY MRS. ROBB AND
JUDGE SHEA

We concur with the majority determination that respondent should be censured. We disagree with the majority's dismissal of Charge IV. We believe that Charge IV should be sustained. The discussion on Charge IV in the dissenting opinion of Commission member Michael M. Kirsch represents our views on Charge IV, and to that extent we join in his dissent.

Dated: June 23, 1981

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

ALAN I. FRIESS,

A Judge of the Criminal Court of the City of New York,
Kings County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: Gerald Stern (Alan W. Friedberg, of Counsel) for the Commission.

Eric A. Seiff for Respondent.

The respondent, Alan I. Friess, a judge of the Criminal Court of the City of New York, Kings County, was served with a Formal Written Complaint dated February 10, 1981, alleging misconduct in relation to the arraignment of the defendant in *People* v. *Elisia Fominas* in November 1980. Respondent filed an answer dated March 6, 1981.

By order dated March 16, 1981, the Commission designated Robert MacCrate, Esq., referee to hear and report proposed findings of fact and conclusions of law.

On April 16, 1981, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination upon the pleadings and the agreed upon facts. The Commission approved the agreed statement, obviating the hearing

and the further services of the referee.

The Commission heard oral argument on May 26, 1981, as to whether the agreed upon facts established respondent's misconduct and, if so, the appropriate sanction. Respondent appeared with his counsel at oral argument. Thereafter the Commission considered the record of this proceeding and now makes the following findings of fact.

1. November 27, 1980, was Thanksgiving day. At approximately 12:45 A.M. on that date, respondent presided over the arraignment of the defendant in *People* v. *Elisia Fominas* in Part APAR3 of the Criminal Court of the City of New York in Kings County (Brooklyn). The defendant was charged with murder and hindering prosecution. She was represented by the Legal Aid Society.

2. During the course of the arraignment, on the second call of the case, respondent stated that he would release the defendant in his (respondent's) custody and would find lodging for her with a woman friend of his. Subsequently, on the third call of the case, respondent released the defendant on her own recognizance and adjourned the case to the next session of the court, scheduled for the evening of November 27, 1980. Respondent then accompanied the defendant to his residence in Brooklyn and provided overnight lodging for her. Respondent and a woman friend of his remained at the premises.

3. Between 10:45 A.M. and 11:15 A.M. on November 27, 1980, following a conversation between respondent and the defendant, respondent asked Bernard Udell, an attorney friend of his, to meet with the defendant. The Legal Aid Society was still the defendant's attorney of record.

4. Mr. Udell met with Ms. Fominas during the day on November 27, 1980, and appeared with her in court that evening as her attorney. Mr. Udell neither requested nor received a fee. He did not discuss the merits of the case with respondent.

5. During the day on November 27, 1980, respondent arranged for another judge to preside over the *Fominas* case at the court session scheduled for that evening. At approximately 7:30 P.M. on November 27, 1980, respondent formally recused himself from the *Fominas* case, stating in open court, on the record, that he had taken steps to provide the defendant with lodging. Respondent's formal recusal from the case preceded, by at least 24 hours, publication in the press of his earlier actions.

6. Respondent testified under oath that he made his offer to provide the defendant with lodging because the defendant was poor and she feared for her safety. Respondent believed that the defendant had no available friends or relatives to whom she could turn and that there were no public facilities readily accessible to her at that holiday hour.

7. The evidence indicates that respondent was motivated by compassion and his concern for the defendant's welfare and safety.

8. Respondent acknowledges that, by providing lodging at his residence for the defendant and by asking an attorney to meet with the defendant who at the time was represented by the Legal Aid Society, his actions created the appearance of impropriety and brought the judiciary into disrepute.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2 and 33.3(a)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained and respondent's misconduct is established.

Public confidence in the integrity and impartiality of the judiciary is indispensable to the fair and proper administration of justice. A judge's conduct must be and appear to be beyond reproach if respect for the court is to be maintained.

By his conduct in this case, respondent exhibited extraordinarily poor judgment and a serious misunderstanding of the role of a judge in our legal system. Respondent's conduct in providing shelter to Ms. Fominas compromised the judge's impartiality in the case and diminished public confidence in the court. It was also improper for respondent to introduce new counsel to a defendant already represented by other counsel in a case before him.

Though respondent was motivated by compassion for the defendant, the result of his conduct was to bring the judiciary into disrepute. While much of the public attention focused on this case has been characterized by exaggeration and unwarranted salacious innuendo, respondent should have known that his conduct would make him and the judiciary vulnerable to such publicity.

The issue now before us is whether respondent's credibility as a judge has been so compromised as to require his removal from office. A single act of misconduct of such magnitude by a judge might well warrant removal, absent compelling mitigating circumstances. Here

there are such mitigating circumstances.

Respondent realized the error in his action almost immediately and, without prompting, took steps to ameliorate the situation by arranging for another judge to replace him in the case. He reported his error in open court, on the record, at the session next following his mistaken act. We believe that respondent has reflected on the ramifications of his actions, and we are convinced that he now understands the nature of his misconduct and will never again repeat it.

Respondent is an intelligent, capable jurist with an otherwise unblemished record. Respondent must be disciplined for his conceded, serious misconduct, but the Commission believes that respondent's capacity to serve and regain public confidence has not been irreparably harmed.

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

All concur except Judge Rubin, who dissents only with respect to sanction and votes that the appropriate sanction is removal from office.

Dated: June 25, 1981

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 E. JOEDICKE,

A Justice of the Town Court of Stamford, Delaware County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Stephen F. Downs and John J. Postel, Of Counsel) for the Commission.

James E. Joedicke, Respondent Pro Se.

The respondent, James E. Joedicke, a justice of the Town Court of Stamford, Delaware County, was served with a Formal Written Complaint dated March 17, 1981, alleging that respondent had not completed a certification program required by law for all town and village justices who are not lawyers, and alleging various administrative and accounting deficiencies. Respondent did not file an answer.

By order dated April 10, 1981, the Commission designated Ira M. Belfer, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on May 12, 1981, and the referee filed his report on May 19, 1981.

By motion dated May 26, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent did not oppose the motion. Oral argument was not requested.

The Commission considered the administrator's motion and the record of the proceeding on June 18, 1981, and makes the determination herein.

With respect to Charge I of the Formal Written Complaint, the Commission makes the following findings of fact.

1. Respondent served as town court justice part-time. He is not an attorney. His regular occupation is superintendent for a construction company. He first took official office in 1974. He was re-elected to a new term of office which commenced on January 1, 1979. He resigned from office effective April 8, 1981.

2. From October 11, 1977, to February 10, 1981, respondent refused to open 81 pieces of mail he received in his official capacity, as set forth in Schedule 1 appended hereto.

3. Respondent was aware that this correspondence was stored unopened in his court desk. The unopened correspondence included letters from government agencies, attorneys and litigants, as noted in Schedule 1.

4. Respondent failed to open the 81 letters set forth in Schedule 1 despite an inquiry from the Commission on December 22, 1980, with respect thereto.

5. On February 10, 1981, respondent appeared before a member of the Commission to testify under oath and offered no reason or explanation for his failure to open the 81 letters.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.3(a)(5) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact.

6. By letter dated September 3, 1980, the Honorable Howard Zeller, administrative judge for the Sixth Judicial District, in which respondent's court is located, advised respondent that he had not attended the advanced judicial training course required by law for the re-certification of all non-attorney judges re-elected to judicial office. The letter from the administrative judge informed respondent that the next training session was scheduled for September 15, 1980, and that

failure to attend the required training course could lead to removal from office.

7. Respondent failed to attend the advanced training course held on September 15, 1980.

8. On September 27, 1980, respondent spoke with Administrative Judge Zeller regarding his lack of certification. By letter dated September 29, 1980, Judge Zeller again advised respondent of his lack of certification. The letter informed respondent that the next training session was scheduled for October 23 and 24, 1980, in Dryden, New York.

9. Respondent attended the first day of the advanced training course in Dryden on October 23, 1980. He did not attend the second day's session on October 24, 1980. Respondent failed to take the required examination and did not receive certification.

10. By letter dated November 10, 1980, Administrative Judge Zeller advised respondent that he remained uncertified because of his failure to take the required examination. Respondent did not respond to Judge Zeller's letter and remained uncertified through the date of his resignation from office.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Article 6, Section 20(c), of the State Constitution, Section 31 of the Town Law, Section 105 of the Uniform Justice Court Act, Section 30.6(b) of the Uniform Justice Court Rules, Sections 33.1, 33.2(a), 33.3(a)(5) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct. Charge II of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge III of the Formal Written Complaint, the Commission makes the following findings of fact.

11. In the 24-month period from October 1978 through September 1980, respondent, contrary to the requirements of Section 30.7 of the Uniform Justice Court Rules, retained possession of court funds and regularly failed to deposit those funds within 72 hours of receipt, as set forth in Schedule 2 appended hereto. In this period respondent was aware of the requirements of Section 30.7.

12. In 16 of the 24 months from October 1978 through September 1980, as set forth in Schedule 2, respondent failed to make any deposits at all of the monies received in his official capacity, despite having such monies under his personal control each month.

13. In his testimony before a member of the Commission on February 10, 1981, respondent failed to give a satisfactory account for the deficiencies in his court account and for his handling of court monies during those periods in which such monies were undeposited and under his personal control.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.3(a))5) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct. Charge III of the Formal Written Complaint is sustained and respondent's misconduct is established.

By his conduct, respondent has evinced a gross neglect of the duties of judicial office.

By refusing to open his court mail, respondent failed to discharge properly his administrative responsibilities and he compromised the administration of justice in his court. It is inexcusable that official correspondence from court administrators, lawyers involved in proceedings before him, and others, would remain unopened for months at a time.

By failing to deposit official funds for several months while such funds were under his personal control, respondent violated the specific requirements of the Uniform Justice Court Rules (Section 30.7[a]). Such conduct demonstrates an intolerable neglect of his responsibilities for the public money entrusted to his care. See *Bartlett* v. *Flynn*, 50 AD2d 401 (4th Dept. 1976), *app dism* 39 NY2d 946 (1976), judge removed *inter alia* for "gross neglect" in handling court funds.

By failing to attend and complete the training and certification program required by law for all non-lawyer town and village justices, despite repeated notice from his administrative judge, respondent again demonstrated a gross disregard of the constitutional and statutory obligations of judicial office. Failure to obtain the required certificate renders a judge unqualified to hold office and has been held, *per se*, to constitute cause for removal. *Bartlett* v. *Bedient*, 47 AD2d 389 (4th Dept. 1975).

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

This determination is rendered pursuant to Section 47 of the Judiciary Law in view of respondent's resignation from office.

Dated: July 1, 1981

SCHEDULE I
Unopened Mail

Source of Letter	Date of Postmark
NYS Office of Court Administration	8/8/78
NYS Office of Court Administration	5/18/78
NYS Department of Audit and Control	8/21/78
NYS Department of Motor Vehicles	8/17/78
NYS Executive Department—Division of Criminal Justice Services	2/23/78
US District Court—Chief Judge David Edelstein	No Date
NYS Office of Court Administration	No Date
NYS Office of Court Administration	No Date
NYS Office of Court Administration	8/31/79
NYS Office of Court Administraton	8/30/79
NYS Office of Court Administration	2/2/79
NYS Department of Motor Vehicles	2/20/79
NYS Department of Motor Vehicles	2/26/79
NYS Department of Motor Vehicles	3/1/79
NYS Office of Court Administration	2/23/78
Delaware County District Attorney	2/15/78
NYS Department of Motor Vehicles	2/16/78
Delaware County Department of Social Services	2/18/78
Delaware County Alcoholism Council	11/23/77
NYS Department of Motor Vehicles	2/24/78
Govern & McDowell, Attorneys At Law	5/4/78
Howard Zeller, Justice Supreme Court, Oneida	8/9/79
NYS Department of Audit and Control	11/7/79
Gray J. Grayson, Attorney At Law	8/24/79
NYS Department of Motor Vehicles	12/5/79
Bob Waters, 116 Maple Drive, Fayetteville, NY	No Date
NYS Department of Audit and Control	11/27/79
NYS Office of Court Administration	8/23/78
Town of Stamford	9/1/78
NYS Department of Audit and Control	9/6/78
William A. Schmitt, P.C., Attorney At Law	8/30/78
NYS Office of Court Administration	8/31/78
NYS Office of Court Administration	9/1/78
Town of Harpersfield	9/5/78
NYS Department of Audit and Control	3/30/79
NYS Department of Motor Vehicles	4/4/79
Stamford Health Bar, Joe and Madge Bonacci	7/5/79

(Continued)

Source Of Letter	Date of Postmark
Delaware County District Attorney	11/3/78
Vickie and Russ Dayton, River Road, Hobart, NY	6/1/79
St. John's Episcopal Church	7/27/78
Town of Harpersfield, Town Justice Ogborn	7/25/?
Klose and Melley, Attorneys At Law 35 East Market Street, Red Hook, NY	6/25/79
NYS Office of Court Administration	3/31/78
NYS Office of Court Administration	No Date
NYS Office of Court Administration	10/11/77
NYS Office of Court Administration	3/12/79
NYS Office of Court Administration	9/14/78
NYS Office of Court Administration	6/26/78
NYS Office of Court Administration	9/20/79
NYS Office of Court Administration	10/19/79
Unknown	5/26/78
NYS Department of Motor Vehicles	5/26/78
NYS Department of Audit and Control	5/24/78
Delaware County Office for the Aging	5/16/78
NYS Department of Motor Vehicles	5/16/78
NYS Department of Motor Vehicles	5/19/78
Delaware County Magistrate's Assn.	5/10/78
Delaware County Magistrate's Assn.	9/28/79
NYS Department of Motor Vehicles	9/21/79
William A. Schmitt, Attorney At Law	9/24/79
NYS Department of Motor Vehicles	10/15/?
Howard A. Zeller, Superme Court Justice, Oneida	10/5/79
Williamson Law Book Company	No Date
National Judicial College, Judicial College Bldg., University of Nevada	No Date
Jacobs & Jacobs, Attorneys At Law	7/31/79
NYS Department of Motor Vehicles	8/21/79
Bob Waters	No Date
NYS Department of Motor Vehicles	9/6/79
NYS Department of Motor Vehicles	9/7/79
NYS Office of Court Administration	2/21/80
Delaware County District Attorney	2/?/80
NYS Department of Motor Vehicles	2/4/80
NYS Office of Court Administration	3/21/80

(Continued)

Source of Letter	Date of Postmark
Howard Zeller, Supreme Court Justice, Oneida	12/12/79
Department of the Navy	3/10/80
William F. McLean, Jr., River Street, Hobart, NY	3/18/80
Dayton, P.O. Box 57, So. Kortright	2/19/80
Veterinary Medicine	4/8/80
NYS Department of Audit and Control	4/2/80
NYS MA, 119 Washington Avenue, Albany, NY	3/29/80
Department of Natural Resources, NYS College of Agriculture and Life Sciences, Cornell University	3/23/79

SCHEDULE 2
Judge James Joedicke

Month and Year	Fines Reported to Audit & Control	Bail Received	Deposits Should Have Been	Deposits Were	Deficiency or Surplus	Cumulative Deficiency or Surplus
October 1978	$ 35.00	0	$ 35.00	0	$ 35.00 (D)	$ 35.00 (D)
November 1978	102.50	0	102.50	0	102.50 (D)	137.50 (D)
December 1978	12.00	0	12.00	0	12.00 (D)	149.50 (D)
January 1979	220.00	0	220.00	169.50	50.50 (D)	200.00 (D)
February 1979	155.00	0	155.00	0	155.00 (D)	355.00 (D)
March 1979	10.00	0	10.00	0	10.00 (D)	365.00 (D)
April 1979	170.00	0	170.00	465.00	295.00 (S)	70.00 (D)
May 1979	25.00	0	25.00	0	25.00 (D)	95.00 (D)
June 1979	70.00	0	70.00	0	70.00 (D)	165.00 (D)
July 1979	58.50	0	58.50	185.00	126.50 (S)	38.50 (D)
August 1979	10.00	0	10.00	0	10.00 (D)	48.50 (D)
September 1979	38.50	0	38.50	118.50	80.00 (S)	31.50 (S)
October 1979	30.00	0	30.00	0	30.00 (D)	1.50 (S)
November 1979	40.00	0	40.00	0	40.00 (D)	38.50 (D)
December 1979	147.50	0	147.50	0	147.50 (D)	186.00 (D)
January 1980	0	0	0	217.50	217.50 (S)	31.50 (S)
February 1980	* 38.00	0	38.00	0	38.00 (D)	6.50 (D)
March 1980	0	0	0	0	0	6.50 (D)
April 1980	155.00	0	155.00	0	155.00 (D)	161.50 (D)
May 1980	30.00	0	30.00	0	30.00 (D)	191.50 (D)
June 1980	10.00	0	10.00	185.00	175.00 (S)	16.50 (D)
July 1980	25.00	0	25.00	35.00	10.00 (S)	6.50 (D)
August 1980	30.00	0	30.00	30.00	0	6.50 (D)
September 1980	20.00	0	20.00	0	20.00 (D)	26.50 (D)

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

ALVIN F. KLEIN,

A Justice of the Supreme Court, First Judicial District.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
E. Garrett Cleary, Esq.
Dolores DelBello
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: Gerald Stern (Raymond S. Hack, Barry M. Vucker and Seth A. Halpern, Of Counsel) for the Commission.

Stroock & Stroock & Lavan (By Charles G. Moerdler, Burton Lipshie and William R. Kutner) for Respondent.

The respondent, Alvin F. Klein, a justice of the Supreme Court, First Judicial District, was served with a Formal Written Complaint dated February 29, 1980, alleging misconduct in that he received financial benefits with respect to three vacation trips arranged by a man who was actively soliciting and being appointed to receiverships by other justices of respondent's court, who was receiving fees with respect thereto, and who was appearing before other justices of respondent's court. Respondent filed an answer dated April 28, 1980.

By order dated May 20, 1980, the Commission designated the Honorable James Gibson referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on October 20, 21, 22, 23, 28 and 29, 1980, and the report of the referee was filed on January 15, 1981.

By motion dated March 9, 1981, the administrator of the Commis-

sion moved to confirm the referee's report, for a finding that respondent's misconduct was established and for a determination that respondent be censured. By cross-motion dated March 30, 1981, respondent moved to confirm in part and disaffirm in part the referee's report and for dismissal of the Formal Written Complaint.

The Commission heard oral argument on the motions on May 26, 1981. Respondent appeared with counsel. Thereafter the Commission considered the record of this proceeding and makes the determination herein.

With respect to Charges I and III of the Formal Written Complaint, the Commission makes the following findings of fact.

1. From 1974 through 1978, Bernard Lange actively solicited justices of the Supreme Court for appointments as a receiver in real property mortgage foreclosure proceedings. He received more than 150 such appointments in that period.

2. From 1974 through 1978, the primary source of Mr. Lange's income was from fees awarded by justices of the Supreme Court in connection with his appointments as a receiver. Mr. Lange was awarded more than $500,000 in such fees in that period.

3. By 1974 respondent knew that Mr. Lange had received appointments as a receiver and therefore that Mr. Lange had interests which had come and were likely to come before the Supreme Court.

4. Respondent had introduced Mr. Lange, at the latter's request, to other judges for the purpose of enhancing Mr. Lange's prospects for obtaining receivership appointments.

5. Prior to October 24, 1975, respondent requested Mr. Lange to arrange a trip for respondent and his wife to the Americana Aruba Hotel in Aruba for the forthcoming Christmas and New Year's holiday.

6. Mr. Lange was not a member of the International Association of Travel Agents and did not hold himself out to the general public as a person engaged in the travel business.

7. Mr. Lange could obtain from various hotels preferential treatment and reservations not otherwise available to the general public. He had informed respondent that he could obtain for respondent reduced rates at the Americana Aruba Hotel.

8. Mr. Lange arranged for respondent's transportation and hotel accommodations at reduced rates for respondent's trip to the Ameri-

cana Aruba Hotel from December 20, 1975, to January 4, 1976.

9. After a communication between Mr. Lange and the general manager of the hotel, the rate respondent was to be charged was reduced by 50 percent. A direction that the bill be charged to Mr. Lange was endorsed upon the bill.

10. Respondent and his wife were guests at the Americana Aruba Hotel from December 20, 1975, to January 4, 1976, during which time the value of the room, food and other services they received, based upon the rates available to the general public, was approximately $1,549.40.

11. At the conclusion of his stay at the Americana Aruba, respondent was presented with the bill which set forth the daily posting of room charges, meal charges and incidentals and which specified that the rate was to be reduced 50 percent and that Mr. Lange was to be charged.

12. Respondent paid $776.15 for all of the services he and his wife received at the Americana Aruba Hotel.

13. Respondent knew that the sum he paid the Americana Aruba Hotel was substantially less than the charges listed on the bill.

14. Respondent knew that he had received a reduced rate at the Americana Aruba Hotel.

15. At the time of his departure from the hotel, respondent was presented with a bill which contained a direction that the bill be charged to Mr. Lange.

16. Respondent accepted and was the beneficiary of a gift and favor from or through Mr. Lange worth approximately $773.25.

17. Respondent took no steps to avoid receiving the benefits noted above related to his stay at the Americana Aruba Hotel, notwithstanding that he had ample notice that he was receiving or was about to receive such benefits.

18. Some time prior to May 1977, Mr. Lange informed respondent that he could obtain for respondent reduced rates at the Southampton Princess Hotel in Bermuda.

19. Prior to May 27, 1977, respondent requested Mr. Lange to arrange a trip for respondent and his wife to the Southampton Princess Hotel for the forthcoming Memorial Day weekend.

20. Mr. Lange made reservations for respondent and his wife at the

Southampton Princess Hotel for May 27 to May 30, 1977. In so doing Mr. Lange arranged for respondent to receive a "deluxe" room for $40 less per night than the price charged to the general public for such a room.

21. Respondent and his wife stayed in a deluxe room at the Southampton Princess Hotel from May 27 to May 30, 1977, and were charged $40 less per night than the price charged to the general public for such a room.

22. The value of the room, food and other services received by respondent and his wife, based upon the rates available to the general public, was $442.20.

23. Respondent paid a total of $335.85 for the room, food and other services received from the hotel.

24. Respondent knew he had received a reduced rate at the Southampton Princess Hotel.

25. Respondent accepted and was the beneficiary of a gift and favor from or through Mr. Lange worth approximately $106.35.

26. Respondent took no steps to avoid receiving the benefits described above related to his stay at the Southampton Princess Hotel, notwithstanding that he had ample notice that he was receiving or about to receive such benefits.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2 and 33.5(c)(3)(iii) of the Rules Governing Judicial Conduct, Section 20.4 of the General Rules of the Administrative Board of the Judicial Conference and Canons 1, 2 and 5C(4)(c) of the Code of Judicial Conduct. Charges I and III of the Formal Written Complaint are sustained, the referee's report with respect thereto is confirmed and respondent's misconduct is established.

Charge II of the Formal Written Complaint is not sustained and therefore is dismissed. The referee's report with respect thereto is confirmed.

By his conduct, respondent created an appearance of impropriety. He introduced Bernard Lange to judges and others, in furtherance of Mr. Lange's solicitation of court-appointed receiverships, and during the same period accepted financial benefits arranged through Mr. Lange in the form of significant reductions in hotel rates. By introducing Mr. Lange to other judges, respondent appeared to be lending

the prestige of his judicial office to advance a private interest, in violation of the Rules Governing Judicial Conduct (Section 33.2). By accepting hotel rate reductions arranged by Mr. Lange, respondent violated that provision of the General Rules of the Administrative Board of the Judicial Conference which prohibits a judge from receiving "any gratuity or gift from any attorney or from any person having or likely to have any official transaction with the court" (Section 20.4). That the foregoing acts and events were contemporaneous gives rise to an appearance of impropriety in that respondent appeared to have benefitted from Mr. Lange's hotel connections in return for having assisted in the furtherance of Mr. Lange's business with the court.

Although respondent himself neither awarded appointments to Mr. Lange nor approved the fees Mr. Lange received for his services to the court, respondent was nevertheless obliged to refrain from business transactions with Mr. Lange in light of the applicable ethical standard which prohibits a judge "from financial and business dealings that . . . involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves" (Section 33.5[c][iii] of the Rules). While a judge may not know all the people who are likely to come before the court on which he serves, in this case respondent was fully aware of Mr. Lange's business with the court and indeed had introduced Mr. Lange to other judges in furtherance of that business.

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

All concur, except Judge Rubin and Judge Shea, who dissent in a separate opinion and vote that the appropriate disposition is a letter of dismissal and caution.

Dated: July 6, 1981.

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

ALVIN F. KLEIN,

A Justice of the Supreme Court, First Judicial District.

DISSENTING OPINION
BY JUDGE RUBIN AND
JUDGE SHEA

We respectfully dissent and vote that the appropriate disposition is a letter of dismissal and caution.

In our view, Charges I and III of the Formal Written Complaint have not been sustained by a preponderance of the evidence. A causal connection between respondent's receipt of lowered hotel room rates and his alleged introduction of Bernard Lange to other judges for Mr. Lange's financial benefit has not been established to our satisfaction. We note that respondent neither awarded judicial appointments to Mr. Lange nor sets fees for his services. We are not persuaded that respondent's conduct created an appearance of impropriety.

Dated: July 6, 1981

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

DANIEL P. FALSIONI,

A Judge of the City Court of Lockport, Niagara County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (John W. Dorn, Of Counsel) for the Commission.

Daniel P. Falsioni,
Respondent Pro Se.

The respondent, Daniel P. Falsioni, is a part-time judge of the City Court of Lockport, Niagara County, who is permitted to practice law. He was served with a Formal Written Complaint dated April 15, 1980, alleging (i) that respondent permitted the other part-time lawyer-judges of the Lockport City Court, and their law partners and associates, to practice law in 335 cases in the Lockport City Court, Civil Division, from 1974 to 1978 and (ii) that respondent permitted his own law partner to practice law in 13 cases in the Lockport City Court, Criminal Division, from 1976 to 1977. Respondent filed an answer dated May 29, 1980.

The Commission designated the Honorable Louis Otten referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on November 17, 1980, and the referee filed his report to the Commission on February 21, 1981.

By motion dated May 21, 1981, the administrator of the Commis-

sion moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion in papers dated June 5, 1981. Oral argument was waived.

The Commission considered the record of this proceeding on June 18, 1981, and makes the following findings of fact.

1. The City Court of Lockport is organized administratively in two sections: the Civil Division and the Criminal Division. The Uniform City Court Act governs the Lockport City Court and both divisions thereof. The jurisdictions of the two divisions are separate and distinct, as are their clerical staffs. Each division occupies a separate office in the same building, maintains its own dockets and observes separate procedures. Both divisions use the same courtroom. Default judgments in the Civil Division are generally processed by the court clerk on papers, without the specific knowledge of the judge in individual cases.

2. Respondent presided in the Civil Division during the entire period at issue in the instant proceeding. The Honorable Willard H. Harris, Jr., presided in the Criminal Division during the same period. Both respondent and Judge Harris are part-time judges who also practice law. The Honorable Gerald D. Watson and the Honorable Spencer Lerch presided as acting judges in the Criminal Division during the periods noted below and were at those times part-time judges who also practiced law. The Honorable Fred J. Smith and the Honorable Richard H. Speranza presided as acting judges in the Civil Division during the periods noted below and were at those times part-time judges who also practiced law.

3. A judge of either division of the Lockport City Court is empowered to sit in the other division of the court if necessary. In 1973 and 1974, Judge Willard H. Harris, Jr., of the Criminal Division presided over cases in the Civil Division in respondent's absence.

4. On May 26, 1977, respondent presided over *Rignall* v. *Burdick*, notwithstanding that counsel for the plaintiffs, Allen D. Miskell, was an attorney associated in the practice of law with Judge Willard H. Harris, Jr. Respondent knew at the time that Mr. Miskell and Judge Harris were law associates. The defendants were not represented by counsel, were informed of the association and consented to proceed with the hearing.

5. Between August 12, 1974, and September 25, 1978, respondent permitted attorneys Allen D. Miskell, Walter Moxham, Jr., and Richard Southard to practice law in the Lockport City Court by ob-

taining default judgments on behalf of their clients in the Civil Division in the 223 cases listed in *Exhibit 1* appended to the Formal Written Complaint, notwithstanding that these attorneys were associated in the practice of law with Judge Willard H. Harris, Jr. Respondent knew at the relevant times that these attorneys and Judge Harris were law associates. Although respondent had no knowledge that these attorneys had applied for default judgments in these particular cases, he had failed to instruct his clerk not to process default judgments for the other Lockport City Court judges and their associates, and he otherwise failed to take steps to prevent such associates from practicing law in the court.

6. On April 18, 1975, respondent permitted Judge Willard H. Harris, Jr., to practice before him as plaintiff's counsel in *Bull* v. *Rauber*. The defendants were not represented by counsel. Respondent knew at the time that Judge Harris was a judge of the Lockport City Court but took no action to prohibit him from appearing in the case. Respondent offered to disqualify himself from presiding but proceeded upon consent of the parties.

7. Between May 10, 1974, and May 18, 1977, respondent permitted Judge Willard H. Harris, Jr., to practice law in the Lockport City Court by obtaining default judgments on behalf of his clients in the Civil Division in the 15 cases listed in *Exhibit 2* appended to the Formal Written Complaint. Respondent knew at the relevant times that Judge Harris was a judge of the Lockport City Court. Although respondent had no knowledge that Judge Harris had applied for default judgments in these particular cases, he had not instructed his clerk not to process default judgments for the other Lockport City Court judges and their associates, nor had he otherwise taken steps to prevent Judge Harris from practicing law in the court.

8. Between February 17, 1975, and April 24, 1978, respondent permitted Acting Judge Gerald D. Watson to practice law in the Lockport City Court by obtaining default judgments on behalf of his clients in the Civil Division in the nine cases listed in *Exhibit 3* appended to the Formal Written Complaint. Respondent knew at the relevant times that Judge Watson was an acting judge of the Lockport City Court. Although respondent had no knowledge that Judge Watson had applied for default judgments in these particular cases, he had failed to instruct his clerk not to process default judgements for the other Lockport City Court judges, and he otherwise failed to take steps to prevent such judges from practicing law in the court.

9. Between May 20, 1974, and August 4, 1978, respondent permit-

ted attorneys Anthony C. Ben, James L. Fox and Edward Thiel to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients in the Civil Division in the 28 cases listed in *Exhibit 4* appended to the Formal Written Complaint, notwithstanding that these attorneys were associated in the practice of law with Acting Judge Gerald D. Watson. Respondent knew at the relevant times that these attorneys and Judge Watson were law associates and should have known they were practicing law in his court, but he took no action to prohibit these attorneys from practicing law in his court in these cases.

10. Between January 18, 1978, and May 22, 1978, respondent permitted attorneys William B. May and Morgan L. Jones, Jr., to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients in the Civil Division in the five cases listed in *Exhibit 5* appended to the Formal Written Complaint, notwithstanding that these attorneys were associated in the practice of law with Acting Judge Spencer Lerch. Respondent should have known these attorneys were practicing law in his court but took no action to prohibit them from doing so.

11. Between November 26, 1974, and June 18, 1975, respondent permitted Acting Judge Fred J. Smith to practice law in the Lockport City Court by obtaining default judgments on behalf of his clients in the Civil Division in the seven cases listed in *Exhibit 7* appended to the Formal Written Complaint. Respondent knew at the relevant times that Judge Smith was an acting judge of the Lockport City Court but took no action to prevent Judge Smith from practicing law in these particular cases.

12. On April 8, 1975, and on June 16, 1975, in the cases of *Kohl* v. *Muir* and *Ben* v. *Levenson*, respectively, respondent permitted Richard H. Speranza to practice law before him. Respondent knew at these times that Mr. Speranza was a member of the law firm of Acting Judge Fred J. Smith. Respondent offered to disqualify himself from presiding but took no action to prohibit Mr. Speranza from practicing before him.

13. Between January 24, 1975, and October 16, 1975, respondent permitted Richard H. Speranza and Leonard G. Tilney to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients in the Civil Division in the 18 cases listed in *Exhibit 8* appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Speranza and Mr. Tilney were law partners of Acting Judge Fred J. Smith but took no action to prohibit them from

practicing law in his court in these cases.

14. On May 19, 1977, respondent permitted Acting Judge Richard H. Speranza to practice before him as plaintiff's counsel in *Wagner* v. *Bowers*. Respondent knew at the time that Judge Speranza was an acting judge of the Lockport City Court. Respondent offered to disqualify himself but took no action to prohibit Mr. Speranza from practicing before him.

15. On March 26, 1976, respondent permitted Acting Judge Richard H. Speranza to practice law in the Lockport City Court by obtaining a default judgment on behalf of his client in the Civil Division in *Ferington* v. *Wilson*. Respondent knew at the time that Judge Speranza was an acting judge of the Lockport City Court but took no action to prohibit Judge Speranza from practicing law in this case.

16. On February 3, 1977, respondent permitted Acting Judge Richard H. Speranza to practice before him by appearing as his own counsel in *Speranza* v. *Rau*. Respondent knew at the time that Judge Speranza was an acting judge of the Lockport City Court. Respondent offered to disqualify himself but took no action to prohibit Judge Speranza from practicing law in this case.

17. Between February 10, 1976, and October 4, 1977, respondent permitted Leonard G. Tilney, R. Joseph Foltz and Richard T. May to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients in the Civil Division in the 23 cases listed in *Exhibit 9* appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Tilney, Mr. Foltz and Mr. May were associated in the practice of law with Acting Judge Richard Speranza but took no action to prohibit them from practicing law in these cases.

18. In April 1977 and January 1978, respondent and the director of administration of the courts for the Fourth Judicial Department discussed the applicability of Section 33.5(f) of the Rules Governing Judicial Conduct to the Lockport City Court, said section governing the conduct of part-time judges who practice law. On April 21, 1978, respondent received an opinion from the director of administration, indicating that practice in one division of the court by a judge or the associate of a judge from the other division of the court is improper. Despite the director's opinion, respondent took no action to enforce Section 33.5(f) until he appeared before the Commission to address the issues herein on June 20, 1979. Thereafter, respondent instructed his court clerk (i) to return any papers received from other Lockport

City Court judges, acting judges and the law partners and associates of these judges and (ii) to advise them by letter that they could no longer practice in his court.

Upon the foregoing findings of fact, the Commission concludes as matter of law that respondent violated Sections 16 and 471 of the Judiciary Law, Sections 33.1, 33.2(a), 33.2(c), 33.3(b)(1), 33.3(b)(2) and 33.5(f) of the Rules Governing Judicial Conduct and Canons 1, 2, 3B(1) and 3B(2) of the Code of Judicial Conduct. Charges I through VII and Charges IX through XIV of the Formal Written Complaint are sustained and respondent's misconduct is established. Charge VIII of the Formal Written Complaint is not sustained and therefore is dismissed.

A part-time lawyer-judge (i) may not practice law in his own court, (ii) may not practice law before any other part-time lawyer-judge in the same county as his own court, (iii) may not permit his law partners or associates to practice law in his court, (iv) may not permit the practice of law in his court by other part-time lawyer-judges whose courts are in the same county as his own court and (v) may not permit the practice of law in his court by the partners and associates of the part-time lawyer-judges of his own court (Section 33.5[f] of the Rules Governing Judicial Conduct). A presiding judge's offer to recuse himself from such cases does not constitute compliance with these rules. Such a recusal does not address the gravamen of the matter, which is that a lawyer prohibited from doing so is indeed practicing law in the court. Nor does recusal satisfy the presiding judge's obligation to enforce the rule. Public confidence in the courts is diminished by the appearance of favoritism when a judge acts as the lawyer in a proceeding in his own court, presided over by his judicial colleague.

The assertion that the two divisions of the Lockport City Court comprise two different courts and are therefore not subject to the applicable rules is without merit. Both divisions operate under the appellation of Lockport City Court. Both divisions are governed by the Uniform City Court Act. Both are located in the same building and share the same courtroom. When a judge of one division is unavailable, he may be relieved by a judge of the other division. Whatever the local practice may have been with regard to the two divisions of the court, the fact is that there is one Lockport City Court, and it is improper for the judges and associates of one division to practice in the other division. The entry of a default judgment by an attorney unquestionably constitutes the practice of law, and where the attorney is also a part-time judge, the prohibitions of the Rules apply with equal force. Moreover, in those cases in which respondent permitted the

proscribed practice in his own division by part-time judges of that division (the Civil Division), the asserted distinction between the civil and criminal divisions is of no moment.

In initiating discussions of the issues herein with the director of administration as early as 1977, respondent demonstrated a commendable sensitivity to the improprieties and appearances of impropriety inherent in his conduct and that of his colleagues. Nevertheless, his failure to take any corrective action for more than two years after these discussions and more than one year after receipt of an opinion from the director of administration indicating the impropriety of the conduct of the part-time lawyer-judges of Lockport, cannot be overlooked.

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

All concur, except that Mr. Cleary dissents only with respect to sanction and votes that the appropriate disposition is a letter of dismissal and caution.

Dated: November 6, 1981

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

WILLARD H. HARRIS, JR.,

A Judge of the City Court of Lockport, Niagara County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin

Appearances: Gerald Stern (John W. Dorn, Of Counsel) for the Commission.

Willard H. Harris, Jr., Respondent Pro Se.

The respondent, Willard H. Harris, Jr., is a part-time judge of the City Court of Lockport, Niagara County, who is permitted to practice law. He was served with a Formal Written Complaint dated April 15, 1980, alleging (i) that respondent practiced law in the Lockport City Court, (ii) that respondent permitted his law partner and associates to practice law in the Lockport City Court, (iii) that respondent permitted other Lockport City Court judges, their law partners and associates to practice in the Lockport City Court and (iv) that respondent failed to cooperate with the Commision during its investigation of these matters. Respondent filed an answer dated August 8, 1980.

The Commission designated the Honorable Louis Otten referee to hear and report proposed findings of fact and conclusions of law. The hearing was held from October 6 through 10, 1980, and the referee filed his report to the Commission on February 6, 1981.

By motion dated May 21, 1981, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's

report and for a determination that respondent be removed from office. Respondent cross-moved on August 14, 1981, to disaffirm the referee's report and to dismiss the Formal Written Complaint. The Commission heard oral argument on September 22, 1981, thereafter considered the record of the proceeding and now makes the following findings of fact.

1. The City Court of Lockport is organized administratively in two sections: the Civil Division and the Criminal Division. The Uniform City Court Act governs the Lockport City Court and both divisions thereof. The jurisdictions of the two divisions are separate and distinct, as are their clerical staffs. Each division occupies a separate office in the same building, maintains its own dockets and observes separate procedures. Both divisions use the same courtroom.

2. Respondent presided in the Criminal Division during the entire period at issue in the instant proceeding. The Honorable Daniel P. Falsioni presided in the Civil Division during the same period. Both respondent and Judge Falsioni are part-time judges who also practice law. The Honorable Gerald D. Watson and the Honorable Spencer Lerch presided as acting judges in the Criminal Division during the periods noted below and were at those times part-time judges who also practiced law. The Honorable Fred J. Smith and the Honorable Richard H. Speranza presided as acting judges in the Civil Division during the periods noted below and were at those times part-time judges who also practiced law.

3. A judge of either division of the Lockport City Court is empowered to sit in the other division of the court if necessary. In 1973 and 1974, respondent presided over cases in the Civil Division in Judge Falsioni's absence.

4. Between September 5, 1974, and September 25, 1978, respondent permitted Richard C. Southard, Allen Miskell and Walter Moxham, Jr., to practice law by obtaining default judgments on behalf of their clients in the Civil Division in 223 of the 224 cases listed in *Exhibit 1* appended to the Formal Written Complaint and by appearing in a summary proceeding in the remaining case listed in *Exhibit 1*. At the relevant times Mr. Southard was a member of respondent's law firm "Harris and Southard," and Mr. Moxham and Mr. Miskell were associated in the practice of law with respondent. Respondent benefitted from the practice of law by his associates in that the legal fees earned in those cases inured to his benefit.

5. On January 22, 1974, respondent permitted Richard C.

Southard to practice law by appearing as his own attorney and obtaining a default judgment in the Civil Division in *Andrews and Southard* v. *Balcom*. At the time Mr. Southard was a member of respondent's law firm.

6. On July 8, 1974, and January 28, 1976, respondent presided over *People* v. *Andrew Filipovich* and *People* v. *Kevin A. Bancroft*, respectively, in which the defendants were clients of his law firm and in which Richard C. Southard, a member of respondent's law firm, was listed as attorney of record. Respondent benefitted from Mr. Southard's appearances in these cases as a result of the firm's financial agreements.

7. On December 23, 1973, and on February 22, 1974, while serving as a judge in the Civil Division during Judge Falsioni's absence, respondent practiced law in the Civil Division by obtaining default judgments in *Thurston* v. *Nerber* and *Household Finance Corp.* v. *Wagner*, respectively.

8. Between June 24, 1974, and February 10, 1977, respondent practiced law by obtaining default judgments in the Civil Division in the 16 cases listed in *Exhibit 2* appended to the Formal Written Complaint.

9. Between February 20, 1974, and August 15, 1978, respondent permitted Gerald D. Watson to practice law before him in the Criminal Division in the 84 cases listed in *Exhibit 3* appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Watson was an acting judge of the Lockport City Court, Criminal Division.

10. Between February 20, 1974, and September 27, 1978, respondent permitted Anthony C. Ben, James Fox, Robert Scheffer and Edward Thiel to practice law before him in the Criminal Division in the 172 cases listed in *Exhibit 4* appended to the Formal Written Complaint. Respondent knew at the relevant times that these attorneys were associated in the practice of law with Acting Lockport City Court Judge Gerald D. Watson of the Criminal Division.

11. On January 31, 1978, respondent permitted Spencer Lerch to practice law before him in *People* v. *David L. Lewis* in the Criminal Division. Respondent knew at the time that Mr. Lerch was an acting judge of the Lockport City Court, Criminal Division.

12. On February 6, 1978, respondent permitted Lockport Assistant Corporation Counsel Morgan C. Jones to practice law before him in *People* v. *Patrick Hawkins* in the Criminal Division. Respondent knew at the time that Mr. Jones was associated in the practice of law

with Acting Lockport City Court Judge Spencer Lerch of the Criminal Division.

13. Between June 8, 1976, and August 9, 1977, respondent permitted James J. Sansone to practice law before him in the Criminal Division in the 13 cases listed in *Exhibit 5* appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Sansone was associated in the practice of law with Lockport City Court Judge Daniel P. Falsioni of the Civil Division.

14. Between January 29, 1976, and August 23, 1977, respondent permitted Richard Speranza to practice law before him in the Criminal Division in the 87 cases listed in *Exhibit 6* appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Speranza was an acting judge of the Lockport City Court, Civil Division.

15. Between December 2, 1974, and January 10, 1978, respondent permitted Leonard Tilney, Joseph Foltz and Richard May to practice law before him in the Criminal Division in the 44 cases listed in *Exhibit 7A* appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Tilney, Mr. Foltz and Mr. May were associated in the practice of law with Acting Lockport City Court Judges Richard Speranza and Fred Smith of the Civil Division.

16. Between December 2, 1974, and December 2, 1975, respondent permitted Richard Speranza to practice law before him in the Criminal Division in the 19 cases listed in *Exhibit 7B* appended to the Formal Written Complaint. Respondent knew at the time that Mr. Speranza was a member of the law firm of Acting Lockport City Court Judge Fred J. Smith of the Civil Division.

17. Respondent failed to respond to six written inquiries sent to him by the Commission between March 5, 1979, and October 8, 1979, during the Commission's investigation of the matter herein.

18. On July 12, 1979, respondent appeared to give testimony before a member of the Commission during the Commission's investigation of the matter herein. At his appearance, respondent claimed to have responded to a Commission letter dated March 29, 1979. Such letter was never received by the Commission. Respondent was asked at his appearance to furnish a copy of such letter to the Commission. Respondent failed to furnish such copy.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 16, 42 and 471 of the

Judiciary Law, Sections 33.1, 33.2(a), 33.3(b)(3) and 33.5(f) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3B(3) of the Code of Judicial Conduct. Charge I, paragraphs (a) and (c), of the Formal Written Complaint, and Charges II through XI of the Formal Written Complaint are sustained and respondent's misconduct is established. Paragraph (b) of Charge I of the Formal Written Complaint is not sustained and therefore is dismissed.

A part-time lawyer-judge (i) may not practice law in his own court, (ii) may not practice law before any other part-time lawyer-judge in the same county as his own court, (iii) may not permit his law partners or associates to practice in his court, (iv) may not permit the practice of law in his court by other part-time lawyer-judges whose courts are in the same county as his own court and (v) may not permit the practice of law in his court by the partners and associates of the part-time lawyer-judges of his own court (Section 33.5[f] of the Rules Governing Judicial Conduct). Public confidence in the integrity and impartiality of the courts is diminished when a part-time judge acts as a lawyer in a proceeding in his own court before one of his judicial colleagues. Public confidence is likewise diminished by the appearance of favoritism when part-time lawyer-judges and their associates routinely appear before one another.

Respondent's assertion that the two divisions of the Lockport City Court comprise two different courts and are therefore not subject to the applicable rules is without merit. Both divisions operate under the appellation of Lockport City Court. Both divisions are governed by the Uniform City Court Act. Both are located in the same building and share the same courtroom. When a judge of one division is unavailable, he may be relieved by a judge of the other division. Indeed, respondent, though himself a judge of the Criminal Division, sat in the Civil Division in 1973 and 1974 in the absence of one of the judges of that division. Whatever the local practice may have been with regard to the two divisions of the court, the fact is that there is one Lockport City Court, and it is improper for the judges and associates of one division to practice law in the other division.

In any event, respondent's assertion that the two divisions are in fact two separate courts is of no consequence with respect to (i) representing clients in his own division of the court, (ii) presiding over cases in which the defendants were clients of his own law firm and (iii) permitting other Criminal Division judges and their associates to practice law before him in that division. Respondent's misconduct in these matters has compromised the integrity of his court and has prejudiced

the administration of justice. His misconduct is exacerbated by the financial benefits he derived from his own inappropriate appearances as a lawyer in his own division, and from the appearances of his law associates in cases before him.

In hundreds of cases over several years, respondent engaged in conduct which failed to conform to the ethical standards required of a judge. His misconduct was not isolated or temporary. His assertion of good faith misinterpretation of the applicable statutes and rules is disingenuous. One need not be familiar with specific statutes and canons of judicial conduct, for example, to know that a judge should not preside over cases involving his law firm's clients.

Respondent's failure to cooperate with the Commission during its investigation of the matters herein further compounds the impropriety of his conduct and demonstrates a disregard of the obligations of judicial office. Judiciary Law Section 42(3); *Matter of Jordan*, 47 NY2d(xxx)(zzz) (Ct. on the Judiciary 1979); *Matter of Cooley*, 53 NY2d 64 (1981).

The totality of respondent's misconduct is grave, brings disrepute to the judiciary and warrants appropriate discipline.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

Dated: November 6, 1981

NOTE: The Court of Appeals, upon review, accepted the Commission's determination that respondent be removed. 56 NY2d 365 (1982).

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

SAMUEL C. ALESSI, JR.

A Judge of the City Court of Jamestown, Chautauqua County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (John J. Postel, Of Counsel) for the Commission.

Robert H. Alessi for Respondent.

The respondent, Samuel C. Alessi, Jr., a judge of the City Court of Jamestown, Chautauqua County, was served with a Formal Written Complaint dated February 3, 1981, alleging misconduct with respect to respondent's conduct in a 1980 civil matter. Respondent filed an answer dated February 17, 1981.

By order dated March 16, 1981, the Commission designated Saul H. Alderman, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on May 21, 1981, and the referee filed his report on July 27, 1981.

By motion dated August 13, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion on August 21, 1981, and moved to dismiss the Formal Written Complaint. The Commission heard oral argument on the motions on September 23, 1981, thereafter considered the record of the proceeding and now makes the following findings of fact.

1. Martin P. Carlson is a real estate broker. G. Jeffrey Weise and Howard Crossley are attorneys who were representing the purchaser and seller in a real property transaction in April and May 1980 involving Mr. Carlson as broker.

2. On May 1, 1980, based upon an oral complaint and request by Mr. Weise and Mr. Crossley, respondent issued a summons directing the appearance "forthwith" of Mr. Carlson. No criminal information, prosecutor's information or formal complaint of any kind had been filed with the court. The summons stated that Mr. Carlson was "wrongfully withholding personal property" belonging to Mr. Weise and Mr. Crossley, "to wit: the keys to the Nichols property". The summons contained no reference to any Penal Law violation and was not issued to obtain the defendant's appearance for the purpose of arraignment. Respondent was aware that the matter related to a civil dispute but issued the summons nonetheless. The issuance of a "forthwith" summons was not respondent's common practice. Moreover, such procedure did not comport with Section 130.10 of the Penal Law, of which respondent had specific knowledge.

3. Prior to issuing the summons, respondent spoke by telephone with Mr. Carlson and attempted without success to persuade him to surrender the key to the property.

4. Upon issuance of the summons, respondent instructed the police to effect Mr. Carlson's appearance forthwith. Thereupon Jamestown Police Officer Gunnard Kindberg served the summons on Mr. Carlson, placed him in custody and escorted him to respondent's chambers. Neither Mr. Weise nor Mr. Crossley were present.

5. Respondent and Mr. Carlson discussed the realty matter privately in respondent's chambers. Respondent did not advise Mr. Carlson of his right to counsel, denied Mr. Carlson's request to have an attorney present, and demanded that Mr. Carlson surrender the key in question. Respondent told Mr. Carlson that his business would be affected adversely if he persisted in his "arrogant" attitude, that he could be charged with possession of stolen property and practicing law without a license, and that he could have problems with his real estate license.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 3A(1) and 3A(4) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

By attempting to persuade Mr. Carlson in an *ex parte* telephone conversation to surrender the disputed key, respondent lent the prestige of his office to advance the private interests of others (Section 33.2[c] of the Rules Governing Judicial Conduct). By thereafter issuing a criminal summons for Mr. Carlson's "forthwith" appearance in a civil matter and having him brought to chambers in police custody, responent knowingly acted contrary to the relevant provisions of law. By interrogating Mr. Carlson privately and demanding the surrender of the disputed key, by denying Mr. Carlson's request for the presence of an attorney and by failing to advise him of his right to counsel, respondent acted in a manner inconsistent with his obligations to promote public confidence in the integrity and impartiality of the judiciary and to be faithful to the law (Sections 33.2[2] and 33.3[a] of the Rules). By warning Mr. Carlson that his business and livelihood could be affected adversely by a continued refusal to cooperate, respondent appeared to be coercing Mr. Carlson into submission.

Respondent's conduct in this case is a gross abuse of the power and prestige of judicial office. Respondent improperly extended the court's authority and jurisdiction beyond lawful limits and perverted it to advance private interests. Such conduct is cause for discipline. *Matter of Perry*, 53 AD2d 882 (2d Dept. 1976).

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

All concur, except Mr. Cleary and Mr. Wainwright dissent with respect to sanction and vote that respondent should be admonished.

Dated: November 13, 1981

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

DONALD L. BOUGHNER,

A Justice of the Town Court of Riga, Monroe County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin

Appearances: Gerald Stern for the Commission.

Walter M. Pelkey for Respondent.

The respondent, David L. Boughner, a justice of the Town Court of Riga, Monroe County, was served with a Formal Written Complaint dated April 16, 1980, alleging misconduct with respect to nine traffic cases. Respondent filed an Answer on May 29, 1980.

By order dated June 30, 1980, the Commission designated W. David Curtiss, Esq., referee to hear and report proposed findings of fact and conclusions of law.

The hearing was held on October 17, 1980, and the referee filed his report to the Commission on March 10, 1981.

By motion dated June 26, 1981, the Administrator of the Commission moved to confirm in part and to disaffirm in part the referee's report, and for a determination that respondent be admonished. Respondent cross-moved on July 22, 1981, to disaffirm in part and to confirm in part the referee's report and for dismissal of the Formal Written Complaint. Oral argument on the motions was not requested.

The Commission considered the record of this proceeding on September 22, 1981, and makes the following findings of fact:

1. Charge I: On January 16, 1977, respondent communicated wit LeRoy Town Court Justice John Aramino, seeking special consider ation on behalf of the defendant, who was charged with speeding i *People* v. *Donald D. Brown*, a case then pending before Judg Aramino.

2. Charge II: On June 6, 1977, respondent reduced a charge c speeding to failing to obey a traffic control device in *People* v. *Da W. Aycock* as a result of a letter he received from Groveland Tow Court Justice Donald Barber, seeking special consideration on beha of the defendant.

3. Charge VII: On November 12, 1973, respondent reduced charge of speeding to driving with an unsafe tire in *People* v. *Gary L Myrick* as a result of a communication he received from Chili Tow Court Justice Neil Cramer, seeking special consideration on behalf c the defendant.

4. Charge IX: On May 20, 1974, respondent accepted the forfeitu of bail in lieu of further prosecution of a charge of speeding in *Peop* v. *John E. Kerekavich* as a result of a letter he received from Ogde Town Court Justice Roy J. Burley, seeking special consideration o behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canor 1, 2 and 3A of the Code of Judicial Conduct. Charges I, II, VII an IX of the Formal Written Complaint are sustained and respondent misconduct is established. Charges III through VI and Charge VIII c the Formal Written Complaint are not sustained and therefore ar dismissed.

It is improper for a judge to seek to persuade another judge, on th basis of personal or other special influence, to grant special consider tion to a defendant. It is also improper for a judge to accede to suc requests from judges.

By requesting special consideration of another judge for the defer dant in a traffic case, and by granting such requests from othe judges, respondent violated the Rules enumerated above.

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

All concur, except Mrs. DelBello dissents only as to Charges III through VI of the Formal Written Complaint and votes that the above charges be sustained.

Dated: November 13, 1981.

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

WALTER J. STERIA,

A Justice of the Town Court of New Bremen, Lewis County.

Before: Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

William J. Riley for Respondent.

The respondent, Walter J. Steria, a justice of the Town Court of New Bermen, Lewis County, was served with a Formal Written Complaint dated September 19, 1980, alleging misconduct with respect to a traffic case. Respondent did not file an answer.

By order dated December 24, 1980, the Commission designated Charles T. Major, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on February 20, 1981. Respondent waived his appearance. The referee filed his report to the Commission on May 18, 1981.

By motion dated June 16, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent did not submit papers in opposition. The Commission heard oral argument on the motion on July 15, 1981, at which respondent appeared through counsel. Thereafter the Commission considered the record of the proceeding and makes the following findings of fact.

1. On June 2, 1980, respondent sent a letter on judicial stationery to Champion Town Court Justice James Church, seeking special consideration on behalf of the defendant, who was charged with speeding, in *People* v. *Linda Bush*, a case then pending before Judge Church. Respondent's letter stated that the defendant had been speeding, identified the defendant as his baby sitter and asked Judge Church to "see what you can do for her." Judge Church did not accede to respondent's request.

2. Prior to sending the letter of June 2, 1980, respondent knew that it was improper for a judge to request special consideration for the defendant in a case before another judge, in that (i) he was aware of the Commission's well-publicized investigation of such ticket-fixing incidents prior to sending the letter and (ii) he had attended an Office of Court Administration judicial training course in 1979 at which ticket-fixing was described and examples given, such as an attempt by one judge to influence another, by using official stationery to request special consideration.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to grant special consideration to a defendant. By making such a request of another judge for a favorable disposition for the defendant in a traffic case, respondent violated the Rules enumerated above.

Courts in this and other states, as well as the Commission, have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In *Matter of Byrne*, 47 NY2d(b) (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of *malum in se* misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." *Id.* at (c).

The import of respondent's misconduct goes beyond his request for special consideration. Respondent was aware of the Commission's ex-

tensively reported investigation and disciplinary determinations in ticket-fixing matters. Furthermore, he had been apprised of the impropriety of ticket-fixing by the Office of Court Administration during a judicial training course in 1979. Indeed, respondent was advised specifically at the training course that use of official stationery to request special consideration was improper. Nevertheless, in 1980 respondent made precisely such a proscribed request. Respondent knew his action would be wrong, but he was not deterred. His explanation that his letter pertained only to the fine is neither persuasive nor relevant. Special consideration is wrong whether asserted with regard to the fine, a reduction of the original charge or any other disposition of the particular case.

We note specifically that Judge Church, to whom respondent's letter was addressed, acted properly in disregarding the request which respondent made of him.

Claimed ignorance of the ethical standards a judge is obliged to know does not excuse a violation of those standards. Where the violation occurs in the face of specific knowledge of the applicable standards, the misconduct is all the more egregious.

Under the circumstances noted herein the Commission determines that the appropriate sanction is severe censure.

All concur, except for Mr. Kovner and Mr. Wainwright, who dissent only with respect to sanction and vote that the appropriate discipline is removal from office.

Dated: November 13, 1981

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

WALTER J. STERIA

A Justice of the Town Court of New Bremen, Lewis County.

DISSENTING OPINION
BY MR. KOVNER AND
MR. WAINWRIGHT

In our view, even a single request by a judge for special consideration, made with knowledge of the discipline previously imposed by the Commission and the Court of Appeals for such conduct, requires removal from office. Nothing in the record of this proceeding justifies a more lenient sanction.

Dated: November 13, 1981

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

CARL R. SCACCHETTI, JR.,

A Judge of the Rochester City Court, Monroe County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern for the Commission.

Charles A. Schiano for Respondent.

The respondent, Carl R. Scacchetti, Jr., a judge of the City Court of Rochester, Monroe County, was served with a Formal Written Complaint dated April 15, 1981, alleging misconduct with respect to his presiding over two criminal proceedings in which the defendant was a close friend from whom respondent contemporaneously (i) accepted a loan or gift of $262.10 and (ii) solicited and accepted a camera and accessories. Respondent filed an answer dated May 5, 1981.

By order dated June 8, 1981, the Commission designated the Honorable Carman F. Ball referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 22, 27, 28 and 29, 1981, and the referee filed his report to the Commission on September 25, 1981.

By motion dated October 1, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent did not file

opposing papers. On October 22, 1981, the Commission heard oral argument on the administrator's motion. Respondent appeared by counsel for oral argument. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact:

1. Respondent has known Albert Tantalo since 1976 and the two have been close friends since 1978. As early as 1979, respondent and Mr. Tantalo discussed certain business and Internal Revenue Service problems Mr. Tantalo had.

2. On March 20, 1978, respondent presided at a criminal proceeding in which Mr. Tantalo was the defendant. The case was dismissed upon Mr. Tantalo's promise to make restitution to the complaining witness and upon the recommendation of the District Attorney. In accordance with law, the case file was sealed by the court clerk.

3. On January 30, 1979, respondent went to Mr. Tantalo's place of business and accepted a check which was signed by Mr. Tantalo but which in all other respects was blank. Respondent subsequently filled in the check in the amount of $262.10 to pay for a 35mm camera he purchased at LeBeau Photo Shop.

4. Respondent considered the $262.10 to be a loan from Mr. Tantalo which he testified was repaid in cash installments, the last installment being paid in late May or early June of 1979.

5. There is no record of the loan or respondent's repayment of it. Respondent did not report the loan to the clerk of the Rochester City Court, as required by Sections 33.5(c)(3)(iii) and 33.6(c) of the Rules Governing Judicial Conduct.

6. On March 1, 1979, while Mr. Tantalo's purported loan to respondent was still outstanding, respondent presided over the case of *Svatek* v. *World Wide Tire, Inc.* Respondent knew at the time that the defendant corporation was controlled and operated by Mr. Tantalo. On April 11, 1979, while Mr. Tantalo's purported loan to respondent was still outstanding, respondent dismissed the plaintiff's complaint in the *Svatek* case for lack of a cause of action.

7. On December 6, 7, 10, 11, 13 and 17, 1979, respondent and Mr. Tantalo had conversations by telephone and in person, concerning *inter alia, People* v. *Wesley Hutchinson*, a case then pending before respondent. The conversation of December 13 took place in Florida, where both men happened to be at the time. The conversation of December 17 took place at respondent's home. The others were over the

telephone, with respondent in chambers. During these conversations, the following occurred:

(a) Mr. Tantalo requested special consideration from respondent on behalf of the defendant in *People* v. *Wesley Hutchinson.*

(b) Mr. Tantalo convinced respondent that Wesley Hutchinson's employer was interested in the outcome of the case.

(c) Respondent assured Mr. Tantalo that he would consider the latter's request for special consideration.

(d) Respondent recommended to Mr. Tantalo a specific attorney to represent Mr. Hutchinson.

(e) While discussing the *Hutchinson* case, respondent advised Mr. Tantalo that he needed a 35mm camera. Respondent told Mr. Tantalo to obtain a good Minolta camera for him.

(f) Mr. Tantalo advised respondent that Wesley Hutchinson's employer would buy the camera for respondent.

(g) It was apparent to respondent that he would not pay for the camera, that Mr. Hutchinson's employer would pay for the camera and that respondent would receive it as a gift. Respondent asked Mr. Tantalo to ask Mr. Hutchinson's employer for a motor drive accessory to the camera.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(c)(1), 33.5(c)(3)(iii) and 33.6(c) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3C(1), 5C(4)(c) and 6 of the Code of Judicial Conduct. Charge I of the Formal Written Complaint dated April 15, 1981, is sustained and respondent's misconduct is established.

By presiding over cases involving a close friend, and by accepting a loan from that friend and presiding over an action against him while the loan was outstanding, respondent violated those rules which require a judge's disqualification from cases in which his impartiality might reasonably be questioned (Section 33.3[c]). His conduct impaired public confidence in the integrity and impartiality of the judiciary (Sections 33.1 and 33.2). A judge may not accept loans from persons whose interests have been or are likely to come before him, and any loan in excess of $100 must be reported to the clerk of the

court (Sections 33.5[c][3][iii] and 33.6[c]). Respondent violated the applicable rules.

By entertaining a request for special consideration on behalf of the defendant in a criminal case before him and soliciting a gift in return, respondent engaged in egregious misconduct. Respondent's actions prejudiced the administration of justice, compromised the integrity of his court and irreparably impaired his effectiveness as a judge. Respondent has demonstrated his willingness to use judicial office to advance the private interests of his friends and those who would reward him for his services.

Respondent's misconduct in this matter, as well as with regard to the determination dated June 10, 1981, appended hereto, demonstrates that he lacks the moral qualities required of a judge and therefore is unfit to serve.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

Appended hereto is the determination of the Commission dated June 10, 1981, with respect to the earlier, unrelated proceeding against respondent. In that proceeding, the Commission (i) found that respondent's misconduct was established and (ii) deferred consideration of sanction until the instant matter was determined.

All concur.

Dated: November 25, 1981

NOTE: The Court of Appeals, upon review, accepted the Commission's determination that respondent be removed. 56 NY2d 980 (1982).

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

CARL R. SCACCHETTI,

A Judge of the City Court of Rochester, Monroe County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
Hon. Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.*
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (John W. Dorn, Of Counsel) for the Commission.

Charles A. Schiano
for Respondent.

The respondent, Carl R. Scacchetti, a judge of the City Court of Rochester, Monroe County, was served with a Formal Written Complaint dated June 1, 1979, alleging that he failed to disqualify himself and improperly participated in eight cases in June 1978. Respondent filed an answer dated July 13, 1979.

By order dated November 5, 1979, the Commission designated William F. FitzPatrick, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on March 11, 12 and 13, 1980, and the referee filed his report to the Commission on September 12, 1980.

By motion dated December 3, 1980, the administrator of the Commission moved to confirm the referee's report, and for a finding that respondent had engaged in misconduct. Respondent opposed the mo-

tion on February 23, 1981. Oral argument was waived.

The Commission considered the record of the proceeding on March 10, 1981, and makes the determination herein.

With respect to Charge I of the Formal Written Complaint, the Commission makes the following findings of fact.

1. Respondent's brother, Anthony Scacchetti, at all times mentioned in the Formal Written Complaint, was a Sergeant in the Rochester Police Department assigned to the "Lake Section", which includes Ontario Beach Park.

2. Charles J. Cortese and Wayne Hadley at all times mentioned in the Formal Written Complaint were members of the Rochester Police Department assigned to the Lake Section.

3. On the evening of June 20, 1978, Officers Cortese and Hadley were on duty between 3 p.m. and 11 p.m. under the supervision of Sergeant Scacchetti.

4. On that night, Sergeant Scacchetti drove his police vehicle to respondent's home and asked respondent if he wanted to visit their mother, who resided at the Senior Citizens' Tower on Lake Avenue, which is approximately one quarter mile south of Ontario Beach Park. Respondent accepted and accompanied Sergeant Scacchetti in the police vehicle.

5. On the way to his mother's home, Sergeant Scacchetti drove through Ontario Beach Park on patrol.

6. Between 9:45 p.m. and 10:00 p.m., respondent was present in his brother's police car at Ontario Beach Park where Officers Cortese and Hadley arrested Peter Saxe, Patrick Muldoon, Thomas Monna, David Magee, Dennis Betetti, Bruce Mitchell, Kevin Bordonaro and James Gately.

7. Respondent arrived in the area of the park pavilion subsequent to the arrest of the defendants Magee, Mitchell and Betetti. While at the place of arrest, he observed:

a. two police cars about 50-70 feet away, and Officers Cortese and Hadley making out their arrest reports for the defendants;

b. beer bottles and cans in and around the pavilion where the youths were arrested;

c. Dennis Betetti, one of the defendants, with a beer in his

hand; and

d. people in the pavilion.

8. Respondent was present in the police car when Dennis Betetti, one of the defendants, discussed his arrest with Sergeant Scacchetti.

9. Dennis Betetti, after being advised by Sergeant Scacchetti that a judge was in the police car, asked respondent if respondent could do something about his arrest for drinking in the park.

10. Respondent observed a group of people sitting and standing in and near the pavilion, subsequent to the arrest of Magee, Mitchell and Betetti.

11. The remaining defendants were arrested at the lavatory area of the park.

12. Respondent was assigned to Part I of the Rochester City Court to preside over arraignments during the period from June 20 to June 28, 1978.

13. Between June 21 and June 28, 1978, respondent presided over the arraignments of Peter Saxe, Patrick Muldoon, Thomas Monna, David Magee, Dennis Betetti, Bruce Mitchell, Kevin J. Bordonaro and James Gately and, except as hereafter noted with respect to defendant Betetti, failed to disqualify himself from handling any and all parts of the proceedings involving the defendants named above.

14. Respondent accepted a plea of guilty at Dennis Betetti's arraignment on June 21, 1978, and upon being made aware that Betetti was the individual who had approached the car on the previous evening, stated that he disputed a factual assertion made by Mr. Betetti, as follows:

> You made a statement to this court that you were not drinking beer. You had no beer in your hand, and Mr. Betetti, I saw with my own eyes beer in your hand. Therefore, I am going to disqualify myself. . . [Ex. 1A(6-7)]

15. Respondent thereafter disqualified himself from handling further proceedings in regard to defendant Betetti.

With respect to Charge II of the Formal Written Complaint the Commission makes the following findings of fact.

16. During the course of the arraignment proceedings held on June

21, 1978, in the cases of *People* v. *David Magee, Dennis Betetti* and *Bruce Mitchell*, respondent improperly participated in those proceedings by:

(a) Making the following remarks from the bench concerning Officer Wayne Hadley, one of the arresting officers:

Mr. Betetti: Yes. Can I just ask one more question. The officer that arrested us, he stated that he thought he was doing wrong and he felt that the arrest was wrong, but he had to do it because you were in the car behind him.

The Court: He said that?

Mr. Magee: That's right.

The Court: You gentlemen stay right in the court. He is going to say that on the record. You heard him say that?

Mr. Betetti: He said—I said the officer—

The Court: He said that. Let him say that on the record. It doesn't make any difference. He will be suspended from the force saying that. You sit right here in the courtroom while he gets called in and says that on the record. He will be suspended from the force. There is no question. You will be here Friday?

The Court: Jack, I want Officer Wayne Hadley called in immediately. Immediately.

(Arr. Tr. 3-5, June 21, 1978)

(b) Initiating an *ex parte* conversation with Officer Wayne Hadley, in respondent's chambers during a recess of the proceedings, concerning Mr. Betetti's statement to the court set forth in paragraph 16(a) above and thereafter resolved the issue raised by the defendant Betetti against his interest;

(c) Making the following remarks from the bench which were based upon his presence and observations at the place of the arrest:

Mr. Magee: Didn't your brother say that the signs were torn down in the—

The Court: Some of the signs.

Mr. Magee: We didn't know.

The Court: Mr. Magee, you are going to help us put them back up. June 28th for sentencing, Mr. Magee. You case will be transferred to Judge Cassetti, Mr. Betetti.

Mr. Magee: When you came up to the group there was at least five or

six other people, right? They just walked away and went away; is that fair?

The Court: No, I didn't see that, Mr. Magee.

Mr. Magee: You didn't see that?

The Court: No.

Mr. Magee: You didn't see the beer sitting around then?

The Court: Oh yes. I did see that. I did see that. You are right. I did see that.

Mr. Magee: How?

The Court: Mr. Magee, I am telling you I didn't see it. Now, if you want me to say I saw it, I will say I saw it. If you want me to say it. Would it make you happy if I say—

Mr. Magee: Not unless you really didn't see it.

The Court: Then I didn't see it. Mr. Magee, is it that you don't want to—

Mr. Magee: That is it is not—I can't—

The Court: I didn't see it because I was not looking for it.

Mr. Magee: You saw—

The Court: I didn't see you at all, Mr. Magee. I never saw you. You understand that?

Mr. Magee: All right.

The Court: He is the only one I ever saw. That is why I disqualified myself. I never saw you, Mr. Magee. You could have been there I don't remember you at all.

(Arr. Tr. 8-10, June 21, 1978)

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.3(c)(1), 33.3(c)(1)(i), 33.3(c)(1)(ii), and 33.3(c)(1)(iv)(d) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3C(1), 3C(1)(a), 3C(1)(b) and 3C(1)(d)(iv) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

Charge III of the Formal Written Complaint is not sustained and therefore is dismissed.

A judge is required to disqualify himself from presiding over any proceeding in which he has personal knowledge of disputed evidentiary facts, has been a material witness to the matter at bar is related

within six degrees of relationship to a material witness, or in which his impartiality might otherwise be reasonably questioned (Section 33.3[c] of the Rules).

Because he had been present with his police sergeant brother at the scene of the arrests of eight defendants on June 20, 1978, was a witness to some of the arrests, was related to a witness thereto and himself had personal knowledge of evidentiary facts, respondent was obliged under the Rules to recuse himself from any participation in the cases when they appeared on the court calendar. Instead of immediately stepping down, however, respondent conducted the arraignments and, from the bench, engaged in disagreements over the facts in the case at issue with two of the defendants. Such conduct, apart from violating the rules on disqualification, was injudicious.

The matter of an appropriate sanction is not now before us. Written and oral argument on sanction shall be scheduled by the clerk of the Commission upon application of counsel.

All concur.

Dated: June 10, 1981

*Mr. Maggipinto's term as a member of the Commission expired on March 31, 1981. The vote on this determination was rendered on March 10, 1981.

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 L. TIPPETT,

A Justice of the Town Court of Tonawanda, Erie County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Barry M. Vucker, Of Counsel) for the Commission.

Doyle & Phelan (By George P. Doyle) for Respondent.

The respondent, James L. Tippett, a justice of the Town Court of Tonawanda, Erie County, was served with a Formal Written Complaint dated April 15, 1980, alleging misconduct with respect to seven traffic cases. Respondent filed an answer dated May 28, 1980.

By order dated July 7, 1980, the Commission designated Solon J. Stone, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on December 15, and 16, 1980, and the referee filed his report to the Commission on April 22, 1981.

By motion dated June 19, 1981, the administrator of the Commission moved to confirm in part and to disaffirm in part the referee's report, and for a determination that respondent be censured. Respondent did not submit papers in opposition but appeared by counsel for oral argument on October 23, 1981. Thereafter the Commission con-

sidered the record of this proceeding and now makes the following findings of fact:

1. Charge I: On June 7, 1976, respondent reduced a charge of speeding to failure to obey a traffic control device in *People* v. *W. F. Blackwell, Jr.*, as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi and Lewiston Town Court Clerk Gloria A. Donovan, seeking special consideration on behalf of the defendant.

2. Charge II: On August 16, 1976, respondent reduced a charge of speeding to failure to obey a traffic sign in *People* v. *Dario Capozzi* as a result of a communication he received from the defendant's brother-in-law, a State Trooper, seeking special consideration for the defendant.

3. Charge III: On January 6, 1975, respondent reduced a charge of speeding to failure to obey a traffic sign in *People* v. *Franklin Gaglione* as a result of a communication he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

4. Charge IV: On August 19, 1976, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in *People* v. *Francis Valente* as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

5. Charge VI: On June 8, 1972, respondent accepted the forfeiture of bail in lieu of further prosecution of a speeding charge in *People* v. *Frances M. Klein* as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, confirming a prior conversation with the Tonawanda Town Court clerk and seeking special consideration on behalf of the defendant.

6. Charge VII: On May 10, 1976, respondent reduced a charge of speeding to failure to obey a traffic device in *People* v. *Roy Di Pasquale* as a result of a letter he received from Lancaster Town Court Justice J. Michael Kelleher, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(4), 33.3(b)(1) and 33.3(b)(2) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(4), 3B(1) and 3B(2) of the Code of Judicial Conduct. Charges I through IV and Charges VI and VII of

the Formal Written Complaint are sustained and respondent' misconduct is established. Charge V of the Formal Written Complair is not sustained and therefore is dismissed.

It is improper for a judge to seek to persuade another judge, on th basis of personal or other special influence, to grant special consider ation to a defendant. It is also improper for a judge to accede to suc requests from judges and others with influence. By granting the re quests of other judges for favorable dispositions for defendants i traffic cases, respondent violated the Rules enumerated above.

Courts in this and other states, as well as the Commission, hav found that favoritism is serious judicial misconduct and that ticket fixing is a form of favoritism.

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

All concur, except (i) with respect to Charges IV and VI, Mr Cleary, Mr. Kirsch, Mrs. Robb and Judge Shea dissent and vote t dismiss the charges, (ii) with respect to Charge V, Mrs. DelBello dis sents and votes to sustain the charge and (iii) with respect to sanctior Mrs. Robb dissents and votes that respondent be censured.

Dated: December 3, 1981

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 H. RICHARDSON,

A Justice of the Village Court of Waterloo, Seneca County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (John W. Dorn, Of Counsel) for the Commission.

Charles E. Shaffer for Respondent.

The respondent, James H. Richardson, a justice of the Village Court of Waterloo, Seneca County, was served with a Formal Written Complaint dated January 28, 1981, charging him with intemperate and otherwise injudicious behavior in connection with his arrest for driving while intoxicated in April 1977. Respondent filed an answer dated February 16, 1981.

By order dated March 5, 1981, the Commission designated the Honorable Harold A. Felix referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on April 7 and 8, 1981, and the referee filed his report to the Commission on June 23, 1981.

By motion dated September 3, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the administrator's motion on October 8, 1981, and cross-moved for dismissal of the For-

mal Written Complaint or, in the alternative, for a determination that respondent be admonished. Oral argument was waived.

The Commission considered the record of this proceeding on October 27, 1981, and made the following findings of fact:

1. On April 4, 1977, at approximately 2:00 A.M., Seneca Falls Village Police Sergeant Louis Van Cleef and Officer Steven Manino stopped a motor vehicle driven by respondent and charged respondent with driving in excess of the 30 mph speed limit on Falls Street in Seneca Falls and driving while intoxicated.

2. At the time of arrest, respondent made derogatory remarks to Sergeant Van Cleef about Officer Manino, referring to Officer Manino as a "little pisspot" and stating that "he never should have been a cop to begin with". Respondent's remarks were heard by Officer Manino.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1 and 33.5(a) of the Rules Governing Judicial Conduct and Canons 1 and 5A of the Code of Judicial Conduct. Paragraphs 4 and 5b of the Formal Written Complaint are sustained and respondent's misconduct is established. Paragraphs 5a, 5c and 5d of the Formal Written Complaint are not sustained and therefore are dismissed.

Respondent's operation of a motor vehicle in such a condition as to result in a charge of driving while intoxicated, and his derogatory remarks about one of the police officers who effected his arrest, demonstrated a failure to observe the high standards of conduct required of a judge and detracted from the dignity of his office.

By reason of the foregoing, the Commission determines that respondent should be admonished.

All concur.

Dated: December 8, 1981

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

DONALD X. CLAVIN,

A Judge of the District Court, Nassau County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Robert H. Straus and Jean Savanyu, Of Counsel) for the Commission.

William E. Turner for Respondent.

The respondent, Donald X. Clavin, a judge of the District Court, Nassau County, was served with a Formal Written Complaint dated December 6, 1979, alleging intemperance and other unjudicious demeanor in eight cases in 1976 and 1977. Respondent filed an answer dated February 19, 1980.

By order dated March 18, 1980, the Commission designated Gerald Harris, Esq., referee to hear and report proposed findings of facts and conclusions of law. The hearing commenced on May 2, 1980, and was concluded on February 5, 1981.

By motion dated March 6, 1981, respondent moved to dismiss the Formal Written Complaint. By determination and order dated April 30, 1981, the Commission denied the motion.

The referee filed his report to the Commission on July 6, 1981. By

motion dated August 25, 1981, the administrator of the Commission moved to confirm in part and to disaffirm in part the referee's report and for a determination that respondent be censured. Respondent cross-moved on October 5, 1981, to disaffirm in part and to confirm in part the referee's report and to dismiss the Formal Written Complaint. The Commission heard oral argument on the motion on October 22, 1981, thereafter considered the record of this proceeding and made the following findings of fact:

1. From May 4, 1976, through May 12, 1976, respondent presided over the jury trial of *People* v. *Jeffrey Attie*. The exchanges from the trial transcript, as set forth in Charge I of the Formal Written Complaint, are accurate, and respondent made the statements attributed to him therein. During the trial respondent:

(a) created the appearance that he was partial to the prosecution and its case;

(b) deprived the defendant, his attorney and witnesses of the opportunity to be heard fully by engaging in conduct which tended to intimidate and threaten them;

(c) unduly projected himself into the trial in a prosecutorial manner;

(d) made statements tending to prejudice the jury against the defendant, his attorney, his witnesses and the merits of his case; and

(e) was impatient with and discourteous to defendant's counsel.

2. On July 12, 1976, respondent presided over the non-jury small claims trial of *Fetkowitz* v. *Tauscher*. The exchanges from the trial transcript, as set forth in Charge II of the Formal Written Complaint, are accurate, and respondent made the statements attributed to him therein. During the trial respondent:

(a) was impatient and discourteous toward the defendant;

(b) deprived the defendant of the opportunity to be heard fully by engaging in conduct which tended to intimidate, threaten and harass him; and

(c) disparaged and demeaned the defendant.

3. On June 29, 1977, respondent presided over the non-jury small claims trial of *Cepale* v. *Woods, Walter Kiddie & Co., Inc.* The exchanges from the trial transcript, as set forth in Charge IV of the For-

mal Written Complaint, are accurate, and respondent made the statements attributed to him therein. During the trial respondent:

(a) deprived defendant Eugene Woods of the opportunity to be heard fully by engaging in conduct which tended to intimidate, threaten and harass him; and

(b) disparaged and demeaned Mr. Woods.

4. On June 29, 1977, respondent conducted an inquest in the small claims matter of *Davis* v. *Jacobson*. During the proceeding, respondent made the statement attributed to him in Charge V of the Formal Written Complaint. Respondent:

(a) was impatient, inconsiderate and discourteous toward the plaintiff and

(b) disparaged and demeaned the plaintiff.

5. On June 29, 1977, respondent presided over the non-jury small claims trial of *Feinne* v. *Daljack Co., Inc.* The exchanges from the trial transcript, as set forth in Charge VI, subparagraph (c), of the Formal Written Complaint, are accurate, and respondent made the statements attributed to him therein. During the trial respondent disparaged Daniel Itzler, the defendant corporation's representative.

6. On June 29, 1977, respondent presided over the non-jury small claims trial of *Bowers* v. *Mauro*. The exchanges from the trial transcript as set forth in Charge VII of the Formal Written Complaint are accurate, and respondent made the statements attributed to him therein. During the trial, respondent's threat to cause a summons to be issued to the defendant constituted improper intimidation.

7. On June 29, 1977, respondent presided over the non-jury small claims trial of *Lester* v. *VIP Sleep Shops, Ltd.* During the trial, respondent made the statement attributed to him in Charge VIII of the Formal Written Complaint and thereby disparaged Nadalynne Aaronson, the defendant corporation's representative.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.3(a)(1), 33.3(a)(2), 33.3(a)(3), and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2A, 3A(1), 3A(2), 3A(3) and 3A(4) of the Code of Judicial Conduct and Sections 700.5(a) and (e) of the Rules of the Appellate Division, Second Department. Charges I and II and Charges IV through VIII of the Formal Written Complaint are sustained insofar as they are consistent with the findings of fact

herein, and respondent's misconduct is established. Charge III of the Formal Written Complaint is not sustained and therefore is dismissed. Respondent's motion to dismiss the Formal Written Complaint is denied. Respondent's legal arguments have been considered and found to be without merit.

Respondent's demeanor in the cases at issue was impatient, threatening and disparaging of parties in litigation before him. His manner often created the appearance of partiality toward one party or the other and intimidated lawyers, ligitants and witnesses.

The deficiencies of the physical plant, the crowded court calendar and the general atmosphere of tension in the small claims part of the District Court may have contributed to but do not excuse respondent's intemperate demeanor. Most people have their only contact with the legal system in such forums as small claims courts, and their experiences will often form the basis for their views toward the judicial system. It is therefore particularly important for judicial officers in lower courts to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The Commission notes in mitigation that respondent appears to be contrite with respect to his misconduct and that, at the oral argument before the Commission, he expressed an intention to improve his conduct.

By reason of the foregoing, the Commission determines that respondent should be admonished.

All concur.

Dated: December 28, 1981

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 H. REEDY,

A Justice of the Town Court of Galway, Saratoga County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jack J. Pivar, Of Counsel) for the Commission.

Morris D. Strauss for Respondent.

The respondent, James H. Reedy, a justice of the Town Court of Galway, Saratoga County, was served with a Formal Written Complaint dated June 25, 1980, alleging various discrepancies in his deposits of court funds and financial reports to the Department of Audit and Control. Respondent filed an answer on July 29, 1980.

By order dated August 22, 1980, the Commission designated Martin M. Goldman, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on December 5, 1980, and the referee filed his report on May 15, 1981.

By motion dated June 17, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion on August 5, 1981. The Commission heard oral argument on the motion on October 22, 1981, thereafter considered the record of the

proceeding and made the following findings of fact:

1. Respondent has been a justice of the Town Court of Galway for 10 years. He is also a justice of the Village Court of Galway.

2. Respondent suffered a heart attack in 1974. From 1975 through 1977, during respondent's convalescence, his wife, Florence Reedy, acted as his court clerk in charge of records. Under respondent's direction, Mrs. Reedy assumed responsibility for respondent's official court accounts and his deposit, remittance and reporting requirements. Mrs. Reedy was not trained to fulfill these responsibilities but attempted to qualify herself by taking an adult education course in bookkeeping.

3. Between 1975 and 1977, respondent and his wife would place court funds, including checks and cash received from fines paid to the court, in an unlocked desk drawer in their home prior to depositing them in the official court bank account.

4. Between March 1975 and November 1977, respondent and his wife (i) failed to deposit in the official court bank account $752 in fine monies received by respondent in his judicial capacity, (ii) omitted references to 23 cases in reports to the Department of Audit and Control amounting to $567 of the $752 deficiency, as set forth in *Schedule A* appended to the Formal Written Complaint, and (iii) underreported to the Department of Audit and Control the fines received in nine cases amounting to $185 of the $752 deficiency, as set forth in Charge II of the Formal Written Complaint. Respondent's certification of the accuracy of his reports to the Department of Audit and Control was erroneous.

5. After respondent's records and funds were audited by the Department of Audit and Control, Mrs. Reedy filed an amended report, correcting the errors and omissions noted in paragraph 4 above and paying out of her personal funds the $752 discrepancy.

6. Between March 1975 and November 1977, respondent's individual docket sheets accurately reflected the amounts of the fines received in the 32 cases referred to in paragraph 4 above. There is no indication that respondent's records and bookkeeping were deficient prior to 1975 or after 1977.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I and II of the

Formal Written Complaint are sustained and respondent's misconduct is established.

Respondent's failure to supervise the preparation and handling of court accounts, reports and records resulted in a $752 deficiency in court funds as well as inaccurate reports and incomplete remittances of official funds to the Department of Audit and Control from 1975 through 1977. (Respondent's medical fitness to serve during this period, when he was recovering from a heart attack, is not in issue, since respondent presided over cases and otherwise performed his judicial duties.)

The placement of court monies by respondent in an unlocked desk drawer in his home constituted negligence in his management of the public money entrusted to his care. His assertion that $25 of that money may have been stolen by the child of a neighbor illustrates one consequence of his carelessness in leaving court funds unprotected, but neither accounts for the unexplained $752 deficiency in his court accounts nor excuses the failure to report nine cases and the underreporting of 23 others to Audit and Control.

The Commission notes in mitigation that respondent's records and remittances have otherwise been accurate, that the referee did not find that the unreported money had been converted to respondent's personal use, and that respondent and his wife complied with bookkeeping suggestions and directions made by Audit and Control after the discovery of the discrepancy.

By reason of the foregoing, the Commission determines that respondent should be admonished.

All concur, except Mrs. DelBello and Mr. Kirsch dissent with respect to sanction and vote that respondent should be censured.

Dated: December 28, 1981.

APPENDIX

Update to Volume One

Matter of Morris Spector

The Commission's determination that Supreme Court Justice Morris Spector be admonished was accepted by the Court of Appeals. 47 NY2d 462 (1979).

Matter of George C. Dixon

The Commission's determination that Ghent Town Justice George C. Dixon be censured was modified by the Court of Appeals to an admonition. 47 NY2d 523 (1979).

Matter of William J. Bulger

The Commission's determination that Wappinger Town Justice William J. Bulger be censured was accepted by the Court of Appeals. 48 NY2d 32 (1979).

Matter of John G. Dier

The Commission's determination that Warren County Court Judge John G. Dier be censured was accepted by the Court of Appeals. 48 NY2d 874 (1979).

Matter of Norman E. Kuehnel

The Commission's determination that Hamburg Town Justice Norman E. Kuehnel be removed was accepted by the Court of Appeals 49 NY2d 465 (1980).

Matter of James L. Kane

The Commission's determination that Supreme Court Justice James L. Kane be removed was accepted by the Court of Appeals. 50 NY2d 360 (1980).

Matter of Arthur W. Lonschein

The Commission's determination that Supreme Court Justice Arthur W. Lonschein be censured was modified by the Court of Appeals to an admonition. 50 NY2d 569 (1980).

INDEX OF DETERMINATIONS

INDEX OF DETERMINATIONS
(Alphabetical, By Name of Respondent)