DETERMINATIONS

OF THE

NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

VOLUME THREE
1982-1983

COMMISSION MEMBERS

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

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

Carroll L. Wainwright, Jr., Esq., served to
March 31, 1983, and was succeeded by Mr. Sheehy

ADMINISTRATOR

Gerald Stern, Esq.

DEPUTY ADMINISTRATOR

Robert H. Tembeckjian, Esq.

CLERK OF THE COMMISSION

Albert B. Lawrence, Esq.

Robert H. Tembeckjian, Esq., served to
April 6, 1983, and was succeeded by Mr. Lawrence

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

TABLE OF CONTENTS

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

MARGARET TAYLOR,

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

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea

Appearances: Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission

Julien, Schlesinger & Finz (By Alfred S. Julien; David Weprin, Of Counsel) for Respondent

The respondent, Margaret Taylor, a judge of the Civil Court of the City of New York, New York County, was served with a Formal Written Complaint dated March 3, 1981, alleging misconduct with respect to her actions toward attorneys in two cases in October 1979. Respondent filed an answer dated April 13, 1981.

By order dated April 23, 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 June 2, 3, 10 and 11, 1981, and the referee filed his report on August 28, 1981.

By motion dated September 25, 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 and cross moved to dismiss the Formal Written Complaint. The Commission heard oral argument on the motions on November 24, 1981,

thereafter considered the record of the proceeding and made the findings of fact herein.

With respect to Charge I, the Commission makes the following findings of fact.

1. Respondent has been a judge of the New York City Civil Court since January 1, 1977. In October 1979, respondent was assigned to Part XII, a Conference and Assignment Part of the Civil Court. A rule of the Civil Court required the appearance in that part by attorneys or their representatives who were authorized to settle, make binding concessions or otherwise dispose of matters before the court. Cases not settled would be assigned for immediate trial.

2. On October 17, 1979, the case of *Schwartz* v. *Republic Insurance Company* came before respondent, having been adjourned from a previous date. The plaintiff was represented by Lawrence Anderson and the defendant by Roberta Tarshis.

3. In conference with counsel on the *Schwartz* case, respondent was advised that the defendant company disputed the amounts sought by the plaintiff and that an issue of fraud, possibly vitiating the underlying insurance policy, might be involved in the case.

4. In the conference with respondent, Ms. Tarshis stated that the defendant company demanded a jury trial. Respondent sought to dissuade Ms. Tarshis from the jury demand. Respondent told Ms. Tarshis that, notwithstanding the right to demand a jury trial, the goal of preserving the jury system would not be enhanced by jurors (i) who were reluctant to sit on long, detailed accounting cases such as the *Schwartz* case and (ii) who publicly voiced their displeasure at such assignments.

5. In seeking to persuade Ms. Tarshis to waive the jury, respondent warned Ms. Tarshis that unless there were such a waiver, Ms. Tarshis would be forced to sit in court until the jury was waived.

6. In the conference with opposing counsel, respondent was made aware that both sides were ready for trial in the *Schwartz* case. In response to an inquiry from respondent, plaintiff's counsel Mr. Anderson said a settlement was not possible because of the defendant company's position. Thereafter Ms. Tarshis undertook to call her client to ascertain whether it would waive a jury, notwithstanding its previously asserted position to the contrary. The matter was adjourned to 9:30 AM the next day.

7. On October 18, 1979, both Ms. Tarshis and Mr. Anderson were present in court and ready for trial at 9:30 AM. At 2:30 PM, Ms. Tarshis approached the bench and asked that the *Schwartz* case be called.

Respondent, aware that the jury demand had not been waived, directed Ms. Tarshis to sit down.

8. On at least two occasions on the afternoon of October 18, 1979, respondent announced the availability of trial parts and asked if any attorneys were present who were ready for trial or to select a jury. On both occasions Ms. Tarshis and Mr. Anderson stood up, announced their readiness and were told by respondent to resume their seats. In a colloquy later that afternoon, respondent told Ms. Tarshis that the *Schwartz* case would not be called until her client waived a jury trial.

9. At approximately 3:30 PM on October 18, 1979, after Ms. Tarshis and Mr. Anderson again indicated their readiness to pick a jury, respondent stated that she did not wish them to select a jury. Respondent thereupon excused Mr. Anderson from court and directed Ms. Tarshis to remain seated.

10. After respondent excused Mr. Anderson, Ms. Tarshis requested that a court reporter record the incident. Her request was not granted. Ms. Tarshis was excused by respondent approximately five minutes after Mr. Anderson had been excused.

11. At approximately 3:45 PM on October 18, 1979, Mr. Anderson and Ms. Tarshis went to the office of Judge Eugene Wolin, Judge-In-Charge of the Civil Court, New York County, to discuss the foregoing events in the *Schwartz* case. At the conclusion of this meeting, Ms. Tarshis returned to respondent's court and was informed by respondent that the case had been adjourned to 9:30 AM the next day.

12. On October 19, 1979, Ms. Tarshis reported early to respondent's court and proceeded to respondent's chambers, where she expressed her concern about the foregoing events in the *Schwartz* case. Ms. Tarshis told respondent she was upset about the matter. Respondent assured Ms. Tarshis that there was nothing personal in her actions toward Ms. Tarshis and that she was acting to preserve the jury system. Respondent apologized to Ms. Tarshis for any inconvenience or difficulty Ms. Tarshis may have encountered.

13. On October 19, 1979, at the opening of court, respondent apologized in open court to Ms. Tarshis and adjourned the proceedings in the *Schwartz* case to the November term of court before another judge. The *Schwartz* case was settled on February 4, 1980.

With respect to Charge II, the Commission makes the following findings of fact.

14. On October 11, 1979, at approximately 2:00 PM, the case of *Giordano* v. *Allstate Insurance Co.* was called in respondent's part.

The defendant was represented by James P. McCarthy, an attorney admitted to the bar in 1963. The plaintiff was represented by the firm of Weg, Myers, Jacobson & Sheer.

15. When the *Giordano* case was called, Mr. McCarthy approached the bench and advised respondent that he had a complaint with regard to the order in which the court clerks were calling the cases to be heard. Mr. McCarthy advised respondent that certain lawyers had their cases called shortly after they arrived in court, ahead of others who had been waiting in court for up to several hours. Mr. McCarthy and respondent discussed the court's calendar procedure in general.

16. While respondent and Mr. McCarthy were discussing court procedures, Glen Jacobson approached the bench. Mr. Jacobson was a law clerk for the plaintiff's counsel. He had graduated from law school but had not yet been admitted to the bar. Mr. Jacobson handed respondent an affirmation which he designated as one of engagement made by plaintiff's counsel, in support of an application for an adjournment. Respondent threw the affirmation back at Mr. Jacobson and stated the case was ready for trial. Mr. McCarthy stated that it appeared respondent denied Mr. Jacobson's application because Mr. McCarthy criticized court procedures, whereupon respondent left the courtroom.

17. At approximately 2:15 PM on October 11, 1979, Mr. McCarthy, Mr. Jacobson and two other attorneys who had been in court and observed the foregoing events, went to the office of the Honorable Eugene Wolin, Judge-In-Charge of the Civil Court, New York County, to inform him of respondent's action. Judge Wolin telephoned respondent and told her there were attorneys in his office who were complaining about her actions in the *Giordano* case. Respondent told Judge Wolin that she would return to her courtroom shortly.

18. At approximately 2:20 PM, respondent returned to the courtroom and stated that the *Giordano* case would not be heard until all other cases had been heard.

19. At approximately 3:30 PM on October 11, 1979, after all the other cases had been heard, respondent called the *Giordano* case and adjourned it to the following day.

20. Respondent acted in the manner described on the afternoon of October 11, 1979, because of her anger at the complaint made to Judge Wolin by Mr. McCarthy and Mr. Jacobson about her procedure.

21. On October 12, 1979, respondent directed her court clerks to call the *Giordano* case after all the other cases had been heard. At 9:45

AM, all the parties in the *Giordano* case were present in court. At approximately 12:30 PM, the *Giordano* case was called. Respondent denied the plaintiff's request for an adjournment and subsequently granted the plaintiff's request to have the case marked off the calendar.

22. Respondent acted in the manner described on October 12, 1979, because of her anger at the complaint made the previous day to Judge Wolin by Mr. McCarthy and Mr. Jacobson about her procedure.

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(a)(1-5) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3A(1-5) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established, except that paragraph 12 of Charge II is not sustained and therefore is dismissed.

A judge is obliged, *inter alia*, to be patient, dignified and courteous to those who appear before her in her official capacity, to accord parties and their counsel full right to be heard according to law, and to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Sections 33.2 and 33.3 of the Rules). Respondent's conduct did not comport with these standards.

By refusing to call and by otherwise impeding the prompt disposition of the *Giordano* case, respondent was, in essence, retaliating against the attorneys in that case for their having complained about respondent's court procedures to the administrative judge. Such a deliberate manipulation of the court calendar constitutes an abuse of judicial authority which impaired the rights of the parties, the dignity of the proceedings and the public's confidence in the integrity of the judiciary.

By forcing defendant's counsel in the *Schwartz* case to sit in court to compel a waiver of a jury trial, even though both sides were ready to select a jury and trial parts were available, respondent in essence (i) punished a lawyer whose client did not wish to pursue a settlement and (ii) tried to coerce the lawyer to waive a right she had repeatedly asserted.

The administrative directives and pressures on a judge to try to settle cases in busy courts such as respondent's do not excuse the abuses of discretion and decorum exhibited by respondent in the matters herein.

The Commission notes that respondent apologized to one of the lawyers she had mistreated. The Commission also notes that the

apology followed complaints by lawyers to the administrative judge about respondent's conduct.

By reason of the foregoing, the Commission, by vote of 6 to 2, determines that respondent should be admonished. Mr. Kovner and Judge Shea dissent as to sanction and vote that the appropriate disposition is a letter of dismissal and caution. Mr. Kovner also dissents as to Charge II (the *Giordano* matter) and votes that the charge be dismissed. Mr. Kovner files herewith his dissenting opinion.

Dated: January 13, 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

MARGARET TAYLOR,

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

DISSENTING OPINION BY MR. KOVNER

For the reasons set forth below, I concur with respect to Charge I, dissent with respect to Charge II, and conclude that a private letter of dismissal and caution would be the appropriate sanction.

Judge Taylor was, in October 1979, assigned to a conference and assignment part, which was responsible for a calendar previously handled by three such parts (formerly called "blockbuster" parts). During eighteen court days of that month, 1032 cases appeared on Judge Taylor's calendar. During that month, 367 were settled, 229 were marked off calendar and 45 were set down for inquest, a record praised by Judge Francis X. Smith, the Administrative Judge of the Civil Court, and by Justice Leonard Sandler of the Appellate Division, First Department, both of whom testified before the referee.

Judge Taylor's mandate, in that difficult part, was to conference and settle cases, narrow the issues where possible, and to discourage adjournments and thus encourage discussions among the waiting attorneys with the expectation that more settlements, or at least issue stipulations, could be achieved.* As Justice Sandler testified at the hearing before the referee: "Well, I think that when lawyers are together waiting in a courtroom setting, it is conducive to their talking to each other. I think it encourages communication of a kind that may not otherwise take place" [440].** The rules applicable to such parts were well publicized by the New York Law Journal:

---

*In noting the objectives of judges assigned to such parts, I do not suggest that the present system is ideal but merely recognize the inevitable burdens facing urban judges assigned to such parts.

**Bracketed numbers without a prefix refer to the hearing transcript. Bracketed numbers with the prefix "Ref." refer to the referee's report.

> Attorneys or those representatives who are thoroughly familiar with the actions and fully authorized to settle, make binding concessions or otherwise to dispose of the matter are required to answer this calendar.
>
> Cases not settled will be forthwith assigned for immediate trial. Consent adjournments will not be recognized nor will service representatives be permitted to answer this calendar [Hearing Exhibit E].

The record is uncontroverted that, to achieve these results, Judge Taylor frequently took lunch while working through the lunch hour, made certain cases returnable in the afternoon to accommodate members of the bar, and rarely left the part before 5:00 PM. The court staff assigned to assist such a judge had been called upon to work beyond the normal hours required of such personnel. This is the context in which the events of October 11 and October 12 must be viewed.

The findings of fact made by the referee with respect to Charge II are not disputed by respondent. When *Giordano* v. *Allstate Insurance Co.* was first called, no representative of plaintiff was present. Indeed, in sending to court a clerk not yet admitted to the bar, with an "Affirmation of Engagement", plaintiff's attorneys appeared to be in violation of the applicable rule, *supra*, and respondent would have been justified in marking the case off the calendar on October 11.* Since the majority did not base its finding of misconduct on the manner in which the affirmation was rejected, it need only be noted that the toss of the document back to Mr. Jacobson, landing on respondent's desk near Mr. Jacobson, cannot be viewed as misconduct.

The essence of the misconduct found by the majority is based not in lack of temperament but in abuse of authority, that is, in the inappropriate direction that *Giordano* be called last on the afternoon of October 11 and last again on the morning of October 12. A trial judge has, of course, very broad discretion in the control and ordering of his or her own calendar. *Landis* v. *North American Co.*, 299 US 248, 254. Such discretion, however, does not extend to punitive or discriminatory actions in the calling of a calendar. Thus, no one would contend that a trial judge could direct that the cases of black attorneys be called last, or that the cases of an attorney, conceded to be a social friend of the judge, be called first.

---

*To offer the affirmation as one of "actual engagement" was misleading, since there is a question as to whether it was sufficient to justify the requested adjournment.

In finding misconduct, the majority appears to rely on the referee's finding that the direction to call *Giordano* last on the two occasions was

> *for no reason other than respondent's resentment* at Mr. McCarthy's bringing to her attention what he believed was wrongful action in respect to the calling of cases by her court officers and going to the Deputy Administrative Judge immediately thereafter [Ref. 39, emphasis added].

I do not find in the record adequate support for such a finding.

The respondent testified that the decision to call *Giordano* last was, in part, due to her concern that loud allegations of favoritism* on the part of the court officers should not be made in the presence of many other people [576] and that she hoped that a trial lawyer (as opposed to a clerk not yet admitted to practice) would appear prior to the calling of the case on October 11. The Commission's counsel urged that such testimony was at variance with the respondent's Answer to the Formal Written Complaint and with her testimony at an earlier investigative appearance, where she referred to her concern about the complaint to Judge Wolin and acknowledged an effort

> to protect the reputation of the two court officers who were diligently performing their tasks, on many occasions without taking lunch, and in a proper manner assisting the court to cope with a daily calendar of 100-150 cases [Answer Par. 23].

I find no inconsistency between respondent's testimony at the hearing before the referee, on the one hand, and her testimony at the investigative appearance and in her Answer, on the other. The fact that she expressed annoyance at what she regarded as a serious but baseless allegation is not inconsistent with her testimony at the hearing that she preferred a less crowded courtroom at a time she anticipated the reassertion or further discussion of such serious charges. Unlike the referee who concluded that the action was motivated by "pure pique" [Ref. 83], I reject the urging of Commission's counsel to disregard respondent's testimony at the hearing. In doing so, I note that Commission's counsel has not challenged the evidence that respondent's "truthfulness, veracity, honesty and integrity" are unquestioned.

I believe that the effort to limit the number of persons who could hear the expected allegations (previously made in a loud voice) against the court officers was a legitimate concern for a trial judge assigned to

*McCarthy's allegation of favoritism in the calling of the calendar carried the implication that gratuities had been received by the court officers.

the conference and assignment part. In perceiving a legitimate concern, I do not suggest that the method adopted (i.e. the calling of *Giordano* last on two occasions) was appropriate. Nor does respondent, who readily acknowledges her error. Obviously, not every abuse of discretion amounts to misconduct, as this Commission has often observed. And, in ordering her calendar, as opposed to ruling on substantive matters, respondent's discretion was especially broad.

Respondent could have marked *Giordano* off the calendar on October 11 at approximately 2:00 PM, when it was first called. That it was not recalled until approximately 3:30 PM should not be viewed as punitive, especially where respondent had not taken a lunch hour. The case was in fact marked off the calendar between noon and 1:00 PM the next day, due to plaintiff's attorney's announcement that he was not ready to proceed.* Although respondent's failure to call *Giordano* until the end of the morning calendar was inappropriate, her action did not rise to the level of misconduct.

With respect to sanction, it must be noted that the misconduct in Charge I led to a prompt private apology from respondent to Ms. Tarshis. Although the private apology followed the complaint to Judge Wolin, it was repeated in public in her courtroom, before many of the same people who had witnessed the inappropriate actions taken the previous day.

A public admonition, though less severe than a censure, is a serious sanction to any judge. There may be occasions where such discipline is appropriate, even for isolated misconduct. Unlike most conduct that has warranted such discipline, here there was no special interest served. Here, there is no issue of favoritism to relatives of judges (*Matter of Spector*, 47 NY2d 463 [1979]), no favors to other judges or public officials, as in the admonitions imposed in ticket-fixing cases (e.g., *Matter of Dixon*, 47 NY2d 532 [1979]), and no use of judicial office for a private interest (*Matter of Lonschein*, 50 NY2d 569 [1980]). The pending proceeding is based upon what was essentially overzealous actions by a judge, perhaps unduly responsive to administrative goals. Furthermore, there was no pattern of inappropriate conduct as was found, for example, in *Matter of Kaplan*, NYLJ Sept. 7, 1979, p. 5, col. 4, *Matter of Sena*, NYLJ Feb. 2, 1980, p.1, col. 4, *Matter of Mertens*, 56 AD2d 456, 392 NYS2d 860, or *Matter of Richter*, 42 NY2d (a), 409 NYS2d 1013.

---

*Significantly, the morning of October 12 was the only occasion at which attorneys for both parties could discuss settlement. As Justice Sandler testified, the practice of keeping people in court and trying to get them to talk together was "consonant with achieving results in the calendar" [440].

Relevant, too, is respondent's overall record. I believe the majority gave insufficient weight to the testimony of Judges Sandler and Smith, who praised her performance in the arduous part to which she was assigned.

In view of the respondent's impressive achievements on the bench, I believe that a private letter of dismissal and caution would have been the appropriate sanction.

Dated: January 13, 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

RUTH MILKS,

A Justice of the Town and Village Courts of Perry,
Wyoming County.

Before: Mrs. Gene Robb, Chairwoman
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 (Cody B. Bartlett, Of Counsel) for the Commission

Philip A. McBride for Respondent

The respondent, Ruth Milks, a justice of the Town and Village Courts of Perry, Wyoming County, was served with a Formal Written Complaint dated February 25, 1981, alleging that she used the prestige of her judicial office to collect a private debt on behalf of her employer. Respondent filed an answer on May 2, 1981.

The Commission designated the Honorable John S. Marsh referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on June 1, 1981, and the referee submitted his report on August 18, 1981.

By motion dated October 5, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent waived submission of opposing papers and oral argument.

The Commission considered the record of this proceeding on November 23, 1981, and made the following findings of fact.

1. Respondent serves part-time as justice of the Town and Village Courts of Perry. Respondent has served as Village Court Justice continuously since June 1979 and as Town Court Justice since January 1981. From April 1980 to April 1981, respondent was also employed as a debt collector for the Rochester office of American Health Fitness Centers. Her collections territory included the Rochester and Buffalo areas. She had no accounts in Wyoming County and did not preside over suits involving her employer. Respondent resigned her position with American Health on April 1, 1981, on advice of counsel.

2. In March 1980 Christopher DiVincenzo, a resident of Kenmore, New York (Erie County), signed a contract for a fitness program with American Health. Shortly thereafter Mr. DiVincenzo and American Health disagreed on the terms of payment and Mr. DiVincenzo neither used American Health's facilities nor made any payments on the contract.

3. In early June 1980, respondent telephoned Mr. DiVincenzo's home, identified herself as "Judge Milks" and left a message for Mr. DiVincenzo to call her. Mr. DiVincenzo returned the call on June 4, 1980. Respondent again identified herself as "Judge Milks" and stated that she had called him to discuss his non-payment on the American Health contract. Respondent told Mr. DiVincenzo that his credit would be ruined if he did not make the payments and that he would have two weeks to make payment arrangements before she would submit the case to court. Respondent told Mr. DiVincenzo that American Health matters were not handled in her court. In answer to his inquiry as to his chances in a court case, respondent told Mr. DiVincenzo: "If you went to court you would lose."

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)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 5C(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

A judge is obliged to refrain from financial and business dealings that tend to exploit or reflect adversely upon judicial office (Section 33.5[c][1] of the Rules). A judge is also obliged not to lend the prestige of judicial office to advance a private interest (Section 33.2[c] of the Rules). By identifying herself as a judge while attempting to collect a disputed debt on behalf of her non-judicial employer, respondent violated the applicable rules. As such respondent failed to conduct herself in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Sections 33.1 and 33.2 of the Rules).

The Commission notes in mitigation that respondent resigned her position as a debt collector and that therefore the circumstances herein are not continuing.

By reason of the foregoing, the Commission determines that respondent should be admonished.

All concur.

Dated: January 20, 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

JOSEPH REICH,

A Justice of the Village Court of Tannersville, Greene County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Raymond S. Hack and Jack J. Pivar, Of Counsel) for the Commission

Alex Wiltse, Jr., for Respondent

The respondent, Joseph Reich, a justice of the Village Court of Tannersville, Greene County, was served with a Formal Written Complaint dated December 8, 1980, alleging that from July 1974 to March 1978 he failed to make proper deposits of monies received in his official capacity. Respondent filed an answer dated January 15, 1981.

By order dated February 17, 1981, the Commission designated Richard L. Baltimore, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on June 4, 1981, and the referee filed his report on September 18, 1981.

By motion dated October 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 opposed the motion on November 4, 1981. The Commission heard oral argument on the motion on November 23, 1981, thereafter considered the record of the proceeding and made the following findings of fact.

1. On May 6, 1976, respondent deposited into his personal checking account $830 in court funds. Respondent testified that this deposit was made by mistake and that he was unaware of it until May 1981.

2. On May 17, 1976, the balance in respondent's personal checking account fell to $615.78, and on November 18, 1976, it fell to $74.25. On July 13, 1976, respondent's official court account became overdrawn by $90. Respondent should have known of the mistaken deposit of $830 by virtue of this deficiency in his court funds.

3. For 25 of the 45 months from July 1974 to March 1978, respondent deposited less money than he had received in his official capacity. For 20 of those 45 months, he deposited more money than he had received in his official capacity. In this 45-month period respondent's average cumulative deficiency was $664.11.

4. Respondent's bookkeeping procedures are inadequate in that the transactions in his official bank account are not fully and accurately reflected in his records. Respondent's records of his finances and banking transactions are so inaccurate as to be unreliable. When requested by the Commission in August 1980 to explain the deficiencies in his court account, respondent was unable to do so.

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(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.

A judge is obliged to segregate and account for the funds he receives in his official capacity (Section 30.7 of the Uniform Justice Court Rules; see also Section 4-410 of the Village Law). By depositing $830 of court funds into his personal bank account, respondent violated the applicable rules and demonstrated negligence in his handling of public monies. Respondent's misconduct in this regard is exacerbated by his inadequate bookkeeping procedures, which are so unreliable that (i) the mistaken deposit of $830 was undiscovered for five years, even after the personal account into which it was deposited fell to $74.25 and the court account into which it should have been deposited was overdrawn by $90, (ii) for 45 consecutive months respondent's deposits either fell short or exceeded but never equalled the amount of money he actually received, resulting in an average deficit of over $664, and (iii) respondent himself could not adequately explain his records to the Commission.

The Commission concludes that the cumulative deficiency in respondent's court account relates to the mistaken deposit of $830 in May 1976. However, in view of the serious disorganization of respondent's records and accounting procedures, such an error cannot

be minimized. Unless respondent's practices are dramatically improved, such mistakes may recur and go undetected.

By reason of the foregoing, the Commission concludes that respondent should be censured.

All concur.

Dated: January 20, 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

RONALD LEMON,

A Justice of the Town Court of Allegany, Cattaraugus 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. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (John J. Postel, Of Counsel) for the Commission

William H. Mountain
for Respondent

The respondent, Ronald Lemon, a justice of the Town Court of Allegany, Cattaraugus County, was served with a Formal Written Complaint dated February 25, 1981, alleging various deficiencies in his court accounts and records. Respondent filed an answer dated March 23, 1981.

By order dated June 10, 1981, the Commission designated the Honorable John S. Marsh referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 28, 1981, and the referee filed his report with the Commission on October 7, 1981.

By motion dated December 24, 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 record of this proceeding on January 20, 1982, and made the following findings of fact.

1. Respondent has been a justice of the Town Court of Allegany since June 1969.

As to Charge I of the Formal Written Complaint:

2. From February 1, 1978, to March 14, 1980, respondent failed to deposit in his court bank account monies received in his judicial capacity within the time required by law and court rules, resulting in a deficiency of $2,431.

3. Respondent converted to his own use more than $2,000 in funds received by him in his judicial capacity by failing to deposit them as required and by using them for his personal benefit.

4. On March 14, 1980, respondent obtained a personal loan of $3,000, which he used to replace the court funds he had previously converted.

5. Respondent's testimony on September 19, 1980, during the Commission's investigation of this matter, and at the hearing before the referee, lacked candor in that he knowingly gave less than truthful answers to questions put to him relating to the conversion of funds.

6. Respondent does not believe it was wrong to use court funds for his personal benefit.

As to Charge III of the Formal Written Complaint:

7. On August 27, 1979, respondent received $600 in payment of a criminal fine from Bruce L. Steck.

8. On September 24, 1979, respondent received $502.50 in payment of a civil fine from George C. Van Cleef.

9. On September 24, 1979, respondent deposited the $1,102.50 he received in the *Steck* and *Van Cleef* cases into his official court account. Respondent did not report the dispositions in these two cases or remit the fines received to the State Comptroller until March 8, 1980.

10. Between September 24, 1979, and March 8, 1980, respondent used the $1,102.50 to cover in part a pre-existing deficiency in his court bank account.

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 30.7 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. Charges I and III of the Formal Written Complaint are sustained and respondent's misconduct is established. Charge II is not sustained and therefore is dismissed.

Respondent's failure to deposit and remit monies collected in his official capacity and his use of more than $2,000 in court funds for personal matters are flagrant misuses of the public money entrusted to his care. Compounding his original misconduct, respondent then attempted to cover part of his court account deficiency by depositing $1,102.50 received from cases whose dispositions he did not report. Though he later secured a personal loan to cover the remaining court account deficiency, this in no way mitigates his having converted court money to his personal use. Such a breach of the public trust, standing alone, would warrant respondent's removal from office. (*See, Matter of Cooley* v. *Commission*, 53 NY2d 64 [1981] and *Bartlett* v. *Flynn*, 50 AD2d 401 [1976].)

Respondent's misconduct is further compounded by his lack of candor regarding the conversion of his court funds. As the referee noted in his report:

> Respondent's testimony . . . revealed a complete lack of candor on his part and a disposition to withhold and misrepresent relevant facts until circumstances developed during his examination indicated to him the apparent expediency to change his testimony . . . [Ref. Rep. 10].

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

Dated: March 15, 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

PATRICK J. CUNNINGHAM,

A Judge of the County Court, Onondaga 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. William J. Ostrowski
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission

Bruce O. Jacobs for Respondent

The respondent, Patrick J. Cunningham, a judge of the County Court, Onondaga County, was served with a Formal Written Complaint dated July 8, 1981, alleging that he engaged in *ex parte* communications with a lower court judge concerning four of the lower court judge's decisions which were on appeal before respondent. Respondent filed an answer dated July 28, 1981.

On November 20, 1981, respondent, his attorney and the administrator of the Commission 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 render its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement on December 16, 1981, determined that no outstanding issue of fact remained and set a schedule for memoranda and oral argument to determine (i) whether the facts established misconduct and (ii) an appropriate sanction, if any.

On January 22, 1982, the Commission determined that respondent's misconduct was established. On February 24, 1982, the Commission heard oral argument as to appropriate sanction and now renders this determination.

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

1. On March 19, 1976, respondent signed three orders to show cause in connection with three appeals being taken to his court from decisions by Syracuse City Court Judge J. Richard Sardino in *People* v. *Jerry Thousand, People* v. *Bonnie Chichester (Maraia)* and *People* v. *John Turner.*

2. On March 20, 1976, respondent read an article in the *Syracuse Post Standard* in which he was quoted as making critical statements concerning Judge Sardino with respect to the three cases.

3. On March 20, 1976, respondent was told that Judge Sardino was very angry at him for having signed the three orders to show cause.

4. On March 20, 1976, in order to calm Judge Sardino and avoid criticism from him, respondent wrote the following letter to Judge Sardino on his official court stationery:

> Don't believe that crap they put in the Post Standard. I was misquoted & really had nothing to say about these 3 sentences. Other than they all came in together. There is no way I would ever change a sentence that you had imposed. You can do whatever you want to whenever you want to & I'll agree with you. I signed one of those as an accomodation & the other 2 will be argued Monday. I take the position that you know the case and as sentencing judge can do whatever you damn well please to a defendant so don't get nervous at what you read in the paper. I tried to call you but couldn't locate you.

5. Thereafter respondent heard the appeals and affirmed Judge Sardino's decisions in the *Thousand* and *Turner* cases. The appeal in the *Chichester* case was never perfected.

With respect to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact.

6. On July 9, 1979, respondent signed an order to show cause in connection with an appeal being taken to his court from a decision by Syracuse City Court Judge J. Richard Sardino in *People* v. *Jill Ann Bucktooth.*

7. On July 11, 1979, respondent was told that Judge Sardino was extremely upset that respondent had signed the order to show cause in the *Bucktooth* case.

8. On July 11, 1979, in order to calm Judge Sardino and avoid criticism from him, respondent wrote the following letter to Judge Sardino on his official court stationery:

> I signed a show cause order on the [*Bucktooth*] matter.
>
> Her retained lawyer claims she has an appeal and has some dough to perfect it. If I catch the appeal, I will affirm, as always, on a judge's discretion. The appeals are rotated when they are received, so I don't know who will get to hear it.
>
> The appeal is moot if she has served her time. In these cases, I will sign a show cause almost automatically.
>
> Word has it that you got a little nervous when she didn't appear at Jamesville.

9. Thereafter respondent heard the appeal in the *Bucktooth* case and reversed Judge Sardino's decision.

Upon the foregoing findings of fact, the Commisson 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. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

It is the essence of our system of justice that a judge strive not only to be impartial but also to appear impartial in the discharge of judicial duty. Whether at a trial or on an appellate bench, a judge must preside with equanimity, view the issues with dispassion and render decisions free from undue influence. A judge who does not meet these standards undermines his own usefulness on the bench.

Respondent's *ex parte* letters to Judge Sardino were in violation of the Rules Governing Judicial Conduct (Section 33.3[a][4]). The sentiments expressed in those letters were plainly improper. By telling Judge Sardino (i) that "you can do whatever you want whenever you want to and I'll agree with you," (ii) that "[you] can do whatever you damn well please to a defendant," and (iii) "if I catch the appeal [in a particular case], I will affirm, as always," respondent abdicated his responsibility as an appellate judge to review such matters on the merits. Respondent's communications to Judge Sardino clearly indicated that appellate review in the cases at issue would be a sham, and that the lower court's decisions would be upheld automatically. Respondent's words, whether intentional or not, conveyed this unmistakable impression. Respondent appeared to be giving Judge Sardino license to do as he "damn well please[d]", as though Judge Sardino were unaccountable to a higher court.

Respondent's explanation that he wrote the letters "to calm," to "avoid criticism from" and "to make peace and keep peace" with an "angry" and "upset" Judge Sardino, does not mitigate his conduct. The personal reaction of a trial court judge to an appellate court's review of his decisions is irrelevant to the merits of the cases at bar. Indeed, it is unseemly for a higher court judge to coddle and even pander to a lower court judge in his jurisdiction. Respondent's overriding responsibility is to deal appropriately with the judicial matters before him, irrespective of public or professional disapproval. *See*, Section 100.3(a)(1) of the Rules Governing Judicial Conduct (formerly Section 33.3[a][1] of the Rules).

The fact that respondent reversed Judge Sardino's decision in the *Bucktooth* case is of little moment. The integrity of the judicial system was compromised when respondent, before considering the merits, wrote to Judge Sardino that he would "affirm, as always." Such a declaration deprives the parties of a meaningful appeal. It also deprives a trial judge of an important constraint on his exercise of discretion: the knowledge that he is accountable for his actions to a higher court.

Respondent's conduct has completely impaired his effectiveness as a judge. He has demonstrated a profound disregard of the duties of an appellate judge, resulting in an irredeemable loss of public confidence in his performance. No one could ever be reasonably certain that respondent was acting properly, on the merits, in matters that henceforth would be before him.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur, except for Judge Alexander, Mr. Bromberg, Mr. Cleary and Judge Ostrowski, who dissent in a separate opinion as to sanction only and vote that respondent be censured.

Dated: April 20, 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

PATRICK J. CUNNINGHAM,

A Judge of the County Court, Onondaga County.

DISSENTING OPINION BY JUDGE ALEXANDER,
MR. BROMBERG, MR. CLEARY
AND JUDGE OSTROWSKI

In his answer, his testimony before the Commission, the agreed statement of facts and his appearance before the Commission, respondent readily acknowledged the serious impropriety of his conduct. He expressed sincere regret for his communications to Judge Sardino, and for the effect of such communications on public perception of the administration of justice. Respondent was open and frank and has given his assurance that he will not repeat such conduct.

Respondent's disposition of the appeal in the *Bucktooth* case (Charge II) indicates that, in fact, he decided the appeals before him fairly and on the merits. In *Bucktooth*, respondent reversed Judge Sardino's decision and wrote a lengthy, well-reasoned opinion which was severely critical of Judge Sardino. Thus, respondent's judicial decision-making function was properly performed.

We cannot, on this record, agree that the sanction of removal is appropriate. Such ultimate sanction is not normally to be imposed for poor judgment, even extremely poor judgment. *See, Matter of Steinberg* v. *State Commission on Judicial Conduct*, 51 NY2d 74, 81, and *Matter of Shilling* v. *State Commission on Judicial Conduct*, 51 NY2d 397, 403.

In view of the foregoing, we believe that censure is appropriate.

Dated: April 20, 1982

NOTE: The Court of Appeals, upon review, modified the Commission's determination to censure. 57 NY2d 270 (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

RONALD LEW,

A Justice of the Village Court of Waterville, Oneida County.

Before: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. William J. Ostrowski
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission

Ronald Lew, Respondent Pro Se

The respondent, Ronald Lew, a justice of the Village Court of Waterville, Oneida County, was served with a Formal Written Complaint dated November 25, 1981, alleging various financial and record keeping improprieties and deficiencies. Respondent did not submit an answer.

By motion dated December 31, 1981, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent did not oppose the motion or file any papers in response thereto.

By determination and order dated January 26, 1982, the Commission granted the administrator's motion, found respondent's misconduct established and set a schedule for argument as to appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent neither submitted a memorandum nor requested oral argument.

The Commission considered the record of this proceeding on February 25, 1982, and made the following findings of fact.

1. Charge I: Between February 1975 and September 1980, respondent wrote 71 checks to "cash" on his official court account totaling $2,690, and cashed the checks at two supermarkets.

2. Charge II: From January 1979 through November 1981, respondent (i) failed to report to the Department of Audit and Control 55 cases disposed of during this period, (ii) under-reported the fine collected in a 56th case and (iii) failed to remit to the State Comptroller $1,295 in fines received in connection with these cases, as set forth in *Schedule A* appended to the Formal Written Complaint. Respondent did not have sufficient funds in his court account to make payment for the fines he received, and he failed to deposit sufficient funds in his court account to make up the deficiency, despite notice in January 1981 from the Department of Audit and Control.

3. Charge III: Between December 1976 and May 1979, in the eight cases set forth in *Schedule B* appended to the Formal Written Complaint, respondent received funds totaling $150 but reported only $90 to the Department of Audit and Control.

4. Charge IV: On January 6, 1981, respondent's court account was deficient by $1,512.21. On November 25, 1981, his court account was still deficient by $1,355.

5. Charge V: From May 1981 through November 1981, in the 40 cases set forth in *Schedule C* appended to the Formal Written Complaint, respondent received $625 in fines but did not report the cases or remit the money to the State Comptroller.

6. Charge VI: Between January 1978 and October 1981, respondent failed to file reports or remit money to the Department of Audit and Control within ten days of the month following collection, as set forth in *Schedule D* appended to the Formal Written Complaint.

7. Charge VII: Between October 1975 and November 1980, respondent failed to maintain in his official court account sufficient funds to cover his liabilities, and his account was overdrawn 35 times, as set forth in *Schedule E* appended to the Formal Written Complaint.

8. Charge VIII: From January 1979 through November 1981, respondent failed to perform his administrative duties in that he (i) failed to keep complete and accurate dockets of his court activities, (ii) failed to keep a complete and accurate cashbook and (iii) failed to keep a complete and accurate account of moneys received.

9. Charge IX: Respondent failed to cooperate with a duly authorized Commission investigation in that he refused to appear to testify under oath before a member of the Commission on the matters

addressed herein, despite having been duly notified that his appearance was required.

Upon the foregoing findings of fact the Commission concludes as a matter of law that respondent violated Sections 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act, Sections 30.7(a) and 30.7(b) of the Uniform Justice Court Rules, Section 1803 of the Vehicle and Traffic Law, Section 4-410 of the Village Law, 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.

Respondent's failure to deposit court funds in official court bank accounts, and his failure to report dispositions and remit such funds to the State Comptroller, constitute a gross neglect of his statutory and ethical obligations and are grounds for removal from office. *Matter of Petrie* v. *State Commission on Judicial Conduct*, 54 NY2d 807 (1981); *Matter of Cooley* v. *State Commission on Judicial Conduct*, 53 NY2d 64 (1981); and *Bartlett* v. *Flynn*, 50 AD2d 401 (4th Dept. 1976).

In the instant matter, respondent's negligence is exacerbated by his apparent conversion of court funds for his personal use. Those funds which respondent in fact deposited in his official court accounts were promptly withdrawn by checks which he drew to "cash". Such conduct is intolerable.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

Dated: April 22, 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

STANLEY C. WOLANIN,

A Justice of the Town Court of Whitestown and an
Acting Justice of the Village Court of Whitesboro, Oneida 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. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Jack J. Pivar,
Of Counsel) for the Commission

Evans, Severn, Bankert & Peet
(By Anthony T. Panzone)
for Respondent

The respondent, Stanley C. Wolanin, a justice of the Town Court of Whitestown and an acting justice of the Village Court of Whitesboro, Oneida County, was served with a Formal Written Complaint dated September 12, 1980, alleging various deficiencies in his court finances and reports. Respondent filed an answer dated October 8, 1980.

By order dated November 3, 1980, Charles T. Major, Esq., was designated referee to hear and report proposed findings of fact and conclusions of law. The hearing was conducted on February 25 and 26, 1981, and the referee filed his report to the Commission on October 6, 1981.

By motion dated October 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 removed from office. Respondent opposed the motion by answering affidavit dated December 6, 1981. The parties filed reply papers. Oral argument was waived.

The Commission considered the record of this proceeding on January 20, 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Between November 1977 and November 1978, in his capacity as justice of the Town Court of Whitestown, respondent received monies from fines and made the deposits in his court account as set forth in *Exhibit A* of the Formal Written Complaint.

2. Between November 1977 and November 1978, respondent retained possession of and did not safeguard large amounts of court funds and regularly failed to deposit those funds in court accounts within the time required by law and court rules.

3. An audit was performed on respondent's court account in December 1978 by the Department of Audit and Control. The audit was based solely on the entries made in respondent's records.

4. Prior to the audit being performed, respondent produced $1,039 from his briefcase ($690 in cash and $349 in undeposited checks) and certified that this represented all the court funds that he had on hand.

5. During the audit, respondent was notified that his account was deficient by $1,608.50. Thereupon, respondent on December 14, 1978, deposited $1,608.50 in his court account.

6. On December 20, 1978, respondent was notified that he was deficient by another $157.40 and he deposited this amount in his court on the same day.

As to Charge II of the Formal Written Complaint:

7. Between January 1975 and December 1978, respondent failed to report or remit to the State Comptroller, within the time required by law and court rules, fines totaling $470 which he received in his capacity as acting justice of the Village Court of Whitesboro, as follows:

(a) $160 from parking violation fines in 1975;

(b) $190 in fines from cases adjudicated between January 1975 and May 1978; and

(c) $120 in fines from cases adjudicated between May 1978 and August 1978.

8. On December 8, 1978, respondent filed a supplemental report with the Department of Audit and Control to account for the $470 in fines he had previously failed to report.

9. Between March 1975 and December 1978, respondent failed to deposit $250 he received in his official capacity as acting justice of the

Village Court of Whitesboro. Respondent deposited $250 in his official court account in December 1978.

10. From May 1978 to November 6, 1978, respondent received $155 in fines in his capacity as acting justice of the Village Court of Whitesboro, as set forth in *Exhibit B* of the Formal Written Complaint. Respondent deposited $155 in his official court account on December 8, 1978.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law, Section 30.7 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 and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

Over a four-year period, respondent failed to make prompt deposits of court funds in his official bank accounts, and he failed to make timely reports and remittances of those funds to the State Comptroller, as required by the applicable laws and rules cited above. Moreover, respondent failed to safeguard adequately the public money entrusted to his care, and he failed in these proceedings to explain satisfactorily the deficiencies, which at one point exceeded $1750.

Respondent's busy calendar and the inadequate administrative assistance provided to his court do not excuse the financial and record keeping deficiencies addressed herein. It is a judge's responsibility to meet statutory depositing, reporting, remitting and record keeping requirements.

The voluntary assumption of judicial office carries the obligation to discharge all the duties of that office diligently. We note that respondent's court has an unusually heavy caseload. We believe respondent now fully understands his judicial obligations and is committed to discharging his administrative duties promptly and accurately.

By reason of the foregoing, the Commission determines that respondent should be censured.

All concur, except for Judge Alexander, Mr. Bromberg and Mrs. DelBello, who dissent in a separate opinion and vote that respondent should be removed from office.

Dated: April 22, 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

STANLEY C. WOLANIN,

A Justice of the Town Court of Whitestown and an
Acting Justice of the Village Court of Whitesboro, Oneida County.

DISSENTING OPINION BY MR. BROMBERG,
JUDGE ALEXANDER AND MRS. DEL BELLO

We respectfully dissent from the majority determination that respondent be censured. We believe the record of this proceeding requires respondent's removal from office.

Respondent's gross negligence in the handling of court funds and his failure to account for funds, standing alone, even absent any conversion (or apparent conversion) of court funds to his use, would warrant removal. *Matter of Petrie* v. *State Commission on Judicial Conduct*, 54 NY2d 807 (1981); *Bartlett* v. *Flynn*, 50 AD2d 401 (4th Dept. 1976), *app. dismissed*, 39 NY2d 942 (1976); *Matter of Lew* (Commission determination rendered on this date).

By way of explanation for the $1,608.50 deficiency in his court account, respondent testified that when the deficiency was reported to him by Audit and Control, (i) he was "surprised", (ii) he went home, searched through a desk, found $1,200 to $1,500 in bail money in an envelope, (iii) added enough money of his own to bring the amount to $1,608.50 and (iv) deposited the money in his court account. Respondent claimed that the money found in the desk was from bail which he had forgotten to deposit. However, he was unable to locate an entry for the bail anywhere in his records or give any details concerning the circumstances under which the money was received. Coincidentally, shortly before he "found" the unreported bail money, respondent withdrew $1,200 from his personal savings account, but he could not explain the reason for that withdrawal.

It is reasonable, indeed compelling, to conclude that the money purportedly found in the desk came not from bail but from respondent's personal funds. Yet even if it were accepted at face value, respondent's explanation would create more problems than it would

solve. The $1,608.50 deficiency related to fines and bail which respondent had *reported* but had not deposited or remitted. The money purportedly from the desk was from "bail" he had *not* reported. Thus, if respondent made up for the deficiency as to *reported* cases with money from *unreported* cases, the money from the unreported cases would now be missing. In fact, the $1,200 in bail which respondent claims to have found in his desk is to this day unreported and outstanding.

Under the circumstances we are not persuaded that respondent's purported "renewed commitment" to the prompt and accurate discharge of his administrative duties either excuses or mitigates the gross misconduct revealed by this record. Nor do we feel such commitment to be reliable when considered in light of the explanations offered by respondent for his conduct herein.

We note that respondent was previously censured for ticket-fixing activities. *Matter of Stanley C. Wolanin*, NYLJ Aug. 9, 1979, p. 5, col. 1 (Com. on Jud. Conduct, July 10, 1979).

Accordingly, it is our view that the appropriate sanction is removal from office. Under the circumstances, we see no alternative.

Dated: April 22, 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

LAWRENCE L. RATER,

A Justice of the Town Court of Sherman, Chautauqua County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. William J. Ostrowski
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Cody B. Bartlett, Of Counsel) for the Commission

Cole, Sorrentino, Cavanaugh, Stephenson and O'Brien (By Stephen E. Cavanaugh) for Respondent

The respondent, Lawrence L. Rater, a justice of the Town Court of Sherman, Chautauqua County, who is not a lawyer, was served with a Formal Written Complaint dated March 6, 1981, and an amended Formal Written Complaint dated April 14, 1981, alleging that he failed to meet various financial reporting and record-keeping requirements and that he improperly presided over a traffic case in which his brother was the defendant. Respondent filed an answer dated May 1, 1981.

By order dated June 10, 1981, 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 September 14, 1981, and the referee filed his report with the Commission on November 19, 1981.

By motion dated January 26, 1982, 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 March 10, 1982. The Commission heard oral argument on the matter on March 25, 1982, thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. From January 1, 1976, to July 30, 1980, respondent was negligent in accounting for monies received in his official capacity, resulting in a deficiency in the amount of $264.68.

2. From May 21, 1979, to August 2, 1979, and from October 31, 1979, to November 30, 1979, respondent failed to deposit official funds into his court account within 72 hours of receipt, as required by Section 30.7(a) of the Uniform Justice Court Rules.

3. From January 1, 1976, to July 30, 1980, respondent failed to report and remit to the State Comptroller, within the first ten days of the month following receipt, all fines, civil fees and bail forfeitures received in his official capacity, as required by Sections 2020 and 2021(1) of the Uniform Justice Court Act and Section 1803 of the Vehicle and Traffic Law.

4. From January 1, 1976, to December 15, 1980, respondent failed to maintain a complete cashbook and index of cases as required by Section 30.9 of the Uniform Justice Court Rules.

As to Charge II of the Formal Written Complaint:

5. On March 18, 1978, respondent's brother, Norman Rater, was charged with speeding 43 miles per hour in a 30 miles per hour zone. On March 28, 1978, respondent presided over the case of *People* v. *Norman Rater* and dismissed the charge.

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)(1), 33.3(a)(5), 33.3(b)(1) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(5), 3B(1) and 3C(1)(d) 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 make timely deposits of official funds, by failing to report and to remit such funds in a timely manner to the State Comptroller, and by failing to maintain complete and accurate records such that his accounts were $264 deficient, respondent failed to discharge diligently his administrative responsibilities. Such neglect of his duties is cause for discipline. *Bartlett* v. *Flynn*, 50 AD2d 401 (4th Dept. 1976), *app. dism.*, 39 NY2d 942 (1976); *Matter of Reich*, unreported

(Com. on Jud. Conduct, Jan. 20, 1982); *Matter of Reedy*, unreported (Com. on Jud. Conduct, Dec. 28, 1981).

By presiding over his brother's traffic case and by dismissing the charge, respondent violated the rules and statutory prohibitions on hearing a matter involving relatives within six degrees of consanguinity (Section 14 of the Judiciary Law and Section 33.3[c][1] of the Rules Governing Judicial Conduct). By so doing, respondent prejudiced the administration of justice and undermined public confidence in the integrity and impartiality of the judiciary.

There remains the issue of appropriate sanction. Considering the circumstances of this case, we conclude that censure is more appropriate than removal from office.

While respondent's administrative failures constitute clear misconduct, we note (i) the relatively modest deficiency occurring over a long period of time ($264 over four-and-a-half years), (ii) the absence of evidence of conversion, (iii) the subsequent balancing of the court account and (iv) respondent's frank admission of error.

Respondent's presiding over his brother's case is serious misconduct, but we note in mitigation (i) respondent's apparently honest failure to understand that recusal is mandatory in such cases, (ii) that this is an isolated incident and (iii) that respondent frankly admitted wrongdoing.

Although these mitigating factors in no way excuse respondent of his misconduct or exempt him from stern public discipline, they do in our judgment require a sanction short of removal. The facts here differ from other cases in which the Commission determined that removal was the appropriate sanction. *Cf. Matter of Adams*, NYLJ, Jan. 19, 1979, p. 1, col. 1 (Com. on Jud. Conduct, Nov. 29, 1978), *Matter of Seaton*, unreported (Com. on Jud. Conduct, May 8, 1980), and *Matter of Schultz*, NYLJ, June 8, 1979, p. 1, col. 2 (Com. on Jud. Conduct, May 29, 1979).

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

All concur.

Dated: May 6, 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

JOSEPH DiFEDE,

A Justice of the Supreme Court, First Judicial District.

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

Appearances: Gerald Stern (Raymond S. Hack and Barry M. Vucker, Of Counsel) for the Commission

Julien, Schlesinger & Finz
(By Alfred S. Julien and David I. Weprin) for Respondent

The respondent, Joseph DiFede, a justice of the Supreme Court, First Judicial District (in Bronx County), was served with a Formal Written Complaint dated February 29, 1980, alleging misconduct in that he received financial benefits with respect to four vacation trips arranged by a man who, *inter alia*, was actively soliciting and receiving receivership appointments by respondent and other judges of respondent's court. Respondent filed an answer dated September 16, 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 September 16 and 17 and October 2, 5, 6, 7 and 9, 1981. The referee filed his report with the Commission on January 21, 1982.

By motion dated February 26, 1982, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion and

moved for dismissal of the Formal Written Complaint. The administrator filed a reply memorandum. The Commission having heard oral argument and an oral statement from respondent on April 21, 1982, thereafter considered the record of the proceeding and made the determination herein.

Preliminarily the Commission makes the following findings of fact.

1. Between 1974 and 1978, Bernard Lange was actively soliciting judicial appointments from justices of the Supreme Court as a receiver in real property mortgage foreclosure proceedings and received more than 150 such appointments. Mr. Lange informed respondent that he would like to receive such appointments in the future.

2. From 1974 through 1978, the primary source of Mr. Lange's income was fees awarded by justices of the Supreme Court in connection with his appointments as a receiver.

3. Almost all such appointments of Mr. Lange were in New York City and more were received in Bronx County than any other county.

4. Mr. Lange was first appointed by respondent as a receiver on or about January 6, 1975, while respondent was presiding in Special Term of the Supreme Court, Bronx County.

5. Prior to July 1976 respondent knew that he and other justices of the Supreme Court were appointing Mr. Lange as a receiver and therefore that Mr. Lange had interests which had come and were likely to continue to come before respondent and other justices of the Supreme Court.

6. Mr. Lange did not hold himself out to the general public as a person engaged in the travel business.

7. Mr. Lange could obtain preferential treatment and reservations for guests at Princess Hotels, which included obtaining accommodations at rates less than what was available to the general public.

8. Sometime between April 14, and April 18, 1976, during a time when respondent was vacationing at the Southampton Princess Hotel, Mr. Lange informed respondent of his special relationship with the Princess Hotel chain. Mr. Lange informed respondent that by reason of such special relationship, he was able to obtain accommodations for guests at rates less than what was available to the general public.

9. During the April 1976 trip to the Southampton Princess Hotel, respondent received a deluxe room for $45 per night for two persons, including breakfast and dinner. The rate charged to the general public for a deluxe room in April 1976 was $120 per night for two, including breakfast and dinner.

As to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact.

10. Sometime between April 18 and July 1, 1976, respondent requested Adele D'Addario, an employee of Mr. Lange's, to arrange a vacation for himself, his wife, daughter and three grandchildren, at the Southampton Princess Hotel in Bermuda for the period July 1 to July 14, 1976.

11. Respondent approached Mr. Lange's travel agency to arrange the July 1976 trip (i) with knowledge of Mr. Lange's connections and influence in obtaining favorable rates and (ii) with knowledge that Mr. Lange had arranged for respondent a "good price", indeed an astonishingly low rate, as to respondent's April 1976 trip to the Southampton Princess Hotel.

12. From July 1 to July 14, 1976, respondent vacationed with his family at the Southampton Princess Hotel in Bermuda. Transportation, hotel accommodations and hotel rates for the trip were arranged by or through Bernard Lange.

13. Under the arrangements made through Mr. Lange, a superior room was provided at a rate of $45 per night for three persons, including breakfast and dinner. The rate available to the general public for such accommodations was $122.50. As a result, respondent paid a rate reduced by $77.50 per night.

14. The value of the rooms, food and other services received by respondent and his family based upon the rate available to the general public was $3230.60. Respondent paid for such accommodations the sum of $2223.10.

15. Respondent accepted and was the beneficiary of a gift or favor from or through Mr. Lange worth $1007.50.

16. Prior to the July 1976 trip, respondent had appointed Mr. Lange as a receiver in six proceedings which resulted in $7311.80 in judicially approved fees to Mr. Lange.

17. Subsequent to the July 1976 trip, respondent appointed Mr. Lange as receiver in 20 real property mortgage foreclosure proceedings which resulted in $31,300.72 in judicially approved fees to Mr. Lange.

18. Subsequent to the July 1976 trip, respondent approved fees to Mr. Lange in connection with Mr. Lange's appointments as a receiver in 17 instances resulting in a total of $48,300.30.

19. From 1975 to 1978, respondent frequently ruled on motions concerning properties for which Mr. Lange served as a receiver.

As to Charge III of the Formal Written Complaint, the Commission makes the following findings of fact.

20. In December 1976, respondent requested Mr. Lange to arrange a vacation for him and his wife at the Bahamas Princess Tower Hotel in Freeport, the Bahamas, for the period from January 8 to 22, 1977.

21. From January 8 to January 22, 1977, respondent and his wife vacationed at the Bahamas Princess Tower Hotel; transportation, hotel accommodations and hotel rates for the trip were arranged by or through Mr. Lange.

22. Under the arrangements made through Mr. Lange, a deluxe room was provided to respondent at the rate of $20 per night for two, without meals. The rate available to the general public for such accommodations was $71 per night. As a result, respondent paid a rate reduced by $51 per night.

23. The rate arranged through Mr. Lange on behalf of respondent was known as a special airline rate which was available only to airline personnel and travel agents, and not to guests whose reservations had been made by travel agents.

24. The value of the room, food and services received by respondent and his wife based upon the rates available to the general public was $1628.80. Respondent paid for such accommodations the sum of $912.80.

25. Based upon the foregoing, including the caliber and quality of the hotel, the accommodations and the services he received in relation to the price he was charged, respondent knew that he had received a benefit of financial significance by or through Mr. Lange as described above.

26. Respondent accepted and was the beneficiary of a gift or favor from or through Mr. Lange worth $714.

27. Prior to the January 1977 trip, respondent had appointed Mr. Lange as a receiver in 22 proceedings which resulted in $34,708.96 in judicially approved fees to Mr. Lange.

28. Subsequent to the January 1977 trip, respondent appointed Mr. Lange as a receiver in four real property mortgage foreclosure proceedings which resulted in $3,903.56 in judicially approved fees to Mr. Lange.

29. Prior to the January 1977 trip, respondent approved fees to Mr. Lange in connection with Mr. Lange's appointments as a receiver in eight instances totalling $26,342.04.

30. Subsequent to the January 1977 trip, respondent approved fees to Mr. Lange in connection with Mr. Lange's appointments as a receiver in nine instances totalling $21,958.26.

31. From 1975 to 1978 respondent frequently ruled on motions concerning property for which Mr. Lange was the receiver.

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 (now Sections 100.1, 100.2 and 100.5[c][3][iii]), Canons 1, 2 and 5C(4) of the Code of Judicial Conduct and Section 20.4 of the General Rules of the Administrative Board of the Judicial Conference. Charges II and III of the Formal Written Complaint are sustained to the extent indicated in the findings and conclusions herein, and respondent's misconduct is established. Charges I, IV, V and VI of the Formal Written Complaint are not sustained and therefore are dismissed.

By his conduct, respondent created at least an appearance of impropriety. He knew that Mr. Lange was soliciting and receiving receivership appointments from Supreme Court justices. Respondent had himself awarded Mr. Lange such appointments. During the same period, respondent accepted financial benefits arranged through Mr. Lange in the form of significant reductions in hotel rates.

By accepting the hotel rate reductions arranged by Mr. Lange, respondent violated the rule which prohibits a judge from receiving "any gratuity or gift from any attorney or any person having or likely to have any official transaction with the court" (Section 20.4 of the General Rules). Respondent was further obliged to refrain "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][3][iii] of the Rules Governing Judicial Conduct). 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 himself awarded Mr. Lange appointments of the court.

That the foregoing knowledge, appointments and vacation trips 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 furthered Mr. Lange's business with the court.

By reason of the foregoing, the Commission determines that respondent should be admonished.

The Commission records the following votes.

As to Charge I, all concur that it is dismissed.

As to Charges II and III, all concur that they are sustained, except Judge Alexander, Mr. Kovner and Mr. Wainwright, who dissent and vote that the charges be dismissed.

As to Charges IV, V and VI, all concur that they are dismissed, except Mrs. DelBello, who dissents and votes that they be sustained.

As to sanction, all concur that respondent should be admonished, except that (i) Mr. Cleary votes that respondent be sent a letter of dismissal and caution and (ii) Judge Alexander, Mr. Kovner and Mr. Wainwright, having voted to dismiss all charges, vote to dismiss the Formal Written Complaint without sanction.

Dated: June 8, 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

JOSEPH DiFEDE,

A Justice of the Supreme Court, First Judicial District.

DISSENTING OPINION BY JUDGE ALEXANDER,
MR. KOVNER AND MR. WAINWRIGHT

The misconduct found by the majority depends on respondent's knowledge or awareness, allegedly acquired in April 1976, that Lange had obtained for him the favorable price not available to other members of the public. This finding, we submit, was simply not established by the evidence.

It was uncontroverted that respondent was not an experienced traveler; indeed, he had not traveled abroad for many years. His trip to Bermuda in April 1976 was occasioned by a last minute change in the schedules of attorneys then before him in a lengthy contested hearing. He did not learn, until he arrived in Bermuda, that Lange had arranged the trip.* He testified that he never focused on the price charged by the hotel at any time, but merely relied on the fact that reasonable arrangements had been made by others. When respondent called Lange's secretary to arrange the July trip, Lange's office was the only travel agency that occurred to him.

The referee, in finding that respondent must have been aware of the details of the favorable rate from the information set forth at the foot of the bill, made an inference supported neither by the facts nor by contemporary custom. Large numbers of experienced travelers do not study the details of their hotel bills, especially where the arrangements are made by others, and especially where the charges were grouped with charges for other accommodations (as they were in the July 1976 bill). Respondent's testimony that he was unaware of any financial benefit (other than his acknowledgement that he had received a

---

*At no time in question did respondent learn that the primary source of Lange's income in this period was receivership fees. Although multiple appointments of the same receiver are not to be encouraged, at the time many judges in that court placed great reliance upon the recommendation of the mortgagee in foreclosure proceedings.

"good" price) is both credible and uncontroverted by other testimony. The bills themselves did not constitute notice to such an inexperienced traveler that he was in receipt of some special favor.

In the absence of knowledge or awareness of receipt of such a "gift" or "benefit," there was no impropriety; nor could there be sufficient appearance of impropriety, if the recipient of the "gift" was unaware of its existence.

Respondent's reputation as one of the First Department's most distinguished and respected judges is unquestioned. Weighing his credibility against the strained inference proffered from the receipt of the bills alone leaves this essential element of the charges unproved.

In our view, all charges should have been dismissed.

Dated: June 8, 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

JOHN MAHAR,

A Justice of the Town Court of Hoosick, Rensselaer County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
John J. Bower, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Hon. William J. Ostrowski
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Albert B. Lawrence, Of Counsel) for the Commission

John Mahar, Respondent
Pro Se

The respondent, John Mahar, a justice of the Town Court of Hoosick, Rensselaer County, was served with a Formal Written Complaint dated November 4, 1981, alleging *inter alia* that he threatened an attorney who had lodged a complaint against him with this Commission. Respondent filed an answer dated January 9, 1982.

The Commission designated Bernard H. Goldstein, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on January 22, 1982. The referee filed his report with the Commission on March 15, 1982.

By motion dated March 26, 1982, 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 by letter dated April 6, 1982. Oral argument was waived.

The Commission considered the record of this proceeding on April 21, 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Rolf M. Sternberg is an attorney admitted to the practice of law in New York. In May 1979, Mr. Sternberg filed a written complaint and affidavit with the Commission concerning respondent.

2. On August 1, 1980, the Commission sent Mr. Sternberg's complaint and affidavit to respondent and asked for his comments with respect thereto. Respondent received the material on August 5, 1980.

3. On August 19, 1980, Mr. Sternberg appeared in the Hoosick Town Court on a matter presided over by respondent's co-justice. As he left the court, Mr. Sternberg was approached by respondent, who said he was "going to win" the matter before the Commission and was thereafter "going to get" Mr. Sternberg. Respondent's threat was motivated by his rancor at Mr. Sternberg for having filed the complaint with the Commission. In testimony before the Commission during its investigation of this matter, respondent acknowledged that his conduct was improper.

As to Charge II of the Formal Written Complaint:

4. On May 4, 1981, in connection with a Commission proceeding concerning Mr. Sternberg's complaint against respondent, Commission attorney Stephen F. Downs sent to respondent's attorney the statements of witnesses who would testify at the proceeding. Among the statements sent on that date was one by Ralph Helft, who was scheduled to testify against respondent.

5. Wayne Weeden is respondent's next-door neighbor. He is also a bartender at "R's Tavern" in the Village of Hoosick Falls. Charges of burglary and possession of stolen property were pending against Mr. Weeden in Troy, New York, in 1981, arising from a tire-stealing incident in 1979.

6. On two occasions in May 1981, respondent asked Mr. Weeden to make a statement that would incriminate Mr. Helft in the tire-stealing matter. Respondent indicated to Mr. Weeden that he himself was in "some kind of trouble" and that, in return for such testimony, respondent would use his influence to clear Mr. Weeden's arrest records in Troy. Respondent told Mr. Weeden that he wanted to retaliate against Mr. Helft. Mr. Weeden subsequently testified that Mr. Helft was not involved in the tire-stealing incident.

As to Charge III of the Formal Written Complaint:

7. On July 18, 1981, respondent was notified by the Commission that his appearance and testimony were required with respect to his conversations with Mr. Weeden.

8. On August 3, 1981, Mr. Weeden was at his job tending bar at R's Tavern. Respondent was drinking alcohol at the tavern over a period of two hours and was inebriated. In a loud voice that other patrons could hear, respondent repeatedly used vulgar language and called Mr. Weeden a liar. Respondent was known by other patrons to be a judge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.2(c) of the Rules Governing Judicial Conduct (now renumbered 100.1 100.2[a] and 100.2[c]) and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, except for that portion of Charge III that alleges that respondent threatened to "get even" with Mr. Weeden for testifying before the Commission, which is dismissed. Respondent's misconduct is established.

Respondent has demonstrated by his conduct that he is unfit to continue as a judge.

By encouraging a witness to make a false statement in a criminal matter, by offering the prestige of his office to help that witness in return, and by threatening an attorney who properly availed himself of judicial grievance procedures, respondent prejudiced the administration of justice and obstructed the very search for truth which our courts and judges are supposed to enhance. Such conduct warrants removal. *See, Matter of Jones*, 47 NY2d (mmm) (Ct. on the Judiciary 1979).

By allowing himself to become intoxicated in a public place where he was known to be a judge, by using vulgar language in a loud and offensive manner, and by repeatedly calling a witness against him a liar, respondent undermined public confidence in the integrity of the judiciary. *See, Matter of Quinn*, 54 NY2d 386, 392 (1981), and *Matter of Kuehnel*, 49 NY2d 465 (1980).

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

Dated: June 10, 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

FRANCIS B. PRITCHARD,

A Justice of the Town Court of Grand Island, Erie County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
John J. Bower, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Hon. William J. Ostrowski
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (John J. Postel, Of Counsel) for the Commission

Cole, Sorrentino, Cavanaugh, Stephenson & O'Brien (By Stephen E. Cavanaugh) for Respondent

The respondent, Francis B. Pritchard, is a part-time justice of the Town Court of Grand Island, Erie County, and an attorney permitted to practice law. He was served with a Formal Written Complaint dated February 20, 1981, alleging misconduct with respect to his actions in five traffic cases and his failure to disqualify himself from presiding over two cases in which his impartiality might reasonably be questioned. Respondent filed an answer on April 3, 1981.

By order dated April 23, 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 June 30 and July 1, 1981, and the referee filed his report with the Commission on October 20, 1981.

By motion dated December 21, 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. The Commission heard oral argument on the matter on April 22, 1982,

thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. On November 3, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Guy San Lorenzo* as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

As to Charge II of the Formal Written Complaint:

2. On March 3, 1976, respondent reduced a charge of passing a red light to driving with an unsafe tire in *People* v. *William M. Walsh* as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

As to Charge III of the Formal Written Complaint:

3. On July 21, 1976, respondent reduced a charge of speeding 93 mph in a 55 mph zone to speeding 75 mph in a 55 mph zone in *People* v. *Alfonso R. Pacitti* as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

As to Charge V of the Formal Written Complaint:

4. On March 9, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in *People* v. *Armand J. Castellani* as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

As to Charge VI of the Formal Written Complaint:

5. From 1973 to 1977, respondent represented three plaintiffs who brought actions against Michael Sendlbeck: *Link Building Products* v. *Sendlbeck* in 1973, *Calvin Jenkins and Jeffrey Hawkins* v. *Sendlbeck* in 1973 and *Grand Island Penny Saver* v. *Sendlbeck* in 1975. In the *Penny Saver* case, judgment in the amount of $257.49 was entered against Mr. Sendlbeck on September 15, 1975, and remained unsatisfied until January 1977.

6. On September 3, 1976, Michael Sendlbeck was arraigned before respondent on charges of non-payment of wages in *People* v. *Michael Sendlbeck*. At the time of the defendant's arraignment, the judgment in the *Penny Saver* case was still outstanding.

7. Mr. Sendlbeck moved for respondent to recuse himself from presiding over *People* v. *Sendlbeck*. Respondent denied the motion. Mr.

Sendlbeck thereafter entered a plea of guilty to the charge and was sentenced by respondent to 60 days in jail and a $500 fine. The County Court, Erie County, subsequently modified the term of imprisonment to time already served by the defendant.

8. A portion of the money received from Mr. Sendlbeck's bail checks was used by his attorney to satisfy the *Penny Saver* judgment and to pay respondent's fee for that 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)(1), 33.3(a)(4), 33.3(b)(2) and 33.3(c)(1)(i) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2, 100.3[a][1], 100.3[a][4], 100.3[b][2] and 100.3[c][1][i]) and Canons 1, 2, 3A(1), 3A(4) and 3C(1)(a) of the Code of Judicial Conduct. Charges I, II, III, V and VI of the Formal Written Complaint are sustained and respondent's misconduct is established. Charges IV and VII of the Formal Written Complaint are not sustained and therefore are 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 granting *ex parte* requests of another judge 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. In *Matter of Byrne*, 47 NY2d (b), (c) (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.*

With respect to his conduct in the *Sendlbeck* case, respondent, by failing to disqualify himself, failed to separate his judicial duties from his private interests as a practicing attorney. Respondent should have recognized the appearance of impropriety that would result from his presiding over a matter in which the defendant owed money to a client of his. By refusing to recuse himself, respondent acted in a manner in which his impartiality and objectivity might reasonably be questioned.

By reason of the foregoing, the Commission determines that respondent should be censured.

All concur.

Dated: June 10, 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

ANTHONY ELLIS,

A Justice of the Town Court of Altamont and the Village Court of Tupper Lake, Franklin County.

Before: Hon. Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Hon. William J. Ostrowski
Hon. Isaac Rubin
Hon. Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (John J. Postel, Of Counsel) for the Commission

Cade, Armstrong & Persons (By William J. Cade and Robert J. Armstrong) for Respondent

The respondent, Anthony Ellis, a justice of the Town Court of Altamont and the Village Court of Tupper Lake, was served with a Formal Written Complaint dated April 20, 1981, alleging *inter alia* that he intentionally incarcerated certain defendants for lengthy periods contrary to law. Respondent filed an answer dated July 8, 1981.

The Commission designated the Honorable James A. O'Connor referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 20 and 21 and August 19 and 20, 1981, and the referee filed his report to the Commission on January 26, 1982.

By motion dated March 24, 1982, 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. Oral argument was scheduled before the Commission on April

21, 1982, and was adjourned at the request of respondent's counsel to May 21, 1982. A request by respondent's counsel on May 20, 1982, for a second adjournment of oral argument was denied. Oral argument was held as scheduled on May 21, 1982. Neither respondent nor his counsel appeared.

The Commission considered the record of the proceeding on May 21, 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. From December 1976 to March 1981, in the 23 cases set forth in *Schedule A* appended to the Formal Written Complaint, respondent (i) exhibited prejudice toward the defendants who appeared before him, (ii) denied the defendants certain basic legal rights, including the presumption of innocence and the right to a speedy trial before an impartial judge, (iii) abused the bail process by deliberately incarcerating certain defendants for indefinite periods of time for the purpose of coercing them to plead guilty, after which they would be sentenced to the time already served, and (iv) failed to appoint counsel for indigent defendants and refused to cooperate with the public defender's office, with the purpose of increasing the period of pre-trial incarceration for such defendants.

As to Charge II of the Formal Written Complaint:

2. On July 2, 1977, respondent arraigned Timothy Demers on charges of disorderly conduct and resisting arrest. Mr. Demers is 19 years old, retarded and alcoholic. Respondent failed to assign counsel to the defendant, whom he should have known was financially unable to retain counsel. Respondent accepted a plea of guilty from the defendant, in the absence of counsel, and committed him to jail to await sentence. Respondent states that he sent the defendant to jail so he might be treated for his alcoholism. Respondent did not order such treatment, however, and he knew none was available at the jail.

3. On July 28, 1977, respondent sentenced the defendant to a conditional discharge and time already served.

4. Sometime between July 28 and September 27, 1977, respondent observed the defendant violating the terms of the conditional discharge. On September 27, 1977, respondent had the defendant brought before him, charging such violation.

5. On September 27, 1977, respondent presided over a hearing on the violation of the conditional discharge, despite having personal knowledge of disputed evidentiary facts. Respondent did not advise the assistant public defender, whom he then knew to be representing

the defendant, that such proceeding was being held. Respondent ordered the defendant incarcerated without a specific sentence and subsequently ignored communications from the public defender's office concerning the case.

6. On October 21, 1977, the defendant was released from jail on a writ of habeas corpus.

As to Charge III of the Formal Written Complaint:

7. Prior to March 15, 1978, Patrick Brophy, an attorney, had represented a client in a proceeding before respondent, who accused Mr. Brophy of demeaning him in the presence of Mr. Brophy's client. Respondent disliked Mr. Brophy.

8. On March 15, 1978, James Crockford was issued a ticket for speeding, a violation, returnable before respondent. Mr. Crockford was represented by Mr. Brophy. Mr. Brophy appeared on behalf of his client before respondent and offered to plead his client guilty to a reduced charge of an equipment violation. Respondent, however, knowingly entered a misdemeanor conviction on the defendant's record for defective brakes. Respondent knew a misdemeanor conviction for defective brakes was more serious than the original speeding violation charge. In entering the misdemeanor conviction, respondent was motivated not by the merits of the case but by his personal dislike of Mr. Brophy. Respondent acted without regard for the consequences to the defendant.

9. On December 14, 1978, Mr. Brophy advised respondent that the defendant had not intended to plead to a misdemeanor. Mr. Brophy asked respondent to advise the Department of Motor Vehicles of the proper charge. Respondent did not so notify the Department.

10. Prior to January 25, 1979, Mr. Brophy again advised respondent of the mistaken misdemeanor entry and again asked respondent to rectify the matter. Respondent did not notify the Department of Motor Vehicles until after January 25, 1979.

As to Charge IV of the Formal Written Complaint:

11. On October 20, 1978, Geraldine Beaudette, age 16, was arraigned before respondent on felony charges of burglary and grand larceny. On that same date, Robert Beaudette, age 17, was arraigned before respondent on a felony charge of burglary and a misdemeanor charge of petit larceny. Neither defendant was represented by counsel, and neither was assigned counsel by respondent. Both defendants pleaded not guilty and were committed by respondent to jail. Respondent did not set bail or a return appearance date for either defendant.

Because of their ages, both defendants were eligible for, but were not granted, Youthful Offender status.

12. On October 24, 1978, Wyngar Dugan, the assistant public defender, was notified by an investigator in his office that the defendants requested to be represented by the public defender's office.

13. On October 25, 1978, Mr. Dugan went to the jail and was informed that both defendants had been released.

14. On October 25, 1978, respondent, without notifying the public defender's office, negotiated with the district attorney's office for pleas of guilty to misdemeanor charges and sentenced both defendants to the time served and conditional discharges.

As to Charge V of the Formal Written Complaint:

15. On February 13, 1977, Vincent Ormsby, age 17, was arraigned before respondent on a violation for harassment and a misdemeanor charge of resisting arrest. Respondent failed to assign counsel when he should have known the defendant was financially unable to obtain counsel. Respondent failed to set bail and committed the defendant to jail without setting a date for a return appearance.

16. By notation on the order committing the defendant to jail, respondent requested that George J. Fast, M.D., director of the Franklin County Community Mental Health Service, conduct a psychiatric evaluation of the defendant. Respondent received Dr. Fast's report on February 16, 1977.

17. By letter dated March 7, 1977, Wyngar Dugan, the assistant public defender, requested that respondent take immediate action in the *Ormsby* case. Respondent did not reply.

18. On March 28, 1977, without notifying Mr. Dugan, respondent had the defendant returned before him. At that proceeding respondent accepted the defendant's guilty plea and sentenced him to the time already served plus three years of probation.

As to subdivision (a) of Charge VI of the Formal Written Complaint:

19. On January 13, 1977, Thomas Boucher was arraigned before respondent on a misdemeanor charge of possession of stolen property. Respondent knew the defendant was indigent, but he failed to assign counsel and failed to set bail. Respondent committed the defendant to jail without setting a date for a return appearance.

20. On February 1, 1977, the defendant was brought before respondent, pled guilty to the charge and was sentenced to a conditional discharge.

As to subdivision (b) of Charge VI of the Formal Written Complaint:

21. On September 2, 1978, Daniel Guiney was arraigned before respondent on a charge of criminal mischief. Respondent knew the defendant to be a known drug and alcohol abuser who had been committed previously to psychiatric institutions. Respondent knew the defendant was unable to obtain counsel, but he failed to assign counsel. Respondent set bail at $500 and committed the defendant to jail without setting a date for a return appearance. Respondent also advised the defendant's mother to contact a physician and attempt to have the defendant committed civilly to an institution.

22. On September 27, 1978, the defendant was released from jail and the charge against him was adjourned in contemplation of dismissal.

As to subdivision (c) of Charge VI of the Formal Written Complaint:

23. On September 19, 1978, George St. Louis was arraigned before respondent on a charge of possession of a weapon. Respondent knew the defendant to be an alcoholic. Respondent knew the defendant was unable to retain counsel, but he failed to assign counsel. Respondent set bail at $500, committed the defendant to jail and adjourned the matter to October 26, 1978.

24. Respondent stated that the adjourned date was arbitrary and was intended to keep the defendant in jail so that he could be "psychiatrically evaluated". However, respondent did not order any psychiatric evaluation of the defendant.

25. On September 27, 1978, the assistant public defender wrote to advise respondent that he was now representing the defendant.

26. On October 5, 1978, the defendant was returned to court where, in the absence of his attorney, he pled guilty to the charge and was conditionally discharged by respondent.

As to Charge VII of the Formal Written Complaint:

27. On September 23, 1978, Joseph Gadway was arraigned before respondent on a vehicle-related misdemeanor charge of permitting operation without insurance. The defendant requested assigned counsel, and respondent advised him to contact the public defender's office. Respondent did not assign counsel or notify the public defender's office of the defendant's request. At the arraignment, without the presence or advice of counsel, the defendant pled guilty to the charge and was sentenced by respondent to 89 days imprisonment.

28. After being sentenced, the defendant requested legal representation from assistant public defender Wyngar Dugan. By letter dated September 27, 1978, Mr. Dugan (i) informed respondent that an appeal was being taken in the *Gadway* case and (ii) requested from respondent the papers in the case.

29. On October 4, 1978, respondent was served by Mr. Dugan with an affidavit of errors as part of the appeal, to which respondent never responded.

30. On October 25, 1978, respondent, without notifying Mr. Dugan, ordered the defendant brought before him and, in the absence of counsel, reduced the defendant's sentence to time already served (32 days) and imposed a $200 fine.

As to Charge VIII of the Formal Written Complaint:

31. On September 19, 1978, Richard Liberty was arraigned before respondent on a misdemeanor charge of unlawfully dealing with a child, for having served beer to a minor. Respondent should have known the defendant was unable to afford counsel, but he failed to assign counsel. Respondent set bail at $250 and committed the defendant to jail without setting a date for a return appearance.

32. On September 26, 1978, the defendant requested legal representation from assistant public defender Wyngar Dugan.

33. On September 27 and 28 and October 4 and 11, 1978, Mr. Dugan wrote to respondent, requesting in each letter that respondent make available to him the court papers in the *Liberty* case. Respondent failed to respond to these communications.

34. On October 16, 1978, the defendant and Mr. Dugan appeared before respondent. The defendant was arraigned on an additional charge of petit larceny. The defendant pled guilty to both outstanding charges and was recommitted by respondent to jail, pending a presentence report. However, respondent deliberately did not order a presentence report, stating later that he intended to extend the defendant's incarceration to await a possible extradition proceeding from New Jersey. Respondent had no reasonable basis to conclude that such extradition was pending.

35. On November 2, 1978, respondent sentenced the defendant to time already served (44 days) on the charge of unlawfully dealing with a child, and 89 days on the charge of petit larceny.

As to Charge IX of the Formal Written Complaint:

36. On March 17, 1978, Richard Pickering, age 17, was arraigned before respondent on charges of criminal trespass and petit larceny.

The defendant pled not guilty and was committed by respondent to jail in lieu of $1,000 bail. On April 4, 1978, the defendant was returned to court, pled guilty to both charges and was recommitted by respondent to jail, ostensibly to await a pre-sentence investigation. In fact, the defendant was recommitted to jail for an indeterminate period of time. On April 10, 1978, the probation department received the order of pre-sentence investigation. On April 24, 1978, the defendant was released from custody and sentenced by respondent to time already served (38 days).

37. On December 5, 1978, Harold Maddox, age 16, was arraigned before respondent on a charge of petit larceny. The defendant, with his father present, waived counsel and pled guilty. Respondent committed the defendant to jail on December 16, to await a pre-sentence investigation. However, respondent did not order a pre-sentence investigation until January 12, 1979, and the order was not received by the probation department until January 19, 1979.

38. On June 13, 1980, Anthony Pecararo, age 17, was arraigned before respondent on a charge of unauthorized use of a motor vehicle. The defendant pled not guilty and was committed by respondent to jail in lieu of $500 bail. A return date was set for August 26, 1980, at which time the defendant appeared without counsel, pled guilty and was recommitted by respondent to jail, ostensibly to await a pre-sentence investigation. By September 18, 1980, respondent had not yet issued an order for such investigation. On September 18, the assistant public defender communicated with respondent and requested such an order. On September 22, 1980, respondent's pre-sentence investigation order was delivered to the probation department by the assistant public defender.

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 (now Sections 100.1, 100.2, 100.3[a][1], 100.3[a][4] and 100.3[c][1]), and Canons 1, 2, 3A and 3C(1) of the Code of Judicial Conduct. Charges I through IX of the Formal Written Complaint are sustained, except for that portion of Charge IX which refers to *People* v. *Maddox*, which was withdrawn. Respondent's misconduct is established.

Respondent has engaged in a course of misconduct which both violates the relevant ethical standards and shocks the conscience. He has abused the power of his office in a manner that has brought discredit to the judiciary and has irredeemably damaged public confidence in the integrity of his court.

In the cases reported herein, respondent abused the bail process by deliberately incarcerating certain defendants for indefinite periods of time in order to coerce them to plead guilty. He deliberately failed to appoint counsel for indigent defendants. He deliberately penalized one defendant because of a personal dislike for that defendant's attorney. Respondent's treatment of the defendants was based not on the merits of their cases but on his own prejudices. Many of these defendants were inexperienced or otherwise incapable of protecting their rights; some were 16 or 17 years old, two were alcoholics, and one was retarded.

Respondent's explanations for his actions do not excuse his gross misconduct. In one case, for example, respondent claims to have incarcerated the defendant on the wrong charge because he was "confused" (Charge II of the Formal Written Complaint). In another case he failed to set bail because he was too "[b]usy with work" (Charge IV). In a third case he failed for nearly a month to send the defendant's attorney the papers before the court, because he "got carried away somewheres, probably selling a rug, probably doing a little carpenter work" (Charge VIII). In a fourth case he failed to order a pre-sentence investigation because he purportedly lost the order in a pile of papers (Charge IX). Respondent did not rectify his conduct, even when his improprieties were called to his attention by the assistant public defender.

No judge is above the law he is sworn to administer. The legal system cannot accommodate a jurist who thus disregards law. Respondent's conduct has revealed his total misunderstanding of the role of a judicial officer. He is not fit to serve as a judge.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

Dated: July 14, 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

THOMAS D. GEORGE,

A Justice of the Town Court of Varick, Seneca County.

Before: Hon. Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Hon. William J. Ostrowski
Hon. Isaac Rubin
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (John J. Postel, Of Counsel) for the Commission

Thomas D. George, Respondent Pro Se

The respondent, the Honorable Thomas D. George, was served with a Formal Written Complaint dated February 1, 1982, charging him with failure to report and remit official monies to the State Comptroller, failure to disqualify himself in a criminal proceeding in which he owed a debt to the defendant, and failure to cooperate with the Commission. Respondent did not file an answer.

By motion dated March 29, 1982, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's operating procedures and rules, and for a finding that respondent's misconduct was established. Respondent did not oppose the motion.

By determination and order dated April 26, 1982, the Commission granted the motion for summary determination, found respondent's misconduct established and set a date for oral argument on the matter of appropriate sanction. Respondent neither appeared for oral argument nor submitted a memorandum on sanction. The administrator of the Commission filed a memorandum in lieu of oral argument.

The Commission considered the record of this proceeding on May 21, 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. From March 1981 to February 1, 1982 (the date of the Formal Written Complaint in this proceeding), respondent failed to report or remit any monies he received in his judicial capacity to the State Comptroller, as required by 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.

As to Charge II of the Formal Written Complaint:

2. On May 28, 1980, in the case of *People* v. *Robert W. Hayssen*, in which the defendant was charged with criminal mischief, respondent failed to disqualify himself, arraigned the defendant and set bail at $250, notwithstanding that respondent owed a debt to the defendant for prior services rendered by the defendant's business to respondent. Bail was posted with $25 in cash and an improperly endorsed third-party check.

3. On May 29, 1980, while still owing a debt to the defendant in *People* v. *Robert W. Hayssen*, respondent confronted Mr. Hayssen at a local country club and, in the presence of Mr. Hayssen's associates, requested that Mr. Hayssen properly endorse the bail check. Mr. Hayssen declined. After respondent departed, Mr. Hayssen went to the Sheriff's Department to deliver $225 in cash for bail. There he was informed that respondent had revoked the defendant's bail and issued a warrant for the defendant's arrest. The defendant was re-arrested and arraigned again before respondent, who set new bail at $500. The defendant was committed to the custody of the Seneca County Sheriff for two hours, until bail was posted.

As to Charge III of the Formal Written Complaint:

4. Respondent failed to cooperate with the Commission during its investigation of the matters herein in that: (i) on December 9, 1981, he failed to keep an appointment with a Commission staff member notwithstanding his previous agreement to present his court records for examination on that date; (ii) on December 15, 1981, he failed to appear to give testimony before a member of the Commission despite having been notified by personal service that his appearance on that date was required; and (iii) on January 15, 1982, he falsely represented to a Commission staff member that he had returned his judicial records to the custody of the Town of Varick following his resignation from office on December 1, 1981.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27 of the Town Law, Section 1803 of the Vehicle and Traffic Law, Sections 100.1, 100.2(a), 100.2(b), 100.3(a)(1), 100.3(b), 100.3(b)(1) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 2B, 3A(1), 3B(1) and 3C(1) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained and respondent's misconduct is established.

Respondent has demonstrated by his conduct that he is unfit for judicial office and should be removed.

Public confidence in the courts requires those who preside over them to be impartial. While owing a debt to the defendant in *People* v. *Robert W. Hayssen*, respondent actively involved himself in the case as noted herein and undermined public confidence in the integrity and impartiality of his court.

By failing to report and remit official funds to the State Comptroller for an 11-month period, respondent violated those provisions of the law which require prompt reports and remittances of such funds.

By falsely representing that he had returned his judicial records to the custody of the Varick Town Board, when in fact he had not, respondent inexcusably hindered a Commission inquiry.

In addition, respondent failed to cooperate with the Commission during its investigation of the matter herein, did not answer the Formal Written Complaint or otherwise participate in this proceeding. *See, Matter of Cooley* v. *State Commission on Judicial Conduct*, 53 NY2d 64 (1981). Respondent has demonstrated that he is unfit for judicial office.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

This determination is rendered pursuant to Section 47 of the Judiciary Law, in view of respondent's failure to resign his office in the manner prescribed by law.

Dated: July 14, 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

JAMES J. LEFF,

A Justice of the Supreme Court, First Judicial District.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Hon. William J. Ostrowski
Hon. Felice K. Shea (Not Participating)
Carroll L. Wainwright, Jr., Esq.

Appearances: Gerald Stern (Raymond S. Hack and Jean M. Savanyu, Of Counsel) for the Commission

Kasanof Schwartz Iason (By Robert Kasanof, Lawrence Iason and Howard E. Heiss) for Respondent

The respondent, James J. Leff, a justice of the Supreme Court, First Judicial District (New York County), was served with a Formal Written Complaint dated January 5, 1981, alleging that, for a six-month period in 1980, respondent refused to perform his assigned duties in accordance with an administrative order. Respondent filed an answer dated February 18, 1981.

By order dated March 12, 1981, 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 September 21, 22, 24 and 25, 1981, and the referee filed his report with the Commission on January 20, 1982.

By motion dated February 24, 1982, the administrator of the Commission moved to confirm the referee's report and for a determination

that respondent be censured. Respondent opposed the motion and cross-moved on March 29, 1982, to disaffirm the referee's report and for dismissal of the Formal Written Complaint or, in the alternative, for reference of the Formal Written Complaint to a different referee for a new hearing. The Commission heard oral argument on the matter on April 22, 1982, thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Supreme Court, First Judicial District, since January 1969, having been elected in the fall of 1968 to a 14-year term.

2. Between 1969 and April 1972, respondent served almost exclusively in civil parts of the Supreme Court.

3. Between May 1972 and June 1980, respondent served almost exclusively in criminal parts of the Supreme Court.

4. On May 27, 1980, respondent was assigned to serve in Part 4 of the Civil Term, a jury part, of the Supreme Court, New York County, for the period from June 16, 1980, to December 26, 1980. Respondent actually learned of the pending assignment by April 1980 and was notified officially on or about May 27, 1980.

5. The assignment of respondent was made in connection with the general assignment of all elected and acting Supreme Court justices to the civil and criminal parts of the Supreme Court in the counties comprising New York City, for the period from June 16, 1980, to December 26, 1980. There were at the time 167 criminal parts and 86 civil parts in the Supreme Court in New York City.

6. The assignment of respondent was recommended, approved, effected, concurred in or ratified by the following: Hon. E. Leo Milonas, Deputy Administrative Judge for New York City; Hon. Jawn A. Sandifer, Deputy Administrative Judge for the Criminal Term, Supreme Court, New York County; Hon. Edward Dudley, Assistant Administrative Judge for the Civil Term, Supreme Court, First Judicial District; Hon. Herbert Evans, Chief Administrative Judge of New York State; Hon. Francis Murphy, Presiding Justice of the Appellate Division, First Department; and the Chief Judge of the State of New York, Hon. Lawrence Cooke. In regular course during the periods at issue, assignments of elected New York Supreme Court justices in the First Judicial District to civil and criminal parts were done by the authority of both Justice Evans and Justice Murphy. In practice, as was done in respondent's case, the assignment schedules were drawn up by Justice Milonas after consultation with Justices

Sandifer and Dudley. Justice Milonas then forwarded a draft assignment schedule to Justices Sandifer and Dudley for comment, and later submitted his final schedule to Justices Evans and Murphy for consideration and signature.

7. Respondent refused to serve in Part 4 of the Civil Term as assigned and failed to perform any judicial duties in that part for the period from June 16, 1980, to December 26, 1980.

8. In the Supreme Court, in New York City, no general practice of circularizing justices for assignment preferences existed, and reasons for assignments were not given to individual justices as a matter of regular course. The only written standard for assignment of judges cited was Section 31.2 of the Rules of the Administrative Board of the Judicial Conference of the State of New York, which reads:

> *Assignment of justices to criminal terms.* The appropriate Appellate Division or such administrative judge or judges as it may designate, shall make the assignments of justices to criminal term parts. The aptitude, interest, and experience of justices in criminal work shall be considered in making such assignments.

Nothing was cited for assignment to civil terms.

9. Respondent discussed his assignment views and corresponded over them with judges in the administrative chain both before and after his actually learning, and official notification, of his new assignment.

10. Respondent enjoys a broad reputation for good judicial performance.

11. He has the intellect, ability and experience necessary to discharge well the functions of both civil and criminal parts of the New York State Supreme Court.

12. Respondent has for many years expressed public and private criticism of the courts and their administration.

13. Respondent, as an individual, was considered personally troublesome by Justice Sandifer.

14. In February 1980, respondent requested and was given a transfer from a criminal calendar part to a criminal trial part on respondent's own claim that he was tired and needed a rest from the calendar part.

15. No punitive or retaliatory basis, and no irregularity of any kind, was proven with respect to respondent's assignment on May 27,

1980, to Part 4 of the Civil Term of his court, the assignment here in question.

16. In December 1980, respondent was given another civil assignment, which he willingly accepted and later performed satisfactorily.

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, 33.3(a)(1), 33.3(a)(5) and 33.3(b)(1) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2[a], 100.3, 100.3[a][1], 100.3[a][5] and 100.3[b][1]) and Canons 1, 2A, 3A(1), 3A(5) and 3B(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained and respondent's misconduct is established.

Respondent's assignment on May 27, 1980, to a civil part of the Supreme Court, was lawfully made by those justices charged with the administration of the Supreme Court. Their authority derives from Article VI, Section 28, of the State Constitution and Article 7-A of the Judiciary Law.

Respondent had a duty to serve in accordance with that assignment. In a large and complex court system, it is obvious that individual judges cannot be free to set their own assignments or reject those which they simply do not prefer. Respondent himself concedes that he does not have a right to veto his assignments. For individual judges to do so would result in chaos and negate any effective central administration.

Respondent was elected to serve as a justice of the Supreme Court, not as a justice of the criminal part of the Supreme Court. A person elected to the Supreme Court must expect to be assigned from time to time to duties in either the civil or criminal parts, in which all Supreme Court justices are constitutionally qualified to serve.

Respondent was never ordered to perform an assignment which was unconstitutional, or which even remotely shocked the conscience, or which other Supreme Court justices were not routinely required to perform, or which respondent had not already performed in the past.

Respondent's contention that the order of May 27, 1980, was punitive and in retaliation for his open criticism of court administration is without foundation. On its face, there is nothing unusual or punitive about an assignment of a Supreme Court justice to a regular civil part of the Supreme Court in his home county. On the record of this proceeding, there is no proof that this otherwise valid assignment was inspired by retaliatory motive. As Justice Harnett, the referee, concluded, "the unequivocal testimony of [Justices] Murphy, Evans, Milonas, Dudley and Sandifer explicitly negated imputation of

punitive retaliation or irregularity." Surely, evidence that a judge has some ground to believe an assignment was punitive is insufficient to warrant a finding of invalidity and plainly fails to justify a private work stoppage or strike against the litigants and attorneys scheduled to appear in his court.

We reject the contention that a work stoppage is an appropriate manner by which to assert such a claim. An Article 78 proceeding to test such an assignment was the obvious alternative, and one which respondent did not hesitate to adopt to challenge the Commission's own proceedings.* The dissent's argument that such a course of action imposes an expensive and unfair burden on the judge is unpersuasive.

In essence, this case involves not the validity of the assignment to civil term but the refusal by a judge to perform his duties for six months. Assuming, as we do, that respondent sincerely believed that the assignment of May 27 was improper, he had the obligation to seek redress in a lawful manner. One would expect that a judicial officer, when confronted by an order whose validity he challenged, would seek relief in those same courts over which he otherwise presides and before which the ordinary citizens of a civilized society are expected to bring their disputes.

There is a great irony, and a potentially dangerous message to society at large, for a judge to decline to rely upon the very legal system whose laws he applies to others, and instead take extra-judicial action. Had the order of May 27 been so onerous as to shock the conscience, had it directed respondent to commit an illegal act, for example, he still would have been obliged to challenge it in court. Respondent's implication that review of such a challenge would have been less than fair is an unwarranted slur upon the state's judiciary.

Respondent has advanced the argument, which the dissent has furthered, that the Commission, in disciplining a judge for his refusal to accept an assignment, has somehow impaired the independence of the judiciary. This contention is unsound.

Historically, the term "independent judiciary" has referred to those courts in which judges are free to decide the merits of cases without fear of public reproof for unpopular decisions and without private pressure from those who govern or others with influence. An "independent judiciary" has never encompassed authority for judges to

---

*Two independent proceedings were instituted by respondent in state and federal courts in the course of this proceeding. *Leff* v. *Commission et al.*, N.Y. Sup Ct (1st Jud. Dist., Index No. 18586/80, Oct. 5, 1980); and *Leff* v. *Commission et al.*, U.S. Dist. Ct. (SDNY, Index No. 80Civ.6074, Nov. 3, 1980).

refuse lawfully-assigned work. Indeed, in the very constitutional provision establishing this Commission, "persistent failure to perform his duties" is one of the specifically-enumerated causes for disciplining a judge (Article VI, Section 22a, of the Constitution). Thus, to argue that discipline in this case would chill judicial independence is to misunderstand the nature of that independence and to ignore our constitutional obligation to discipline a judge who does not work.

The Commission holds that refusal to accept a lawful assignment for a period of six months constitutes judicial misconduct. In so holding, we have every confidence that this determination will not impair in the slightest the abilities of our judiciary to fulfill their obligations as independent officials under our state and federal constitutions.

As to the propriety of imposing discipline for such conduct, it first must be noted that the Commission's determinations are subject to full scrutiny by the judiciary itself, in the form of *de novo* review by the Court of Appeals. Thus the judiciary itself, not the other independent branches of government, remains the final arbiter of judicial disciplinary proceedings. Second, the judiciary is well represented on the Commission itself, with four of our eleven members required by law to be judges. Third, the Commission frequently, as in the instant case, turns to distinguished former judges to serve as referees during the formal hearings on stated charges which precede the issuance of determinations.

As to appropriate sanction, we find, as did the referee, that respondent enjoyed an outstanding reputation as a member of the Supreme Court. Perhaps his years of outstanding service led him to believe that his reassignment was subject to standards not applicable to his colleagues. His error is tragic. We agree with the referee's conclusion that respondent has disgraced himself and compromised the judiciary.

We note, however, that in December 1980, respondent accepted another civil part assignment and has since performed satisfactorily. We have every reason to believe that his lapse of judgment will not recur and that years of productive service lie ahead.

By reason of the foregoing, the Commission determines that respondent should be censured.

Mrs. Robb, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Mr. Wainwright concur.

Judge Alexander and Mr. Bower concur in the findings of fact and conclusions of law but dissent as to sanction only and vote that respondent should be admonished.

Mr. Bromberg dissents from the findings and conclusions and votes that the Formal Written Complaint should be dismissed.

Dated: August 20, 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

JAMES J. LEFF,

A Justice of the Supreme Court, First Judicial District.

CONCURRING OPINION BY JUSTICE OSTROWSKI

I concur with the majority opinion but the dissent of my fellow Commission member David Bromberg prompts these additional observations.

The respondent, in papers submitted to the Commission and in his personal appearance, fashioned himself as a specialist in criminal law whose talents would be wasted in any other assignment.

Any administrative judge worth his salt will exploit the special skills and aptitudes of each judge and will try to accommodate judges who have assignment preferences. But to suggest that an administrative judge *must* do so under pain of mutiny must be rejected out of hand.

The Supreme Court has general original jurisdiction in law and equity. Const., Art.VI,§7. By seeking and accepting nomination for the office of justice of that court, a candidate holds himself out to the public as ready, willing and able to perform all of the manifold duties of that office and it ill behooves any incumbent to recant such compact with the electorate.

This is hardly the first time that the Commission has found misconduct in a violation of an administrative rule. Almost every decision of the Commission is premised on the Code of Judicial Conduct as originally formulated by the American Bar Association and later adopted by the New York State Bar Association. Virtually the entire Code (either one) has been codified as Rules of the Chief Administrator of the Courts (22 NYCRR 100) pursuant to very specific constitutional and statutory authority. Const., Art.VI,§20(b); §212(2,b) Judiciary Law. Hence, every time the Commission finds a violation of the Code, it simultaneously finds a violation of the corresponding rule.

Finally, the dissent says that, "The Commission has now held that a violation of, or non-compliance with, any rule or order of OCA is tantamount to a breach of judicial ethics and is punishable as judicial

misconduct'', and that, ''. . . the effect of its holding is . . . that a judge is required by the rules of judicial conduct to obey an improper or illegal order of the Office of Court Administration.'' That is an unwarranted and expansive reading of this case. The point involved here is a very narrow one and the decision is limited to the factual situation presented.

The time may well come when the Commission has to come to grips with a rule or order of the Chief Judge, or the Chief Administrator of the Courts, or their designees, which it finds to be improper or illegal. That decision is for another day.

Dated: August 20, 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

JAMES J. LEFF,

A Justice of the Supreme Court, First Judicial District.

DISSENTING OPINION BY MR. BROMBERG

I dissent from the foregoing determination because I believe that the Commission has no warrant to render sanctions against judges on complaints that they have violated, or refused to obey, administrative orders or rules of the Office of Court Administration. It is essential to our system of democratic government and to our continued freedom that our judiciary be strong and independent and perform its duties with fairness and integrity. The determination herein threatens serious erosion of the powers and independence of the judiciary and risks potential harm to the balanced operation of our governmental structure.

The constitutional amendments and legislative acts (Article VI, Section 22, of the Constitution and Article 2-A of the Judiciary Law) which established the Commission (and the 49 others like it in all of the states) resulted from widespread public perception that the judiciary was unwilling to recognize or address the problems arising from instances of judicial misconduct. The diminished public confidence in the court system required such a solution as the establishment of this Commission. I believe that the existence of the Commission and the continuance of its work are vital to the proper administration of our judicial system; and I believe further that the record establishes that the Commission has performed its duties fairly and to good effect.

Necessary and salutary though this Commission is, each judge has now become subject to oversight by a body with power to investigate, try and punish him. Neither the executive nor legislative branches of state government are subject to any such form of oversight; nor are local officeholders (e.g., district attorneys) subject to any such disciplinary body. However, the record of the Commission to date shows careful exercise of its powers and justifies confidence that the Commission, while performing its necessary functions, is sensitive to, and

does in fact avoid, any encroachment upon the powers or independence of the judiciary.

At the same time that this Commission was coming into being, the perceived need for reform of judicial administration also resulted in the passage of a constitutional amendment and enabling legislation which established a system of centralized judicial administration for the courts. (Article VI, Section 28, of the Constitution and Article 7-A of the Judiciary Law.) The Chief Judge of the Court of Appeals was given the power to appoint a chief administrator of the courts and to establish and supervise standards and administrative policies for the unified court system for all matters, including rules regulating practice and procedure in the courts, as well as hours of court, judicial assignments and judicial transfers; and he was given the power, through the chief administrator, to supervise the administrative operation of the unified court system. These powers are subject only to the advice and consent of the Administrative Board of the courts (consisting of the Chief Judge and the Presiding Justices of all the Appellate Divisions) in appointing a chief administrator and establishing rules of practice in the courts, and to consultation with the Administrative Board and approval by the Court of Appeals in establishing standards and administrative policies for court administration.

One cannot quarrel with the need for such constitutional amendment and legislation; nor with the assessment that these reforms have had a positive effect on the functioning of the justice system. Necessary and salutary though these reforms are, each judge has now become subject to a centralized authority exercised through the Office of Court Administration which sets rules for, and administers, supervises and controls, the functioning of the entire judicial system and each judge, down to the smallest detail, including fixing the place where each judge shall hold court on each month.

The Commission has now held that a violation of, or noncompliance with, any rule or order of OCA is tantamount to a breach of judicial ethics and is punishable as judicial misconduct. The determination of the Commission that it will utilize its disciplinary powers to enforce the administrative rules and orders issued by the Office of Court Administration carries with it a potential for diminution of the independence of the judiciary which is different and greater than any which could arise from the power of the Commission and the centralized court administration exercised separately from each other. The individual judge now contemplates a system of judicial administration which can bring him before a disciplinary body to answer for disobedience of any of its rules or orders, bring to bear against him the resources of two governmentally financed agencies, and subject him

to the financial, emotional and other strains of a disciplinary hearing and the threat of public discipline. In the face of this, there is cause to wonder whether the individual judge—and, in sum, the judiciary—will be made to feel—or will become—more like court employees subservient to the court administration system, rather than independent constitutional officers performing the judicial functions of government.

I do not believe that the joinder of disciplinary and administrative power in such fashion was foreseen or approved by the public or the legislature, or that it is implicit in the structure of the constitutional amendments and legislation establishing this Commission and the system of court administration. It swings the pendulum too far from the now-overcome extreme of judicial non-accountability toward the other potentially dangerous extreme of a too-controlled judiciary and, thus, threatens the independent functioning of the judiciary and the justice system.

Further, an adversarial and punitive approach to problems of court administration is itself a hindrance to the goal of improving our judicial administration system. Surely the court system and the legislature can—and should—develop a better method of dealing with disputes between court administrators and an individual judge.

I do not argue in support of the propriety or responsibility of the actions of respondent herein. There were other, and perhaps wiser, courses that he might have followed. But there are certain aspects of this matter which bear some discussion here.

Respondent, an experienced and effective jurist, believed that his reassignment from the criminal to the civil part was a punishment and he challenged it by refusing to accept it. The Commission's characterization of respondent's actions as a "private work stoppage or strike against . . . litigants and attorneys" and a "refusal to perform his duties" does no more than restate the issues of this proceeding in a pejorative manner and provide the disciplinary peg of a violation of a specific Rule Governing Judicial Conduct on which to hang the Commission's determination. In fact, respondent wished very much to work. Respondent sought work from other judges when he had completed his remaining work; thereafter he offered to accept any criminal assignment in any court; thereafter he offered to accept any civil or criminal assignment in any court, so long as his objections to the original assignment order were not thereby rendered moot; and finally, when the next round of assignment orders for the judiciary was issued by OCA, respondent accepted his assignment to a civil part. In sum, respondent did not refuse to work or to perform his

duties. He opposed himself to an order of court administration which he believed to be illegal, and the only "violation" of which he could be guilty was his refusal to obey that order.

The referee and the Commission have found that the reassignment was legal and proper, and was not punitive; but the record reveals there are at least some grounds to find that respondent was being reassigned because he was abrasive and difficult and his immediate supervising judge was tired of dealing with him and wanted him elsewhere. (Hearing Tr. 274, 277; Referee Report 9-10.) The Commission's determination appears to sanction such conduct on the part of the assigning authority, and to hold that the assigning authority may properly reassign a judge for its own personal and private reasons.

I cannot agree that the Office of Court Administration has that power. More importantly, I believe that the Commission should not, in any event, function as an overseer of court administration by ruling upon the propriety or legality of Office of Court Administration assignment orders or any other orders of the court administration system. If the Commission's determination in this matter is that it has the power to judicially review orders and rules of the Office of Court Administration and to render a determination that any such rule is improper or illegal, then I believe the Commission is overstepping its bounds.

If, on the other hand, the Commission's determination is that it has no power of review over the OCA beyond establishing that an order was regularly issued, then the effect of its holding is that the very act of disobedience of an administrative order or rule—even if the order or rule is improper or illegal—is, without more, an act of judicial misconduct; and that a judge is required by the Rules Governing Judicial Conduct to obey an improper or illegal order of the Office of Court Administration. The judge's only recourse would then be to find the personal determination and the resources to mount a court challenge against the illegal order of the Office of Court Administration. This is an expensive and unfair burden to impose upon an individual judge and it tilts the scales heavily against him, especially since it could be held with at least equal validity that the well-manned and financed Office of Court Administration should be the one required to institute judicial proceedings.

To those who would argue that chaos in the courts would result from the Commission's declination of jurisdiction in disputes between the Office of Court Administration and members of the judiciary, it should be said that greater faith in the integrity of the judiciary is justified than to accept such a mordant view; and that, in any event,

there is more than sufficient power in the legislature, the Office of Court Administration and the courts to put down any threat of anarchy, should it become a reality.

I firmly believe that a dispassionate analysis of this problem by the OCA and the legislature outside the context of an ongoing dispute will surely reveal a more rational method to reconcile or resolve disagreements between court administration and judges than the adversarial and punitive course now being followed.

For the foregoing reasons I dissent from the determination of the Commission in this matter and I vote that the Formal Written Complaint be dismissed.

Dated: August 20, 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

ALEXANDER CHANANAU,

A Justice of the Supreme Court, First Judicial
District (Bronx County).

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

Appearances: Gerald Stern (Raymond S. Hack and Barry M. Vucker, Of Counsel) for the Commission

Irving Anolik for Respondent

The respondent, Alexander Chananau, a Justice of the Supreme Court, First Judicial District (Bronx County), was served with a Formal Written Complaint dated February 29, 1980, alleging misconduct in that, *inter alia*, he received financial benefits with respect to two of three vacation trips arranged by a man who was actively soliciting and receiving receivership appointments by other judges of respondent's court and in whose cases respondent had ruled on motions and once approved a fee. Respondent filed an answer dated May 7, 1980.

By order dated June 19, 1980, the Commission designated the Honorable James Gibson referee to hear and report proposed findings of fact and conclusions of law.

Upon respondent's assertion that a health condition made impossible his participation in the proceeding, and upon his consequent motion to dismiss the Formal Written Complaint therefore, the referee appointed an impartial physician to examine respondent and report his findings. On February 4, 1982, upon consideration of the physician's report, the referee accepted the physician's conclusion that

respondent "is able to participate in the pending proceedings at this time with no significant threat to his health or life." Respondent's motion to dismiss the Formal Written Complaint was denied, and the referee directed that the hearing proceed.

On April 20, 1982, 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, in which respondent agreed that his conduct created an appearance of impropriety, and waived the hearing provided by Section 44, subdivision 4, of the Judiciary Law. The Commission approved the agreed statement as submitted and heard oral argument on June 28, 1982, as to appropriate sanction. Respondent appeared by counsel for oral argument. Thereafter the Commission made the following findings of fact, as submitted by the parties in the agreed statement.

1. Bernard Lange was a person who knew the management of the Americana Aruba Hotel, and could obtain at that hotel excellent accommodations at lower rates than were available to the general public.

2. 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.

3. From 1975 to 1978, Mr. Lange actively solicited and received numerous judicial appointments from justices of the Supreme Court, Bronx County, as a receiver in real property mortgage foreclosure proceedings. Mr. Lange's main source of income during this period was derived from such judicial appointments.

4. Mr. Lange was appointed more than 150 times as a receiver in real property mortgage foreclosure proceedings. These appointments resulted in over $500,000 in fees to Mr. Lange.

5. Respondent knew or should have known that Mr. Lange had and was likely to continue to have frequent transactions in the Supreme Court, Bronx County, because of his numerous appointments to serve as referee.

6. Between October 25, 1977, and June 26, 1978, respondent ruled upon 20 motions in real property mortgage foreclosure proceedings in which Mr. Lange was serving as receiver. (Attached to the agreed statement and made a part thereof as Exhibits 1 to 20 are copies of those motions.)

7. From April 1976 to December 1977, Mr. Lange arranged transportation and hotel accommodations for respondent and his wife for four vacation trips. On two of those trips respondent and his family

obtained excellent hotel accommodations at substantial savings. On the other two trips respondent and his family received no discounts and no preferential treatment.

8. From April 14 to April 18, 1976, respondent vacationed with his wife at the Southampton Princess Hotel in Bermuda. Transportation, hotel accommodations and hotel rates for this trip were arranged through Mr. Lange.

9. On this trip, respondent and his wife were lodged in deluxe accommodations at the Southampton Princess Hotel. The rate to the general public for such accommodations was $120 per night including breakfast and dinner; Mr. Lange arranged to have respondent billed at the rate of $45 per night.

10. With respect to this trip, 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 approximately $534.20. Respondent paid $217.70.

11. Arrangements for this trip were made by another judge through a friend of the other judge. Respondent was unaware of the identity of the travel agent until after the arrangements were completed. Respondent was not aware of any rates until he registered at the hotel and was given a registration card to sign which showed the rate to be $45.00 per night which respondent paid as billed.

12. From December 18, 1976, to January 2, 1977, respondent vacationed with his wife at the Americana Aruba Hotel in Aruba. Transportation, hotel accommodations and hotel rates for this trip were arranged at respondent's request through Mr. Lange.

13. On this trip respondent and his wife were lodged in deluxe accommodations at the Americana Aruba Hotel. The value of the room, food and other services received by respondent and his wife based upon respondent's bill was $1,957.75. Respondent paid $1,293.20.

14. Respondent knew that he was receiving a reduced rate at the Americana Aruba Hotel through Mr. Lange equal in value to the difference between his hotel bill and what respondent paid.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(c)(1) and 33.5(c)(3)(iii) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2, 100.3[c][1] and 100.5[c][3][iii]), Section 20.4 of the General Rules of the Administrative Board of the Judicial Conference (now the Rules of the Chief Administrator) and Canons 1, 2, 3C(1) and 5C(4)(c) 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 conduct, respondent, as he stipulated in the agreed statement, failed to conduct himself in a manner that promoted public confidence in the integrity and impartiality of the judiciary; created the appearance of impropriety; permitted the impression to be conveyed that Mr. Lange was doing favors for him and was in a special position to influence him; created the appearance that Mr. Lange had paid for part of his trip; failed to observe high standards of conduct; presided over 20 motions in which his impartiality could reasonably be questioned; and accepted gifts, the value of which was the difference between the rates charged to the general public and the rates that respondent paid through Mr. Lange, a person who was receiving judicial appointments and whose interests were likely to come before the Supreme Court in Bronx County.

Respondent knew that Mr. Lange was soliciting and receiving receivership appointments from Supreme Court justices and had himself presided over motions involving Mr. Lange's work as a receiver. Nevertheless, during the same period, respondent took vacations arranged by Mr. Lange and accepted financial benefits arranged through Mr. Lange in the form of significant reductions in hotel rates. In so doing, respondent violated the rule which prohibits a judge from receiving "any gratuity or gift from any attorney or person having or likely to have any official transaction with the court" (Section 20.4 of the General Rules). Respondent further failed to refrain "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][3][iii] of the Rules Governing Judicial Conduct), as he was required to do. While a judge may not know all the people who are likely to come before the court on which he serves, respondent was fully aware of Mr. Lange's business with the court and indeed had presided over a number of Mr. Lange's matters.

By reason of the foregoing, the Commission determines that respondent should be admonished.

All concur.

Dated: September 10, 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

ALBERT MONTANELI,

A Justice of the Ancram Town Court, Columbia County.

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

Appearances: Gerald Stern (Stephen F. Downs and Albert B. Lawrence, Of Counsel) for the Commission

Daley and Baldwin (By Andrew J. Baldwin) for Respondent

The respondent, Albert Montaneli, a justice of the Ancram Town Court, Columbia County, was served with a Formal Written Complaint dated October 14, 1981, alleging that he improperly intervened on behalf of the defendant in a case not before him in November and December 1980. Respondent filed an answer on November 25, 1981.

By order dated December 1, 1981, the Commission designated the Honorable Simon J. Liebowitz referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on January 11, 1982, and the referee filed his report with the Commission on March 15, 1982.

By motion dated May 5, 1982, 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 May 21, 1982, and waived oral argument.

The Commission considered the record of the proceeding on June 28, 1982, and made the following findings of fact.

1. Joseph DiCaprio is the owner of a bar in the town of Ancram. He was arrested on November 28, 1980, for two counts of serving alcohol to minors, a misdemeanor. The case was returnable before Ancram Town Court Justice Joan Dwy, respondent's co-justice.

2. Mr. DiCaprio and his family and respondent are close personal friends.

3. On the night of November 28, 1980, after the arrest of Mr. DiCaprio, respondent telephoned the State Police officers who had made the arrest. Respondent identified himself as the Ancram town justice and as a close friend of Mr. DiCaprio and the DiCaprio family.

4. On December 8, 1980, respondent spoke to the assistant district attorney assigned to the *DiCaprio* case and engaged the prosecutor in a conversation relating to a possible plea bargain, reduction of sentence and lenient treatment of his friend Mr. DiCaprio. The prosecutor rejected respondent's suggestions and told respondent not to involve himself in the case in any way.

5. On December 8, 1980, respondent spoke to Justice Dwy and suggested a fine of $200 in the event the defendant pled guilty to the charge. Such fine would be less than the maximum penalty allowed by law of $250 or 90 days in jail per count. Justice Dwy subsequently imposed a fine of $200 on Mr. DiCaprio.

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(b), 33.2(c), 33.3(a)(4) and 33.3(c) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2[a], 100.2[b], 100.2[c], 100.3[a][4] and 100.3[c]) and Canons 1, 2A, 2B, 3A(4) and 3C of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained to the extent indicated in the findings and conclusions herein, and respondent's misconduct is established.

Respondent lent the prestige of his office to advance a private interest (i) by identifying himself as a judge when he made inquiries to the police on behalf of a friend who was arrested and (ii) by attempting to influence the prosecutor and presiding judge as they discharged their responsibilities in the case. In essence, respondent sought special consideration on behalf of a friend charged with a crime. *See, Matter of Byrne*, 47 NY2d (b), (c) (Ct. on the Jud. 1978).

Respondent's conduct undermined the administration of justice and diminished public confidence in the integrity and impartiality of the judiciary.

By reason of the foregoing, the Commission determines that respondent should be censured.

Judge Alexander, Mr. Bower, Mr. Cleary and Judge Rubin dissent and conclude that respondent's misconduct was not established.

Dated: September 10, 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

RAYMOND E. ALDRICH, JR.,

A Judge of the County Court, Dutchess County.

Before: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Hon. William J. Ostrowski
Hon. Isaac Rubin (Not Participating)
Hon. Felice K. Shea (Not Participating)
Carroll L. Wainwright, Jr., Esq.

Appearances: Raymond S. Hack (Alan W. Friedberg, Of Counsel) for the Commission

Peter L. Maroulis for Respondent

The respondent, Raymond E. Aldrich, Jr., a judge of the County Court, Dutchess County, was served with a Formal Written Complaint dated June 16, 1981, alleging that he presided over two sessions of court while under the influence of alcohol. Respondent filed an answer dated July 9, 1981.

By order dated July 10, 1981, the Commission designated the Honorable Raymond Reisler referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on September 15, 22, 23 and 24 and October 6, 1981, and the referee filed his report on March 11, 1982.

By motion dated April 19, 1982, the deputy 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 May 11, 1982, and, in mitigation, asserted respondent's status as a recovering alcoholic. The deputy administrator filed a reply on May 14, 1982.

The Commission heard oral argument on May 20, 1982, at which respondent appeared with counsel. Thereafter, the Commission requested additional memoranda and reargument, which was held on June 29, 1982. Respondent appeared with counsel for reargument. Thereafter the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a judge of the County Court, Dutchess County, continuously since 1969.

2. On June 13, 1980, respondent, sitting as an acting judge of the Family Court, presided at the disposition in the juvenile delinquency proceeding involving Donald G. (Docket No. D-254-80) and Michael O. (Docket No. D-255-80).

3. Prior to the commencement of the proceeding on June 13, 1980, respondent had consumed alcoholic drinks.

4. While presiding over the proceeding on June 13, 1980, respondent was under the influence of alcohol.

5. During the course of the proceeding on June 13, 1980, at which juveniles and their parents were present, respondent used profane, improper and menacing language, made inappropriate racial references and otherwise behaved in an inappropriate and degrading manner, such as noted below.

(a) Respondent addressed the juveniles before him with respect to their prospective experience in the custody of the Department of Correction by stating, *inter alia:*

> You are in with the blacks from New York City, and you don't dare go to sleep because if you do you will probably be raped, and not one, there may be five. . . . When they get you behind those cell bars they will rape the shit out of you. . . . You are going to be with the blacks in New York. You understand that?

(b) Respondent engaged in a verbal altercation with one of the juveniles before him, insisting that the juvenile have a shorter haircut. Respondent threatened "to bring down two deputies and a barber, and we will give Mr. O. a hair cut." Respondent then held up a pair of scissors. Respondent also told the juvenile: "Look, I am tough, Mike. I love a challenge. I love a kid who wants to bullshit a judge."

6. During the course of a conference in chambers on June 13, 1980, with the attorneys in the proceeding involving Donald G. and Michael O., respondent referred to, described and characterized Dutchess County Executive Lucille Pattison in profane, obscene and vulgar terms, such as "cunt" and "pussy." In a telephone conversation with Ms. Pattison on that same date, respondent was hostile and incoherent.

As to Charge II of the Formal Written Complaint:

7. On March 19, 1981, respondent was assigned to conduct hearings at the Mid-Hudson Psychiatric Center involving persons detained therein. The hearings were scheduled to commence at 10:00 A.M.

8. Prior to his arrival at the Mid-Hudson facility, respondent had consumed alcoholic drinks. He arrived at the facility at 11:00 A.M. and was under the influence of alcohol.

9. Respondent arrived at the facility driving his automobile. At the entrance gate, respondent addressed Michael Weymer, the security guard on duty, and demanded to be allowed to drive his car into the facility. After Mr. Weymer consulted a superior and received permission to allow respondent to drive into the facility, respondent held the point of a large hunting knife against Mr. Weymer's body, frightening Mr. Weymer. While thus brandishing the knife, respondent addressed remarks of a racial character to Mr. Weymer, who is white.

10. When respondent appeared at the facility hearing room to preside over the scheduled hearings, his speech was slurred and rambling, his face florid, his eyes bloodshot and his equilibrium unsteady. While on the bench respondent conducted himself in a bizarre and inappropriate manner, without due regard for the nature of the proceedings. Respondent was incapable of presiding properly.

11. As a result of respondent's incapacity, the attorneys, doctors and court personnel present for the hearings agreed upon adjournments.

Additional findings:

12. On November 23, 1980, five months after his conduct in the delinquency proceeding underlying Charge I of the Formal Written Complaint, respondent entered Highwatch Farms in Kent, Connecticut, for treatment for alcoholism. He abstained from the use of alcohol from then until February 20, 1981, one month before his conduct at the Mid-Hudson facility underlying Charge II of the Formal Written Complaint.

13. From April 6, 1981, to date, respondent has been a member of Alcoholics Anonymous, which holds meetings every day at locations near respondent's residence. Respondent attends approximately 70% of those meetings. Since April 2, 1981, respondent has abstained from the use of alcohol.

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(a)(1) through (5) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2[a] and 100.3[a][1] through [5]) and Canons 1, 2A and 3A(1) through (5) 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 acted in a manner that renders him unfit to continue as a judge.

Twice respondent was intoxicated while on the bench. Twice he presided and attempted to render decisions while his capacity to do so was significantly diminished.

The particular conduct respondent exhibited on these occasions was egregious. In the first incident, he used profane, vulgar language in the presence of juveniles and their parents, engaged in a verbal altercation with one of the juveniles and made offensive references of a racist character about black people from New York City. Later in chambers, in a conference with attorneys, he made obscene and vulgar references of a sexist character about the Dutchess County Executive, whom he then addressed in a hostile and incoherent manner over the telephone.

In the second incident, while en route to a hearing at the Mid-Hudson Psychiatric Center, respondent brandished a weapon and threatened a security guard on duty at the facility and again made public remarks of a racial character. Thereafter he appeared at the hearing but was unable to preside properly.

Respondent's acts of misconduct, standing alone, are of sufficient gravity to warrant termination of his service as a judge. His racist, sexist, vulgar remarks, publicly uttered during the performance of his official duties, diminished the esteem of the court and the dignity of judicial office. His repeated use of racist remarks and his threatening a security officer with a hunting knife were shocking and outrageous.

Respondent is an alcoholic. His misconduct was stimulated by his drinking. Respondent's alcoholism, however, does not relieve him of responsibility for his misconduct, nor does it exempt him from discipline. However sympathetic we are to his circumstances, and however

hopeful we are that he will successfully rehabilitate himself, the effect of respondent's alcoholism has been to cast grave doubt on his efficacy as a judicial officer.

It is simply intolerable for a judge to act in his official capacity while under the influence of alcohol. The very presence on the bench of an intoxicated judge, whose ability to reason is thus impaired, undermines a system of law requiring sound, reasoned, dispassionate judgments. Moreover, respondent's insistence at the hearing that, apart from intoxication, his actions were not improper, demonstrates that he fails to appreciate the gravity of his misconduct and reflects adversely on both his judgment and appreciation of his role and responsibility as a judge.

In determining the appropriate sanction to be imposed upon a judge whose misconduct is established, the Commission must balance its responsibility to ensure to the public a judiciary beyond reproach and its responsibility to deal humanely and fairly with the individual judge. As we have observed previously, where "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 adequately be protected . . . only by removal of the judge from office" (cf. *Matter of Culver Barr*, unreported Determination, October 3, 1980; judge censured for off-the-bench conduct).

The Constitution empowers the Commission to render one of four determinations when misconduct or disability is established: admonition, censure or removal for cause, or retirement for disability (Article VI, Section 22). Respondent and two of our dissenters suggest that the Commission should engraft upon this constitutional provision a new determination, the essence of which would be to discipline respondent conditionally while monitoring his recovery from alcoholism. Respondent suggests that he would accept such a determination and stipulate to a term that would make his removal automatic should another alcohol-related incident occur. Respondent's suggested determination is outside the Commission's constitutional authority.

The overriding need for public confidence in the judiciary does not justify conditional discipline in this case. The integrity of respondent's court would be hopelessly compromised if those who stood before him were reasonably to question his sobriety or wonder with anxiety if another alcohol-related incident was imminent. Placing such a burden on the court would be of particularly dubious merit, particularly since respondent's record of rehabilitation is already blemished. After the first alcohol-related incident, respondent sought treatment, then

stopped. Shortly thereafter the second alcohol-related incident occurred. Under these circumstances, the risk to the public of leaving respondent on the bench is not warranted.

Moreover, the suggested disposition proposed by respondent and the dissenters would necessarily involve the abdication by this Commission of its responsibility and would be an improper delegation of its authority. To repose in the hands of others the power to effect the removal of a judge from office clearly violates the constitutional and statutory judicial disciplinary structure, which authorizes the Commission to determine that a judge should be removed and carefully reposes in the Court of Appeals the actual power to do so.

In *Quinn* v. *State Commission on Judicial Conduct*, 54 NY2d 386 (1981) the Court of Appeals held that there is cause for terminating the services of an unfit judge whose alcoholism results in misconduct *unrelated* to the judicial function. In the instant case, the misconduct stimulated by respondent's alcoholism occurred on the bench and directly impaired the judicial function. Respondent's conduct prejudiced the administration of justice and brought the judiciary into disrepute. Public confidence in the integrity of his court is irretrievably lost.

For the reasons heretofore noted, termination of respondent's judicial services is appropriate. The question remains, however, as to the appropriate manner of effecting that termination: removal or retirement.

In *Quinn*, the Court of Appeals noted: "When misconduct is the result of alcoholism, retirement for disability may be most appropriate in cases where discretion is called for." 54 NY2d at 393.

In oral argument before the Commission, in addition to arguing against removal and in favor of the conditional discipline noted above, respondent steadfastly maintained that he was not disabled and therefore that retirement would be an inappropriate determination. As evidence of his capacity to serve, respondent pointed to his membership in Alcoholics Anonymous, his status as a "recovering alcoholic" and his effective discharge of judicial duties since the second alcohol-related incident.

The essence of this matter involves not respondent's alcoholism but the nature of the misconduct he exhibited while under its influence, the consequent loss of public confidence in the integrity of his court, and his failure to understand that, whether or not he was intoxicated, his conduct was egregiously wrong. While respondent's alcoholism was a stimulus for his misconduct, it is not for alcoholism that he must

be disciplined. Respondent must be relieved of office because the totality of his conduct renders him unfit to be a judge. In these circumstances, retirement for disability would not be appropriate.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur, except for Mr. Bower, Mr. Cleary and Judge Ostrowski, who dissent only with respect to sanction in separate opinions.

Dated: September 17, 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

RAYMOND E. ALDRICH, JR.,

A Judge of the County Court, Dutchess County.

DISSENTING OPINION BY MR. BOWER
IN WHICH JUDGE OSTROWSKI JOINS

I dissent from the majority on the issue of sanctions.

While misconduct has been amply established, to remove the respondent from judicial office is an act of judicial overkill. The harshness of the punishment simply does not fit the crime. Additionally, the majority failed to take into consideration the report of the referee in its essential findings of fact that the respondent is an alcoholic who qualifies for the legal definition of a "recovered alcoholic" and whose misconduct was deeply rooted in his disease.

The facts are virtually uncontested. Respondent has been a County Court judge since 1969. For some three years prior to that, he had been a Family Court judge. He has been assigned at various times to the Supreme Court, the County Court, the Family Court and the Surrogate's Court. His reputation for ability, integrity and veracity has been high, both as a judge and as a practicing lawyer. He has led a useful and umblemished life and has discharged the responsibilities of his judicial office more than adequately.

Both charges of misconduct arise from two isolated acts committed when respondent was inebriated. The first one occurred on June 13, 1980, when he used regrettable language in Family Court. Without condoning such grossly improper tactics, it is easy to see that respondent, in his inebriated state, thought this could be an effective deterrent. His use of a mild expletive while on the bench and his reference to a public official in four-letter words off the bench in a conference with attorneys, while in bad taste, do not rise above the trivial. His phone call to the public official during the same incident is but an example of drunken rambling. It is clear that the respondent's conduct on that day was indeed the result of his having been inebriated. To infer that he is either a racist or a sexist from such conduct is unwarranted.

The second act of misconduct took place some nine months later. In the intervening period, respondent had undergone some treatment for alcoholism but reverted to drinking and eventually, some nine months after the first incident, while at the Mid-Hudson Psychiatric Institute, he engaged in further misconduct. He was unable to preside on that day in a rational and judicial manner and his acts toward the personnel of the hospital, counsel, etc., were clearly those of someone who had had too much to drink. While such behavior is unbecoming a judge and certainly reflects poorly on the judiciary, it certainly does not rise to the gravity where it would justify removal. The same is true of the first group of incidents. Yet, in some curious fashion, two incidents of moderate misconduct, while committed in an inebriated state, neither one of which would be grounds for removal, in the minds of the majority somehow are sufficient for the imposition of the gravest sanction against a judge.

The defense of mitigation has been extensively litigated and argued. It seems well established, and the referee so found, that after the second incident respondent engaged in an effort of the most stringent nature to cure himself of his alcoholic habit. The record is uncontradicted that in the past 15 months the judge has religiously attended the Alcoholics Anonymous meetings on an average of five to six times a week. He has requested and received the aid of the New York State Bar Association Committee on Alcoholism and has someone from that committee monitoring his performance both directly and through the AA program. His judicial performance merited praise from the administrative judge of his district, who testified as a witness before the referee. He has sat by assignment in the Supreme Court as well as in his other courts and has discharged his duties better than many of his colleagues. He established that he is indeed a "recovered alcoholic" as defined by the Mental Hygiene Law Section 1.03 (15). Parenthetically, the same statute (Section 19.07, subdivision 17) discusses the remedy accorded to *recovered* alcoholics with respect to rights or privileges impaired or forfeited as a result of their former disease and discusses the applications and benefits of anti-discrimination laws.

The focus of the majority's position is that the quality of misconduct on those two isolated occasions requires that respondent be removed from judicial office. Indeed, the majority adopted the position taken by counsel for the Commission during oral argument, which urged that because the quality of the acts clearly established that respondent, on those two isolated occasions, was unfit to perform his office as a judge because of impairment due to alcohol, he must be removed from office. This, of course, infers that there are degrees of objectionable behavior, from the mildly reprehensible to the odious,

punishable on a scale of absolutes. What this argument, of course, leaves unanswered is that a lifetime of honorable, competent service on the bar and the bench can be disregarded in an able and honest judge who then suffered of a disease of which he managed to cure himself. This is especially so since neither of the acts, taken alone, shocks the conscience or brought public disgrace on the judiciary in general; they were deemed by participants and observers as the foolish ramblings of someone who got drunk in spite of a performance of capability and sobriety in the past. The stress of the Commission counsel adopted by the majority was that such "on the bench" as opposed to "off the bench" peccadilloes made two arguably reprehensible instances so odious as to be fatal to respondent's career.

In agreeing with this facile solution, the majority of the Commission feels that there is a scale of behavior which, when proven, requires us to administer sanctions without regard to the human worth of the respondent or the nature of mitigation offered. I should think that such absolutist view of punishment vanished with the coming of the Age of Enlightenment. We are not judging conduct which is akin to airline pilots subject to dizzy spells or surgeons with hand tremors. Respondent's situation is more akin to the case of a patient diagnosed as suffering from schizophrenia with its irrational behavior only to find that indeed, it is a brain tumor that is at the bottom of his symptoms and, upon its removal, recovery occurs. The majority's view implies that judges who drink must cure their affliction before becoming judges. This, of course, is hardly possible. It further infers that respondent's acts of misconduct are similar to volitional acts of intoxication recognized in the criminal law as being no excuse for the commission of a crime. It urges that to protect the public from the likes of respondent, he must be removed as one cannot "take a chance" that he might fall off the wagon again.

I cannot share this draconian view. While I do not condone the off-color flavor of the judge's remarks to either the two young defendants or about the county executive, they compare with the salty language used by former Presidents of the United States and pale in comparison with the remarks of certain respected judges whose discussions were publicly reported during the airing of the Judge Leff assignment controversy. It seems that the only serious charge that this record established is respondent's threatening a guard at the hospital and his obviously impaired performance on the bench which was but one instance of public inebriation while performing judicial functions. This can be distinguished from *Matter of Kuehnel*, 49 NY2d 465, as there, the judge failed to recognize his problems with alcohol, engaged in public fights, had received a prior censure which he disregarded and showed total lack of remorse and candor. It is also distinguishable

from *Matter of Quinn*, 54 NY2d 386, as there, the judge had on four occasions been found in public in an intoxicated condition, had been formally admonished for his drinking, had been convicted of driving while his ability was impaired and finally, had been convicted of a misdemeanor, driving while intoxicated. As an aggravating factor, there was a continuation of the drinking problem after the admonition had been administered to him.

We must squarely face the problem of alcoholism in the judiciary as well as in the bar. Other states have dealt with this problem by not removing judges suffering from the disease but by allowing them a probationary period, under supervision, provided their recovery is well underway. Lawyers who have committed egregious acts of breach of faith as well as neglect of clients' trust, upon being found to have suffered from alcoholism, were allowed to recover while practicing law. (See *Matter of Corbett* [87 AD2d 140 (1st Dept. 1982)].) Respondent's conduct cannot be compared with the type of behavior which requires removal. Venality, tyranny, cruelty and the total conscious disregard of established legal rights are all sins that should bar one from judicial office. Being an alcoholic with but two isolated instances of aberrant behavior in 13 years does not fall within this category. One who is an alcoholic may wallow in the depths of the illness for many years without a public incident. His judgment will be poor, his performance mediocre at best, his vision clouded and his private life a shambles. This, if one understands the majority view, is acceptable in a judge. Should he, however, engage but twice in 13 years in two temporally close public displays of alcoholic distemper, the wrath of the community should expel him from the ranks of the judiciary. Even more curiously, the majority holding means that if these two isolated instances of inebriation are successfully fought and remedied by 15 months of great effort and more than competent and able official and private behavior, the horrendous nature of these acts will make all efforts that followed, meaningless and hollow.

There are two rational ways to judge respondent: First, he could be censured with a clear mandate that recurrence will result in removal. Second, in a more enlightened way, the Commission could impose any sanction short of removal and stay its execution for an additional period during which attendance in a regulated program of Alcoholics Anonymous and other supervision and monitoring would be required. Nothing in Article 2-A of the Judiciary Law (Sections 41 through 48) impairs the Commission's power to do so. Indeed, many times the Board of Regents of the State of New York, in dealing with disciplining physicians and other professionals, imposes precisely that type of sanction. Revocations of licenses are enacted and stayed for five

years during which the respondents must submit monthly or quarterly reports of compliance with monitoring and supervision. I cannot but feel that judges have at least the same right.

Appended to this dissent is a stipulation filed in the highest Court of Minnesota, its Supreme Court [*In re Darrell M. Sears*, No. 81-1264, unreported, Jan. 26, 1982]. [Stipulation omitted.] In that matter, the judge's conduct was far more egregious than anything remotely resembling the case at bar. He frequently drank heavily at noon and was observed to be habitually inebriated in court. His behavior at public places was noted to be offensive and embarrassing. He attended bar association meetings while intoxicated. He had been repeatedly reprimanded for failing to discharge his judicial duties in a timely fashion. He sexually harassed and embarrassed female employees of the court as well as female attorneys by making suggestive and off-color remarks and at times, touching their bodies or attempting to kiss them. There is no need to detail all of the charges as the foregoing represent but just a part. It is sufficient to say that such behavior was rooted in alcoholism and the judge did not, unlike respondent in our case, have a period of sustained recovery with resultant discharge of judicial duties.

Yet, the Supreme Court of Minnesota entered the stipulation between the judge and the Board of Judicial Standards which calls for supervised probation, censure and conditional removal.

Accordingly, I dissent from the determination and vote (i) that respondent be severely censured, (ii) that for a period of two years he be subject to monthly reports that he has faithfully attended the Alcoholics Anonymous program and that his judicial performance meets with his superior's requirements, and (iii) that he be removed upon his failure to meet any of these conditions.

Dated: September 17, 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

RAYMOND E. ALDRICH, JR.,

A Judge of the County Court, Dutchess County.

DISSENTING OPINION BY MR. CLEARY

I dissent as to sanction only and vote that respondent be censured.

Respondent's misconduct occurred while he was suffering from "alcoholism", which has been defined by the legislature of this state as "a chronic illness in which the ingestion of alcohol usually results in the further compulsive ingestion of alcohol beyond the control of the sick person to a degree which impairs or destroys his capacity to function normally within his social and economic environment and to meet his civic responsibilities." (Mental Hygiene Law, §1.03, subd. 13.) I feel that he is now a "recovered alcoholic", which has been defined as "a person with a history of alcoholism whose course of conduct over a sufficient period of time reasonably justifies a determination that the person's capacity to function normally within his social and economic environment is not likely to be destroyed or impaired by alcohol." (*Ibid.*, subd. 15.)

While the respondent's conduct was intolerable, I feel his alcoholism at the time may be given consideration in determining the appropriate sanction, especially when he has taken the necessary steps to cure himself of the illness.

This result would apparently not be inconsistent with the thinking of the Court of Appeals, which has recently told us that the proper legal response to alcoholism "is still subject to debate and adjustment." (*Matter of Quinn* v. *State Commission on Judicial Conduct*, 54 NY2d 386, 393.)

I am not convinced that removal is essential, and because of this uncertainty, I vote that respondent, whose record of disposition of cases compares "very favorably" with other County Judges in the Ninth Judicial District, should be censured. I also note that during

World War II, respondent participated in the invasions of Africa, Sicily, Salerno, Anzio and Normandy.

Dated: September 17, 1982

NOTE: The Court of Appeals, upon review, accepted the Commission's determination that respondent be removed. 58 NY2d 279 (1983).

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

J. RICHARD SARDINO,

A Judge of the Syracuse City Court, Onondaga County.

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

Appearances: Gerald Stern (Robert H. Straus and Albert B. Lawrence, Of Counsel) for the Commission

Langan, Grossman, Kinney and Dwyer (By Richard D. Grossman and James L. Sonneborn) for Respondent

The respondent, J. Richard Sardino, a judge of the Syracuse City Court, Onondaga County, was served with a Formal Written Complaint dated May 29, 1981, alleging various acts of misconduct in the course of 63 cases before respondent in 1979 and 1980. Respondent filed an answer on August 11, 1981.

By order dated August 24, 1981, the Commission designated the Honorable John S. Marsh referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on October 13, 14, 15, 19, 20 and 21, 1981, and the referee filed his report with the Commission on March 31, 1982.

By motion dated May 11, 1982, 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. Respondent cross-moved for, *inter alia*, dismissal of the Formal

Written Complaint. The Commission heard oral argument on the motions on June 28, 1982, at which respondent and his counsel appeared. Thereafter the Commission made the following findings of fact.*

As to Charge I of the Formal Written Complaint:

1. In 62 of the 63 cases listed in *Schedule A* appended to the Formal Written Complaint (cases numbered 1 through 8 and 10 through 63), respondent engaged in a pattern of behavior in which he knowingly deprived the defendants of basic, well-established rights and conveyed the impression of partiality toward the prosecution and prejudice against the defendants.

(a) In 44 of the 63 cases (numbered 1 through 4, 6 through 8, 13 through 19, 21 and 22, 25 through 27, 29 and 30, 32 through 35, 37 through 41, 44 and 45, 47 through 49, 51 through 55, 58 through 61, and 63), respondent failed to adhere to Sections 170.10 and 180.10 of the Criminal Procedure Law, in that he failed to advise the defendants of their rights, failed to accord them the opportunity to exercise those rights or failed to take the affirmative steps necessary to effectuate those rights.

(b) In 38 of the 63 cases (numbered 1 through 3, 6 through 8, 13 through 17, 19, 22, 25 through 27, 29, 32 through 35, 37 through 39, 41, 44 and 45, 49 through 51, 53 through 55, 58 through 61, and 63), respondent failed to afford the defendants their right to the assistance of counsel, and he failed to effectuate that right.

(c) In 52 of the 63 cases (numbered 1 through 4, 6 through 8, 11 through 19, 21 through 26, 28 through 30, 32 through 45, 47 through 49, 51, 53 through 56, 58 through 61, and 63), respondent abused the bail process and thereby improperly caused the defendants to be incarcerated, in that he (i) failed to inquire into factors required to be considered in the fixing of bail, (ii) unreasonably refused to fix bail in certain cases, (iii) fixed bail without legal authorization in some cases, (iv) directed that certain defendants be held without bail in cases where bail is required by law, (v) arbitrarily and improperly directed that certain defendants, unrepresented by counsel, be held without bail for "mental examinations" and (vi) used the bail process in a punitive manner.

---

*Appended hereto and made a part hereof is a summary of each case referred to in these findings of fact, except for *People* v. *Willard Roy*, which is described in full detail in paragraph 17 herein.

(d) In nine of the 63 cases (numbered 4, 6, 8, 11, 12, 13, 21, 30 and 36), respondent made improper public inquiries of defendants, and improperly elicited potentially incriminating statements from them, with respect to charges pending against them.

(e) In 23 of the 63 cases (numbered 5, 6, 8, 11 through 13, 17 through 21, 25, 30, 36, 39, 43, 45 through 48, 55, 57 and 59), at arraignment or before each matter had been adjudicated and the individual defendant's guilt established, respondent conveyed the impression that he believed the defendants to be guilty of the crimes and offenses with which they were charged.

(f) In 39 of the 63 cases (numbered 2, 5 through 8, 10 through 13, 16 through 21, 24 through 26, 29 through 31, 35 and 36, 39, 41 through 48, 52, 55, 57, 59 and 60, and 62), respondent was impatient, discourteous and undignified. He disparaged and demeaned persons appearing before him. Often at arraignments he implied that defendants appearing before him were guilty as charged. He acted in an adversarial manner which conveyed the impression that he was biased in favor of the prosecution and prejudiced against the defendants.

(g) In nine of the 63 cases (numbered 2, 8, 10, 24, 31, 36, 43, 47 and 62), respondent improperly criticized other judges, refused to honor negotiated pleas on sentences, or improperly raised or fixed bail set by other judges in cases not properly before him.

(h) In 17 of the 63 cases (numbered 6 through 8, 17 and 18, 21 through 23, 26, 30, 33 and 34, 42, 53, 55, 57 and 60), respondent scheduled or adjourned the cases in a manner which was likely to deny defendants the right (i) to have timely hearings or trials or (ii) to be released from custody or have the charges against them dismissed for the failure of the prosecution to provide timely hearings or trials.

As to Charge II of the Formal Written Complaint:

2. On January 16, 1979, respondent presided over *People* v. *Kevin Joyce* in the Traffic Division of the Syracuse City Court. During that proceeding, before the defendant's guilt or innocence had been established, respondent:

(a) repeatedly disparaged and demeaned the defendant;

(b) improperly deprived the defendant of the right to have bail fixed by revoking the defendant's release on recognizance and remanding him to be held without bail;

(c) made the following remarks upon being told the defendant's car had been destroyed in an accident: "Too bad he wasn't destroyed and the car was still here. That would be beneficial to the community . . .";

(d) conveyed the impression that he believed the defendant to be guilty of the crimes and offenses with which he was charged;

(e) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant and his attorney; and

(f) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge III of the Formal Written Complaint:

3. On May 22, 1980, while arraigning the defendant in *People* v. *Brian Courbat* in the Traffic Division of the Syracuse City Court, respondent:

(a) improperly questioned the defendant and elicited facts concerning the case against him before the defendant had entered a plea or had an opportunity to assert his rights to trial and representation by counsel;

(b) conveyed the impression that he believed the defendant to be guilty of the crimes and offenses with which he was charged;

(c) imposed an unconditional discharge on a charge of Driving An Unregistered Vehicle, without taking a plea from the defendant, who was not represented by counsel, and without advising him of his rights, although the defendant had asserted his innocence;

(d) notwithstanding that he had previously dismissed the remaining charges, respondent improperly ordered the defendant held on bail, adjourned the case for 27 days and threatened him with a charge of contempt, because he thought the defendant had addressed him sarcastically;

(e) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant; and

(f) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge IV of the Formal Written Complaint:

4. On August 15, 1979, while arraigning the defendant in *People* v. *Robert Gemmill* in the Criminal Division of the Syracuse City Court, respondent:

(a) repeatedly disparaged and demeaned the defendant;

(b) improperly elicited from the defendant potential admissions and incriminating statements concerning the crimes with which he was charged;

(c) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged and suggested that he "should be exterminated";

(d) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant and his attorney; and

(e) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge V of the Formal Written Complaint:

5. On February 22, 1980, while arraigning the defendant in *People* v. *Joseph Manzi* in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) improperly elicited from the defendant and his mother potential admissions concerning the crime with which the defendant was charged;

(c) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged;

(d) deprived the defendant of the assistance of counsel;

(e) improperly failed to afford the defendant's mother the opportunity to be heard on the subject of bail; and

(f) was impatient, undignified, inconsiderate and discourteous to the Legal Aid Society lawyer who had offered to represent the defendant.

As to Charge VI of the Formal Written Complaint:

6. On August 13, 1979, while arraigning the defendants in *People* v. *Norma North, Maria North, Roy Abear and Donald Westcott* in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendants of their rights, did not accord them an opportunity to exercise those rights and did not take

any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) did not inquire into the indigency of defendant Abear, and did not appoint an attorney, when Mr. Abear requested that an attorney be appointed;

(c) did not inquire into the indigency of defendant Westcott, and did not appoint an attorney, when Mr. Westcott stated he could not afford a lawyer; and

(d) set bail for each of the defendants without inquiring into the facts and circumstances required to be considered.

As to Charge VII of the Formal Written Complaint:

7. On February 14, 1980, while arraigning the defendant in *People* v. *Donald Parks* in the Criminal Division of the Syracuse City Court, respondent:

(a) refused to appoint a Legal Aid Society lawyer, David Okun, as defendant's counsel, despite Mr. Okun's representation to the court that the defendant was eligible for legal aid and that Mr. Okun was prepared to take the case; respondent instead assigned a student from the Syracuse University Law Clinic to represent the defendant;

(b) directed the student to proceed notwithstanding the student's expressed reservations about appearing for the defendant in the absence of the student's supervising attorney, such supervision being required by Section 478 of the Judiciary Law;

(c) suggested that the defendant had not been entitled to assigned counsel on a previous charge because his father, though unemployed when the Legal Aid Society was appointed, had previously been employed;

(d) stated that the Legal Aid Society lawyer "should proceed against [the defendant's] father for reimbursement of the taxpayers of the expenses of legal representation" on the previous case;

(e) cut short the student attorney's time to confer with his client;

(f) conveyed the impression that he believed the defendant to be guilty of the offense with which he was charged; and

(g) made disparaging remarks about the defendant and his family, and was sarcastic, curt, impatient, undignified, inconsiderate and discourteous to the defendant, to the student and to the Legal Aid Society lawyer.

As to Charge VIII of the Formal Written Complaint:

8. On September 26, 1979, while arraigning the defendant in *People* v. *Paulette Morabito* in the Criminal Division of the Syracuse City Court, respondent:

(a) improperly elicited potentially incriminating statements from the defendant;

(b) conveyed the impression that he believed the defendant to be guilty of the crime with which she was charged;

(c) conveyed the appearance of prejudice against the defendant because of her previous record; and

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

As to Charge IX of the Formal Written Complaint:

9. On September 8, 1979, while arraigning the defendants in *People* v. *James Grimes and James Rivers* in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendants of their rights, did not accord them the opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendants of the assistance of counsel;

(c) failed to inquire into the ability of the defendants to obtain counsel, after being placed on notice that the defendants might be unable to afford counsel;

(d) conveyed the impression that he was prejudiced against the defendants because of the previous record of one of them; and

(e) fixed bail without inquiring into the facts and circumstances required to be considered.

As to Charge X of the Formal Written Complaint:

10. On February 22, 1980, while arraigning the defendants in *People* v. *Donald Jenner and Patty Wilson* in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendants, who were not represented by counsel, of their rights, did not accord them an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) improperly elicited potentially incriminating statements from the defendant Jenner;

(c) conveyed the appearance of prejudice against the defendants;

(d) fixed bail without inquiring into the facts and circumstances required to be considered; and

(e) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendants and the mother of one of the defendants.

As to Charge XI of the Formal Written Complaint:

11. On September 18, 1979, while arraigning the defendant in *People* v. *John Perry* in the Criminal Division of the Syracuse City Court, respondent:

(a) improperly ignored the defendant's request to be allowed to make a telephone call;

(b) refused to allow the defendant's newly-assigned attorney to confer with his client before fixing bail, then remanded the defendant in lieu of $1,000 bail;

(c) fixed bail without inquiring into the facts and circumstances required to be considered; and

(d) acted in an adversarial manner which gave the impression of bias and partiality toward the prosecution and against the defendant.

As to Charge XII of the Formal Written Complaint:

12. On February 13, 1980, while arraigning the defendant in *People* v. *Dorothy Reese* in the Criminal Division of the Syracuse City Court, respondent:

(a) conveyed the impression that he believed the defendant to be guilty of the crime with which she was charged;

(b) conveyed the appearance of prejudice against the defendant because of her previous record; and

(c) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant and her attorney.

As to Charge XIII of the Formal Written Complaint:

13. The charge is not sustained and therefore is dismissed.

As to Charge XIV of the Formal Written Complaint:

14. On February 21, 1980, while arraigning the defendant in *People* v. *John LaPorte* in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take the affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel; and

(c) unlawfully deprived the defendant of his liberty by ordering him held, without bail, on a non-criminal offense charge for which the defendant was not subject to arrest, incarceration or fingerprinting; respondent did so notwithstanding that the defendant was appearing voluntarily pursuant to an appearance ticket.

As to Charge XV of the Formal Written Complaint:

15. On February 18, 1980, while arraigning the defendant in *People* v. *Frank Trivison* in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) did not appoint counsel and did not inquire into the defendant's indigency in response to the defendant's statement that he could not afford an attorney;

(d) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged;

(e) fixed bail without inquiring into the facts and circumstances required to be considered;

(f) conveyed the appearance of prejudice against the defendant because of his previous record; and

(g) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant.

As to Charge XVI of the Formal Written Complaint:

16. On October 16, 1979, while arraigning the defendant in *People* v. *Glenn Watts* in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) failed to inquire into the defendant's ability to obtain counsel;

(d) unlawfully deprived the defendant of his liberty by fixing bail on a non-criminal offense charge for which the defendant was not subject to arrest, incarceration or fingerprinting; respondent did so notwithstanding that the defendant was appearing voluntarily pursuant to an appearance ticket;

(e) adjourned the case for 13 days after fixing bail at $500 knowing that the defendant was not represented by counsel; and

(f) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge XVII of the Formal Written Complaint:

17. On August 21, 1980, respondent dismissed a charge of speeding in the case of *People* v. *Willard Roy*, as a result of a letter he received from Deputy Chief Richard L. Haumann of the Syracuse Police Department, seeking special consideration on behalf of the defendant.

(a) The letter from Deputy Chief Haumann was *ex parte* in nature and not authorized by law.

(b) Respondent failed to refer the summons to the Traffic Part when he received it in June 1980, and instead, held it until he presided in that Part on August 21, 1980, so that he could dismiss the charge.

(c) The disposition by respondent of *People* v. *Willard Roy* was unrelated to the guilt or innocence of the defendant and was not based upon the facts or the law.

(d) Respondent failed to set forth, on the record, his reasons for the dismissal, as required by Section 170.40 of the Criminal Procedure Law, and he failed to require the defendant's appearance in court.

(e) Respondent knew or should have known, prior to dismissing the charge in the *Roy* case, that it was improper for a judge to grant special consideration to a defendant based on an improper *ex parte* communication on behalf of the defendant.

As to Charge XVIII of the Formal Written Complaint:

18. On September 6, 1979, while arraigning the defendant in *People* v. *Elaine Benedict* in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of her rights, did not accord her an opportunity to exercise those rights, and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) fixed bail without inquiring into the facts and circumstances required to be considered; and

(d) after being advised that the defendant was indigent and was being represented by assigned counsel on other charges, disregarded a request that counsel be assigned to represent the defendant, revoked the defendant's release on recognizance on the other charges, fixed bail and adjourned the matter before him, all in the absence of counsel for the defendant.

As to Charge XIX of the Formal Written Complaint:

19. On September 18, 1980, while arraigning the defendant in *People* v. *Charles Cronk* in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights, and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel; and

(c) with knowledge that the defendant was not represented by counsel, improperly and arbitrarily ordered the defendant held, without bail, for an "informal" mental examination.

As to Charge XX of the Formal Written Complaint:

20. On September 6, 1979, while arraigning the defendant in *People* v. *John D. Alling (Dalling)* in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) improperly and arbitrarily ordered the defendant held, without bail, for a mental examination, knowing that the defendant was not represented by counsel;

(d) improperly elicited a potential admission from the defendant;

(e) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged; and

(f) fixed bail, pending the outcome of the mental examination, without inquiring into the facts and circumstances required to be considered.

As to Charge XXI of the Formal Written Complaint:

21. On August 15, 1979, while presiding over *People* v. *Edward Dillenbeck* in the Criminal Division of the Syracuse City Court, respondent:

(a) disparaged and demeaned the defendant;

(b) was sarcastic, undignified, discourteous and intemperate toward the defendant; and

(c) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge XXII of the Formal Written Complaint:

22. On September 11, 1979, while arraigning the defendant in *People* v. *Christopher Gilbert* in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged;

(d) improperly and arbitrarily ordered the defendant held, without bail, for a mental examination, knowing that the defendant was not represented by counsel;

(e) fixed bail, pending the outcome of the mental examination, without inquiring into the facts and circumstances required to be considered;

(f) improperly elicited potentially incriminating statements from the defendant;

(g) improperly and unlawfully directed the prosecuting attorney to notify "the county judge" to revoke the defendant's license to possess a weapon, while stating that the defendant would be charged with unlawful possession of a weapon if he did not immediately surrender his gun;

(h) rescinded his order for a mental examination, at the request of the prosecuting attorney, while improperly and unlawfully conditioning the release of the defendant on his own recognizance on the surrender of the defendant's weapons and weapons permit to the Syracuse Police Department; and

(i) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge XXIII of the Formal Written Complaint:

23. On June 27, 1979, while sentencing the defendant in *People* v. *Lindy McCauliffe* in the Criminal Division of the Syracuse City Court, respondent:

(a) knowingly, improperly and unjustifiably imposed a sentence greater than that approved by the judge who had accepted the defendant's plea of guilty, requiring a modification of the sentence on appeal;

(b) disparaged and demeaned the defendant; and

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

As to Charge XXIV of the Formal Written Complaint:

24. On February 23, 1980, while arraigning the defendants in *People* v. *Mary Herring and Josie Miranda* in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendants of their rights, did not accord them an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendants of the assistance of counsel;

(c) conveyed the impression that he believed the defendants to be guilty of the crimes with which they were charged;

(d) fixed bail without inquiring into the facts and circumstances required to be considered; and

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

As to Charge XXV of the Formal Written Complaint:

25. On March 23, 1981, while conducting a pre-trial conference in *People* v. *Kimberly Cook* in the Criminal Division of the Syracuse City Court, respondent:

(a) conveyed the appearance of prejudice against the defendant and witnesses to be called on her behalf;

(b) conveyed the appearance of partiality toward the prosecution and its case;

(c) conveyed the impression that he believed the defendant to be guilty of the crime with which she was charged; and

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

As to Charge XXVI of the Formal Written Complaint:

26. On September 14, 1979, while arraigning the defendants in *People* v. *Donna Pilon and Sarah Stephens* in the Criminal Division of the Syracuse City Court, respondent:

(a) conveyed the impression that he believed the defendants to be guilty of the crimes with which they were charged;

(b) deprived the defendant Stephens of the right to have bail fixed by holding her without bail on an unrelated charge which was not properly before respondent and on which another judge had previously fixed bail;

(c) conveyed the impression that he believed the defendant Pilon had been guilty of a charge which had previously been dismissed;

(d) was impatient, undignified, discourteous and intemperate toward the defendant Pilon's mother; and

(e) acted in an adversarial manner which gave the impression of bias and partiality toward the prosecution and against the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.2(a), 33.3(a)(1), 33.3(a)(3) and 33.3(a)(4) of the Rules Governing Judicial

Conduct (now Sections 100.1, 100.2, 100.2[a], 100.3[a][1], 100.3[a][3] and 100.3[a][4]) and Canons 1, 2, 2A, 3A(3) and 3A(4) of the Code of Judicial Conduct. Charges II through XII and Charges XIV through XXVI of the Formal Written Complaint are sustained *in toto*. Charge I of the Formal Written Complaint is sustained, except for (i) that portion referring to *People* v. *Thelma Davis*, (ii) those portions in subparagraph (b)(4) of the Charge referring to *People* v. *Holmes, People* v. *Jenner and Wilson, People* v. *Manzi* and *People* v. *Rebensky* and (iii) that portion of subparagraph (f) of the Charge referring to *People* v. *Joyce*, which are not sustained and therefore are dismissed. Charge XIII of the Formal Written Complaint, as hereinbefore noted, is not sustained and therefore is dismissed. As to the sustained charges, respondent's misconduct is established.

Respondent has engaged in a course of conduct which both violates the relevant ethical standards and shocks the conscience. He has abused the power of his office in a manner that has brought discredit to the judiciary and has irredeemably impaired public confidence in the integrity of his court.

The record reveals that respondent routinely conducted himself not as the dignified, impartial adjudicator a judge is required to be but as an intemperate, biased partisan who was predisposed to favor the prosecution and who regularly and deliberately disparaged, demeaned and deprived defendants of their constitutional rights. The evidence of respondent's misconduct is plain and overwhelming.

Respondent knowingly and deliberately ignored certain provisions of the Criminal Procedure Law, such as those which require a judge to advise defendants of the right to counsel and the opportunity to make a telephone call. He knowingly and deliberately ordered certain defendants held for mental examinations, without justification and in the absence of counsel. He knowingly and deliberately required some defendants to post bail for offenses for which incarceration was not authorized. He knowingly and deliberately failed to assign court-appointed lawyers to the indigent, and he did not make the simplest inquiries as to the circumstances of those defendants who volunteered that they could not afford counsel. Respondent did not rectify his conduct, even when the improprieties of his actions were called to his attention by Legal Aid Society attorneys.

In one case (*People* v. *Courbat*, Charge III), respondent knowingly and deliberately reinstated previously-dismissed motor vehicle charges and ordered the defendant held in lieu of bail. This decision was based not on the merits but was motivated by personal pique at the real or imagined sarcasm exhibited by the defendant toward the court.

At times from the bench respondent expressed displeasure with the actions and decisions of other judges and, on occasion, improperly sought to impose his own decisions in matters decided elsewhere and not properly before him. For example, in *People* v. *McCauliffe*, Charge XXIII, respondent knowingly and deliberately ignored a sentence approved by another judge in order to impose a greater sentence on the defendant. In *People* v. *Gilbert*, Charge XXII, respondent improperly and unlawfully directed the prosecuting attorney to advise another judge to reverse a previous ruling with respect to the defendant. In *People* v. *Joyce*, Charge II, respondent declared that he would "not be bound by any other judge or district attorney . . . including the Court of Appeals."

In other cases, respondent revealed his disbelief of statements made by defendants, well before guilt or innocence was established. He did so on numerous occasions at the arraignment stage, before individual defendants had even entered their pleas. He said, for example, that one defendant was "probably still out writing bad checks," that another "almost decapitated a couple of police officers," that a third was "carrying a loaded handgun around" and that a fourth had engaged in "gross" conduct by "blow[ing] up a shotgun in a discotheque." He routinely displayed hostility and animosity toward defendants in his court, stating for example, that one should be "exterminated" and another was "scummy."

Respondent's manner in open court was virtually devoid of those qualities of decorum which the Rules Governing Judicial Conduct require: patience, dignity and courtesy by the judge toward all who appear before him. Such appearances of bias diminish public confidence in the impartiality of the judiciary and reveal respondent's disregard for the obligation of a judge to preside in a fair and even-handed manner.

The record also reveals that it was respondent's practice to conduct *ex parte* discussions with an assistant district attorney on impending matters, prior to the calling of those cases before him. (Transcript of October 19, 1982, pages 31-47.) Such *ex parte* communications are prohibited by the Rules Governing Judicial Conduct (Section 33.3[a][4], now 100.3[a][4]). The fact that they occurred underscores the appearance that respondent was prejudiced against defendants and predisposed toward the prosecution. Respondent in some cases knowingly and deliberately elicited incriminating statements from defendants who were not yet represented by counsel.

The totality of respondent's conduct shows a shocking disregard for due process of law. Respondent has grossly abused judicial power and

process, routinely denied defendants their rights, ignored the mandates of law, disregarded the jurisdiction of other courts, disparaged attorneys, demeaned defendants and otherwise acted in a manner bringing disrepute to the courts and the judiciary.

Respondent has so distorted his role as a judge as to render him unfit to remain in judicial office.

As to respondent's claim that laches bars discipline in this matter, we note the following. The Formal Written Complaint was served in May 1981 after a predicate investigation. The cases at issue occurred in 1979, 1980 and 1981 and were well within the memory of most of the witnesses. Furthermore, transcripts and other documentary evidence were introduced as to all material facets of the charges. In addition, two lengthy adjournments were requested by respondent during the proceedings and were granted. The laches argument is without merit.

As to respondent's claim that certain portions of the Formal Written Complaint should be dismissed because of tainted evidence adduced in support thereof, we conclude that all of the evidence in the record of this proceeding was properly admitted by the referee and was otherwise properly before the Commission.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

Dated: September 20, 1982

NOTE: The Court of Appeals, upon review, accepted the Commission's determination that respondent be removed. 58 NY2d 286 (1983).

APPENDIX

The cases referred to in paragraphs 1 through 26 of the determination herewith are summarized below, in alphabetical order, as they are listed in *Appendix A* of the Formal Written Complaint.

1. *People v. Dwayne Aiken, October 9, 1979*

The defendant, an 18-year-old high school student, appeared voluntarily for arraignment, without counsel, and was charged with unauthorized use of a motor vehicle, a misdemeanor.

Respondent did not advise Mr. Aiken of his rights and stated he would enter a not guilty plea to allow Mr. Aiken time to obtain counsel. Mr. Aiken indicated his age, lack of employment and the fact that his income came from his father, who was not present. Respondent, without further inquiry, declared that the "responsibility" for obtaining counsel belonged to Mr. Aiken's father. Respondent then entered a not guilty plea, adjourned the case for 10 days and fixed bail at $500. Respondent did so without indication that Mr. Aiken's father was willing or able to hire counsel and without indication that the defendant could indeed post bail in lieu of remaining incarcerated without an attorney to defend him.

[Reference to determination: paragraph numbered 1(a), (b) and (c).]

2. *People v. Elaine Benedict, September 6, 1979*

The defendant, an unemployed 17-year-old, appeared before respondent for arraignment on a felony charge. Respondent did not advise her of her rights.

Ms. Benedict told respondent she was represented by Irene Sommer, a Legal Aid Society lawyer. Respondent replied that Ms. Sommer could not represent the defendant on this charge. He then adjourned the case for six days to allow Ms. Benedict time to obtain counsel.

Susan Horn, another Legal Aid attorney who was present, advised respondent that Legal Aid was indeed representing Ms. Benedict on other charges and that Ms. Benedict was probably eligible for assigned counsel. Ms. Horn requested that respondent assign counsel. Respondent replied "I'll take care of that," whereupon he (i) did not assign counsel, (ii) fixed bail at $5,000, (iii) revoked the defendant's release on recognizance ordered in another case by another judge; and (iv) fixed $500 bail on that other case. Respondent did so without a motion having been made by the assistant district attorney, having

concluded without a record before him that Ms. Benedict had not complied with the rules of the "Pretrial Release Program" set by the other court.

When Ms. Horn repeated her request that counsel be assigned, respondent said: "The Court will protect her rights. You can be seated, Ms. Horn." Respondent then adjourned the case without assigning counsel.

[Reference to determination: paragraphs numbered 1(a), (b), (c), (f), (g) and 18.]

3. *People v. Janice Block, September 6, 1979*

The defendant was charged with prostitution and appeared without counsel before respondent.

Respondent did not advise the defendant of her rights and made no inquiry as to her ability to afford counsel or as to factors appropriate to a bail decision. Respondent (i) adjourned the case for seven days, (ii) ordered a physical examination and (iii) fixed bail at $2,500 "to be effective on the obtaining of negative results of the physical exam."

[Reference to determination: paragraph numbered 1(a), (b) and (c).]

4. *People v. Mary Ellen Boyd, September 10, 1979*

The defendant, charged with falsely reporting an incident, appeared voluntarily for arraignment, without counsel. Ms. Boyd was alleged to have been in a car accident, left the scene and reported that her car had been stolen. She denied the allegations. Respondent nevertheless asked her questions about the facts of the case which might have elicited from Ms. Boyd self-incriminating information.

[Reference to determination: paragraph numbered 1(a), (c) and (d).]

5. *People v. Kimberly Cook, March 23, 1981*

At a pre-trial conference attended by an assistant district attorney and defense counsel, respondent stated that the defendant "and people like her" of the "lower" class were "scummy," "half drunk," "liars" and "not to be believed." Respondent stated that, in contrast to the defendant and "people like her," a "respectable" defendant should be believed. He said that one such "respectable" defendant would be a General Electric employee charged with price-fixing.

[Reference to determination: paragraphs numbered 1(e), (f) and 25.]

6. *People v. Brian Courbat, May 22, 1980*

The defendant, a 17-year-old, appeared voluntarily for arraignment, without counsel, on several motor vehicle charges.

Respondent did not advise Mr. Courbat of his rights. He made no inquiry into the defendant's ability to obtain counsel. Without arraigning Mr. Courbat or entering a plea, respondent questioned Mr. Courbat about the charges, discussed the merits of the matter and made it clear he believed the defendant was guilty of wrongdoing.

When the defendant asserted his innocence and said he had not been driving the car, respondent sarcastically indicated his disbelief of the defendant in the following exchange:

The Court:	You hadn't been driving the car, is that what you're telling me?
Defendant:	Yes.
The Court:	This was at 4 a.m. on May 21?
Defendant:	Yes.
The Court:	You had not been driving the car?
Defendant:	I was in my pajamas. I just came out of the house.
The Court:	The old pajama trick, huh?. . .

As the defendant persisted in professing innocence, respondent insisted he must be guilty of something:

> Well, obviously, there must have been some kind of complaint made by your neighbors or somebody. You were probably being obnoxious in the neighborhood. They don't just go up there and get somebody out of bed at 4 o'clock in the morning to write tickets. You must have been doing something. I only get half the story here, see.

Thereafter, despite the failure to enter a plea and the defendant's assertions of innocence, respondent pronounced sentence of an unconditional discharge. Notwithstanding this disposition, respondent improperly ordered the defendant held on bail, adjourned the case for 27 days and threatened him with contempt, because respondent believed that when the defendant said "have a nice day" in the colloquy below, he did so with sarcasm:

Defendant:	Um, about the car . . .
The Court:	Move. Get out of here.
	(Defendant started to leave courtroom)
Defendant:	Have a nice day, Your Honor.

The Court:	Come back here, young man. Come back here.
Defendant:	Yes?
The Court:	Are you trying to be contemptuous with this Court? If you are, I'll send you to jail for 30 days.
Defendant:	No, sir. I'm sorry.
The Court:	Give me those tickets back here. I can see now why these officers apparently had problems with you.
Mr. Paris:	Do you want to amend some of those tickets, Judge?
The Court:	No, what I think I'll do with this smart young man is plead not guilty and have him get a lawyer and have him go to trial on these. Bail is $25 on each ticket. You're in custody until you get that bail up. Go over in the jury box right now.
Mr. Paris:	Do you want a trial date, Judge?
The Court:	Yes.
Mr. Paris:	June 18.
The Court:	Good.

[Reference to determination: paragraphs numbered 1(a), (b), (c), (d), (e), (f), (h) and 3.]

7. *People v. Charles Cronk, September 18, 1979*

The defendant, an unemployed 17-year-old, appeared voluntarily for arraignment, without counsel, and was charged with menacing (a misdemeanor) and harassment (a violation). He was accompanied by his mother.

Respondent did not advise the defendant of his rights, suggested that the district attorney file yet a third charge against the defendant, and made no inquiry as to his financial ability to obtain counsel. Respondent told Mrs. Cronk it was her "responsibility to provide [her son] with legal services."

Respondent adjourned the case for 17 days (i.e. two days over the maximum allowable by law) and fixed bail at $2,500. When the case was later recalled, respondent ordered the defendant held without bail for an "informal" mental examination, without having any information before him that would indicate such an examination was appropriate. Respondent again failed to advise the defendant, who was still without counsel, of his rights.

[Reference to determination: paragraphs numbered 1(a), (b), (c), (f), (h) and 19.]

8. *People v. John D. Alling (Dalling), September 6, 1979*

The defendant, a 16-year-old self-employed painter, appeared for arraignment without counsel on a felony charge of criminal mischief.

Respondent did not advise the defendant of his rights, made no inquiry into his ability to afford counsel, ordered a mental examination, fixed bail at $5,000 with no discussion of bail criteria pending the results of that examination and, prior to adjourning the case for 12 days (i.e. nine days over the maximum allowable period), elicited an admission of guilt from the defendant. Respondent so acted despite being advised by the prosecutor that the charges had been improperly drawn and should be reduced to a misdemeanor.

[Reference to determination: paragraphs 1(a) through (h) and 20.]

9. *People v. Thelma Davis, May 28, 1980*

The change in the Formal Written Complaint as to this case was dismissed.

[Reference to determination: paragraphs numbered 1 and 13.]

10. *People v. Edward Dillenbeck, August 15, 1979*

The defendant appeared before respondent on a weapons charge. Respondent refused to accept a plea and sentence approved in another court. He publicly stated his disregard for the other court's action in the case.

In the course of the proceeding, respondent referred to the defendant as a "one man crime wave," a "creature" and "one of the worst wretches I've seen."

[Reference to determination: paragraphs numbered 1(f), (g) and 21.]

11. *People v. Robert Gemmill, August 15, 1979*

The defendant, charged with reckless endangerment, appeared with counsel for arraignment. Respondent referred to Mr. Gemmill as a "creature" and as "crazy." Respondent ignored defendant's counsel and spoke directly to Mr. Gemmill, asking him about the previous arrest.

With respect to the matter then before him, respondent conveyed the impression that he believed the defendant guilty.

When defendant's counsel asked respondent to repeat something, respondent spoke to him discourteously.

[Reference to determination: paragraphs numbered 1(c), (d), (e), (f) and 4.]

12. *People v. Sherry and Stephen George, September 25, 1979*

The defendants appeared with counsel for arraignment on charges of criminal possession of a weapon and possession of a controlled substance. During the proceeding, respondent referred to the defendants as "crazy" and conveyed the impression he believed they were guilty.

[Reference to determination: paragraph numbered 1(c), (d), (e) and (f).]

13. *People v. Christopher Gilbert, September 11, 1979*

The defendant voluntarily appeared, without counsel, for arraignment on a charge of menacing, a class B misdemeanor, for allegedly threatening two neighbors with a handgun.

Respondent did not advise Mr. Gilbert of his rights, stated he was (i) entering a not guilty plea, (ii) "reserving" Mr. Gilbert's "rights" and (iii) adjourning the case. Respondent did so without determining whether the defendant was able to obtain a lawyer.

After determining that Mr. Gilbert had never been in a mental institution, was not under the care of a psychiatrist and had been employed as an electrician for nine years, respondent, over the objection of the assistant district attorney, ordered the defendant held for a mental examination. Without discussion of bail criteria, respondent then fixed bail at $2,500.

Respondent then interrogated the defendant on the merits of the case. After determining that no gun had been found in connection with the charge, respondent elicited from the defendant the fact that he has a gun permit. Respondent thereupon summarily concluded that the permit "should be revoked forthwith," and he directed the assistant district attorney to so advise the county court.

Respondent so acted despite the facts that (i) the proceeding was an arraignment, not a trial on the merits, (ii) the defendant was without counsel, (iii) the defendant had expressed his innocence and (iv) the defendant's innocence was presumed in law.

When the case was recalled later the same day, respondent, at the prosecutor's request, cancelled the mental examination and released the defendant on his own recognizance, on condition that he surrender his weapon and permit.

[Reference to determination: paragraphs numbered 1(a), (b), (c), (d), (e), (f) and 22.]

14. *People v. Barbara Gordon, September 6, 1979*

The defendant was charged with prostitution. At arraignment, respondent did not advise her of her rights, made no inquiry into her ability to afford counsel, adjourned the case for 13 days, ordered a physical examination and, with no inquiry as to bail criteria, fixed bail at $2,500 pending receipt of negative examination results.

[Reference to determination: paragraph numbered 1(a), (b) and (c).]

15. *People v. Gwendolyn Grimes, September 7, 1979*

The defendant was charged with prostitution. At arraignment, respondent did not advise her of her rights. Although the defendant stated that her husband was employed part-time and she asked to have counsel appointed, respondent stated that it was her husband's responsibility to obtain counsel for his wife. Respondent made no serious inquiry as to the defendant's indigency. He knowingly deprived the defendant of the assistance of counsel and misinformed her on her husband's responsibility. He then ordered the defendant held without bail for a physical examination, informing her that if the results were positive she would be held until cured.

[Reference to determination: paragraph numbered 1(a), (b) and (c).]

16. *People v. James Grimes and James Rivers, September 8, 1979*

The defendants were charged with petit larceny and possession of burglary tools. They appeared at arraignment without counsel. Respondent did not advise them of their rights. Despite being advised by Mr. Grimes that he was previously represented by a legal aid attorney, respondent made no inquiry as to the financial ability of the defendants to obtain counsel, and he did not assign counsel in this case.

Respondent directed the court clerk to notify Mr. Grimes' parole officer to have him prosecuted for violation of parole, though the proceeding was an arraignment and not a trial on the merits. Respondent addressed the defendants in a manner that implied their guilt and set bail without proper inquiry as to bail criteria.

[Reference to determination: paragraphs numbered 1(a), (b), (c), (f) and 9.]

17. *People v. Mary Herring and Josie Miranda, February 23, 1980*

The defendants, 20 and 22 years old respectively, were charged with petit larceny. They appeared without counsel at arraignment. Respondent did not advise them of their rights. Although each defendant

stated she was unemployed, respondent made no inquiry as to their ability to obtain counsel, and he did not appoint counsel. Instead respondent said: "You ought to try working sometime instead of stealing," thus creating the appearance he thought they were guilty although neither pleaded guilty and both were, by law, presumed innocent. Respondent fixed bail at $500 each and adjourned the case for five weeks.

[Reference to determination: paragraphs numbered 1(a), (b), (c), (e), (f), (h) and 24.]

18. *People v. John Holmes, February 22, 1980*

The defendant was charged with first degree robbery and third degree larceny. He appeared without counsel for arraignment. During the proceeding, respondent indicated he had prejudged the defendant's guilt and adjourned the case for 7 days (i.e. four days over the maximum allowable period).

[Reference to determination: paragraph numbered 1(a), (c), (e), (f) and (h).]

19. *People v. Willie Hunt, August 17, 1979*

The defendant was charged with misdemeanor violations of the Alcoholic Beverage Control laws, pertaining to illegal sale and storage of alcoholic beverages. He appeared voluntarily for arraignment, without counsel. Respondent set bail at $2,500 without proper inquiry as to bail criteria, and he made no inquiry into Mr. Hunt's ability to afford counsel, after being advised that an unrelated weapons charge was pending against the defendant.

[Reference to determination: paragraph numbered 1(a), (b), (c), (e) and (f).]

20. *People v. Walwyn Jackson, February 13, 1980*

The defendant was charged with possession of a forged instrument, second degree. At a hearing before respondent, the defendant's attorney appeared on his client's behalf and advised respondent that Mr. Jackson had been released on his own recognizance and was told his personal appearance was not necessary for the proceeding before respondent. Respondent indicated his belief that the defendant was guilty of the crimes charged and was probably committing new crimes.

[Reference to determination: paragraph numbered 1(e) and (f).]

21. *People v. Donald Jenner and Patty Wilson, February 22, 1980*

The defendant was charged with possession of a controlled substance. Ms. Wilson was 16 years old. The defendants appeared

without counsel for arraignment. Respondent did not advise them of their rights.

In the course of the arraignment, respondent encouraged Mr. Jenner to discuss the merits of the case and elicited incriminatory statements from him.

Respondent indicated his belief that Mr. Jenner was guilty of the accused crimes in the following remarks to defendant Wilson's mother, who was present:

> I'm going to show you something. This is part of his rap sheet, ma'am. That's the kind of creature your daughter is hanging around with. I'm just telling you that so she can act accordingly if she does get out of here. If I were her father and came here, that would be another case of homicide.

Respondent adjourned the case for 7 days (i.e. four days over the maximum allowable period).

[Reference to determination: paragraphs numbered 1(a), (c), (d), (e), (f), (h) and 10.]

22. *People v. Evonne Johnson, September 6, 1979*

The defendant was charged with loitering for prostitution, a violation. She appeared for arraignment without counsel. Respondent did not advise her of her rights. He fixed bail at $2,500 and adjourned the case for seven days to give the defendant time to see a lawyer, having made no inquiry into the defendant's ability to afford counsel.

[Reference to determination: paragraph numbered 1(a), (b), (c) and (h).]

23. *People v. John C. Jones, February 7, 1980*

The defendant appeared with counsel for arraignment. Respondent stated that the defendant would be held without bail "at the request of the District Attorney," pending receipt of a New York State identification and intelligence system (NYSIIS) report. The record reveals no such "request" by the D.A.'s office. Defense counsel requested that the case be held pending receipt of such report, in order to protect his client's right to bail. Respondent denied the request without proper inquiry as to bail criteria. By adjourning the case he denied the defendant the opportunity to have a bail decision made upon receipt of the report later that same day. Respondent made no inquiry as to the delay in transmittal of the report on the day in question, nor did he request its expedited delivery.

When the defendant's attorney requested that a preliminary examination be scheduled within 72 hours of the defendant's arraignment, as required by law, respondent replied, without basis or justification, that the law meant such examination was required "within 72 *court* hours." [Emphasis supplied.] He thus denied the defendant timely release.

[Reference to determination: paragraph numbered 1(c) and (h).]

24. *People v. Kevin Joyce, January 16, 1979*

The defendant was charged with reckless driving. He appeared with counsel for arraignment.

Respondent set bail without inquiry into bail criteria because he "did not want this creature walking around." He stated that the defendant belonged in a mental institution, was a "dangerous maniac," had been "in trouble since he was born," "ought to spend 20 years [in jail]" and had "almost decapitated a couple of police officers." When told Mr. Joyce's car had been destroyed, respondent said:

> Too bad he wasn't destroyed and the car still here. That would be beneficial to the community. And the D.A. is willing to let him plead to one charge. No way.

Refusing to accept a plea negotiation worked out in another court, respondent indicated that he would prosecute Mr. Joyce in excess of the district attorney's position and refused to accept Mr. Joyce's attorney's representation concerning the already agreed upon disposition. Respondent informed the attorney, Mr. Parker, what disposition he wanted ("Best I will do with this creature is take a plea to no insurance charge and plea to reckless driving") and said:

> There isn't going to be a problem, counselor. That's it. That's the deal. I am not interested with Mr. Fico's [the prosecutor] beliefs whatsoever. As long as I am in Traffic Court, I will not be bound by any other Judge or District Attorney, unless I am previously consulted previous to any arrangement, including the Court of Appeals.

[Reference to determination: paragraphs numbered 1(c), (f), (g) and 2.]

25. *People v. Michael Kaigler, September 18, 1979*

The defendant was charged with menacing. He appeared without counsel for arraignment. Although the defendant told respondent he could not afford a lawyer, respondent did not make sufficient inquiry as to the defendant's financial capability to retain counsel, stating "you're going to have to get your own attorney" after the defendant

said he earned $120 per week. Respondent fixed bail, suggested that the prosecutor request a mental examination of the defendant, appeared to have prejudged the merits of the matter and identified himself with the prosecutor.

[Reference to determination: paragraph numbered 1(a), (b), (c), (e) and (f).]

26. *People v. Howard Keller, September 19, 1979*

The defendant was charged with burglary in the second degree, a felony. He appeared without counsel for arraignment, accompanied by his father. Respondent did not advise the defendant of his rights. Respondent interrogated the defendant about prior arrests, his parole or probation status and his place of residence. Although respondent had before him a report on the defendant's record prepared by the Syracuse police department, he suggested to the prosecutor that the defendant be held without bail for a NYSIIS report, whereupon the prosecutor made such a request which respondent granted.

When the defendant advised respondent that he did not have a lawyer, respondent made no inquiry as to the defendant's ability to obtain one. He adjourned the case for 13 days (10 days over the maximum allowable period). Respondent then directed the defendant to return in 13 days with a lawyer, even though he had ordered the defendant held without bail.

[Reference to determination: paragraph numbered 1(a), (b), (c), (f) and (h).]

27. *People v. Donald M. Kyles, November 15, 1979*

The defendant appeared before respondent pursuant to a summons. He was accompanied by his mother and Susan Horn, a Legal Aid Society lawyer. Ms. Horn advised respondent that the defendant was eligible for assigned counsel, and she asked to be assigned.

Respondent disregarded Ms. Horn's remarks, did not advise the defendant of his rights and proceeded to question him. When Ms. Horn insisted on being heard, respondent ruled that she was in contempt of court and remanded her to the custody of the sheriff. He then assigned other counsel, who was not present, and continued questioning Mr. Kyles, finally releasing him on his own recognizance.

[Reference to determination: paragraph numbered 1(a) and (b).]

28. *People v. Rhonda Lane, August 9, 1979*

The defendant was charged with prostitution. Respondent improperly caused the defendant to be incarcerated by failing to inquire into

bail criteria, unreasonably refusing to fix bail, directing that the defendant be held without bail although the fixing of bail was required by law and thus using bail in a punitive manner.

[Reference to determination: paragraph numbered 1(c).]

29. *People v. John LaPorte, February 21, 1980*

The defendant was charged with unlawful possession of marijuana, a violation for which he was not subject to incarceration. He appeared without counsel for arraignment.

Respondent did not advise the defendant of his rights. Aware that the defendant was indigent, respondent first assigned Legal Aid to represent him, then substituted Bonnie Strunk upon learning she had been assigned to represent the defendant on other charges. Later in the arraignment proceeding, when the defendant told respondent that his landlord had posted bail for him on other charges, respondent ruled that the defendant was able to get his own lawyer, and he therefore withdrew the assignment of counsel. Respondent then ordered him held without bail and, although he had adjourned the case to March 23, 1980, directed the defendant to appear with his landlord the next day, whereupon the following ensued:

The Court:	You be back here tomorrow morning, my friend, at 9:30 with your landlord.
The Defendant:	At 9:30? Why? You said March 23rd.
The Court:	Okay, no bail. That will make sure you're going to be here.
The Defendant:	Okay.
The Court:	Take him away.
The Defendant:	I'll be here tomorrow morning, sir. You can release me. If you tell me to be here, sir, I'll be here. You don't like me, huh?

[Reference to determination: paragraphs numbered 1(a), (b), (c), (f) and 14.]

30. *People v. Joseph Manzi, February 22, 1980*

The defendant, a 17-year-old, was charged with second degree assault. He appeared without counsel for arraignment. During the proceeding, respondent interrogated the defendant and elicited potentially incriminatory statements.

Respondent did not advise the defendant of his rights. He thereafter adjourned the case for seven days (i.e. four days over the maximum allowable period).

[Reference to determination: paragraphs numbered 1(a), (c), (d), (e), (f), (h) and 5.]

31. *People v. Lindy McCauliffe, June 27, 1979*

In sentencing the defendant on a charge of criminal mischief, respondent refused to honor a plea arrangement negotiated in another court and agreed to by the prosecuting attorney. Then, addressing the defendant before sentencing, respondent stated:

> You're a habitual criminal, Mr. McCauliffe. You're a thief. You're a robber. You get breaks, and you violate your probation. You're a violent offender in my judgment. You should be put away for life. As far as I'm concerned, you ought to be caged in like an animal in a zoo somewhere. You shouldn't be allowed to mingle with law-abiding people, and I'm going to do the best I can to see that you don't mingle with law-abiding people because you don't have any sense of decency about you . . .

[Reference to determination: paragraphs numbered 1(f) and 23.]

32. *People v. Mary McClendon, February 19, 1980*

The defendant, an unemployed 19-year-old, appeared without counsel for arraignment on misdemeanor and violation charges. Respondent did not advise the defendant of her rights. He told her he was entering not guilty pleas and adjourning the case. When the defendant advised respondent that she was unemployed, had no income and lived with her mother, respondent ascertained that the defendant's mother was employed by General Electric. (The defendant's mother was not in court.) Respondent made no other inquiry into the mother's willingness or ability to obtain counsel, and he told the defendant: "Tell your mother that's her responsibility to provide legal counsel for you." He then fixed bail at $500 and adjourned the case for eight days.

[Reference to determination: paragraph numbered 1(a), (b) and (c).]

33. *People v. Keith McLaurin, February 19, 1980*

The defendant was charged with disorderly conduct and possession of marijuana, both violations. He appeared without counsel for arraignment. Respondent did not advise the defendant of his rights, did not inquire into bail criteria, did not inquire into the defendant's ability to obtain counsel, did not assign counsel and adjourned the case for eight days (i.e. three days over the maximum allowable period).

[Reference to determination: paragraph numbered 1(a), (b), (c) and (h).]

34. *People v. Willie Montague, September 6, 1979*

The defendant, an unemployed 22-year-old, was charged with possession of a weapon, a class "D" felony. He appeared without counsel for arraignment, accompanied by his mother.

Respondent did not advise the defendant of his rights. Though he knew the defendant was without counsel, respondent made no inquiry as to his ability to obtain counsel. Respondent then adjourned the case for five days (i.e. two days over the maximum allowable period).

[Reference to determination: paragraph numbered 1(a), (b), (c) and (h).]

35. *People v. Queen Moore, September 25, 1979*

The defendant was charged with reckless endangerment, second degree. She appeared without counsel for arraignment. Respondent did not advise her of her rights. Respondent, in his opening remarks, declared the defendant guilty of a greater crime than the one with which she had been charged and suggested that the district attorney prosecute her for that greater crime.

Respondent made no inquiry into the defendant's financial ability to obtain counsel, adjourned the case and then ordered the defendant held without bail for a mental examination, not on the basis of any information before him.

[Reference to determination: paragraph numbered 1(a), (b), (c) and (f).]

36. *People v. Paulette Morabito, September 26, 1979*

The defendant was charged with possession of a hypodermic instrument. She appeared with counsel for arraignment.

The assistant district attorney advised respondent that the defendant had appeared voluntarily and had no prior record of absconding. Respondent, with no further comment, fixed bail at $1,000. When defendant's counsel suggested that bail was not appropriate under these circumstances, respondent addressed him discourteously. When respondent was advised that the defendant had been released from probation on an earlier charge by the judge of another court, he replied:

> I can't believe it. I can't believe it. That's a mystery to me. What judicial officers are doing is absolutely crazy. It's against your best interests and society's best interest. What is that judge's name?

Although the defendant appeared with counsel, respondent questioned the defendant directly and cut off her counsel when he attempted to speak.

[Reference to determination: paragraphs numbered 1(c), (d), (e), (f), (g) and 8.]

37. *People v. Norma North, Maria North, Roy Abear and Donald Westcott, August 13, 1979*

The defendants appeared without counsel for arraignment. Respondent did not advise them of their rights.

When Mr. Abear requested a court-appointed lawyer, respondent, without inquiry into his financial status, said: "No, you get your own lawyer."

When the matter of counsel for Mr. Westcott was raised, the following ensued:

Mr. Westcott:	I ain't working. How am I going to get a lawyer? I can't afford a lawyer, Your Honor.
The Court:	What income do you have?
Mr. Westcott:	None right now.
The Court:	Well, how do you buy food, how do you buy whiskey, how do you buy gas?
Mr. Westcott:	I don't.
The Court:	You don't, you don't eat?
Mr. Westcott:	Yeah, I eat. I live with my parents.
The Court:	You live with your parents?
Mr. Westcott:	Yeah.
The Court:	Then have your parents get you a lawyer. I'll give you an adjournment till August 23. Bail is $500 cash on both charges. Call your parents.

[Reference to determination: paragraphs numbered 1(a), (b), (c) and 6.]

38. *People v. Richard Panek, February 1, 1980*

The defendant was charged with petit larceny and appeared voluntarily for arraignment, without counsel. Respondent did not advise the defendant of his rights. In reply to questions from respondent, the defendant said he planned on getting an attorney. Respondent made no further inquiry on his financial eligibility after the defendant said he was an auto mechanic. Respondent adjourned the case for 14 days and fixed bail at $100 cash or $500 bond.

[Reference to determination: paragraph numbered 1(a) and (b).]

39. *People v. Donald Parks, February 14, 1980*

The defendant was charged with violation of probation.

David Okun, a Legal Aid Society lawyer, had interviewed the defendant, determined that he was eligible for legal aid and asked to be assigned. Respondent ignored Mr. Okun's request and instead assigned an unsupervised law student to the case. When the law student demurred, respondent did not withdraw the assignment. When the law student requested time to confer with the defendant, respondent did not allow sufficient time and ordered the defendant held without bail. During the foregoing proceeding, respondent indicated his conclusion that the defendant was guilty as charged.

[Reference to determination: paragraphs numbered 1(a), (b), (c), (e), (f) and 7.]

40. *People v. Mary Peck, August 17, 1979*

The defendant was charged with a misdemeanor and appeared without counsel for arraignment. Respondent did not advise her of her rights and failed to inquire into bail criteria.

[Reference to determination: paragraph numbered 1(a) and (c).]

41. *People v. John Perry, September 18, 1979*

The defendant was charged with petit larceny and appeared without counsel for arraignment. Respondent did not advise the defendant of his rights and assigned counsel after the defendant steadfastly maintained that he was unemployed and could not afford counsel.

Upon learning that the defendant was on probation for an earlier offense, respondent directed that he be prosecuted for probation violation, a decision which is within the discretion of the probation department.

[Reference to determination: paragraphs 1(a), (b), (f) and 11.]

42. *People v. John Perry, February 13, 1980*

The defendant appeared before respondent, represented by counsel. Respondent set bail. Respondent rudely disputed the representations of defendant's counsel concerning the defendant's record of appearing in court. Respondent made sarcastic reference to defendant's defense, analogizing it to the defense of an ABSCAM-implicated congressman who claimed to be conducting his own investigation. Despite the maximum allowable adjournment of 72 hours in such a case, respondent engaged in the following colloquy with defense counsel:

Mr. Harrigan: Your Honor, evidently Mr. Perry was arrested on Friday and was arraigned on Monday morning. I was out of town last week and was not aware of that, so I would ask for Preliminary Examination for Mr. Perry and would ask that we schedule that this afternoon if possible.

The Court: That's not possible.

Mr. Harrigan: Well, Your Honor, Mr. Perry has the right to a Preliminary Examination within 72 hours. He's been in jail since Friday.

The Court: He has the right of a Preliminary Examination within 72 Court hours from the time it is demanded. You are now demanding it, and I will give it to you 72 hours from the time you demand it, Mr. Harrigan. That will be February 19th. Court is closed on the 18th.

[Reference to determination: paragraph numbered 1(c), (f) and (h).]

43. *People v. Donna Pilon and Sarah Stephens, September 14, 1979*

The defendants were charged with loitering for the purpose of prostitution. During the arraignment, when defendant Pilon's mother (who was present) said that defendant Stephens lived in her building, respondent said: "So, you've got two convicted prostitutes living with you?" Respondent also said: "She was arrested last time with Tina Miller, another sweetheart."

Told by Ms. Pilon's mother that the family had previously lived in Rochester, respondent replied: "Was she arrested in Rochester for prostitution, too?"

After Ms. Pilon's mother attempted to explain that her husband was disabled, that the family was in serious financial trouble and that the defendant had applied for welfare, the following colloquy took place:

The Court: You're telling me you tolerate that?

Mrs. Pilon: Come again?

The Court: There's no point in my talking with you, ma'am. Since May, your daughter's been arrested three times.

Mrs. Pilon: Well, everything isn't black and white, Your Honor.

The Court: That's all you have to say about it? "Everything isn't black or white?"

Mrs. Pilon: Yes. A lot of things, you know, seem like what they're not.

The Court: Take a look at your girl here. She was walking around the street with that see-through bathing suit in a public place soliciting men for prostitution.

Mrs. Pilon: My daughter is a good girl.

The Court: That depends on your definition of good, ma'am. You're entitled to your opinion. I'm entitled to mine. I disagree with you, ma'am.

With reference to bail in her case, I'll set the bail at on each charge $1,000 cash or bond. Okay. We don't have the file here, but on the other case, we'll get the file and file a Violation of a Conditional Discharge. We'll try her on that Monday at two p.m. Okay.

When it was indicated that Syracuse City Court Judge Louis Mariani had previously dismissed a case in which Ms. Pilon was the defendant, the following colloquy occurred:

The Court: Okay. File a Violation of that conditional discharge. Give her a summary hearing immediately like two o'clock. She—Oh, yes, I see it here now. That was in June of '69—or '79, rather. One year conditional discharge, and then she was arrested July 26th and charged with Loitering For Prostitution Purposes. Who gave her that one? August 16th.

Mr. Sonneborn: Dismissal in the interest of justice, Your Honor.

The Court: Yes.

Mr. Sonneborn: I can assure you it was not our office.

The Court: It was not me. I know that.

Mr. Sonneborn: I believe Judge Mariani was on the bench.

The Court: Judge Mariani gave her a dismissal in the interest of justice? Isn't that something. Who was your lawyer on that caper?

With respect to defendant Stephens, who had had bail set by another judge on another charge not before respondent, respondent revoked the earlier bail. Upon being advised that Syracuse City Court Judge Louis Mariani had jurisdiction over the earlier case, respondent stated:

> I now have jurisdiction of the case. I'm assuming jurisdiction of the case, and I'm revoking her bail on the conviction for prostitution.

Respondent told the law student who was appearing for Ms. Pilon that she had "a ridiculous record" and directed that a violation of conditional discharge be filed against her, despite the fact that the defendant was at this stage merely charged with, not convicted of, a crime.

[Reference to determination: paragraphs numbered 1(c), (e), (f), (g) and 26.]

44. *People v. Helen Prince, October 2, 1979*

The defendant was charged with prostitution and appeared without counsel for arraignment. Respondent did not advise her of her rights and made no inquiry as to her ability to afford counsel. Respondent ordered the defendant held without bail for a physical examination, directed that a violation of her conditional discharge be filed notwithstanding that the proceeding was an arraignment and not a determination on the merits, did not appoint a lawyer and indicated the defendant should obtain one herself.

[Reference to determination: paragraph numbered 1(a), (b), (c) and (f).]

45. *People v. Eric Pritchett, February 19, 1980*

The defendant, a 17-year-old, was charged with resisting arrest and disorderly conduct. He appeared without counsel for arraignment, accompanied by his mother. Respondent did not advise him of his rights, made no inquiry into his ability to afford counsel, fixed bail at $500 and adjourned the case so respondent could obtain counsel on his own. During the arraignment, respondent indicated his belief that the defendant was guilty as charged.

[Reference to determination: paragraph numbered 1(a), (b), (c), (e) and (f).]

46. *People v. Irving Puryea, February 7, 1980*

The defendant was charged with third degree burglary, petit larceny, aggravated harassment and issuing a bad check. He appeared with counsel for arraignment. Throughout the proceeding, respondent was impatient and discourteous toward defense counsel and indicated his belief that the defendant was guilty as charged.

[Reference to determination: paragraph numbered 1(a), (e) and (f).]

47. *People v. Michael Rebensky, February 20, 1980*

The defendant was charged with resisting arrest and unlawful possession of marijuana. He appeared without counsel for arraignment. Respondent did not advise him of his rights, failed to assign counsel, failed to inquire into bail criteria, criticized another judge's decision and indicated his belief that the defendant was guilty as charged.

[Reference to determination: paragraph numbered 1(a), (c), (e), (f) and (g).]

48. *People v. Dorothy Reese, February 13, 1980*

The defendant was charged with trespass and third degree possession of stolen property. Respondent did not advise the defendant of her rights and appointed counsel to represent her. In response to counsel's bail application on the grounds that the defendant had two children and had never missed a court appearance, respondent conveyed the impression he believed the defendant was guilty.

[Reference to determination: paragraphs numbered 1(a), (c), (e), (f) and 12.]

49. *People v. Christine Shinto, September 29, 1979*

The defendant was charged with prostitution and appeared without counsel for arraignment. Respondent did not advise her of her rights, did not inquire into bail criteria, did not make adequate inquiry into her financial ability to obtain counsel and ordered her held without bail for a physical examination.

[Reference to determination: paragraph numbered 1(a), (b) and (c).]

50. *People v. James Simms, August 6, 1979*

The defendant appeared before respondent for sentencing, accompanied by Irene Sommer, a Legal Aid Society attorney. Although Ms. Sommer stated that the defendant was "borderline eligible" for legal aid and that she would represent him, respondent stated that Ms. Sommers had said the defendant was not eligible for assigned counsel. Respondent deprived the defendant of counsel, sentenced him and did not advise him of his rights.

[Reference to determination: paragraph numbered 1(b).]

51. *People v. Wayne Smarr, September 29, 1979*

The defendant, a 19-year-old charged with possession of marijuana and a drug, a misdemeanor, appeared without counsel for arraignment. Respondent did not advise him of his rights, did not inquire into his ability to obtain counsel, did not appoint counsel and did not inquire into bail criteria. He adjourned the case for 16 days and indicated the defendant should obtain his own counsel.

[Reference to determination: paragraph numbered 1(a), (b) and (c).]

52. *People v. Sadie Stewart, August 15, 1979*

At this proceeding, the defendant's attorney was relieved and a new one assigned. Respondent said that the case would be ". . . going to go to trial right away notwithstanding Judge Burke or County Court

or anything. This is going to trial in this Court right now. . . ." Respondent directed her attorney to produce the defendant later that day so that he could fix bail on her. Respondent made that statement after being told by defense counsel that Ms. Stewart was free on her recognizance pursuant to CPL §180.80; the prosecution had not been ready for a preliminary hearing. The prosecution had made no request that bail be fixed at this stage or that the case proceed immediately to trial. In fact, the assistant district attorney had stated that no juries were available.

[Reference to determination: paragraph numbered 1(a) and (f).]

53. *People v. Timothy Stoddard, September 18, 1979*

The defendant, a 20-year-old charged with third degree larceny, appeared without counsel for arraignment. Respondent did not advise the defendant of his rights, did not inquire into his ability to obtain counsel and did not inquire into bail criteria. Respondent adjourned the case for 17 days (i.e. 14 days over the maximum allowable period). Although the prosecutor suggested adjourning the case to the following morning so bail could be fixed, respondent prompted the prosecutor to request that the defendant be held without bail for a NYSIIS report.

[Reference to determination: paragraph numbered 1(a), (b), (c) and (h).]

54. *People v. Janice Suits, September 10, 1979*

The defendant was charged with prostitution and appeared without counsel for arraignment. Respondent did not advise her of her rights, did not inquire into her ability to obtain counsel, did not inquire into bail criteria and ordered her held without bail for a medical examination.

[Reference to determination: paragraph numbered 1(a), (b) and (c).]

55. *People v. Ezra Taylor, February 10, 1980*

The defendant was charged with first degree reckless endangerment, a felony, and appeared without counsel for arraignment. Respondent did not advise him of his rights, did not inquire into his ability to obtain counsel, did not inquire into bail criteria, ordered the defendant held without bail for a mental examination without inquiring into the defendant's mental condition, and adjourned the case for seven days (i.e. four days over the maximum allowable period).

[Reference to determination: paragraph numbered 1(a), (b), (c), (e), (f) and (h).]

56. *People v. Wanda Thomas and Rita Brown, August 17, 1979*

The defendants were charged with loitering and appeared for arraignment before respondent. Respondent did not inquire into bail criteria and ordered defendant Brown held without bail for physical examination, then fixed bail at $2,500 if the examination results were negative. Respondent intentionally did so despite knowing that physical examinations are not authorized by the CPL for defendants charged with loitering.

With respect to defendant Thomas, although she had already been examined physically, respondent refused to accept that fact and ordered her examined again, holding her without bail pending such examination.

[Reference to determination: paragraph numbered 1(c).]

57. *People v. Wanda Thomas and Diana Morris, August 15, 1979*

The defendants were charged with second degree assault and appeared with counsel before respondent. The assistant district attorney (Mr. Plochocki) moved to dismiss since the complaining witness was not available to testify. Defense counsel (Mr. Raus) moved to dismiss for violation of the right to a speedy trial. Respondent denied both motions and in so doing, disparaged another court:

The Court:	No, the motion is denied. I'm directing the District Attorney to present this case to the grand jury and produce the victim by compulsion if necessary. The criminal justice system has degenerated to a point where we can only prosecute cases where the complainant is willing, then we might as well fold up our tents and move to Canada. That's ridiculous. Because a victim won't testify before the grand jury, you want to move to dismiss two serious felony charges. No way. Motion is denied.
Mr. Raus:	Your Honor, for the record at this time I would move for a dismissal of the charges pursuant to §30.30 of the Criminal Procedure Law, a speedy trial.
The Court:	Move in County Court. That's where they belong. That's where that motion lies. I'm sure they'll grant it for you. They do that pro forma over there.
Mr. Plochocki:	Your Honor, the motion is based upon the fact that the time has elapsed for us to be ready for trial.
The Court:	Bring them in anyway before the grand jury. If there's an exception where the victim is unavailable, that extends the time period. Just because a man won't appear before a grand jury, you flake off. Forget it.

[Reference to determination: paragraph numbered 1(e), (f) and (h).]

58. *People v. Miles Thompson, August 7, 1979*

The defendant was charged with possession of stolen property, a misdemeanor. He appeared voluntarily for arraignment, without counsel. Respondent did not advise him of his rights. When advised by the defendant that he could not afford counsel, respondent denied him assigned counsel without inquiry.

[Reference to determination: paragraph numbered 1(a), (b) and (c).]

59. *People v. Patricia Thrush, February 29, 1980*

The defendant was charged with prostitution and appeared without counsel for arraignment. Respondent did not advise her of her rights, ordered her held for a physical examination with bail at $2,500 if the results were negative, and thereafter asked if the defendant had funds to obtain counsel. When the defendant said she did not, respondent indicated his belief that the defendant was guilty as charged.

[Reference to determination: paragraph numbered 1(a), (b), (c), (e) and (f).]

60. *People v. Frank Trivison, February 18, 1980*

The defendant, who was unemployed, was charged with first degree criminal possession of stolen property, a felony. He appeared without counsel for arraignment. Respondent did not advise him of his rights, did not inquire into bail criteria and adjourned the case for seven days (i.e. four days over the maximum allowable period). During arraignment the following colloquy occurred:

The Court:	You have a squalid police record.
The Defendant:	I don't understand what that means.
The Court:	That means that it smells. It's odorous. You have been a public nuisance here since 1962, Frank. You were placed on Probation in 1971 for Burglary, and you couldn't even make that, couldn't even stay out of trouble on Probation. How many prior Felonies have you been convicted of?
The Defendant:	None, Your Honor, just the Burglary.
The Court:	Don't give me that none.
The Defendant:	Just the Burglary.
The Court:	You got five years Probation for Burglary in 1971.
The Defendant:	That's the only one.
The Court:	I thought you said none.

The Defendant: No, that's the only one.

The Court: So, you're a predicate felon.

[Reference to determination: paragraphs numbered 1(a), (b), (c), (f), (h) and 15.]

61. *People v. Sheila Villnave and Irving Puryea, September 10, 1979*

The defendants were charged with petit larceny and appeared voluntarily for arraignment. Respondent did not advise them of their rights. Despite Mr. Puryea's statement that he worked part-time and Ms. Villnave's statement that she was unemployed, respondent did not make further inquiry into their ability to obtain counsel, did not assign counsel, adjourned the case and suggested that they find attorneys on their own.

[Reference to determination: paragraph numbered 1(a), (b) and (c).]

62. *People v. Wayne Waterman, June 28, 1979*

In a letter dated April 19, 1979, the district attorney's office had recommended the acceptance of a plea to assault in the third degree and a sentence of probation.

Pursuant to that recommendation, Syracuse City Court Judge Louis Mariani accepted the defendant's guilty plea on May 1, 1979. There was to be a pre-sentence report and the defendant was to appear before Judge Mariani for sentencing on May 31, 1979. On that date the report was not ready and Judge Mariani adjourned the matter to June 28, 1979, for the pre-sentence report to be completed. All of these documents—pre-sentence report, letter from the probation department and criminal court fact sheet—clearly indicate that Judge Mariani, who had accepted the plea of guilty and who would be aware of any promises or recommendations which had been made, would set sentence.

On June 28, 1979, the defendant appeared with his attorney, Joseph Heath, for sentencing. Since the probation department, the complainant and the district attorney's office had all recommended the sentence of probation, a probation order had been prepared and was attached to the pre-sentence report. The report was addressed to Judge Mariani.

The transcript of the sentencing of Wayne Waterman shows that respondent imposed a jail sentence of one year on the defendant. This occurred after defense counsel requested that the matter be referred to

Judge Mariani. Respondent denied that request and an additional one for a two-day adjournment of the case.

[Reference to determination: paragraph numbered 1(f) and (g).]

63. *People v. Glenn Watts, October 16, 1979*

The defendant, a 19-year-old, was charged with non-criminal possession of marijuana and appeared without counsel for arraignment. Respondent did not advise the defendant of his rights, did not inquire into the defendant's ability to obtain counsel and, knowing the defendant was charged with a violation for which he was not subject to arrest, incarceration or fingerprinting, nevertheless set bail at $500, stating that the reason he was doing so was that, a year before, the defendant had had other charges against him dismissed.

[Reference to determination: paragraphs numbered 1(a), (b), (c) and 16.]

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 R. PULVER,

A Justice of the Kinderhook Town Court
and Valatie Village Court, Columbia County.

The Commission:	Mrs. Gene Robb, Chairwoman Hon. Fritz W. Alexander, II John J. Bower, Esq. David Bromberg, Esq. E. Garrett Cleary, Esq. Dolores DelBello Victor A. Kovner, Esq. Hon. William J. Ostrowski Hon. Isaac Rubin Hon. Felice K. Shea Carroll L. Wainwright, Jr., Esq.
Appearances:	Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission
	Ronald R. Pulver, Respondent Pro Se

The respondent, Ronald R. Pulver, a justice of the Kinderhook Town and Valatie Village Courts, was served with a Formal Written Complaint dated April 26, 1982, alleging that he presided over four cases from 1978 to 1981 involving his relatives. Respondent did not file an answer.

By motion dated July 20, 1982, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established, pursuant to 22 NYCRR 7000.6(c). Respondent did not oppose the motion. By determination and order dated August 20, 1982, the Commission granted the administrator's motion, found respondent's misconduct established and set a date for oral argument on the issue of sanction. Respondent did not appear for

oral argument and sent the Commission a letter indicating his intention to resign. The administrator filed a memorandum in lieu of oral argument. The Commission considered the record of the proceeding on September 16, 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. On April 15, 1978, respondent presided over an arraignment in *People* v. *Charles Pulver, Jr.*, in which the defendant was charged with burglary in the third degree, notwithstanding that the defendant was his nephew. Respondent failed to keep any record of the arraignment.

As to Charge II of the Formal Written Complaint:

2. Between January 1979 and January 1981, respondent presided over *People* v. *Suzanne Klein*, in which the defendant was charged with endangering the welfare of a minor, notwithstanding that the complaining witness in the case, Ruth Pulver, was respondent's sister-in-law, and notwithstanding that the minor whose welfare was at issue was respondent's niece.

As to Charge III of the Formal Written Complaint:

3. On January 17, 1979, respondent presided over *People* v. *Charles Pulver, Jr.*, in which the defendant was charged with criminal trespass in the second degree, notwithstanding that the defendant was his nephew. Respondent dismissed the charges and failed to keep any record of the proceeding.

As to Charge IV of the Formal Written Complaint:

4. On March 12, 1980, respondent presided over *People* v. *Charles Pulver, Jr.*, in which the defendant was charged with assault in the third degree, notwithstanding that the defendant was his nephew. Respondent reduced the charges against the defendant to harassment and imposed a $50 fine against him.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 14 of the Judiciary Law, Sections 2019 and 2019-a of the Uniform Justice Court Act, Sections 105.1 and 105.3 of the Recordkeeping Requirements for Town and Village Courts, Sections 100.1, 100.2, 100.3(a)(1) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3C(1) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained and respondent's misconduct is established.

An independent, impartial judiciary is essential for the fair and proper administration of justice. It is improper for a judge to preside

over cases involving relatives within six degrees of consanguinity or affinity. To do so would violate Section 14 of the Judiciary Law and Section 100.3(c)(1) of the Rules Governing Judicial Conduct, which require the judge's disqualification in such circumstances.

By presiding over cases involving his nephew, sister-in-law and niece, and by violating the relevant ethical provisions cited above, respondent irreparably diminished public confidence in the integrity and impartiality of his court and has demonstrated his unfitness for judicial office.

Respondent compounded the seriousness of his misconduct by failing to keep proper records of the cases at issue, despite the mandates of law and the rules relevant to town and village court administration. Such misconduct suggests a deliberate attempt by respondent to conceal what he knew to be improper conduct. We are not persuaded by respondent's assertion that he merely forgot to keep certain records (Charges I and IV) or that he had no recollection of the case involving the allegedly endangered welfare of his niece.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

This determination is made pursuant to Section 47 of the Judiciary Law in view of respondent's recent resignation.

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mrs. DelBello and Judge Rubin were not present.

Dated: November 12, 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

ANGELO D. RONCALLO,

A Justice of the Supreme Court,
Tenth Judicial District (Nassau County).

The Commission:	Mrs. Gene Robb, Chairwoman Hon. Fritz W. Alexander, II John J. Bower, Esq. David Bromberg, Esq. E. Garrett Cleary, Esq. Dolores DelBello Victor A. Kovner, Esq. Hon. William J. Ostrowski Hon. Isaac Rubin Hon. Felice K. Shea Carroll L. Wainwright, Jr., Esq.
Appearances:	Gerald Stern (Robert Straus, Of Counsel) for the Commission
	Irving A. Cohn for Respondent

The respondent, Angelo D. Roncallo, a justice of the Supreme Court, Tenth Judicial District (Nassau County), was served with a Formal Written Complaint dated April 5, 1982, alleging *inter alia* that he failed to disqualify himself in a 1979 proceeding in which his impartiality reasonably might be questioned.

On May 28, 1982, respondent, his counsel and the Commission's administrator entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing authorized by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the agreed-upon facts. The Commission approved the agreed statement of facts and, on September 16, 1982, heard oral argument on the issues herein. Respondent's counsel appeared for oral argument. Thereafter the Commission considered the record of the proceeding and made the following findings of fact.

1. On January 12, 1979, respondent, while assigned to Special Term, Part I, of the Supreme Court, Nassau County, issued a memorandum decision in *Worthley et al.* v. *Williams et al.*, dismissing the plaintiffs' complaint, notwithstanding the following:

(a) The plaintiffs in *Worthley* alleged and based their request for relief on the claim that the Nassau County system of insurance commission-sharing was illegal and improper. Respondent had personal knowledge of and participated in the same insurance commission-sharing system at issue in the suit.

(b) Between 1968 and 1972, respondent received payments totalling $8,030 from an insurance agency which, as broker of record for Nassau County, participated in the aforementioned insurance commission-sharing system. That insurance agency, after changing its name to Richard B. Williams & Son, Inc., continued to participate in the aforementioned insurance commission-sharing system as broker of record for Nassau County and was a defendant in the *Worthley* case.

(c) Respondent had prior political, business and close personal relationships with several of the defendants in the *Worthley* case.

(d) Respondent submitted the names of persons and organizations who were to be designated to share in the commissions produced by the aforementioned insurance commission-sharing system. Respondent knew or had reason to know that such persons or organizations were among those named as defendants in the *Worthley* case.

(e) Respondent failed to disclose to the plaintiffs or their attorneys any of the facts or circumstances set forth in subparagraphs (a) through (d) above.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3C(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 of the courts requires that a judge preside over legal disputes in a fair and impartial manner.

Respondent's conduct was plainly improper. When a matter came before him concerning the propriety of a commission-sharing practice in which he himself had participated, involving defendants with whom he was associated either professionally or personally, respondent was

required by specific Rule to disqualify himself (Section 100.3[c][1] of the Rules). His failure to do so, and his failure to disclose these facts to the parties, clearly impaired the integrity of the judicial process. Such misconduct threatens public confidence in the impartiality of the judiciary.

We note that respondent admits that his conduct was improper.

By reason of the foregoing, the Commission determines that respondent should be censured.

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mrs. DelBello and Judge Rubin were not present.

Dated: November 12, 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 W. SIMON,

A Justice of the Galen Town Court, Wayne County.

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

Appearances: Gerald Stern (Cody B. Bartlett, Of Counsel) for the Commission

Carl W. Simon, Respondent
Pro Se

The respondent, Carl W. Simon, a justice of the Galen Town Court, Wayne County, was served with a Formal Written Complaint dated March 19, 1982, alleging *inter alia* that he failed to deposit, report and remit to the State Comptroller various funds received in his official capacity. Respondent did not file an answer.

By motion dated July 26, 1982, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent did not oppose the motion. By determination and order dated August 20, 1982, the Commission granted the administrator's motion, found respondent's misconduct established and set a date for oral argument on the issue of sanction. Respondent did not appear for oral argument or submit a memorandum in lieu thereof. The administrator filed a memorandum in lieu of oral argument. The Commission considered the record of

this proceeding on September 16, 1982, and made the following findings of fact.

1. From January 1, 1980, through December 31, 1981, respondent failed to perform properly his administrative duties, as follows.

(a) Respondent failed to account for, deposit or make a record of $175 received in cash from Mr. Mike Bishop on October 13, 1980, in payment of a fine. Respondent failed to write an official receipt for the $175.

(b) Respondent failed to deposit within 72 hours of receipt all monies collected in his official capacity, as required by Section 30.7 of the Uniform Justice Court Rules.

(c) Respondent failed to make any deposits in eight of the 24 months in this period, notwithstanding that he received funds in his official capacity during those months, as set forth in *Schedule A* appended hereto.

(d) Respondent failed to report and remit to the State Comptroller in a timely manner all fines, civil fees and bail forfeitures received in his official capacity, as set forth in *Schedule B* appended hereto, as required by 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. Respondent's judicial salary consequently was suspended by the State Comptroller.

(e) Respondent failed to maintain an index of cases and a cashbook prior to October 1980, as required by Section 30.9 of the Uniform Justice Court Rules.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27 of the Town Law, Section 1803 of the Vehicle and Traffic Law, Section 30.7 of the Uniform Justice Court Rules, Sections 100.1, 100.2(a), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained and respondent's misconduct is established.

The laws and rules cited above require a town or village justice (i) to maintain proper docket books of matters on the court's calendar, (ii) to maintain a cashbook, (iii) to deposit official funds in an official court account within 72 hours of receipt and (iv) 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. *Cooley* v. *State Commission on Judicial Conduct*, 53 NY2d 64 (1981); *Petrie* v. *State Commission on Judicial Conduct*, 54 NY2d 807 (1981).

By failing for as long as two years to meet the various financial and administrative responsibilities noted above, and by failing altogether to account for certain cash received in his official capacity, respondent has exhibited an inability or unwillingness to discharge the obligations of judicial office in a responsible manner. Respondent's behavior clearly was improper, constituted at least negligence and evinced an indifference to the legal and ethical constraints upon him. Such conduct is inconsistent with his position of trust and responsibility as a judicial officer.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mrs. DelBello and Judge Rubin were not present.

Dated: November 12, 1982

SCHEDULE A. Deposits of Official Funds

Month	*Fines received*	*Bail received*	*Bail conversions*	*Deposits should have been*	*Deposits were*	*Monthly surplus or deficiency*	*Cumulative surplus or deficiency*
1/80	93.00	200.00	.00	293.00	294.00	+ 1.00	+ 1.00
2/80	87.00	100.00	.00	187.00	87.00	−100.00	− 99.00
3/80	760.00	.00	.00	760.00	863.00	+103.00	+ 4.00
4/80	166.00	.00	.00	166.00	113.00	− 53.00	− 49.00
5/80	100.00	.00	.00	100.00	70.00	− 30.00	− 79.00
6/80	372.50	500.00	.00	872.50	910.50	+ 38.00	− 41.00
7/80	173.00	.00	.00	173.00	.00	−173.00	−214.00
8/80	100.00	.00	.00	100.00	.00	−100.00	−314.00
9/80	160.00	25.00	.00	185.00	.00	−185.00	−499.00
10/80	110.00	.00	.00	110.00	553.50	+443.50	− 55.50
11/80	80.00	.00	.00	80.00	.00	− 80.00	−135.50
12/80	.00	.00	.00	.00	.00	.00	−135.50
1/81	285.00	225.00	150.00	360.00	.00	−360.00	−495.50
2/81	140.00	.00	.00	140.00	590.00	+450.00	− 45.50
3/81	120.00	100.00	.00	220.00	.00	−220.00	−265.50
4/81	165.00	250.00	35.00	380.00	415.00	+ 35.00	−230.50
5/81	195.00	500.00	.00	695.00	.00	−695.00	−925.50
6/81	205.00	.00	50.00	155.00	570.00	+415.00	−510.50
7/81	520.57	.00	.00	520.57	1,135.00	+614.43	+103.93
8/81	182.57	.00	.00	182.57	455.57	+273.00	+376.93
9/81	115.00	200.00	.00	315.00	364.17	+ 49.17	+426.10
10/81	95.00	100.00	.00	195.00	194.00	− 1.00	+425.10
11/81	255.00	.00	.00	255.00	.00	−255.00	+170.10
12/81	345.00	425.00	.00	770.00	330.00	−440.00	−269.90

SCHEDULE B. Reports to Audit and Control

Month	*Date submitted*	*Due date*	*Days late*
1/80	04/03/80	02/10/80	53
2/80	04/15/80	03/10/80	36
3/80	04/15/80	04/10/80	5
4/80	06/24/80	05/10/80	45
5/80	11/03/80	06/10/80	146
6/80	11/03/80	07/10/80	116
7/80	11/03/80	08/10/80	85
8/80	11/03/80	09/10/80	54
9/80	11/03/80	10/10/80	24
11/80	05/18/81	12/10/80	159
12/80	05/18/81	01/10/81	128
1/81	05/18/81	02/10/81	97
2/81	05/18/81	03/10/81	69
3/81	05/18/81	04/10/81	38
4/81	05/18/81	05/10/81	8
6/81	08/06/81	07/10/81	27
8/81	11/18/81	09/10/81	69
9/81	11/18/81	10/10/81	39
10/81	01/27/82	11/10/81	78
11/81	01/27/82	12/10/81	48
12/81	01/27/82	01/10/82	17

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

SUSAN A. STAFFORD,

A Justice of the Newfield Town Court, Tompkins County.

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

Appearances: Gerald Stern (Cody B. Bartlett, Of Counsel) for the Commission

Susan A. Stafford, Respondent Pro Se

The respondent, Susan A. Stafford, a justice of the Newfield Town Court, Tompkins County, was served with a Formal Written Complaint dated April 28, 1982, alleging *inter alia* that she failed to discharge her judicial duties for 16 months and failed to cooperate with state agencies inquiring into her conduct. Respondent did not file an answer.

By motion dated July 23, 1982, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent did not oppose the motion. By determination and order dated August 20, 1982, the Commission granted the administrator's motion, found respondent's misconduct established and set a date for oral argument on the issue of sanction. Respondent did not appear for oral argument or submit a memorandum in lieu thereof. The administrator filed a memorandum

in lieu of oral argument. The Commission considered the record of this proceeding on September 16, 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent took office as Newfield town justice on January 1, 1980. Since that date she has presided over one arraignment, conducted in April 1980. Respondent has presided over no other arraignments, trials or other proceedings and has otherwise failed to carry out virtually all her judicial duties.

As to Charge II of the Formal Written Complaint:

2. Respondent did not file required monthly reports with the State Comptroller from January 1980 to November 1980. Respondent's reports for this period were filed on December 17, 1980. Since that date, respondent has failed to file any of the required monthly reports. Since January 1980 respondent has failed to respond to inquiries from the Department of Audit and Control with respect to such unfiled reports. In addition, respondent failed to reply to letters dated October 24 and December 15, 1980, from the Director of Administration of the Courts for the Third Judicial Department, concerning the unanswered inquiries made by the Department of Audit and Control. The State Comptroller, pursuant to law, stopped payment of respondent's salary for her failure to file the required reports.

As to Charge III of the Formal Written Complaint:

3. Respondent failed to respond to letters dated March 9, April 3 and April 15, 1981, sent from this Commission to respondent pursuant to Section 44, subdivision 3, of the Judiciary Law, in the course of a duly authorized investigation of the matters herein. Respondent failed to appear for testimony before a member of the Commission during the investigation of this matter, despite being duly requested to do so pursuant to Section 44, subdivision 3, of the Judiciary Law, by letter dated May 1 and personally served on May 4, 1981. In so doing, respondent failed to cooperate with the Commission.

As to Charge IV of the Formal Written Complaint:

4. From January 1, 1980, to the commencement of this proceeding, respondent failed to file with the Office of Court Administration her oath of office, questionnaire and bank account statement, as required. In this period respondent did not reply to inquiries from the Office of Court Administration with respect thereto. In addition, respondent did not reply to letters dated February 2 and February 26, 1982, from the administrative judge of the Sixth Judicial District (in

which respondent's court is located), concerning the unanswered inquiries made by the Office of Court Administration.

As to Charge V of the Formal Written Complaint:

5. Respondent was admitted to the New York State bar in 1978. On October 9, 1981, she was suspended indefinitely from the practice of law by the Appellate Division, for her failure to appear pursuant to an order of the court during a duly authorized inquiry commenced by the committee on grievances. From October 9, 1981, to the commencement of this proceeding, respondent did not complete a course of training required of all non-lawyer town and village justices by statute and court rules.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 105 of the Uniform Justice Court Act, Section 31 of the Town Law, Section 17.2 of the Judicial Education and Training Rules of the Chief Judge (formerly Section 30.6 of the Uniform Justice Court Rules), Sections 100.1, 100.2(a), 100.3(a)(1) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained and respondent's misconduct is established.

The record of this proceeding reveals respondent's gross neglect of judicial duties. Her failure to do anything more than preside over one arraignment in 28 months, her failure to fulfill a variety of required administrative responsibilities and her repeated, continuing failure to respond to inquiries from several state agencies evince an indifference to the obligations of her judicial office. Such conduct warrants removal from office. *Cooley* v. *State Commission on Judicial Conduct*, 53 NY2d 64 (1981); *Petrie* v. *State Commission on Judicial Conduct*, 54 NY2d 807 (1981).

Judicial office, voluntarily assumed, obliges those who hold it to discharge their duties faithfully and conscientiously. Public confidence in the courts and judiciary requires no less. Respondent's conduct and the related suspension of her license to practice law have irreparably diminished public confidence in her court.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mrs. DelBello and Judge Rubin were not present.

Dated: November 12, 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

VIRGINIA NEW,

A Justice of the Philadelphia Town Court, Jefferson County.

The Commission:	Mrs. Gene Robb, Chairwoman Hon. Fritz W. Alexander, II John J. Bower, Esq. David Bromberg, Esq. E. Garrett Cleary, Esq. Dolores DelBello Victor A. Kovner, Esq. Hon. William J. Ostrowski Hon. Isaac Rubin Hon. Felice K. Shea Carroll L. Wainwright, Jr., Esq.
Appearances:	Gerald Stern (Albert B. Lawrence, Of Counsel) for the Commission Virginia New, Respondent Pro Se

The respondent, Virginia New, a justice of the Philadelphia Town Court, Jefferson County, was served with a Formal Written Complaint dated April 26, 1982, alleging *inter alia* that she failed to meet various records keeping and financial reporting, deposit and remittance requirements. Respondent did not answer the Formal Written Complaint.

By notice dated June 1, 1982, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent opposed the motion on June 21, 1982, with what was, in effect, an answer to the Formal Written Complaint. The administrator thereupon withdrew his motion for summary determination.

By order dated July 13, 1982, 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 August 23 through 26, 1982, and the referee filed his report with the Commission on October 19, 1982.

By motion dated October 27, 1982, the administrator moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent did not oppose the motion or request oral argument.

The Commission considered the record of the proceeding on November 29, 1982, and made the following findings of fact.

Preliminary findings:

1. Respondent has been a justice of the Philadelphia Town Court continuously since 1973. Respondent was a justice of the Philadelphia Village Court from April 1974 to April 1982.

2. Respondent serves as a justice part-time. She has a college degree in accounting. Respondent is self-employed as an accountant and also works nights for the Crosby's Super Duper store in Watertown (Jefferson County), New York.

As to Charge I of the Formal Written Complaint:

3. Between July 1977 and December 1981, as set forth in *Schedules A* and *B* appended to the Formal Written Complaint, respondent failed to deposit official monies within 72 hours of receipt, as required by Section 30.7 of the Uniform Justice Court Rules, with the result that her court accounts were deficient. Respondent was aware of the 72-hour deposit requirement.

4. From August 14, 1979, to December 31, 1979, respondent failed to deposit any monies she received in her judicial capacity into her town and village court accounts, notwithstanding that she received $2,104 during this period.

5. From January 15, 1980, to July 1980, respondent failed to deposit any monies she received in her official capacity into her town and village court accounts, notwithstanding that she received $637 during this period.

6. In December 1980, John F. McKiernan, an examiner with the Department of Audit and Control, audited respondent's court records and spoke to her about her depositing practices. Respondent offered no explanation for the late deposits and reports.

As to Charge II of the Formal Written Complaint:

7. Between July 1977 and February 1982, as set forth in *Schedules C* and *D* appended to the Formal Written Complaint, respondent failed to file reports and remit monies to the State Comptroller within ten days of the month following collection, as required by Section 2021(1) of the Uniform Justice Court Act.

8. In December 1980, John F. McKiernan, an examiner with the Department of Audit and Control, audited respondent's court records and spoke to her about her late reports. Thereafter respondent continued to fail to file reports and remit monies to the State Comptroller in a timely manner.

9. Respondent has filed her monthly reports and remittances as late as 199 days.

10. For 53 of the 56 months between July 1977 and February 1982, as indicated in *Schedule C* appended to the Formal Written Complaint, respondent was late in filing her town court monthly reports and in remitting official town court monies to the State Comptroller.

11. For 52 of the 56 months between July 1977 and February 1982, as indicated in *Schedule D* appended to the Formal Written Complaint, respondent was late in filing her village court monthly reports and in remitting official village court monies to the State Comptroller.

As to Charge III of the Formal Written Complaint:

12. From June 1978 to October 1981, as indicated in *Schedule E* appended to the Formal Written Complaint and Exhibits 16 and 18 accepted into evidence by the referee, respondent:

(a) failed to dispose of 116 cases in her court, notwithstanding that the defendants had pled guilty;

(b) failed to respond at all to the pleas or inquiries of 95 defendants;

(c) failed to return driver's license renewal stubs to 73 defendants who had forwarded the stubs with their pleas of guilty;

(d) failed to make entries in her docket for 74 criminal cases pending in her court;

(e) failed to maintain any records for 25 cases pending in her court; and

(f) failed to keep any case files or indices of cases pending in her court.

13. As of August 26, 1982, the last day of the hearing before the referee in this matter, respondent had in her personal possession 14 checks and money orders totaling $217, in fines paid by defendants as long ago as January 1980. She had not deposited these funds in her official bank account, issued receipts to the defendants or disposed of the cases.

As to Charge IV of the Formal Written Complaint:

14. Respondent failed to cooperate with the Commission during its investigation of the matters herein, in that she failed on five occasions (September 18, October 28 and December 30, 1981; January 7 and January 15, 1982) to appear to give testimony before a member of the Commission, despite having been duly required to appear pursuant to Section 44, subdivision 3, of the Judiciary Law.

As to Charge V of the Formal Written Complaint:

15. Respondent's term of office as Philadelphia Village Justice, to which she was not re-elected, expired on April 5, 1982. Respondent knew she was required by law to turn over her village court records to the village clerk by April 5, 1982. Notwithstanding repeated requests by the village clerk, the village mayor and her successor as village justice, respondent has failed to turn over her records to the village clerk.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct; Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct; Section 30.7 of the Uniform Justice Court Rules; Sections 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act; Section 1803 of the Vehicle and Traffic Law; Section 27(1) of the Town Law; Section 410(1) of the Village Law; and Sections 105.1 and 105.3 of the Rules of the Chief Administrator of the Courts on Recordkeeping Requirements for Town and Village Courts. Charges I through V of the Formal Written Complaint are sustained and respondent's misconduct is established.

Over a four-year period, respondent has disregarded various statutory records keeping and financial reporting requirements. She has been negligent in her handling of public monies. She has failed to dispose of scores of cases and failed to respond to citizens' inquiries about the status of their cases. She failed to cooperate with the Commission during its investigation of the matters herein.

The totality of respondent's conduct constitutes a serious violation of her official responsibilities and an irreparable breach of the public's

trust in her judicial performance. (*See, Matter of Cooley*, 53 NY2d 64; *Matter of Petrie*, 54 NY2d 807.)

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

Dated: December 8, 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

ANTHONY J. CERTO,

A Judge of the Niagara Falls City Court, Niagara County.

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

Appearances: Gerald Stern (Cody B. Bartlett, Of Counsel) for the Commission
John P. Bartolomei for Respondent

The respondent, Anthony J. Certo, who is Chief Judge of the Niagara Falls City Court, was served with a Formal Written Complaint dated February 17, 1981, alleging misconduct with respect to a fund-raising event held in March 1980. Respondent filed an answer dated March 19, 1981, and an amended answer dated July 7, 1981.

By order dated April 30, 1981, the Commission designated the Honorable Harry D. Goldman as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 24, and October 1, 2, 5, 6, 9, 13, 20 and 21, 1981, and the referee filed his report with the Commission on December 29, 1981.

By motion dated September 16, 1982, 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 censured. Respondent opposed the motion on October 20, 1982. The Com-

mission heard oral argument on the motion on October 29, 1982, at which respondent appeared with counsel, thereafter considered the record of this proceeding and made the following findings of fact.

As to paragraph (a) of Charge I of the Formal Written Complaint:

1. On March 6, 1980, a fund-raising event was held for respondent in Niagara Falls. The event was referred to as a testimonial. Respondent knew that the purpose of the event was to raise funds for himself.

2. Three hundred and five tickets at $50 each were sold for the fund-raising event. The gross income from such sales was $15,250.

3. Sometime after the fund-raising event, respondent received $6,564.28 in checks and $4,070.56 in cash from the money collected for the event. Respondent used these funds, totaling $10,634.84, for personal purposes and expenditures.

4. An additional $2,000 from the money collected for the fund-raising event was deposited into the account of respondent's re-election committee.

As to paragraph (b) of Charge I of the Formal Written Complaint:

5. Angelo J. Morinello is respondent's nephew. He and respondent have a close relationship. Mr. Morinello was the treasurer for respondent's 1980 re-election campaign. He is an attorney who from 1976 through 1979 practiced in partnership with John Mattio in Niagara Falls. In numerous cases in this period Mr. Morinello and Mr. Mattio appeared as counsel before respondent.

6. Mr. Morinello was one of the principal organizers of the fund-raising testimonial held for respondent on March 6, 1980. He acted as treasurer of the funds raised from the event.

7. A special bank account was opened to handle the funds from the testimonial. Mr. Morinello wrote all of the checks drawn on this account, including the $2,000 paid to respondent's re-election committee and the $10,684.34 in checks and withdrawn cash paid directly to respondent for his personal use.

As to paragraph (c) of Charge I of the Formal Written Complaint:

8. Persons who had litigation before respondent prior to the fund-raising event on March 6, 1980, purchased tickets to and attended the event.

9. Numerous attorneys who had practiced law before respondent prior to March 6, 1980, purchased tickets to and attended the event.

Additional finding:

10. Between the date of the referee's report in this matter and the date of oral argument before the Commission, respondent repaid to the contributing individuals all the money collected from the fund-raising event.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.5(b) and 100.5(c)(3) of the Rules Governing Judicial Conduct (formerly Sections 33.1, 33.2[a], 33.5[b] and 33.5[c][3]), Canons 1, 2A, 5B and 5C(4) of the Code of Judicial Conduct, and Section 20.4 of the Rules of the Chief Judge and Chief Administrator of the Courts (formerly the General Rules of the Administrative Board of the Judicial Conference). The charge in the Formal Written Complaint (Charge I, paragraphs a, b and c) is sustained and respondent's misconduct is established.

By accepting money for his personal use from contributions by attorneys and litigants who appear in his court, respondent undermined public confidence in the integrity and impartiality of the judiciary. His conduct both was improper and created an appearance of impropriety (Sections 100.1, 100.2[a] and 100.5[b] of the Rules Governing Judicial Conduct). Respondent also violated the specific prohibition against a judge accepting a "gift from any attorney or from any person having or likely to have any official transaction with the court" (Section 20.4 of the Rules of the Chief Judge). Though the particular fund-raising event at issue was called a "testimonial", respondent knew in advance that its proceeds would be given to him. The amount of money actually given to respondent, after the event, for his personal use—over $10,000—cannot reasonably be considered a "gift *incident* to a public testimonial" (Section 100.5[c][3] of the Rules Governing Judicial Conduct; emphasis added).

The Commission notes that respondent repaid the money collected from those who contributed to the fund-raising event.

By reason of the foregoing, the Commission determines that respondent should be admonished.

Mrs. Robb, Judge Alexander, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Rubin and Mr. Wainwright concur.

Mr. Bower, Mr. Bromberg and Mrs. DelBello dissent only as to sanction and vote that respondent should be censured.

Judge Shea was not present.

Dated: December 28, 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

VICTOR A. JURHS,

A Justice of the Kendall Town Court, Orleans County.

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

Appearances: Gerald Stern (Cody B. Bartlett, Of Counsel) for the Commission

Victor A. Jurhs, Respondent Pro Se

The respondent, Victor A. Jurhs, a justice of the Kendall Town Court, Orleans County, was served with a Formal Written Complaint dated January 14, 1982, alleging *inter alia* that he failed to make timely deposits and remittances of court funds and that he failed to keep accurate records of his court accounts. Respondent filed an answer dated February 11, 1982.

By order dated March 16, 1982, the Commission designated John J. Darcy, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on April 5 and 7, 1982, and the referee filed his report with the Commission on June 10, 1982.

By motion dated September 27, 1982, the administrator of the Commission moved to confirm the referee's report and to return the matter to the referee for further proceedings and additional findings relative to respondent's most current accounting and record keeping

practices. Respondent did not file papers in opposition to the administrator's motion but appeared for oral argument before the Commission on October 29, 1982. Thereafter the Commission made the following findings of fact.

1. Respondent has been a justice of the Kendall Town Court since his first election to that office in 1963. He is not a lawyer. The Town of Kendall does not provide respondent with any clerical, secretarial or administrative assistance.

2. Respondent maintained his official court bank account at the Marine Midland Bank in Holley, New York, where he also maintained his personal bank account. The bank is approximately eight miles from both respondent's home and the town hall in which he holds court.

3. From January 1, 1975, to September 30, 1981, respondent failed to deposit all monies received in his official capacity within 72 hours of receipt, as required.

4. In 48 of the 81 months from January 1975 through September 1981, respondent failed to make deposits of court funds, although he received funds in his official capacity in those months, as set forth in Schedule A appended to the Formal Written Complaint and accepted into evidence by the referee, as amended, as Exhibit 60. Respondent made a practice of accumulating such official funds for varying periods and then making lump sum deposits. Respondent used a portion of the undeposited funds as petty cash from which he made change for defendants in his court.

5. From January 1, 1975, to September 30, 1981, respondent failed to report and remit as required to the State Comptroller, within the first 10 days of the month following receipt, all fines, bail forfeitures and civil fees received by him, as set forth in Schedule B appended to the Formal Written Complaint. The average delay in reporting during this period was 56 days. Eleven reports were over 100 days late, including three which were over 200 days late and two which were over 300 days late. Respondent received numerous communications from the Department of Audit and Control with respect to the law on timely report filing, and in September 1976 his salary was stopped because of his failure to file timely reports.

6. From January 1, 1975, to September 30, 1981, respondent did not maintain a cashbook at all times, as required. Respondent did not issue receipts for official monies received from the Orleans County Sheriff's Department but did issue receipts for official monies received from all other sources.

7. At no time did respondent misappropriate funds or act in a dishonest manner.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27 of the Town Law, Section 1803 of the Vehicle and Traffic Law, Section 30.9 of the Uniform Justice Court Rules, Sections 100.1, 100.2(a), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct (formerly Sections 33.1, 33.2[a], 33.3[a][5] and 33.3[b][1]) and Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint (Charge I, paragraphs a through g) is sustained and respondent's misconduct is established. The administrator's motion requesting additional proceedings before the referee is denied.

Respondent is habitually tardy in making the reports, remittances and administrative records required of him by law and rules. Those who assume judicial office are obliged to find the time and make the sacrifices necessary to discharge their administrative duties promptly and accurately. While occasional lapses may be unavoidable, respondent's oversights and omissions over a six-year period were both frequent and protracted and thus require public discipline.

We note that respondent's honesty and integrity are not in issue and that there is no suggestion that official funds were misappropriated or used for other than court-related purposes.

By reason of the foregoing, the Commission determines that respondent should be admonished.

Mrs. Robb, Judge Alexander, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Rubin concur.

Mr. Cleary and Mr. Wainwright dissent as to sanction only and vote that the matter be closed with a confidential letter of dismissal and caution to the judge.

Mr. Bower and Judge Shea were not present.

Dated: January 11, 1983

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 R. BAYGER,

A Justice of the Supreme Court,
Eighth Judicial District (Erie County).

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

Appearances: Gerald Stern (John J. Postel, Of Counsel) for the Commission

Albrecht, Maguire, Heffern & Gregg (Charles H. Dougherty, Of Counsel) for Respondent

The respondent, Frank R. Bayger, a justice of the Supreme Court, Eighth Judicial District (Erie County), was served with a Formal Written Complaint dated November 25, 1981, alleging that he disparaged a litigant in a matter before him and that he engaged in numerous business activities prohibited by the Rules Governing Judicial Conduct. Respondent filed an answer dated January 28, 1982.

By order dated March 2, 1982, 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 May 13 and 14, 1982, and the referee filed his report with the Commission on September 28, 1982.

By motion dated November 3, 1982, the administrator of the Commission moved to confirm in part and disaffirm in part the report of the referee, and for a determination that respondent be censured. By cross-motion dated November 18, 1982, respondent opposed the administrator's motion and moved to confirm the referee's report and for dismissal of the Formal Written Complaint. The Commission heard oral argument on the motions on November 30, 1982, at which respondent appeared with counsel, thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. On January 20, 1981, the case of *Wecksler* v. *Kubiak and Whelan* came before respondent in Special Term of Supreme Court, Erie County. Robert E. Whelan, as City Comptroller of Buffalo, was a nominal party to the proceeding, which involved a disability claim.

2. Prior to January 20, 1981, respondent had two experiences involving Mr. Whelan. First, in 1975, respondent presided over an election law matter in which he ruled in Mr. Whelan's favor. Sometime thereafter, in a public encounter at a restaurant, respondent and Mr. Whelan had an angry verbal confrontation in which, among other things, Mr. Whelan made a denigrating ethnic remark about Polish people.

3. On January 20, 1981, respondent decided to recuse himself from presiding over the *Wecksler* v. *Kubiak and Whelan* case. Respondent instructed his court deputy, Joseph D. Pirrone, to go into a public hallway outside the courtroom and request members of the press to come into the courtroom. Mr. Pirrone informed two newspaper reporters of respondent's request. The reporters went to the courtroom, where attorneys, court personnel and spectators were also present.

4. Respondent announced in open court that he was disqualifying himself in the *Wecksler* v. *Kubiak and Whelan* case because Robert E. Whelan was a litigant. Respondent disparaged Mr. Whelan as a "so-called public servant" and an "anti-Polish American." Respondent announced that he would urge the administrative judge to assign the case to a judge who is not of Polish extraction.

5. At the time of his actions on January 20, 1981, respondent knew Mr. Whelan was a declared candidate for Erie County Surrogate. Respondent knew or should have known that his disparaging comments about Mr. Whelan would be widely reported in the Buffalo area. In no other case in which he disqualified himself had respondent called members of the press into his courtroom for the announcement.

6. Respondent's actions and comments were based upon his intense dislike of Mr. Whelan.

As to Charge II of the Formal Written Complaint:

7. On October 7, 1971, respondent entered into a general partnership with Dimitri Tzetzo, Donald Hayes, John Conroy, Mary Chur, Oliver Reed and Robert Brooks, to form Capital Leasing Company. Respondent was aware that the agreement which he signed on that date in entering the partnership was for a general and not a limited partnership.

8. Capital Leasing Company was a business organized for profit which leased equipment, including dental equipment, office equipment, office furniture and automobiles. As a general partner, respondent had rights concerning the operation of the business, including: the right to prevent the company or its partners from borrowing or lending money on behalf of the partnership; selling, assigning or pledging any partnership interest; or executing any lease, mortgage or security agreement.

9. Respondent was an active participant in the company. As a general partner he had a role equal to that of the other general partners in the management and conduct of the business. Throughout the life of the Capital Leasing Company, respondent exercised the rights and obligations of a general partner and participated in management, as noted in the examples below:

(a) by participating in the decision to buy the share of retiring partner Mary Chur and continue the company's operation in February 1975, by discussing with the other general partners the amount to offer and by signing the formalized agreement to do so;

(b) by participating in the decision to buy the share of retiring partner Oliver Reed and continue the company's operation in July 1975, by discussing with the other general partners the amount to offer and by formalizing and signing the agreement to do so;

(c) by participating in the decision to buy the share of deceased partner Robert Brooks and continue the company's operation in December 1977, by discussing with the other general partners the amount to offer and by formalizing and signing the agreement to do so;

(d) by attending dinner meetings with the other general partners once or twice a year to discuss company matters;

(e) by being consulted periodically about certain partnership transactions; and

(f) by signing documents related to the conduct of the business.

10. Respondent sold his interest in Capital Leasing Company in January 1982.

As to Charge III of the Formal Written Complaint:

11. On August 1, 1975, respondent entered into a general partnership with Dimitri Tzetzo, Donald Hayes and John Conroy, to form Willink Development Company. Respondent was aware that the agreement which he signed on that date in entering the partnership was for a general and not a limited partnership.

12. Willink Development Company was a business organized for profit which leased property. As a general partner, respondent had rights concerning the operation of the business, including: the right to prevent the company or its partners from borrowing or lending money on behalf of the partnership; selling, assigning or pledging any partnership interest; or executing any lease, mortgage or security agreement.

13. Respondent was an active participant in the company. As a general partner he had a role equal to that of the other general partners in the management and conduct of the business. Throughout his tenure as a general partner in Willink Development Company, respondent exercised the rights and obligations of a general partner and participated in management.

14. Respondent sold his interest in Willink Development Company in January 1982 and presently holds a mortgage as a result of the sale.

As to Charge IV of the Formal Written Complaint:

15. On August 1, 1979, respondent filed a certificate that he was conducting business under the name of Arlington Properties, a business organized for profit.

16. On August 23, 1979, respondent formed 19 Arlington Place Corporation, a business organized for profit, of which he is president. Respondent formed the corporation in order to secure a $225,000 commercial loan from Western New York Savings Bank. His earlier application to the same bank for a personal loan in that amount had been denied.

17. On August 28, 1979, 19 Arlington Place Corporation entered into a $225,000 mortgage agreement with Western New York Savings

Bank for purchase of a tract of land in Buffalo from Burke Rental Corporation. On that same date, 19 Arlington Place Corporation entered into a $25,000 mortgage agreement with Burke Rental Corporation. On that same date, 19 Arlington Place Corporation transferred the tract of land to Arlington Properties.

18. Respondent is an active and managing participant in Arlington Properties. While his employee, Wendy Rothfuss, performs certain duties delegated to her by respondent with respect to Arlington Properties, such as collecting rents, respondent makes all management decisions and without exception signs all company checks. He alone reviews the company books and finances. He alone approves major repairs and determines which company will be contracted to make the repairs.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.2(b), 100.3(a)(3), and 100.5(c)(2) of the Rules Governing Judicial Conduct (formerly Sections 33.1, 33.2[a], 33.3[b], 33.3[a][3] and 33.5[c][2]) and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established. The affirmative defenses asserted by respondent are not sustained.

Respondent's conduct in the course of announcing his disqualification in the case involving Buffalo City Comptroller Robert E. Whelan was improper. Rather than recuse himself in a decorous manner, respondent disparaged Mr. Whelan in open court, having deliberately invited the press into the courtroom for the specific purpose of hearing his remarks. Respondent knew Mr. Whelan was a declared candidate for judicial office at the time, and he knew or should have known that his disparaging remarks would be widely publicized. Respondent allowed his personal animosity toward Mr. Whelan to affect his judicial conduct and judgment.

Respondent's participation in four businesses organized for profit was also improper. The Rules Governing Judicial Conduct (Section 100.5[c][2]) specifically prohibit the very type of business activity in which respondent engaged. Respondent's business activities cannot be excused by the assertion that they did not interfere with the performance of his duties as a judge. The prohibitions in the Rules are straightforward and unequivocal and make no exception for business activities which do not interfere with the judicial function.

By reason of the foregoing, the Commission determines that respondent should be admonished.

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Shea and Mr. Wainwright concur.

Judge Ostrowski did not participate.

Judge Rubin was not present.

Dated: January 18, 1983

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

ELMER L. LOBDELL,

A Justice of the Fulton Town Court, Schoharie County.

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

Appearances: Gerald Stern (Albert B. Lawrence, Of Counsel) for the Commission

Roger H. Mallery for Respondent

The respondent, Elmer L. Lobdell, a justice of the Fulton Town Court, Schoharie County, was served with a Formal Written Complaint dated April 1, 1982, alleging *inter alia* that he continued to preside over cases despite not having been duly certified to perform the duties of judicial office. Respondent filed an answer dated April 22, 1982.

By order dated May 3, 1982, the Commission designated Margrethe R. Powers, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on May 19 and 20, 1982, and the referee filed her report with the Commission on October 19, 1982.

By motion dated November 1, 1982, 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 in papers dated November 17, 1982. Oral argument was waived. The Commission considered the record of the proceeding on November 29, 1982, and made the following findings of fact.

1. Respondent was first elected to judicial office in November 1979 and commenced his term on January 1, 1980. Respondent serves part-time as a town justice. He is not an attorney.

2. The first available basic training course for non-lawyer town justices after respondent's election was offered in November 1979 by the Office of Court Administration. Respondent failed to complete the course and therefore was not certified to discharge the responsibilities of his judicial office on January 1, 1980.

3. Respondent was granted temporary certification by the Office of Court Administration on April 28, 1980. Prior thereto, respondent had presided over seven cases, despite not having been certified to do so.

4. In July 1980, respondent attended and successfully completed a basic training course. The basic certificate he received from the Office of Court Administration stated that an advanced training course must be successfully completed within the first year of a town justice's new term.

5. Respondent was informed by the Office of Court Administration, by letter dated November 13, 1980, that he must successfully complete an advanced training course within one year of a new term to retain his certification.

6. Respondent's basic certificate expired on December 31, 1980. He was not issued a temporary certificate thereafter.

7. Respondent was informed by his administrative judge, by letter dated March 13, 1981, that he was not certified, that he must attend an advanced training course and that he could be removed from office for failure to be certified.

8. In March 1981, respondent appeared for an advanced training course but failed to pass the final examination. By letter dated April 2, 1981, respondent was notified by the Office of Court Administration that he had failed the examination and could not assume the functions of his judicial office.

9. Respondent did not attend any of the next five regularly scheduled advanced training courses offered in May, July, September and October 1981 and February 1982.

10. By letter dated October 9, 1981, respondent was notified by the Commission that a complaint had been filed regarding his non-certification.

11. In March 1982 respondent appeared for an advanced training course but again failed to pass the final examination. By letter dated March 23, 1982, respondent was notified by the Office of Court Administration that he had failed the examination and could not assume the functions of his judicial office.

12. Respondent presided over and disposed of 84 cases in 1981, despite not being certified to assume judicial duties. Seventeen of the 84 cases were disposed of after respondent had been notified by the Commission of the complaint against him.

13. There was no town justice in Fulton other than respondent throughout 1981. A second town justice took office in Fulton in January 1982.

14. On February 18, 1982, the town board of Fulton requested that respondent resign from office. Respondent declined.

15. On April 21, 1982, respondent transferred the 14 cases pending on his court calendar to his co-justice.

16. Since the date of the hearing before the referee, respondent attended and successfully completed an advanced training course.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Article VI, Section 20(c), of the Constitution of the State of New York, Section 105 of the Uniform Justice Court Act, Section 31 of the Town Law, Section 17.2 of the Rules of the Chief Judge (formerly Section 30.6 of the Uniform Justice Court Rules), Sections 100.1, 100.2(a), 100.3(a)(1) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1) and 3B(1) of the Code of Judicial Conduct. The Charge in the Formal Written Complaint is sustained and respondent's misconduct is established.

For more than 21 of the first 30 months of his term, respondent was not qualified to discharge the duties of judicial office, because of his failure to meet the certification requirements of the Constitution and state law. Nevertheless, in that period respondent presided over and disposed of 91 cases.

Respondent was fully aware of the applicable requirements and procedures, but for periods during 1980 and 1982, and throughout 1981, he did not endeavor to attend the requisite judicial training programs run by the Office of Court Administration.

That there was no other town justice in Fulton to hear cases in 1981 does not excuse respondent for his conduct. Respondent was obliged to make known to the parties in his court that he was not certified, and he should have disqualified himself from the proceedings, thereby enabling the parties to move in county court for a change of venue under Section 170.15(3) of the Criminal Procedure Law.

Failure to complete judicial certification requirements affects the ability of a judge to preside and is cause for removal from office, "in and of itself." *Bartlett* v. *Bedient*, 47 AD2d 389, 390 (4th Dept. 1975). 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 the Office of Court Administration and his administrative judge, respondent demonstrated a serious disregard of the constitutional and statutory obligations of judicial office. *See, Matter of Joedicke*, unreported (Com. on Jud. Conduct, July 1, 1981). His conduct in presiding over 91 cases while not certified was prejudicial to the administration of justice and is not mitigated by his eventual completion of the certification requirements.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Judge Rubin was not present.

Dated: January 18, 1983

NOTE: The Court of Appeals, upon review, accepted the Commission's determination that respondent be removed. 59 NY2d 338 (1983).

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 E. WHALEN,

A Justice of the Ticonderoga Town Court, Essex County.

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

Appearances: Gerald Stern (Albert B. Lawrence, Of Counsel) for the Commission

Gerald J. Lawson for Respondent

The respondent, Donald E. Whalen, a part-time justice of the Ticonderoga Town Court, Essex County, was served with a Formal Written Complaint dated March 15, 1982, alleging that he presided over 37 matters in May 1981 in which his employer was a party. Respondent filed an answer dated April 5, 1982.

By order dated April 22, 1982, the Commission designated Michael Whiteman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on June 1 and 2, 1982, and the referee filed his report with the Commission on September 27, 1982.

By motion dated October 27, 1982, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent cross-moved on

November 16, 1982, to disaffirm the referee's report and for dismissal of the Formal Written Complaint. The Commission heard oral argument on the motion on November 29, 1982, at which respondent appeared by counsel, thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a town justice of Ticonderoga since July 1977. He is not a lawyer. He serves as town justice part-time.

2. Respondent is also an x-ray technician at the Moses Ludington Hospital in Ticonderoga, a position he has held since 1966.

3. Respondent has successfully completed the judicial training courses required of all non-lawyer town and village justices by the state Constitution. He is familiar with the Rules Governing Judicial Conduct and the annual reports of this Commission.

4. In May 1981, the controller of the Moses Ludington Hospital filed 37 claims with the clerk of the Ticonderoga Town Court. The hospital was not represented by an attorney.

5. On May 11, 1981, respondent signed 37 summonses with respect to the claims filed by the Moses Ludington Hospital. All 37 summonses were made returnable before respondent on June 4, 1981, based on respondent's instructions to the court clerk.

6. On May 19, 1981, Francis Barnes was served with a summons signed by respondent regarding the claim of the Moses Ludington Hospital that he owed a balance of $130.13. On that date, Mr. Barnes telephoned respondent and advised him that the hospital's bill had been paid. Mr. Barnes was aware at the time that respondent was employed by the hospital. (The evidence is not sufficient to establish whether the payment took place before or after the telephone call.) Respondent did not inform Mr. Barnes that he was employed by the hospital at any time during the telephone call or at any other time in the proceeding. Respondent did not disqualify or offer to disqualify himself from the case.

7. During the telephone conversation on May 19, 1981, Mr. Barnes told respondent that his participation in the case created a conflict of interest.

8. On June 4, 1981, Mr. Barnes appeared before respondent pursuant to the summons. The *Barnes* case was the first one heard by respondent on that date. Mr. Barnes offered evidence that the hospital bill had been paid. Respondent thereupon dismissed the claim. Prior to leaving the courtroom, Mr. Barnes again stated that respondent had a conflict of interest in the case.

9. On June 4, 1981, Earl Gould, Jr., appeared in court pursuant to a summons signed by respondent on a claim by Moses Ludington Hospital that Mr. Gould owed a balance of $482.36. When Mr. Gould first saw respondent in court, he recognized him as the hospital's x-ray technician and thought he was appearing for the hospital. He did not know respondent was a judge and he was confused as to whether the ensuing events were indeed a court proceeding. Respondent never offered to disqualify himself or transfer the case to another judge. Mr. Gould paid the hospital bill in full, as respondent noted on his docket in this case.

10. On May 12, 1981, a summons signed by respondent was served on Sarah Westcott regarding the claim of Moses Ludington Hospital that she owed a balance of $674.89. Sometime thereafter, Mrs. Westcott's husband, Ellis Westcott, spoke with respondent at the hospital and told him the bill would be paid. Respondent did not advise Mr. Westcott at any time during that conversation or thereafter that his employment by the hospital might create a conflict of interest for him as the presiding judge. Respondent did not at any time disqualify or offer to disqualify himself from the case. On June 10, 1981, respondent entered judgment in favor of the hospital for $674.89 plus costs.

11. On June 4, 1981, Ernest Fleury appeared in court pursuant to a summons signed by respondent on a claim by Moses Ludington Hospital that he owed a balance of $519.37. When his case was called by respondent, Mr. Fleury discussed the matter first with respondent and thereafter with the hospital's controller, who was present. Respondent did not at any time disqualify or offer to disqualify himself from the case. On June 10, 1981, respondent entered judgment in favor of the hospital for $519.37 plus costs.

12. On June 4, 1981, Rose St. Andrews appeared in court pursuant to a summons signed by respondent on a claim by Moses Ludington Hospital that she owed a balance of $200.87. Ms. St. Andrews advised respondent that Medicaid was to have paid her bill. Respondent said he would inquire into the matter. Although Ms. St. Andrews was aware that respondent was employed by the hospital, respondent did not at any time mention that fact, nor did he disqualify or offer to disqualify himself from the case. On June 10, 1981, respondent entered judgment in favor of the hospital for $200.87 plus costs.

13. On June 4, 1981, Harry Gould, Sr., appeared in court pursuant to a summons signed by respondent on a claim by Moses Ludington Hospital that he owed a balance of $410.87. Mr. Gould advised respondent that the bill from the hospital was inconsistent with an earlier statement sent by the hospital. Respondent said he would inquire into the matter. Although Mr. Gould was aware that respondent

was employed by the hospital, respondent did not at any time mention that fact, nor did he disqualify or offer to disqualify himself from the case. On June 10, 1981, respondent entered judgment in favor of the hospital for $410.87 plus costs.

14. On June 4, 1981, Ida Mae Bazan appeared in court pursuant to a summons signed by respondent and issued to her husband, Raymond, on a claim by Moses Ludington Hospital that Mr. Bazan owed a balance of $111.28. When she appeared on behalf of her husband, Mrs. Bazan paid the claimed amount to the hospital's controller, who was present. Respondent advised Mrs. Bazan that he was employed by the hospital, but he at no time disqualified or offered to disqualify himself from the case, which he marked on his docket as paid in full.

15. On June 4, 1981, Benjamin O'Dell appeared in court pursuant to a summons signed by respondent on a claim by Moses Ludington Hospital that he owed a balance of $2,420.37. In response to questioning by respondent, Mr. O'Dell stated that he owed the amount claimed and would pay it. Respondent told Mr. O'Dell that he was employed by the hospital, which Mr. O'Dell already knew. Respondent did not at any time disqualify or offer to disqualify himself from the case. On June 10, 1981, respondent entered judgment in favor of the hospital for $2,420.37 plus costs.

16. On June 4, 1981, James M. Taylor appeared in court pursuant to a summons signed by respondent on a claim by Moses Ludington Hospital that he owed a balance of $1,139.51. In response to questioning by respondent, Mr. Taylor stated that he could afford to pay something toward the claimed amount and that he could make monthly payments of $5. Although Mr. Taylor was aware that respondent was employed by the hospital, respondent did not at any time mention that fact, nor did he disqualify or offer to disqualify himself from the case. On June 10, 1981, respondent entered judgment in favor of the hospital for $1,139.51 plus costs.

17. On June 4, 1981, Trustan Whittemore appeared in court pursuant to a summons signed by respondent on a claim by Moses Ludington Hospital that he owed a balance of $467.49. Mr. Whittemore told respondent that he had not paid the bill because his employer's insurance was responsible for payment. Respondent advised Mr. Whittemore to retain a lawyer in this matter. Respondent did not advise Mr. Whittemore that he was employed by the hospital, although Mr. Whittemore may have known it. Respondent did not at any time disqualify or offer to disqualify himself from the case. On June 10, 1981, respondent entered judgment in favor of the hospital for $467.49 plus costs.

18. The remaining claims filed by Moses Ludington Hospital and returnable before respondent pursuant to summonses he had signed on May 11, 1981, were against the following defendants: Sylvia Anderson, Deborah Bain, William Ball, Hazelton Belden, George Besson, Thomasina Buckman, Gladys Burger, Camp Adirondack, Michael Coffin, Kenneth Frasier, William Gibbs, John Hunsdon, Faith Lincourt, Peter Mars, Gloria Morse, Ernest Plumley, Douglas Russell, Jennie Savage, Dennis Scuderi, Harriett Stevenson, Colleen Stone, Leslie Taylor, David Thompson, Josephine Thompson, Allan Trombley, William C. Wilson and Carl Woodard.

19. On June 10, 1981, respondent entered judgments in favor of the hospital against Ms. Anderson, Ms. Bain, Mr. Ball, Ms. Buckman, Mr. Coffin, Mr. Frasier, Mr. Gibbs, Mr. Hunsdon, Ms. Lincourt, Mr. Plumley, Mr. Russell, Ms. Stevenson and Ms. Stone.

20. On June 10, 1981, respondent entered default judgments in favor of the hospital against Ms. Belden, Ms. Taylor and Mr. Woodard.

21. Respondent's dockets as to the remaining cases record the following. The case against Camp Adirondack was "dismissed by hospital." The case against Mr. Wilson was marked "no service dismissed." The cases against Mr. Besson, Mr. Scuderi, Ms. Thompson and Mr. Trombley were marked "Pd in full." The cases against Mr. Mars, Ms. Morse and Mr. Thompson were marked "moved to New Mexico," "moved to New Hampshire" and "moved to Oklahoma," respectively. The case against Ms. Burger was marked "bankrupt." The case against Ms. Savage was marked "deceased."

22. In each instance in which a judgment was entered, the judgment itself was prepared by the court clerk, on the basis of docket entries made by her from bench notes made by respondent. In those cases in which judgments were not entered, docket entries were made by the court clerk from bench notes made by respondent. The dockets were signed in respondent's name by the clerk, with respondent's knowledge and permission.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3C(1) of the Code of Judicial Conduct. The Charge in the Formal Written Complaint is sustained and respondent's misconduct is established.

Respondent was disqualified by his employment relationship with Moses Ludington Hospital from participating in any way in any cases

involving that hospital. Nevertheless, in one day respondent signed 37 summonses on claims brought by the hospital, insured that all 37 matters were returnable before him one month later, and thereafter disposed of all 37 cases, typically by finding in the hospital's favor for the full amount of the claim, plus costs. Respondent did not disqualify or offer to disqualify himself from these cases, despite the rules requiring him to do so and despite the assertion of at least one defendant that his presiding created a conflict of interest.

The role of a judge in our legal system is to preside over legal disputes in an impartial, dispassionate manner. Public confidence in the integrity of the judiciary and the entire legal system is diminished when a judge has an interest in a matter over which he presides.

Respondent's conduct both was improper and appeared to be improper. Even had his role in these 37 cases been strictly ministerial, it would have been inappropriate and contrary to the rules for him to participate. In fact, respondent played an active role in the hospital's pursuit of its payment claims, some of which were disputed by defendants who appeared in his court. The summary manner in which respondent disposed of even the disputed claims evinced his predisposition to favor his employer-plaintiff. Indeed, his bias was so obvious and his courtroom decorum so unjudicial that one defendant thought respondent was representing the hospital and was unaware he was the judge.

In essence, respondent acted as his employer's debt-collector, abusing the power and prestige of his judicial office to advance a private interest, in clear violation of the applicable ethical standards. By his conduct, respondent has compromised the integrity and independence of the judiciary.

In determining the appropriate sanction, we have considered the extreme seriousness of respondent's misconduct but note that it was limited to a single episode.

By reason of the foregoing, the Commission determines that respondent should be severely censured.

Judge Alexander, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mrs. Robb, Mr. Bower and Mrs. DelBello dissent as to sanction and vote that respondent should be removed from office.

Judge Rubin was not present.

Dated: January 20, 1983

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 E. WHALEN,

A Justice of the Ticonderoga Town Court, Essex County.

DISSENTING OPINION BY MRS. DEL BELLO
IN WHICH MRS. ROBB AND MR. BOWER JOIN

I respectfully dissent from the majority determination and vote that respondent be removed from office.

Unfitness for judicial office should be a primary consideration in determining sanction. *See, Matter of Kane* v. *State Commission on Judicial Conduct*, 50 NY2d 360 (1980). If unfitness is established, then removal from office is clearly warranted. A lesser discipline as censure or admonition is in order when unfitness has not been established.

In this case, respondent presided over 37 cases brought by his employer. He virtually turned his courtroom into a collection agency and did so even after a question was raised by an involved party as to his conflict of interest. To further compound his actions, respondent's testimony at the hearing was found by the referee to be lacking in credibility in several key areas.

Respondent has exhibited his unfitness for office by the manner in which he used his courtroom and by not acknowledging the impropriety of presiding over 37 cases in which he had an interest due to his employment and by his lack of candor at the hearing in this matter. He has exhibited an affront and insensitivity to judicial ethical standards.

For these reasons, I believe that the integrity of respondent's court has been irreparably compromised and that removal from office is appropriate.

Dated: January 20, 1983

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

PAUL McGEE,

A Justice of the Peru Town Court, Clinton County.

The Commission:	Mrs. Gene Robb, Chairwoman Hon. Fritz W. Alexander, II John J. Bower, Esq. David Bromberg, Esq. E. Garrett Cleary, Esq. Dolores DelBello Victor A. Kovner, Esq. Hon. William J. Ostrowski Hon. Isaac Rubin Hon. Felice K. Shea Carroll L. Wainwright, Jr., Esq.
Appearances:	Gerald Stern (Albert B. Lawrence, Of Counsel) for the Commission
	O'Connell and Wolfe (By Louis E. Wolfe and Lois McS. Webb) for Respondent

The respondent, Paul McGee, a justice of the Peru Town Court, Clinton County, was served with a Formal Written Complaint dated January 7, 1982, alleging *inter alia* that over a two-year period he engaged in a course of conduct prejudicial to the administration of justice, in that he denied defendants certain fundamental rights. Respondent filed an answer dated January 18, 1982.

By order dated January 29, 1982, the Commission designated the Honorable James A. O'Connor as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on March 19, 29, 30 and 31 and April 21, 1982, and the referee filed his report with the Commission on September 10, 1982.

By motion dated October 15, 1982, the administrator of the Commission moved to confirm in part and disaffirm in part the report of the referee, and for a determination that respondent be removed from office. Respondent opposed the motion in papers dated November 1, 1982. The Commission heard oral argument on the motion on November 29, 1982, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. From February 1979 through January 1981, respondent engaged in a course of conduct prejudicial to the administration of justice by failing to advise defendants in criminal cases of their rights, including: the right to counsel; the right to communicate with someone by letter or telephone, free of charge, for the purpose of obtaining counsel; the right of indigent defendants to have counsel appointed for them; the right to an adjournment to obtain counsel; the right to pre-trial hearings in felony cases; and the right to trial by jury in misdemeanor and felony cases. Respondent failed both to accord to defendants the opportunity to exercise their rights and to take the affirmative actions necessary to effectuate those rights, contrary to the requirements of law.

2. Respondent failed to give defendants copies of accusatory instruments.

3. Respondent abused the bail process by using it to coerce guilty pleas.

4. Respondent made improper inquiries of defendants in open court concerning pending charges, and he improperly elicited potentially incriminating statements from them.

5. Respondent engaged in *ex parte* discussions concerning cases pending before him.

6. Respondent conveyed the impression that he was prejudiced against defendants in his court and that he believed them to be guilty.

7. In some cases, respondent coerced or attempted to coerce defendants into pleading guilty. In other cases, respondent entered pleas of guilty to criminal charges without asking defendants how they pled and without their telling him they chose to plead guilty.

8. Respondent reported to government agencies that defendants had been convicted of various crimes, notwithstanding that the defendants had never received a trial or pled guilty to any crime.

As to Charge II of the Formal Written Complaint:

9. On October 25, 1979, respondent signed a warrant for the arrest of Helen Kellas, charging her with theft of services, a class A misdemeanor.

10. The information, upon which the warrant was issued, had been prepared by a member of the New York State Police and alleged that the defendant had paid by personal check for repairs to a saw, and that she subsequently stopped payment on the check.

11. When the defendant was brought before him, respondent failed to advise her of her right to counsel. When the defendant asked him if she should get a lawyer, respondent replied: "if you want, but it will be costly."

12. Respondent failed to give the defendant a copy of the accusatory instrument.

13. Respondent informed the defendant that the complaining witness had indeed performed the repair services and was entitled to be paid for his labor.

14. Respondent informed the defendant that if she did not plead guilty she could be incarcerated "immediately".

15. Respondent informed the defendant after she pled guilty that she would have "a record" but that it did not "mean anything".

16. After the defendant had entered a plea of guilty and made restitution, the respondent entered a conviction to the charge on his records and reported it to the Division of Criminal Justice Services.

As to Charge III of the Formal Written Complaint:

17. On September 26, 1979, Donald J. Shappy was brought before respondent on a charge of harassment, a violation.

18. Respondent failed to give the defendant a copy of the information and failed to advise him that he had a right to counsel.

19. Respondent failed to enter a plea of "not guilty" on behalf of the defendant after the latter repeatedly stated that he was not guilty of the charge.

20. Respondent signed a commitment order sentencing the defendant to 30 days in jail unless a fine of $250.00 was paid.

21. Respondent entered in his records a conviction on the charge, even though the defendant did not plead guilty and was not afforded a trial.

As to Charge IV of the Formal Written Complaint:

22. On August 22, 1979, Beverly M. Gannon was brought before respondent on a charge of petit larceny, a misdemeanor. The defendant was alleged to have left a supermarket without paying for a carton of cigarettes.

23. Respondent failed to ask the defendant to enter a plea to the charge. After an *ex parte* conference with the arresting officer, respondent informed the defendant she must pay a $25 fine.

24. Respondent entered a conviction on the petit larceny charge in his criminal docket and reported the conviction to the authorities, notwithstanding that no trial had been held and the defendant had not pled guilty.

As to Charge V of the Formal Written Complaint:

25. The charge was withdrawn at the hearing and therefore is not sustained.

As to Charge VI of the Formal Written Complaint:

26. On December 6, 1980, Patricia Burl was brought before respondent on a charge of third degree assault, a class A misdemeanor, resulting from an altercation she had had with Laurie Bouyea.

27. The defendant entered a plea of not guilty and told respondent she had acted in self-defense. Respondent ignored her explanation and said: "I saw Laurie Bouyea's eye and you're twice the size she is."

28. Respondent asked the defendant whether she had bail money. On learning that she did not, respondent informed her she would have to be incarcerated in lieu of bail for six days.

29. When the defendant demanded a trial by jury, respondent replied that whether or not she had a jury trial was entirely up to him.

30. Respondent told the defendant that when she returned to court, she was not to bring a lawyer.

31. After the arraignment, the defendant telephoned respondent and asked for clarification on whether she was entitled to be represented by counsel. Respondent again told her not to bring an attorney to court. Respondent also again told her that it was up to him whether she had a jury trial.

As to Charge VII of the Formal Written Complaint:

32. On February 15, 1978, Anthony Jacques was charged with petit larceny, a class A misdemeanor, for allegedly failing to pay for a pair of boots. He was arraigned before respondent on the same date.

33. At the arraignment, respondent failed to give the defendant a copy of the accusatory instrument, failed to advise the defendant of his rights and failed to ask the defendant to enter a plea to the charge. After an *ex parte* conference with the arresting officer, respondent told the defendant he had a choice between paying a $50 fine or spending 25 days in jail. Respondent signed a commitment order sentencing the defendant to jail unless the fine was paid.

34. Respondent entered a conviction to the charge in his records and reported the conviction to the appropriate authorities, notwithstanding that no trial had been held and the defendant had not pled guilty.

As to Charge VIII of the Formal Written Complaint:

35. On February 16, 1980, in *People* v. *Richard Test*, in which the defendant was charged with class A misdemeanors of driving while intoxicated and unauthorized use of a motor vehicle, respondent conducted a proceeding, found the defendant guilty of the latter charge and sentenced him to jail for five days, notwithstanding that the defendant was visibly intoxicated. Respondent's docket as to the driving while intoxicated charge indicates the following: "2/19/80 Y.O. Released on time served."

As to Charge IX of the Formal Written Complaint:

36. On June 19, 1980, Michael Alexander, age 18, was charged with criminal mischief, 4th degree, a class A misdemeanor, and with two charges of harassment.

37. Respondent failed to advise the defendant of his right to counsel, and he failed to give the defendant a copy of the accusatory instruments.

38. Prior to asking the defendant for his plea to the charges, respondent asked the defendant if he had jumped on the hood of the car involved in the alleged incident underlying the charges, and if he had struck the occupants of the car. Respondent then refused to listen to the defendant's explanation as to what had occurred and admonished him to be quiet.

39. The defendant pled guilty, and respondent sentenced him to $50 or ten days in jail.

As to Charge X of the Formal Written Complaint:

40. On September 16, 1979, in *People* v. *Helen Macey*, in which the defendant was charged with harassment, a violation, for allegedly using abusive language to a trooper, respondent failed to give the defendant a copy of the accusatory instrument, failed to advise her of

her rights and failed to ask her to enter a plea to the charge. After an *ex parte* conference with the arresting officer, respondent told Ms. Macey that she was guilty and the fine would be $50. He accepted a personal check from her in payment of the fine and entered a conviction to the charge in his records, notwithstanding that no trial had been held and the defendant had not pled guilty.

41. Thereafter, respondent was advised that a stop-payment notice had been placed on Ms. Macey's check. On September 26, 1979, respondent issued warrants for Ms. Macey's arrest on charges of obstructing governmental administration and criminal contempt.

42. At the arraignment of Ms. Macey on the new charges, respondent failed to give the defendant a copy of the accusatory instrument, failed to advise her of one of the charges against her (obstructing governmental administration), failed to advise her of her rights and failed to ask her to enter a plea to the charges. When Ms. Macey stated that she had not stopped payment on the check, respondent said that she had stopped payment and was guilty. Respondent then imposed a sentence of a $50 fine or five days in jail, signed a commitment order and reported a conviction to the Division of Criminal Justice Services on the bad check charge, notwithstanding that no trial had been held and the defendant had not pled guilty.

As to Charge XI of the Formal Written Complaint:

43. The charge is not sustained.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.3(a)(1) and 100.3(a)(4) of the Rules Governing Judicial Conduct (formerly Sections 33.1, 33.2[a], 33.3[a][1] and 33.3[a][4]) and Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charges I through IV and Charges VI through X of the Formal Written Complaint are sustained and respondent's misconduct is established. Charges V and XI of the Formal Written Complaint are not sustained and therefore are dismissed.

Respondent has engaged in a course of conduct which both violates the relevant ethical standards and shocks the conscience. He has abused the power of his office in a manner that has brought disrepute to the judiciary and has irredeemably damaged public confidence in the integrity of his court.

The record reveals that respondent routinely denied defendants their constitutional and statutory rights by failing to advise them of the right to counsel, the right to pre-trial hearings and the right to trial by jury. He failed to give defendants the accusatory instruments upon

which the prosecutions against them were based. He coerced guilty pleas. He entered guilty pleas against defendants who had neither pled guilty nor stood trial. Often he did so after conducting improper *ex parte* conferences with the arresting officers.

Respondent has distorted the legal process in his court beyond recognition. He has routinely and deliberately conducted himself as one predisposed toward the prosecution.

Although ignorance of the law would be no excuse, we note that respondent's knowledge and awareness of the applicable law are not at issue. The record reveals that in some cases that came before him, respondent indeed advised defendants of their rights, as required.

No judge is above the law he is sworn to administer. The legal system cannot accommodate a jurist who disregards due process. Respondent's conduct has revealed an egregious misapplication of judicial power and a fatal misunderstanding of the role of a judicial officer. He is not fit to serve as judge.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur, except for Judge Rubin, who was not present.

Dated: January 21, 1983

NOTE: The Court of Appeals, upon review, accepted the Commission's determination that respondent be removed. 59 NY2d 870 (1983).

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 G. GODIN,

A Justice of the Manheim Town Court, Herkimer County.

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

Appearances: Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission

G. Gerald Fiesinger, Jr., for Respondent

The respondent, Philip G. Godin, is a justice of the Manheim Town Court, Herkimer County. He serves as a judge part-time and is also a practicing attorney. He was served with a Formal Written Complaint dated December 3, 1982, alleging various acts of misconduct with respect to court funds entrusted to his care. Respondent did not file an answer.

On December 30, 1982, 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, stipulating that the agreed statement be executed in lieu of respondent's answer and further stipulating that the Commission make its determination on the pleadings and the agreed upon

facts. Among the exhibits appended to the agreed statement was respondent's testimony before a member of the Commission on October 26, 1982, in the course of the investigation of the matters herein.

The Commission approved the agreed statement as submitted. The administrator and respondent waived oral argument on the issues of misconduct and sanction.

The Commission considered the record of this proceeding on January 19, 1983, and made the following findings of fact.

1. Between August 1980 and June 1981, respondent received $5022.56 in fines and other court funds which he was required to deposit promptly in his official court account and remit to the State Comptroller. In that period, respondent actually deposited $3071.80, resulting in a deficiency of $1950.76, as set forth in *Schedule A* appended to the agreed statement of facts. Respondent was aware throughout this period that he was depositing less money than he actually received, and he did so deliberately in order to conceal earlier deficiencies.

2. On June 30, 1981, respondent was asked by examiners from the State Department of Audit and Control to certify the amount of undeposited court funds in his possession. Respondent certified that there were no undeposited court funds, on the form annexed as *Exhibit 1* to the agreed statement of facts. In fact, respondent knew at the time that there were over $1800 in court funds which had not been deposited.

3. On July 3, 1981, when his court account was deficient by more than $1900, respondent's records were being audited by the Department of Audit and Control. On that date respondent made deposits of $1838.61 and $182.25 into his court account. Respondent then made false entries in his cashbook to indicate that the deposits had been made in May 1981 and January 1981, respectively, as set forth in *Exhibits 2* and *3* appended to the agreed statement of facts.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 107, 2019 and 2019-a of the Uniform Justice Court Act, Sections 30.7(a) and 30.9 of the Uniform Justice Court Rules, Section 105.1 of the Recordkeeping Requirements for Town and Village Courts, Sections 100.1, 100.2(a), 100.3(a)(1), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1), 3A(5) and 3B(1) of the Code of Judicial Conduct. The Charge in the Formal Written Complaint is sustained and respondent's misconduct is established.

Respondent deliberately failed to deposit court funds into his official court account over an 11-month period, resulting in a deficiency of more than $1900. He then made false entries in his records in order to conceal the deficiency from state auditors, and he falsely certified the status of his court funds and accounts in a statement submitted to the auditors. In so doing, respondent engaged in egregious misconduct for which there can be no excuse. In attempting with falsehoods to cover up his original misconduct, respondent acted in a disgraceful manner which has prejudiced the administration of justice and destroyed his credibility as a judge.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

This determination is rendered pursuant to Section 47 of the Judiciary Law in view of respondent's resignation from the bench.

All concur, except for Mr. Bower and Judge Rubin, who were not present.

Dated: January 26, 1983

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 T. JORDAN, JR.,

A Justice of the Supreme Court,
Second Judicial District (Kings County).

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

Appearances: Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission

Nathan R. Sobel for Respondent

The respondent, Anthony T. Jordan, Jr., a justice of the Supreme Court, Second Judicial District (Kings County), was served with a Formal Written Complaint dated February 2, 1982, alleging that he addressed an attorney in an improper manner in a 1981 proceeding. Respondent filed an answer dated February 10, 1982.

By order dated March 3, 1982, the Commission designated Gerald Harris, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on May 17, 1982, and the referee filed his report with the Commission on July 14, 1982.

By motion dated August 18, 1982, the administrator of the Commission moved to confirm the referee's report and for a determination

that respondent be admonished. By papers and motion dated October 5, 1982, respondent opposed the administrator's motion and moved to disaffirm the referee's report and for dismissal of the Formal Written Complaint. The administrator filed a reply to respondent's opposing papers on November 17, 1982.

The Commission heard oral argument in this matter on December 20, 1982, at which respondent appeared with counsel, and thereafter made the following findings of fact.

1. Martha Copleman is an attorney who was admitted to the New Jersey bar in 1974, the Texas bar in 1977 and the New York bar in 1979. She has been an attorney with East Brooklyn Legal Services since 1979 and, prior to December 7, 1981, had appeared before respondent on more than one occasion.

2. On December 7, 1981, Ms. Copleman appeared before respondent in Special Term, Part I, of Supreme Court in Kings County, representing the petitioner in *Matter of Troy* v. *Krauskopf.* Assistant New York City Corporation Counsel John Jokl was her opposing counsel. Between 30 and 50 people, mostly attorneys, were present in the courtroom at that time.

3. When the *Troy* case was called, respondent heard argument on a requested adjournment. (Mr. Jokl requested a two-week adjournment and Ms. Copleman argued for a shorter one.) In the ensuing dialogue, respondent asked Ms. Copleman several questions, including the length of time she had been practicing law. At one point during his questioning, respondent addressed Ms. Copleman as "little girl." Ms. Copleman objected to being called "little girl" and requested that respondent address her as "counselor." Respondent apologized.

4. As the argument on the requested adjournment was concluded, respondent told Ms. Copleman: "I will tell you what, little girl, you lose." Respondent's voice was raised and he conveyed the impression of insulting and demeaning Ms. Copleman. Ms. Copleman was upset by the incident, felt humiliated and was close to tears as she left the courtroom. Respondent did not apologize because he did not believe he had said anything wrong.

5. Respondent has foresworn future use in his court of the expression "little girl."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 100.3(a)(3) of the Rules Governing Judicial Conduct and Canon 3A(3) of the Code of Judicial Conduct. The Charge in the Formal Written Complaint is sustained, except as to those portions of paragraph 7 of the Formal Written

Complaint which allege violations of Sections 100.1, 100.2(a), 100.3(a)(1) and 100.3(a)(2) of the Rules and Canons 1, 2A, 3A(1) and 3A(2) of the Code, which are dismissed. Respondent's misconduct is established.

A judge is obliged to treat those who appear in his or her court with courtesy and respect, and to maintain the decorum and dignity of the court.

As the referee observed, when respondent first addressed a lawyer in his court as "little girl," it may well have been an inadvertent expression of unconscious prejudice or the result of an ingrained pattern of speech. That phrase is objectionable no matter what its origin. We note here that we do not share the dissenter's view that the term "little girl" is comparable to "young lady." Notwithstanding our respect for the dissenter's extensive experience in court, the former term was never an accepted or acceptable manner of addressing an attorney, even in the "bruising give-and-take" of the courtroom.

When respondent, with his voice raised, repeated the phrase "little girl" after the attorney had objected, it was clearly an epithet calculated to demean the lawyer. It was intentional and not, as the dissent suggests, inadvertent. As such it constituted misconduct. Yet even if respondent's second use of the phrase was unintentional, his contention that "little girl" is analogous to "sweetheart" or "darling," and his suggestion that these are terms of endearment, are neither persuasive nor mitigating. Expressions such as these are insulting, belittling and inappropriate in an exchange between judge and lawyer. They diminish the dignity of the court.

By reason of the foregoing, the Commission determines that respondent should be admonished.

Mrs. Robb, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

Mr. Cleary and Mr. Wainwright dissent as to sanction only and vote that respondent be issued a confidential letter of dismissal and caution.

Mr. Bower dissents and votes that respondent's misconduct was not established and that the Formal Written Complaint be dismissed.

Judge Alexander and Judge Rubin were not present.

Dated: January 26, 1983

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 T. JORDAN, JR.,

A Justice of the Supreme Court,
Second Judicial District (Kings County).

DISSENTING OPINION BY MR. BOWER

I dissent from the finding of misconduct.

Patterns of speech as well as inflexions of voice are parts of one's personality. They are no more amenable to rapid change than one visit to a psychiatrist is likely to change the patient's insight. As social patterns change rapidly, there is a gap between what was acceptable a decade ago and what is unacceptable today. In the fifties or sixties, judicial sternness was seen as an asset. Courtroom decorum was desirable and in order to have it, bench and bar perceived a direct relationship between the stern mien of the court and the respect by all who appeared before it. Judges of today who grew up professionally in the atmosphere of those days didn't think anything of being referred to as "young fellow", "young lady" and the like. They may not have liked it but did not feel that it was insulting. In fact, smart lawyers turned such remarks to their advantage.

Without drawing invidious parallels between courtroom behavior then and now (including the behavior, intelligence, mode of dress of the court personnel, jurors and lawyers), it is easy to see how one raised professionally in those antediluvian days may have erred inadvertently and in the heat of a debate, the innocuous remark "little girl" slipped out in addressing a lawyer. When this inadvertent error was committed, the respondent apologized and properly so, when the attorney indicated her preference not to be called "little girl." I cannot think of conduct more proper than the apology. Even the referee found no misconduct in this first instance. As the argument wore on, however, once again respondent lapsed from modern ways and once again, in the heat of argument, alluded to the attorney as "little girl."

It is unthinkable to me that this trivial matter evoked the oversensitive response from the attorney in that she made the complaint in the first place. Law is an adversarial process and its practitioners are not

swathed in cotton. A certain amount of give-and-take and bruising is expected. There would have been nothing wrong, in my opinion, in the attorney engaging in a bit of give-and-take in the courtroom on this point. I am sure that respondent would have apologized again and the matter would have been simply forgotten. Instead, the awesome machinery of this Commission geared up to prosecute with ability and zeal the respondent, a capable judge with a previously unblemished record, in order to hold him up to public opprobrium. I find this more shocking than the trivial incident which gave rise to the complaint.

Neither the Constitution (Article VI, Section 22) nor the statute (Judiciary Law, Chapter 5) defines "judicial misconduct." The Constitution provides that justices of the Supreme Court may be removed or otherwise punished by the Commission "for cause." This may include, among other things, "misconduct in office." This solemn language relates to an act significant to the administration of justice or other proper performance of the judicial function and to me, it is obvious that every trivial deviation from a formally spelled out rule, either procedural or behavioral, does not reach the level of significance to sustain a sanction against a judge, either for "cause" or "judicial misconduct." The act complained of must be significant enough to reflect adversely either on the office or the public perception of its performance. Unimportant or trivial violations of any rule by a judge cannot be "judicial misconduct." One instance of lateness on the bench in violation of a provision as to the hours of court, for example, would be "misconduct" if we apply the majority's reasoning. This is somewhat silly. To prosecute a judge for anything trivial was aptly described by Horace some 2,000 years ago: "The mountains will be in labor, and a ridiculous mouse will be brought forth."

Throughout history, more excesses have been committed against decency in the name of moral or political good, than in the name of evil. To impose public punishment on the respondent so that "male chauvinists" are put on notice, demeans the purpose for which this Commission was created.

I am not persuaded that we must make a public example of respondent so that no judge in the state will insult sensitive female lawyers by calling even one, in an inadvertent manner, "little girl." Certainly, insofar as respondent is concerned, a mere letter of caution, without a formal complaint, would have achieved that result. To impose public sanction under these circumstances, in my opinion, is far worse than the trivial incident upon which it is based.

Dated: January 26, 1983

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 S. CURCIO,

A Justice of the Malta Town Court, Saratoga County.

The Commission:	Mrs. Gene Robb, Chairwoman Hon. Fritz W. Alexander, II John J. Bower, Esq. David Bromberg, Esq. E. Garrett Cleary, Esq. Dolores DelBello Victor A. Kovner, Esq. Hon. William J. Ostrowski Hon. Isaac Rubin Hon. Felice K. Shea Carroll L. Wainwright, Jr., Esq.
Appearances:	Gerald Stern (Albert B. Lawrence, Of Counsel) for the Commission
	David L. Reibel for Respondent

The respondent, Joseph S. Curcio, a justice of the Malta Town Court, Saratoga County, was served with a Formal Written Complaint dated November 5, 1981, alleging misconduct with respect to two cases involving the same defendant in January 1980 and March 1981. Respondent filed an answer dated January 20, 1982.

By order dated June 4, 1982, the Commission designated Edward Brodsky, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 13, 1982, and the referee filed his report with the Commission on October 22, 1982.

By motion dated December 3, 1982, 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 January 10, 1983. Oral argument was waived.

The Commission considered the record of the proceeding on January 18, 1983, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. On December 31, 1979, Barry L. King was arraigned before respondent on a criminal complaint charging that he issued two bad checks in payment of rent on his residence at Northway Eleven Apartments.

2. Mr. King appeared before respondent on January 17, 21 and 26, 1980. On January 17 he was represented by counsel. On January 21 and 26 he appeared without counsel. At the January 26 appearance, no prosecutor was present.

3. Respondent fixed bail on January 17, 1980, at $1500. That amount was determined by calculating restitution for the two allegedly bad checks, plus a fine. Bail was posted by Mr. King's mother-in-law, Catherine McCallum, and by John O'Connor.

4. At the January 26, 1980, appearance, Mr. King appeared before respondent without counsel. No prosecutor was present. Respondent told Mr. King and Mrs. McCallum, who was reached by telephone, that if Mr. King did not arrange to use the bail money to make restitution for the two allegedly bad checks, he would order Mr. King incarcerated for 90 days. Respondent entered a judgment of conviction against Mr. King for disorderly conduct, although the defendant was not charged with or tried on such a charge. Indeed, Mr. King had not pled guilty to any charge in connection with this matter.

5. Mrs. McCallum arranged to have the bail money in *Northway Eleven* released, and it was used to make restitution and pay a $250 fine set by respondent.

6. The judgment of conviction entered by respondent in the *Northway Eleven* matter, and respondent's entry in his court docket book, incorrectly state that the defendant was convicted after a trial, when in fact there was no trial.

As to Charge II of the Formal Written Complaint:

7. In March 1981, a civil complaint was filed against Mr. King by Robert Van Patten, the owner of Northway Eleven Apartments, for eviction and for back rent for October 1980 through February 1981.

8. On March 19, 1981, Mr. King appeared before respondent in the *Van Patten* matter and denied that he owed back rent. Mr. King presented proof of payment for at least part of the back rent. The plaintiff, Mr. Van Patten, presented no evidence to the effect that rent was owing. No trial was held.

9. Respondent entered a default judgment against Mr. King on March 19, 1981, in the full amount demanded in the plaintiff's petition, notwithstanding that Mr. King appeared, was not in default and denied the allegations in the complaint. Respondent failed to deduct from the awarded judgment the amount which he acknowledged Mr. King showed he had paid.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.3(a)(1) and 100.3(a)(4) of the Rules Governing Judicial Conduct (formerly Sections 33.1, 33.2[a], 33.3[a][1] and 33.3[a][4]) and Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

A judge is obliged by the Rules Governing Judicial Conduct to be faithful to and competent in the law, to insure that all those with a legal interest have a full right to be heard, and to act in a manner that promotes public confidence in the integrity of the judiciary. By disposing of the *Northway Eleven Apartments* case without a trial, in the absence of a prosecutor and defense counsel, with a judgment that found the defendant guilty of a crime he had not been accused of committing, respondent did not meet the relevant provisions of the Rules cited above. Moreover, respondent abused the bail process by improperly threatening the defendant with incarceration if he failed to make restitution with bail money that was not his and which others had posted on his behalf.

By disposing of the *Van Patten* case without a trial, and by entering a default judgment against the defendant who was not in default and in fact was present before the judge, respondent again denied the defendant his fundamental right to be heard.

By reason of the foregoing, the Commission determines that respondent should be admonished.

Mrs. Robb, Judge Alexander, Mr. Bromberg, Mrs. DelBello, Mr. Cleary, Mr. Kovner, Judge Ostrowski and Mr. Wainwright concur.

Mr. Bower, Judge Rubin and Judge Shea were not present.

Dated: March 1, 1983

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,
New York County.

The Commission:	Mrs. Gene Robb, Chairwoman Hon. Fritz W. Alexander, II John J. Bower, Esq. David Bromberg, Esq. E. Garrett Cleary, Esq. Dolores DelBello Victor A. Kovner, Esq. Hon. William J. Ostrowski Hon. Isaac Rubin Hon. Felice K. Shea Carroll L. Wainwright, Jr., Esq.
Appearances:	Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission
	Eric A. Seiff, Alan I. Friess, Bette Blank and Bryan Barrett for Respondent

The respondent, Alan I. Friess, a judge of the Criminal Court of the City of New York, was served with a Formal Written Complaint dated February 25, 1982, alleging misconduct with respect to two cases over which he presided. Respondent filed an answer dated March 15, 1982.

By order dated March 18, 1982, the Commission designated the Honorable Simon J. Liebowitz as referee to hear and report proposed findings of fact and conclusions of law. The hearing was public, pursuant to respondent's written waiver of the confidentiality provision of Section 44, subdivision 4, of the Judiciary Law. It was held on

January 20 and 27 and February 2, 9 and 10, 1983,* and the referee filed his report with the Commission on March 11, 1983.

By motion dated March 11, 1983, 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 by cross-motion dated March 21, 1983. By determination and order dated March 24, 1983, the Commission disposed of the procedural issues raised in respondent's cross-motion.

The Commission heard oral argument on the merits of this matter on March 25, 1983, thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. During the week of June 18, 1979, respondent was assigned to sit in Part SP1 of the Criminal Court of the City of New York, at 346 Broadway. The physical conditions of the court were generally unsatisfactory, and the courtroom was frequently crowded.

2. Quarrels between neighbors frequently became the subject of bitter disputes in SP1. With the exception of those cases involving fines and petty offenses, many complaints in SP1 are dismissed without witnesses being sworn, adjourned in contemplation of dismissal or referred to a trial part.

3. The condition of the courtroom and its surroundings has no bearing on or relevance to the acts or conduct of respondent.

4. On June 22, 1979, in SP1, respondent presided over the case of *People* v. *Louis Santiello*, in which the complaining witness, John Haisley, charged the defendant with harassment. In addition to *Santiello*, there were 10 other cases on respondent's calendar involving quarrels between individuals.

5. Before rendering his decision in the *Santiello* case, respondent told both Mr. Haisley and the defendant that he was going to ask the courtroom spectators to decide the case by a show of hands as to

---

*Respondent commenced a CPLR Article 78 proceeding in Supreme Court in April 1982, challenging the Commission on various jurisdictional and procedural grounds. He was granted a stay of the hearing, pending determination of his petition. The matter reached the Appellate Division, which denied respondent's petition on December 16, 1982. Respondent sought leave to appeal to the Court of Appeals and on January 13, 1983, his request that the hearing continue to be stayed was denied, except that the Appellate Division temporarily stayed the referee from filing his report with the Commission. On January 20, 1983, the hearing was commenced. On January 25, 1983, respondent's motion for leave to appeal was denied by the Appellate Division, and the stay on the referee was vacated.

whether Mr. Haisley or Mr. Santiello was telling the truth. Respondent asked both Haisley and Santiello if they would abide by the spectators' vote, which he referred to as "the decision of the jury." Mr. Santiello agreed. Mr. Haisley refused.

6. Respondent then asked the courtroom spectators to vote by raising their hands in favor of either Mr. Haisley or Mr. Santiello. After the vote, respondent stated: "It seems to be a divided jury. This case is A.C.D.'d" [adjourned in contemplation of dismissal]. Respondent then rendered a disposition of A.C.D.

7. By his actions, respondent intended to convey to the litigants that he was basing his decision on the audience vote. He conveyed to the audience the impression that he intended to abide by their vote.

As to Charge II of the Formal Written Complaint:

8. On January 26, 1982, respondent was sitting in Part AP7 of the Criminal Court of the City of New York, and presided over a plea and bench conference in *People* v. *Jeffrey Jones*, in which the defendant was charged with jostling, a Class A misdemeanor. The assistant district attorney was John Jordan, and the defendant's counsel was Michael Moscato.

9. During the bench conference, respondent stated that he would sentence the defendant to 3 years' probation if he pled guilty. The District Attorney's office took no position on sentencing. Mr. Moscato conferred with the defendant and advised respondent that the defendant would prefer a short jail sentence to probation.

10. Respondent stated that he would sentence the defendant to a term of 30 days in jail if he pled guilty. Mr. Moscato conferred with the defendant and advised respondent that the defendant would prefer a sentence of 20 days.

11. Respondent asked Mr. Moscato if the defendant was a "gambling man." Respondent then asked the defendant directly if he was a "gambling man."

12. Respondent then told the defendant he was prepared to have a coin tossed to determine if the defendant should be sentenced to 20 days or 30 days in jail. The defendant agreed to the procedure and asked respondent if the coin was rigged. Respondent told the defendant that the coin was not rigged.

13. Respondent requested that Mr. Moscato toss the coin. Respondent stated that if the coin landed "heads" the sentence would be 30 days, and if it landed "tails" the sentence would be 20 days. Mr. Moscato tossed the coin, which came out "tails."

14. As a result of the coin toss, respondent sentenced the defendant to 20 days in jail.

15. Other people in the court besides the individuals involved in the bench conference were able to observe the coin toss and hear respondent's statements during the conference.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a) and 100.3(a)(1-4) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3A(1-4) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

Public confidence in the judiciary is fundamental to the fair and proper administration of justice. A judge's conduct must be and appear to be beyond reproach if respect for the courts is to be maintained.

In allowing a coin toss to determine the length of a defendant's jail term, and in representing to courtroom spectators that their show of hands would determine the outcome of a disputed matter, respondent undermined public respect for the judiciary and irretrievably lost the public's confidence.

As noted by the referee:

> Judicial judgment is a non-delegable duty. For a judge to abdicate this judicial judgment to the flipping of a coin gives the appearance of reckless dispensation of justice [Ref. Rep. 17].
>
> * * * * *
>
> It is not the function of a judge to play games with the litigants or the spectators. His avowed intention of not being bound by the vote and then calling for a vote was deceptive. The respondent's callous reaction to the humiliation he caused Mr. Haisley should not be discounted. Furthermore, thousands of these neighborly quarrels, bitter as they have been, have been resolved satisfactorily without resorting to the method used by respondent. It is true that at the time respondent . . . was a new and inexperienced judge. He still insists with vehemence and fervor that the polling of the audience was an act of judicial propriety and dignity. His immutable belief [to date] that he acted properly negates any possible mitigating finding that his conduct was the result of his inexperience. He insists to this very day that his act was one of a genius and that he acted with judicial propriety. He compares his conduct of being innovative as a new judge to Mozart creating his first symphony at the age of 4 [Ref. Rep. 10-11].

It is intolerable for a judge to act as respondent did. The suggestion that his conduct was "creative" or "innovative" and therefore appropriate is absurd. A court of law is not a game of chance. The public has every right to expect that a jurist will carefully weigh the matters at issue and, in good faith, render reasoned rulings and decisions. Abdicating such solemn responsibilities, particularly in so whimsical a manner as respondent exhibited, is inexcusable and indefensible.

The argument that respondent acted reasonably, given the emotional character of the court in which he sat, is likewise without merit. The disdainful characterization of the court, by respondent and others, as a "sham," a "zoo" and a "nut part," is troublesome. Respondent's unflattering view of the litigants does not excuse his having made a mockery of the legal proceedings. Indeed, that the court was a volatile place made it all the more imperative for respondent to act in a dignified manner. He was obliged to set an appropriate example.

The Commission notes the testimony of several members of the judiciary in support of respondent's conduct. While their opinion evidence was well-intentioned, and they are well within their rights in expressing their views, we deem their testimony totally unpersuasive.

Respondent resigned from office on December 31, 1982, during the course of these proceedings. Section 47 of the Judiciary Law authorizes the Commission to determine that a judge be removed from office, notwithstanding such resignation. Removal automatically bars a judge from ever again holding judicial office in this state.

Among the factors to be weighed in making such a serious determination are the nature of the misconduct, respondent's appreciation of the gravamen of the misconduct, and whether the prospect of his attaining a maturity of judgment, such as would warrant his possible service as a jurist in the future, is worth the risk to the public and the administration of justice in permitting him to return to the bench.

Of course, no one can make such a judgment with absolute certainty. However, in considering these issues and the entire record of this proceeding, we note respondent's complete failure to appreciate the fact that his conduct was totally inappropriate and plainly wrong. We also note his continued and unyielding insistence not only that his conduct was appropriate but that it was an act of genius. Finally, we take particular note that in June 1981, only seven months before the coin-tossing incident, respondent was censured by this Commission for having taken to his home the criminal defendant in a case over which he was presiding. *Matter of Friess*, June 25, 1981 (Com. on Jud. Conduct).

By his conduct in these cases, respondent has exhibited extraordinarily poor judgment, utter contempt for the process of law and the grossest misunderstanding of the role and responsibility of a judge in our legal system. He has severely prejudiced the administration of justice and demonstrated his unfitness to hold judicial office.

By reason of the foregoing, the Commission determines that respondent should be removed from office pursuant to Section 47 of the Judiciary Law.

All concur, except for Judge Shea, who dissents in a separate opinion as to sanction only.

Dated: March 30, 1983

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,
New York County.

DISSENTING OPINION BY JUDGE SHEA

I concur in the finding of misconduct as to Charges I and II. I agree that respondent exhibited extremely poor judgment on these two occasions and demonstrated a serious misconception of the proper role of a judge.

Nevertheless, the record as a whole, and particularly the testimony of esteemed members of the bench, shows that respondent was an able and dedicated judge. His resignation makes it unnecessary to apply the ultimate sanction that the majority finds appropriate. In my view, removing respondent solely to insure that he can never again serve on the judiciary is unwarranted.

Accordingly, I dissent and vote for dismissal, the only other disposition available pursuant to Section 47.

Dated: March 30, 1983

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

RAYMOND E. BURR,

A Justice of the Middlefield Town Court, Otsego County.

The Commission:	Mrs. Gene Robb, Chairwoman Hon. Fritz W. Alexander, II John J. Bower, Esq. David Bromberg, Esq. E. Garrett Cleary, Esq. Dolores DelBello Victor A. Kovner, Esq. Hon. William J. Ostrowski Hon. Isaac Rubin Hon. Felice K. Shea Carroll L. Wainwright, Jr., Esq.*
Appearances:	Gerald Stern (Albert B. Lawrence, Of Counsel) for the Commission
	Greene and Green (By Lynn E. Green, Jr.) for Respondent

The respondent, Raymond E. Burr, a justice of the Middlefield Town Court, Otsego County, was served with a Formal Written Complaint dated May 6, 1982, alleging that over a 19-month period he repeatedly refused a newspaper reporter access to public court records and proceedings. Respondent filed an answer dated May 28, 1982.

By order dated June 17, 1982, the Commission designated William H. Morris, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 29, 1982, and the referee filed his report with the Commission on October 4, 1982.

---

*Mr. Wainwright's term as a member of the Commission expired on March 31, 1983. The vote in this case was held on February 16, 1983.

By motion dated January 6, 1983, 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 opposed the motion on January 21, 1983. Respondent waived oral argument.

The Commission considered the record of the proceeding on February 16, 1983, and made the following findings of fact.

1. Respondent serves as a part-time town justice. He customarily holds court on Monday evenings at 7:00 PM at the Middlefield firehouse.

2. Respondent keeps his court dockets in a footlocker at his home and brings them with him to court on Monday evenings. He customarily makes his dockets available for inspection on Monday evenings at the firehouse. Respondent does not release information over the telephone concerning court cases.

3. Claude Rose is a newspaper reporter for the *Oneonta Star*. Richard Johnson is editor and publisher of the *Freeman's Journal* in Cooperstown.

4. In October 1980, Mr. Rose requested information from respondent on several occasions, by telephone and in person, concerning *People* v. *Mervin Nichols*, over which respondent had presided. Respondent refused to provide Mr. Rose with information in the *Nichols* case, notwithstanding that the records of the case were not sealed or otherwise confidential. Mr. Rose thereafter invoked the Freedom of Information Law, gave respondent a copy of Section 2019-a of the Uniform Justice Court Act pertaining to court records, and asked to see respondent's records. Respondent denied the request. Several times thereafter in the autumn of 1980 Mr. Rose requested to see respondent's court records, and each time respondent denied the request.

5. On March 16, 1981, Mr. Rose attended a public court proceeding in respondent's court in the case of *People* v. *Robert Race*. Respondent attempted to remove Mr. Rose from the court, but he was prevailed upon by the prosecutor to allow Mr. Rose to remain. At the end of the proceeding, Mr. Rose asked the see the court dockets and was informed by respondent that the dockets were not there that evening. Respondent did not state when the records could be examined.

6. On March 16, 1981, and April 7, 1981, Mr. Rose and his newspaper's attorney, respectively, wrote to respondent and asked that Mr. Rose be allowed to see the court dockets. Respondent did not answer the letters.

7. On April 5, 1982, Mr. Rose and another journalist, Mr. Johnson, attended a regularly scheduled public session of respondent's court and requested to see the court dockets for 1981 and 1982, either then or by appointment within the next two days. Respondent denied the request and asked Mr. Rose and Mr. Johnson to leave the court.

8. On May 4, 1981, Mr. Rose attended a regularly scheduled public session of respondent's court. Respondent ordered Mr. Rose to leave and threatened to call the sheriff if Mr. Rose refused. Respondent thereupon telephoned the sheriff's department, and a deputy was sent to court. Mr. Rose left the court on his own accord after a discussion with the deputy.

9. In late summer of 1981, Mr. Rose telephoned respondent to inquire about a kidnapping case heard in respondent's court. Respondent made no comment and hung up the phone.

10. Respondent was aware of Section 2019-a of the Uniform Justice Court Act and was aware that his court records are public records which Mr. Rose and Mr. Johnson were entitled to see. Respondent was aware that the proceedings in his court are open to the public and that Mr. Rose and Mr. Johnson were entitled to be present.

11. Respondent refused to permit Mr. Rose to see his court records because he disliked Mr. Rose personally and because he wanted to keep his records and proceedings private. Respondent's refusal to allow Mr. Rose to see the court records was not motivated by any good faith considerations.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a) and 100.3(b)(1) of the Rules Governing Judicial Conduct, Canons 1, 2A and 3B(1) of the Code of Judicial Conduct, Section 2019-a of the Uniform Justice Court Act and Section 4 of the Judiciary Law. The Charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Records and proceedings of the court are public, with certain exceptions which do not apply in this instance, such as cases in which "youthful offender" status is granted to the defendant or when sealed by the court upon a disposition favorable to the defendant. Court records which are not confidential must be made available for public inspection. (*See*, Section 4 of the Judiciary Law and Section 2019-a of the Uniform Justice Court Act. *See also, Werfel* v. *Fitzgerald*, 23 AD2d 306 [2d Dept. 1965].) Court records are not the private property of the individual judge. They cannot be withheld from the public, except pursuant to law.

Respondent excluded a newspaper reporter from public court proceedings and refused for 19 months to allow access by that reporter to public documents. He did so because of personal animosity toward the reporter, and because of an inappropriate and legally unsupportable view that such proceedings and records should be private. Respondent thereby failed to observe the applicable standards of conduct, with which he was familiar.

The Commission notes that the incidents involved in this proceeding appear to be isolated and not indicative of a pattern of denying access to court proceedings and records.

By reason of the foregoing, the Commission determines that respondent should be admonished.

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mrs. DelBello, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mr. Cleary, Mr. Kovner and Judge Rubin were not present.

Dated: April 22, 1983

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

W. HOWARD SULLIVAN,

A Judge of the Norwich City Court, Chenango County.

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

Appearances: Gerald Stern (Albert B. Lawrence, Of Counsel) for the Commission

McMahon & McMahon
(By John L. McMahon)
for Respondent

The respondent, W. Howard Sullivan, serves part-time as a judge of the Norwich City Court. He is also a partner in the law firm of Stratton & Sullivan. Respondent was served with a Formal Written Complaint dated May 10, 1982, alleging *inter alia* that he failed to disqualify himself in certain cases involving his law firm. Respondent filed an answer dated June 21, 1982.

By order dated July 20, 1982, the Commission designated Bernard Goldstein, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on September 9 and

---

*Mr. Wainwright's term as a member of the Commission expired on March 31, 1983. The vote in this case was held on February 16, 1983.

October 8, 1982, and the referee filed his report with the Commission on November 18, 1982.

By motion dated January 21, 1983, 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 opposed the motion and moved that the referee's report be confirmed and that respondent be admonished. Respondent waived oral argument.

The Commission considered the record of the proceeding on February 16, 1983, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. In April 1979, Elaine Henderson visited respondent at his law firm, Stratton & Sullivan, for a consultation on a legal matter.

2. In July 1979, Ms. Henderson received a bill from Stratton & Sullivan for $87.50 for the consultation. Ms. Henderson thereafter left a message with the firm that the bill was a mistake because it was her understanding that the consultation was without charge.

3. In December 1979 Ms. Henderson received a second statement from Stratton & Sullivan for the $87.50.

4. Respondent authorized his law firm to refer Ms. Henderson's unpaid bill to a collection agency.

5. In May 1981, Ms. Henderson was served a summons in the matter of *Stratton & Sullivan* v. *Thomas and Elaine Henderson*. Stratton & Sullivan was represented in this action by the law firm of Singer, Singer & Larkin.

6. On May 19, 1981, Ms. Henderson paid the $87.50 directly to Stratton & Sullivan by delivering to the firm's mailbox two money orders totaling that amount. Approximately one week later, Ms. Henderson received a letter from Singer, Singer & Larkin, acknowledging the $87.50 payment and seeking an additional $21.70 in costs.

7. On June 23, 1981, respondent authorized his court clerk to sign a default judgment against Ms. Henderson, notwithstanding that he knew his firm was the plaintiff in the matter, and notwithstanding that the debt had already been paid to his firm. Respondent knew at the time it was improper for him to authorize entry of the judgment.

8. On August 5, 1981, Ms. Henderson called the president of the Chenango County Bar Association, Edmund Lee, to file a complaint against respondent. Mr. Lee did not advise Ms. Henderson of the procedure for filing a complaint. He offered to call respondent to see what could be done to resolve the matter.

9. Respondent and Mr. Lee discussed the matter and agreed that the matter should be settled on an informal basis. Respondent authorized Mr. Lee to negotiate with Ms. Henderson to try to resolve the matter. Respondent told Mr. Lee he was willing to pay Singer, Singer & Larkin their expenses, and to have the judgment against Ms. Henderson vacated. Respondent proposed that, in return, Ms. Henderson not file any charges against him.

10. Mr. Lee advised Ms. Henderson of respondent's position, and on August 12, 1981, he advised Ms. Henderson's attorney, Mary Beth Fleck, of respondent's position.

11. On October 5, 1981, after an inquiry from Singer, Singer & Larkin, respondent sent that firm a check to cover its expenses in handling the *Stratton & Sullivan* v. *Henderson* case. On October 9, 1981, Singer, Singer & Larkin entered a satisfaction of judgment in the case, and on October 15, 1981, Ms. Henderson was notified thereof.

12. Respondent did not vacate the default judgment he had ordered against the Hendersons on June 23, 1981.

As to Charge II of the Formal Written Complaint:

13. Respondent presided over the following traffic matters, notwithstanding that, as an attorney, he had previously represented each of the defendants:

(a) *People* v. *Tim B. Danaher*, June 11, 1981;

(b) *People* v. *Dan Ohl*, June 18, 1981;

(c) *People* v. *Wilma F. Yocum*, June 18, 1981;

(d) *People* v. *Daniel M. Anderson*, June 26, 1981;

(e) *People* v. *Megan M. Martin*, June 26, 1981;

(f) *People* v. *Bruce A. Osterhout*, June 29, 1981; and

(g) *People* v. *Flora S. Evans*, August 25, 1981.

As to Charge III of the Formal Written Complaint:

14. Roger Monaco is an associate at respondent's law firm. Mr. Monaco appeared before an acting Norwich City Court judge in summary proceedings as to *Edwards* v. *McKenna* and *Cooper* v. *Butts*. Respondent failed to take appropriate steps to prohibit an associate of his from practicing in the Norwich City Court, as required by the Rules Governing Judicial Conduct.

As to Charge IV of the Formal Written Complaint:

15. On September 10, 1981, respondent presided over a non-jury trial in *Miles* v. *Cappadonia*. The plaintiff in this case was represented by Singer, Singer & Larkin. At the time of the trial, Singer, Singer & Larkin was also representing respondent's law firm in *Stratton & Sullivan* v. *Thomas and Elaine Henderson.*

16. Respondent did not inform the parties in *Miles* v. *Cappadonia* of his association with Singer, Singer & Larkin. After presiding over the trial, respondent entered a judgment in favor of the plaintiff.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 14 of the Judiciary Law, Sections 100.1, 100.2, 100.3(a)(1), 100.3(c)(1) and 100.5(f) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3C(1) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained (except for those portions of Charge II relating to *People* v. *Russell McIntyre* and *People* v. *Betty S. Martin*, which are not sustained and therefore are dismissed), and respondent's misconduct is established.

A judge's obligation to be and appear impartial in matters before the court is fundamental to public confidence in the administration of justice. Specifically, a judge is prohibited from participating in any case in which he has an interest or in which his impartiality might otherwise be reasonably questioned. (Section 14 of the Judiciary Law and Section 100.3[c] of the Rules Governing Judicial Conduct.) In addition, a part-time judge who also practices law is prohibited from practicing in his own court, and he is obliged to insure that his partners and associates do not practice in his court, regardless of who presides. (Section 100.5[f] of the Rules.)

Respondent violated the applicable ethical provisions cited above (i) by authorizing a judgment against the defendant in a case in which his own law firm was the plaintiff, (ii) by presiding over seven cases involving clients of his law firm, (iii) by allowing one of his associates to appear in two cases before a co-judge in respondent's own court and (iv) by presiding over a case involving a law firm which was contemporaneously representing respondent's own firm in another matter. *See, Matter of Harris* v. *State Commission on Judicial Conduct*, 56 NY2d 365 (1982).

Respondent exacerbated his misconduct by suggesting that he would withdraw the judgment he authorized against the defendants in *Stratton & Sullivan* v. *Thomas and Elaine Henderson* in return for

Ms. Henderson's forgoing any grievances or legal claims against him. The powers and prestige of judicial office are not meant as barter for the advancement of a judge's personal interests. (Section 100.2 of the Rules.)

The Commission notes that respondent acknowledges his misconduct and expresses his intention to adhere to the applicable rules.

By reason of the foregoing, the Commission determines that respondent should be censured.

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mrs. DelBello, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mr. Cleary, Mr. Kovner and Judge Rubin were not present.

Dated: April 22, 1983

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

BARBARA M. SIMS,

A Judge of the Buffalo City Court, Erie County.

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

Appearances: Gerald Stern (Cody B. Bartlett, Of Counsel) for the Commission

William Sims and George Hairston for Respondent

The respondent, Barbara M. Sims, a judge of the Buffalo City Court, was served with a Formal Written Complaint dated February 2, 1981, alleging, *inter alia*, that she signed orders in ten cases in which the defendants were clients or former clients of her or her husband. Respondent filed an answer dated March 13, 1981.

By order dated April 30, 1981, the Commission designated Sheila L. Birnbaum, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on March 1, 1982, and the referee filed her report with the Commission on October 5, 1982.

---

*Mr. Wainwright's term as a member of the Commission expired on March 31, 1983. This determination was rendered pursuant to a vote on March 24, 1983.

By motion dated November 24, 1982, 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 censured. Respondent opposed the motion in papers dated December 31, 1982, and cross-moved for, *inter alia*, dismissal of the charges. The Commission heard oral argument on the motion on March 24, 1983, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. One judge of the Buffalo City Court is assigned to preside over weekend arraignments at the courthouse. The judge is not obligated to consider at home or in the evening a request for bail or release.

2. Respondent's husband, William Sims, often assisted her in the preparation of orders for the release of defendants on bail or on their own recognizance. Generally, Mr. Sims would do whatever respondent asked in the preparation of a release order. When a request was received, respondent would either call the jail to ask for information about the defendant or ask her husband to do so. Respondent would either prepare the release herself or ask her husband to prepare it for her signature. Even when respondent herself obtained the information and prepared the release order, Mr. Sims would "know what was going on."

3. Mr. Sims is an attorney who practices in Buffalo. He holds no position in the Buffalo City Court. He and respondent practiced law in the same office until she took the bench on December 27, 1977.

As to Charge I of the Formal Written Complaint:

4. The charge is not sustained and is therefore dismissed.

As to Charge II of the Formal Written Complaint:

5. On the evening of January 25, 1979, respondent received at her home a telephone call from a former client, Patricia Jones, requesting the release of her husband, Walter, from jail. Respondent had also represented Mr. Jones when she was in private practice.

6. Mr. Jones was charged with Assault, Third Degree, and Menacing, both misdemeanors.

7. Respondent signed an order releasing Mr. Jones from custody without the requirement of cash bail or bond.

8. Respondent's husband talked to Mr. Jones at the Sims' home shortly after he was released from jail pursuant to respondent's order.

9. On January 26, 1979, respondent's husband appeared before another judge in the Buffalo City Court representing Mr. Jones in the same case in which he had been released from jail by respondent.

10. Mr. Sims charged a fee of $1,350 for his representation of Mr. Jones in this case, although he collected only $50 from him.

As to Charge III of the Formal Written Complaint:

11. On May 2, 1978, respondent received a telephone call at her political campaign headquarters from the daughter of James Grant, requesting Mr. Grant's release from jail. Mr. Grant was a former client of respondent's husband.

12. Mr. Grant was charged with Criminal Possession Of A Weapon, Third Degree, a felony.

13. Respondent's husband left campaign headquarters, went to his home to obtain a release form and returned to campaign headquarters where respondent signed an order releasing Mr. Grant from custody without the requirement of cash bail or bond.

14. Respondent's husband prepared the body of the release order for her signature. Mr. Sims testified that he could not remember whether the body of the release order was completed before or after respondent signed it. He also testified, "[I]t does not matter whether it was on before or after, as long as it was prepared for a signature at her direction. . . ."

15. Before preparing the release, Mr. Sims called the Buffalo City Police to find out whether there were papers holding the defendant, what the charge was and what the circumstances were. He did not contact any particular person at police headquarters but talked to someone in "central booking."

16. On May 3, 1978, Mr. Sims appeared before another judge in the Buffalo City Court with Mr. Grant.

17. Mr. Sims charged a fee for his legal service in this matter.

18. Respondent knew or should have known that signing the release order outside of court when she was not obligated to do so would lead the defendant to seek Mr. Sims' representation in court the following day.

As to Charge IV of the Formal Written Complaint:

19. On May 12, 1978, respondent signed at her home an order releasing Maurice Gaines from custody without the requirement of cash bail or bond.

20. Mr. Gaines was charged with Criminal Possession Of Stolen Property, a misdemeanor, and with Disorderly Conduct and Harassment, both violations.

21. Respondent's husband prepared the body of the release order for her signature. Mr. Sims testified that he could not remember whether the body of the release order was completed before or after respondent signed it.

22. On May 13, 1978, Mr. Sims appeared before another judge in the Buffalo City Court with Mr. Gaines.

23. Respondent knew or should have known that signing the release order outside of court when she was not obligated to do so would lead the defendant to seek Mr. Sims' representation in court the following day.

As to Charge V of the Formal Written Complaint:

24. On the evening of November 29, 1978, respondent's husband received a telephone call from the sister of Lawrence Grant, requesting Mr. Grant's release from jail.

25. Mr. Grant was charged with Assault, First Degree, a felony.

26. Mr. Sims had previously represented Mr. Grant and members of his family.

27. Mr. Sims called respondent after receiving the call from Mr. Grant's sister. Mr. Sims or Ms. Grant conveyed to respondent the request to release Mr. Grant.

28. Respondent called the Buffalo City Police central booking with respect to the *Grant* case and then signed an order releasing Mr. Grant from custody without the requirement of cash bail or bond.

29. Respondent's husband represented Mr. Grant at the time respondent signed the release order. His representation had begun the same day the release order was signed.

30. On November 30, 1978, Mr. Sims appeared before another judge in the Buffalo City Court with Mr. Grant.

31. Respondent knew or should have known that at the time she signed the release her husband represented the defendant.

As to Charge VI of the Formal Written Complaint:

32. On the evening of January 17, 1979, respondent received a telephone call at her home from the mother of Emory Jackson, requesting Mr. Jackson's release from jail.

33. Mr. Jackson was charged with Assault, First Degree, a felony.

34. Respondent's husband had previously represented Mr. Jackson and members of his family.

35. Respondent called the Buffalo City Police central booking with respect to the *Jackson* case and then signed an order releasing Mr. Jackson from custody without the requirement of cash bail or bond.

36. On January 18, 1979, respondent's husband appeared before another judge in the Buffalo City Court with Mr. Jackson.

37. Respondent knew or should have known that signing the release order outside of court when she was not obligated to do so would lead Mr. Jackson to seek Mr. Sims' representation in court the following day.

As to Charge VII of the Formal Written Complaint:

38. On Sunday, March 18, 1979, respondent received a telephone call at her home from the wife of Cecil Frame, requesting Mr. Frame's release from jail.

39. Mr. Frame was charged with Leaving The Scene Of An Accident and Driving While Intoxicated.

40. Mr. Frame was an acquaintance of respondent's husband. When she called, Ms. Frame told respondent that she knew Mr. Sims.

41. Respondent asked her husband whether he knew Ms. Frame. Mr. Sims said that he did.

42. Respondent then signed an order releasing Mr. Frame from custody without the requirement of cash bail or bond.

43. Respondent gave the order to her husband, who then delivered it to Ms. Frame.

44. On March 19, 1979, Mr. Sims appeared before another judge in the Buffalo City Court with Mr. Frame.

45. Respondent knew or should have known that signing the release outside of court when she was not obligated to do so would lead Mr. Frame to seek Mr. Sims' representation in court the following day.

As to Charge VIII of the Formal Written Complaint:

46. On the night of April 5, 1979, respondent received a telephone call at her home from a Reverend Jones and from Theodore Williams requesting the release from jail of Mr. Williams' sons, Reginald and Dwayne.

47. Reginald Williams was charged with Reckless Endangerment, First Degree, and Criminal Possession Of A Weapon, Third Degree, both felonies. Dwayne Williams was charged with Criminal Mischief, Fourth Degree, and Assault, Third Degree, both misdemeanors.

48. Mr. Jones was a former client of respondent's husband.

49. Mr. Jones first spoke to respondent, and she agreed to release the defendants. Theodore Williams then spoke to respondent's husband and asked him to represent the defendants. Mr. Williams asked Mr. Sims, "Is your wife going to let them out?"

50. Respondent then signed orders releasing the defendants from custody without the requirement of cash bail or bond.

51. Mr. Jones and Mr. Williams then came to the Sims' home and picked up the release orders.

52. On April 6, 1979, Mr. Sims appeared before another judge in the Buffalo City Court with Reginald and Dwayne Williams.

53. Mr. Sims collected a fee for his legal services in this matter.

54. Respondent knew or should have known that agreeing to sign release orders outside of court when she was not obligated to do so would lead the defendants to seek Mr. Sims' representation in court.

As to Charge IX of the Formal Written Complaint:

55. On December 27, 1979, respondent received a telephone call at her home from Augustine Olivencia, a community leader, requesting the release of Benjamin Rivera from jail.

56. Mr. Rivera was charged with Assault, Second Degree, a felony.

57. Respondent signed an order releasing Mr. Rivera from custody without the requirement of cash bail or bond.

58. On December 28, 1979, respondent's husband appeared before another judge in the Buffalo City Court with Mr. Rivera. Mr. Sims had agreed to represent Mr. Rivera only until his attorney, Loren Lobban, returned from out of town.

59. Respondent knew or should have known that signing the release outside of court when she was not obligated to do so would lead Mr. Rivera to seek Mr. Sims' representation in court the following day.

As to Charge X of the Formal Written Complaint:

60. On December 29, 1979, respondent, at the request of her husband, signed an order releasing Jetone Jones from custody without the requirement of cash bail or bond.

61. Mr. Jones was charged with Menacing, a misdemeanor, and Harassment, a violation.

62. On December 31, 1979, Mr. Sims appeared before another judge in the Buffalo City Court with Mr. Jones. Mr. Sims had agreed to represent Mr. Jones until his attorney, Loren Lobban, returned from out of town.

63. Mr. Sims intended to collect a fee for his legal services in this matter.

64. Respondent knew or should have known that signing the release order would lead Mr. Jones to seek Mr. Sims' representation in court the following day.

As to Charge XI of the Formal Written Complaint:

65. On December 30, 1979, at approximately 2:00 A.M., respondent's husband received a telephone call at home from the mother of O'Connor Bowman, requesting his release from jail. Mr. Sims identified the caller and gave the call to respondent.

66. Mr. Bowman was charged with Criminal Possession Of A Weapon, Fourth Degree, a misdemeanor.

67. Respondent signed an order releasing Mr. Bowman from custody without the requirement of cash bail or bond. Mr. Sims prepared the body of the release for respondent's signature.

68. On December 31, 1979, Mr. Sims appeared before another judge in the Buffalo City Court with Mr. Bowman.

69. Mr. Sims intended to collect a fee for his legal services in the matter.

70. Respondent knew or should have known that signing the release order would lead Mr. Bowman to seek Mr. Sims' representation in court the following day.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1) and 100.3(c)(1)(iv) (formerly Sections 33.1, 33.2, 33.3[a][1] and 33.3[c][1][iv]) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3C(1)(d) of the Code of Judicial Conduct. Charges II through XI of the Formal Written Complaint are sustained, and respondent's misconduct is established. Respondent's cross-motion is denied.

Respondent released from jail a former client, a client and two former clients of her husband, an acquaintance of her husband and a

defendant whose release was sought by a former client of her husband. In one other case, respondent released a defendant from jail at her husband's request. In still two other cases, respondent signed release orders delivered to her and prepared for her by her husband. In these nine cases and in one other in which respondent ordered the release of a defendant, respondent's husband was later retained by the defendants to represent them in court. In most of the ten cases, he appeared in court the very next day with defendants released by respondent.

This pattern created the unmistakable impression that respondent and her husband were acting in concert to free defendants and advocate their positions in court. It appeared that by a single telephone call, a defendant could obtain his release and retain a lawyer to represent him. By retaining Mr. Sims, a defendant could also obtain his release from custody. In the case of Reginald and Dwayne Williams, for example, Mr. Jones, a former client of respondent's husband, elicited respondent's promise to release the defendants, and in the same phone call their father retained Mr. Sims.

The way in which respondent and her husband mingled her judicial functions with his practice of law contributed to the perception that they acted as a team. He prepared release orders at her request; she signed orders for his client and former clients, at his request, and upon his assurance that he was acquainted with a defendant.

Respondent was not obligated to consider the bail applications, contrary to her contentions. Other judges who had no association with her husband were available to consider the applications, and five of the defendants were charged with felonies, for which the law does not require bail or release. By considering their applications outside of court when she was not obligated to do so, she was encouraging the defendants to retain her husband to represent them in later stages of the proceedings. This was especially so in the seven cases in which the applications were made on behalf of or by former clients of respondent or her husband or by persons with some other connection with her husband.

Such encouragement seriously undermined the integrity and independence of the judiciary in that it created the appearance that respondent was using her judicial office to favor and benefit her husband's law practice. *See* Sections 100.1, 100.2 and 100.3(a)(1) of the Rules Governing Judicial Conduct.

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

Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Shea and Mr. Wainwright concur, except that Mrs. DelBello dissents as to Charge I only and votes to sustain the charge, and Mr. Kovner dissents as to Charges II and IX and votes to dismiss the charges, and dissents as to sanction and votes that respondent be admonished.

Judge Ostrowski abstained.

Mrs. Robb, Judge Alexander and Judge Rubin were not present.

Dated: May 16, 1983

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

BARBARA M. SIMS,

A Judge of the Buffalo City Court, Erie County.

DISSENTING OPINION BY MRS. DEL BELLO

I concur with the majority's findings that Charges II through XI of the Formal Written Complaint are sustained and that Judge Sims should be censured. I respectfully dissent as to the majority's dismissal of Charge I, however, and vote that the charge be sustained.

Regarding Charge I, respondent signed a "Jane Doe" warrant of arrest in *People* v. *Jeane Ambroselli*, notwithstanding that the complaining witness in the case, Frank Sims, was her son.

Frank Sims lives at home with respondent. The name "Frank Sims" is clearly listed on the supporting information which accompanied the warrant that respondent signed. Frank Sims' address is clearly listed on the information, immediately below his name, as "101 Depew". 101 Depew is the *respondent's* address.

Respondent asserted that she was unaware that her son was the complainant because she always referred to him by the nickname "Billy" and did not call him by his given name "Frank". This defense is incredible.

It is unconvincing that a mother would not recognize the name she gave her own son when it was placed before her in connection with a summons she was about to sign, and it is also incredible that she would not recognize her own address.

Even if respondent's defense is accepted at face value, she has at least violated those sections of the Rules Governing Judicial Conduct which require a judge to be diligent in the discharge of her duties. She failed to observe those standards by not realizing that she was signing a warrant requested by her son, and that such an act would violate the prohibition on a judge's participation in a case involving relatives. Sections 100.3(a)(1), 100.3(b)(1) and 100.3(c)(1)(iv) of the Rules. Indeed, respondent herself acknowledged that she was obliged to review carefully the supporting information before signing an arrest warrant,

and that in this case she actually checked to see that Frank Sims had signed it.

For these reasons I vote that Charge I of the Formal Written Complaint be sustained.

Dated: May 16, 1983

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

BARBARA M. SIMS,

A Judge of the Buffalo City Court, Erie County.

DISSENTING OPINION BY MR. KOVNER

I dissent as to Charges II and IX and find no misconduct. The essence of the misconduct in the other charges was the involvement of Judge Sims' husband, an active practitioner, in her judicial responsibilities where the defendants or their families had been previously represented by respondent's husband.

There was no evidence that Mr. Sims had represented the defendants in Charges II and IX until after the release executed by respondent. Nor was there evidence in those cases that he had called police central booking, prepared the body of the release order, or delivered the release to the defendant. Indeed, in Charge II, the defendant had been subjected to an illegal arrest. Given the limited number of attorneys and judges in the minority community, the mere fact that respondent's husband was engaged to represent these defendants on the day following release by respondent would not necessarily, standing alone, constitute misconduct.

I believe the sanction of admonition would be appropriate.

Dated: May 16, 1983

NOTE: The Court of Appeals, upon review, did not accept the Commission's determination, concluded that Charges I through XI were sustained and removed the judge from office. 61 NY2d 349 (1984).

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

LOUIS KAPLAN,

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

The Commission:	Mrs. Gene Robb, Chairwoman Hon. Fritz W. Alexander, II John J. Bower, Esq. David Bromberg, Esq. E. Garrett Cleary, Esq. Dolores DelBello Victor A. Kovner, Esq. Hon. William J. Ostrowski Hon. Isaac Rubin Hon. Felice K. Shea Carroll L. Wainwright, Jr., Esq.*
Appearances:	Gerald Stern for the Commission
	John H. Doyle, III for Respondent

The respondent, Louis Kaplan, a judge of the New York City Civil Court, was served with a Formal Written Complaint dated July 19, 1982, alleging that he assisted his wife in obtaining charitable contributions from lawyers who appeared before him and that he obtained an adjournment in another court for a friend. Respondent did not file an answer.

On January 3, 1983, 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, stipulating that the agreed statement be executed in

---

*Mr. Wainwright's term as a member of the Commission expired on March 31, 1983. This determination was rendered pursuant to a vote on March 24, 1983.

lieu of respondent's answer and further stipulating that the Commission make its determination upon the pleadings and the agreed upon facts.

The Commission approved the agreed statement on January 18, 1983, and, on March 24, 1983, heard oral argument on the issues herein. Respondent's counsel appeared for oral argument. Thereafter the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. In the summer and fall of 1980, respondent assisted his wife in connection with advertisements she had solicited for the Park Avenue Synagogue Dedication Journal, in that respondent on several occasions in chambers gave journal contract forms to attorneys and received such forms from attorneys for delivery to his wife.

2. These attorneys had been previously solicited for advertisements to the journal by respondent's wife.

3. The journal was to be published as part of a fund-raising effort to defray the costs of the synagogue's newly-constructed religious school.

4. Respondent's wife received journal contracts from 46 persons. Twenty-seven of the contracts were received from attorneys or law firms.

5. Four of these attorneys or law firms appeared once before respondent in the fall of 1980. Fifteen of them appeared more than once before respondent in the fall of 1980. Eight did not appear before respondent at all.

6. Some solicitations to attorneys were made at the request of respondent's wife by Jack Feder, a person who regularly appears in respondent's court.

As to Charge II of the Formal Written Complaint:

7. On January 5, 1981, a friend of respondent who was the manager of a clothing store called respondent and told him that the clothing store was the defendant in a case pending in the Small Claims Part of the Civil Court in New York County. The case was on the court calendar for January 6, 1981.

8. Respondent asked the clerk in the Small Claims Part about obtaining an adjournment in the case. As a result of the conversation, the case was adjourned from January 6, 1981, to January 13, 1981.

9. The adjournment was not approved by a judge presiding in the Small Claims Part. The adjourned date was recorded on the Small Claims calendar prior to the court session of January 6, 1981.

10. At respondent's suggestion, the defendant advised the plaintiff of the adjournment by telegram. The plaintiff received the telegram on January 6, 1981, prior to the time the case was scheduled to be heard.

11. Respondent also suggested to the store manager that he request that a judge rather than an arbitrator try the case. On January 13, 1981, the case was tried before an arbitrator. A verdict and judgment in the plaintiff's favor was entered, and the defendant's counterclaim was dismissed. The defendant paid the judgment in full.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.5(b)(2) of the Rules Governing Judicial Conduct and Canons 1, 2 and 5B(2) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A judge may not "solicit funds for any educational, religious, charitable, fraternal or civic organization or use or permit the use of the prestige of the office for that purpose. . . ." Section 100.5(b)(2) of the Rules Governing Judicial Conduct. Although the funds were solicited by his wife, respondent, by distributing and collecting the advertising contracts, used the prestige of his office to assist her fund-raising activities. That he did so in his chambers to lawyers exacerbates his violation of the rule. Lawyers with matters pending before respondent or who regularly appeared in his court could not help feeling pressured to cooperate in his wife's efforts in order to maintain good relations with respondent.

By intervening in a case in another court to obtain an adjournment for a friend, respondent lent "the prestige of his . . . office to advance the private interests of others. . . ." *See* Section 100.2(c) of the Rules Governing Judicial Conduct. Respondent took advantage of his position to get from a court clerk what his friend or any other person could only have obtained from a judge for good cause shown: an adjournment of a case scheduled for the following day. Such interventions by a judge cloaked in the authority of his office have in the past met with public sanction, even when done for understandable reasons. *See Lonschein* v. *State Commission on Judicial Conduct*, 50 NY2d 569 (1980); *Shilling* v. *State Commission on Judicial Conduct*, 51 NY2d 397 (1980); *Matter of Figueroa*, NYLJ, Nov. 28, 1979, p. 11,

col. 1 (Com. on Jud. Conduct, Nov. 1, 1979). We note that respondent used his office only to seek an adjournment, not to influence the outcome of his friend's case.

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

Judge Alexander, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mr. Bower did not participate.

Mrs. Robb and Judge Rubin were not present.

Dated: May 17, 1983

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

W. EUGENE SHARPE,

A Justice of the Supreme Court,
Eleventh Judicial District, Queens County.

The Commission:	Mrs. Gene Robb, Chairwoman Hon. Fritz W. Alexander, II John J. Bower, Esq. David Bromberg, Esq. E. Garrett Cleary, Esq. Dolores DelBello Victor A. Kovner, Esq. Hon. William J. Ostrowski Hon. Isaac Rubin Hon. Felice K. Shea
Appearances:	Gerald Stern (Robert Straus, Of Counsel) for the Commission
	Flamhaft, Levy, Kamins, Hirsch & Booth (By William H. Booth) for Respondent

The respondent, W. Eugene Sharpe, a justice of the Supreme Court, Eleventh Judicial District, was served with a Formal Written Complaint dated March 31, 1982, alleging that he improperly cited for contempt an attorney appearing before him and ordered the attorney held in detention. Respondent filed an answer dated May 28, 1982.

By order dated June 29, 1982, the Commission designated Seymour M. Klein, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on October 18, 1982, and the referee filed his report with the Commission on February 8, 1983.

By motion dated March 23, 1983, 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 April 13, 1983. The Commission heard oral argument on the motion on April 20, 1983, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Supreme Court, Eleventh Judicial District, assigned to the Criminal Division, and has been since January 1979.

2. Seymour Roth is an assistant district attorney in the Queens County District Attorney's Office and has been a practicing attorney for 25 years.

3. On Friday, September 4, 1981, respondent presided at a hearing in *People* v. *Frank Green*, in which the defendant was charged with Attempted Murder. Mr. Roth represented the prosecution.

4. Vincent Pepe, a New York City police officer, was on the witness stand when the hearing was adjourned until Tuesday, September 8, 1981. Officer Pepe, who was testifying for the prosecution, was directed to return at 9:30 A.M. on September 8 to continue his testimony.

5. After the hearing was adjourned on September 4, Mr. Roth arranged to have Officer Pepe assigned to the District Attorney's Office on September 8 and directed the officer to meet him at 9:30 A.M. that day.

6. On Tuesday, September 8, 1981, at about 9:30 A.M., when Officer Pepe failed to meet him at his office, Mr. Roth attempted unsuccessfully to reach the officer by telephone.

7. At about 9:35 A.M., Mr. Roth telephoned respondent's law secretary, Marvin Scharf, to inform him that Officer Pepe had not yet arrived, that Mr. Roth was trying to reach him and that they would come to the courtroom as soon as the officer arrived.

8. Shortly before 10:00 A.M., Mr. Scharf called Mr. Roth and told him that respondent wanted him in the courtroom immediately.

9. Mr. Roth again attempted to reach Officer Pepe and then went to respondent's courtroom.

10. Respondent came on the bench, and the following colloquy took place:

The Court: Where is the police officer, sir?

Mr. Roth: Your Honor, Officer Pepe came up to our office when we adjourned last Friday, and we told him to be back here in court.

The Court: I told him to be back, also, at 9:30 this morning.

Mr. Roth: That's correct.

I told him to be in my office by 9:30. He said he would. I called the Anti-Crime Unit in Far Rockaway three times. I was unable to get to anybody.

People at the Precinct put me in touch with the Anti-Crime Unit, it's a separate unit in Far Rockaway, and nobody answered the phone. I just called two minutes ago again, and the line was busy.

I did speak to a Detective Richardson this morning. He told me he did not get the message which we had left. That's myself and also Pepe called Friday and told the Detective Richardson to be down here at nine o'clock this morning at my office. He told me he did not get those messages, but he would come down to my office; and he said he'd be down in my office—

The Court: Why would he do us a favor? I don't need him to do this Court any favors. He was directed to be here this morning at 9:30.

Mr. Roth: I am referring to another witness, Richardson; Detective Richardson.

The Court: That's not who we need. Pepe was in the process of being cross-examined as I recall it, when we adjourned this matter on Friday.

Mr. Roth: Your Honor, I have no idea why he is not here, and I am continually trying to reach the Anti-Crime Unit and have not been able to reach anybody yet.

The Court: What do you wish to do? We are not going to allow you, nor any police officer, to determine when this Court transacts its business, and it is the Court's business, and not the Prosecutor's business. Is that clear to you, sir?

Mr. Roth: No, I am sorry. I didn't understand.

The Court: I will help, explain you—

Mr. Roth: May I tell you what my quandary is?

The Court: What quandary? What is your quandary?

Mr. Roth: I understand, and I wanted to proceed this morning at 9:30.

The Court: Then it's your responsibility to have your witnesses here.

Mr. Roth:	I am sorry, I can't be responsible—
The Court:	Why is it you can't be responsible?
Mr. Roth:	—for anything but my duty.
The Court:	What is your duty? Your duty is to have your—
Mr. Roth:	I understand my duties.
The Court:	Your duty is to have witnesses here. Isn't that your duty, sir? What is your duty?
Mr. Roth:	I can only try my best.
The Court:	Trying your best is not enough. Not for this Court.
Mr. Roth:	I can't do anything past that.
The Court:	You couldn't do anything past that.
Mr. Roth:	I can't do anything but try my best.
The Court:	Sir, if you don't get the officer in here in two minutes, I am going to cite you for contempt to this Court. Two minutes. Two minutes, sir. Did you hear that?
Mr. Roth:	I am sorry. I won't be able to.
The Court:	You are cited for contempt. Put him in, sir.

11. When respondent told Mr. Roth that he would cite him for contempt if he did not produce Officer Pepe in court in two minutes, respondent knew that Mr. Roth would be unable to produce the witness within that time.

12. Before he cited Mr. Roth for contempt, respondent did not warn Mr. Roth "that his conduct [was] deemed contumacious and give him an opportunity to desist . . ." as required by Section 701.4 of the Appellate Division Rules.

13. Before he cited Mr. Roth for contempt, respondent did not give Mr. Roth "a reasonable opportunity to make a statement in his defense or in extenuation of his conduct," as required by Section 701.2(c) of the Appellate Division Rules.

14. After he cited Mr. Roth for contempt, respondent did not set forth in an order and a mandate of commitment the particular circumstances of the offense, as required by Sections 752 and 755 of the Judiciary Law.

15. Mr. Roth had engaged in no improper, discourteous or contumacious conduct prior to or at his appearance before respondent on September 8, 1981. Mr. Roth had never been cited for contempt or warned that he might be held because of contumacious conduct.

16. After Mr. Roth was cited for contempt, respondent ordered Mr. Roth escorted from the courtroom by uniformed officers and held in the detention area for prisoners, where he remained for from 15 to 45 minutes. The defendant, Frank Green, was also taken into the detention area. While passing Mr. Roth, Mr. Green laughed at the prosecutor. While Mr. Roth was being questioned by officers in the detention area, he was told to keep his voice down so that Mr. Green could not overhear the prosecutor giving his address.

17. Officer Pepe eventually arrived in court and explained that he had been tied up in traffic.

18. Mr. Roth was ordered back into the courtroom by respondent. Respondent vacated the contempt order and ordered Mr. Roth's record expunged. He did not apologize to Mr. Roth.

19. Respondent previously had experiences in which he felt that other assistant district attorneys had misled him concerning the availability of witnesses. Respondent misdirected his annoyance, anger and frustration with these other prosecutors and with Officer Pepe at Mr. Roth.

20. In citing Mr. Roth summarily for contempt and ordering him to be placed in the detention area under guard, respondent abused his contempt power and improperly subjected Mr. Roth to public humiliation and embarrassment.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.3(a)(1) and 100.3(a)(3) of the Rules Governing Judicial Conduct; Canons 1, 2A, 3A(1) and 3A(3) of the Code of Judicial Conduct; Sections 752 and 755 of the Judiciary Law; and Sections 701.2(c) and 701.4 of the Appellate Division Rules. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

By summarily citing Mr. Roth for contempt and ordering him detained, respondent engaged in a gross abuse of power. There could be no rational basis for citing for contempt a lawyer who, by respondent's own admission, had engaged in no improper, discourteous or contumacious conduct. Even if Mr. Roth had acted disrespectfully, respondent's hasty citation, made without giving the attorney a right to explain or purge himself of any contempt, was improper.

Respondent misdirected at Mr. Roth his anger with Officer Pepe and Mr. Roth's colleagues in the District Attorney's Office. In doing

so, he departed from the high standards of conduct expected of every judge. In depriving Mr. Roth of his liberty, even temporarily, respondent deviated from the confines of the law he was sworn to uphold.

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

Mrs. Robb, Judge Alexander, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Judge Ostrowski and Judge Shea concur.

Mr. Bower dissents as to sanction only and votes that respondent be censured.

Mr. Kovner and Judge Rubin were not present.

Dated: June 7, 1983

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

VINCENT T. CERBONE,

A Justice of the Mount Kisco Town Court, Westchester County.

The Commission: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Hon. William J. Ostrowski
Hon. Isaac Rubin
Hon. Felice K. Shea
John J. Sheehy, Esq.

Appearances: Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission

Morosco & Cunard
(By B. Anthony Morosco)
for Respondent

The respondent, Vincent T. Cerbone, a justice of the Mount Kisco Town Court, Westchester County, was served with a Formal Written Complaint dated July 23, 1982, alleging that he addressed patrons of a bar in a degrading, racist, threatening, profane and abusive manner. Respondent filed an answer dated August 13, 1982.

By order dated October 18, 1982, the Commission designated Edward Brodsky, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on November 15, 16, 18 and 22, 1982, and the referee filed his report with the Commission on March 31, 1983.

By motion dated April 8, 1983, 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 May 6, 1983. The Commission heard oral argument on the motion on June 17, 1983, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent, an attorney, is a justice of the Mount Kisco Town Court. He has been a judge in that community since 1962.

2. On October 25, 1981, respondent went to Finn's Tavern in Mount Kisco to meet the bar owners, who were clients of respondent.

3. Upon entering the bar, respondent announced to several patrons that he had seen men engaging in a drug transaction outside the bar.

4. Respondent then went to a telephone and called the police. He did not tell the police on the telephone or when they arrived at the bar that he had witnessed a drug transaction.

5. Four men, Clifton Mosley, James Ferguson, Earl Bynum and Gary Barker, entered the bar after respondent. Mr. Bynum left moments later.

6. Respondent addressed Mr. Ferguson as a "drug pusher" and told him, "If you are going to sell that stuff, do it outside of my presence," notwithstanding that he had seen no drug sale take place and had no reason to believe that Mr. Ferguson was engaged in the sale of narcotics.

7. An argument ensued between respondent and Mr. Ferguson, Mr. Mosley and Mr. Barker, who are black. Respondent, in a loud voice, addressed them in a degrading, racist, and profane manner that was heard by others in the bar. Respondent referred to the men as "niggers" and "black bastards." He asked them what they were doing in "a white man's bar."

8. Respondent identified himself as a judge and used his judicial position to threaten the black men by stating that he would incarcerate them for a specific number of years and would "railroad" and "hang" them if they ever appeared in his court.

9. Respondent also became involved in a heated argument with a white patron of the bar, Dennis Moroney, during which respondent referred to Mr. Moroney by such terms as "son of a bitch," "bastard" and "dumb fuck."

10. Respondent discussed leaving the bar to fight Mr. Moroney and at one point raised his forearm and made contact with Mr. Moroney's face or neck.

11. Respondent was in the bar for about an hour, and during this time he had two drinks. He was not intoxicated.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(a) of the Rules Governing Judicial Conduct and Canons 1 and 2A of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Judges are held to a higher standard of conduct on and off the bench than are members of the public at large. *Matter of Kuehnel* v. *State Commission on Judicial Conduct*, 49 NY2d 465 (1980). Respondent was no ordinary bar patron. At Finn's Tavern, he "remained cloaked figuratively, with his black robe of office. . . ." *Matter of Kuehnel, supra*, at 469. Yet, respondent's actions were grossly inappropriate even for one not charged with upholding the integrity of and public confidence in the judiciary.

Respondent walked into a bar and announced to the patrons that there were men outside "doing drugs" and that he would call the police. He allowed himself to be drawn into a heated argument, during which he loudly used degrading, racist and profane language. By the account of ten witnesses, he struck one of the patrons and, by his own admission, discussed fighting the patron outside the bar.

That respondent identified himself as a judge and threatened to use his judicial office against his antagonists exacerbates his misconduct.

These confrontations took place over a sustained period of time. The misconduct is not based on a single remark uttered in the heat of passion or in response to a personal attack. Even respondent's claim of a trap contrived by all of the many other patrons of the bar (a claim not sustained by the evidence), would not justify his remaining at the scene for nearly an hour engaging in such conduct.

The law of New York is now clear that racist conduct by a member of the judiciary will not be tolerated. *Matter of Kuehnel, supra; Matter of Aldrich* v. *State Commission on Judicial Conduct*, 58 NY2d 279 (1983). No citizen should be required to appear before a judge who publicly uses terms such as "niggers" and "black bastards," and who questions the right of black patrons to visit "a white man's bar."

Even where a judge's use of profane and racist language has been influenced by alcohol, he has been held to have irretrievably lost public confidence so as to be unfit to hold judicial office. *Matter of Aldrich, supra*. Here, respondent's actions were not influenced by alcohol.

Such conduct would be outrageous from a private citizen. Coming from one who brandishes his judicial office, it becomes especially intolerable. Despite his 20 years of service on the bench, respondent's conduct at Finn's Tavern effectively terminated public confidence in his ability to fairly and impartially adjudicate matters without bias.

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin and Judge Shea concur.

Judge Alexander and Mr. Cleary were not present.

Mr. Sheehy was not a member of the Commission at the time the vote in this proceeding was taken.

Dated: August 5, 1983

NOTE: The Court of Appeals, upon review, accepted the Commission's determination that respondent be removed. 61 NY2d 93 (1984).

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

WARREN L. BOULANGER,

A Justice of the Cold Spring Village Court, Putnam County.

The Commission: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Hon. William J. Ostrowski
Hon. Isaac Rubin
Hon. Felice K. Shea
John J. Sheehy, Esq.

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

Shulman, Boulanger & Carlo, P.C. (By Louis G. Carlo) for Respondent

The respondent, Warren L. Boulanger, an attorney, is a justice of the Cold Spring Village Court, Putnam County. Respondent was served with a Formal Written Complaint dated November 10, 1982, alleging, *inter alia*, that he transferred to himself certain assets of a client of his private law practice. Respondent filed an answer dated January 14, 1983.

By order dated December 17, 1982, the Commission designated William V. Maggipinto, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on January 19, 1983, and the referee filed his report with the Commission on May 2, 1983.

By motion dated May 16, 1983, 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 June 3, 1983. The Commission heard oral argument on the motion on June 16, 1983, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. In January 1975, respondent prepared a document giving him a general power of attorney for Fred H. M. Dunseith and naming him Mr. Dunseith's attorney-in-fact. The power of attorney was signed by Mr. Dunseith on January 7, 1975, in the presence of respondent with no witnesses. Respondent notarized Mr. Dunseith's signature.

2. At the time, Mr. Dunseith was 95 years old, legally blind, partially deaf and lived in a nursing home. The execution of the power of attorney took place in Mr. Dunseith's room at the nursing home.

3. In April 1975, respondent used his power of attorney to sell Mr. Dunseith's home to a third party. Respondent deposited the proceeds of the sale, approximately $48,300, in a bank account maintained and controlled by respondent. He used the proceeds of the sale to pay his personal bills and expenses.

4. In or about November 1975, respondent used his power of attorney to sell certain stock of Mr. Dunseith for $8,524.25. The proceeds of the sale were initially deposited in a brokerage account in the name of respondent as attorney for Mr. Dunseith. They were later withdrawn by respondent and deposited in respondent's savings account. Respondent used the money for his personal needs.

5. In January 1976, Mr. Dunseith gave respondent a special power of attorney for a Dime Savings Bank account. Respondent made two withdrawals from this account in January 1976, one of $7,500 and the other of $24,888.88. Respondent deposited the $7,500 in his personal checking account and used the money for his personal bills and living expenses. He deposited the $24,888.88 in his personal savings account.

6. In October 1976, using his power of attorney, respondent withdrew a total of $6,000 from Mr. Dunseith's checking and savings accounts. Respondent kept the money for himself as a retainer for his legal work on behalf of Mr. Dunseith.

7. In January 1977, using his power of attorney, respondent sold for $72,000 other stock owned by Mr. Dunseith. Approximately one-half of the proceeds of the sale was used by respondent to purchase

new stock in Mr. Dunseith's name. The balance was deposited in the stockbroker's cash reserve management account in the name of Mr. Dunseith. Respondent later drew two checks against that account, one for $10,000 and one for $2,500, and the broker sent respondent a check for the balance of $23,650. Respondent deposited the $2,500 in his personal checking account and used it to pay personal bills and expenses. He deposited the $10,000 and the $23,650 in his personal savings account.

8. In the spring of 1977, respondent closed a bank account of Mr. Dunseith in a Scranton, Pennsylvania, bank. Respondent used the $3,928 from the account for his personal needs.

9. On May 28, 1976, respondent wrote two letters to the Newburgh Savings Bank, falsely stating that Mr. Dunseith had died and requesting that several accounts in respondent's name "in trust" for Mr. Dunseith be changed to respondent's name alone. Respondent wrote these letters to avoid the imposition of penalties in requesting changes in the titles of the account. He wrote them shortly after a matrimonial action brought by his former wife had been settled.

10. On March 5, 1976, respondent filed a false and fraudulent financial affidavit in the matrimonial action for the purpose of concealing his property and financial assets from his former wife.

11. In August 1981, at a time when he knew that he was under criminal investigation, respondent filed late gift tax returns for 1975, 1976, and 1977, on behalf of Mr. Dunseith, causing his estate to pay $15,000 in penalties and taxes.

As to Charge II of the Formal Written Complaint:

12. On November 18, 1982, respondent was sentenced to federal prison by the United States District Court for the Southern District of New York, having been found guilty by a jury of three counts of violating Section 7201 of Title 26 of the United States Code, a felony, by unlawfully, knowingly and willfully attempting to evade income taxes by means of filing false and fraudulent income tax returns.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(a) of the Rules Governing Judicial Conduct and Canons 1 and 2A of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

As attorney-in-fact for Mr. Dunseith, respondent acted as a fiduciary for his client. *McMahon* v. *Pfister*, 39 AD2d 691 (1st Dept. 1972). He was, thus, required to handle his client's money in the best

interests of the client. Nonetheless, respondent transferred to himself $135,000 of Mr. Dunseith's money. As the referee found, respondent's position that this money was given by Mr. Dunseith as gifts is "uncorroborated, incredible and inherently unreliable, since it is self-serving. . . ." Even assuming that Mr. Dunseith had repeatedly told respondent to take vast sums of money, such transfers were of dubious benefit to Mr. Dunseith, and, given his age and infirmities, respondent should have questioned whether they were in the client's best interests.

This gross abuse of the trust placed in him by his client and by the state that licenses him to practice law is exacerbated by a series of deliberate deceptions on the part of respondent. He admits that he falsely reported the death of Mr. Dunseith to a bank in order to avoid paying interest penalties and that he filed a false and fraudulent financial affidavit in a divorce proceeding in order to conceal assets from his former wife. There is also evidence that he filed false income tax returns for the purpose of avoiding payment of taxes. Furthermore, his testimony before the Commission and at his federal court trial, the transcript of which is part of the record of this proceeding, "lack[s] the ring of truth." *Matter of Steinberg* v. *State Commission on Judicial Conduct*, 51 NY2d 74, 81 (1980).

The judiciary cannot accommodate one who so consistently abandons his ethical obligations. "[A] Judge cannot simply cordon off his public role from his private life and assume safely that the former will have no impact on the latter." *Matter of Steinberg, supra.* By his unprincipled conduct as an attorney, respondent has brought the judiciary into disrepute and has demonstrated that he is unfit for judicial office.

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

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

Mr. Cleary and Judge Rubin were not present.

Mr. Sheehy was not a member of the Commission at the time the vote in this proceeding was taken.

Dated: August 10, 1983

NOTE: The Court of Appeals, upon review, accepted the Commission's determination that respondent be removed. 61 NY2d 89 (1984).

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. KELSO,

A Justice of the Montgomery Town Court, Orange County.

The Commission: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Hon. William J. Ostrowski
Hon. Isaac Rubin
Hon. Felice K. Shea
John J. Sheehy, Esq.

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

G. R. Bartlett, Jr., for Respondent

The respondent, Robert W. Kelso, is an attorney and has been a justice of the Montgomery Town Court, Orange County, since 1973. He was served with a Formal Written Complaint dated October 4, 1982, alleging certain improprieties in connection with his private law practice. Respondent filed an answer dated October 21, 1982.

By order dated January 4, 1983, the Commission designated Richard D. Parsons, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on March 9, 1983, and the referee filed his report with the Commission on May 27, 1983.

By motion dated June 20, 1983, 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 by cross-motion on July 11, 1983. The Commission heard oral

argument on the motion on July 21, 1983, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. In 1972, respondent was retained by Charles Duryea to pursue legal claims arising from an injury received in an accident at his place of employment.

2. In 1975, Mr. Duryea received approximately $2,000 in satisfaction of a Workers' Compensation claim arising from his injury.

3. Although respondent knew that Section 11 of the Workers' Compensation Law precluded a civil action for damages for personal injuries arising from the accident, he told Mr. Duryea that he would bring such a claim. He did not advise Mr. Duryea that such an action was precluded.

4. From 1975 to 1979, respondent made numerous misrepresentations to Mr. Duryea. He told Mr. Duryea that he had commenced a civil action for damages, that the action had been placed on the court calendar and that it had been adjourned several times. In fact, respondent had commenced no action and all of his statements were false.

5. Respondent made these misrepresentations to deceive Mr. Duryea into believing that his action had been commenced and was proceeding.

6. On January 4, 1980, respondent instituted a civil action on Mr. Duryea's behalf, although he knew that recovery on the claim was then barred by both Section 11 of the Workers' Compensation Law and the statute of limitations. He did not advise Mr. Duryea that recovery was barred. Respondent withdrew the complaint after Mr. Duryea retained another attorney and filed a grievance against respondent.

As to Charge II of the Formal Written Complaint:

7. On February 20, 1980, respondent offered to pay Mr. Duryea $10,000 for the purpose of inducing him not to file a grievance for professional misconduct against respondent. Respondent confirmed the offer in writing on February 21, 1980.

8. Because Mr. Duryea thereafter filed the grievance, respondent never paid the money as promised.

As to Charge III of the Formal Written Complaint:

9. On the basis of Mr. Duryea's grievance, formal charges were instituted against respondent, and on June 1, 1982, he was suspended

from the practice of law for one year by the Appellate Division, Second Department.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a) and 100.3(a)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3A(1) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established. Respondent's cross-motion is denied.

Over a period of years, in dozens of conversations, respondent deliberately deceived a client who had placed his trust in respondent to give truthful legal advice and conscientious legal assistance. In violating that trust, respondent prejudiced the administration of justice. Such misconduct by one who also sits as a judge "engender[s] disrespect for the entire judiciary." *In re Ryman*, 394 Mich 637, 232 NW2d 178, 184 (1975).

Respondent compounded his misconduct by offering his client $10,000 to dissuade him from filing a grievance—a right available to the client as a matter of law. Respondent's offer was *malum in se*. By this act, respondent further destroyed public confidence in his ability to adhere to the high standards of conduct expected of every judge.

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

Mrs. Robb, Mrs. DelBello, Mr. Kovner, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Cleary and Judge Ostrowski dissent as to sanction only and vote that respondent be censured.

Judge Alexander, Mr. Bower and Mr. Bromberg were not present.

Dated: September 21, 1983

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. KELSO,

A Justice of the Montgomery Town Court, Orange County.

DISSENTING OPINION BY MR. CLEARY
IN WHICH JUDGE OSTROWSKI JOINS

On this record, I do not feel that the sanction of removal is appropriate. Removal is an extreme sanction and should be imposed only in the event of truly egregious circumstances. *Matter of Steinberg*, 51 NY2d 74, 83. The Court of Appeals recently indicated that removal should not be ordered for conduct that amounts simply to poor judgment, or even extremely poor judgment. *Matter of Cunningham*, 57 NY2d 270, 275, citing *Matter of Shilling*, 51 NY2d 397, 403, and *Matter of Steinberg, supra*, at 81. Under the circumstances of this case, I feel that censure is the appropriate sanction.

Dated: September 21, 1983

NOTE: The Court of Appeals, upon review, modified the Commission's determination to censure. 61 NY2d 82 (1984).

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

PAUL E. HUTZKY,

A Justice of the Saratoga Town Court, Saratoga County.

The Commission:	Mrs. Gene Robb, Chairwoman Hon. Fritz W. Alexander, II John J. Bower, Esq. David Bromberg, Esq. E. Garrett Cleary, Esq. Dolores DelBello Victor A. Kovner, Esq. Hon. William J. Ostrowski Hon. Isaac Rubin Hon. Felice K. Shea John J. Sheehy, Esq.
Appearances:	Gerald Stern (Stephen F. Downs and Henry S. Stewart, Of Counsel) for the Commission
	David L. Riebel for Respondent

The respondent, Paul E. Hutzky, a justice of the Saratoga Town Court, Saratoga County, was served with a Formal Written Complaint dated May 2, 1983, alleging that he had failed to meet various records keeping and financial reporting, deposit and remittance requirements. Respondent did not file an answer.

On September 16, 1983, 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, stipulating that the agreed statement be executed in lieu of respondent's answer and further stipulating that the Commission make its determination upon the pleadings and the agreed upon facts.

The Commission approved the agreed statement and, on October 13, 1983, considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent is a justice of the Saratoga Town Court and has been since January 1978.

2. Respondent was a justice of the Schuylerville Village Court from October 1980 to September 1982.

3. Respondent holds a master's degree in education and has received credit toward a doctorate.

4. Respondent has successfully completed three training sessions for non-lawyer judges given by the Office of Court Administration.

As to Charge I of the Formal Written Complaint:

5. Between January 1978 and January 25, 1983, respondent failed to deposit court moneys into his official account within 72 hours of receipt in that he:

(a) Made no deposits in his town court account from March 15, 1980, to June 3, 1980, notwithstanding that he received a total of $1,863 in court funds in his town court during that period;

(b) made no deposits in his town court account from February 28, 1981, to May 28, 1981, notwithstanding that he received a total of $830 in court funds in his town court during that period;

(c) made no deposits in his village court account from April 4, 1981, to May 28, 1981, notwithstanding that he received a total of $2,540 in court funds in his village court during that period;

(d) made no deposits in his village court account from August 1, 1981, to September 28, 1981, notwithstanding that he received a total of $1,823.25 in court funds in his village court during that period;

(e) deposited money in his court accounts at an average frequency of once a month between January 1980 and May 1981;

(f) did not deposit a $10 check received on May 15, 1981, on behalf of the defendant in *People* v. *David Jordan;*

(g) did not deposit until December 3, 1982, a total of $50 in cash received on September 4, 1980, from the defendants in *People* v. *Theresa Mayer, People* v. *Gerald G. Mayer* and *People* v. *Dale P. Mayer;*

(h) did not deposit a $20 money order received on July 28, 1981, from the defendant in *People* v. *Frederick Trinkaus;*

(i) did not deposit $5 in cash received in October 1981 from the defendant in *People* v. *Linda Kosloske;*

(j) did not deposit a $250 check received on June 3, 1982, from the defendant in *People* v. *Kenneth Tilford;* and,

(k) did not deposit a $25 money order received on October 31, 1981, from the defendant in *People* v. *Edward White.*

6. Respondent kept undeposited court funds in his home freezer, in his shoes and at other locations in his house for substantial periods of time.

7. Respondent made deposits only when he remembered to do so. The bank in which his official accounts were held was only a half mile from his home.

8. Respondent was aware that he was required by law to deposit court funds in his official accounts within 72 hours of receipt.

As to Charge II of the Formal Written Complaint:

9. On June 2, 1981, during an audit of his town court, respondent falsely certified in writing to the Department of Audit and Control that he had no undeposited court funds and no cash on hand in his town court.

10. In fact, on June 2, 1981, respondent had more than $300 in court funds at his home. Respondent deposited these court funds after the auditor called his attention to a deficiency in his court account.

11. Respondent did not then know and still does not know the exact amount of funds hidden in his house, to what cases the funds relate, or how long they have lain undeposited in his house.

As to Charge III of the Formal Written Complaint:

12. From the time that he took judicial office in January 1978, respondent failed to perform his administrative and judicial duties in that he:

(a) Failed to respond to 42 defendants who pled guilty by mail to traffic tickets in respondent's court;

(b) failed to return 48 driver's licenses to defendants who sent in their licenses in connection with pleas of guilty to traffic charges;

(c) failed to dispose of 282 cases;

(d) failed to make entries in his docket book for 456 cases pending in his court;

(e) failed to maintain any records for 63 cases pending in his court;

(f) failed to report and remit to the Department of Audit and Control in a timely manner a total of $6,533.05 in fines received over a period of nearly four years from defendants in 183 cases;

(g) failed to report to law enforcement agencies the disposition of 99 cases brought by those agencies in respondent's court;

(h) failed to submit certificates of conviction to the Department of Motor Vehicles for 44 cases which were disposed of by respondent;

(i) failed to report cases and remit moneys received to the Department of Audit and Control in a timely manner, in that reports were submitted an average of three weeks late for the town and an average of more than one month late for the village, with one village report submitted 172 days late; and,

(j) failed to maintain case files and indices of cases for all cases in his town and village courts.

As to Charge IV of the Formal Written Complaint:

13. Respondent failed to explain to the Commission staff the status of hundreds of cases or to give information concerning those cases, notwithstanding that the information was requested seven times over a period of five months.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct; Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct; Sections 107, 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act; Sections 30.7(a) and 30.9 of the Uniform Justice Court Rules; Sections 105.1 and 105.3 of the Recordkeeping Requirements for Town and Village Courts; Section 91.12 of the Regulations of the Commissioner of the Department of Motor Vehicles (15 NYCRR 91.12); Section 1803 of the Vehicle and Traffic Law; Section 27 of the Town Law; and Section 4-410(1) of the Village Law. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent has neglected nearly every aspect of his judicial and administrative duties. As a result, the records of his courts are a shambles. No one, including respondent, can reconstruct what cases have come before him and how they were handled.

Respondent is well educated and has no excuse for his gross negligence except "bad habits" and "sloppy bookkeeping." He has mishandled hundreds of cases and thousands of dollars in public moneys. Such disregard of a judge's statutory responsibilities warrants removal from office. *Bartlett* v. *Flynn*, 50 AD2d 401 (4th Dept. 1976); *Matter of Petrie*, 54 NY2d 807 (1981); *Matter of Cooley*, 53 NY2d 64 (1981).

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

All concur.

Dated: November 4, 1983

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

LUVERN W. MOORE,

A Justice of the Kinderhook Town Court, Columbia County.

The Commission:	Mrs. Gene Robb, Chairwoman Hon. Fritz W. Alexander, II John J. Bower, Esq. David Bromberg, Esq. E. Garrett Cleary, Esq. Dolores DelBello Victor A. Kovner, Esq. Hon. William J. Ostrowski Hon. Isaac Rubin Hon. Felice K. Shea John J. Sheehy, Esq.
Appearances:	Gerald Stern (Henry S. Stewart, Of Counsel) for the Commission

The respondent, Luvern W. Moore, a justice of the Kinderhook Town Court, Columbia County, was served with a Formal Written Complaint dated August 3, 1983, alleging that he had made false entries in his court records. Respondent did not answer the Formal Written Complaint.

By motion dated September 16, 1983, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent did not oppose the motion or file any papers in response thereto.

By determination and order dated October 17, 1983, the Commission granted the administrator's motion, found respondent's misconduct established and set a schedule for argument as to appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent neither submitted a memorandum nor requested oral argument.

On November 4, 1983, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. On August 10, 1982, respondent fined the defendant in *People* v. *Miroslaw Kozlowski* $40 on a charge of Speeding.

2. Respondent received $40 in cash from the defendant and issued a receipt, number 3145, to the defendant for $40.

3. On the same date, at about 7:00 P.M., respondent wrote a second receipt, number 3020, falsely stating that he had received $30 from the defendant. Respondent also marked on a copy of the Uniform Traffic Ticket that he had received only $30.

4. Respondent made the false entry intentionally and knowingly in an attempt to conceal his larceny of $10.

5. On May 20, 1983, respondent was charged with violating Section 175.10 of the Penal Law, Falsifying Business Records, First Degree, a Class E felony.

6. On the same date, respondent pled guilty to the reduced charge of Falsifying Business Records, Second Degree, a Class A misdemeanor (Section 175.05 of the Penal Law).

7. On June 20, 1983, respondent was sentenced to three years probation on the condition that he make restitution of $1,070 and resign his judicial office.

As to Charge II of the Formal Written Complaint:

8. Between April 28, 1981, and November 30, 1982, in 34 cases, respondent wrote bogus receipts which falsely stated that he had received lesser amounts of money in fines from defendants than he had actually received.

9. Respondent kept the false receipts as part of his official court records and reported and remitted to the Department of Audit and Control only the lesser amounts listed on the false receipts.

10. Respondent withheld from the Department of Audit and Control amounts ranging from $5 to $100 from each of the defendants in the 34 cases. The total amount withheld was $1,015.

Upon the foregoing findings of fact, the Commission determines as a matter of law that respondent violated Sections 100.1, 100.2(a) and 100.3(a)(1) of the Rules Governing Judicial Conduct; Canons 1, 2A and 3A(1) of the Code of Judicial Conduct; Sections 107, 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act; Section

1803 of the Vehicle and Traffic Law; and Section 27(1) of the Town Law. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent was plainly engaged in a scheme to misappropriate funds received in his official capacity and to conceal his misconduct by falsifying court records. Deception is antithetical to the role of a judge who is sworn to uphold the law and seek the truth. *Matter of Steinberg* v. *State Commission on Judicial Conduct*, 51 NY2d 74, 78 (1980).

By falsely certifying the receipt of public monies and maintaining personal control over them for extended periods of time, respondent violated the legal, administrative and ethical duties of a judge. Such misconduct warrants removal. *Matter of James O. Kane*, unreported (Com. on Jud. Conduct, March 5, 1979); *Matter of Hollebrandt*, unreported (Com. on Jud. Conduct, Nov. 12, 1980); *Matter of Godin*, unreported (Com. on Jud. Conduct, Jan. 26, 1983).

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

This determination is rendered pursuant to Section 47 of the Judiciary Law in view of respondent's resignation from the bench.

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Judge Alexander and Judge Rubin were not present.

Dated: November 10, 1983

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. JACON,

A Justice of the East Greenbush Town Court, Rensselaer County.

The Commission:	Mrs. Gene Robb, Chairwoman Hon. Fritz W. Alexander, II John J. Bower, Esq. David Bromberg, Esq. E. Garrett Cleary, Esq. Dolores DelBello Victor A. Kovner, Esq. Hon. William J. Ostrowski Hon. Isaac Rubin Hon. Felice K. Shea John J. Sheehy, Esq.
Appearances:	Gerald Stern (John J. Postel and Henry S. Stewart, Of Counsel) for the Commission
	Jack J. Pivar for Respondent

The respondent, Robert M. Jacon, a justice of the East Greenbush Town Court, Rensselaer County, was served with a Formal Written Complaint dated December 7, 1982, alleging that he presided over a case involving a client of his private law practice. Respondent filed an answer dated January 7, 1983.

By order dated February 10, 1983, the Commission designated the Honorable James A. O'Connor as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on April 14, 1983, and the referee filed his report with the Commission on August 23, 1983.

By motion dated September 15, 1983, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional findings of fact and conclusions

of law and for a determination that respondent be censured. Respondent moved on October 3, 1983, to confirm the referee's report and to dismiss the Formal Written Complaint. The administrator submitted a reply to respondent's motion on October 6, 1983. The Commission heard oral argument on the motions on October 13, 1983, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a part-time justice of the East Greenbush Town Court and has been since January 1978.

2. Respondent is also an attorney who has a private law practice in East Greenbush.

3. Patrick Trexler was a client of respondent from 1974 to 1982.

4. On May 20, 1980, Mr. Trexler was arrested on a charge of disorderly conduct in the Town of East Greenbush as the result of a domestic disturbance in which he was alleged to have been drinking.

5. The case was scheduled for respondent's court on June 5, 1980.

6. Sometime before June 5, 1980, respondent learned of the case and told Mr. Trexler not to appear in court. Respondent told Mr. Trexler that he would see what disposition of the case the arresting officer, Sergeant Robert N. Kroll, would like.

7. The case was called in respondent's court on June 5, 1980. Sergeant Kroll was present in the courtroom. Mr. Trexler was not.

8. Respondent engaged in an *ex parte* discussion with Sergeant Kroll in which the police officer described the case as "junk" and indicated that, as the officer designated by the district attorney to prosecute the case, he would agree to an adjournment in contemplation of dismissal as an appropriate disposition.

9. Respondent adjourned the case in contemplation of dismissal and assured Sergeant Kroll that he would speak with Mr. Trexler about his drinking habits.

10. Respondent did not inform Sergeant Kroll that Mr. Trexler was a longstanding client of his private law practice.

11. At no time did respondent disqualify himself and transfer the case to another judge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1), 100.3(a)(4) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1), 3A(4) and 3C(1) of the

Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established. Respondent's motion to dismiss is denied.

Respondent acted as both judge and attorney in handling the *Trexler* matter. He presided over the case and disposed of it in his judicial capacity, and at the same time he counseled the defendant and negotiated a disposition as defense counsel. Although respondent is permitted to practice law, he is required to distinguish scrupulously his judicial function from his role as advocate. A judge may not sit as a neutral and impartial arbiter and, in the same case, represent one of the parties. To do so, creates an appearance of favoritism.

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

Mrs. Robb, Judge Alexander, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Rubin and Mr. Sheehy concur.

Mr. Bower, Mr. Cleary, Judge Ostrowski and Judge Shea dissent as to sanction only and vote that the appropriate disposition would be a letter of dismissal and caution.

Dated: November 28, 1983

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. JACON,

A Justice of the East Greenbush Town Court, Rensselaer County.

DISSENTING OPINION BY JUDGE OSTROWSKI
IN WHICH MR. BOWER, MR. CLEARY
AND JUDGE SHEA JOIN

The genesis of this proceeding was a noisy argument between former spouses in the home of the ex-wife to which the father of their child had gone to babysit. A neighbor called the police. An officer asked the father to step outside and then arrested him for disorderly conduct. No one in the home wanted the police or called the police. No accusatory instrument or supporting deposition was ever executed by anyone in the home. There is nothing to indicate that anyone other than a single neighbor and the arresting officer heard the argument.

On this record, there does not appear to be even the semblance of a *prima facie* case of disorderly conduct. *People* v. *Munafo*, 50 NY2d 326, and particularly *People* v. *Canner* and *People* v. *Chesnick*, cited therein. Hence, the proceeding should have been terminated by dismissal of the accusatory instrument pursuant to Section 170.35(a) of the Criminal Procedure Law, by the granting of a trial order of dismissal pursuant to Section 290.10, Criminal Procedure Law, or by acquittal. Rather than the total vindication the defendant seems to have been entitled to, there was an adjournment in contemplation of dismissal pursuant to Section 170.55 of the Criminal Procedure Law. Hence, what this case involves is an accusation of an offense of less than misdemeanor grade which was baseless and which should never have been made.

The only reason the case is before the Commission is that the defendant was a client of the judge who is also a practicing lawyer. But the judge was well aware of his obligation to disqualify himself and, in open court, announced his intention to transfer the case to another judge at which point the arresting officer described the charge as "junk" and suggested an adjournment in contemplation of dismissal, which the court granted.

The respondent acknowledges that he should not have participated in the case. There is nothing in the record to suggest that this is anything other than an isolated occurrence. The underlying charge was petty and groundless. The Commission's referee concluded that there was no misconduct. All of the circumstances point to a letter of dismissal and caution as the appropriate disposition pursuant to 22 NYCRR 7000.7(c), rather than public admonition.

Dated: November 28, 1983

APPENDIX

Update to Volume One

Matter of Arthur W. Lonschein, 50 NY2d 569 (1980)

In Volume One, the Commission reported its determination that Supreme Court Justice Arthur W. Lonschein be censured. In Volume Two, the Commission reported that its determination was modified by the Court of Appeals to an admonition. It should be noted that the Court of Appeals dismissed Charge I, which had been sustained by the Commission. As to Charge II, the Court held that Justice Lonschein's actions constituted misconduct. The Court rejected the determination of censure and imposed a sanction of admonition.

INDEX OF DETERMINATIONS

(Alphabetical, By Name of Respondent) *Page*