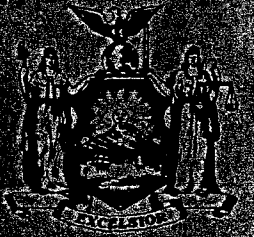
ANNUAL REPORT

March 1986

New York State Commission on Judicial Conduct



1986 ANNUAL REPORT

OF THE

NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

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

Pursuant to Section 42, paragraph 4, of the Judiciary Law of the State of New York, the New York State Commission on Judicial Conduct respectfully submits this annual report of its activities. The report covers the period from January 1, 1985, through December 31, 1985.

Respectfully submitted,

Lillemor T. Robb, Chairwoman,
On Behalf of the Commission

March 1, 1986
New York, New York

TABLE OF CONTENTS

INTRODUCTION

The State Commission on Judicial Conduct is the disciplinary agency constitutionally designated to review complaints of judicial misconduct in New York State. The Commission's objective is to enforce the obligation of judges to observe high standards of conduct while safeguarding their right to decide cases independently.

By offering a forum for citizens with conduct-related complaints, the Commission seeks to insure compliance with established standards of ethical judicial behavior, thereby promoting public confidence in the integrity and honor of the judiciary. The Commission does not act as an appellate court, does not make judgments as to the merits of judicial decisions or rulings, and does not investigate complaints that judges are either too lenient or too severe in criminal cases.

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

In New York, a temporary commission created by the Legislature in 1974 began operations in January 1975. It was made permanent in September 1976 by a constitutional amendment. A second constitutional amendment, effective on April 1, 1978, created the present Commission with expanded membership and jurisdiction.[1]

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[1]For the purpose of clarity, the Commission which operated from September 1, 1976, through March 31, 1978, will henceforth be referred to as the "former" Commission. A description of the temporary and former commissions, their composition and workload is appended.

STATE COMMISSION ON JUDICIAL CONDUCT

Authority

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

By 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...and may determine that a judge or justice be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge or justice be retired for mental or physical disability preventing the proper performance of his judicial duties.

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

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

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

-- admonish a judge publicly;

-- censure a judge publicly;

-- remove a judge from office;

-- retire a judge for disability.

In accordance with its rules, the Commission may also issue a confidential letter of dismissal and caution to a judge, despite a dismissal of the complaint, when it is determined that

the circumstances so warrant. In some cases the Commission has issued such a letter after charges of misconduct have been sustained.

Procedures

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

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

After the Commission authorizes an investigation, the complaint is assigned to a staff attorney, who is responsible for conducting the inquiry and supervising the investigative staff. If appropriate, witnesses are interviewed and court records are examined. The judge may be asked to respond in writing to the allegations. In some instances the Commission requires the appearance of the judge to testify during the course of the investigation. The judge's testimony is under oath, and at least one Commission member must be present. Although such an "investigative appearance" is not a formal hearing, the judge is entitled

to be represented by counsel. The judge may also submit evidentiary data and materials for the Commission's consideration.

If the Commission finds after an investigation that the circumstances so warrant, it will direct its administrator to serve upon the judge a Formal Written Complaint containing specific charges of misconduct. The Formal Written Complaint institutes the formal disciplinary proceeding. After receiving the judge's answer, the Commission may, if it determines there are no disputed issues of fact, grant a motion for summary determination. It may also accept an agreed statement of facts submitted by the administrator and the respondent-judge. Where there are factual disputes that make summary determination inappropriate or that are not resolved by an agreed statement of facts, the Commission appoints a referee to conduct a formal hearing and report proposed findings of fact and conclusions of law. Referees are designated by the Commission from a panel of attorneys and former judges.[2] Following the Commission's receipt of the referee's report, on a motion to confirm or disaffirm the report, both the administrator and the respondent may submit legal memoranda and present oral argument on issues of misconduct and sanction. The respondent-judge (in addition to his or her counsel) may appear and be heard at oral argument.

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[2]A list of those who have served as referees in Commission cases from 1978 through 1985 is appended.

In deciding motions, considering proposed agreed statements of fact and making determinations with respect to misconduct and sanction, and in considering other matters pertaining to cases in which Formal Written Complaints have been served, the Commission deliberates in executive session, without the presence or assistance of its administrator or regular staff. The clerk of the Commission assists the Commission in executive session but does not participate in either an investigative or adversarial capacity in any cases pending before the Commission.

The Commission may dismiss a complaint at any stage during the investigative or adjudicative proceedings.

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

Membership and Staff

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

The chairwoman of the Commission is Mrs. Gene Robb of Newtonville. The other members are: John J. Bower, Esq., of Upper Brookville; David Bromberg, Esq., of New York City; Honorable Carmen Beauchamp Ciparick of New York City, Justice of the Supreme Court, First Judicial District; E. Garrett Cleary, Esq., of Rochester; Dolores DelBello of South Salem; Victor A. Kovner, Esq., of New York City; Honorable William J. Ostrowski of Buffalo, Justice of the Supreme Court, Eighth Judicial District; Honorable Isaac Rubin of Rye, Justice of the Appellate Division, Second Department; Honorable Felice K. Shea of New York City, Justice of the Supreme Court, First Judicial District; and John J. Sheehy, Esq., of New York City.

The administrator of the Commission is Gerald Stern, Esq. The deputy administrator is Robert H. Tembeckjian, Esq. The chief attorney in Albany is Stephen F. Downs, Esq. The chief

attorney in Rochester is John J. Postel, Esq. The clerk of the Commission is Albert B. Lawrence, Esq.[3]

The Commission has 41 full-time staff employees, including ten attorneys. A limited number of law students are employed throughout the year on a part-time basis.

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

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[3]Biographies are appended.

COMPLAINTS AND INVESTIGATIONS IN 1985

In 1985, 867 new complaints were received. Of these, 648 were dismissed upon initial review, and 219 investigations were authorized and commenced.[4] As in previous years, the majority of complaints were submitted by civil litigants and by complaining witnesses and defendants in criminal cases. Other complaints were received from attorneys, judges, law enforcement officers, civic organizations and concerned citizens not involved in any particular court action. Among the new complaints were 64 initiated by the Commission on its own motion.

The Commission carried over 155 investigations and proceedings on formal charges from 1984.

Some of the new complaints dismissed upon initial review were frivolous or outside the Commission's jurisdiction (such as complaints against attorneys or judges not within the state unified court system). Many were from litigants who complained about a particular ruling or decision made by a judge in the course of a proceeding. Absent any underlying misconduct, such as demonstrated prejudice, intemperance, conflict of interest or flagrant disregard of fundamental rights, the Commission does not investigate such matters, which belong in the appellate courts.

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[4]The statistical period in this report is January 1, 1985, through December 31, 1985. Statistical analysis of the matters considered by the temporary, former and present Commissions is appended in chart form.

Judges must be free to act, in good faith, without fear of being investigated for their rulings or decisions.

Of the combined total of 374 investigations and proceedings on formal charges conducted by the Commission in 1985 (155 carried over from 1984 and 219 authorized in 1985), the Commission made the following dispositions in 201 cases:

-- 101 matters were dismissed outright. (100 of these matters were dismissed after investigations were completed, and 1 was dismissed at the conclusion of a formal proceeding.)

-- 28 matters involving 26 different judges were dismissed with letters of dismissal and caution. (27 of these matters were dismissed with caution upon conclusion of an investigation and 1 was issued upon conclusion of a formal proceeding.)

-- 27 matters involving 18 different judges were closed upon resignation of the judge from office. (23 of these matters were closed at the investigation stage and 4 during the formal proceeding stage.)

-- 17 matters involving 13 different judges were closed upon vacancy of office due to reasons other than resignation, such as the judge's retirement or failure to win re-election. (All 17 of these matters were closed at the investigation stage.)

-- 28 matters involving 18 different judges resulted in formal discipline (admonition, censure or removal from office).

One hundred seventy-three matters were pending at the end of the year.

ACTION TAKEN IN 1985

Formal Proceedings

No disciplinary sanction may be imposed by the Commission unless a Formal Written Complaint, containing detailed charges of misconduct, has been served upon the respondent-judge, and the respondent has been afforded an opportunity for a formal hearing. These proceedings fall within the confidentiality provisions of the Judiciary Law and are not public unless confidentiality is waived, in writing, by the judge.

In 1985, the Commission authorized Formal Written Complaints against 23 judges.

The confidentiality provisions of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibit public disclosure by the Commission with respect to charges served, hearings commenced or other matters, absent a waiver by the judge, until a case has been concluded and a final determination has been filed with the Chief Judge of the Court of Appeals and forwarded to the respondent-judge. Following are summaries of those matters which were completed during 1985 and made public pursuant to the applicable provisions of the Judiciary Law.

Determinations of Removal

The Commission completed eight disciplinary proceedings in 1985 in which it determined that the judges involved should be removed from office.

Matter of Walter J. Dudzinski

Walter J. Dudzinski, a justice of the Macedon Town Court and Macedon Village Court, Wayne County, was served with a Formal Written Complaint dated May 1, 1984, alleging that he received unlawful gratuities in connection with his full-time employment. Judge Dudzinski filed an answer dated May 31, 1984.

A hearing was held before a referee, Peter N. Wells, Esq. Both sides filed papers with respect to the referee's report to the Commission. Judge Dudzinski did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated January 24, 1985, that Judge Dudzinski be removed from office. A copy of the determination is appended.

Judge Dudzinski did not request review of the Commission's determination, and the Court of Appeals ordered his removal on March 5, 1985.

Matter of Almon L. Wait

Almon L. Wait, a justice of the Waverly Town Court, Franklin County, was served with a Formal Written Complaint dated October 19, 1984, alleging that he presided over several cases in which the defendants were his relatives. Judge Wait filed an answer dated November 3, 1984.

Judge Wait, his counsel and the administrator entered into an agreed statement of facts on May 16, 1985. The Commission

approved the agreed statement. Both sides filed memoranda as to sanction. Judge Wait appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated August 5, 1985, that Judge Wait be removed from office. A copy of the determination is appended.

Judge Wait requested review of the Commission's determination by the Court of Appeals, which ordered his removal on February 11, 1986.

Matter of Ronald V. Bailey

Ronald V. Bailey, a justice of the Keeseville Village Court, Essex County, was served with a Formal Written Complaint dated August 31, 1984, alleging that he engaged in a plan to illegally hunt deer and that he was convicted of Making A False Statement To Obtain A License. Judge Bailey filed an answer dated October 4, 1984.

Judge Bailey, his counsel and the administrator entered into an agreed statement of facts on May 2, 1985. The Commission approved the agreed statement. Both sides filed memoranda as to sanction. Judge Bailey appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated August 5, 1985, that Judge Bailey be removed from office. A copy of the determination is appended.

Judge Bailey requested review of the Commission's determination by the Court of Appeals, which ordered his removal on February 19, 1986.

Matter of Wesley R. Edwards

Wesley R. Edwards, a justice of the Stephentown Town Court, Rensselaer County, was served with a Formal Written Complaint dated August 31, 1984, alleging that he sought special consideration in another court on behalf of his son. Judge Edwards filed an answer dated October 5, 1984.

A hearing was held before a referee, the Honorable James A. O'Connor. Both sides filed papers with respect to the referee's report to the Commission. Judge Edwards and his counsel appeared for oral argument.

The Commission filed with the Chief Judge its determination dated September 18, 1985, that Judge Edwards be removed from office. A copy of the determination is appended.

Judge Edwards requested review of the Commission's determination by the Court of Appeals, where the matter is pending. On November 26, 1985, the Court suspended Judge Edwards pending review.

Matter of Richard J. Cote

Richard J. Cote, a justice of the Pamelia Town Court, Jefferson County, was served with a Formal Written Complaint dated April 10, 1985, alleging certain administrative and financial depositing, reporting and remitting failures. Judge Cote filed an answer dated May 17, 1985.

A hearing was held before a referee, John F. Luchsinger, Jr., Esq. The administrator filed a motion with respect to the

referee's report to the Commission. Judge Cote did not file papers and did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated October 21, 1985, that Judge Cote be removed from office. A copy of the determination is appended.

Judge Cote did not request review of the Commission's determination, and the Court of Appeals ordered his removal on December 4, 1985.

Matter of Francis E. Robbins

Francis E. Robbins, a justice of the Saratoga Town Court, Saratoga County, was served with a Formal Written Complaint dated February 28, 1985, alleging certain administrative and financial depositing and remitting failures. Judge Robbins filed an answer dated March 19, 1985.

Judge Robbins, his counsel and the administrator entered into an agreed statement of facts on August 16, 1985. The Commission approved the agreed statement. Both sides submitted memoranda as to sanction. Judge Robbins did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated November 27, 1985, that Judge Robbins be removed from office. A copy of the determination is appended.

Judge Robbins did not request review of the Commission's determination, and the Court of Appeals ordered his removal on January 27, 1986.

Matter of Joseph Myers

Joseph Myers, a justice of the Norfolk Town Court, St. Lawrence County, was served with a Formal Written Complaint dated January 8, 1985, alleging that he failed to disqualify himself in a case involving his son. Judge Myers filed an answer dated March 22, 1985.

A hearing was held before a referee, Peter N. Wells, Esq. Both sides submitted papers with respect to the referee's report to the Commission. The Commission heard oral argument by the administrator, but Judge Myers did not appear.

The Commission filed with the Chief Judge its determination dated October 21, 1985, that Judge Myers be removed from office. A copy of the determination is appended.

Judge Myers requested review of the Commission's determination by the Court of Appeals, where the matter is pending. On December 17, 1985, the Court suspended Judge Myers pending review.

Matter of Joseph Jutkofsky, Jr.

Joseph Jutkofsky, Jr., a justice of the Taghkanic Town Court, Columbia County, was served with a Formal Written Complaint dated April 4, 1985, alleging that he engaged in a course of conduct prejudicial to the administration of justice. Judge Jutkofsky filed an answer dated May 29, 1985.

A hearing was held before a referee, Michael M. Kirsch, Esq. The administrator filed a motion with respect to the

referee's report to the Commission. Judge Jutkofsky did not file any papers and did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated December 24, 1985, that Judge Jutkofsky be removed from office. A copy of the determination is appended.

Judge Jutkofsky did not request review of the Commission's determination, and the Court of Appeals ordered his removal on February 5, 1986.

Determinations of Censure

The Commission completed four disciplinary proceedings in 1985 in which it determined that the judges involved should be censured.

Matter of David J. Sandburg

David J. Sandburg, a justice of the Lisbon Town Court, St. Lawrence County, was served with a Formal Written Complaint dated March 7, 1984, alleging certain financial depositing deficiencies. Judge Sandburg did not answer the Formal Written Complaint.

Judge Sandburg, his counsel and the administrator entered into an agreed statement of facts on November 30, 1984. The Commission approved the agreed statement. Both sides submitted memoranda as to sanction. Judge Sandburg appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated June 6, 1985, that Judge Sandburg be censured. A copy of the determination is appended.

Judge Sandburg did not request review of the Commission's determination, which thus became final.

Matter of Lester Evens

Lester Evens, a judge of the New York City Civil Court, New York County, was served with a Formal Written Complaint dated August 30, 1984, alleging four instances of undignified behavior. Judge Evens filed an answer dated October 29, 1984.

A hearing was held before a referee, Haliburton Fales II, Esq. Both sides submitted papers with respect to the referee's report to the Commission. Judge Evens and his counsel appeared for oral argument.

The Commission filed with the Chief Judge its determination dated September 18, 1985, that Judge Evens be censured. A copy of the determination is appended.

Judge Evens did not request review of the Commission's determination, which thus became final.

Matter of Robert G. Leonard

Robert G. Leonard, a justice of the Riverhead Town Court, Suffolk County, was served with a Formal Written Complaint dated December 7, 1984, alleging that he failed to render timely

decisions in 14 small claims cases. Judge Leonard filed an undated answer received on December 21, 1984.

A hearing was held before a referee, Lawrence R. Bailey, Sr., Esq. Both sides filed papers with respect to the referee's report to the Commission. Judge Leonard did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated October 24, 1985, that Judge Leonard be censured. A copy of the determination is appended.

Judge Leonard did not request review of the Commission's determination, which thus became final.

Matter of Robert J. Wilkins

Robert J. Wilkins, a justice of the Olive Town Court, Ulster County, was served with a Formal Written Complaint dated March 11, 1985, alleging that he denied an unrepresented plaintiff a jury trial, held an informal proceeding and, after an ex parte conversation with the defendant's attorney, dismissed the claim. Judge Wilkins filed an answer dated April 1, 1985.

A hearing was held before a referee, the Honorable Catherine T. England. The administrator filed a motion with respect to the referee's report to the Commission. Judge Wilkins did not file any papers and did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated December 24, 1985, that Judge Wilkins be censured. A copy of the determination is appended.

Judge Wilkins did not request review of the Commission's determination, which thus became final.

Determinations of Admonition

The Commission completed six disciplinary proceedings in 1985 in which it determined that the judges involved should be admonished.

Matter of Ralph DelPozzo

Ralph DelPozzo, a justice of the Germantown Town Court, Columbia County, was served with a Formal Written Complaint dated January 25, 1984, alleging that he acted in cases in which the complainant was a client of his private business. Judge DelPozzo filed an answer dated May 1, 1984.

A hearing was held before a referee, Michael Whiteman, Esq. The administrator filed a motion with respect to the referee's report to the Commission. Judge DelPozzo did not file any papers but appeared on his own behalf for oral argument.

The Commission filed with the Chief Judge its determination dated January 25, 1985, that Judge DelPozzo be admonished. A copy of the determination is appended.

Judge DelPozzo did not request review of the Commission's determination, which thus became final.

Matter of Stewart DeVaul

Stewart DeVaul, a justice of the Cicero Town Court, Onondaga County, was served with a Formal Written Complaint dated July 13, 1984, alleging that he allowed his law partner to appear in his court and that his law firm contributed to political campaigns in which he was not a candidate. Judge DeVaul filed an answer dated August 15, 1984.

Judge DeVaul, his counsel and the administrator entered into an agreed statement of facts on November 30, 1984. The Commission approved the agreed statement. The administrator filed a memorandum as to sanction. Judge DeVaul did not file a memorandum and did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated March 22, 1985, that Judge DeVaul be admonished. A copy of the determination is appended.

Judge DeVaul did not request review of the Commission's determination, which thus became final.

Matter of Warren M. Doolittle

Warren M. Doolittle, a judge of the District Court, Nassau County, was served with a Formal Written Complaint dated October 5, 1984, alleging that he made numerous improper comments to female attorneys. Judge Doolittle did not answer the Formal Written Complaint.

Judge Doolittle, his counsel and the administrator entered into an agreed statement of facts on December 12, 1984. The Commission approved the agreed statement. Both sides filed memoranda as to sanction. Judge Doolittle and his counsel appeared for oral argument.

The Commission filed with the Chief Judge its determination dated June 13, 1985, that Judge Doolittle be admonished. A copy of the determination is appended.

Judge Doolittle did not request review of the Commission's determination, which thus became final.

Matter of Kenneth Kremenick

Kenneth Kremenick, a justice of the Milan Town Court, Dutchess County, was served with a Formal Written Complaint dated December 12, 1984, alleging that he drove an automobile while intoxicated and was convicted of Driving While Ability Impaired. Judge Kremenick filed an answer dated December 31, 1984.

The Commission granted the administrator's motion for summary determination and found misconduct established. Both sides filed memoranda as to sanction. Judge Kremenick did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated June 28, 1985, that Judge Kremenick be admonished. A copy of the determination is appended.

Judge Kremenick did not request review of the Commission's determination, which thus became final.

Matter of John P. Tobey

John P. Tobey, a justice of the Wheatfield Town Court, Niagara County, was served with a Formal Written Complaint dated October 24, 1984, alleging that he signed arrest warrants in cases in which he and his sister-in-law were the complainants. Judge Tobey filed an answer dated November 15, 1984.

A hearing was held before a referee, Grace Marie Ange, Esq. The administrator filed a motion with respect to the referee's report to the Commission. Judge Tobey did not file any papers and did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated September 19, 1985, that Judge Tobey be admonished. A copy of the determination is appended.

Judge Tobey did not request review of the Commission's determination, which thus became final.

Matter of Elton Maxon

Elton Maxon, a justice of the Berlin Town Court, Rensselaer County, was served with a Formal Written Complaint dated October 19, 1984, alleging that he convicted a defendant without a trial or any appearance by a prosecutor. Judge Maxon filed an answer dated November 19, 1984.

A hearing was held before a referee, Bruno Colapietro, Esq. The administrator filed a motion with respect to the referee's report to the Commission. Judge Maxon did not file any papers and did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated December 17, 1985, that Judge Maxon be admonished. A copy of the determination is appended.

Judge Maxon did not request review of the Commission's determination, which thus became final.

Dismissed Formal Written Complaints

The Commission disposed of six Formal Written Complaints in 1985 without rendering public discipline.

In one of these cases, the Commission determined that the judge's misconduct had been established but that public discipline was not warranted, dismissed the Formal Written Complaint and issued the judge involved a confidential letter of dismissal and caution.

In one case, the Commission found that the judge involved had committed misconduct but that, upon the judge's resignation from office, further action was not warranted.

In three other cases, the Commission closed the matters before hearings were conducted in view of the resignation of the judges involved.

In the remaining case, the Commission found that misconduct was not established and dismissed the Formal Written Complaint.

Letters of Dismissal and Caution

Pursuant to Commission rule, 22 NYCRR 7000.1(1), a "letter of dismissal and caution" constitutes the Commission's written confidential suggestions and recommendations to a judge.

Where the Commission determines that the misconduct would not warrant public discipline, the Commission, by issuing a letter of dismissal and caution, can privately call a judge's attention to de minimis violations of ethical standards which should be avoided in the future. Such a communication is valuable since it is the only method by which the Commission may caution a judge as to his or her conduct without making the matter public.

Should the conduct addressed by the letter of dismissal and caution continue unabated or be repeated, the Commission may authorize an investigation on a new complaint which may lead to a Formal Written Complaint and further disciplinary proceedings.

In 1985, 26 letters of dismissal and caution were issued by the Commission, one of which was issued after formal charges had been sustained and a determination made that the judge involved had engaged in misconduct. The 26 letters addressed various types of conduct.

For example, two judges were cautioned for improperly participating in fund-raising events conducted by charitable organizations.

Several judges were cautioned for initiating or entertaining improper ex parte communications.

Several judges were cautioned for being discourteous to litigants or others appearing before them in court.

Two part-time judges who also practice law were cautioned, each for having presided over a case which involved the interests of a client.

Since April 1, 1978, the Commission has issued 282 letters of dismissal and caution, 22 of which were issued after formal charges had been sustained and determinations made that the judges involved had engaged in misconduct.

Matters Closed upon Resignation

Eighteen judges resigned in 1985 while under investigation or under formal charges by the Commission.

Since 1975, 144 judges have resigned while under investigation or charges by the temporary, former or present Commission.

The jurisdiction of the temporary and former commissions was limited to incumbent judges. An inquiry was therefore terminated if the judge resigned, and the matter could not be made public. The present Commission may retain jurisdiction over a judge for 120 days following a resignation. The Commission may proceed within this 120-day period, but no sanction other than removal may be determined by the Commission within such period. (When rendered final by the Court of Appeals, the "removal" automatically bars the judge from holding judicial office in the future.) Thus, no action may be taken if the Commission decides

within that 120-day period following a resignation that removal is not warranted.

SUMMARY OF COMPLAINTS CONSIDERED BY THE TEMPORARY, FORMER AND PRESENT COMMISSIONS

Since January 1975, when the temporary Commission commenced operations, 7679 complaints of judicial misconduct have been considered by the temporary, former and present Commissions.

Of the 7679 complaints received since 1975, 5252 were dismissed upon initial review and 2427 investigations were authorized. Of the 2427 investigations authorized, the following dispositions have been made through December 31, 1985:

-- 1050 were dismissed without action after investigation;

-- 429 were dismissed with caution or suggestions and recommendations to the judge;

-- 180 were closed upon resignation of the judge;

-- 164 were closed upon vacancy of office by the judge other than by resignation; and

-- 431 resulted in disciplinary action.

-- 173 are pending.

Of the 431 disciplinary matters noted above, the following actions have been recorded since 1975 in matters initiated by the temporary, former or present Commission:[5]

-- 67 judges were removed from office;

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[5]It should be noted that several complaints against a single judge may be disposed of in a single action. This accounts for the apparent discrepancy between the number of complaints which resulted in action and the number of judges disciplined.

-- 2 additional removal determinations are pending review in the Court of Appeals;

-- 3 judges were suspended without pay for six months;

-- 2 judges were suspended without pay for four months;

-- 143 judges were censured publicly;

-- 71 judges were admonished publicly; and

-- 59 judges were admonished confidentially by the temporary or former Commission, which had such authority.

In addition, 144 judges resigned during investigation, upon the commencement of disciplinary proceedings or in the course of those proceedings.

REVIEW OF COMMISSION DETERMINATIONS BY THE COURT OF APPEALS

Determinations rendered by the Commission are filed with the Chief Judge of the Court of Appeals and served by the Chief Judge on the respondent-judge, pursuant to statute. The Judiciary Law allows the respondent-judge 30 days to request review of the Commission's determination by the Court of Appeals. If review is waived or not requested within 30 days, the Commission's determination becomes final.

In 1985, the Court had before it eight requests for review, two of which had been filed in 1984 and six of which were filed in 1985. Of these eight matters, the Court decided six; two are pending.

Matter of Thomas S. Agresta

On July 5, 1984, the Commission determined that Thomas S. Agresta, a justice of the Supreme Court, Eleventh Judicial District, Queens County, be censured for making a remark with racial connotations during the sentencing of a defendant.

Judge Agresta requested review of the Commission's determination by the Court of Appeals.

In its unanimous opinion dated February 12, 1985, the Court accepted the determined sanction of censure. 64 NY2d 327 (1985).

Matter of James H. Reedy

On June 29, 1984, the Commission determined that James H. Reedy, a justice of the Galway Town Court and Galway Village Court, Saratoga County, be removed from office for seeking to use his judicial office to obtain special consideration for his son, a defendant in a traffic case.

Judge Reedy requested review of the Commission's determination by the Court of Appeals.

In its opinion dated February 21, 1985, the Court unanimously accepted the Commission's determination and removed Judge Reedy from office. 64 NY2d 299 (1985). The Court noted that Judge Reedy had previously been censured by the Commission for attempting to influence other judges on behalf of defendants appearing before them, but stated:

> Ticket-fixing is misconduct of such gravity as to warrant removal, even if this matter were petitioner's only transgression.
>
> 64 NY2d at 302.

Matter of Ronald L. Fabrizio

On December 26, 1984, the Commission determined that Ronald L. Fabrizio, a justice of the New Windsor Town Court, Orange County, be removed from office for, inter alia, seeking special consideration on behalf of two defendants in other courts, being discourteous to a defendant in his court, using racial epithets, altering a transcript and falsely testifying before a Commission member.

Judge Fabrizio requested review of the Commission's determination by the Court of Appeals.

In its opinion dated June 13, 1985, the Court unanimously accepted the Commission's determination and removed Judge Fabrizio from office. 65 NY2d 275 (1985).

Matter of William W. Seiffert

On October 26, 1984, the Commission determined that William W. Seiffert, a judge of the District Court, Nassau County, be removed from office for seeking special consideration on behalf of three defendants.

Judge Seiffert requested review of the Commission's determination by the Court of Appeals.

In its opinion dated June 13, 1985, the Court unanimously accepted the Commission's determination and removed Judge Seiffert from office. 65 NY2d 278 (1985).

Matter of Almon L. Wait

On August 5, 1985, the Commission determined that Almon L. Wait, a justice of the Waverly Town Court, Franklin County, be removed from office for presiding over several cases in which the defendants were his relatives.

Judge Wait requested review of the Commission's determination by the Court of Appeals.

In its opinion dated February 11, 1986, the Court unanimously accepted the Commission's determination and removed Judge Wait from office. ___ NY2d ___, No. 34 (Feb. 11, 1986).

Matter of Ronald V. Bailey

On August 5, 1985, the Commission determined that Ronald V. Bailey, a justice of the Keeseville Village Court, Essex County, be removed from office for engaging in a plan to illegally hunt deer and for having been convicted of Making A False Statement To Obtain A License.

Judge Bailey requested review of the Commission's determination by the Court of Appeals.

In its opinion dated February 19, 1986, the Court unanimously accepted the Commission's determination and removed Judge Bailey from office. ___ NY2d ___, No. 77 (Feb. 19, 1986).

CHALLENGES TO COMMISSION PROCEDURES

The Commission's staff litigated a number of cases in 1985 involving several important constitutional and statutory issues relative to the Commission's jurisdiction and procedures.

Honorable John Doe v. Commission

On July 11, 1985, a Justice of the Supreme Court (identifying himself as "Honorable John Doe") obtained an order to show cause in Supreme Court, Erie County, directing the Commission to dismiss an Administrator's Complaint against him. The petitioner asserted that the allegations against him in the Administrator's Complaint were unsubstantiated and were "entirely different" from those in a Formal Written Complaint that had been served upon him, and that therefore its dismissal was warranted; unless such a formal disposition were made, he urged, the judge "must operate under the cloud created by the charge in perpetuity."

On July 19, 1985, the Commission cross-moved for a change of venue or, in the alternative, to dismiss. Counsel to the Commission argued that the Administrator's Complaint, which served as the basis for commencing an investigation, was superseded by the filing of a Formal Written Complaint, and that a hearing on the matter was pending. Counsel argued that there is no basis in law for a judge who is the subject of charges and a pending proceeding to demand that action be taken on the initial complaint that gave rise to an investigation.

In a decision dated September 27, 1985, Judge Thomas F. McGowan denied the Commission's cross-motion to change venue or dismiss. The Court held that since the underlying events giving rise to the Commission's investigation occurred in Erie County, venue was properly in that county. The Court also held that "basic principles of fairness and due process" require that where the formal charges are "entirely different" from the allegations of the Administrator's Complaint, a disposition be made of the initiatory complaint; and that when the public has become aware of the allegations, a public disposition is required. The Court denied petitioner's ancillary motion as to the imposition of sanctions upon certain members of the Commission's staff.

On December 27, 1985, Judge McGowan granted a motion by the Commission for permission to appeal to the Appellate Division, Fourth Department, insofar as the decision denied the Commission's cross-motion for lack of subject matter jurisdiction and failure to state a cause of action. The appeal is pending.

Matter of Seiffert (Court of Appeals Review)

The Commission had determined in 1984 that Nassau County District Court Judge William W. Seiffert should be removed from office. Judge Seiffert requested review of that determination by the Court of Appeals. The judge asserted, inter alia, that the standard of proof should be "clear and convincing evidence" rather than the "preponderance of the evidence" standard adopted by the Commission (see 22 NYCRR 7000.6[1]).

In its unanimous decision dated June 13, 1985, the Court of Appeals rejected Judge Seiffert's contention and held that the right of a judge to continue in office is "more akin to a property, rather than a personal or liberty, interest" as to which the higher standard of proof has not been required. Stating that "the interest of the State and of the public in a competent judiciary is superior to the interest of the individual judge to continue in office," the Court upheld the "preponderance of the evidence" standard of proof in judicial disciplinary proceedings in this State. 65 NY2d 278, 280 (1985). As noted earlier, the Court also ordered Judge Seiffert removed from office.

SPECIFIC PROBLEM AREAS IDENTIFIED BY THE COMMISSION

In the course of its inquiries into individual complaints, the Commission has identified certain activities which appear to occur periodically and sometimes frequently. Several such areas are discussed below.

Political Activity by Judges

In its 1985 annual report, the Commission included a 19-page special section calling for clearer rules on certain aspects of political activity by judges. Most, if not all, of the problems identified by the Commission in last year's report persist. Indeed, the Commission continues to receive inquiries about what judges may properly do in light of certain ambiguous rules.

While it is not necessary to republish in this volume the entire section on political activity from last year's report, the Commission's experience over the past year confirms its belief that some of the applicable rules governing political and campaign activities should be reconsidered and clarified.

Attendance at political fund-raising events remains a nettlesome subject. Except within specified time frames during periods when they are announced candidates, judges may not attend political fund-raisers. This view is reinforced by a commentary to Canon 7 of the Code of Judicial Conduct which says that the names of campaign contributors should not be made known to the judge (to avoid actual or apparent conflicts of interest should

those contributors later appear before the judge). Thus, there is the seeming anomaly of judges attending political fund-raisers whose proceeds may benefit other candidates, but avoiding appearances at their own fund-raisers for fear of meeting and therefore knowing the identity of their campaign contributors. Some judges do attend their own fund-raisers, under the broad authorization given by the rules to attend political functions during a campaign.

As the Commission noted in last year's annual report, in the past, different counsel to the Office of Court Administration have advised judges that, while campaigning, they could properly attend another candidate's fund-raiser, even though the major portion of the cost of attending such an event is considered a campaign contribution. Since the Election Law prohibits judicial candidates from making contributions to other candidates or to political parties, the practice -- apparently sanctioned by OCA counsel at a time when OCA was issuing advisory opinions -- seems to conflict with the Election Law. Although OCA counsel have alerted judges that their opinions interpret only the Rules Governing Judicial Conduct and not the Election Law, it is shortsighted not to conform the rules with the law since a judge who violates the Election Law in this regard is violating the rules. (For example, the Rules require judges to be "faithful" to the law, to "comply" with law and, as to political activity, to make appropriate "reference" to the Election Law). As we observed in last year's annual report, an opinion of the Elections Board

advised judges that paying the cost of attendance at a political fund-raiser for another candidate is a prohibited contribution under the Election Law. This conflict should be resolved by a modified rule.

Similarly, several OCA advisory opinions suggested that a judge may attend his or her own fund-raiser pursuant to the rules, notwithstanding a Code of Judicial Conduct commentary that places judges on notice that they should not even see a list of contributors. Contrary to the opinions of his predecessors, one OCA Counsel, a few years ago, advised judges at an OCA training session that a judge is not permitted to attend his or her own fund-raiser. Judges are in doubt as to some of the prevailing rules, and so is the Commission.

In its 1985 annual report, the Commission detailed a number of areas in which the Rules Governing Judicial Conduct and the Code of Judicial Conduct are deficient, calling for a thorough review and appropriate revision of the political activities sections. If such a review were undertaken, OCA should consider not only the Commission's 1985 annual report section on the subject but the thoughtful commentaries of other organizations. Of special note is Opinion #280 of the New York State Bar Association, which sets forth certain general campaign guidelines in conjunction with the Rules and Code.

Prohibited Ex Parte Communications

Section 100.3(a)(4) of the Rules Governing Judicial Conduct states in part that a judge, "except as authorized by law, [shall] neither initiate nor consider ex parte or other communications concerning a pending or impending matter."

Over the years, the Commission has disciplined numerous judges for engaging in such prohibited ex parte communications. See, for example, Matter of Wilkins in this report, in which a judge expressed his predisposition in a case and privately advised defense counsel to move for dismissal, a motion which was indeed made by counsel and granted by the judge. See also Matter of Loper and Matter of Klein in the Commission's 1985 report, and Matter of Curcio in the 1984 report.

The Commission has also become aware of instances in which both full-time and part-time judges meet with local prosecutors in advance of the day's calendar to discuss privately the merits of criminal cases, in the absence of defense counsel. In fact, at the hearing in Matter of Sardino, 58 NY2d 286 (1983), an assistant district attorney testified that he and the judge (a full-time city court judge with legal education and experience) often held private meetings to review cases and make judgments as to the merits.

Some non-lawyer town and village justices engage in practices similar to that described in Sardino, often due to a lack of confidence in their ability to handle criminal procedures. One judge so confused his role and the role of the prosecutor that

he testified at a disciplinary proceeding that when a defendant could not afford counsel, the judge would refer the matter to the District Attorney for assignment of counsel. Even as late in the proceeding as the hearing on stated charges, the judge insisted that the District Attorney, and not the Court, had the responsibility to appoint counsel for indigent defendants. Matter of McGee, 59 NY2d 870 (1983) (the Commission's determination to remove the judge was upheld by the Court of Appeals).

Ex parte practices in which judges rely for advice on prosecutors or other law enforcement personnel are clearly improper and undermine a fundamental judicial obligation to hear both sides in a dispute fully and fairly in order to render an unbiased judgment. It distorts the judicial process for the presiding judge to discuss the merits of a case with one side in private. At the very least, such communications give rise to an appearance of impropriety. At worst, they offer one side a means of influencing the judge with information that the other side does not know is before the judge and therefore cannot rebut.

Attorneys who knowingly engage in such prohibited ex parte communications are as guilty as the judge of impropriety, and their conduct should be reviewed by the appropriate disciplinary authorities.

Delegation of Judicial Authority

In several investigations concerning judicial conflicts of interest, the Commission has been made aware of a curious and

troubling practice. A number of judges have indicated that their law secretaries or law assistants draft decisions and orders on submitted motions or other matters -- usually without specific guidance from the judge -- and the judge then routinely signs the decisions without scrutiny or even cursory review.

Sometimes the judge's description of the process, as an explanation for apparent misconduct, lacks the ring of truth. See, for example, Matter of Kane, 50 NY2d 360 (1980), in which a Supreme Court justice who was removed for, inter alia, awarding appointments to his own son, stated that he merely signed without reading the appointment orders as prepared by a clerk.

In other instances, however, the judge's description of the motion-deciding process is confirmed by court personnel. One judge's law secretary, under oath, described a routine in which the judge handles trial work and the law secretary handles motions decided on the papers, without oral argument before the judge. The judge rarely reads the background papers before signing the orders as decided and prepared by the law secretary. The law secretary said that in only a small percentage of cases would he feel the need to discuss the issues with the judge prior to drafting a decision, and the judge indicated that he signs the orders prepared, because of the confidence and trust he places in his law secretary.

Such an extraordinary delegation of judicial authority is highly improper and reposes enormous and unintended power in a law secretary. While it is entirely proper for a judge to assign

decision-drafting duties to an assistant, it is an abdication of judicial authority merely to sign those decisions without having offered guidance in their preparation or scrutinized their final text.

The constitutional authority to decide cases and motions devolves upon the judge, not the law secretary. Even as to routine motions, a judge is bound by the ethical strictures of impartial and diligent performance of duties to at least read the papers he or she is signing. There is no other way for the judge to know if the decision is meritorious, or if the case involves participants or interests that would mandate the judge's disqualification.

Indeed, it has been while investigating such apparent conflicts of interest that the Commission has become aware of the decision-delegation practice. For example, one party to a proceeding may submit a motion and later find that it was decided by a judge who was related to an adverse party or witness. The judge's unacceptable defense might be not having read the motion papers or decision before signing it. Even if the decision is meritorious, and even if the law secretary has had substantial experience with certain types of motions, the judge is obliged to know and is responsible for all that bears his or her signature. The administration of justice is inevitably compromised when judges who are accountable to the public -- and subject to the highest standards of conduct -- cede their authority to law secretaries or others.

Disparate Recordkeeping Requirements for City Court Judges and Town and Village Justices

In the course of investigating various complaints alleging inadequate recordkeeping, the Commission has discovered several significant disparities in recordkeeping requirements incumbent upon city court judges and town and village justices.

The statutory recordkeeping obligations on town and village justices are found primarily in the Uniform Justice Court Act (UJCA). Except for those city courts whose authority is addressed in particular statutes (such as the New York City Civil Court Act) the recordkeeping obligations on city court judges are found primarily in the Uniform City Court Act (UCCA). Many of the important recordkeeping duties required of town and village justices are not equivalently required of city court judges.

For example, while city court judges are required in general language to keep "legible and suitable records and dockets" (UCCA 2019), town and village justices are obliged not only to maintain "legible and suitable records and dockets" (UJCA 2019) but also to record certain specific information, such as the names of witnesses sworn in criminal actions, their addresses, etc. (UJCA 2019-a). Moreover, the Rules of the Chief Administrator of the Courts contains a further detailed description of the recordkeeping requirements for town and village justices, including a case numbering and index system, case histories with specific records of names, dates, pleadings and other facts, a cashbook itemizing all receipts and disbursements, and other information

(Section 105 of the Rules of the Chief Administrator). Yet that same section states only that each city court "may" maintain records consistent with those mandated upon town and village courts. Obviously, city courts are not obliged by the rule to maintain records comparable to those required of town and village courts.

In addition, city courts do not have a specific rule or statute comparable to that requiring town and village courts to make their records public (UJCA 2019-a). While various court rulings over the years have defined what court records are public, a specific rule or statutory reference would provide invaluable guidance and direction.

The disparities in statutes and rules between city courts and their town and village counterparts are disturbing and illogical. Efficient administration of these courts seems to require uniformity in the way their records are kept. Moreover, from a disciplinary point of view, the detail in records required of town and village justices makes potential problems such as habitual delays and financial mismanagement easier to detect and correct.

The Commission recommends that the Office of Court Administration thoroughly examine and seek to unify the various statutory and rule-imposed recordkeeping requirements on city, town and village judges and justices.

The Commission also recommends that the Office of Court Administration examine other possible anomalies in the rules. For

example, Section 105.2(6) of the Rules of the Chief Administrator requires a town or village court to record which party in a civil case requests adjournments. There is no equivalent language as to criminal cases, yet it is in criminal matters that speedy trial requirements make such information critical. (If numerous adjournments had been requested by the defense, a subsequent defense motion to dismiss for failure to provide a speedy trial would be disingenuous. If such requests were made by the prosecutor, a defense motion on speedy-trial grounds would be enhanced.)

Also, while the Office of Court Administration requires regular city court reports on pending civil cases, it does not require equivalent information as to pending criminal cases.

The Commission recommends review of these various recordkeeping matters and encourages appropriate action to eliminate the disparities addressed above.

Omission in the Rules as to Prohibited Business Activity by Judges

Section 100.5(c) of the Rules Governing Judicial Conduct sets strict limitations on the kinds of financial activities in which judges may engage. Generally, the applicable section requires judges to refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties, exploit

their judicial position or involve them in frequent transactions with lawyers or others likely to come before their court.

Section 100.5(c)(2) of the Rules specifically cites a number of courts whose judges are prohibited from being, among other things, managing or active participants in any form of business enterprise organized for profit. The section cites as within its ambit the judges of the Court of Appeals, Appellate Division, Supreme Court, Court of Claims, County Court, Surrogate's Court, Family Court, District Court, New York City Civil Court and New York City Criminal Court.

Presumably, the rule is intended to prohibit full-time judges from engaging in business activities. Town and village justices, for example, who serve part-time and are otherwise permitted to engage in businesses, are not covered by the rule.

Also not mentioned in the rule, with the exception of the New York City Civil and Criminal Courts, are judges of the various city courts throughout the state. This omission appears to be inconsistent with the intent of the rule to prohibit certain business activity by full-time judges.

Some city courts, such as those in New York City, Syracuse and Buffalo, are full-time courts. Others, such as in Albany, are part-time. It is illogical to prohibit New York City judges from engaging in certain business activities while not addressing their Buffalo and Syracuse counterparts in the same rule. Moreover, the omission in the rule permits a curious anomaly: two full-time judges who sit in the same locale are

treated differently by the same rule. For example, a full-time Onondaga County Court judge sitting in Syracuse would be prohibited from engaging in certain business activity, but a full-time Syracuse City Court judge would not.

The Commission recommends that this inconsistency be corrected and that a single standard be applied to all full-time judges throughout the state.

Raising Funds for Charitable, Civic or Other Organizations

Judges understandably devote their time to worthwhile causes in their communities. Under Section 100.5 of the Rules Governing Judicial Conduct, they may serve as officers, directors, trustees or advisors of civic, charitable, educational or fraternal organizations, unless the organizations are likely to be engaged in proceedings that would ordinarily come before the judges' court (Section 100.5[b][1] of the Rules).

A judge may not solicit funds for such an organization "or use or permit the use of the prestige of the office for that purpose" (Section 100.5[b][2]). A judge may not even be listed on stationery used for fund-raising purposes. Also specifically barred is serving as a speaker or guest of honor at an organization's fund-raising events (Section 100.5[b][2]). Using synonyms for "speaker" or "guest of honor" would not defeat the restrictions in the Rules.

A judge is not excused from these restrictions by not knowing the event is a fund-raiser. Whether funds are raised through selling subscriptions to a journal, or selling tickets to attend the function, or direct solicitation at the function, a judge should make reasonable inquiry before agreeing to participate. Even if the judge has participated in an event without knowing it was a fund-raiser, he or she has violated the applicable rule if the judge through inquiry could have determined the true purpose of the event. Thus, failing to inquire will not be a valid defense to an allegation that the judge participated in an organization's fund-raising efforts.

Coercing Agreements Not to Sue

Dating back to its first annual report (the 1975 report of the Temporary State Commission on Judicial Conduct), the Commission has criticized the improper practice of conditioning the dismissal of criminal charges on an agreement by the defendant not to sue for damages.

In a hypothetical situation, a defendant charged with a criminal offense, such as trespass, may assert a defense, such as a right to be on the property. During a pre-trial conference or plea discussion, the prosecutor or judge may determine that the state's case is weak, or even that there was no probable cause upon which to arrest and try the defendant. A key witness may have recanted, the defendant's defense may have been substantiated by previously unknown information, or, for other reasons, the

prosecution may not want to proceed with its case. Instead of dismissing the criminal charge outright, however, the judge first attempts to dissuade the defendant from pursuing a civil claim against the arresting officer or municipality based on false arrest. The judge might even refuse to dismiss the criminal charge unless the defendant agrees to waive the civil suit for damages against the officer or municipality.

Such coercion puts the defendant in an unfair posture and reflects poorly on the legal system and especially on the judiciary. No one should be compelled to forego a legitimate civil claim in order to avoid criminal prosecution, particularly where the prosecution to all appearances should not on its own merits be pursued. Judges who employ such coercive techniques undermine the very values that jurists are obliged by the Rules Governing Judicial Conduct to promote: public confidence in the integrity, impartiality and independence of the judiciary and the administration of justice.

A recent decision by the United States Supreme Court lends support to the view that the disposition of criminal charges should not be conditioned on a defendant's forfeiture of a civil damages action. In Briggs v. Malley (decided March 5, 1986), the Court held that police officers are liable to pay damages for clearly unreasonable arrests and searches, even when they obtain judicial warrants in advance. A key issue in the case was whether Fourth Amendment strictures -- the prohibition on unreasonable searches and seizures, and the requirement that warrants be

supported by probable cause -- were better enforced by making police officers liable to pay civil damages to people whose rights they knowingly, unreasonably violated, rather than by suppressing the evidence in the criminal trials against those people.

The Briggs decision is consistent with recent Court decisions making it more difficult for criminal defendants to suppress illegally seized evidence at their criminal trials. Yet it also effectively encourages civil suits for damages against those authorities without immunity who knowingly and unreasonably violate individual rights in seizing that evidence.

A judge who coerces a criminal defendant to agree not to sue in civil law, as a quid pro quo for dismissing the criminal charges, would therefore not only be compromising the integrity, impartiality and independence of the courts, but would also be acting contrary to the policy of permitting recovery in civil actions for certain improper conduct of a municipality and its agents.

Those prosecutors who employ coercive tactics should also desist. The right to commence an action for false arrest or other wrongful conduct should be respected by the criminal justice system. This Commission will continue to take appropriate action with respect to judges who engage in such coercive, highly improper conduct.

CONCLUSION

Public confidence in the integrity and impartiality of the judiciary is essential to the rule of law. The members of the State Commission on Judicial Conduct believe the Commission contributes to that ideal and to the fair and proper administration of justice.

Respectfully submitted,

Mrs. Gene Robb, Chairwoman
John J. Bower
David Bromberg
Carmen Beauchamp Ciparick
E. Garrett Cleary
Dolores DelBello
Victor A. Kovner
William J. Ostrowski
Isaac Rubin
Felice K. Shea
John J. Sheehy

APPENDIX A

BIOGRAPHIES OF COMMISSION MEMBERS

JOHN J. BOWER, ESQ., is a graduate of New York University and New York Law School. He is a partner in Bower & Gardner in New York City. He is a Fellow of the American College of Trial Lawyers, a Member of the Federation of Insurance Counsel and a Member of the American Law Institute.

DAVID BROMBERG, ESQ., is a graduate of Townsend Harris High School, City College of New York and Yale Law School. He is a member of the firm of Epstein, Becker, Borsody and Green. Mr. Bromberg served as counsel to the New York State Committee on Mental Hygiene from 1965 through 1966. He was elected a delegate to the New York State Constitutional Convention of 1967, where he was secretary of the Committee on the Bill of Rights and Suffrage and a member of the Committee on State Finances, Taxation and Expenditures. He served, by appointment, on the Westchester County Planning Board until 1985. He is a member of the Association of the Bar of the City of New York and has served on its Committee on Municipal Affairs. He is a member of the New York State Bar Association and is presently serving on its Committee on the New York State Constitution. He serves on the National Panel of Arbitrators of the American Arbitration Association.

HONORABLE CARMEN BEAUCHAMP CIPARICK is a graduate of Hunter College and St. John's University School of Law. She was elected a Justice of the Supreme Court for the First Judicial District in 1982. Previously she was an appointed Judge of the Criminal Court of the City of New York from 1978 through 1982. Judge Ciparick formerly served as Chief Law Assistant of the New York City Criminal Court, Counsel in the office of the New York City Administrative Judge, Assistant Counsel for the Office of the Judicial Conference and a staff attorney for the Legal Aid Society in New York City. She is a former Vice President, Secretary and Board Member of the Puerto Rican Bar Association. Judge Ciparick is a member of the Mayor's Commission on Hispanic Concerns, the Mayor's Commission on the Bicentennial of the Constitution, the Board of Directors of the New York Association of Women Judges and the Board of Directors of the Project Green Hope Services for Women.

E. GARRETT CLEARY, ESQ., attended St. Bonaventure University and is a graduate of Albany Law School. He was an Assistant District Attorney in Monroe County from 1961 through 1964. In August of 1964, he resigned as Second Assistant District Attorney to enter private practice. He is now a partner in the law firm of Harris, Beach, Wilcox, Rubin and Levey in Rochester. In January 1969 he was appointed a Special Assistant Attorney General in charge of Grand Jury Investigation ordered by the late Governor Nelson A. Rockefeller to investigate financial irregularities in the Town of Arietta, Hamilton County, New York. In 1970 he was designated as the Special Assistant Attorney General in charge of an investigation ordered by Governor Rockefeller into a student/police confrontation that occurred on the campus of Hobart College, Ontario County, New York, and in 1974 he was appointed a Special Prosecutor in Schoharie County for the purpose of prosecuting the County Sheriff. Mr. Cleary is a member of the Monroe County and New York State Bar Associations, and he has served as a member of the governing body of the Monroe County Bar Association, Oak Hill Country Club, St. John Fisher College, Better Business Bureau of Rochester, Automobile Club of Rochester, Hunt Hollow Ski Club, as a trustee to Holy Sepulchre Cemetery and as a member of the Monroe County Bar Foundation and the Monroe County Advisory Committee for the Title Guarantee Company. In 1981 he became the Chairman of the Board of Trustees of St. John Fisher College. He and his wife Patricia are the parents of seven children.

DOLORES DEL BELLO received a baccalaureate degree from the College of New Rochelle and a masters degree from Seton Hall University. She is presently Regional Public Relations Director for Bloomingdale's. Mrs. DelBello is a member of the League of Women Voters; the Board of Directors for the Naylor Dana Institute for Disease Prevention; American Health Foundation; the Board of Trustees of St. Cabrini Nursing Home, Inc.; Hadassah; the Westchester Women in Communications; Alpha Delta Kappa, the international honorary society for women educators; the Board of Directors for the Hudson River Museum; Board of Directors Universitas Internationalis Coluccio Salutati; Advisory Committee, Westchester County Chapter, New York State Association for Retarded Children; and the Board of Directors, Lehman College Performing Arts Center.

VICTOR A. KOVNER, ESQ., is a graduate of Yale College and the Columbia Law School. He is a partner in the firm of Lankenau Kovner & Bickford. Mr. Kovner served as a member of the Mayor's Committee on the Judiciary from 1969 through 1985. He was a member of Governor Carey's Court Reform Task Force and now serves on the board of directors of the Committee for Modern Courts. Mr. Kovner is Chairman of the Committee on Communications Law of the Association of the Bar of the City of New York, and serves as a member of the advisory board of the Media Law Reporter. Mr. Kovner serves in the House of Delegates of the New York State Bar Association. He formerly served as President of Planned Parenthood of New York City, and he is a trustee of the American Place Theater.

HONORABLE WILLIAM J. OSTROWSKI is a graduate of Canisius College and received law degrees from Georgetown and George Washington Universities. He attended the National Judicial College in 1967. Justice Ostrowski is a Justice of the Supreme Court in the Eighth Judicial District and was elected to that office in 1976. During the preceding 16 years he was a judge of the City Court of Buffalo, and from 1956 to 1960 he was a Deputy Corporation Counsel of the City of Buffalo. He served with the 100th Infantry Division in France and Germany during World War II. He has been married to Mary V. Waldron since 1949 and they have six children and five grandchildren. Justice Ostrowski is a member of the American Law Institute, the Fellows of the American Bar Foundation, the American Bar Association and its National Conference of State Trial Judges; American Judicature Society; National Advocates Society; New York State Bar Association and its Judicial Section; Erie County Bar Association; and the Lawyers Club of Buffalo.

MRS. GENE ROBB is a graduate of the University of Nebraska. She is a former President of the Women's Council of the Albany Institute of History and Art and served on its Board. She also served on the Chancellor's Panel of University Purposes under Chancellor Boyer, later serving on the Executive Committee of that Panel. She served on the Temporary Hudson River Valley Commission and later the permanent Hudson River Valley Commission. She is a member of the Board of the Salvation Army Executive Committee for the New York State Plan. She is on the Board of the Saratoga Performing Arts Center, the Board of the Albany Medical College, the Board of Trustees of Union College and the Board of Trustees of the New York State Museum. Mrs. Robb is a former member of the Advisory Committee of the Center for Judicial Conduct Organizations of the American Judicature Society. She is now a member of the Executive Committee of the Board of the Society. Mrs. Robb received an honorary degree of Doctor of Law from Siena College, Loudonville, in 1982. She serves on the Visiting Committee for Fellowships and Internships of the Nelson A. Rockefeller Institute of Government. In 1984 Mrs. Robb was awarded the Regents Medal of Excellence for her community service to New York State. She is the mother of four children and grandmother of ten. Mrs. Robb has been a member of the Commission since its inception.

HONORABLE ISAAC RUBIN is a graduate of New York University, the New York University Law School (J.D.) and St. John's Law School (J.S.D.). He is presently a Justice of the Appellate Division, Second Department, to which he was appointed by Governor Carey in January 1982 and reappointed by Governor Cuomo in January 1984. Prior to this appointment, Justice Rubin sat in the Supreme Court, Ninth Judicial District, where he served as Deputy Administrative Judge of the County Courts and superior criminal courts. Judge Rubin previously served as a County Court Judge in Westchester County, and as a Judge of the City Court of Rye, New York. He is a director and former president of the Westchester County Bar Association. He has also served as a member of the Committee on Character and Fitness of the Second Judicial Department, and as a member of the Nominating Committee and the House of Delegates of the New York State Bar Association.

HONORABLE FELICE K. SHEA is a graduate of Swarthmore College and Columbia Law School. She is a Justice of the Supreme Court, First Judicial District (New York County), and is the Presiding Justice of the Extraordinary Special and Trial Term of the Supreme Court for the City of New York. She served previously as a Judge of the Civil Court of the City of New York. Justice Shea is President of the Alumni Association of Columbia Law School, a Director of the Association of Women Judges of the State of New York, a Director of the New York Women's Bar Association, a Fellow of the American Bar Foundation, and a Fellow of the American Academy of Matrimonial Lawyers. She is a member of the Association of the Bar of the City of New York and serves on its Council on Judicial Administration and on its Committee on Legal Education and Admission to the Bar. Justice Shea is a member of the Advisory Committee of the Center for Judicial Conduct Organizations of the American Judicature Society.

JOHN J. SHEEHY, ESQ., is a graduate of the College of the Holy Cross, where he was a Tilden Scholar, and Boston College Law School. He is a partner in the New York office of Rogers & Wells. He is a senior member of the firm's litigation department and chairman of its personnel committee. Mr. Sheehy was an Assistant District Attorney in New York County from 1963 to 1965, when he was appointed Assistant Counsel to the Governor by the late Nelson A. Rockefeller. Mr. Sheehy joined Rogers & Wells in February 1969. He is a member of the bars of the United States Supreme Court, the United States Court of Appeals for the Second and Eighth Circuits, the United States District Court for the Southern, Eastern and Northern Districts of New York, the United States Court of International Trade and the United States Court of Military Appeals. He is a member of the American and New York State Bar Associations, Chairman of the Parish Council of Epiphany Church in Manhattan and a member of the Metropolitan Club. He is also a Commander in the U.S. Naval Reserve, Judge Advocate General Corps. John and Morna Ford Sheehy live in Manhattan and East Hampton, with their three children.

ADMINISTRATOR OF THE COMMISSION

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

DEPUTY ADMINISTRATOR

ROBERT H. TEMBECKJIAN, ESQ., is a graduate of Syracuse University and Fordham Law School. He previously served as Clerk of the Commission, as publications director for the Council on Municipal Performance in New York, staff director of the Governor's Cabinet Committee on Public Safety in Ohio and special assistant to the Deputy Director of the Ohio Department of Economic and Community Development. Mr. Tembeckjian is a member of the New York State Bar Association and the Association of the Bar of the City of New York, serving on its Committee on Professional Discipline. He is also on the boards of the South Manhattan Development Corporation and the Play Schools Association, Inc.

CLERK OF THE COMMISSION

ALBERT B. LAWRENCE, ESQ., is a graduate of the State University of New York and Antioch School of Law. He joined the Commission staff in 1980 and has been Clerk of the Commission since 1983. He is a former newspaper reporter who has written on criminal justice and legal topics. Mr. Lawrence is on the adjunct faculty of the State University where he teaches in the Empire State College program. He is a member of the Board of Directors of Big Brothers/Big Sisters of Rensselaer County, chairman of its Committee on Planning and Legal Representation, and a member and former chairman of its advisory committee on New Start, a program that provides counseling for troubled young men and women.

CHIEF ATTORNEY, ALBANY

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

CHIEF ATTORNEY, ROCHESTER

JOHN J. POSTEL, ESQ., is a graduate of the University of Albany and the Albany Law School of Union University. He joined the Commission's staff in 1980 as an assistant staff attorney in Albany. He has been Chief Attorney in charge of the Commission's Rochester office since April 1984.

COMMISSION STAFF

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DEPUTY ADMINISTRATOR
Robert H. Tembeckjian

CLERK OF THE COMMISSION
Albert B. Lawrence

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Stephen F. Downs
John J. Postel

SENIOR ATTORNEY
Alan W. Friedberg

STAFF ATTORNEYS
Karen Kozac
Jean M. Savanyu
Henry S. Stewart

ASS'T STAFF ATTORNEY
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Maureen Sheehan
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Brunilda Lopez
Carolyn McKie*
Ellen M. Mulvey*
Deborah L. Sasso*
Susan Totten
Linda J. Wentworth

LAW STUDENTS
John McBride
Deborah Ronnen
John C. Turi

* Denotes individuals who left the Commission staff prior to March 1986.

APPENDIX B

COMMISSION BACKGROUND

Temporary State Commission on Judicial Conduct

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

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

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

Five judges resigned while under investigation.*

Former State Commission on Judicial Conduct

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

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*A full account of the temporary Commission's activity is available in the Final Report of the Temporary State Commission on Judicial Conduct, dated August 31, 1976.

The former Commission was empowered to investigate allegations of misconduct against judges, impose certain disciplinary sanctions* and, when appropriate, initiate formal disciplinary proceedings in the Court on the Judiciary, which, by the same constitutional amendment, had been given jurisdiction over all 3,500 judges in the unified court system.

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

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

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

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

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

Those proceedings resulted in the following:

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

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*The sanctions that could be imposed by the former Commission were: private admonition, public censure, suspension without pay for up to six months, and retirement for physical or mental disability. Censure, suspension and retirement actions could not be imposed until the judge had been afforded an opportunity for a full adversary hearing; these Commission sanctions were also subject to a de novo hearing in the Court on the Judiciary at the request of the judge.

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

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

Continuation in 1978, 1979 and 1980 of Formal Proceedings Commenced by the Temporary and Former Commissions

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

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

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

State Commission on Judicial Conduct

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

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

APPENDIX C

REFEREES DESIGNATED BY THE COMMISSION FROM 1978 THROUGH 1985 TO PRESIDE OVER HEARINGS

NAME	CITY	COUNTY
Hon. Morris Aarons	New York	New York
Saul H. Alderman	(deceased)	
Grace Marie Ange	Buffalo	Erie
Lawrence R. Bailey, Sr.	New York	New York
Hon. Carman Ball	West Seneca	Erie
Hon. Richard L. Baltimore, Jr.	New York	New York
Hon. Earle C. Bastow	Utica	Oneida
Ira M. Belfer	New York	New York
Hon. Francis Bergan	Albany	Albany
Patrick J. Berrigan	Niagara Falls	Niagara
Sheila L. Birnbaum	New York	New York
Edward Brodsky	New York	New York
Eugene V. Buczkowski	Buffalo	Erie
Michael A. Cardozo	New York	New York
Bruno Colapietro	Binghamton	Broome
John P. Cox	Buffalo	Erie
W. David Curtiss	Ithaca	Tompkins
Hon. Richard M. Daily	Ilion	Herkimer
John J. Darcy	Rochester	Monroe
Hon. Nanette Dembitz	New York	New York
Joseph C. Dwyer	Olean	Cattaraugus
Hon. Jesse M. Eisen	Yonkers	Westchester
Robert L. Ellis	New York	New York
Hon. Catherine T. England	Centereach	Suffolk
Haliburton Fales, II	New York	New York
Hon. Harold A. Felix	New York	New York
William Fitzpatrick	(deceased)	
Walter Gellhorn	New York	New York
Hon. James Gibson	Hudson Falls	Warren
Hon. Charles Gold	(deceased)	
Hon. Harry D. Goldman	Rochester	Monroe
Hon. Martin M. Goldman	Plattsburgh	Clinton
Bernard H. Goldstein	New York	New York
Paul C. Gouldin	(deceased)	
Hon. Bertram Harnett	New York	New York
Gerald Harris	New York	New York
Hon. H. Hawthorne Harris	New Rochelle	Westchester
Hon. Joseph Hawkins	Poughkeepsie	Dutchess
Robert E. Helm	Albany	Albany
Hon. J. Clarence Herlihy	(deceased)	
Hon. Pierson R. Hildreth	(deceased)	
Gilbert A. Holmes	New York	New York
Herbert W. Holtz	Buffalo	Erie

NAME	CITY	COUNTY
Hon. James D. Hopkins	Armonk	Westchester
Jacob D. Hyman	Buffalo	Erie
H. Wayne Judge	Glens Falls	Warren
Lewis B. Kaden	New York	New York
Barbara L. Kaiser	White Plains	Westchester
Marjorie E. Karowe	Troy	Rensselaer
Robert M. Kaufman	New York	New York
Michael M. Kirsch	Brooklyn	Kings
Seymour M. Klein	New York	New York
Donald W. Kramer	Binghamton	Broome
Hon. Francis C. LaVigne	Massena	St. Lawrence
Hon. Simon J. Liebowitz	New York	New York
John F. Luchsinger	Syracuse	Onondaga
Robert MacCrate	New York	New York
William V. Maggipinto	Southampton	Suffolk
Hon. Charles T. Major	Syracuse	Onondaga
Hon. Arthur Markewich	New York	New York
Hon. John S. Marsh	Niagara Falls	Niagara
Hon. Frank S. McCullough, Sr.	Harrison	Westchester
Hon. Bernard S. Meyer	New York	New York
William Morris	Rochester	Monroe
Joseph H. Murphy	Syracuse	Onondaga
Hon. Joseph A. Nevins	Olean	Cattaraugus
Hon. James A. O'Connor	Waterford	Saratoga
Hon. Louis Otten	New York	New York
Richard D. Parsons	New York	New York
Stanley Plesent	New York	New York
Margrethe R. Powers	Albany	Albany
Hon. Raymond Reisler	New York	New York
Shirley Adelson Siegel	New York	New York
Hon. Morton B. Silberman	White Plains	Westchester
Hon. Caroline K. Simon	New York	New York
Henry J. Smith	White Plains	Westchester
Hon. Dean C. Stathacos	Buffalo	Erie
Solon J. Stone	Snyder	Erie
Gray Thoron	Ithaca	Tompkins
Francis L. Valente, Jr.	New York	New York
Samuel B. Vavonese	Syracuse	Onondaga
Nancy F. Wechsler	New York	New York
Peter N. Wells	Syracuse	Onondaga
Michael Whiteman	Albany	Albany
Hon. G. Robert Witmer	Rochester	Monroe
George M. Zimmermann	Buffalo	Erie

State of New York
Commission on Judicial Conduct

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

RONALD V. BAILEY,

a Justice of the Keeseville Village Court, Essex County.

Determination

APPEARANCES:

Gerald Stern (Henry S. Stewart, Of Counsel) for the Commission

Robert P. Roche for Respondent

The respondent, Ronald V. Bailey, a justice of the Keeseville Village Court, Essex County, was served with a Formal Written Complaint dated August 31, 1984, alleging that he engaged in a plan to illegally hunt deer and that he was convicted of Making a False Statement to Obtain a License. Respondent filed an answer dated October 4, 1984.

On May 2, 1985, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement on May 30, 1985.

The administrator and respondent filed memoranda as to sanction. On June 21, 1985, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Keeseville Village Court and has been since April 1, 1984. He was a justice of the Chesterfield Town Court, Essex County, from January 1, 1971, to December 31, 1981.

2. In 1980, while he was a justice of the Chesterfield Town Court, respondent engaged in a plan to illegally hunt deer.

3. In 1980, state law required deer hunters to apply for and obtain a hunting license issued by agents of the state to ensure that only persons who were familiar with guns and competent to hunt safely would be licensed.

4. Each person applying for a hunting license was required to attest to the truth of statements made in the license by signing the license.

5. In 1980, a deer hunting license entitled the holder to "take", or kill, one buck during the season. The licensee could also apply for a deer management permit, also known as a "party" permit, which, if granted, would allow the licensee to take an additional deer during the season.

6. Party permits are issued each year by the Department of Environmental Conservation. The size of the deer herds in various parts of the state determine the number of permits issued each year and the number of persons required in each party. In 1980, only one person was required for a "party". Thus, each licensee who was granted a party permit could legally take two deer during the 1980 season.

7. In 1980, a licensee was prohibited by Section 11-0913(4) of the Environmental Conservation Law from using more than one hunting license in making application for a party permit.

8. In 1980, each deer hunting license and each party permit was issued with a tag. A hunter was required to carry his or her hunting license and tag while hunting. If a deer was shot, the hunter was required to attach the tag to the deer. The use of a tag cancelled the license or party permit issued with the tag.

9. In 1980, respondent requested and obtained permission from Adalore Latourelle, Henry G. Rock, John D. Murray, Peter Massaro, Edwin Lattrell and Donald W. Robare for respondent to sign their names on hunting license applications.

10. Respondent obtained permission from the wife of Oril H. Gordon for respondent to sign Mr. Gordon's name on a hunting license application.

11. In August 1980, respondent signed the names of Mr. Latourelle, Mr. Rock, Mr. Murray, Mr. Massaro, Mr. Lattrell, Mr. Robare and

Mr. Gordon on hunting license applications, submitted them to the Chesterfield Town Clerk and obtained hunting licenses in those names for respondent's use.

12. Respondent certified that the information contained in the hunting license applications was true, knowing that they did not bear the signature of the applicant made in the presence of the agent, or town clerk, as indicated on the application form.

13. Respondent also requested and obtained 1980 hunting licenses issued to Adolphus Brelia, William Maggy and Robert Laundree.

14. Respondent signed on applications for party permits the names of Mr. Latourelle, Mr. Rock, Mr. Murray, Mr. Massaro, Mr. Lattrell, Mr. Robare, Mr. Gordon, Mr. Brelia, Mr. Maggy, Mr. Laundree and respondent's father, Harold Bailey.

15. Respondent certified that the information contained in the party permit applications was true.

16. Respondent did not inform the eleven men that he intended on this occasion to sign their names on applications for party permits.

17. Respondent submitted the applications for party permits to the Department of Environmental Conservation and obtained party permits for his own use in the names of Mr. Latourelle, Mr. Rock, Mr. Murray, Mr. Massaro, Mr. Lattrell, Mr. Robare, Mr. Gordon, Mr. Brelia, Mr. Maggy, Mr. Laundree and Harold Bailey.

18. Respondent asked the Keeseville Postmaster, Lyman P. Martin, to hold and deliver to respondent mail from the Department of Environmental Conservation to Mr. Latourelle, Mr. Rock, Mr. Murray, Mr. Massaro, Mr. Robare, Mr. Gordon, Mr. Brelia, Mr. Maggy and Harold Bailey. Postmaster Martin was a regular hunting partner of respondent.

19. Respondent received from the postmaster party permits addressed to Mr. Latourelle, Mr. Rock, Mr. Murray, Mr. Massaro, Mr. Robare, Mr. Gordon, Mr. Brelia, Mr. Maggy and Harold Bailey.

20. Mr. Lattrelle and Mr. Laundree received party permits by mail and turned them over to respondent.

21. In testimony before a member of the Commission on June 26, 1984, respondent acknowledged that he applied for the permits in the names of other men in order to take additional deer beyond the number allowed by law.

22. Respondent acknowledged that such a plan was in violation of the Environmental Conservation Law.

23. In November 1980, respondent was a member of a deer-hunting expedition. He had in his possession on the expedition deer-hunting licenses, tags and party permits for persons who were not physically present in the expedition.

24. Respondent gave to his nephew, Ronnie Barber, a party permit issued to Robert Laundree. Mr. Barber used that permit to tag a deer illegally.

25. Six members of respondent's expedition, including Mr. Barber, Postmaster Martin and Harold Bailey, were charged with and convicted of Illegally Taking Deer.

As to Charge II of the Formal Written Complaint:

26. On September 8, 1982, respondent pled guilty to Making A False Statement To Obtain A License, a misdemeanor. He was given a conditional discharge and fined $200.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2 of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent engaged in a scheme to obtain licenses and permits on behalf of persons that he knew would not use them so that he and his hunting party could use them to kill unlawfully more than the number of deer to which they were entitled.

In the process, respondent falsely certified that applicants for hunting licenses had signed applications before the state agent when respondent had done so on their behalf. In one instance, he signed an application with another's name without authority. Without the knowledge of the licensees, respondent applied for party permits. He plotted with the local postmaster, a hunting companion, to divert mail addressed to the legal licensees so that respondent could obtain the permits directly. Respondent carried the extra permits of others on a hunting expedition and allowed his nephew to use the permit of another man to tag a deer unlawfully.

A judge is required to respect and comply with the law at all times. Section 100.2(a) of the Rules Governing Judicial Conduct. Respondent has engaged in a chain of deceptive activities outside the law he is sworn to uphold. Such conduct is antithetical to the role of a judge (Matter of Moore, 3 Commission Determinations 256, 258 [Nov. 10, 1983]), and

destructive of his usefulness on the bench (Matter of Perry, 53 AD2d 882 [2d Dept. 1976]).

The fact that respondent has been returned to the bench by the voters is of no significance. The standards of judicial conduct are not to be defined by the community in which a judge sits. Public confidence in our legal system requires that there be one set of standards, applied equally to all judges throughout the state, and that the standards be of the highest order. Matter of Sobeck, 1 Commission Determinations 105, 108 (July 2, 1979); Matter of Barclay, 2 Commission Determinations 275, 276-77 (Jan. 6, 1981).

The Commission notes that respondent has been previously censured for requesting special consideration on behalf of defendants in other courts on four occasions. Matter of Bailey, 2 Commission Determinations 180 (May 20, 1980).

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

All concur.

Dated: August 5, 1985

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

RICHARD J. COTE,

a Justice of the Pamelia Town Court, Jefferson County.

Determination

APPEARANCES:

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

Honorable Richard J. Cote, pro se

The respondent, Richard J. Cote, a justice of the Pamelia Town Court, Jefferson County, was served with a Formal Written Complaint dated April 10, 1985, alleging certain administrative and financial depositing, reporting and remitting failures. Respondent filed an answer dated May 17, 1985.

By order dated May 22, 1985, the Commission designated John F. Luchsinger, Jr., Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 25, 1985, and the referee filed his report with the Commission on July 19, 1985.

By motion dated August 13, 1985, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent did not file any papers in response thereto and waived oral argument.

On September 12, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent became a justice of the Pamelia Town Court in January 1976. He notified the Chief Administrator of the Courts of his resignation on June 24, 1985.

2. Respondent is not an attorney. He is a former state trooper and works as a credit manager for a furniture store.

3. Respondent has attended three training sessions for non-lawyer judges offered by the Office of Court Administration.

4. Respondent's wife works as his court clerk. She is primarily responsible for maintaining court dockets.

As to Charge I of the Formal Written Complaint:

5. In June 1982, Timothy L. Thompson was ticketed for Passing A Stop Sign in the Town of Pamelia.

6. Mr. Thompson signed a plea of guilty on the back of the ticket and mailed the ticket and the conviction stub from his driver's license by registered mail to respondent on June 15, 1982.

7. A receipt indicating that respondent had received the documents on June 16, 1982, was returned to Mr. Thompson.

8. In July 1982, Mr. Thompson's wife, Tina, called respondent on behalf of her husband and inquired about disposition of the matter. Respondent promised to get to it as soon as possible.

9. In September 1982, Ms. Thompson called respondent and again inquired about disposition of the ticket. Respondent again promised to take care of the matter.

10. As of the hearing in this proceeding on June 25, 1985, respondent had not disposed of the Thompson case and was unable to locate any records in his court concerning it.

11. After having the matter brought to his attention by a Commission investigator, respondent notified the Jefferson County Sheriff's Department and the state police that he was unable to locate any records of the Thompson case.

As to Charges II through V of the Formal Written Complaint:

12. From January 1976 until the Formal Written Complaint was served on April 10, 1985, respondent failed to perform his administrative and adjudicative responsibilities in that he:

(a) Failed to schedule for trial 45 cases pending in his court in which the defendants had pled not guilty, as denominated in Schedule A of the Formal Written Complaint;

(b) failed to dispose of 187 cases in which the defendants had pled guilty, as denominated in Schedule C of the Formal Written Complaint;[1]

(c) failed to dispose of 356 cases in which the defendants had failed to appear or answer the charges against them, as denominated in Schedule D of the Formal Written Complaint;

(d) failed to maintain docket entries, case files or indices of cases for 637 cases pending in his court, as denominated in Schedules A, B, C and D of the Formal Written Complaint;

(e) failed to return driver's licenses to 14 defendants who had pled not guilty, as denominated in Schedule A of the Formal Written Complaint;[2]

(f) failed to report to the appropriate law enforcement agencies and the Department of Motor Vehicles the disposition of 217 cases and failed to notify the Department of Motor Vehicles that the defendants had not paid fines, as denominated in Schedules B and C of the Formal Written Complaint;

(g) failed to report to the Department of Motor Vehicles that 356 defendants had not appeared or answered traffic tickets, as denominated in Schedule D of the Formal Written Complaint;

(h) failed, as of October 4, 1984, to deposit in his official court account $1,395 in checks and money orders received between November 9, 1977, and August 20, 1984, in connection with 49 cases, as denominated in Schedule B of the Formal Written Complaint; and,

(i) failed, between December 11, 1977, and October 4, 1984, to report 49 cases and remit $1,395 to the State Comptroller, as denominated in Schedule B of the Formal Written Complaint.

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[1]The case of People v. Maurice Albert, which appears on page 2 of Schedule C, was withdrawn at the hearing.

[2]In the case of People v. Brent P. Riley, which appears on page 2 of Schedule A, the allegation that respondent failed to return the conviction stub portion of the defendant's license was withdrawn at the hearing.

13. Respondent was aware that he was required to notify law enforcement agencies and the Department of Motor Vehicles of the disposition of cases and that he was required to notify the Department of Motor Vehicles of the failure of defendants in traffic cases to pay fines.

14. Respondent was aware that he was required by law to deposit all monies received in his court within 72 hours of receipt.

15. Respondent offered no excuse for his failures other than that he "got behind" in his work.

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; Section 27 of the Town Law; Sections 514(3), 1803, 1805 and 1806 of the Vehicle and Traffic Law; Sections 105.1 and 105.3 of the Recordkeeping Requirements for Town and Village Courts, and Section 91.12 of the Regulations of the Commissioner of the Department of Motor Vehicles. Charges I through V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent has neglected hundreds of cases over a period of years and has mishandled thousands of dollars in public monies. He has no excuse for his misconduct. He was aware of the legal requirements concerning reporting and disposing of cases and the handling of court funds. He was trained and experienced in financial matters, and he had the assistance of a court clerk.

Such disregard of a judge's statutory responsibilities violates the public trust and warrants removal from office. Matter of Cooley v. State Commission on Judicial Conduct, 53 NY2d 64 (1981); Matter of Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981); Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976); Matter of New, 3 Commission Determinations 155 (Com. on Jud. Conduct, Dec. 8, 1982); Matter of Hutzky, 3 Commission Determinations 251 (Com. on Jud. Conduct, Nov. 4, 1983).

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

Mrs. Robb, Mr. Bower, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bromberg was not present.

Judge Ciparick was not a member of the Commission at the time the vote in this proceeding was taken.

This determination is rendered pursuant to Section 47 of the Judiciary Law in view of respondent's resignation from the bench.

Dated: October 21, 1985

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

RALPH DEL POZZO,

a Justice of the Germantown Town Court, Columbia County.

Determination

APPEARANCES:

Gerald Stern (Henry S. Stewart, Of Counsel) for the Commission

Honorable Ralph Del Pozzo, pro se

The respondent, Ralph Del Pozzo, a part-time justice of the Germantown Town Court, Columbia County, was served with a Formal Written Complaint dated January 25, 1984, alleging that he acted in cases in which the complainant was a client of his private business. Respondent filed an answer dated May 1, 1984.

By order dated June 6, 1984, the Commission designated Michael Whiteman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 11, 1984, and the referee filed his report with the Commission on October 18, 1984.

By motion dated November 16, 1984, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be admonished. Respondent did not file any papers in response thereto. On December 13, 1984, the Commission heard oral argument, at which respondent appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Germantown Town Court and has been since 1978.

2. On February 28, 1979, respondent was cautioned by this Commission not to allow his non-judicial relationships to influence his judicial conduct and not to lend the prestige of his office to advance private interests.

3. Since 1980, respondent has owned Ralph's Country Realty, a real estate agency in Germantown.

4. Hannelori Hinkein has worked for respondent at Ralph's Country Realty since October 1980. Rudolph James Skoda has worked for the firm since July 16, 1982.

5. In 1980 or 1981, Gordon Miller Zook listed with Ralph's Country Realty 5.26 acres of unimproved land that he owned across Route 9G from his home in Germantown.

6. Respondent was aware in 1980 or 1981 that Mr. Zook was trying to find a buyer for the land through respondent's agency.

7. On November 20, 1982, Mr. Zook had his former wife, Gloria Rae Zook, and his daughter, Sunshine, arrested for trespassing at his home across the road from the property listed with respondent's agency. Gloria Zook had been evicted from the home five days earlier.

8. Gloria and Sunshine Zook were arraigned after their arrest before respondent on charges of Criminal Trespass, Second Degree. Respondent committed the women to jail in lieu of $500 bail each. The cases were adjourned to December 8, 1982. Sunshine Zook was released on November 20, 1982, after bail was posted. Gloria Zook was released in her own recognizance three days later.

9. Between November 15, 1982, and December 3, 1982, Mr. Zook listed his home with Ralph's Country Realty. Ms. Hinkein took the listing and notified respondent of it.

10. On December 3, 1982, Mr. Skoda showed the Zook house to a prospective buyer on behalf of Ralph's Country Realty.

11. Gloria Zook came to the house while Mr. Skoda was showing it and challenged Mr. Skoda's authority to show the house for sale.

12. Mr. Zook was notified of his former wife's presence at the house.

13. Respondent was told of the confrontation between Mr. Skoda and Ms. Zook.

14. Mr. Zook signed a second complaint, dated December 4, 1982, alleging that his former wife trespassed at his home. Mr. Skoda signed a supporting deposition.

15. On December 4, 1982, respondent signed a warrant for Gloria Zook's arrest on the second charge based on the complaint of his client, Mr. Zook, and the deposition of his employee, Mr. Skoda.

16. On December 8, 1982, Sunshine Zook appeared before respondent in connection with the first incident. Respondent disposed of the matter through an adjournment in contemplation of dismissal on the condition that Ms. Zook not reenter the home for six months.

17. Gloria Zook also appeared before respondent on December 8, 1982. Respondent disqualified himself from the cases and transferred them to another justice of the Germantown Town Court. The charges were adjourned in contemplation of dismissal.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.2(c), 100.3(a)(1) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 2B, 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 arraigned Gloria and Sunshine Zook on the complaint of Gordon Zook nearly two years after he had listed for sale Mr. Zook's unimproved land. Thus, respondent and Mr. Zook had a business relationship at the time Mr. Zook's complaint came before him. Respondent's impartiality might reasonably have been questioned, and he should have disqualified or offered to disqualify himself. Section 100.3(c) of the Rules Governing Judicial Conduct.

Respondent acknowledges that he had been informed of the listing of Mr. Zook's land but claims that he was not conscious of it when he arraigned Gloria and Sunshine Zook. Nonetheless, by acting in a matter in which his client had a substantial interest, respondent created the appearance of partiality. Furthermore, he had a duty to inquire and determine whether he had a conflict between his private business activities and his role as a judge.

After Gloria Zook's eviction, Mr. Zook listed his house with respondent's agency, and respondent acknowledges that he was aware of the listing. Nonetheless, respondent signed a warrant for Ms. Zook's arrest based on the second complaint of his client, Mr. Zook, and stemming from an incident which occurred while respondent's agent, Mr. Skoda, was showing the house. By this time, respondent and his real estate agency had become players in the Zook dispute, and respondent should have been in no way involved as a judge. In addition to signing the warrant, respondent disposed of the case against Sunshine Zook after becoming intimately involved in the matter.

"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." Matter of Whalen, unreported (Com. on Jud. Conduct, Jan. 20, 1983) p. 9.

Respondent should have been especially careful to avoid any conflicts between his business and his judicial role in view of the Commission's previous caution concerning his business activities.

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

Mrs. Robb, Mr. Bromberg, Mr. Cleary, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bower dissents as to sanction only and votes that respondent be censured.

Judge Alexander, Mrs. DelBello and Mr. Kovner were not present.

Dated: January 25, 1985

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

RALPH DEL POZZO,

a Justice of the Germantown Town Court, Columbia County.

DISSENTING OPINION BY MR. BOWER

I dissent as to sanction only.

The referee before whom the matter was tried, rejected respondent's contention that on November 20, 1982, the respondent was not conscious of the business relationship with Gordon Zook when he arraigned Gloria and Sunshine Zook in his court.

More significantly, the respondent makes no bones about the fact that on December 3, 1982, he well knew that indeed, a business relationship existed between Gordon Zook and respondent's firm. Nonetheless, with awareness of that fact, respondent signed a warrant for Gloria Zook's arrest based on the complaint of his client and deposition of respondent's employee, Mr. Skoda. Astonishingly, a few days later respondent sat on the matter of Sunshine Zook, acted as a Judge and disposed of the matter through an A.C.D. on condition that she not re-enter the home which respondent's firm was trying to sell for six months.

Respondent's previous contact with this Commission resulted in a caution concerning the conflicts between his business activities and his duties as a Judge. That caution should have sensitized him to a high degree of awareness of his judicial duties vis-a-vis his business interests.

Upon the oral argument, respondent's defense to this charge was that he was without venal intention and that he habitually performs charitable acts that demonstrate his unselfish nature. I find these defenses scant mitigation for the obvious disrepute into which respondent brought his court. More than admonition is required. Respondent should have a clear expression of our disapproval. Accordingly, I vote to censure him.

Dated: January 25, 1985

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

STEWART DeVAUL,

a Justice of the Cicero Town Court, Onondaga County.

Determination

APPEARANCES:

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

Jacobs and Forward (By Bruce O. Jacobs) for Respondent

The respondent, Stewart DeVaul, a part-time justice of the Cicero Town Court, Onondaga County, was served with a Formal Written Complaint dated July 13, 1984, alleging that he allowed his law partner to appear in his court and that his law firm contributed to political campaigns in which respondent was not a candidate. Respondent filed an answer dated August 15, 1984.

On November 30, 1984, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement on December 13, 1984.

The administrator filed a memorandum with respect to sanction. Respondent neither filed a memorandum nor appeared for oral argument. On January 18, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

Preliminary Findings:

1. Respondent is a justice of the Cicero Town Court and was during the time herein noted.

2. From August 1980 through the present, respondent and Thomas W. Myers have been engaged in the private practice of law in the firm of DeVaul and Myers.

3. Respondent's interest in the partnership is 25 percent. Mr. Myers' interest in the partnership is 75 percent.

As to Charge I of the Formal Written Complaint:

4. On January 18, 1984, Mr. Myers represented the Town of Cicero in respondent's court before Justice Harvey Chase in the trial of David B. Kazel, who was charged with a town ordinance violation.

5. In June 1983, Mr. Myers represented the Town of Cicero in respondent's court before Judge Chase in a proceeding against Earl George, Jr., who was charged with a town ordinance violation.

6. In May 1981, Mr. Myers represented the Town of Cicero in respondent's court before Judge Chase in a proceeding against Stanley Pryzstuta, who was charged with a town ordinance violation.

7. In May 1982, Mr. Myers represented the Town of Cicero in respondent's court before Judge Chase in a town ordinance violation proceeding against Mr. Pryzstuta.

As to Charge II of the Formal Written Complaint:

8. On August 15, 1980, a check in the amount of $100, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the Cicero Republican Committee.

9. On April 7, 1981, a check in the amount of $100, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the Independent Citizens Committee.

10. On April 14, 1982, a check in the amount of $250, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the "Committee for Hogan, Kavanaugh and Bradley".

11. On October 13, 1982, a check in the amount of $100, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the Committee to Elect John M. Hall.

12. On July 27, 1983, a check in the amount of $200, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the "Committee for Hogan, Bradley and Kavanaugh".

13. On September 15, 1983, a check in the amount of $50, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the Committee to Re-Elect Frank Rego.

14. On September 30, 1983, a check in the amount of $50, signed by Mr. Myers, was drawn on the account of DeVaul and Myers and paid to the Committee for Frank Rose.

15. Each of the contributions was made to political campaigns in which respondent was not a candidate.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.5(f) and 100.7(b) of the Rules Governing Judicial Conduct and Canons 1, 2 and 7A(1)(c) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they allege that respondent allowed his law partner to appear in his court and made political contributions to campaigns in which he was not a candidate. Respondent's misconduct is established.

On four occasions, respondent's law partner appeared in respondent's court before another judge, in clear violation of Section 100.5(f) of the Rules Governing Judicial Conduct which provides, "No judge who is permitted to practice law shall permit his or her partners or associates to practice law in the court in which he or she is a judge." The onus was on respondent to ensure that his partner did not practice in his court. By failing to do so, respondent engaged in misconduct.

Respondent also violated Section 100.7(b) of the Rules which prohibits contributions by a judge to political campaigns in which he or she is not a candidate. Respondent's law firm, in which he has a one-quarter interest, made seven contributions to campaigns in which respondent was not a candidate.

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

Mrs. Robb, Mr. Bower, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Judge Alexander and Mr. Bromberg were not present.

Dated: March 22, 1985

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 M. DOOLITTLE,

a Judge of the District Court, Nassau County.

Determination

APPEARANCES:

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

Irving A. Cohn for Respondent

The respondent, Warren M. Doolittle, a judge of the District Court, Nassau County, was served with a Formal Written Complaint dated October 5, 1984, alleging that he made numerous improper comments to female attorneys. Respondent did not answer the Formal Written Complaint.

On December 12, 1984, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law, 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. The Commission approved the agreed statement on December 13, 1984. The administrator and respondent's counsel filed memoranda as to appropriate sanction. On January 18, 1985, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Between January 1, 1980, and June 1, 1984, in the course of his official duties but not within the hearing of the general public, respondent made numerous improper comments to female attorneys, referring to their appearance and physical attributes.

2. In some instances, respondent suggested that female attorneys could get whatever they were asking of the court because of their physical appearance. These comments were not intended to convey that respondent would actually consider any physical attributes of the attorneys as a factor in any judicial decisions, nor did the attorneys believe that the statements were so intended.

3. Most of the attorneys to whom respondent's remarks referred have indicated that they were not offended. Some have indicated that they were offended.

4. Respondent has acknowledged that the remarks were highly inappropriate and offensive to women in general.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(a)(3) of the Rules Governing Judicial Conduct; Canons 1, 2 and 3A(3) of the Code of Judicial Conduct; and Sections 700.5(a) and 700.5(e) of the Special Rules Concerning Court Decorum of the Appellate Division, Second Department. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

The cajoling of women about their appearance or their temperament has come to signify differential treatment on the basis of sex. A sensitized and enlightened society has come to realize that such treatment is irrational and unjust and has abandoned the teasing once tolerated and now considered demeaning and offensive. Comments such as those of respondent are no longer considered complimentary or amusing, especially in a professional setting.

Furthermore, respondent's statements that female attorneys could get everything they wanted were especially improper. Although they were not meant to be and were not taken literally, they conveyed the impression that respondent in some way treated female attorneys differently than male attorneys. A judge is obligated to be independent and impartial and must avoid appearances to the contrary.

Such comments by a judge, especially in the course of his official duties, lack the courtesy, dignity and respect he is expected to maintain at all times. It is important, however, to consider respondent's remarks in their proper context. They were not made before the public. They were uttered in informal meetings to women respondent had known and worked with for some time. They were not meant to offend or demean. There is no indication that respondent otherwise treated female attorneys in a different fashion than males.

The Commission notes that the many testimonials submitted on respondent's behalf indicate that he has a fine reputation as an able and efficient judge who is otherwise dignified and professional. Moreover, respondent has acknowledged misconduct and is now aware that such remarks are inappropriate and offensive to women in general.

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

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

Judge Shea dissents as to sanction only and votes that respondent be censured.

Mr. Bromberg and Mr. Sheehy were not present.

Dated: June 13, 1985

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 M. DOOLITTLE,

a Judge of the District Court, Nassau County.

CONCURRING OPINION
BY MRS. DELBELLO

I concur with the dissenter in the characterization of the misconduct. The kind of remarks made by respondent have no place in our society in any setting and especially in a courtroom.

Dated: June 13, 1985

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 M. DOOLITTLE,

a Judge of the District Court, Nassau County.

DISSENTING OPINION
BY JUDGE SHEA

I believe the majority underrates the seriousness of respondent's misconduct. Respondent's statements to women attorneys were not only discourteous, undignified, irrational, unjust and demeaning as pointed out by the majority. In addition, respondent's offensive remarks bring the judiciary into disrepute. Worse still, conduct such as respondent's has a deleterious effect on the administration of justice. Respondent's sexist and vulgar comments give the message that women attorneys need not be treated professionally, and the ability of those attorneys to serve their clients is thus compromised. A pattern of such behavior on the part of a judge is intolerable and, in my view, ordinarily should result in removal. Because there are mitigating factors, as noted by the majority, I vote for censure.

Dated: June 13, 1985

State of New York
Commission on Judicial Conduct

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

WALTER F. DUDZINSKI,

a Justice of the Macedon Town and Village Courts, Wayne County.

Determination

APPEARANCES:

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

Gilmore and Power (By Thomas J. Gilmore, Jr.)
for Respondent

The respondent, Walter F. Dudzinski, a part-time justice of the Macedon Town Court and Macedon Village Court, Wayne County, was served with a Formal Written Complaint dated May 1, 1984, alleging that he received unlawful gratuities in connection with his full-time employment. Respondent filed an answer dated May 31, 1984.

By order dated June 7, 1984, the Commission designated Peter N. Wells, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 30 and August 27, 1984, and the referee filed his report with the Commission on October 29, 1984.

By motion dated November 16, 1984, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on November 29, 1984. Oral argument was waived. On December 13, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Macedon Town Court and has been since January 1, 1980. He is also a justice of the Macedon Village Court and has been since April 1, 1982.

2. From April 1974 to February 15, 1984, respondent was also employed as sewage treatment operator for the Village of Macedon.

3. Until November 1980, respondent was solely responsible for ordering chemicals used at the sewage treatment plant. Respondent himself ordered and purchased the chemicals.

4. In 1978, respondent received a flyer which offered a free color television in exchange for the purchase of chemicals from the Car-Chem Chemical Co.

5. Respondent thought that the offer of a television to a municipal employee was "kind of strange."

6. Nonetheless, in April 1978, respondent ordered $1,146.20 in chemicals from the company.

7. After the chemicals were received and paid for, respondent received a portable color television.

8. Respondent testified that the television was kept in a closet at the sewage treatment plant for use by municipal employees and was destroyed in a flood at the plant. However, he acknowledged that he had never told any other village employees about the television. The assistant operator at the time testified that he was unaware of it and did not recall seeing it during the flood clean-up.

9. In December 1978, respondent placed a second order with Car-Chem for $1,166.88 in chemicals.

10. After the second order, respondent received a second television set at his home.

11. In July 1979, respondent ordered $1,202.36 in chemicals from Car-Chem.

12. Thereafter, respondent received at his home an AM/FM radio from Car-Chem. The radio was kept at respondent's home.

13. In November 1980, concerned about the high cost of operating the sewage treatment plant, the Macedon Village Board instituted a competitive bidding procedure which required awards by the village board to companies providing chemicals for the plant.

14. Thereafter, respondent made recommendations to the board as to which company should be awarded contracts for chemicals, and he conducted demonstrations before the board to indicate the efficacy of certain chemicals.

15. On February 11, 1981, on respondent's recommendation, the village board awarded the first competitively-bid contract to Car-Chem for $11,177.58.

16. Thereafter, the president of Car-Chem, Mickey Carson, took respondent and his wife to dinner and asked respondent to act as a "salesman" for the company.

17. Respondent agreed the following day and was given $1,500 on April 10, 1981, for the sales made to the Macedon plant.

18. In July 1981, the village purchased $9,487.50 in chemicals from Car-Chem.

19. By check dated September 10, 1981, respondent was paid $850 by Mr. Carson.

20. In December 1981, the village purchased another $9,487.50 in chemicals from Car-Chem.

21. By check dated January 5, 1982, respondent was paid $1,159.84 by Mr. Carson.

22. At respondent's request, all of the checks were drawn on an account of another company of Mr. Carson, National Utilities Supply Co., instead of Car-Chem. The checks were negotiated by respondent at a branch of his bank out of Macedon. The money was used for his personal benefit.

23. Respondent did not solicit business for Car-Chem from other treatment plant operators in the area. He testified that his only work as a salesman was to provide Mr. Carson with the names of other plant operators and that he talked informally about his experiences with Car-Chem products at meetings with other operators.

24. Respondent never informed any officials of the village of his receipt of the televisions, the radio and the checks from Mr. Carson or of his employment as a salesman for Car-Chem, as required by Section 803 of the General Municipal Law.

25. On February 6, 1984, respondent pled guilty in the Arcadia Town Court to Receiving Unlawful Gratuities, a Class A misdemeanor, in connection with his receipt of gifts and money from Car-Chem. He was given a $900 fine.

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.

Respondent accepted gifts and more than $3,500 over a period of nearly four years from a company with which he did business in his official capacity as a municipal sewage treatment plant operator.

> 'The awarding of gifts thus related to an employee's official acts is an evil in itself...because it tends, subtly or otherwise to bring about preferential treatment by Government officials or employees, consciously or unconsciously, for those who give gifts as distinguished from those who do not....The iniquity of the procuring of public officials, be it intentional or unintentional, is...fatally destructive to good government...'
>
> Irwin v. Board of Regents, 27 NY2d 292, 298 (1970), quoting United States v. Irwin, 354 F2d 192 (2d Circ. 1965).

Respondent's acceptance of gratuities constituted a violation of the Penal Law, which he acknowledged by his plea of guilty, and his failure to report to village officials his relationship with the chemical company was also a violation of law. From the outset, respondent was aware that the offer of gifts was "strange." His request that the checks from the chemical company come from a different firm with the same principal and his habit of depositing the checks out-of-town indicate that he was aware of the impropriety and was attempting to conceal their receipt.

The public can have no faith in a judicial officer who participates in criminal activity. "Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function." Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465, 469 (1980).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Judge Alexander, Mrs. DelBello and Mr. Kovner were not present.

Dated: January 24, 1985

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

WESLEY R. EDWARDS,

a Justice of the Stephentown Town Court, Rensselaer County.

Determination

APPEARANCES:

Gerald Stern (Henry S. Stewart, Of Counsel) for the Commission

Henry F. Zwack for Respondent

The respondent, Wesley R. Edwards, a justice of the Stephentown Town Court, Rensselaer County, was served with a Formal Written Complaint dated August 31, 1984, alleging that he sought special consideration in another court on behalf of his son. Respondent filed an answer dated October 5, 1984.

By order dated October 16, 1984, the Commission designated the Honorable James A. O'Connor as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 9, 1985, and the referee filed his report with the Commission on May 13, 1985.

By motion dated June 21, 1985, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on July 10, 1985.

On July 19, 1985, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Stephentown Town Court and has been since January 1964.

2. On June 2, 1980, respondent's son, Gregory A. Edwards, was ticketed for Speeding in the Town of Schuyler, Herkimer County.

3. On June 9, 1980, respondent called Justice Leon J. Cioch of the Schuyler Town Court, identified himself as a judge and said that he was calling on behalf of his son.

4. Respondent asked about the procedure required to resolve the case and told Judge Cioch that Gregory Edwards did not believe that he had been driving at the speed charged.

5. Judge Cioch suggested that Mr. Edwards plead not guilty and send him the ticket. Judge Cioch said that he would submit the matter to the District Attorney's Office for its recommendation.

6. After the telephone conversation, respondent's son pled not guilty to the Speeding charge on the back of the traffic ticket.

7. Respondent sent the ticket to Judge Cioch with a covering letter dated June 9, 1980.

8. In the letter, respondent typed:

> As per your recommendation, Gregory has entered a plea of 'Not Guilty' to the charge of speeding, violation of section 1180-B of the V&T Law, pursuant to our telephone conversation this date.
>
> Please be advised of the following, Gregory has no prior convictions and his probation period ended on March 18, 1980.
>
> Any assistance you may render will be greatly appreciated by the undersigned.

* * *

9. Respondent then listed his name, judicial title and address and under a space for his signature typed his name and judicial title.

10. Judge Cioch testified at the hearing in this matter that he never received respondent's letter and the defendant's plea.

11. Judge Cioch testified that that on June 16, 1980, he received a telephone call from a person who identified himself as Gregory Edwards and entered a plea of guilty to the Speeding charge.

12. On December 3, 1981, Judge Cioch mailed Mr. Edwards a fine notice.

13. Respondent testified at the hearing that his son never pled guilty by telephone and never received the fine notice.

14. On March 29, 1982, Judge Cioch ordered Mr. Edwards' license suspended for failure to pay the fine.

15. In February 1983, respondent and his son received notice of the suspension order from the Department of Motor Vehicles.

16. Respondent then called Judge Cioch, identified himself as a judge and said that he was calling on behalf of his son.

17. Respondent told Judge Cioch that he was surprised to receive the suspension notice because his son had pled not guilty and had never received a trial date.

18. Respondent asked Judge Cioch to lift the suspension.

19. Judge Cioch told respondent to send the suspension notice to him so that it could be lifted.

20. Respondent thereafter sent the suspension notice to Judge Cioch with a letter dated February 26, 1983, on judicial stationery.

21. In the letter, respondent typed:

> I believe that seeing a plea of 'Not Guilty' was entered on June 9, 1980 and forwarded to your court the same date and due to the time which has elapsed since then (2 years and 8 months) that the information should be dismissed due to the fact that a trial date was not set and the defendant notified of same.

* * *

22. Respondent signed the letter and typed his name, judicial title and address below his signature.

23. Respondent also enclosed a copy of the letter of June 9, 1980, to Judge Cioch.

24. Judge Cioch received the letter and enclosures and ordered the suspension lifted.

25. Judge Cioch then referred the matter to Assistant District Attorney Stephen Getman to allow him to answer respondent's claim that the case should be dismissed.

26. Mr. Getman subsequently recommended that the case be dismissed.

27. Judge Cioch did not dismiss the case because he did not want to create the appearance that he was "doing a favor" or was "being pressured into a dismissal." As of the hearing on January 9, 1985, the matter was still pending in Judge Cioch's court.

28. At the time of each communication with Judge Cioch, respondent was aware of the Commission's decisions and report on the subject of ticket-fixing and knew that it was improper for one judge to request special consideration from another concerning a pending matter.

29. Respondent maintained that the purpose of his communications to Judge Cioch was to "expedite" his son's case.

30. Upon oral argument, respondent acknowledged, for the first time, that his communications to Judge Cioch resulted from his "paternal instincts" and were improper.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2 of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

On four occasions, respondent intervened in a case in another court on behalf of his son. Each time, respondent discussed ex parte the merits of the case and invoked the prestige of his judicial office.

We reject respondent's contention that because he did not specifically ask for a favor, he did not seek special consideration. "...[A]ny communication from a Judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office. ...Judges must assiduously avoid those contacts which might create even the appearance of impropriety." Matter of Lonschein v. State Commission on Judicial Conduct, 50 NY2d 569, 572 (1980). Respondent identified himself as a judge in two telephone conversations and mentioned his judicial office twice in each of two letters to another judge. The obvious purpose was to seek some favorable action for his son. See Matter of DeLuca, unreported (Com. on Jud. Conduct, July 2, 1984).

Respondent was aware at the time of his son's case that it was wrong to seek special consideration and should have known that his communications to Judge Cioch were improper. Yet he still fails to appreciate his misconduct, demonstrating insensitivity to the ethical obligations of judicial office. Matter of Shilling v. State Commission on Judicial Conduct, 51 NY2d 397, 404 (1980); Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349, 356 (1984).

As to appropriate sanction, the law is now clear. In a case involving similar facts, the Court of Appeals recently declared, "Ticket-fixing is misconduct of such gravity as to warrant removal, even if this matter were [the judge's] only transgression." Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299, 486 NYS2d 722, 723 (1985).

Respondent's insistence throughout this proceeding that his communications to his fellow judge were merely for the purpose of expediting his son's case shows a regrettable lack of candor.

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mrs. DelBello, Mr. Kovner and Judge Ostrowski concur.

Mr. Cleary, Judge Shea and Mr. Sheehy dissent as to sanction only and vote that respondent be censured.

Judge Rubin was not present.

Dated: September 18, 1985

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

WESLEY R. EDWARDS,

a Justice of the Stephentown Town Court, Rensselaer County.

DISSENTING OPINION BY MR. CLEARY IN WHICH JUDGE SHEA AND MR. SHEEHY JOIN

In his 21 years as town justice, respondent has never before been the subject of Commission discipline. He cooperated fully during the investigation of this matter and has been forthright in admitting the impropriety of his conduct.

I cannot agree that the sanction of removal is necessary. Removal is an extreme sanction which should be applied only in the event of truly egregious circumstances. Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74, 83. While the Court of Appeals held in Matter of Reedy v. State Commission on Judicial Conduct, 64 NY2d 299, 302, that a single incident of ticket-fixing warrants removal, in Reedy there had been a prior censure. The Court of Appeals has also ruled in Matter of Cunningham v. State Commission on Judicial Conduct, 57 NY2d 270, 275, 456 NYS2d 36, 38, that removal should not be ordered for conduct that amounts simply to poor judgment or even extremely poor judgment. Such is the case here, where respondent's judgment was clouded by his son's involvement. In light of respondent's 21 unblemished years as a town justice, this isolated incidence of extremely poor judgment stands out as an aberration. I feel the appropriate sanction is censure.

Dated: September 18, 1985

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

LESTER EVENS,

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

Determination

APPEARANCES:

Gerald Stern, (Karen Kozac and Jean M. Savanyu, Of Counsel) for the Commission

Beldock Levine & Hoffman (By Myron Beldock) for Respondent

The respondent, Lester Evens, a judge of the New York City Civil Court, New York County, was served with a Formal Written Complaint dated August 30, 1984, alleging four instances of undignified behavior. Respondent filed an answer dated October 29, 1984.

By order dated November 20, 1984, the Commission designated Haliburton Fales, II, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on March 12, 13 and 14, 1985, and the referee filed his report with the Commission on May 13, 1985.

By motion dated May 24, 1985, the administrator of the Commission moved to disaffirm the referee's report, to adopt additional findings and conclusions and for a finding that respondent be censured. Respondent opposed the motion on June 12, 1985, and moved to confirm the referee's report and dismiss the Formal Written Complaint.

On June 20, 1985, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a judge of the New York City Civil Court and has been since 1978.

2. On February 27, 1984, respondent was sitting by designation in the New York City Criminal Court.

3. Beth Reilly, a defendant with numerous convictions for prostitution and loitering for the purpose of prostitution, appeared in respondent's court on two outstanding bench warrants.

4. Respondent re-sentenced Ms. Reilly to time served on one charge and ordered her to pay a $40 mandatory surcharge owed in connection with the second charge.

5. Ms. Reilly indicated through counsel that a friend would come to court and pay the $40. Respondent ordered Ms. Reilly to remain in the courtroom until the friend arrived and the fine was paid.

6. Thereafter, respondent saw Ms. Reilly sleeping in the courtroom and ordered a court officer to bring her to the bench to sit beside respondent.

7. Ms. Reilly was placed in a chair to the left and slightly behind respondent's chair.

8. Ms. Reilly remained on the bench until the court was recessed for lunch. After lunch, respondent ordered her returned to her chair beside him for the afternoon session. She was seated on the bench for at least three hours.

9. Respondent's orders to have Ms. Reilly seated at the bench drew laughter and snickers from court personnel.

10. While Ms. Reilly was seated beside respondent, he conducted other court business as usual. At one point during another case, respondent turned to Ms. Reilly and asked whether she believed what another defendant had said.

11. Respondent ignored the concerns expressed by court officers that Ms. Reilly's presence on the bench posed security problems.

12. Respondent eventually re-sentenced Ms. Reilly on the second charge to "time served" on the bench with him and waived the $40 mandatory surcharge.

13. Respondent considers placing Ms. Reilly on the bench "very appropriate," but would not do so again because of the consequent criticism from court personnel and press coverage of the incident.

As to Charge II of the Formal Written Complaint:

14. On January 5, 1984, respondent was sitting by designation in the New York City Criminal Court.

15. Stanley Green, a criminal trial lawyer, appeared in respondent's court with a client.

16. Mr. Green testified at the hearing before the Commission that he had engaged quietly in a conversation with a court officer concerning the court calendar when respondent loudly and angrily told him to sit down, then asked Mr. Green's name and how long he had been practicing law and demanded that he face the audience and apologize for his conduct.

17. Respondent testified that Mr. Green had ignored several requests by a court officer to be seated. Respondent acknowledged that he asked Mr. Green's name and how long he had practiced law and asserted that Mr. Green became argumentative. Respondent testified that he then directed Mr. Green to face the audience and apologize.

18. Mr. Green was embarrassed and shaken and faced the audience and apologized as directed.

As to Charge III of the Formal Written Complaint:

19. On January 4, 1984, respondent presided over People v. Joseph Pollock in the New York City Criminal Court.

20. Debra Porder represented the defendant.

21. Respondent directed Ms. Porder to produce her client and ordered the case held for second call.

22. Ms. Porder attempted to address respondent, and the following colloquy took place:

THE COURT: Madam, I consider it serious. This is--don't turn your back on me when I'm--

COUNSELLOR: I'm going to get my client.

THE COURT: But allow me to finish. There's something called common courtesy. I hope to extend it to you. This is a criminal court and if you want to have a perception of being a gangland lawyer, a mouth-piece for the

mob, then you come in and act that way. But I demand, I demand that you conduct yourself ethically and with skill, and I will not have defendants not appear. Do you understand? Go get your client.

COUNSELLOR: Your Honor, I meant no disrespect.

THE COURT: Then I accept your apology. I suggest, in the future, in your anxiety, that you still wait until someone is done speaking. Thank you very much.

* * *

As to Charge IV of the Formal Written Complaint:

23. On January 4, 1984, Brad Friedman appeared before respondent on a charge of Drinking an Alcoholic Beverage in Public.

24. Mr. Friedman, a 23-year-old advertising agency employee, pled guilty to carrying beer on the street in an open container.

25. Respondent then stated:

> ...That particular beer has just cost you twenty-six dollars and twenty cents. And let me tell you something. Every time you do it, for every one of those six beers in that six-pack that you're going to do in the future, and clearly you are, I wish I could be their big brother that I could be there imposing twenty-six dollars and twenty cents on you. You know why? 'Cause you're a damn fool. You deserve to pay twenty-six dollars each time you do this big macho beer drinking thing. Go over and pay your fine. If you don't pay it you spend two lovely evenings in Rikers Island. You think it's funny, sir? I mean they'd love a juicy little white boy like you. Go over and pay your fine. Twenty five dollars.

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)(2) and 100.3(a)(3) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(2) and 3A(3) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established. Respondent's motion is denied.

The established facts indicate a pattern of misconduct in which respondent overreacted to what he perceived as displays of disrespect for the court. His responses were beyond the scope of his judicial authority and lacking in the dignity and courtesy expected of every judge.

Whether or not respondent correctly perceived that the lawyers and litigants before him were disrespectful should not be at issue. The controlling factor is that in each instance respondent's conduct, whatever may have provoked it, was inappropriate, unprofessional and intemperate.

Respondent's decision to place a convicted prostitute on the bench with him impaired, rather than enhanced, respect for the court. The judge's elevated station in the courtroom is symbolic of authority and honor. Respondent demeaned the court by sharing his post with a defendant, particularly one who, by respondent's own account, had already demonstrated disrespect for the court. Respondent should have been aware of this when his direction to seat her at the bench drew laughter in the courtroom. Instead, respondent still sees it as an appropriate act, never to be repeated only because of the reaction it drew.

Respondent further encouraged disrespect for the court by making an aside to the defendant concerning another case that came before him while she was on the bench.

Respondent's humiliation of attorneys Stanley Green and Debra Porder constituted an abuse of his power to maintain order and decorum in the courtroom. Whatever the situation, it was unnecessary to require Mr. Green to face the audience and apologize and to intimate that Ms. Porder was unethical and a "mouth-piece for the mob" because she turned around in the courtroom. Unfortunately, respondent fails to perceive the impropriety of his conduct.

It was unjustified and inexcusable for respondent to mention time in jail and graphically depict with racial overtones the brutal treatment that might be received there by a defendant who had pled guilty to a minor violation. Respondent was without basis in concluding that defendant Brad Friedman would engage in similar conduct in the future and in suggesting that he would not pay his fine.

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

Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Judge Ostrowski and Mr. Sheehy concur, except that Mr. Cleary dissents as to Charges II and III only and votes that the charges be dismissed.

Mrs. Robb dissents as to Charges I and II and votes that the charges be dismissed and dissents as to sanction and votes that respondent be admonished.

Mr. Kovner dissents as to Charges II and III and votes that the charges be dismissed and dissents as to sanction and votes that respondent be admonished.

Judge Shea dissents as to Charges I and III and votes that the charges be dismissed and dissents as to sanction and votes that respondent be admonished.

Judge Rubin did not participate.

Dated: September 18, 1985

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

LESTER EVENS,

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

DISSENTING OPINION BY MR. KOVNER

The remarks which form the basis of Charges II and III do not constitute judicial misconduct warranting public discipline.

The evidence regarding the colloquy with Ms. Porder establishes that she turned her back on the Court while respondent was addressing her. Respondent's version of the events was corroborated by two impartial witnesses and Ms. Porder neither complained nor testified at the hearing. Most significantly, Ms. Porder apologized and respondent promptly accepted her apology. The language of the Court, while far from ideal, did not constitute misconduct.

The criticism of Mr. Green was more severe and respondent's direction that Mr. Green turn to apologize to those in Court was not appropriate. Nonetheless, such isolated remarks in a busy overcrowded part do not warrant public discipline. As to these exchanges with counsel, I believe the majority gave insufficient weight to the findings of fact by the distinguished Referee, who noted

> My very strong impression, after spending three full days observing the Judge and hearing him testify for several hours on direct and cross, is that he is a compulsively honest witness with a meticulous regard for facts.

I concur as to Counts I and IV and believe admonition to be the appropriate sanction.

Dated: September 18, 1985

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

LESTER EVENS,

DISSENTING OPINION BY JUDGE SHEA

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

The allegations of Charge I, although proven, do not constitute misconduct. The placing of Ms. Reilly on the bench beside him by respondent is an act within a judge's discretion. Although reasonable people may reach differing conclusions as to its appropriateness, I do not believe respondent's action encouraged disrespect for the court.

Nor was there misconduct or an abuse of power in respondent's statements to Debra Porder. It is not the function of this Commission to substitute its judgment for the words of a judge uttered in a busy courtroom. While judges must strive to be courteous, not every departure from the ideal is misconduct. I concur with the views expressed with regard to Charge III by the co-dissenter.

I agree with the majority that Charges II and IV were sustained; respondent's conduct was intemperate and his statements humiliated an attorney in one case and a defendant in the other.

The appropriate sanction is admonition.

Dated: September 18, 1985

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 JUTKOFSKY, JR.,

a Justice of the Taghkanic Town Court, Columbia County.

Determination

APPEARANCES:

Gerald Stern (Stephen F. Downs and Cathleen S. Cenci, Of Counsel) for the Commission

Cade & Saunders, P.C. (By William J. Cade and James T. Curry) for Respondent

The respondent, Joseph Jutkofsky, Jr., a justice of the Taghkanic Town Court, Columbia County, was served with a Formal Written Complaint dated April 4, 1985, alleging that he engaged in a course of conduct prejudicial to the administration of justice. Respondent filed an answer dated May 29, 1985.

By order dated April 30, 1985, the Commission designated Michael M. Kirsch, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 19, 20 and 21, July 22 and 23, August 19 and 20 and September 5 and 6, 1985, and the referee filed his report with the Commission on November 4, 1985.

By motion dated November 15, 1985, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent did not file any papers in response thereto and waived oral argument.

On December 12, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent is a part-time justice of the Taghkanic Town Court and has been since 1977.

2. Respondent is not a lawyer. He is a crop farmer.

As to Paragraph 4(a) of Charge I of the Formal Written Complaint:

3. On April 28, 1983, and May 12, 1983, respondent committed Jeffrey B. Whiteing to jail for a total of 28 days awaiting trial on a charge of Pedestrian On Parkway, a traffic infraction.

4. The maximum period Mr. Whiteing could lawfully have been incarcerated awaiting trial was five days, in accordance with Section 30.30(2)(d) of the Criminal Procedure Law.

5. The maximum lawful sentence of imprisonment that Mr. Whiteing could have received upon conviction was 15 days, in accordance with 17 NYCRR 184.2 and Section 1800(b) of the Vehicle and Traffic Law.

6. On May 5, 1983, respondent committed Aldo Maestri and Gloria Zook to jail for 13 days awaiting trial on charges of Harassment, a violation. Respondent knew that the defendants had already been in jail for three days pursuant to another judge's commitment.

7. The maximum period Mr. Maestri and Ms. Zook could lawfully have been incarcerated awaiting trial was five days, in accordance with Section 30.30(2)(d) of the Criminal Procedure Law.

8. The maximum sentence Mr. Maestri and Ms. Zook could have lawfully received upon conviction was 15 days, in accordance with Section 70.15(4) of the Penal Law.

As to Paragraph 4(b) of Charge I of the Formal Written Complaint:

9. On March 20, 1984, respondent committed Barbara Moore Dearing to jail without bail, purportedly for the purpose of a psychiatric examination, on a charge of Torturing Animals.

10. On September 22, 1983, respondent committed James W. Barbour to jail without bail, purportedly for a psychiatric examination, on a charge of Resisting Arrest.

11. On October 18, 1981, respondent committed Wyman F. Heath, IV, to jail without bail, purportedly for the purpose of a psychiatric examination, on a charge of Assault.

12. Respondent never ordered examinations of Ms. Dearing, Mr. Barbour and Mr. Heath, as required by Sections 730.10 and 730.30 of the Criminal Procedure Law.

As to Paragraph 4(c) of Charge I of the Formal Written Complaint:

13. In the following cases, respondent unlawfully sentenced defendants to jail in lieu of fine for terms longer than the maximum, in violation of Section 420.10(3) of the Criminal Procedure Law:

Defendant	Date Committed
Gerard D. Altman	7/12/81
George W. Anast	10/24/82
Nicola J. Basile	10/22/83
Douglas W. Blume	6/30/83
Christopher Carlotta	4/24/83
Alan R. Degling	9/22/83
Donna Diaz	4/17/82
Paul H. Dreesen	9/02/83
Jose E. Feliciano	9/02/83
Morgan J. Frazier	3/24/84
Rino Giuliani, Jr.	8/14/83
Kurt J. Hansen	8/14/83
Joseph C. Haviland	10/30/84
Harvey G. Hveem	9/18/82
John J. Innominato, III	8/14/83
Philip J. Kania, Jr.	5/02/81
Timothy Koppas	7/12/81
Vincent J. Leggio, Jr.	7/25/82
Donald S. Lovell	10/30/84
Arthur M. Lull	10/31/82
John McCormack	7/12/81
Joseph W. Merola	5/14/83
Joseph J. Muscato	7/15/82
Michael R. O'Connor	1/09/82
Robert A. Pagniello	8/14/83
Kenneth C. Peterson	8/07/83
Lawrence T. Sherrer	11/07/82
Oliver W. Smith, Jr.	10/02/81
Richard B. Smith, III	8/05/82
Thomas N. Toland	12/16/82
Lawrence E. Turner	9/18/82
Otto J. Vnek	1/14/83

As to Paragraph 4(d) of Charge I of the Formal Written Complaint:

14. On October 30, 1984, respondent fined Joseph C. Haviland and Donald S. Lovell $250 each on charges of Discharging A Firearm Across A Public Highway, notwithstanding that the maximum fine is $200, as set forth in Section 71-0921(3) of the Environmental Conservation Law.

15. On January 9, 1982, respondent fined Michael R. O'Connor $200 on a charge of Unlawful Possession of Marijuana, the defendant's first such offense, notwithstanding that the maximum fine for a first offense is $100, as set forth in Section 221.05 of the Penal Law.

16. On December 17, 1982, respondent fined Kenneth E. Warner $200 on a charge of Driving Without a License, the defendant's first such offense, notwithstanding that the maximum fine for a first offense is $50, as set forth in Section 1800(b) of the Vehicle and Traffic Law.

17. Before imposing the fine, respondent had told Mr. Warner's attorney that he intended to fine the defendant "double the maximum."

18. The attorney, Andrea Moran, prepared a memorandum of law in which she argued that the maximum fine for the offense was $50. She also argued orally before respondent on the day of sentencing that the maximum fine was $50.

As to Paragraph 4(e) of Charge I of the Formal Written Complaint:

19. Respondent accepted guilty pleas from unrepresented, intoxicated defendants Jacqueline P. Kobler on June 26, 1983, Edwin R. Thompson on March 7, 1981, and Roderick J. Niesen, Jr., on March 7, 1981, notwithstanding that respondent knew that the proper practice is to take no plea and re-arraign intoxicated defendants at a later time.

As to Paragraph 4(f) of Charge I of the Formal Written Complaint:

20. Respondent failed to file returns, as required by Section 460.10(3)(d) of the Criminal Procedure Law, to affidavits of errors served on him in connection with appeals in People v. Joseph A. Bailey, People v. Albert Fair, People v. Joseph R. Guenette, People v. Gerald R. Moore, People v. Yvette C. Neier, People v. Ethel R. Silverberg and People v. Kenneth E. Warner.

21. In People v. Adamo DeBartolo, the defendant filed a notice of appeal and an affidavit of errors on December 1, 1981. Respondent filed a return 10 months later, on September 27, 1982, notwithstanding that Section 460.10(3)(d) of the Criminal Procedure Law requires that he do so within 10 days, and only after the defendant had moved to compel a return and to

reverse respondent's decision on the ground that he had failed to file a return.

22. Respondent knew or should have known how to file a return and that the appeals could not proceed without his returns.

As to Paragraph 4(g) of Charge I of the Formal Written Complaint:

23. On August 14, 1983, respondent arraigned Rino Giuliani, Jr., on charges of Unlawfully Dealing With Fireworks and Criminal Mischief, Fourth Degree, accepted guilty pleas to both charges and committed the defendant to jail for failure to pay fines totalling $350. Mr. Guiliani was 16 years old, had no prior criminal record and was not represented by counsel.

24. On October 11, 1981, respondent arraigned Keith T. Pritchett on charges of Possession of a Hypodermic Needle and Open Container, accepted guilty pleas to both charges and fined the defendant a total of $150. Mr. Pritchett was 18 years old at the time, had no prior criminal record and was not represented by counsel.

25. On June 27, 1981, respondent arraigned Larry L. Woods on charges of Obstructing Governmental Administration and Harassment, accepted guilty pleas to both charges and sentenced the defendant to 30 days in jail. Mr. Woods was 18 years old at the time, had no prior criminal record and was not represented by counsel.

26. Respondent did not adjudicate Mr. Giuliani, Mr. Pritchett and Mr. Woods as youthful offenders, notwithstanding that he was required to do so because of their ages and clean records, in accordance with Sections 720.10 and 720.20(1)(b) of the Criminal Procedure Law.

As to Paragraph 4(h) of Charge I of the Formal Written Complaint:

27. After conducting arraignments in the cases of Joseph A. Bailey on October 18, 1980, Sandra Dianda on May 29, 1983, and Harry A. Payton on October 11, 1981, respondent failed to transfer case records to the courts with trial jurisdiction as required by Section 170.15(1) of the Criminal Procedure Law, notwithstanding that he did not have jurisdiction to dispose of the cases.

28. On April 21, 1983, respondent arraigned James W. Barbour on charges lodged in the Town of Clermont, Columbia County. Respondent twice adjourned the case to his own court and did not transfer it to the Clermont Town Court until June 2, 1983, notwithstanding that respondent had no jurisdiction to arraign the defendant or dispose of the matter.

29. On September 20, 1980, respondent arraigned Ronald Hines on charges lodged in the Village of Philmont. Respondent did not transfer the case to the Philmont Village Court until March 1981, notwithstanding that he did not have jurisdiction to dispose of it.

30. On March 7, 1981, respondent arraigned Roderick J. Niesen, Jr., on charges lodged in the Village of Philmont. Respondent did not transfer the case to the Philmont Village Court until July 1981, notwithstanding that he did not have jurisdiction to dispose of it.

As to Paragraph 4(i) of Charge I of the Formal Written Complaint:

31. At their initial arraignments, respondent induced guilty pleas and unlawfully sentenced the following unrepresented defendants to periods of incarceration, in violation of Section 170.10 of the Criminal Procedure Law, the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 6, of the New York State Constitution:

Defendant	Date
Gerard D. Altman	7/12/81
George W. Anast	10/24/82
Donna Diaz	4/17/82
Paul H. Dreesen	9/02/83
Mitchell J. Edley	10/18/83
Jose E. Feliciano	9/02/83
Morgan J. Frazier	3/24/84
Mark P. Frey	4/02/82
Andrew M. Gilman	1/08/82
Rino Giuliani, Jr.	8/14/83
Joseph M. Guarino	9/25/83
John J. Guzinski	2/14/82
Kurt J. Hansen	8/14/83
Joseph C. Haviland	10/30/84
William E. Hester	5/01/83
Harvey G. Hveem	9/18/82
John J. Innominato, III	8/14/83
Philip J. Kania, Jr.	5/02/81
Lawrence R. Kaufman	5/04/84
Brian G. King	8/27/83
Jacqueline P. Kobler	6/26/83
Timothy Koppas	7/12/81
Vincent J. Leggio, Jr.	7/25/82
James J. Leone	5/31/81
Donald S. Lovell	10/30/84
Arthur M. Lull	10/31/82
John McCormack	7/12/81
Robert F. McGuiness, Jr.	2/14/82

Robert T. McKee	5/31/81
Kenneth E. Manosh	10/18/83
Joseph J. Muscato	7/15/82
Peter J. Northrup	10/05/81
Michael R. O'Connor	1/09/82
Robert A. Pagniello	8/14/83
Catherine M. Reilly	9/04/83
Robert W. Robinson	11/11/82
Lawrence T. Sherrer	11/07/82
Jerry Shook	10/02/83
Oliver W. Smith, Jr.	10/02/81
Otto J. Vnek	1/14/83
Jeri Whitaker	8/20/83
Sandra L. Williams	7/03/81
James L. Wolcott	2/25/83
Larry L. Woods	6/27/81

As to Paragraph 4(j) of Charge I of the Formal Written Complaint:

32. On February 25, 1983, respondent sentenced James L. Wolcott to three consecutive 30-day sentences and three consecutive 90-day sentences for failure to pay fines, without ordering or reviewing a presentence report as required for jail terms in excess of 90 days by Section 390.20(2)(b) of the Criminal Procedure Law.

33. On October 28, 1982, respondent sentenced Kenneth Thomas to six months in jail, without ordering or reviewing a presentence report as required by law.

As to Paragraph 4(k) of Charge I of the Formal Written Complaint:

34. On April 24, 1983, respondent issued warrants for the arrest of Aldo Maestri and Gloria Zook, notwithstanding that he was without jurisdiction to do so under Section 120.30(2) of the Criminal Procedure Law, in that they were charged with offenses that occurred in the Town of Germantown, which does not adjoin the Town of Taghkanic.

35. On December 10, 1981, and December 29, 1981, respondent issued warrants for the arrest of James R. Atkinson and on December 11, 1981, and January 15, 1982, respondent arraigned Mr. Atkinson, notwithstanding that he was without jurisdiction to issue warrants under Section 120.30(2) of the Criminal Procedure Law or to arraign the defendant under Section 140.20(1)(a) of the Criminal Procedure Law, in that the offenses charged occurred in the non-adjoining City of Hudson.

36. Respondent arraigned the following defendants, notwithstanding that he was without jurisdiction to do so in that the offenses charged occurred in non-adjoining municipalities:

Defendant	Date
Joseph A. Bailey	10/18/80
Barry Benghiat	11/20/82
Sandra Dianda	5/29/83
Morgan J. Frazier	3/24/84
Wyman F. Heath, IV	10/18/81
Lawrence R. Kaufman	5/04/84
Robert W. Robinson	11/11/82

37. Respondent issued arrest warrants and arraigned Gerald R. Moore on April 16, 1983, and Sandra L. Williams on July 3, 1981, notwithstanding that he was without jurisdiction to do so in that the offenses charged occurred in the non-adjoining Town of Greenport.

As to Paragraph 6(a) of Charge II of the Formal Written Complaint:

38. Respondent failed to maintain complete, accurate and suitable dockets and records of the following criminal cases:

Defendant	Arrest Date
Joseph A. Bailey	10/18/80
Adamo De Bartolo	5/10/81
Louie C. Grzyb	10/29/82
John J. Guzinski	2/14/82
Lawrence J. Kovarovic	9/06/82
Ralph E. Mazal	12/20/81
Roderick J. Niesen, Jr.	3/07/81
Peter J. Northrup	3/28/81
Miguel Pumarejo	10/23/82
William B. Scraper	1/01/83
Jerry Shook	10/02/83
Scott B. Singletary	10/29/82
Sebastiano Verrelli	11/25/82
Jeffrey B. Whiteing	4/28/83

As to Paragraph 6(b) of Charge II of the Formal Written Complaint:

39. Respondent failed to remit funds received in connection with the following cases to the Department of Audit and Control for more than six months from the date of receipt:

Defendant	Date Received	Date Remitted
Howard Britton	11/13/82	7/10/84
Adamo De Bartolo	11/05/82	7/10/84
Michael J. Dirkes	10/31/82	7/10/84
Geoffrey Harrington	11/27/82	7/10/84
Marianne Holling	7/19/81	8/06/82
Martin Keaney	11/04/82	7/10/84
Mark A. Kosta	7/12/81	7/10/84
Lawrence J. Kovarovic	2/15/83	--
Ralph E. Mazal	11/04/81	--
Stephen Mrozko	11/11/82	7/10/84
Fridoon M. Shirf	9/06/83	7/10/84
Sebastiano Verrelli	11/29/82	7/10/84

40. As a result, respondent accumulated a surplus of $4,000 in his official court account which was not promptly remitted to the Department of Audit and Control.

As to Paragraph 6(c) of Charge II of the Formal Written Complaint:

41. Since 1977, respondent has failed to properly record the receipt of bail in his cashbook.

As to Paragraph 6(d) of Charge II of the Formal Written Complaint:

42. Since 1977, respondent has failed to reconcile his official bank account or to account for liabilities on a monthly basis.

As to Paragraph 6(e) of Charge II of the Formal Written Complaint:

43. Respondent failed to respond to letters from attorneys, defendants and public officials requesting court action in People v. Adamo De Bartolo, People v. Sandra Dianda, People v. Lawrence J. Kovarovic, People v. Ethel R. Silverberg and People v. Kenneth E. Warner.

As to Paragraph 6(f) of Charge II of the Formal Written Complaint:

44. Respondent failed to properly supervise his court clerks in connection with People v. Albert Fair, People v. Lawrence J. Kovarovic, People v. Sandra Dianda and People v. Joseph A. Bailey.

As to Charge III of the Formal Written Complaint:

45. On April 28, 1983, Jeffrey B. Whiteing was charged with Pedestrian On Parkway, a traffic infraction, requested counsel, pled not guilty, and was committed by respondent to jail for two weeks in lieu of $150 bail, although respondent knew that the defendant was financially unable to post bail.

46. On May 12, 1983, the defendant was brought before respondent, again pled not guilty, and was recommitted to jail by respondent for another two weeks, without a trial date ever having been set by respondent.

47. The defendant was not released by respondent until May 26, 1983, having spent 28 days in jail. The maximum sentence of imprisonment the defendant could have lawfully received on this charge had he been convicted was 15 days, in accordance with 17 NYCRR 184.2(b) and Section 1800 of the Vehicle and Traffic Law. Also, pursuant to Section 30.30(2)(d) of the Criminal Procedure Law, the defendant could properly be held awaiting trial for only five days.

48. Respondent recorded in his docket that the charge against the defendant had been dismissed in the interest of justice on April 28, 1983, and reported to the Department of Audit and Control that the defendant had served 30 days in jail.

49. Respondent testified before the Commission that he unlawfully committed Mr. Whiteing to jail because he was penniless and wearing only a shirt and respondent wanted to protect him from "the cold winter."

50. The weather report for the day of Mr. Whiteing's arrest shows that the temperature ranged from 43 to 85 degrees and there was no rain, and the jail inventory of the defendant's property showed that he was carrying three jackets.

As to Charge IV of the Formal Written Complaint:

51. On April 24, 1983, respondent issued warrants for the arrest of Gloria Zook and Aldo Maestri on charges of Harassment, a violation.

52. Respondent indicated a "recommended bail" of $1,000 on each warrant.

53. The conduct for which the defendants were charged occurred on April 17, 1983, in the non-adjoining Town of Germantown. Therefore, respondent did not have jurisdiction to issue the warrants under Section 120.30(2) of the Criminal Procedure Law.

54. On May 2, 1983, Ms. Zook and Mr. Maestri were arrested on respondent's warrants and were arraigned in the Livingston Town Court, where bail was set at $500 each and the defendants were jailed in lieu of bail. The cases were made returnable on May 5, 1983, before respondent.

55. On May 5, 1983, the defendants appeared before respondent. Respondent knew the defendants had already spent three days in jail and that they had not been able to post bail.

56. Respondent continued the defendants' bail at $500 each and remanded them to jail without proper inquiry into the factors and criteria set forth in Section 510.30(2) of the Criminal Procedure Law. Respondent set a return date of May 18, 1983. Neither defendant was represented by counsel, and respondent did not assign them counsel.

57. Ms. Zook and Mr. Maestri were released on May 18, 1983, by order of another judge, after spending 16 days in jail.

58. Respondent knew that the maximum term of imprisonment upon conviction of a violation is 15 days, under Section 70.15 of the Penal Law.

59. The maximum period that the defendants could lawfully be held awaiting trial was five days, under Section 30.30(2)(d) of the Criminal Procedure Law.

As to Charge V of the Formal Written Complaint:

60. On May 29, 1983, Sandra Dianda was arrested in the Town of Greenport on charges of Resisting Arrest, a misdemeanor, and Disorderly Conduct and Harassment, both violations.

61. The Town of Greenport does not adjoin the Town of Taghkanic.

62. Ms. Dianda was transferred by the police to the Columbia County Jail in the City of Hudson, where she was also charged with Obstruction Of Governmental Administration, a misdemeanor.

63. Respondent arraigned the defendant on all four charges shortly after her arrest, notwithstanding that he did not have jurisdiction to do so under Section 140.20(1)(a) of the Criminal Procedure Law.

64. Respondent set Ms. Dianda's bail at $2,000 and remanded her to jail in lieu of bail. The defendant was unrepresented at her arraignment.

65. On May 30, 1983, Ms. Dianda posted bail and was released.

66. On June 8, July 8 and August 9, 1983, the defendant's attorney, Carl G. Whitbeck, Jr., wrote to respondent requesting that the case records be transferred to the Greenport Town Court.

67. Respondent did not respond to Mr. Whitbeck's letters.

68. On July 19, 1983, the Greenport Town Court Clerk, Harry Carhart, wrote a note to respondent requesting the Dianda case papers.

69. Respondent did not respond to Mr. Carhart's request.

70. On November 1, 1983, Mr. Whitbeck obtained from the Supreme Court an Order to Show Cause why an order should not be made dismissing the charges or removing the matter to the Town of Greenport.

71. Respondent failed to submit any papers in response to the Order to Show Cause or to transfer the case papers to the Greenport Town Court.

72. On November 29, 1983, an order was made by the Supreme Court, dismissing the charges against Ms. Dianda.

As to Charge VI of the Formal Written Complaint:

73. On April 14, 1983, respondent held a trial in the case of People v. Albert Fair, in which the defendant was charged with Passing In A No Passing Zone.

74. On May 3, 1983, respondent's court clerk, Doreen Kraft, wrote a letter to Mr. Fair stating, in part:

> In reviewing the tapes and talking with the other party involved; about the accident in question occurring on the 11th day of November, 1982, the court has come to the conclusion you were the one at fault.
>
> Therefore, the court finds you guilty of section 1126A--no passing in a no passing zone. The court also, finds you guilty of purjury [sic] on the witness stand, but the court will reserve decision.

75. The letter of May 3, 1983, was respondent's opinion in the case.

76. Respondent directed his court clerk to write the opinion and send it to Mr. Fair.

77. Mr. Fair had not been charged with or tried for perjury.

78. A notice of appeal was served and filed, and an affidavit of errors was served upon respondent by Mr. Fair's attorney.

79. Respondent did not file a return to the affidavit of errors, and on August 23, 1983, Mr. Fair's convictions for Passing In A No Passing Zone and perjury were vacated by the Columbia County Court.

As to Charge VII of the Formal Written Complaint:

80. On August 14, 1983, respondent arraigned Rino Giuliani, Jr., John J. Innominato, III, and Robert A. Pagniello on charges of Unlawfully Dealing With Fireworks and Criminal Mischief, Fourth Degree.

81. Respondent would not allow the defendants to explain the circumstances of the alleged offenses.

82. Respondent induced the defendants to plead guilty by telling them that they would have to wait in jail if they wanted a lawyer.

83. Respondent sentenced each defendant to a $100 fine or 15 days in jail in lieu of fine on the charge of Unlawfully Dealing With Fireworks and a $250 fine or six months in jail in lieu of fine on the charge of Criminal Mischief, Fourth Degree. The latter jail sentence is two months in excess of the maximum jail sentence in lieu of a fine, as set forth in Section 420.10(3)(b) of the Criminal Procedure Law.

84. None of the defendants was represented by counsel.

85. Respondent failed to advise the defendants of their right to a telephone call and did not notify their parents.

86. Respondent knew that Mr. Giuliani was 16 years old and that Mr. Innominato was 18 years old at the time.

87. Respondent failed to advise the defendants of their right to apply to be resentenced if they could not pay the fines, and he gave the defendants no opportunity to raise the fine money before committing them to jail in lieu of fine.

88. Mr. Giuliani had no prior arrests and was therefore required by Section 720.20(1)(b) of the Criminal Procedure Law to be treated as a youthful offender.

89. Mr. Innominato had no prior criminal convictions and was eligible for youthful offender status.

90. Respondent did not order a presentence report on Mr. Innominato or Mr. Giuliani, as required by Section 720.20(1) of the Criminal Procedure Law.

91. Respondent failed to consider youthful offender status for Mr. Innominato and failed to grant youthful offender status to Mr. Giuliani.

92. Respondent was aware of and familiar with the criteria governing youthful offender treatment.

93. Respondent failed to seal the case records pertaining to the Criminal Mischief charge against Mr. Giuliani, as required by Section 720.35(2) of the Criminal Procedure Law.

As to Charge VIII of the Formal Written Complaint:

94. On October 8, 1982, Lawrence J. Kovarovic pled guilty by mail in respondent's court to Speeding and paid a $50 fine.

95. Thereafter, Mr. Kovarovic, a Connecticut resident, was informed that his privilege to drive in New York had been revoked, pursuant to law, because the speeding violation was his third within 18 months.

96. Mr. Kovarovic telephoned respondent for help, explaining that he needed his car for business.

97. Respondent offered to vacate the speeding conviction and substitute for it a conviction on a reduced charge, thus reinstating Mr. Kovarovic's driving privilege, on the condition that Mr. Kovarovic pay an additional $300 fine and attend a safe driving course. Respondent later waived the latter requirement.

98. On or about January 26, 1983, Mr. Kovarovic mailed respondent a check for $300.

99. Respondent deposited the check in his court account on or about February 15, 1983.

100. Mr. Kovarovic was never sent a receipt for his $300 fine.

101. Respondent failed to reply to correspondence from Mr. Kovarovic and the Department of Motor Vehicles regarding the proposed reduction of Mr. Kovarovic's speeding conviction.

102. Respondent never took the necessary steps to vacate Mr. Kovarovic's speeding conviction.

103. After the six-month period of revocation of Mr. Kovarovic's driving privilege had elapsed, Mr. Kovarovic requested the return of his $300 fine from respondent.

104. Respondent did not respond to Mr. Kovarovic.

105. Mr. Kovarovic's driving privilege was reinstated by the Department of Motor Vehicles in August 1983.

106. Respondent did not return Mr. Kovarovic's $300 fine money until July 6, 1984, after respondent had appeared before a member of the Commission.

107. Respondent maintained no record of the reduced charge or of receipt of the $300 fine.

108. Respondent did not report or remit the $300 fine to the Department of Audit and Control.

109. Respondent reported to the town attorney and respondent's administrative judge that he had lost the file in this case.

As to Charge IX of the Formal Written Complaint:

110. On October 30, 1981, Ralph E. Mazal was charged with Driving While License Suspended and Broken Windshield.

111. Mr. Mazal was arraigned in the Livingston Town Court, where he posted $20 bail and was directed to appear before respondent.

112. On December 10, 1981, Mr. Mazal pled guilty to the charges in respondent's court.

113. Respondent fined Mr. Mazal $100 on the charge of Driving While License Suspended and $25 on the charge of Broken Windshield and allowed the defendant until December 17, 1981, to pay the fines.

114. Respondent made no effort to determine whether Mr. Mazal could pay the fines.

115. On December 19, 1981, respondent issued a warrant for the arrest of Mr. Mazal for the crime of Criminal Contempt, Second Degree, because Mr. Mazal had failed to pay the fines.

116. On Sunday, December 20, 1981, Mr. Mazal was arrested on respondent's warrant and brought before respondent.

117. Respondent did not ask Mr. Mazal how he pled to the charge of Criminal Contempt and did not conduct a hearing.

118. Mr. Mazal's attorney was not present, and respondent knew that Mr. Mazal was represented by counsel.

119. Respondent summarily convicted the defendant and sentenced him to 15 days in jail, in violation of Section 170.10 of the Criminal Procedure Law; Article I, Section 6, of the New York State Constitution, and the Sixth and Fourteenth Amendments to the United States Constitution.

120. Respondent maintained no records of the Criminal Contempt charge against Mr. Mazal, other than the warrant of arrest.

121. Respondent received Mr. Mazal's $20 bail from the Livingston Town Court but did not refund it to the defendant or report it to the Department of Audit and Control. He did not report the disposition of the Criminal Contempt charge to the Department of Audit and Control.

As to Charge X of the Formal Written Complaint:

122. On April 9, 1982, Kenneth E. Warner was arrested for Speeding, Unregistered Motor Vehicle and Driving While License Suspended.

123. Mr. Warner was arraigned before respondent and pled guilty to Speeding and not guilty to Unregistered Motor Vehicle and Driving While License Suspended.

124. Respondent released Mr. Warner on $150 bail.

125. Mr. Warner, an attorney, retained Andrea Moran to represent him.

126. Ms. Moran spoke with respondent by telephone prior to the return date. Respondent told Ms. Moran that he would reduce the charge of Driving While License Suspended to a lesser charge of Driving Without A License, but they could not agree on the amount of the fine. Respondent told Ms. Moran that he intended to fine Mr. Warner "double the maximum."

127. On December 9, 1982, Ms. Moran and Mr. Warner appeared before respondent for sentencing. Ms. Moran prepared and submitted to respondent a memorandum of law, and Ms. Moran argued that the maximum fine for the reduced charge was $50.

128. Respondent contended that a new 1983 law authorized a maximum fine of $200 and that it could be applied to this 1982 case.

129. Respondent sentenced Mr. Warner to a fine of $200 on the reduced charge of Unlicensed Driver.

130. Ms. Moran served an affidavit of errors on respondent on January 7, 1983, appealing the sentence, but respondent failed to file a return, as required by Section 460.10(3)(d) of the Criminal Procedure Law.

131. On January 19, 1983, Ms. Moran wrote to respondent, asking him to file a return to the affidavit of errors, but no return was filed. She then wrote to the district attorney for his assistance in the matter.

132. District Attorney Charles Inman wrote to respondent on April 20, 1983, notifying him that the Warner case was in jeopardy of being dismissed for lack of respondent's return.

133. On May 18, 1983, respondent was ordered by the Columbia County Court to file his return by June 3, 1983.

134. On July 19, 1983, the county court ordered respondent to return Mr. Warner's excess fine money ($150) within ten days or be held in contempt of court.

135. Respondent did not comply with that order.

136. Respondent did not return the defendant's excess fine money until January 26, 1984, after the county court judge's law secretary intervened.

As to Charge XI of the Formal Written Complaint:

137. On February 25, 1984, James L. Wolcott was charged with three counts of Issuing A Bad Check, a misdemeanor.

138. The defendant was arraigned before respondent and pled guilty to all three counts.

139. Mr. Wolcott was unrepresented, and respondent did not assign him counsel.

140. On each count, respondent sentenced the defendant to 30 days' imprisonment, plus a fine of $200 or 90 days in jail in lieu of fine, with all terms to run consecutively.

141. Respondent did not order a presentence report on Mr. Wolcott, notwithstanding that a presentence report was required for any sentence in excess of 90 days by Section 390.20(2) of the Criminal Procedure Law.

142. Mr. Wolcott spent approximately 120 days in jail on respondent's commitment orders and oral instructions to the chief jailer.

As to Charge XII of the Formal Written Complaint:

143. On March 20, 1984, respondent issued an arrest warrant for Barbara Moore Dearing, based on a misdemeanor charge of Overdriving, Injuring Or Torturing Animals.

144. Respondent wrote on the arrest warrant his recommendation that no bail be set on Ms. Dearing, in the event that he was not available to arraign the defendant after arrest. At the time he signed the warrant, respondent determined that Ms. Dearing should be jailed without bail for psychiatric examination.

145. Respondent based this decision solely on the police officers' description of the animals, without having seen or spoken with Ms. Dearing.

146. Ms. Dearing did not understand the charge against her, and respondent did not explain the charge or allow her to plead.

147. Ms. Dearing was not represented by counsel. She requested counsel, but none was assigned and no adjournment was granted for the purpose of obtaining counsel.

148. Respondent committed Ms. Dearing to jail without bail.

149. Respondent told Ms. Dearing he was committing her to jail for psychiatric examination.

150. Respondent never ordered the Columbia County Mental Health Director to perform a psychiatric examination of Ms. Dearing, as required by Sections 730.10(2) and 730.20 of the Criminal Procedure Law.

151. Ms. Dearing did not receive a psychiatric examination while she was in jail.

152. Respondent never took any steps to determine whether Ms. Dearing had received a psychiatric examination.

153. Ms. Dearing was released from jail on March 23, 1984, only after she obtained an attorney, who persuaded respondent to set bail.

As to Charge XIII of the Formal Written Complaint:

154. On October 10, 1980, Eustace Gibbs was arrested and arraigned before respondent on charges of Speeding and Operating While License Suspended. Mr. Gibbs' license suspension was in error.

155. Mr. Gibbs pled not guilty at the arraignment, and respondent set bail at $150. Respondent released Mr. Gibbs in the custody of his employer, Jeffrey Franklin.

156. On October 16, 1980, respondent was informed by an FBI agent that there was a warrant for Mr. Franklin's arrest. Respondent informed the FBI agent that Mr. Franklin would be in court on October 30, 1980, the adjourned date in the Gibbs case.

157. On October 30, 1980, respondent knew that federal officers were present in court and assumed that they were there to arrest Mr. Franklin.

158. Mr. Gibbs appeared without Mr. Franklin.

159. Respondent discussed the Gibbs matter ex parte with Assistant District Attorney Russell Baller and the arresting officer.

160. Respondent set Mr. Gibbs' bail at $2,000 and told him to call Mr. Franklin to have him come to court. Mr. Gibbs refused to call Mr. Franklin and was remanded to jail in lieu of $2,000 bail.

161. Respondent used his judicial office and the threat of jail in an effort to compel the appearance and arrest of Mr. Franklin, notwithstanding that no matter concerning Mr. Franklin was before him.

As to Charge XIV of the Formal Written Complaint:

162. On December 10, 1981, Officer James Dolan of the Hudson City Police Department filed two felony complaints in respondent's court against James R. Atkinson, charging him with Criminal Sale Of A Controlled Substance, Third Degree, and Criminal Possession Of A Controlled Substance, Third Degree.

163. The complaints were based on an alleged incident in the City of Hudson on November 27, 1981.

164. Officer Dolan told respondent that no other judges were available to sign an arrest warrant. Officer Dolan had not attempted to contact another judge; he was trying to keep the case away from the Hudson City Court Judge, with whom Officer Dolan was engaged in a public controversy over the city court judge's bail-setting practices.

165. Officer Dolan knew of respondent's reputation for ready availability and sought out respondent in preference to others.

166. Respondent did not question Officer Dolan's veracity concerning the unavailability of other judges.

167. On December 10, 1981, respondent signed warrants of arrest and indicated his bail recommendation of $30,000 on one of the warrants, notwithstanding that he lacked jurisdiction to issue the warrants under Section 120.30(2) of the Criminal Procedure Law.

168. Officer Dolan arrested Mr. Atkinson on December 11, 1981, and brought him before respondent for arraignment.

169. Respondent arraigned the defendant, set bail at $30,000 and adjourned the case to December 14, 1981, for a preliminary hearing in his court, notwithstanding that he did not have jurisdiction to arraign the defendant under Section 140.20 of the Criminal Procedure Law.

170. Mr. Atkinson was not represented at the arraignment, and the district attorney was not present.

171. Mr. Atkinson was remanded to jail in lieu of bail.

172. On December 14, 1981, after the preliminary hearing, Mr. Atkinson's attorney, Gary Greenwald, obtained an order from the county court reducing bail to $15,000.

173. District Attorney Charles Inman consented to the reduction in bail.

174. Mr. Greenwald and Mr. Inman agreed that the $15,000 bail would cover any additional charges that might arise as a result of any evidence seized during the searches of the defendant's apartment.

175. On December 29, 1981, Officer Dolan presented respondent with another felony complaint, charging Mr. Atkinson with Criminal Possession Of A Controlled Substance, Third Degree. The complaint was based on the result of another search of Mr. Atkinson's apartment.

176. Respondent issued another arrest warrant for Mr. Atkinson on December 29, 1981, notwithstanding that he lacked jurisdiction to do so under Section 120.30(2) of the Criminal Procedure Law.

177. Respondent knew when he issued the warrant that the defendant's bail had been reduced by the county court and that the defendant had posted bail and had been released.

178. Mr. Greenwald contacted respondent and informed him of his agreement with Mr. Inman. Respondent refused to withdraw the warrant.

179. When Mr. Atkinson appeared voluntarily in response to respondent's warrant, respondent arraigned the defendant and set bail at $20,000, notwithstanding that he lacked jurisdiction to conduct an arraignment under Section 140.20 of the Criminal Procedure Law.

180. The district attorney was not present at the arraignment and was not consulted with respect to bail.

181. Respondent knew that Section 530.20(2)(b)(i) of the Criminal Procedure Law required him to hear the district attorney's recommendations with respect to bail on a felony charge.

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), 100.3(a)(5), 100.3(b)(1) and 100.3(b)(2) of the Rules Governing Judicial Conduct; Canons 1, 2, 3A(1), 3A(4), 3A(5), 3B(1) and 3B(2) of the Code of Judicial Conduct; Sections 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act; Section 30.9 of the Uniform Justice Court Rules; Section 27(1) of the Town Law; Section 1803 of the Vehicle and Traffic Law, and Sections 105.1 and 105.3 of the Recordkeeping Requirements for Town and Village Courts. Charges I through XIV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent has repeatedly abused his judicial powers and violated the law he is sworn to uphold. He has disregarded well-established, fundamental rights of defendants so as to create an appearance of bias and damage public confidence in the impartiality and integrity of the judiciary.

Respondent signed arrest warrants and arraigned defendants brought from outside his legal jurisdiction by apparent "judge-shopping" policemen. By threatening them with high bail and jail for minor offenses, respondent coerced guilty pleas from defendants who were often unrepresented and, on occasion, youthful.

Respondent imposed high bail for minor offenses without inquiring into the statutory criteria required to determine whether a defendant is likely to reappear in court, and he jailed defendants when they could not make the bail, sometimes for periods longer than they could have lawfully served had they been convicted of the offenses alleged. Respondent repeatedly gave excessive fines for minor offenses and, when they could not be paid, jailed defendants for periods longer than the maximum allowed by law.

Respondent abused the rights of intoxicated and youthful offenders and put defendants in jail without bail pending psychiatric examinations, then failed to order the examinations.

When defendants appealed respondent's harsh treatment, he attempted to frustrate the appeals by refusing to file the necessary papers.

In addition, respondent persistently failed to meet his administrative and financial responsibilities in running his court.

Such a pattern of misconduct shocks the conscience and indicates that respondent poses a threat to the proper administration of justice. Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286 (1983); Matter of Reeves v. State Commission on Judicial Conduct, 63 NY2d 105 (1984).

No judge is above the law. The legal system cannot accommodate a jurist who deliberately flouts due process of law. Matter of Ellis, 3 Commission Determinations 53 (Com. on Jud. Conduct, July 14, 1982).

Respondent has so distorted his role as to render him unfit to remain in judicial office. Sardino, supra; Matter of McGee v. State Commission on Judicial Conduct, 59 NY2d 870 (1983).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Judge Rubin was not present.

Dated: December 24, 1985

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

KENNETH KREMENICK,

a Justice of the Milan Town Court, Dutchess County.

Determination

APPEARANCES:

Gerald Stern (Jean M. Savanyu, Of Counsel)
for the Commission

Honorable Kenneth Kremenick, pro se

The respondent, Kenneth Kremenick, a justice of the Milan Town Court, Dutchess County, was served with a Formal Written Complaint dated December 12, 1984, alleging that he drove an automobile while intoxicated and was convicted of Driving While Ability Impaired. Respondent filed an answer dated December 31, 1984.

By motion dated February 21, 1985, 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 April 26, 1985, the Commission granted the administrator's motion and found respondent's misconduct established.

Both sides filed memoranda as to sanction. The administrator filed a reply to respondent's memorandum. Oral argument was waived. On May 30, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

1. On April 11, 1984, while in an intoxicated condition, respondent drove an automobile on an entrance ramp to the Taconic State Parkway in the Town of Claverack, Columbia County.

2. Respondent's car came to rest partially off the entrance ramp, where it was discovered by a state trooper, Daniel B. Sweet.

3. Trooper Sweet arrested respondent for Driving While Intoxicated and took him into custody.

4. Respondent initially refused to accompany the trooper to the police barracks and said repeatedly, "I'm the judge. You can't do this to me," and, "I'll have your job."

5. At the barracks, respondent refused to produce a driver's license and identification, refused to take a breathalyzer test and used abusive and profane language with Trooper Sweet.

6. Respondent was arraigned in the Taghkanic Town Court, where he repeatedly told the presiding judge, "I'm the judge, and you can't do this."

7. The charge was reduced to Driving While Ability Impaired; respondent was fined $250, and his license was suspended for 90 days.

8. Respondent maintains that he was an alcoholic at the time of the incident, that he was in a "black out" and does not clearly remember what transpired.

9. On April 13, 1984, respondent admitted himself into a hospital detoxification program and, upon his hospital release, entered a rehabilitation program. He was released on May 9, 1984, and has since attended Alcoholics Anonymous and abstained from the use of alcohol.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2 of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Although respondent has made valiant efforts to rehabilitate himself since this single incident of public intoxication, his actions were inconsistent with established standards of proper judicial behavior and subjected the judiciary as a whole to disrespect. Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465, 469 (1980).

Respondent's attempts to invoke the prestige of his judicial office during his arrest and arraignment and his abusive treatment of the arresting officer are factors which make public sanction appropriate. However, respondent to date has conquered his addiction and deserves recognition of his efforts by a sanction less severe than censure.

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

Mrs. Robb, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Judge Ostrowski, udge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bower and Mr. Kovner were not present.

ated: June 28, 1985

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 G. LEONARD,

a Justice of the Riverhead Town Court, Suffolk County.

Determination

APPEARANCES:

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

Corwin & Matthews (By Charles T. Matthews) for Respondent

The respondent, Robert G. Leonard, a justice of the Riverhead Town Court, Suffolk County, was served with a Formal Written Complaint dated December 7, 1984, alleging that he failed to render timely decisions in 14 small claims cases. Respondent filed an undated answer received on December 21, 1984.

By order dated December 28, 1984, the Commission designated Lawrence R. Bailey, Sr., Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on March 28 and 29, 1985, and the referee filed his report with the Commission on May 28, 1985.

By motion dated July 24, 1985, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on August 7, 1985. The administrator filed a reply on August 21, 1985. Oral argument was waived.

On September 12, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Riverhead Town Court and has been for 16 years.

2. On July 21, 1982, respondent presided over a trial in Darlene Webster-Sujecki v. 101 North Broadway Corp., a small claims case. The trial took 10 minutes. Respondent rendered a three-line decision on September 18, 1984. In the nearly 26 months between the trial and the decision, Ms. Webster-Sujecki contacted the court monthly to inquire about disposition of her case. Twice she spoke to respondent personally. Ward A. Freese of the Suffolk County Department of Consumer Affairs wrote respondent on behalf of Ms. Webster-Sujecki on December 16, 1982, and October 19, 1983, and requested that the matter be decided. He never received a response. Respondent testified on September 6, 1984, that he had filed the papers and forgotten about the case.

3. On June 29, 1983, respondent presided over a trial in Michael Kaufmann v. Charles C. Cali, a small claims case. The trial took approximately 45 minutes. Respondent rendered a two-line decision on August 7, 1984. In the 13 months between the trial and decision, Mr. Kaufmann called the court about six times to inquire about disposition of his case. On June 30, 1984, Mr. Kaufmann wrote to respondent's administrative judge to complain about the delay. Respondent testified on September 6, 1984, that he had placed the papers in Kaufmann in a desk drawer and forgotten about the case.

4. On February 29, 1984, respondent presided over a trial in John W. Keller v. Edward and Victoria Swensen, a small claims case. The trial took approximately 90 minutes. Respondent rendered a three-line decision on September 18, 1984. In the nearly seven months between the trial and the decision, Mr. Keller contacted the court twice to inquire about disposition of his case, the second time speaking to respondent personally. Respondent testified on September 6, 1984, that he had not decided the case because he had let it "lay there."

5. On August 17, 1983, respondent presided over a trial in Edward Waltz v. John and Daniel Keller, a small claims case. The trial took approximately one hour. Respondent rendered a one-line decision on September 18, 1984. In the 13 months between the trial and the decision, Mr. Waltz called the court monthly and visited the court twice to inquire about disposition of his case. Respondent testified on September 6, 1984, that he had filed the papers and forgotten about the case.

6. On July 21, 1982, respondent presided over a trial in John R. Ackermann v. Bay Shore Volkswagen, Inc., a small claims case. The trial took approximately one hour. Papers were filed by the parties on July 24, 1982, July 30, 1982, August 17, 1982, and August 23, 1982. Respondent rendered a two-line decision on October 25, 1983. In the 15 months between the trial and the decision, Mr. Ackermann called the court about three times to inquire about disposition of his case and wrote to respondent on August 12, 1983. Respondent testified on September 6, 1984, that he had put the papers in a desk drawer and forgotten about the case.

7. On April 27, 1983, respondent presided over a trial in Colleen Larsen v. Garsten Motors, a small claims case. The trial took approximately 30 minutes. Respondent rendered a one-line decision on September 18, 1984. In the nearly 17 months between the trial and the decision, Ms. Larsen called the court several times to inquire about disposition of her case. Respondent acknowledged that the delay was due to his "negligence."

8. On April 13, 1983, respondent presided over a trial in Diane Dowd v. 101 North Broadway Association, a small claims case. Respondent rendered a one-line decision on September 18, 1984. Respondent testified on September 6, 1984, that he had forgotten about the case for more than a year.

9. On May 9, 1984, respondent presided over a trial in Peter C. Milach v. Shirley Densieski, a small claims case. The trial took approximately 30 minutes. Respondent rendered a one-line decision on September 18, 1984. In the four months between the trial and the decision, Mr. Milach called the court twice to inquire about disposition of his case. On August 2, 1984, Mr. Milach wrote to respondent to request a decision in the case.

10. On February 29, 1984, respondent presided over a trial in Dennis Bernard v. Joseph P. Graffeo, a small claims case. Respondent rendered a three-line decision on September 18, 1984.

11. On October 27, 1982, respondent presided over a trial in Darlene M. Hunt v. Richard J. Lovett, a small claims case. On May 18, 1983, an attorney for one of the parties wrote respondent to request a decision. Respondent rendered an eight-line decision on June 8, 1983.

12. On August 3, 1983, respondent presided over a trial in Wolfe and Steven Miller v. Estate of Paul Fischer, a small claims case. The trial took approximately 20 minutes. Respondent rendered a five-line decision on March 25, 1985. In the nearly 20 months between the trial and the decision, a representative of the estate called respondent to inquire about disposition of the case. Respondent told her that the matter was "tricky" and "could take years."

13. On July 6, 1983, respondent presided over a trial in Arthur Sarno v. Robert Mance, a small claims case. Respondent rendered a five-line decision on March 25, 1985.

14. On January 5, 1983, respondent presided over a trial in Roy Osman v. Sharon Fioto, a small claims case. The trial took approximately one hour. In October 1984, Ms. Fioto's father called respondent on her behalf to inquire about disposition of the case. Respondent told him that he would decide the matter shortly. Respondent testified on September 6, 1984, that he had forgotten about the Fioto case. Respondent rendered a three-line decision on March 22, 1985.

15. On January 19, 1983, respondent presided over a trial in Wolfe Miller v. Boris Zilberstein, a small claims case. The trial took half a day. On March 18, 1983, the defendant's attorney wrote to the court to inquire about disposition of the case. The attorney also called the court several times. Respondent testified on September 6, 1984, that he had forgotten about the case. Respondent rendered a four-line decision on March 25, 1985.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(a)(5) of the Rules Governing Judicial Conduct; Canons 1,2 and 3A(5) of the Code of Judicial Conduct, and Section 1304 of the Uniform Justice Court Act. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Section 1304 of the Uniform Justice Court Act requires a judge to decide a case within 30 days of a non-jury trial. We reject respondent's argument that this provision does not apply to small claims cases. In any event, the delays respondent permitted amounted to an egregious neglect of his adjudicative responsibilities.

Respondent has no explanation for the delays. He acknowledges that he filed nine of the cases and forgot about them, delaying decision for as long as 27 months despite telephone calls and letters from many of the litigants.

While serious, the misconduct does not require removal. (See Matter of Rogers v. State Commission on Judicial Conduct, 51 NY2d 224 [1980]; Matter of Rater, 3 Commission Determinations 36 [Com. on Jud. Conduct, May 6, 1982]; Matter of Dougherty, unreported [Com. on Jud. Conduct, Apr. 16, 1984]). Respondent has served for 16 years and has cooperated fully in the investigation of this matter. (See Matter of Sandburg, unreported [Com. on Jud. Conduct, June 6, 1985]).

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

Mrs. Robb, Mr. Bower, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bromberg was not present.

Judge Ciparick was not a member of the Commission at the time the vote in this proceeding was taken.

Dated: October 24, 1985

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

ELTON MAXON,

a Justice of the Berlin Town Court, Rensselaer County.

Determination

APPEARANCES:

Gerald Stern (Henry S. Stewart, Of Counsel) for the Commission

Philip A. Lance for Respondent

The respondent, Elton Maxon, a justice of the Berlin Town Court, Rensselaer County, was served with a Formal Written Complaint dated October 19, 1984, alleging that he convicted a defendant without a trial or any appearance by a prosecutor. Respondent filed an answer dated November 19, 1984.

By order dated April 17, 1985, the Commission designated Bruno Colapietro, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on May 22, 1985, and the referee filed his report with the Commission on August 29, 1985.

By motion dated October 16, 1985, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent did not file any papers in response thereto and waived oral argument.

On November 14, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Berlin Town Court and was during the time herein noted.

2. On October 10, 1983, David A. McGrath was ticketed in the Town of Berlin on charges of Speeding and Failure to Produce An Insurance Card.

3. The tickets were returnable in respondent's court.

4. On October 14, 1983, Mr. McGrath pled not guilty by mail to the charges.

5. On October 19, 1983, respondent notified Mr. McGrath to appear for trial on November 2, 1983.

6. On November 2, 1983, Mr. McGrath appeared before respondent for trial.

7. Respondent dismissed the charge of Failure to Produce An Insurance Card after Mr. McGrath provided him with valid proof of insurance.

8. Mr. McGrath asked that the Speeding charge be dismissed on the grounds that no arresting officer or other prosecuting authority was present and no evidence had been presented against him.

9. Mr. McGrath was not provided with a deposition supporting the charge, and no sworn testimony was taken during the proceeding.

10. Mr. McGrath told respondent that he had not been speeding.

11. Respondent refused to dismiss the charge. He told Mr. McGrath that the arresting officer must have had some reason to issue the ticket.

12. Respondent found Mr. McGrath guilty of the Speeding charge and imposed a $15 fine.

13. Respondent acknowledged that he felt that Mr. McGrath was guilty based solely on his personal knowledge of the road where Mr. McGrath was arrested and its reputation as a "speedway."

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. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent denied Mr. McGrath the right to be heard and compromised the impartiality of the court by accepting as truth over the denial of the defendant a police officer's charge without any substantiating evidence. Respondent failed to comply with the law by convicting and fining Mr. McGrath without a trial.

Such insensitivity to the proper role of a judge warrants public sanction. Matter of Curcio, 3 Commission Determinations 198 (Com. on Jud. Conduct, Mar. 1, 1983); Matter of Loper, unreported (Com. on Jud. Conduct, Jan. 25, 1984).

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

All concur.

Dated: December 17, 1985

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 MYERS,

a Justice of the Norfolk Town Court, St. Lawrence County.

Determination

APPEARANCES:

Gerald Stern (Henry S. Stewart and Cathleen S. Cenci, Of Counsel) for the Commission

Duncan S. MacAffer for Respondent

The respondent, Joseph Myers, a justice of the Norfolk Town Court, St. Lawrence County, was served with a Formal Written Complaint dated January 8, 1985, alleging that he failed to disqualify himself in a case involving his son. Respondent filed an answer dated March 22, 1985.

By order dated February 13, 1985, the Commission designated Peter N. Wells, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 2, 1985, and the referee filed his report with the Commission on July 24, 1985.

By motion dated August 16, 1985, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion by cross-motion on September 11, 1985, and moved for a change of venue of the oral argument.

The Commission denied the change of venue on September 12, 1985, and respondent waived oral argument. On September 13, 1985, the Commission heard oral argument by the administrator and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Norfolk Town Court and was at all times herein noted.

2. On December 31, 1983, a car driven by respondent's son, Joseph Myers, Jr., and one driven by Terry Lee Kerr collided in the Town of Norfolk, causing property damage to both cars.

3. Respondent paid the insurance premiums on the car driven by his son at the time of the accident.

4. The accident was investigated by Chief Thomas A. Matzell of the Norfolk Town Police Department. On the day of the accident, Chief Matzell did not issue a ticket to either of the drivers involved in the accident.

5. On three occasions after the accident, the junior Mr. Myers contacted Chief Matzell and informed him that Mr. Kerr had not paid for the damage to the Myers car as Mr. Myers and Chief Matzell understood had been agreed on the day of the accident.

6. On January 27, 1984, Chief Matzell wrote to Mr. Kerr and asked him to contact the junior Mr. Myers to resolve the matter. Chief Matzell never received a response to the letter.

7. After he sent the letter, Chief Matzell was again contacted by the junior Mr. Myers and told that payment for the damage had not been made by Mr. Kerr.

8. On or about March 2, 1984, Chief Matzell contacted respondent and asked whether a criminal summons could be obtained to bring Mr. Kerr into court to resolve the matter.

9. Respondent replied that an information would have to be written upon which a criminal summons could be issued by the court.

10. Based on his conversation with respondent, Chief Matzell prepared a uniform traffic ticket and simplified traffic information returnable before respondent on March 15, 1984.

11. Chief Matzell left the instruments on respondent's desk and noted in his log, "Per request of T/J Myers, issued summons to Terry L. Kerr...."

12. On March 3, 1984, respondent prepared but did not sign a criminal summons for Mr. Kerr, returnable before respondent on March 15, 1984, and placed it in Chief Matzell's mailbox at the town hall.

13. Chief Matzell attempted to serve the summons on Mr. Kerr but was unsuccessful.

14. Chief Matzell returned the summons to respondent and advised him that he was unable to serve Mr. Kerr.

15. Respondent told Chief Matzell that he would find another officer to serve the summons.

16. Respondent approached Trooper Michael C. Swyers of the State Police and asked him to serve the summons.

17. Trooper Swyers refused. Respondent told him that he would find someone else to serve the summons.

18. In a discussion with Sergeant Dominic Germano of the St. Lawrence County Sheriff's Department, respondent indicated that no one had been able to locate Mr. Kerr to serve the summons.

19. Sergeant Germano offered to attempt to serve the summons.

20. Sergeant Germano subsequently served the summons on Mr. Kerr.

21. Mr. Kerr never appeared in court in response to the summons.

22. At some time before June 28, 1984, respondent wrote a note, dated March 15, 1984, addressed to his fellow judge in the Norfolk Town Court, stating that respondent could not handle the Kerr matter and purporting to transfer the case to the other judge. The note was attached to the papers in the Kerr case.

23. Respondent never transmitted the note and the Kerr papers to the other judge.

24. On June 28, 1984, respondent produced the note from his desk and gave it to a Commission investigator.

25. The note was intended to make it appear that respondent had disqualified himself or attempted to disqualify himself from the Kerr case.

26. Approximately two weeks before the hearing in this matter on April 2, 1985, respondent again approached Trooper Swyers.

27. Respondent accused Trooper Swyers of lying in a statement to the Commission concerning the Kerr summons and threatened to cause trouble for Trooper Swyers and to attempt to have him fired.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2 of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct. Paragraphs 4, 4(a), 4(b), 4(c) and 5 of the Formal Written Complaint are sustained, and respondent's misconduct is established. Respondent's cross-motion is denied.

The facts establish that respondent prepared a criminal summons to bring into his court a party to a dispute in which respondent and his son had an interest and of which respondent had personal knowledge. Such an act is improper. Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349, 353-55 (1984); Matter of Tobey, unreported (Com. on Jud. Conduct, Sept. 19, 1985). Respondent's attempt to have the summons served and the defendant brought before him was also improper.

Respondent seriously exacerbated his misconduct by attempting to make it appear that he had intended to disqualify himself in a note that was never delivered to his fellow judge. Such 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 (fn.) (1980); Matter of Moore, 3 Commission Determinations 256, 258 (Com. on Jud. Conduct, Nov. 10, 1983). By providing the note to a Commission investigator, respondent sought to obstruct the Commission's discharge of its lawful mandate. Matter of Jones, 47 NY2d (mmm) (Ct. on the Judiciary, 1979); Matter of Jordan, 47 NY2d (xxx) (Ct. on the Judiciary, 1979).

Respondent further compounded his misconduct by threatening a witness in the Commission proceeding against him. Matter of Fabrizio v. State Commission on Judicial Conduct, 65 NY2d 275 (1985); Matter of Mahar, 3 Commission Determinations 47 (Com. on Jud. Conduct, June 10, 1982).

Respondent has violated the public trust and demonstrated that he is unfit for judicial office.

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

Mrs. Robb, Mr. Bower, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bromberg and Mrs. DelBello were not present.

Judge Ciparick was not a member of the Commission when the vote in this proceeding was taken.

Dated: October 21, 1985

State of New York
Commission on Judicial Conduct

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

Determination

FRANCIS E. ROBBINS,

a Justice of the Saratoga Town Court, Saratoga County.

APPEARANCES:

Gerald Stern (Stephen F. Downs and Henry S. Stewart, Of Counsel) for the Commission

Victor A. Caponera, Jr., for Respondent

The respondent, Francis E. Robbins, a justice of the Saratoga Town Court, Saratoga County, was served with a Formal Written Complaint dated February 28, 1985, alleging certain administrative and financial depositing and remitting failures. Respondent filed an answer dated March 19, 1985.

On August 16, 1985, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement on September 12, 1985.

The administrator and respondent submitted memoranda as to sanction. Oral argument was waived.

On October 10, 1985, the Commission 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 1982.

2. Respondent is not an attorney. He is a college graduate who manages a large dairy farm and works part-time as a lobbyist for farming interests.

3. He has attended all training sessions for non-lawyer judges required by the Office of Court Administration since becoming a judge.

As to Charge I of the Formal Written Complaint:

4. Between July, 1982 and December, 1984, respondent failed to deposit in his official court account within 72 hours of receipt court funds totaling $1,059, received in connection with 20 cases, as denominated in Schedule A of the agreed statement of facts.

5. Respondent kept undeposited money in a filing cabinet at his home.

6. The bank in which respondent maintained his official court account was three miles from his home.

7. As of April 11, 1985, respondent had not reported or remitted to the State Comptroller $707 in court funds received in connection with the following cases:

Received From	Approximate Date Received
Robert Sigouin	12/6/82
Dale E. Charbonneau	3/25/83
Robert L. Ray, Jr.	3/4/83
Jeffrey S. Underwood	5/2/83
Terri Jeanne DeVoe	5/17/83
Patricia R. Shatley	6/17/83
Gerald Bren	7/6/83
Beatrice Rochette	7/6/83
Mary E. Skorupski	7/12/83
E.K. Bolton Pinke	8/6/83
Janet E. Brown	9/16/83
Daniel Mahoney, Esq.	10/6/83
Jones and Mills	11/8/83
William Backus, Esq.	11/16/83
Hazel M. Ross	4/10/84
Debbie and Gary Little	4/30/84

8. Respondent has no record of charging instruments having been before him in the cases of Terri Jeanne DeVoe, Patricia R. Shatley, Beatrice Rochette, Janet E. Brown and Hazel M. Ross. Respondent believes that Ms. Rochette's case was returnable before his predecessor in the court.

As to Charge II of the Formal Written Complaint:

9. Between January 1982 and October 1984, respondent failed to perform properly his administrative and judicial duties in that he:

a) failed to maintain criminal, civil and motor vehicle dockets;

b) failed to maintain a cashbook until July 1984;

c) failed to notify law enforcement agencies of the disposition of cases;

d) failed to submit certificates of conviction to the Department of Motor Vehicles;

e) failed to maintain indices of cases;

f) failed to return driver's license renewal stubs to defendants in 23 cases, as denominated in Schedule B of the agreed statement of facts;

g) failed to open 56 pieces of correspondence, including that marked as from attorneys, banks, the Department of Motor Vehicles, the Division of Criminal Justice Services and the Office of Court Administration, as denominated in Schedule C of the agreed statement of facts;

h) failed to report cases and remit court funds in a timely manner to the Department of Audit and Control for as long as 312 days, as denominated in Schedule D of the agreed statement of facts; and,

i) failed to dispose of 84 cases pending in his court for as long as 25 months, as denominated in Schedule E of the agreed statement of facts.

10. Respondent's only excuse for his failures was that he did not have time to perform his duties.

As to Charge III of the Formal Written Complaint:

11. On July 22, 1983, James Coleman was charged with Driving an Uninspected Vehicle. His ticket was returnable in the Schuylerville Village Court, Saratoga County, on August 11, 1983.

12. Norbert Nolte has been the justice of the Schuylerville Village Court since April 4, 1983.

13. Mr. Coleman failed to appear in court on August 11, 1983, and Judge Nolte ordered his driver's license suspended.

14. On February 20, 1984, respondent accepted a guilty plea from Mr. Coleman and imposed a $10 fine.

15. Respondent signed as Schuylerville Acting Village Justice a certification ordering the reinstatement of Mr. Coleman's driving privileges.

16. Respondent was not authorized to act as a justice of the Schuylerville Village Court.

17. Respondent had no papers in the Coleman case before him when he disposed of the case. The papers were in the possession of Judge Nolte.

As to Charge IV of the Formal Written Complaint:

18. From April 28, 1983, to April 30, 1984, respondent failed to decide a motion to dismiss in Victoria M. Johnson v. George A. Wilson, a small claims case, notwithstanding that the attorneys for the plaintiff and the defendant corresponded with respondent on numerous occasions and requested a decision on the motion.

19. On April 30, 1984, respondent denied the motion.

20. Respondent notified the plaintiff of the decision on or about April 30, 1984, but failed to notify the defendant.

21. Respondent received on or about April 30, 1984, a written request for the decision from the defendant's attorney but failed to respond to it.

22. Respondent's explanation for the one-year delay in deciding the motion was that it was his first small claims case and he was "overwhelmed" by it.

As to Charge V of the Formal Written Complaint:

23. On or about August 3, 1982, respondent found Vernon Dow guilty of Driving While Ability Impaired.

24. On January 16, 1985, respondent submitted to the Department of Motor Vehicles a certificate of conviction indicating that Mr. Dow had been found guilty of Driving While Intoxicated.

25. Respondent's action resulted in the revocation of Mr. Dow's driver's license.

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), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct; Canons 1, 2A, 3A(1), 3A(5) and 3B(1) of the Code of Judicial Conduct; Sections 106(2), 107, 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act; Sections 30.7 and 30.9 of the Uniform Justice Court Rules; Sections 105.1, 105.2 and 105.3 of the Recordkeeping Requirements for Town and Village Courts; Section 1803 of the Vehicle and Traffic Law; Section 27(1) of the Town Law, and Section 91.12 of the Regulations of the Commissioner of the Department of Motor Vehicles. Charges I through V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent has kept in his personal possession for extended periods court funds that should have been deposited promptly in his official court account and remitted to the State Comptroller. Section 30.7 of the Uniform Justice Court Rules; Sections 2020 and 2021(1) of the Uniform Justice Court Act. He failed to dispose promptly of court cases and a motion, failed to maintain proper court records and failed to open court mail.

Such mishandling of funds and neglect of duties constitutes serious misconduct. Matter of Cooley v. State Commission on Judicial Conduct, 53 NY2d 64 (1981); Matter of Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981); Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976); Matter of Joedicke, 2 Commission Determinations 381 (Com. on Jud. Conduct, July 1, 1981).

Respondent's misconduct is especially egregious in view of the fact that a fellow judge of the same court was removed from office for similar acts. Matter of Hutzky, 3 Commission Determinations 251 (Com. on Jud. Conduct, Nov. 4, 1983).

Respondent compounded his misconduct by improperly disposing of a case before another court without legal authority to do so. In re Sarisohn, 27 AD2d 466, 280 NYS2d 237, 245 (2d Dept. 1967); In re Schmidt, 31 AD2d 214, 296 NYS2d 49, 56 (2d Dept. 1968).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Judge Ciparick did not participate.

Judge Rubin was not present.

Dated: November 27, 1985

State of New York
Commission on Judicial Conduct

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

DAVID J. SANDBURG,

a Justice of the Lisbon Town Court, St. Lawrence County.

Determination

APPEARANCES:

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

DeGraff, Foy, Conway, Holt-Harris & Mealey (James F. Downs, Of Counsel) for Respondent

The respondent, David J. Sandburg, a justice of the Lisbon Town Court, St. Lawrence County, was served with a Formal Written Complaint dated March 7, 1984, alleging certain financial depositing deficiencies. Respondent did not answer the Formal Written Complaint.

On November 30, 1984, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law, 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. The Commission approved the agreed statement on December 13, 1984.

Both parties submitted memoranda as to sanction. The administrator filed a reply to respondent's memorandum. On April 26, 1985, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Lisbon Town Court and has been since January 1971.

2. Respondent is not a lawyer. He is president of a mobile home dealership. He has attended all required courses offered by the Office of Court Administration for non-lawyer judges.

3. Respondent's wife works as his court clerk.

4. Between December 28, 1978, and November 5, 1980, the transactions in respondent's official court account resulted in a deficiency of $253.25.

5. Between November 5, 1980, and March 31, 1981, the transactions in respondent's official court account resulted in a deficiency of $198.25.

6. After March 31, 1981, respondent received $725 in fines and bail. On April 30, 1981, respondent deposited $630 ($95 less than he received during this period), leaving a cumulative deficiency in his official court account of $293.25.

7. After April 30, 1981, respondent received $505 in fines and bail. On May 29, 1981, respondent deposited $470 ($35 less than he received during this period), leaving a cumulative deficiency in his official court account of $328.25.

8. After May 29, 1981, respondent received $705 in fines and bail. On July 2, 1981, respondent deposited $625 ($80 less than he received during this period), leaving a cumulative deficiency in his official court account of $408.25.

9. After July 2, 1981, respondent received $1,398 in fines and bail. On July 31, 1981, respondent deposited $1,305 ($93 less than he received during this period), leaving a cumulative deficiency in his official court account of $501.25.

10. After July 31, 1981, respondent received $380 in fines and bail. On August 28, 1981, respondent deposited $373 ($7 less than he received during this period), leaving a cumulative deficiency in his official court account of $508.25.

11. After August 28, 1981, respondent received $840 in fines and bail. On October 1, 1981, respondent deposited $755 ($85 less than he received during this period), leaving a cumulative deficiency in his official court account of $593.25.

12. After October 1, 1981, respondent received $890 in fines and bail. On October 30, 1981, respondent deposited $723 ($167 less than he received during this period), leaving a cumulative deficiency in his official court account of $760.25.

13. After October 30, 1981, respondent received $1,520 in fines and bail. On November 24, 1981, respondent deposited $1,605 ($85 more than

he received during this period), leaving a cumulative deficiency in his official court account of $627.25.

14. After November 24, 1981, respondent received $580 in fines and bail. On December 31, 1981, respondent deposited $510 ($70 less than he received during this period), leaving a cumulative deficiency in his official court account of $745.25.

15. After December 31, 1981, respondent received $120 in fines and bail. On January 12, 1982, respondent deposited $19 ($101 less than he received during this period), leaving a cumulative deficiency in his official court account of $846.25.

16. After January 12, 1982, respondent received $110 in fines. On January 28, 1982, respondent deposited $230 ($120 more than he received during this period), leaving a cumulative deficiency in his official court account of $726.25.

17. After January 28, 1982, respondent received $685 in fines and bail. On March 1, 1982, respondent deposited $580 ($105 less than he received during this period), leaving a cumulative deficiency in his official court account of $831.25.

18. On March 2, 1982, an audit of respondent's court was commenced. On March 2, 1982, respondent deposited $405, of which $300 was cash, leaving a cumulative deficiency in his official court account of $426.25.

19. After March 2, 1982, respondent received $325 in fines. On March 10, 1982, respondent deposited $85 ($240 less than he received during this period), leaving a cumulative deficiency in his official court account of $666.25.

20. After March 10, 1982, respondent received $94 in fines and civil fees. On March 22, 1982, respondent was notified by state auditors that his official court account was deficient by $483.90. On March 25, 1982, respondent deposited $817.90 ($723.90 more than he received during this period), leaving a cumulative surplus in his official court account of $57.65. This deposit included $483.90 of respondent's personal funds which respondent used to eliminate the deficiency found by the auditors.

21. During the time period noted above, respondent and his wife regularly kept undeposited court funds in a briefcase at their home. Although respondent testified that all the cash in the briefcase was deposited each time a deposit was made in his official court account, respondent could not explain why the deficiency in his account continued to grow steadily until discovered by the state auditors.

22. Between July 1980 and March 1982, respondent failed to report or remit to the State Comptroller fines totaling $345 received in connection with 16 cases in his court.

23. The cases were reported and the funds remitted on March 24, 1982, after the cases were called to respondent's attention by a state auditor.

24. Between February 12, 1981, and March 1, 1982, respondent's wife and court clerk used undeposited cash from respondent's official court account for personal expenses, simultaneously issuing personal checks in the amount taken and later depositing them in respondent's official court account. Respondent was aware of the practice and permitted it to occur.

25. On each occasion when respondent or his wife substituted a check for court funds, there were sufficient funds in their personal account to cover the amount of the checks issued.

26. The total of the personal checks substituted for court funds was $1,130.

27. On November 6, 1981, respondent personally substituted a check from his business account for $100 in court funds.

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 2020 and 2021(1) of the Uniform Justice Court Act; Section 30.7 of the Uniform Justice Court Rules; Section 1803 of the Vehicle and Traffic Law; and Section 27(1) of the Town Law. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Over a period of years, respondent consistently deposited less money in his official court account than he had received since the previous deposit. The deficiency thus created steadily grew from $253.25 in 1980 to $831.25 by early 1982.

Respondent maintains that undeposited court moneys were kept in a briefcase between deposits and that all the funds in the briefcase were deposited when he or his wife went to the bank. If that had been the case, there would have been no deficiency, however. Respondent's only explanation for the depositing shortages is that he and his wife engaged in a practice of cashing personal checks from undeposited cash in the briefcase. However, if each time they took cash from the briefcase, they substituted a check, there would have been no deficiency since the checks would have been deposited on the next trip to the bank.

Because of respondent's careless handling of public moneys, neither he nor anyone else can explain the whereabouts of the missing money. Such neglect of his administrative responsibilities constitutes a breach of

the public trust and ordinarily should result in removal. Matter of Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981); Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976).

In mitigation, the Commission notes that (i) respondent cooperated fully in the investigation of this matter; (ii) he corrected the deficiency by depositing personal funds upon being notified by the state auditors (see Matter of Howard J. Miller, unreported [Com. on Jud. Conduct, June 4, 1980]; Matter of James H. Reedy, unreported [Com. on Jud. Conduct, Dec. 28, 1981]); (iii) records of respondent's court transactions were well maintained (see Reedy, supra); and, (iv) respondent made no attempt to conceal the deficiency (see Matter of Lawrence L. Rater, unreported [Com. on Jud. Conduct, May 6, 1982]).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Cleary and Mrs. DelBello were not present.

Dated: June 6, 1985

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 P. TOBEY,*

a Justice of the Wheatfield Town Court, Niagara County.

Determination

APPEARANCES:

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

Benjamin N. Hewitt for Respondent

The respondent, John P. Tobey, a justice of the Wheatfield Town Court, Niagara County, was served with a Formal Written Complaint dated October 24, 1984, alleging that he signed arrest warrants in a case in which his sister-in-law was the complainant and in a case in which respondent was the complainant. Respondent filed an answer dated November 15, 1984.

By order dated November 29, 1984, the Commission designated Grace Marie Ange, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on February 22, 1985, and the referee filed her report with the Commission on May 14, 1985.

By motion dated June 11, 1985, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report, to adopt additional findings and conclusions and for a finding that respondent be admonished. Respondent did not file any papers in response thereto and waived oral argument. On July 19, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

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*The pleadings were originally filed in the name of John "B." Tobey. They were amended at the hearing to reflect respondent's accurate middle initial.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Wheatfield Town Court and has been since January 1, 1982.

2. On March 18, 1982, Anthony T. Carella installed a sewer on the property of a neighbor of Darlene Barone in the Town of Wheatfield.

3. Ms. Barone complained that Mr. Carella damaged her property while installing the sewer.

4. Ms. Barone is respondent's sister-in-law.

5. At about 4:30 P.M. on March 18, 1982, Ms. Barone called respondent.

6. Ms. Barone was upset, and respondent told her that he would go to her home.

7. Ms. Barone had also called the state police. Trooper Darrell McCoy was at her home when respondent arrived.

8. Respondent talked to his sister-in-law about the incident, examined the alleged damage to Ms. Barone's property and returned to his home.

9. After respondent returned home, Trooper McCoy arrived and asked respondent to sign a warrant for Mr. Carella's arrest.

10. Respondent subscribed an information signed by his sister-in-law and signed a warrant for Mr. Carella's arrest.

11. Respondent took no further action with respect to the case.

12. Trooper McCoy then contacted Mr. Carella and asked him to turn himself in at state police barracks.

13. Mr. Carella turned himself in, was arraigned before another judge, and the case was subsequently dismissed.

14. At the time, respondent saw no impropriety in his execution of the arrest warrant but now realizes that it was wrong.

As to Charge II of the Formal Written Complaint:

15. On September 29, 1983, Kenneth O'Bara came to respondent's home.

16. Mr. O'Bara requested the return of $250 bail he had posted on behalf of Norman Pease, a defendant in respondent's court.

17. Respondent told Mr. O'Bara that he was entitled to return of the bail but indicated that respondent would have to issue a warrant for Mr. Pease's arrest to assure his appearance in court.

18. Respondent testified that Mr. O'Bara responded with obscenities, and respondent asked him to leave.

19. Respondent was upset by Mr. O'Bara's remarks because they were made in the presence of his eight-year-old daughter.

20. Respondent called the Niagara County Sheriff's Department.

21. Deputy Sheriff Randall F. Scherrer came to respondent's home, and respondent executed an information accusing Mr. O'Bara of Harassment.

22. Respondent also executed a warrant for Mr. O'Bara's arrest.

23. At the time, respondent saw no impropriety in executing the arrest warrant but now realizes that it was wrong.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(c)(1)(i) and 100.3(c)(1)(iv) of the Rules Governing Judicial Conduct and Canons 1, 2, 3C(1)(a) 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.

A judge is required to disqualify himself or herself in a case in which the judge's impartiality might reasonably be questioned, including circumstances in which the judge has personal knowledge concerning the proceeding or in which the judge is related to a material witness. Section 100.3(c)(1) of the Rules Governing Judicial Conduct.

Respondent had personal knowledge of the facts in the Carella and O'Bara matters and in Carella was related to the complaining witness. By signing arrest warrants in these cases, respondent clearly violated the above-stated rule. Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349, 353-55 (1984); Matter of Scacchetti, 2 Commission Determinations 423 (Com. on Jud. Conduct, June 10, 1981); Matter of DelPozzo, unreported (Com. on Jud. Conduct, Jan. 25, 1985).

Respondent's misconduct is mitigated by the facts that he took no action in the cases beyond signing the arrest warrant and that he now realizes that even that action was improper.

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

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

Mr. Bower and Mr. Sheehy dissent as to sanction only and vote that respondent be issued a confidential letter of dismissal and caution.

Judge Rubin was not present.

Dated: September 19, 1985

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

ALMON L. WAIT,

a Justice of the Waverly Town Court, Franklin County.

Determination

APPEARANCES:

Gerald Stern (Henry S. Stewart, Of Counsel)
for the Commission

Donald T. Kinsella for Respondent

The respondent, Almon L. Wait, a justice of the Waverly Town Court, Franklin County, was served with a Formal Written Complaint dated October 19, 1984, alleging that he presided over several cases in which the defendants were relatives of respondent. Respondent filed an answer dated November 3, 1984.

On May 16, 1985, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement on May 30, 1985.

The administrator and respondent filed memoranda as to sanction. On June 20, 1985, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent is a justice of the Waverly Town Court and has been since January 1, 1972.

2. Respondent has been married since April 10, 1948, to the former Jennie Susice.

As to Charge I of the Formal Written Complaint:

3. On November 8, 1983, Leo J. Patnode, Jr., appeared before respondent on a charge of Speeding.

4. Mr. Patnode is respondent's nephew.

5. Mr. Patnode pled guilty to the Speeding charge.

6. On his own motion, respondent reduced the charge to Driving With an Inadequate Muffler and imposed an unconditional discharge.

7. Respondent reduced the charge because he had personal knowledge of the defendant's financial difficulties, knew that a conviction would mean an increase in the defendant's automobile insurance premiums and "didn't feel he needed any more problems."

8. Respondent testified before a member of the Commission that he had contacted the district attorney about the reduction in the Patnode case and obtained the prosecutor's consent.

9. Neither the district attorney nor the arresting officer has any record or recollection of consulting with respondent or consenting to a reduction in the Patnode case.

10. Respondent did not advise the district attorney that Mr. Patnode was respondent's nephew.

As to Charge II of the Formal Written Complaint:

11. On March 25, 1982, Tawney M. Susice was ticketed for Speeding. The ticket was returnable in respondent's court on March 30, 1982.

12. Ms. Susice is the niece of respondent's wife.

13. On March 26, 1982, four days before the return date of the ticket, Ms. Susice went to respondent's court and asked respondent what he could do about the ticket.

14. Respondent arraigned Ms. Susice on the Speeding charge. She pled guilty.

15. On his own motion, respondent reduced the Speeding charge to Driving With an Inadequate Muffler and imposed a $25 fine.

16. Respondent reduced the charge because he had personal knowledge of the defendant's financial problems and was concerned that a conviction would result in an increase in her insurance premiums.

17. Neither the district attorney nor the arresting officer were present at the disposition of Ms. Susice's case. Respondent did not inform them of the proceeding or obtain their consent to the reduction of the charge.

As to Charge III of the Formal Written Complaint:

18. On October 6, 1982, Gabriel Susice appeared before respondent on a charge of Hunting Migratory Birds After Sunset.

19. Mr. Susice is the first cousin of respondent's wife.

20. Mr. Susice pled guilty to the charge, and respondent imposed an unconditional discharge.

21. Respondent testified that the officer who issued the ticket to Mr. Susice appeared in court and consented to dismissal of the case.

22. The officer, Gary Mulverhill, believes that he did not appear in court and never consented to dismissal or a reduction of the charge.

As to Charge IV of the Formal Written Complaint:

23. On January 3, 1981, Kevin Susice appeared in respondent's court on a charge of Trespassing.

24. Mr. Susice was the first cousin of respondent's wife.

25. Mr. Susice pled guilty to the charge.

26. The charge against Mr. Susice was based on a complaint by Jean R. Prior. Ms. Prior's husband, Richard, is a justice of respondent's court.

27. Before the arraignment of Kevin Susice, respondent called Ms. Prior, and she stated that she wanted Mr. Susice to stay off her property.

28. Based on his conversation with Ms. Prior, respondent disposed of the case without imposing a fine or jail sentence and ordered Mr. Susice to stay off the Prior property.

As to Charge V of the Formal Written Complaint:

29. On April 3, 1979, Ronald N. Susice appeared in respondent's court on a charge of Driving an Uninspected Motor Vehicle.

30. Mr. Susice is the first cousin of respondent's wife.

31. Mr. Susice presented proof that his car had been inspected after he was ticketed.

32. Respondent imposed an unconditional discharge.

As to Charge VI of the Formal Written Complaint:

33. On May 9, 1973, Gale R. Susice appeared in respondent's court on a charge of Criminal Mischief.

34. Mr. Susice is the first cousin of respondent's wife.

35. Mr. Susice pled guilty to the charge.

36. Respondent imposed a $50 fine but waived payment and ordered the defendant to perform labor for the Town of Waverly.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3C(1) of the Code of Judicial Conduct. Charges I through VI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent is prohibited from presiding over cases involving relatives within the sixth degree of relationship to him or his wife. Section 100.3(c)(1)(iv) of the Rules Governing Judicial Conduct. The prohibition clearly extends to respondent's nephew and the niece and first cousins of respondent's wife. Nevertheless, respondent presided over and disposed of six cases involving those relatives.

He exacerbated his misconduct by hearing several of the matters outside the presence of a prosecutor and by granting, on his own motion,

reductions of the charges or the penalties based on personal considerations without obtaining the consent of a prosecutor. In one case, he conducted an improper ex parte conversation with the complaining witness and based his disposition upon information obtained in the conversation.

Such egregious misconduct undermines public confidence in the integrity and impartiality of the judiciary and demonstrates unfitness for judicial office. Matter of Deyo, 2 Commission Determinations 270, 273 (Dec. 18, 1980); Matter of Pulver, 3 Commission Determinations 141, 143 (Nov. 12, 1982).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur, except that Judge Ostrowski dissents as to Charge VI only and votes that the charge be dismissed.

Judge Rubin was not present.

Dated: August 5, 1985

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 J. WILKINS,

a Justice of the Olive Town Court, Ulster County.

Determination

APPEARANCES:

Gerald Stern (Henry S. Stewart, Of Counsel) for the Commission

Riseley, Riseley, Findholt & Gruner (By Paul L. Gruner) for Respondent

The respondent, Robert J. Wilkins, a justice of the Olive Town Court, Ulster County, was served with a Formal Written Complaint dated March 11, 1985, alleging that he denied an unrepresented plaintiff a jury trial, held an informal proceeding and, after an ex parte conversation with the defendant's attorney, dismissed the claim. Respondent filed an answer dated April 1, 1985.

By order dated April 30, 1985, the Commission designated the Honorable Catherine T. England as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 2, 1985, and the referee filed her report with the Commission on October 21, 1985.

By motion dated November 13, 1985, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent did not file any papers in response thereto and waived oral argument.

On December 12, 1985, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Olive Town Court and has been since January 1982.

2. On February 22, 1984, respondent signed a summons in Jeffrey N. Fisher v. Patriot Colonial Lincoln Mercury, a civil case.

3. On March 7, 1984, Mr. Fisher appeared before respondent without counsel. Attorney J. David Aikman and Thomas Murphy, president of Patriot Colonial Lincoln Mercury, appeared for the defendant.

4. Mr. Fisher requested a jury trial.

5. Respondent replied that he wanted to see whether the case warranted a trial and would conduct a "preliminary hearing."

6. Mr. Fisher objected to proceeding on the ground that he had an expert witness who was not present to testify.

7. Mr. Fisher told respondent that he intended to have his lawyer present to represent him at trial.

8. Respondent insisted upon proceeding in deference to Mr. Aikman, who had traveled some distance to be in court. Mr. Fisher and Mr. Murphy were sworn and questioned concerning the merits of the claim.

9. Respondent indicated that he had some doubts about the validity of the claim by Mr. Fisher.

10. After the court session, Mr. Fisher contacted his attorney, Jeffrey M. Brody.

11. Mr. Brody immediately called respondent. Mr. Brody objected to the court proceeding and demanded a jury trial for his client.

12. Respondent indicated that Mr. Fisher's claim had no merit and refused to grant him a jury trial.

13. Respondent then called Mr. Aikman, indicated that he felt that Mr. Fisher's claim had little merit and said that the court would entertain a motion to dismiss.

14. Neither Mr. Fisher nor Mr. Brody were parties to or notified of the conversation between respondent and Mr. Aikman.

15. On March 14, 1984, respondent wrote to Mr. Fisher and Mr. Aikman separately and told them that he would entertain pre-trial motions on April 13, 1984.

16. On March 20, 1984, Mr. Brody wrote to respondent, noted his appearance on behalf of Mr. Fisher and again demanded a jury trial.

17. On March 26, 1984, respondent replied to Mr. Brody, again noted the date for pre-trial motions and stated that he would determine the date for trial at a later time.

18. On March 21, 1984, Mr. Aikman moved for dismissal of the claim.

19. On April 6, 1984, Mr. Brody opposed the motion and cross-moved for respondent's disqualification.

20. On May 4, 1984, respondent granted the motion to dismiss.

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(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

In the absence of counsel for a party whom respondent knew to be represented, he conducted a proceeding in a civil case which was neither a trial nor a pre-trial conference. In doing so, respondent violated the law and denied the plaintiff the right to a trial.

In conversations with both parties, respondent voiced a pre-disposition as to the merits of the claim, thus abandoning his role as an independent and impartial judge. He then suggested ex parte that the defendant's counsel move to dismiss the claim.

Such misconduct warrants public sanction. Matter of Curcio, 3 Commission Determinations 198 (Com. on Jud. Conduct, Mar. 1, 1983); Matter of Loper, unreported (Com. on Jud. Conduct, Jan. 25, 1984).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Judge Ciparick, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Judge Rubin was not present.

Dated: December 24, 1985

TABLE OF CASES PENDING AS OF DECEMBER 31, 1984.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	TOTALS
Incorrect Ruling								
Non-Judges								
Demeanor		15	26	6	10	3	5	65
Delays		3	2	1			3	9
Confl./Interest		2	7			1	4	14
Bias		7	7	2	1		1	18
Corruption		1					1	2
Intoxication		1		1		1	1	4
Disable/Qualif.					2			2
Political Activ.		2	2					4
Finances, Records, Training		3	3	1	8	1	4	20
Ticket-Fixing		1				1	1	3
Assertion of Influence								
Miscellaneous		2	2	1	1		8	14
TOTALS		37	49	12	22	7	28	155

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

TABLE OF NEW CASES CONSIDERED BY THE COMMISSION IN 1985.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	TOTALS
Incorrect Ruling	335							335
Non-Judges	99							99
Demeanor	40	18	19	2	1			80
Delays	37	12	1	1	1			52
Confl./Interest	9	20	6	3				38
Bias	59	21	7	1		1		89
Corruption	5	5	1					11
Intoxication	1	1		2				4
Disable/Qualif.	1	3		1				5
Political Activ.	14	8	3	1		3		29
Finances, Records, Training	11	7	1	1	3	2		25
Ticket-Fixing	1	2						3
Assertion of Influence	10	19	4	2				35
Miscellaneous	26	20	10	2		4		62
TOTALS	648	136	52	16	5	10		867

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

ALL CASES CONSIDERED BY THE COMMISSION IN 1985: 867 NEW COMPLAINTS AND 155 PENDING FROM 1984.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	TOTALS
Incorrect Ruling	335							335
Non-Judges	99							99
Demeanor	40	33	45	8	11	3	5	145
Delays	37	15	3	2	1		3	61
Confl./Interest	9	22	13	3		1	4	52
Bias	59	28	14	3	1	1	1	107
Corruption	5	6	1				1	13
Intoxication	1	2		3		1	1	8
Disable/Qualif.	1	3		1	2			7
Political Activ.	14	10	5	1		3		33
Finances, Records, Training	11	10	4	2	11	3	4	45
Ticket-Fixing	1	3				1	1	6
Assertion of Influence	10	19	4	2				35
Miscellaneous	26	22	12	3	1	12	8	76
TOTALS	648	173	101	28	27	17	28	1022

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

ALL CASES SINCE THE INCEPTION OF THE TEMPORARY COMMISSION (JANUARY 1975).

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
Incorrect Ruling	3275							3275
Non-Judges	441							441
Demeanor	497	33	422	75	36	29	97	1189
Delays	243	15	38	12	4	1	10	323
Confl./Interest	149	22	221	55	23	8	71	549
Bias	252	28	57	4	4	1	4	350
Corruption	56	6	36		7	2	7	114
Intoxication	9	2	15	3	2	1	11	43
Disable/Qualif.	22	3	17	2	12	4	6	66
Political Activ.	73	10	46	65	3	5	6	208
Finances, Records, Training	110	10	69	35	51	44	43	362
Ticket-Fixing	16	3	55	149	33	57	156	469
Assertion of Influence	10	19	4	2				35
Miscellaneous	99	22	70	27	5	20	20	255
TOTALS	5252	173	1050	429	180	164	431	7679

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.