ANNUAL REPORT

1999

NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

* * *

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NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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March 1, 1999

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

Pursuant to Section 42, paragraph 4, of the Judiciary Law of the State of New York, the New York State Commission on Judicial Conduct respectfully submits this Annual Report of its activities, covering the period from January 1, 1998, through December 31, 1998.

Respectfully submitted,

Henry T. Berger, Chair
On Behalf of the Commission

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New York State
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Introduction

The New York State Commission on Judicial Conduct is the disciplinary agency designated by the State Constitution to review complaints of misconduct against judges of the State Unified Court System, which includes approximately 3,300 judges and justices. The Commission's objective is to enforce high standards of conduct for judges, who must be free to act independently and in good faith, but also must be held accountable for their misconduct by an independent disciplinary system.

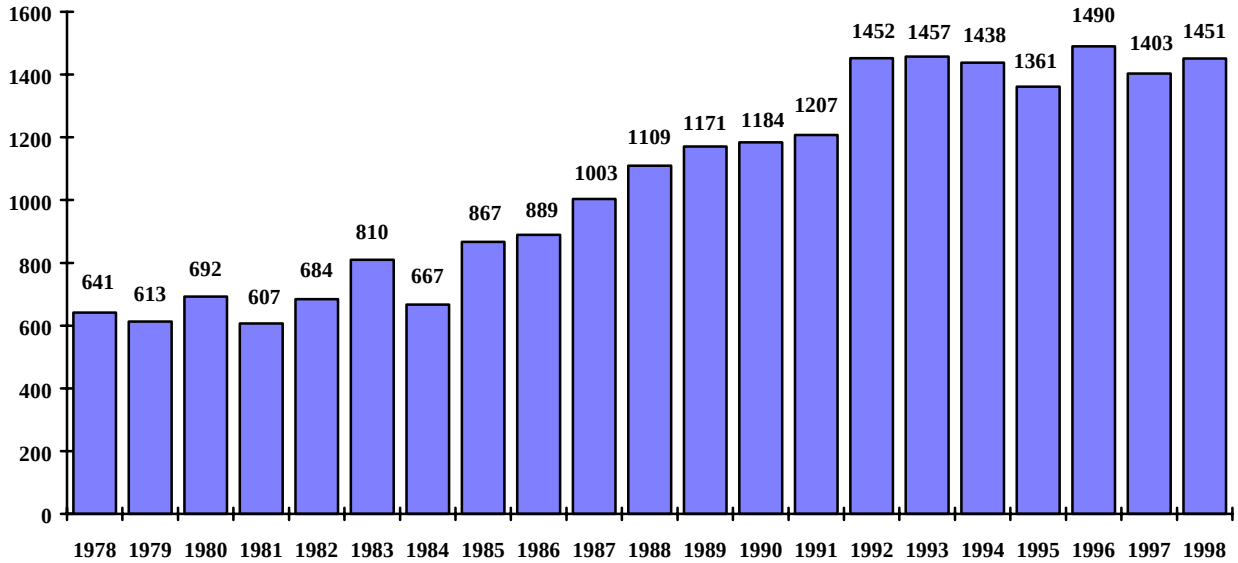
Judicial ethics standards are found primarily in the Rules Governing Judicial Conduct, which are promulgated by the Chief Administrator of the Courts with the approval of the Court of Appeals. (The text of the Rules is annexed to this Report.)

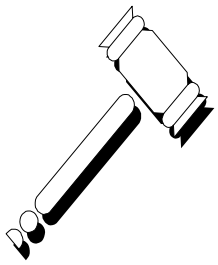
The number of complaints received by the Commission has steadily increased over the 24 years of our operation. In the last seven years, the Commission has averaged 1436 complaints per year.

Indeed, in each of the last seven years, the number of incoming complaints has been more than double the number received as recently as 1984, while our staff (now totaling 27) has decreased to less than half the number we had in 1978 (63).

This current Annual Report covers the Commission's activities during 1998.

Complaints Received Since 1978





Action Taken in 1998

Following are summaries of the Commission's actions in 1998, including accounts of all public determinations, summaries of non-public decisions, and various numerical breakdowns of complaints, investigations and other dispositions.

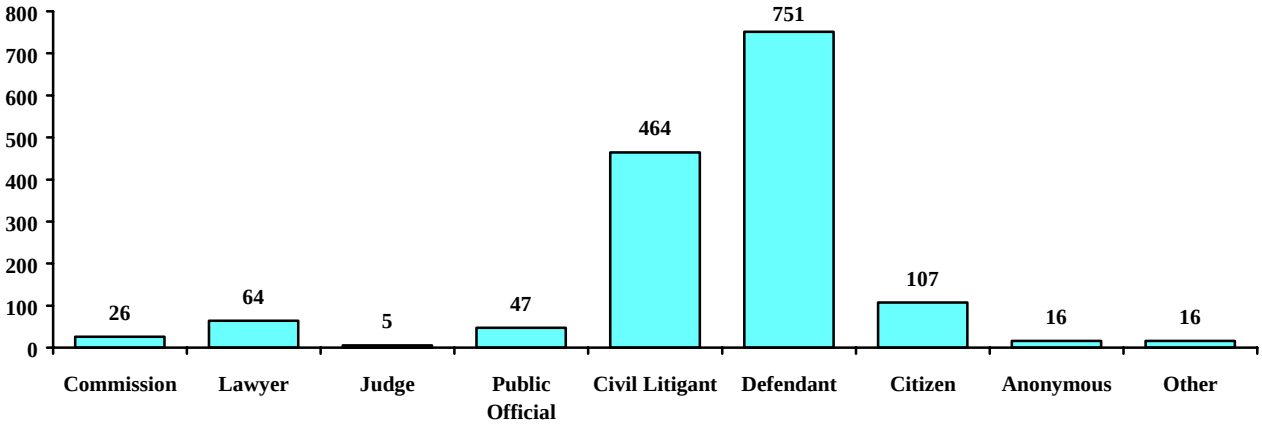
Complaints Received

In 1998, 1451 new complaints were received, marking the seventh consecutive year in which the number of complaints exceeded 1300. Of these, 1236 (85%) were dismissed by the Commission upon initial review, and 215 investigations were authorized and commenced. In addition, 117 investigations and 27 proceedings on formal charges were pending from the prior year.

In 1998, as in previous years, the majority of complaints were received from civil litigants and defendants in criminal cases. Others were received from attorneys, law enforcement officers, civic organizations and concerned citizens not involved in any particular court action. Among the new complaints were 26 initiated by the Commission on its own motion. A breakdown of the source of complaints received in 1998 appears in the following chart.

New complaints dismissed upon initial review are those which the Commission deems to be clearly without merit, not alleging misconduct or outside its jurisdiction, including complaints against judges not within the state unified court system, such as federal judges, administrative law judges and New York City Housing Court judges. Absent any underlying misconduct, such as demonstrated prejudice, conflict of interest or flagrant disregard of fundamental rights, the Commission does not investigate complaints concerning disputed judicial rulings or decisions. The Commission is not an appellate court and cannot reverse or remand trial court decisions.

Sources of Complaints Received in 1998



Investigations

On January 1, 1998, 117 investigations were pending from the previous year. During 1998, the Commission commenced 215 new investigations. Of the combined total of 332 investigations, the Commission made the following dispositions:

- 77 complaints were dismissed outright.
- 38 complaints involving 38 different judges were dismissed with letters of dismissal and caution.
- 8 complaints involving 7 different judges were closed upon the judges' resignation.
- 7 complaints involving 7 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.
- 24 complaints involving 20 different judges resulted in formal charges being authorized.
- 178 investigations were pending as of December 31, 1998.

Formal Written Complaints

On January 1, 1998, Formal Written Complaints from the previous year were pending in 35 matters, involving 27 different judges. During 1998, Formal Written Complaints were authorized in 24 additional matters, involving 20 different judges. Of the combined total of 59 matters involving 47 judges, the Commission made the following dispositions:

- 26 matters involving 22 different judges resulted in formal discipline (admonition, censure or removal from office).
- 3 matters involving 2 judges were dismissed with a letter of dismissal and caution, upon a finding that the judge engaged in misconduct.
- 6 matters involving 5 judges were closed upon the judge's resignation.
- 2 matters involving 2 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.
- 1 matter involving 1 judge was closed after charges were withdrawn upon recommendation of the Commission's Administrator.
- No matters were dismissed outright.
- 21 matters involving 15 different judges were pending as of December 31, 1998.

Summary of All 1998 Dispositions

The Commission's investigations, hearings and dispositions in the past year involved judges at various levels of the state unified court system, as indicated in the following ten tables.

TABLE 1: TOWN & VILLAGE JUSTICES – 2150,* ALL PART-TIME

	Lawyers	*Non-Lawyers*	*Total*
Complaints Received	111	296	407
Complaints Investigated	30	128	158
Judges Cautioned After Investigation	5	23	28
Formal Written Complaints Authorized	1	13	14
Judges Cautioned After Formal Complaint	1	0	1
Judges Publicly Disciplined	3	13	16
Formal Complaints Dismissed or Closed	0	5	5

*Refers to the approximate number of such judges in the state unified court system. Approximately 400 of this total are lawyers.

TABLE 2: CITY COURT JUDGES – 378, ALL LAWYERS*

	Part-Time	*Full-Time*	*Total*
Complaints Received	53	98	151
Complaints Investigated	5	8	13
Judges Cautioned After Investigation	5	0	5
Formal Written Complaints Authorized	0	0	0
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	0	1	1
Formal Complaints Dismissed or Closed	0	0	0

* Approximately 100 of this total serve part-time.

TABLE 3: COUNTY COURT JUDGES – 77 FULL-TIME, ALL LAWYERS*

Complaints Received	134
Complaints Investigated	5
Judges Cautioned After Investigation	3
Formal Written Complaints Authorized	2
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	2
Formal Complaints Dismissed or Closed	0

* Includes 6 who serve concurrently as County and Family Court Judges.

TABLE 4: FAMILY COURT JUDGES – 118, FULL-TIME, ALL LAWYERS

Complaints Received	146
Complaints Investigated	5
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	2
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	2
Formal Complaints Dismissed or Closed	0

TABLE 5: DISTRICT COURT JUDGES – 48, FULL-TIME, ALL LAWYERS

Complaints Received	19
Complaints Investigated	4
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

TABLE 6: COURT OF CLAIMS JUDGES – 51, FULL-TIME, ALL LAWYERS*

Complaints Received	10
Complaints Investigated	0
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

*Complaints against Court of Claims judges who serve as Acting Justices of the Supreme Court were recorded on Table 8 if the alleged misconduct occurred in Supreme Court.

TABLE 7: SURROGATES – 74, FULL-TIME, ALL LAWYERS*

Complaints Received	32
Complaints Investigated	1
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	1
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

*Includes 10 who serve concurrently as Surrogates and Family Court judges, and 30 who serve concurrently as Surrogate, Family and County Court judges.

TABLE 8: SUPREME COURT JUSTICES – 341, FULL-TIME, ALL LAWYERS

Complaints Received	345
Complaints Investigated	28
Judges Cautioned After Investigation	2
Formal Written Complaints Authorized	2
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	3
Formal Complaints Dismissed or Closed	1

TABLE 9: COURT OF APPEALS JUDGES & APPELLATE DIVISION JUSTICES – 59 FULL-TIME, ALL LAWYERS

Complaints Received	15
Complaints Investigated	0
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

TABLE 10: NON-JUDGES*

Complaints Received	192

*The Commission does not have jurisdiction over non-judges, administrative law judges, housing judges of the New York City Civil Court, or federal judges. Such complaints are reviewed, however, to determine whether they should be referred to other agencies.

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.

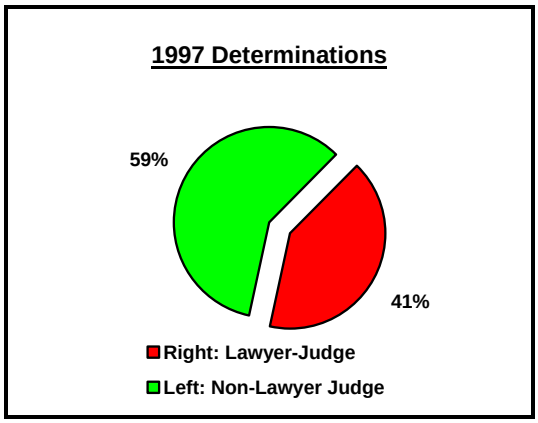
The confidentiality provision of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibits public disclosure by the Commission of the charges served, hearings commenced or related matters, absent a waiver by the judge, until the case has been concluded and a determination of admonition, censure, removal or retirement has been rendered pursuant to law.

Following are summaries of those matters which were completed and made public during 1998. The texts of the determinations are appended to this Report.

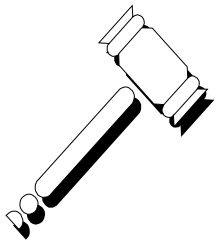
Overview of 1998 Determinations

The Commission rendered 22 formal disciplinary determinations in 1998: three removals, seven censures and 12 admonitions. Thirteen of the 22 respondents disciplined were non-lawyer judges, and nine were lawyer-judges. Sixteen of the respondents were part-time town or village justices, and six were judges of higher courts.

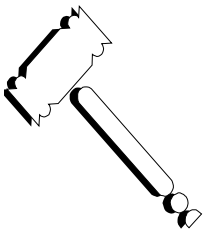
To put these numbers and percentages in some context, it should be noted that, of the 3,300 judges in the state unified court system, approximately 65% are part-time town or village justices. Approximately 80% of the town and village justices, comprising about 55% of all judges in the court system, are not lawyers. (Town and village justices serve part-time and may or may not be lawyers; judges of all other courts must be lawyers, whether or not they serve full-time.)



Of course, no set of dispositions in a given year will exactly mirror those percentages. However, from 1987 to 1998, the number of public determinations, when categorized by type of court and judge, has roughly approximated the makeup of the judiciary as a whole: 134 (about 69%) have involved town and village justices, and 61 (about 31%) have involved judges of higher courts. Excluding cases involving ticket-fixing – largely a town and village court phenomenon, since traffic matters are typically handled by administrative agencies in larger jurisdictions – the overall percentage of town and village justices disciplined by the Commission (66%) is virtually identical to the percentage of town and village justices in the judiciary as a whole (65%).



Determinations of Removal



The Commission completed three disciplinary proceedings in 1998 which resulted in determinations of removal. The cases are summarized below.

Matter of Frieda B. Coble

The Commission determined on February 5, 1998, that Frieda B. Coble, a part-time Village Justice of Earlville, Madison County, should be removed from office for serious delays in remitting court funds to the state comptroller and failing to cooperate in the Commission's investigation of the matter. Judge Coble is not a lawyer.

The judge did not request review by the Court of Appeals.

Matter of Ralph T. Romano

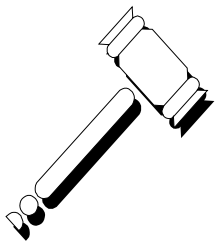
The Commission determined on August 7, 1998, that Ralph T. Romano, a part-time Town Justice of Haverstraw and Acting Village Justice of West Haverstraw, Rockland County, should be removed from office for, *inter alia*, making gender-biased and otherwise inappropriate remarks about and while presiding over domestic assault and sexual abuses cases, exerting the influence of judicial office over the local police and prosecutors in an attempt to commence a criminal investigation at the behest of his friend and client, failing to recuse himself from conducting an arraignment where the complaining witness was a former client whom he described at the arraignment with expletives, and making inflammatory and unsubstantiated oral and written accusations against certain local police detectives. Judge Romano is a lawyer.

Judge Romano requested review by the Court of Appeals, which accepted the Commission's determination and removed the judge from office as this Annual Report was going to press.

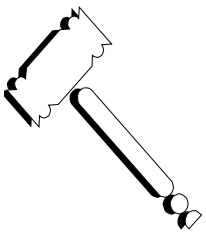
Matter of Klaus Sohns

The Commission determined on October 19, 1998, that Klaus Sohns, a part-time Town Justice of Franklin, Delaware County, should be removed from office for serious delays in remitting court funds to the state comptroller, and for failing to dispose of and keep proper records of cases, notwithstanding a prior caution by the Commission for such conduct. Judge Sohns is not a lawyer.

The judge did not request review by the Court of Appeals.



Determinations of Censure



The Commission completed seven disciplinary proceedings in 1998 which resulted in determinations of censure. The cases are summarized below.

Matter of J. Michael Bruhn

The Commission determined on June 24, 1998, that J. Michael Bruhn, a County Court Judge, Ulster County, should be censured for making improper public remarks at an assembly of police officials, *inter alia* criticizing the Capital Defender Office which at the time was appearing in a capital case before the judge, and disparaging the defense bar in general for asserting constitutional protections which he trivialized as "technicalities."

The judge did not request review by the Court of Appeals.

Matter of Luther V. Dye

The Commission determined on February 6, 1998, that Luther V. Dye a Justice of the Supreme Court, Queens County, should be censured for repeatedly making inappropriate comments to his secretary concerning, *inter alia*, her physical appearance and his interest in having sex with her.

The judge did not request review by the Court of Appeals.

Matter of James J. Faso

The Commission determined on February 5, 1998, that James J. Faso, a part-time Town Justice of Niagara, Niagara County, should be censured for twice double-billing and accepting several hundred dollars in duplicate payments from his town and the state comptroller for official travel and attendance at state judicial training and education programs. Judge Faso is not a lawyer.

The judge did not request review by the Court of Appeals.

Matter of Marshall Jarvis

The Commission determined on October 20, 1998, that Marshall Jarvis, a part-time Town Justice of Altamont and part-time Village Justice of Tupper Lake, Franklin County, should be censured for, *inter alia*, reaching out to the State Police to have a criminal case against a family friend brought before him instead of the jurisdiction in which it was scheduled, then imposed a favorable disposition to the defendant at arraignment. Judge Jarvis is not a lawyer.

The judge did not request review by the Court of Appeals.

Matter of Douglas E. McKeon

The Commission determined on August 6, 1998, that Douglas E. McKeon, a Supreme Court Justice, Bronx County, should be censured for, *inter alia*, using the influence of his judicial office with a lawyer who regularly appeared before him to hire a particular woman, later attempting to prevent or delay her firing, and making public comments on television concerning the *O.J. Simpson* case notwithstanding a prior caution by the Commission that he abide by the rules prohibiting public comment on pending or impending cases.

The judge did not request review by the Court of Appeals.

Matter of James E. McKevitt

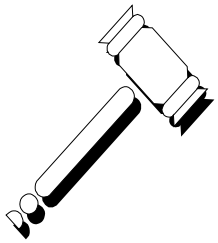
The Commission determined on June 27, 1998, that James E. McKevitt, a part-time Town Justice of Malta, Saratoga County, should be censured for, *inter alia*, making profane and sarcastic remarks toward a defendant in a speeding case, engaging in substantive *ex parte* communications with the prosecutor in various motor vehicle cases, and failing to effectuate various rights of defendants at arraignment in other motor vehicle cases. Judge McKevitt is not a lawyer.

The judge did not request review by the Court of Appeals.

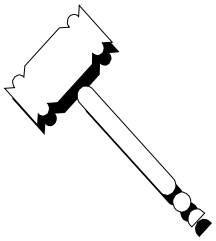
Matter of Mary H. Smith

The Commission determined on June 29, 1998, that Mary H. Smith, a County Court Judge, Westchester County, should be censured for *inter alia* repeatedly speaking *ex parte* with defendants outside the presence of their counsel, and in some cases before her making inappropriate quips and other comments of misplaced humor to attorneys in chambers, appearing to minimize charges brought by the District Attorney's Office.

The judge did not request review by the Court of Appeals.



Determinations of Admonition



The Commission completed 12 disciplinary proceedings in 1998 which resulted in determinations of public admonition. The cases are summarized below.

Matter of Phillip G. Barker, Sr.

The Commission determined on March 17, 1998, that Phillip G. Barker, Sr., a part-time Town Justice of Oppenheim, Fulton County, should be admonished for failing to disclose in a small claims case that he had a conflicting business interest, and for ignoring a legal requirement that he swear witnesses in small claims proceedings. Judge Barker is not a lawyer.

The judge did not request review by the Court of Appeals.

Matter of James V. Burns

The Commission determined on October 20, 1998, that James V. Burns, a part-time Town Justice of Ellery, Chautauqua County, should be admonished for operating a car while his ability was impaired by alcohol. Judge Burns is not a lawyer.

The judge did not request review by the Court of Appeals.

Matter of V. Roy Cacciatore

The Commission determined on March 31, 1998, that V. Roy Cacciatore, a part-time Village Justice of Freeport, Nassau County, should be admonished for engaging in prohibited political activity, in that he sent a letter to local voters urging the support of several candidates for non-judicial office such as mayor and village trustee. Judge Cacciatore is a lawyer.

The judge did not request review by the Court of Appeals.

Matter of Frank W. Degenhardt

The Commission determined on July 27, 1998, that Frank W. Degenhardt, a part-time Town Justice of Gallatin, Columbia County, should be admonished for rendering a decision and entering a judgment in a small claims case without holding a trial, administering an oath or receiving evidence, even though he had concluded that at least one of the charges was time-barred. Judge Degenhardt is not a lawyer.

The judge did not request review by the Court of Appeals.

Matter of Glenn T. Fiore

The Commission determined on June 25, 1998, that Glenn T. Fiore, a part-time Town Justice of North Hudson, Essex County, should be admonished for falsely conveying the impression in a campaign mailing that he was authorized to practice law. Judge Fiore is not a lawyer.

The judge did not request review by the Court of Appeals.

Matter of Stephen W. Herrick

The Commission determined on February 6, 1998, that Stephen W. Herrick, a Judge of the Albany City Court, Albany County, should be admonished for promising in campaign statements that he would jail every defendant who came before him charged with violating an Order of Protection, rather than judging the merits of individual cases.

The judge did not request review by the Court of Appeals.

Matter of Jo Hooper

The Commission determined on June 29, 1998, that Jo Hooper, a part-time Town Justice of Hinsdale, Cattaraugus County, should be admonished for, *inter alia*, reducing and disposing of two speeding cases after *ex parte* communications with the defendants and without notice to the prosecution. Judge Hooper is not a lawyer.

The judge did not request review by the Court of Appeals.

Matter of Samuel Maislin

The Commission determined on August 7, 1998, that Samuel Maislin, a part-time Town Justice of Amherst, Erie County, should be admonished for making substantive public comments about three criminal cases pending in his court, and for making various inappropriate campaign statements, implying that he would jail all those charged with crimes rather than judge the merits of individual cases, and misrepresenting the extent of his involvement in certain notorious local cases. Judge Maislin is a lawyer.

The judge did not request review by the Court of Appeals.

Matter of Duane R. Merrill

The Commission determined on March 17, 1998, that Duane E. Merrill, a part-time Town Justice of Hamden, Delaware County, should be admonished for asserting the influence of his judicial office in attempting to effect the eviction of a local family, based on phone requests from the recent purchaser of the home, notwithstanding that no legal action had been commenced and there was no pertinent matter before the court. Judge Merrill is not a lawyer.

The judge did not request review by the Court of Appeals.

Matter of William Polito

The Commission determined on December 23, 1998, that William Polito, a Supreme Court Justice, Monroe County, should be admonished for running graphic and sensational campaign advertisements which portrayed him as biased against criminal defendants and appeared to commit him to imposing jail sentences in every case and rejecting other lawful dispositions.

The judge did not request review by the Court of Appeals.

Matter of Victor E. Putnam

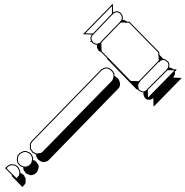
The Commission determined on February 6, 1998, that Victor E. Putnam, a part-time Town Justice of Carlisle, Schoharie County, should be admonished for writing an inappropriate letter to the court hearing a custody matter involving the husband of his former wife, identifying himself as a judge and volunteering information intended to influence the disposition of the case. Judge Putnam is not a lawyer.

The judge did not request review by the Court of Appeals.

Matter of Arthur H. Stevens

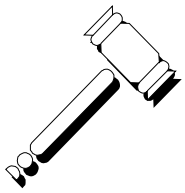
The Commission determined on December 23, 1998, that Arthur H. Stevens, a part-time Town Justice of Whitehall, Schoharie County, should be admonished for, *inter alia*, interfering in a police investigation of a dispute between his son and a neighbor and, without a factual basis to support a charge, urging the police to arrest the neighbor and charge him with Criminal Mischief. Judge Stevens is not a lawyer.

The judge did not request review by the Court of Appeals.



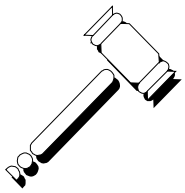
Dismissed or Closed Formal Written Complaints

The Commission disposed of ten Formal Written Complaints in 1998 without rendering public discipline. In two of these cases, the Commission found that the judge's misconduct was established and the charges were sustained, but that the matter should be disposed of with a confidential letter of dismissal and caution. Five cases were closed upon the resignation of the respondent-judge. Two were closed upon the expiration of the respondent-judge's term of office. In one case, the charges were withdrawn upon the recommendation of the Commission's Administrator, and the judge was thereafter cautioned.



Matters Closed Upon Resignation

Twelve judges resigned in 1998: seven while under investigation and five while under formal charges by the Commission. The matters pertaining to these judges were closed. By statute, the Commission may continue an inquiry for a period of 120 days following a judge's resignation, but no sanction other than removal from office may be determined within such period. When rendered final by the Court of Appeals, the "removal" automatically bars the judge from holding judicial office in the future. Thus, no action may be taken if the Commission decides within that 120-period that removal is not warranted.



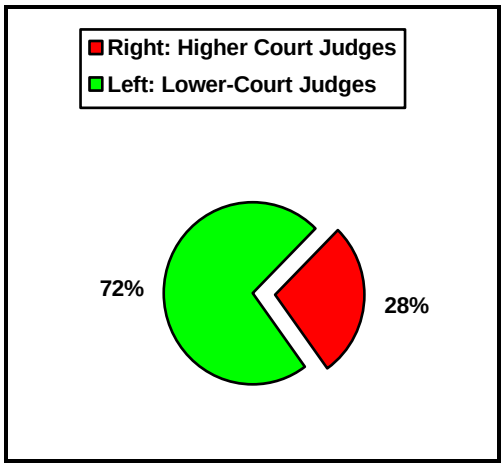
Referrals to Other Agencies

Pursuant to Judiciary Law Section 44(10), the Commission may refer matters to other agencies. In 1998, the Commission referred 20 matters to the Office of Court Administration, typically dealing with relatively isolated instances of delay, poor records keeping or other administrative issues.

Letters of Dismissal and Caution

A *Letter of Dismissal and Caution* constitutes the Commission's written confidential suggestions and recommendations to a judge. It is authorized by Commission rule, 22 NYCRR 7000.1(l). Where the Commission determines that a judge's conduct does not warrant public discipline, it will issue a letter of dismissal and caution, privately calling the judge's attention to ethical violations which should be avoided in the future. Such a communication has value not only as an educational tool but also because it is essentially the only method by which the Commission may address a judge's conduct without making the matter public.

In 1998, the Commission issued 40 letters of dismissal and caution, 38 of which were issued upon conclusion of an investigation; two were issued upon disposition of a Formal Written Complaint. Twenty-nine town or village justices were cautioned, including six who are lawyers. Eleven judges of higher courts – all lawyers – were cautioned. The caution letters addressed various types of conduct, as the examples below indicate.



Unauthorized *Ex Parte* Communications. Six judges were cautioned for having unauthorized *ex parte* communications on substantive matters in pending cases. One part-time justice, for example, visited the home of a defendant's relative to report on the status of the case. Another part-time justice solicited and reviewed documents from one party and discussed the merits of the case on the phone with a party. A third part-time justice independently visited a scene which was the subject of a lawsuit and reported on the visit to the judge presiding over the case. A fourth part-time justice was cautioned for deciding a matter based upon information learned outside court.

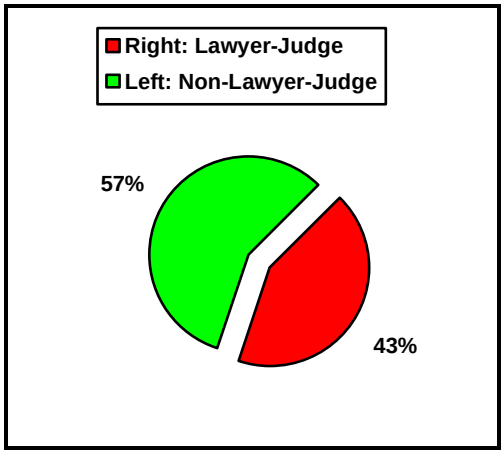
Political Activity. Two judges were cautioned for improper political activity. The Rules Governing Judicial Conduct prohibit judges from attending political gatherings, endorsing other candidates or otherwise participating in political activities except for certain specifically-defined periods when they themselves are candidates for elective judicial office. Judicial candidates are also obliged to campaign in a manner that reflects appropriately on the integrity of judicial office. In 1998, a full-time judge of a higher court was cautioned for personally soliciting campaign contributions in violation of the rules. A part-time justice of a town court was cautioned for failing to dispose of unused campaign funds in a manner consistent with law and the published opinions of the Advisory Committee on Judicial Ethics.

Conflicts of Interest. All judges are required by the Rules to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned. In 1998, A Supreme Court justice was cautioned for appointing as an appraiser

in a particular case an individual with whom the judge had a financial relationship, without disclosing the relationship to the parties in the case.

Inappropriate Demeanor. A Supreme Court justice and a County Court judge were cautioned for exhibiting discourteous, intemperate or otherwise offensive demeanor toward those with whom they deal in their official capacity.

Poor Administration; Failure to Comply with Law. Several judges were cautioned for failing to meet certain mandates of law, either out of ignorance or administrative oversight. For example, three town justices were cautioned for imposing arbitrary policies prohibiting any adjournments but applying the policy only on defendants (not police officers or prosecutors) in Vehicle & Traffic Law cases.



One town justice increased a defendant's bail solely because the defendant would not retain an attorney. A city court judge set bail on a defendant solely because the defendant asked for an adjournment. Another town justice failed at arraignment to advise a defendant of the right to counsel.

Two other town justices were cautioned because, notwithstanding the discretion to conduct somewhat relaxed proceedings in small claims cases pursuant to §1804 of the Uniform Justice Court Act, they failed to follow certain mandatory procedures, such as swearing in witnesses pursuant to §214.10(j) of the Uniform Civil Rules for the Justice Courts.

Lending the Prestige of Office to Advance Private Purposes. Judges are prohibited by the Rules from lending the prestige of judicial office to advance a private purpose, including such laudable activities as charitable fund-raising. In 1998, three judges were cautioned for impermissibly participating in charitable fund-raising activities. Another judge was cautioned for using the prestige of office by approaching the hiring officer at an agency which appears in his court and asking about the status of a job application submitted by a close relative of the judge.

Practice of Law by Part-Time Judges. While judges who serve on part-time courts are also permitted to practice law, there are limitations in the Rules on the scope of that practice. For example, a part-time lawyer-judge may not act as an attorney on any matter in his or her own court. Nor may one part-time lawyer-judge practice law before another part-time lawyer-judge sitting in the same county. In 1998, one part-time lawyer-judge was cautioned for undertaking the representation of a client who was materially involved in a related proceeding which was pending before the judge.

Audit and Control. Twelve part-time town justices were cautioned for failing to make prompt deposits and remittances to the State Comptroller of court-collected funds, such as traffic fines. There was no indication of misappropriated funds, and the judges all took appropriate administrative steps to avoid such problems in the future.

Other Cautions. One judge improperly required fees, sometimes in excess of $75 for

performing wedding ceremonies, contrary to applicable law and Advisory Opinions, which prohibit fees but permit the acceptance of a gift not to exceed $75 in value.

Another judge was cautioned for failing on a mandatory report to record, as required, a fully-submitted case where the decision was pending more than 60 days.

Two judges were cautioned for mediating local disputes that were likely to be, and eventually were, commenced as lawsuits in their own courts.

Follow Up on Caution Letters. Should the conduct addressed by a letter of dismissal and caution continue 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 certain instances, such as audit and control and records keeping matters, the Commission will authorize a follow-up review of the judge's finances and records, to assure that promised remedial action was indeed taken.

In 1998, the Commission determined to remove a judge from office for serious failures to report cases, take action in cases and remit court funds to the state comptroller for inordinate periods of time over a 12-year span, notwithstanding a prior caution by the Commission in 1985 to correct such misconduct. (See *Matter of Klaus Sohns* in this Annual Report.)

The Commission also determined to censure a judge for, *inter alia*, making televised public remarks about the *O.J. Simpson* case, notwithstanding a prior caution by the Commission in 1996 that he abide by the rules prohibiting public comments on pending or impending cases. (See *Matter of McKeon* in this Annual Report.)

In 1997, the Commission admonished a judge who failed to heed a 1991 caution concerning her practice (which was contrary to the CPL) of automatically imposing a predetermined bail on traffic defendants who were not from her county and who pleaded not guilty by mail, while not imposing bail on traffic defendants residing in her county or whom she knew. The judge continued the practice notwithstanding the caution. (See *Matter of Mardis F. Kelsen* in last year's Annual Report.)

Also in 1997, the Court of Appeals upheld the Commission's removal determination against a judge who *inter alia* continued to preside over cases involving his friends, notwithstanding that he had previously been cautioned by the Commission for doing so. *Matter of Ronald C. Robert v. Commission on Judicial Conduct*, 88 NY2d 745 (1997).

Commission Determinations Reviewed by the Court of Appeals

Pursuant to statute, Commission determinations are filed with the Chief Judge of the Court of Appeals, who then serves the respondent-judge. The respondent-judge has 30 days to request review of the Commission's determination by the Court of Appeals, or the determination becomes final. In 1998, the Court decided the two matters summarized below.

Matter of Salvador Collazo v. State Commission on Judicial Conduct

The Commission determined on July 18, 1997, that Salvador Collazo, a Judge of the New York City Civil Court (Bronx County) and an Acting Justice of the Supreme Court, New York County, should be removed from office for (1) writing a lurid note about the anatomy of a female law intern who was working for him at the time, (2) falsely answering a questionnaire from the Governor's Judicial Screening Committee which asked whether he was the subject of investigation, pursuant to the Governor's intention to nominate him for a vacancy on the Supreme Court, (3) falsely telling counsel to the Senate Judiciary Committee that there were no complaints against him at the Commission, at a time when the Senate was considering his nomination to the Supreme Court vacancy, and (4) testifying falsely under oath about these matters.

The Court of Appeals unanimously accepted the Commission's determination and removed Judge Collazo from office in an opinion dated February 17, 1998. 91 NY2d 251 (1998).

The Court held that the judge's "ribald note and indelicate suggestion, even if made in jest, are, without question, demeaning, entirely inappropriate and deserving of some sanction." *Id.* at 253-54. The Court agreed with the Commission that "these isolated occurrences, standing alone, would not be sufficient to justify removal," but that the judge's "misconduct is magnified here by a pattern of evasive, deceitful and outright untruthful behavior, evidencing a lack of fitness to hold judicial office." *Id.* at 254.

The Court noted that the "most egregious instances of such misconduct occurred in connection with petitioner's attempt to conceal the Commission's pending investigation of the initial complaint while seeking an interim appointment to a vacancy on [the] Supreme Court." *Id. at 254.* The various deceptions to the Commission, the Governor's Judicial Screening Committee and the Senate Judiciary Committee were "antithetical to the role of a Judge who is sworn to uphold the law and seek the truth" *Id.* at 255.

Matter of Lorin M. Duckman v. State Commission on Judicial Conduct

The Commission determined on October 24, 1997, that Lorin M. Duckman, a Judge of the Criminal Court of the City of New York, Kings County, should be removed from office for, *inter alia*, (1) intentionally acting contrary to law in dismissing 13 accusatory instruments under the guise of being insufficient on their face, (2) intentionally acting contrary to law in imposing two adjournments in contemplation of dismissal and one dismissal in the interests of justice without the consent of the People or otherwise adhering to various statutory mandates, (3) repeatedly berating, insulting and otherwise demeaning numerous assistant district attorneys, (4) making numerous gender insensitive, racially insensitive and otherwise offensive statements while acting as a judge and (5) otherwise repeatedly demonstrating bias against the prosecution over a five-year period.

The Court of Appeals accepted the Commission's determination and removed Judge Duckman from office in an opinion dated July 7, 1998. 92 NY2d 141 (1998). Two members of the Court dissented and voted for censure.

The Court's majority addressed "several weighty concerns" raised by the dissent, as well as by petitioner and three bar associations which filed briefs as *amici curiae*, including the issue of whether the origin of the Commission's inquiry – "a firestorm of public criticism generated by a separate tragedy,[1] as to which, in the end, petitioner's rulings were found to be a proper exercise of judicial discretion, not a basis for discipline" – constituted a "threat to the independence of the judiciary, a cornerstone of our democracy, posed by unwarranted criticism or the targeting of judges." *Id.* At 156-57. The Court concluded that the unsettling origins of an investigation "could not insulate an unfit judge," and that the salient issue was "how to sanction the [judge's] serious misconduct – [which was] now fully documented." *Id.* at 157.

The Court concluded that Judge Duckman was "an unfit incumbent" and that "in this particular case removal rather than censure, does not imperil the independence of the judiciary." *Id.* at 157.

[1] The tragedy alluded to was a murder-suicide committed by a defendant who was out on bail as set by the judge in *People v. Benito Oliver*, a case pending at the time of the killings.

Special Topics and Recommendations

In the course of its inquiries and other duties, the Commission has identified issues and patterns of conduct that require discussion outside the context of a specific disciplinary proceeding. We do this for public education purposes, to advise the judiciary so that potential misconduct may be avoided, and pursuant to our authority to make administrative and legislative recommendations.

Campaign and Other Political Activity

Most of the judgeships throughout New York State are filled by election. The Rules Governing Judicial Conduct (Section 100.5) prohibit a judge from participating in political events or activities, except for certain specifically defined periods of time when the judge is a candidate for elective judicial office. (This so-called "window period" begins nine months before the election or nominating convention, and ends six months after the election.) For example, except for that "window period," a judge may not attend political gatherings and may not, at any time, endorse other candidates or make political contributions, even to the party endorsing the judge. A judge may not even participate in a non-political event sponsored by a political organization, and the organization need not be a major political party for the stricture to apply. (For example, in Opinion 92-95, the Advisory Committee on Judicial Ethics ruled that a judge could not attend a picnic sponsored by a major local employer, because the event was under the aegis of the company's political activities committee. Similarly, Opinions 88-32 and 88-136 prohibit judges from speaking at a political club about the legal system or the functions of particular courts. Opinion 89-26 prohibits a judge from participating in an essay contest sponsored by a political club.)

The Rules also require a judge to impose certain constraints on his or her staff. Section 100.5(C) prohibits the judge's personal appointees from the following:

- holding elective office in a political organization, except as a delegate to a judicial nominating convention or a member of a county committee other than the executive committee of a county committee;

- contributing, directly or indirectly, money or other valuable consideration in amounts exceeding $500 in the aggregate during any calendar year to all political campaigns for political office, and other partisan political activity including, but not limited to, the purchasing of tickets to political functions, except that this $500 limitation shall not apply to an appointee's contributions to his or her own campaign; and
- personally soliciting funds in connection with a partisan political purpose, or personally selling tickets to or promoting a fund-raising activity of a political candidate, political party, or partisan political club.

Misrepresentations and Improper Pledges Of Future Conduct by Judicial Candidates

Section 100.5(A)(4)(d) of the Rules Governing Judicial Conduct prohibits a judicial candidate from:

- making pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;
- making statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or
- knowingly making any false statement or misrepresenting the identity, qualifications, current position or other fact concerning the candidate or an opponent.

A judge *may* respond to personal attacks or attacks on the candidate's record, so long as the response does not violate the foregoing and other relevant campaign-related provisions. *Id.*

The Commission publicly admonished five judges in 1998 in whole or in part for violating these and other campaign provisions.

In *Matter of V. Roy Cacciatore*, a Village Justice sent a letter to voters, urging support for several candidates for non-judicial office and expressing views on various partisan issues.

In *Matter of Glenn T. Fiore*, a non-lawyer Town Justice distributed campaign literature that gave the misimpression that he was a lawyer, and that he was associated in the law practice of a particular local firm.

In *Matter of Stephen W. Herrick*, a City Court Judge ran televised advertisements which promised that he would jail every defendant who came before him charged with violating an Order of Protection, rather than judge the merits of the individual cases. The ads quoted the judge in part as follows:

> You can't elevate somebody or elect somebody to a high judicial position without knowing what they're going to be like when they put the robe on. You need to know that. It's too important a position….
>
> They [defendants] know they violated the Order of Protection. I'll ask them: "You know what's going to happen, don't you?" And they say, "Yes, judge, I'm going to jail." And they do.

In *Matter of Samuel Maislin*, a Town Justice *inter alia* ran advertisements which portrayed him as biased against criminal defendants, implied that he would jail all those charged with crimes, rather than judge the merits of individual cases, and misrepresented the extent of his involvement in certain cases of local notoriety. For example, the ads:

> stated that he had "refused to let the Wal-Mart armed robbers, the Berk murderer, the Amherst rapist or the Summer Stalker out on low bail;"
>
> inaccurately implied that he had presided over cases involving the "Berk murderer" and the "Amherst rapist;"
>
> stated that he "convicted 88% of those charged with alcohol-related offenses" and depicted drawings of jail cell windows and bars; and
>
> implied that he would take harsh action against "thieves, burglars, stick-up artists, spouse beaters and repeat drunk drivers" and stated that he "has a special place" for them "called jail."

In *Matter of William Polito*, a Supreme Court Justice ran graphic and sensational televised advertisements and inappropriate print advertisements which lacked the dignity appropriate to judicial office and made statements which appeared to commit him to imposing jail sentences in every case and rejecting other lawful dispositions. For example:

> One television advertisement stated in voiceover, "Violent crimes in our streets," and "The menace of drugs. Sexual predators terrorize our lives," and portrayed a masked man with a gun attacking a woman outside her car. The ad noted that the judge was endorsed by several local sheriffs and concluded, "November 5, pull the lever for Bill Polito, and crack down on crime," as a jail door was slammed shut.

> A second television ad proclaimed, "Many violent criminals and sexual predators have already visited our criminal justice system. Bill Polito will stick his foot in the revolving door of justice. Bill Polito won't experiment with alternative sentences or send convicted child molesters home for the weekend… Criminals belong in jail, not on the street."
>
> The judge also ran print advertisements, bearing the legend, "Crack Down On Crime," and promising that he would "not experiment with 'alternative sentencing.'"

Appropriately Closing Campaign Financial Accounts and Properly Disposing of Campaign Surpluses After Election

Since a judge may only engage in political activity during a limited period of time (*i.e.* nine months before and six months after election day), and then only in regard to his or her own campaign for elective judicial office, it is inappropriate for a judge to maintain a campaign committee more than six months after election day. Under various Advisory Opinions by the Advisory Committee on Judicial Ethics, it is inappropriate for a judge to keep the campaign committee open indefinitely, or to transfer the funds from one committee to another, even if the new committee is for use by the same judge in connection with a future race for the same or different judicial office. The mere existence of a campaign committee more than six months after the judge's election would constitute *prima facie* evidence of prohibited political activity by the judge.

The Advisory Committee, in interpreting the applicable law and rules, has opined that it is appropriate for the judge to return surplus campaign funds on a *pro rata* basis to the contributors, or to spend the surplus on equipment or supplies for the court, as approved by the Office of Court Administration, making such material the property of the court system. (A judge could not, for example, use surplus campaign funds to buy a computer for his or her home, even if the equipment were to be used on court-related business.) *See* Advisory Opinions 88-89, 90-6, 91-12, 92-68 and 92-94.

In 1998, the Commission cautioned one judge who, *inter alia*, retained more than $2,700 in campaign funds for nearly three years after his election, for use in a future campaign. As such, the judge engaged in political activity during a time that he was not actually a candidate for elective judicial office.

Post-Election Fund-Raising by a Judge
Who Has Outstanding Loans to the Campaign

A judge's campaign committee is permitted by the Rules to continue raising funds for up to six months after election day. Campaign committees often avail themselves of this provision, holding post-election fund-raising events to retire whatever debt or deficit the campaign may have.

It is not unusual for candidates in judicial or non-judicial races to lend large personal sums to their own campaign committees, in the hope of raising enough money from contributors to reimburse the judge. This practice, while within the letter of the law, can lead to improprieties or the appearance of improprieties. For example, when a judge's campaign committee sends a solicitation to lawyers who practice in the judge's court, there is an inherently coercive character to the appeal. In fact, many lawyers report feeling compelled to contribute to both candidates in a judicial election, out of fear that there may be some adverse impact on their supporting the only the candidate who goes on to defeat. Of course, as to fund-raising solicitations *after* election day, the winning candidate has a decided advantage over a losing candidate, in that lawyers may not feel compelled to contribute to the loser – unless, of course, the loser is still a judge of some other court. Such post-election solicitations by the winning candidate can seem especially coercive.

Where the judge is also the campaign committee's creditor, the post-election find-raising effort becomes even more unseemly, since the contributions are likely to be funneled by the committee directly to the judge. A lawyer who appears before the judge and who makes a post-election contribution is effectively giving money directly to the judge. It would, of course, be inappropriate under almost any other circumstance for a lawyer to make a gratuitous financial payment to a judge before whom he or she practices. Yet when done in the guise of a campaign contribution which will be channeled to the judge as a campaign loan repayment, such financial arrangements are not unusual.

The Commission recommends that the Legislature and the Office of Court Administration consider and address this issue in some way that would eliminate the coercive post-election fund-raising solicitation.

Access to Public Records

In several previous annual reports, most recently last year, the Commission has addressed at length, and reported several relevant private cautions and public disciplines, on the practice of some judges who conduct arraignments and other court proceedings in private or otherwise inappropriate settings, when by law they should be open and accessible to the public. For example, the Commission censured a judge in 1997 for *inter alia* improperly conducting proceedings in chambers on several occasions, excluding the public from matters which, by law, were public. *See, Matter of Westcott* in our 1998 Annual Report. The Commission also cautioned a judge in 1997 for improperly closing a proceeding to the public, at the defendant's request, without a hearing. Several other incidents came to the Commission's attention, either through newspaper reports or petitions filed by newspapers or interested parties, in which such proceedings as arraignments were conducted in chambers or otherwise non-public settings, contrary to law, usually without notice that the proceedings would be closed.

With certain rare and specific exceptions, state law requires that all court proceedings be public (Section 4 of the Judiciary Law). Court decisions as early as 1971 have further addressed the issue, specifically holding that a judge may not hold court in a police barracks or schoolhouse.[2] Unfortunately, these standards are not uniformly observed throughout the state. In 1996, for example, the Commission publicly admonished a town justice who, *inter alia*, conducted arraignments in the police station part of the local justice complex, notwithstanding the availability of his courtroom on the same floor of the same complex. *See, Matter of Cerbone*, in our 1997 Annual Report, and *Matter of Burr* in our 1984 Annual Report. *See also*, the discussion in our 1997 Annual Report about the improper practice of automatically barring children from courtrooms.

Absent a controlling exception, all criminal and civil proceedings should be conducted in public settings which do not detract from the impartiality, independence and dignity of the court.

Likewise, public records of the court must also be reasonably available to the public. Repeatedly, however, the Commission has become aware of

[2] *People v. Schoonmaker*, 65 Misc2d 393, 317 NYS2d 696 (Co Ct Greene Co 1971); *People v. Rose*, 82 Misc2d 429, 368 NYS2d 387 (Co Ct Rockland Co 1975).

some judges and court personnel who make it difficult for individual citizens to have such reasonable access to public records. Indeed, Commission investigators sometimes encounter resistance in their endeavors to review public court files associated with a duly-authorized inquiry. The problem usually arises in smaller municipalities – town, village and small city courts – where court staffing is limited. In a recent example, a part-time town justice insisted that the only time the court's public records would be available for inspection by Commission staff would be one evening per month. While the Commission does not believe it should be necessary to subpoena records that are public and should be available without process, it will issue such subpoenas as necessary. Of course, the average citizen seeking a public record does not have that option.

Sometimes the judge may not be aware that public records are being handled in such a way as to discourage review. In a recent investigation, it developed that a court clerk was requiring inquirers to put their requests for public records in writing, with detailed reasons for the request. The clerk testified that she considered it inappropriate to honor requests where the motive was personal or related to a difficult litigation, such as custody. When the judge was apprised by the Commission of the clerk's practice, the judge educated the clerk on the law and ended the practice of requiring any explanation at all for the review of public records.

The Commission reminds all judges, especially those whose courts are not heavily staffed, to assure the availability of public court records at reasonable times to the public, without regard to the reason an individual wishes to see such records, and to assure that court personnel observe the same standards of diligence and fidelity to the law and the Rules as are applicable to the judge. See Section 100.3(C)(1) & (2).

Blanket Denials of Adjournments in Traffic Cases

The Commission has received several complaints in the past two years concerning a practice in many town and village courts in which traffic defendants who plead not guilty are issued trial notices and are told, in words or substance, that no requests for adjournments will be "considered" or "granted." A typical example, apparently issued on a computer-generated form, reads as follows:

> This Court has accepted your not guilty plea. You have been scheduled for trial as shown above. If you plan to be represented by an attorney he or she should accompany you and be ready for trial as scheduled. No adjournments will be considered.

On its face, such a notice suggests prejudgment because in some circumstances, such as a defendant's hospitalization or a trial lawyer's actual engagement in another court, it may be an abuse of the judge's discretion not to grant an adjournment. Failure to even *consider* the request seems unreasonable. Moreover, such a notice to the defendant raises a question as to whether the same policy is being applied to the prosecution.

After reporting on the problem in our last annual report, the Commission in 1998 confidentially cautioned three judges for arbitrary adjournment policies, in which defendants, typically in traffic cases, were advised that adjournments would not be granted to them, while in fact such adjournments were granted upon request of the local police or prosecutor. It seems axiomatic that a court's policies, on adjournments or other issues, should be constructed in such a way as to apply equally to both sides of a litigation. Moreover, a court should take care not to impose any policy which removes from the judge the discretion to consider individual applications on their own merits. While a judge need not feel required to grant an adjournment simply on request, for example, neither should a judge automatically reject all such requests out of hand. One can readily imagine any number of legitimate requests for an adjournment: the hospitalization of a party, actual engagement by a party or attorney in another court at the same time, etc. In fact, recent matters that have come to the Commission's attention include the following.

> A defendant recovering from surgery was advised by the clerk of a city court that requests for adjournment could not be made by telephone or mail, but only in person at the scheduled time. The defendant had to appear in court for that purpose, against her physician's advice.
>
> A lawyer who had negotiated a reduced plea on behalf of his client, who lived 150 miles from the court, was unable to obtain a short adjournment despite advising the court clerk of his scheduling conflict. The clerk advised him that his client would either have to appear without counsel or retain new counsel. The client retained new counsel and ultimately paid fees to two lawyers, to plead guilty to a traffic charge.

The Commission will continue to address this issue as appropriate, in public forums and in its complaint dispositions.

Sentencing Defendants to Contribute to Specific Charities

Section 100.4(C)(3)(b)(i) of the Rules Governing Judicial Conduct provides that a judge "shall not personally participate in the solicitation of funds or other fund-raising activities" for governmental, civic or charitable organizations.

In 1998, the Commission confidentially cautioned three judges for engaging in impermissible charitable fund-raising activity. In two of these cases, the judges involved had sentenced defendants to donate certain sums of money to particular charitable organizations. Such sentences, though usually associated with a good cause, are contrary to law.

In *Matter of Richter*, the Court on the Judiciary held that a "Judge is forbidden to solicit for charity; *a fortiori*, he may not direct contributions to charities, particularly where the recipient is specified." 42 NY2d [aa], [ii] (Ct. on the Judiciary, 1977). (*See also*, *Matter of Dunbar*, 1980 Annual Report of the Commission, at 169.)

Charging Fees for Conducting Wedding Ceremonies

While the law permits a judge to accept a gift of as much as $75 in value for performing a wedding (General Municipal Law §805-b), it does not permit a judge to solicit a gift or charge a fee (Opinion 89-25 of the Advisory Committee on Judicial Ethics). Moreover, a judge is not permitted to accept even a gift for the performance of a marriage during normal business hours in the courthouse (General Municipal Law §805-b).

The Commission periodically receives complaints about judges who are violating these wedding provisions. In 1998, one judge was cautioned for charging fees, sometimes in excess of $75, for performing wedding ceremonies away from the courthouse, and for accepting monetary gifts for performing wedding ceremonies at the courthouse during regular business hours.

Improper Ex Parte Communications and Conducting Out-of-Court Investigations into Alleged Facts at Issue in Civil or Criminal Cases

As recently as in our 1995 annual report, the Commission has commented extensively on and warned judges about improper *ex parte* communications between judges and various other participants in a case. Nevertheless, in 1998, the Commission publicly disciplined five judges and confidentially cautioned six others, in whole or in part for engaging in improper *ex parte* communications. It seems appropriate, therefore, to revisit this topic in some detail.

Background

Section 100.3(B)(6) of the Rules Governing Judicial Conduct prohibits a judge from initiating or considering *ex parte* communications in a pending or impending matter, except "when authorized by law." Over the years, the Commission has publicly disciplined numerous judges for violating this standard, either for having substantive discussions off the record with one of the parties or participants in a case before them, or for intervening *ex parte* in a case pending before another judge. In some instances, the *ex parte* nature of the communication is incidental to the underlying misconduct. For example, in *Matter of Kiley*, 74 NY2d 364 (1989), a District Court judge spoke privately to prosecutors in two different cases, seeking leniency for defendants as a personal favor. In other instances, the *ex parte* communications may result from the judge's failure to appreciate the proper role of a judge in our legal system.

Ex Parte Communications With Prosecutors and Police

Sometimes due to crowded or otherwise less-than-satisfactory court facilities, some judges find themselves compromised by unintentional proximity to one side or another. For example, one complaint considered by the Commission concerned a town court with very limited space in which the judge, the local prosecutor and the police shared the judge's robing room for pre-trial and mid-trial conferences. In such a setting, even if the judge were scrupulously to avoid discussing the merits, the appearance of impropriety would be inevitable. Sometimes, of course, the misconduct involves more than appearances. In one case, *Matter of*

Cooksey, 1988 Annual Report 151, a town justice went so far as to deny defense counsel entry to the office where an unauthorized *ex parte* conversation between the judge and a prosecutor was taking place.

In other cases, the Commission has learned about full-time and part-time judges who meet regularly with local prosecutors before court convenes, to discuss pending criminal cases. In *Matter of Sardino*, 58 NY2d 286 (1983), an assistant district attorney testified that he and a full-time city court judge regularly held morning meetings to review and make judgments as to the merits of cases on the day's calendar. In *Matter of McGee*, 59 NY2d 870 (1983), a town justice acknowledged holding *ex parte* conversations concerning pending cases with the arresting officers. In *Matter of Greenfeld*, 71 NY2d 389 (1988), a village justice engaged in unauthorized *ex parte* communications and delegated to the local prosecutor various judicial duties, such as accepting pleas and determining the amount of fines.

Such *ex parte* practices, in which judges privately discuss the merits of cases with the prosecutor or other law enforcement personnel, are clearly improper and undermine a fundamental judicial obligation to hear both sides in a dispute fairly in order to render judgment impartially. At the very least, such a distortion of the judicial process gives rise to an appearance of impropriety. At worst, such communications 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.

Ex Parte Disposition of Criminal Charges

The converse of the problem of the judge who communicates improperly with or relies improperly upon the prosecutor is the judge who reduces or dismisses charges without notice to the District Attorney's office.

Various provisions of the Criminal Procedure Law set forth the procedure for dismissing charges with notice to the prosecutor as to an indictment, an information, a simplified traffic information, a prosecutor's information or a misdemeanor complaint (*CPL Sections 170.45, 170.55 and 210.45*). Section 100.2 of the Rules on Judicial Conduct requires a judge to "respect and comply with the law."

From time to time, in the course of investigating particular complaints, the Commission becomes aware of cases disposed of by a judge without

proper notice to the District Attorney. The judge may independently reduce a charge from DWI to DWAI, for example, or dismiss the case altogether, without proper notice to or consent by the DA. Even where the DA would have had no objection to the particular disposition, the failure to give notice is improper and inevitably appears as if the judge is doing a favor for the defense.

Ex Parte Meetings in Civil Cases, Without Consent

Unauthorized *ex parte* communications, of course, are not limited to criminal cases. The Commission receives several complaints each year involving judges who engage in such a practice in civil cases. Numerous letters of dismissal and caution have been issued in such matters. For example, one judge visited the location of a property dispute, unannounced, and discussed the merits of the case with one of the parties, who happened to be at the site when the judge arrived; the judge later told the Commission that he had only wanted to see the disputed property for himself. Another judge interviewed the parties separately in a pending case and failed to hold a hearing in which each side could hear and cross examine the other. A third judge privately interviewed a potential witness and consequently refused to entertain the plaintiff's small claim action. A fourth judge summoned a litigant to court and questioned him outside the presence of his attorney. A fifth judge received and examined material from the plaintiff in a small claims case, without sharing it with the defendant.

Complaints such as these which result in cautions typically arise not out of venality but from the judge's ignorance of procedural and ethical rules. Where the *ex parte* communications are motivated by something more serious than an honest mistake or failure to appreciate the rules, the Commission's responses are correspondingly more severe. For example, in *Matter of Levine*, a New York City Civil Court judge was removed from office for granting an important adjournment on the basis of a request from a former political leader, thereby conveying the "impression in an *ex parte* communication that his rulings would not be based on merit but on his allegiance and loyalty to the former political leader." 74 NY2d 294, 297 (1989).

Whether or not there is something ulterior in the judge's motivation -- such as persuading the plaintiff to withdraw charges as a favor to the defendant, to whom the judge has a personal connection -- private discussion with one side, without the knowledge or consent of the other side, is improper. Even in the

course of settlement discussions between plaintiff and defendant -- where the judge's intervention is well-intentioned and even necessary to advance the negotiations -- the *ex parte* communications must be on notice and with the permission of the parties.

Out-of-Court Investigations

Virtually every year, the Commission receives and investigates complaints alleging that individual judges, usually part-time town or village justices, have conducted their own fact-finding investigations in the field, typically in cases over which they were presiding, and typically *ex parte*. Examples include judges who have made unaccompanied visits to the scene of an accident or to the homes of neighbors involved in a property dispute, often engaging the neighbors in conversation about the case.

The Commission has issued numerous cautions over the years to judges who have engaged in such behavior, reminding them that in our adversary system of law, a judge's decisions should be based only on evidence presented in court and accessible to the parties.

In one case, for example, a judge visited the scene of an alleged motor vehicle violation and spoke about the charge with a witness outside of court and outside the presence of the parties. In a second case, a judge visited the scene of an alleged crime, unaccompanied by the prosecutor or defense counsel, and interviewed the complaining witness *ex parte*. In a third case, a judge visited a property by himself, made a visual inspection of some items at issue in the case, then issued an order based in part on his inspection. In five other cases, the judge involved went to examine a particular building which was the subject of a claim over which he was presiding, without giving the parties an opportunity to be present and to be heard concerning the observations the judge made.

Several investigations are presently pending as to judges who allegedly made *ex parte* out-of-court factual inquiries in cases before them.

It is improper for a judge to conduct an independent, *ex parte*, out-of-court inquiry in an effort to ascertain the facts of a case. It is disturbing how often those judges who engage in such a practice have no conception that their conduct is improper.

The 1998 Cases

In *Matter of Mary H. Smith*, a County Court Judge was censured for, *inter alia*, having unauthorized substantive *ex parte* conversations with defendants, in the absence of their attorneys, notwithstanding at least one warning by a prosecutor that such communications were improper.

In *Matter of Marshall Jarvis*, a Town Justice was censured for speaking to the father of a defendant who was a family friend, then speaking to the District Attorney's Office about the case in an attempt to avert charges, then reaching out to the State Police to order the defendant brought before him, even though the case was scheduled for arraignment in another jurisdiction.

In *Matter of Victor E. Putnam*, a Town Justice was admonished for attempting to influence the outcome of a custody case before another judge by communicating in writing to that judge without invitation and providing disparaging information about one of the parties in the case.

In *Matter of Jo Hooper*, a Town Justice spoke *ex parte* to two traffic defendants and thereafter reduced the charges against them and disposed of the charges without notice to the prosecutor.

In *Matter of Duane R. Merrill*, a Town Justice had an *ex parte* conversation with an individual who was seeing to evict a family from the home he had just purchased, then went to the home, identified himself a judge and tried to effect the eviction, even though no proceeding had yet been formally commenced.

The Commission also cautioned six Town Justices for *ex parte* communications which were not as serious as those above but which nevertheless required corrective comment. For example, one judge received and considered *ex parte* documents and a phone call in a small claims case. Another made an *ex parte* visit to the scene at issue in a case before another judge, then reported to that other judge.

The Commission's Budget

Since its inception, the Commission has managed its finances with extraordinary care. In periods of relative plenty, we kept our budget small; in times of statewide financial crisis, we made difficult sacrifices. Our average annual increase since 1978 has been less than one percent – a no-growth budget which, when adjusted for inflation, has actually meant a major decline in financial resources.

From a high of about $2.26 million, our funding has been as low as $1,584,000, as reflected in the chart below. While we had a staff of 63 in 1978, we have been as low as 20 in 1996-97. At the same time, the number of complaints received and reviewed in a year has more than doubled (to more than 1400 per year), and the number of investigations authorized and conducted in a year has increased more than 22%. The number of more than 22%. The number of judges under the Commission's jurisdiction has remained constant, at about 3,300. Managing such an increased workload in so large a system, with steadily dwindling resources, has been formidable and not without sacrifices to our efficiency.

After several years of steep declines as high as 19.2% of our total budget, the Commission has enjoyed three consecutive years of modest budgetary increases. For the 1998-99 fiscal year, the Commission's budget was set at $1,875,900, as recommended by the Governor and approved by the Legislature. This has permitted us to hire a second full-time attorney in Rochester and an additional full-time investigator for each of our three offices: New York, Albany and Rochester.

Budget Figures, 1978 to Present

Fiscal Year	Annual Budget	Percent Change	Complaints Received	Attorneys on Staff	Investigators on Staff	Total Staff
1978-79	$1,644,000		641	21	18 f/t	63
≈	≈		≈	≈	≈	≈
1988-89	$2,224,000		1109	8	12 f/t, 2 p/t	41
1989-90	$2,211,500	↓ 1.4%	1171	8	9 f/t, 2 p/t	41
1990-91	$2,261,700	↑ 2.2%	1184	8	8 f/t	37
1991-92	$1,827,100	↓ 19.2%	1207	7	7 f/t	32
1992-93	$1,666,700	↓ 8.7%	1452	7	6 f/t, 1 p/t	26
1993-94	$1,645,000	↓ 1.3%	1457	7	4 f/t, 1 p/t	26
1994-95	$1,778,400	↑ 8.1%	1438	7	4 f/t, 1 p/t	26
1995-96	$1,584,100	↓ 10.9%	1361	7	3 f/t, 1 p/t	21
1996-97	$1,696,000	↑ 7%	1490	7	2 f/t, 2 p/t	20
1997-98	$1,736,500	↑ 2.4%	1403	7	2 f/t, 2 p/t	20
1998-99	$1,875,900	↑ 8%	* *	9	6 f/t, 1 p/t	27*

* Number includes two part-time staff.

Conclusion

Public confidence in the high standards, integrity and impartiality of the judiciary, and in an independent disciplinary system which keeps judges accountable for their conduct, is essential to the rule of law. The members of the New York State Commission on Judicial Conduct believe that the Commission's work contributes to that ideal, to a heightened awareness of the appropriate ethics standards incumbent on all judges, and to the fair and proper administration of justice.

Respectfully submitted,

HENRY T. BERGER, CHAIR
JEREMY ANN BROWN
STEPHEN R. COFFEY
LAWRENCE S. GOLDMAN
CHRISTINA HERNANDEZ
DANIEL W. JOY
DANIEL F. LUCIANO
ALAN J. POPE
FREDERICK M. MARSHALL
JUANITA BING NEWTON
EUGENE W. SALISBURY

APPENDIX

Biographies of Commission Members and Attorneys
Roster of Referees Who Served in 1998
The Commission's Powers, Duties & History
Text of the Rules Governing Judicial Conduct
Text of 1998 Determinations
Statistical Analysis of Complaints

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New York State
Commission on Judicial Conduct

Commission Members and Attorneys

There are 11 members of the Commission on Judicial Conduct. Four are appointed by the Governor, three by the Chief Judge, and one by each of the four leaders of the Legislature. The Commission has nine attorneys on its staff, one of whom serves as its clerk, assisting the members with such matters as legal research, opinion drafting, referee designation and scheduling, while having no investigative or trial role.

APPOINTING AUTHORITY	COMMISSION MEMBER	EXPIRATION OF TERM
Governor	Hon. Daniel F. Luciano	March 31, 2003
Governor	Hon. Frederick M. Marshall	March 31, 2000
Governor	Jeremy Ann Brown, C.A.S.A.C.	March 31, 2001
Governor	Christina Hernandez, M.S.W.	March 31, 2002
Chief Judge	Hon. Juanita Bing Newton	March 31, 2000
Chief Judge	Hon. Eugene W. Salisbury	March 31, 2001
Chief Judge	Hon. Daniel W. Joy	March 31, 2002
Assembly Speaker	Lawrence S. Goldman, Esq.	March 31, 2002
Assembly Minority Leader	Alan J. Pope, Esq.	March 31, 2001
Senate President Pro Tem	Stephen R. Coffey, Esq.	March 31, 2003
Senate Minority Leader	Henry T. Berger, Esq.	March 31, 2000

Biographies of the Current Commission Members

Henry T. Berger, Esq., *Chair of the Commission*, is a graduate of Lehigh University and New York University School of Law. He is a partner in the firm of Fisher, Fisher and Berger. He is a member of the Association of the Bar of the City of New York and the New York State Bar Association. Mr. Berger served as a member of the New York City Council in 1977.

Jeremy Ann Brown, C.A.S.A.C., is a recent graduate of Empire State College with a degree in Community and Human Services. In the past she attended Boston University School of Fine Arts and had a career in professional musical comedy theatre. She is a Credentialed Alcohol and Substance Abuse Counselor at the Rockland Council on Alcoholism and other Drug Dependence, Inc., in Nyack, New York. Ms. Brown previously served as C.A.S.A.C. at the YWCA Awakenings Program in White Plains, St. Christopher's Inn in Garrison, Phelps Hospital Outpatient Program in Ossining and the Westchester County Medical Center's detoxification and outpatient program in White Plains. Ms. Brown is a New York State Certified Rape Crisis Counselor and volunteers as such for the Rockland Family Shelter in New City. She was honored by CBS Television as Woman of the Year in 1995. Ms. Brown was appointed to the Attorney General's Crime Victim's Advisory Panel by then-Attorney General Dennis Vacco, and in 1996 she was a recipient of the Governor George E. Pataki Distinguished Citizenship Award. She resides in South Nyack, New York, and has two children, Timothy and Samantha.

Stephen R. Coffey, Esq., is a graduate of Siena College and the Albany Law School at Union University. He is a partner in the law firm of O'Connell and Aronowitz in Albany. He was an Assistant District Attorney in Albany County from 1971-75, serving as Chief Felony Prosecutor in 1974-75. He has also been appointed as a Special Prosecutor in Fulton and Albany Counties. Mr. Coffey is a member of the New York State Bar Association, where he serves on the Criminal Justice Section Executive Committee and lectures on Criminal and Civil Trial Practice, the Albany County Bar Association, the New York State Trial Lawyers Association, the New York State Defenders Association, and the Association of Trial Lawyers of America.

Lawrence S. Goldman, Esq. is a graduate of Brandeis University and Harvard Law School. Since 1972, he has been a partner in the criminal law firm of Goldman & Hafetz in New York City. From 1966 through 1971, he served as an assistant district attorney in New York County. He has also been a consultant to the Knapp Commission and the New York City Mayor's Criminal Justice Coordinating Council. Mr. Goldman is currently Treasurer of the National Association of Criminal Defense Lawyers, and former chairperson of its ethics advisory and white-collar committees, a member of the executive committee of the criminal justice section of the New York State Bar Association and a member of the advisory committee on the Criminal Procedure Law.

He is a past president of the New York State Association of Criminal Defense Lawyers, and a past president of the New York Criminal Bar Association. He has been chosen for the outstanding criminal law practitioner award by the New York State Bar Association, the New York State Association of Criminal Defense Lawyers and the New York Criminal Bar Association. He has lectured at numerous bar association and law school programs on various aspects of criminal law and procedure, trial tactics, and ethics. He is an honorary trustee of Congregation Rodeph Sholom in New York City. He and his wife Kathi have two children and live in Manhattan.

Christina Hernandez, M.S.W., is a member of the New York State Crime Victims Board. She previously worked as a Center for Women in Government fellow in the New York State Department of Environmental Conservation, serving as a Legislative Assistant in the development of agency and state policy regarding environmental justice. Ms. Hernandez also served as a residential service provider for Catholic Charities Developmental Disabilities in Albany. Ms. Hernandez received a Bachelor of Arts in Urban Economic Geography from Buffalo State College, a Masters in Social Work from the State University of New York at Albany and a Certificate of Graduate Study in Women and Public Policy from Rockefeller College School of Public Affairs and Policy, State University of New York at Albany. Ms. Hernandez has served as a Member of the New York State Commission on Domestic Violence and the New York State Police Minority Recruitment Task Force. Currently she serves as a member of the New York State Hispanic Heritage Month Committee, Advisory Council Member of the New York State Office for the Prevention of Domestic Violence, Advisory Council Member (Capital District) of the New York State Division for Women, and Board Member of the Center for Women in Government. A native of New York City, Ms. Hernandez resides in Albany, New York.

Honorable Daniel W. Joy has been a Justice of the Appellate Division, Second Department, since 1998, having previously been elected to the Supreme Court, Queens County in 1985, and the New York City Civil Court in 1983. Prior thereto, Justice Joy served in various capacities as an attorney with the New York City Department of Rent and Housing Maintenance, ultimately becoming Deputy Commissioner of the Department before his election to the bench. He was Vice Chairman of Community Board 13 in Queens and helped organize the Springfield Gardens Civic Association in his neighborhood. He has lectured extensively at colleges and law schools and published

book reviews on matters related to housing law. He is currently Board Chairman of the Macon B. Allen Black Bar Association in Queens, a member of the National Bar Association and the Judicial Friends, and serves on the Curriculum Design Team of the Law, Government and Community Service Magnet High School in Cambria Heights, Queens. He is an active member of New Hope Lutheran Church in Jamaica, Queens, and has served on a number of Boards and Commissions at the Synod and Church-wide levels of the Evangelical Lutheran Church in America. He has been a member of Sigma Pi Phi since 1982. Justice Joy and his wife Ruby, a tax accountant, have two children and four grandchildren, which includes a set of twins.

Honorable Daniel F. Luciano was educated in the public schools of the City of New York and attended Brooklyn College, from which he received a Bachelor of Arts degree. He thereafter attended Brooklyn Law School, earning a Bachelor of Laws degree in 1954. After serving in the United States Army in Europe, he entered the practice of law, specializing in tort litigation, real property tax assessment certiorari and general practice. He was engaged as trial counsel to various law firms in litigated matters. Additionally, he served as an Assistant Town Attorney for the Town of Islip, representing the Assessor in real property tax assessment certiorari from 1970 to 1982, and chaired the Suffolk County Board of Public Disclosure from 1980 to 1982. He was elected a Justice of the Supreme Court in 1982 and presided over a general civil caseload. In May 1991 he was appointed to preside over Conservatorship and Incompetency proceedings, later denominated Guardianship Proceedings in Suffolk County. He was appointed as an Associate Justice of the Appellate Term, Ninth and Tenth Judicial Districts, in April of 1993. On May 30, 1996, he was appointed by Governor George E. Pataki as an Associate Justice of the Appellate Division, Second Judicial Department. Justice Luciano is one of the founders of the Alexander Hamilton Inn of Court and served as a Director of the Suffolk Academy of Law. He was the Presiding Member of the New York State Bar Association Judicial Section, is currently a Delegate to the House of Delegates of the New York State Bar Association, and is President-Elect of the Association of Justices of the Supreme Court of the State of New York. Justice Luciano has held the positions of Director of the Suffolk County Women's Bar Association, and First Vice President, Secretary and Treasurer of the Association of Justices of the Supreme Court of the State of New York. Additionally, he is a member of the Advisory Council of the Touro College, Jacob D. Fuchsberg Law Center.

Honorable Frederick M. Marshall attended the University of Buffalo and is a graduate of its law school. He is admitted to practice in all courts of the State of New York as well as the Federal courts. He is Of Counsel to the law firms of Kinney, Buch, Mattrey & Marshall and Kobis & Marshall in Buffalo and East Aurora. He has served as Chief Trial Assistant in the Erie County District Attorney's office, Senior Erie County Court Judge, President of the New York State County Judges Association, Supreme Court Justice of the State of New York, and President of the State Association of Supreme Court Justices. Justice Marshall has served as Administrative Judge of the Eighth Judicial District and Administrative Justice of the Narcotics Court in the Fourth Judicial Department. In addition to his 30 year tenure in the judiciary, Justice Marshall has been an instructor in constitutional law at the State College at Buffalo, Chairman of the Advisory Council of the Political Science Program at Erie Community College, Chairman of the New York State Bar Association Judicial Section, and has been designated Outstanding Citizen of the Year by the Buffalo News. In 1989 the Bar Association of Erie County presented Justice Marshall with the Outstanding Jurist Award. The University of Buffalo Alumni Association has conferred upon him its Distinguished Alumni Award. He served as a First Lieutenant in the Infantry in World War II. Justice Marshall and his wife have three sons and live in Orchard Park, New York, and Bradenton, Florida.

Honorable Juanita Bing Newton is a graduate of Northwestern University and the Columbus Law School of The Catholic University of America. She is a Judge of the Court of Claims and an Acting Justice of the Supreme Court. Judge Newton serves as the Administrative Judge, First Judicial District, Supreme Court, Criminal Branch. Previously, she served as Executive Assistant to the Deputy Chief Administrative Judge for the New York City Courts, as Executive Director and General Counsel to the New York State Sentencing Guidelines Committee, as an Assistant District Attorney in Bronx County and as a high school social studies teacher. She is a member of the National Association of Women Judges, the Judicial Friends and the Association of Court of Claims Judges, which she serves as Treasurer. Judge Newton serves on numerous New York State judicial committees and programs, including the Judicial Committee on Women in the Courts, the Judicial Commission on Minorities, the Advisory Committee on Criminal Practice and Procedure, the Anti-Bias Committee and Panel of the Supreme Court (New York County) and the Drug Policy Task Force of the New York County Lawyers Associa-

tion. Judge Newton and her husband Eddie have a son, Jason, and reside in New Rochelle.

Alan J. Pope, Esq. is a graduate of the Clarkson College of Technology (cum laude) and the Albany Law School. He is a member of the Broome County Bar Association, where he co-chairs the Environmental Law Committee; the New York State Bar Association, where he serves on the Insurance, Negligence and Compensation Law Section, the Construction and Surety Division, and the Environmental Law Section; and the American Bar Association, where he serves on the Tort & Insurance Practice Section and the Construction Industry Forum Committee. Mr. Pope is also an Associate Member of the American Society of Civil Engineers, a member of the New York Chapter of the General Contractors Association of America, an Associate Member of the Building Contractors of Triple Cities, and a member of the Broome County Environmental Management Council.

Honorable Eugene W. Salisbury is a graduate of the University of Buffalo (cum laude) and the University of Buffalo Law School (cum laude). He is Senior Partner in the law firm of Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria of Buffalo and New York City. He has also been the Village Justice of Blasdell since 1961. Since 1963, Judge Salisbury has served as a lecturer on New York State Civil and Criminal Procedure, Evidence and Substantive Criminal Law for the State Office of Court Administration. He has served as President of the State Magistrates Association and in various other capacities with the Association, as Village Attorney of Blasdell and as an Instructor in Law at SUNY Buffalo. Judge Salisbury has authored published volumes on forms and procedures for various New York courts, and he is Program Director of the Buffalo Area Magistrates Training Course. He serves or has served on various committees of the American Bar Association, the New York State Bar Association and the Erie County Bar Association, as well as the Erie County Trial Lawyers Association and the World Association of Judges. He is a member of the Upstate New York Labor Advisory Council. Judge Salisbury served as a U.S. Army Captain during the Korean Conflict and received numerous Army citations for distinguished and valorous service. Judge Salisbury and his wife reside in Hamburg, New York.

BIOGRAPHIES OF COMMISSION ATTORNEYS

Gerald Stern, *Administrator and Counsel*, is a graduate of Brooklyn College, the Syracuse University College of Law and the New York University School of Law, where he earned 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.

Robert H. Tembeckjian, *Deputy Administrator and Deputy Counsel*, is a graduate of Syracuse University, the Fordham University School of Law, and Harvard University's Kennedy School of Government, where he earned a Masters in Public Administration. He previously served as Clerk of the Commission, as publications director for the Council on Municipal Performance, staff director of the Ohio Governor's Cabinet Committee on Public Safety and special assistant to the Deputy Director of the Ohio Department of Economic and Community Development. Mr. Tembeckjian has served on the Committee on Professional and Judicial Ethics and the Committee on Professional Discipline of the Association of the Bar of the City of New York. He was a Fulbright Scholar to Armenia in 1994, teaching courses and lecturing on constitutional law, public management and ethics at the American University of Armenia and Yerevan State University.

Stephen F. Downs, *Chief Attorney (Albany)*, 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.

John J. Postel, *Chief Attorney (Rochester)*, 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 1984. Mr. Postel is a past president of the Governing Council of St. Thomas More R.C. Parish. He is a former officer of the Pittsford-Mendon Ponds Association and a former President of the Stonybrook Association. He is the advisor to the Sutherland High School Mock Trial Team.

Jean M. Savanyu, *Senior Attorney*, is a graduate of Smith College and the Fordham University School of Law (cum laude). She joined the Commission's staff in 1977 and has been a senior attorney since 1986. Prior to joining the Commission, she worked as an editor and writer. Ms. Savanyu teaches in the paralegal program at Marymount Manhattan College and is a member of its advisory board.

Alan W. Friedberg, *Senior Attorney*, is a graduate of Brooklyn College, the Brooklyn Law School and the New York University Law School, where he earned an LL.M in Criminal Justice. He previously served as a staff attorney in the Law Office of the New York City Board of Education, as an adjunct assistant professor of business law at Brooklyn College, and as a junior high school teacher in the New York City public school system.

Cathleen S. Cenci, *Senior Attorney*, graduated summa cum laude from Potsdam College in 1980. In 1979, she completed the course superior at the Institute of Touraine, Tours, France. Ms. Cenci received her JD from Albany Law School in 1984 and joined the Commission as an assistant staff attorney in 1985. Ms. Cenci is a judge of the Albany Law School moot court competitions and a member of Albany County Big Brothers/Big Sisters.

Seema Ali, *Staff Attorney*, is a graduate of York University in Toronto, Ontario, and the Syracuse University College of Law. She has been a law clerk with the New York State Attorney General's Office and the law firm of D.J. & J.A. Cirando in Syracuse. Ms. Ali is a mentor/tutor with the Monroe County Bar Association's Lawyers for Learning Program.

CLERK OF THE COMMISSION

Albert B. Lawrence holds a B.S. in journalism from Empire State College, an M.A. in criminal justice from Rockefeller College and a J.D. from Antioch University. He joined the Commission's staff in 1980 and has been Clerk of the Commission since 1983. He also teaches legal studies and journalism at Empire State College, State University of New York. A former newspaper reporter, Mr. Lawrence was awarded the New York State Bar Association Certificate of Merit "for constructive journalistic contributions to the administration of justice." He was honored as a distinguished alumnus of Empire State College in 1995 and was honored for excellence in teaching in 1996.

Referees Designated in 1998

The following individuals were designated by the Commission as Referees for service in 1998.

REFEREE	CITY	COUNTY
Honorable Fritz W. Alexander, II	New York	New York
Bruno Colapietro, Esq.	Binghamton	Broome
Daniel G. Collins, Esq.	New York	New York
Robert L. Ellis, Esq.	New York	New York
Vincent D. Farrell, Esq.	Mineola	Nassau
Honorable C. Benn Forsyth	Rochester	Monroe
Maryann Saccomando Freedman, Esq.	Buffalo	Erie
Thomas F. Gleason, Esq.	Albany	Albany
Ann Horowitz, Esq.	Albany	Albany
Michael J. Hutter, Esq.	Albany	Albany
Marjorie E. Karowe, Esq.	Schenectady	Schenectady
Travis H. D. Lewin, Esq.	Syracuse	Onondaga
John J. Poklemba, Esq.	Albany	Albany
Roger W. Robinson, Esq.	New York	New York
Honorable Richard D. Simons	Rome	Oneida
Robert S. Smith, Esq.	New York	New York
Edward S. Spector, Esq.	Buffalo	Erie
Justin L. Vigdor, Esq.	Rochester	Monroe
Michael Whiteman, Esq.	Albany	Albany

The Commission's Powers, Duties & History

1999 Annual Report

New York State
Commission on Judicial Conduct

The Commission's Powers, Duties and History

Creation of the New York State Commission on Judicial Conduct

For decades prior to the creation of the Commission on Judicial Conduct, judges in New York State were subject to professional discipline by a patchwork of courts and procedures. The system, which relied on judges to discipline fellow judges, was ineffective. In the 100 years prior to the creation of the Commission, only 23 judges were disciplined by the patchwork system of *ad hoc* judicial disciplinary bodies. For example, an *ad hoc* Court on the Judiciary was convened only six times prior to 1974. There was no staff or even an office to receive and investigate complaints against judges.

Starting in 1974, the Legislature changed the judicial disciplinary system, creating a temporary commission with a full-time professional staff to investigate and prosecute cases of judicial misconduct. In 1976 and again in 1977, the electorate overwhelmingly endorsed and strengthened the new commission, making it permanent and expanding its powers by amending the State Constitution.

The Commission's Powers, Duties, Operations and History

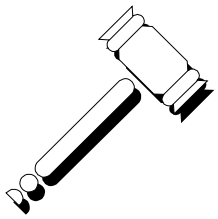
The State Commission on Judicial Conduct is the disciplinary agency constitutionally designated to review complaints of judicial misconduct in New York State. The Commission's objective is to enforce the obligation of judges to observe high standards of conduct while safeguarding their right to decide cases independently. The Commission does not act as an appellate court. It does not review judicial decisions or alleged errors of law, nor does it issue advisory opinions, give legal advice or represent litigants. When appropriate, it refers complaints to other agencies

By offering a forum for citizens with conduct-related complaints, and by disciplining those judges who transgress ethical constraints, the Commission seeks to insure

compliance with established standards of ethical judicial behavior, thereby promoting public confidence in the integrity and honor of the judiciary.

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

In New York, a temporary commission created by the Legislature in 1974 began operations in January 1975. It was made permanent in September 1976 by a constitutional amendment. A second constitutional amendment, effective on April 1, 1978, created the present Commission with expanded membership and jurisdiction. (For clarity, the Commission which operated from September 1976 through March 1978 will be referred to as the "former" Commission.)



Membership and Staff

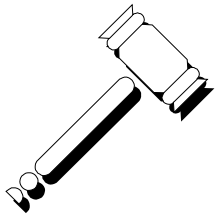
The Commission is composed of 11 members serving four-year terms. Four members are appointed by the Governor, three by the Chief Judge of the Court of Appeals, and one by each of the four leaders of the Legislature. The Constitution requires that four members be judges, at least one be an attorney, and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

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

Hon. Fritz W. Alexander, II (1979-85)
Hon. Myriam J. Altman (1988-93)
Helaine M. Barnett (1990-96)
Herbert L. Bellamy, Sr. (1990-94)
*Henry T. Berger (1988-present)
*John J. Bower (1982-90)
Hon. Evelyn L. Braun (1994-95)
David Bromberg (1975-88)
Jeremy Ann Brown (1997-present)
Hon. Richard J. Cardamone (1978-81)
Hon. Carmen Beauchamp Ciparick (1985-93)
E. Garrett Cleary (1981-96)
Stephen R. Coffey (1995-present)

Howard Coughlin (1974-76)
Mary Ann Crotty (1994-1998)
Dolores DelBello (1976-94)
Hon. Herbert B. Evans (1978-79)
*William Fitzpatrick (1974-75)
Lawrence S. Goldman (1990-present)
Hon. Louis M. Greenblott (1976-78)
Christina Hernandez (1999-present)
Hon. James D. Hopkins (1974-76)
Hon. Daniel W. Joy (1998-present)
Michael M. Kirsch (1974-82)
*Victor A. Kovner (1975-90)
William B. Lawless (1974-75)
Hon. Daniel F. Luciano (1995-present)
William V. Maggipinto (1974-81)
Hon. Frederick M. Marshall (1996-present)
Hon. Ann T. Mikoll (1974-78)
Hon. Juanita Bing Newton (1994-present)
Hon. William J. Ostrowski (1982-89)
Alan J. Pope (1997-present)
*Lillemor T. Robb (1974-88)
Hon. Isaac Rubin (1979-90)
Hon. Eugene W. Salisbury (1989-present)
Barry C. Sample (1994-97)
Hon. Felice K. Shea (1978-88)
John J. Sheehy (1983-95)
Hon. Morton B. Silberman (1978)
Hon. William C. Thompson (1990-1998)
Carroll L. Wainwright, Jr. (1974-83)

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



The Commission's Authority

The Commission has the authority to receive and review written complaints of misconduct against judges, initiate complaints on its own motion, conduct investigations, file Formal Written Complaints and conduct formal hearings thereon, subpoena witnesses and documents, and make appropriate determinations as to dismissing complaints or disciplining judges within the state unified court system. This authority is derived from

Article 6, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law of the State of New York.

By provision of the State Constitution (Article 6, Section 22), the Commission:

> shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system...and may determine that a judge or justice be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge or justice be retired for mental or physical disability preventing the proper performance of his judicial duties.

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

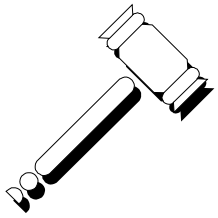
Standards of conduct are set forth primarily in the Rules Governing Judicial Conduct (originally promulgated by the Administrative Board of the Judicial Conference and subsequently adopted by the Chief Administrator of the Courts with the approval of the Court of Appeals) and the Code of Judicial Conduct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

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

- admonish a judge publicly;
- censure a judge publicly;
- remove a judge from office;
- retire a judge for disability.

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

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



Procedures

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

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

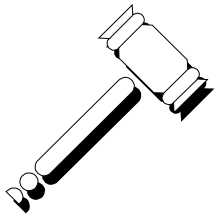
After the Commission authorizes an investigation, the Administrator assigns the complaint to a staff attorney, who works with investigative staff. If appropriate, witnesses are interviewed and court records are examined. The judge may be asked to respond in writing to the allegations. In some instances, the Commission requires the appearance of the judge to testify during the course of the investigation. The judge's testimony is under oath, and 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 will appoint a referee to conduct a formal hearing and report proposed findings of fact and conclusions of law. Referees are designated by the Commission from a panel of attorneys and former judges. Following the Commission's receipt of the referee's report, on a motion to confirm or

disaffirm the report, both the administrator and the respondent may submit legal memoranda and present oral argument on issues of misconduct and sanction. The respondent-judge (in addition to his or her counsel) may appear and be heard at oral argument.

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

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



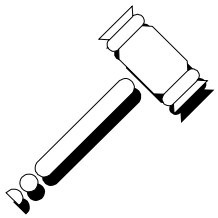
Temporary State Commission on Judicial Conduct

The Temporary State Commission on Judicial Conduct was established in late 1974 and commenced operations in January 1975. The temporary Commission had the authority to investigate allegations of misconduct against judges in the state unified court system, make confidential suggestions and recommendations in the nature of admonitions to judges when appropriate and, in more serious cases, recommend that formal disciplinary proceedings be commenced in the appropriate court. All disciplinary proceedings in the Court on the Judiciary and most in the Appellate Division were public.

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

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

Five judges resigned while under investigation.



Former State Commission on Judicial Conduct

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

The former Commission was empowered to investigate allegations of misconduct against judges, impose certain disciplinary sanctions and, when appropriate, initiate formal disciplinary proceedings in the Court on the Judiciary, which, by the same constitutional amendment, had been given jurisdiction over all 3,500 judges in the unified court system. The sanctions that could be imposed by the former Commission were private admonition, public censure, suspension without pay for up to six months, and retirement for physical or mental disability. Censure, suspension and retirement actions could not be imposed until the judge had been afforded an opportunity for a full adversary hearing. These Commission sanctions were also subject to a *de novo* hearing in the Court on the Judiciary at the request of the judge.

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

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

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

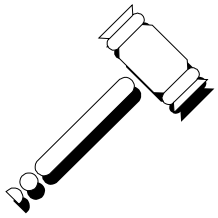
- 15 judges were publicly censured;
- 40 judges were privately admonished;
- 17 judges were issued confidential letters of suggestion and recommendation.

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

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

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

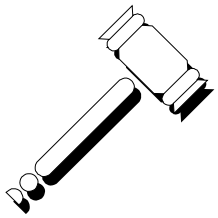


Continuation from 1978 to 1980 of Formal Proceedings Commenced by the Temporary and Former Commissions

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

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

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



The 1978 Constitutional Amendment

The present Commission was created by amendment to the State Constitution, effective April 1, 1978. The amendment created an 11-member Commission (superseding the nine-member former Commission), broadened the scope of the Commission's authority and streamlined the procedure for disciplining judges within the state unified court system. The Court on the Judiciary was abolished, pending completion of those cases 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.

Summary of Complaints Considered Since the Commission's Inception

Since January 1975, when the temporary Commission commenced operations, 24,294 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 19,300 (79%) were dismissed upon initial review and 4994 investigations were authorized. Of the 4994 investigations authorized, the following dispositions have been made through December 31, 1998:

- 2367 were dismissed without action after investigation;
- 983 were dismissed with letters of caution or suggestions and recommendations to the judge; the actual number of such letters totals 913, 53 of which were issued after formal charges had been sustained and determinations made that the judge had engaged in misconduct;
- 397 were closed upon resignation of the judge during investigation or in the course of disciplinary proceedings; the actual number of such resignations was 284;
- 351 were closed upon vacancy of office by the judge other than by resignation;
- 697 resulted in disciplinary action; and
- 199 are pending.

Of the 697 disciplinary matters noted above, the following actions have been recorded since 1975 in matters initiated by the temporary, former or present Commission. (It should be noted that several complaints against a single judge may be disposed of in a single action. This accounts for the apparent discrepancy between the number of complaints and the number of judges acted upon.)

- 127 judges were removed from office;
- 3 judges were suspended without pay for six months (under previous law);
- 2 judges were suspended without pay for four months (under previous law);
- 215 judges were censured publicly;
- 151 judges were admonished publicly; and
- 59 judges were admonished confidentially by the temporary or former Commission.

Text of the Rules
Governing Judicial Conduct

1999 Annual Report

New York State
Commission on Judicial Conduct

PART 100 OF THE RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS GOVERNING JUDICIAL CONDUCT

PREAMBLE

The rules governing judicial conduct are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The rules are to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The rules are designed to provide guidance to judges and candidates for elective judicial office and to provide a structure for regulating conduct through disciplinary agencies. They are not designed or intended as a basis for civil liability or criminal prosecution.

The text of the rules is intended to govern conduct of judges and candidates for elective judicial office and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The rules are not intended as an exhaustive guide for conduct. Judges and judicial candidates also should be governed in their judicial and personal conduct by general ethical standards. The rules are intended, however, to state basic standards which should govern their conduct and to provide guidance to assist them in establishing and maintaining high standards of judicial and personal conduct.

§100.0 Terminology. The following terms used in this Part are defined as follows:

(A) A "candidate" is a person seeking selection for or retention in public office by election. A person becomes a candidate for public office as soon as he or she makes a public announcement of candidacy, or authorizes solicitation or acceptance of contributions.

(B) "Court personnel" does not include the lawyers in a proceeding before a judge.

(C) The "degree of relationship" is calculated according to the civil law system. That is, where the judge and the party are in the same line of descent, degree is ascertained by ascending or descending from the judge to the party, counting a degree for each person, including the party but excluding the judge. Where the judge and the party are in different lines of descent, degree is

ascertained by ascending from the judge to the common ancestor, and descending to the party, counting a degree for each person in both lines, including the common ancestor and the party but excluding the judge. The following persons are relatives within the fourth degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, first cousin, child, grandchild, great-grandchild, nephew or niece. The sixth degree of relationship includes second cousins.

(D) "Economic interest" denotes ownership of a legal or equitable interest, however small, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(2) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, cultural, fraternal or civic organization, or service by a judge's spouse or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization, unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

(E) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

(F) "Knowingly", "knowledge", "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(G) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

(H) "Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

(I) "Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship.

(J) "Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(K) "Non-public information" denotes information that, by law, is not available to the public. Non-public information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports.

(L) A "part-time judge", including an acting part-time judge, is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment.

(M) "Political organization" denotes a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

(N) "Public election" includes primary and general elections; it includes partisan elections, non-partisan elections and retention elections.

(O) "Require". The rules prescribing that a judge "require" certain conduct of others, like all of the rules in this Part, are rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(P) "Rules"; citation. Unless otherwise made clear by the citation in the text, references to individual components of the rules are cited as follows:

"Part" - refers to Part 100

"section" - refers to a provision consisting of 100 followed by a decimal (100.1)

"subdivision" - refers to a provision designated by a capital letter (A).

"paragraph" - refers to a provision designated by an Arabic numeral (1).

"subparagraph" - refers to a provision designated by a lower-case letter (a).

(Q) "Window Period" denotes a period beginning nine months before a primary election, judicial nominating convention, party caucus or other party meeting for nominating candidates for the elective judicial office for which a judge or non-judge is an announced candidate, or for which a committee or other organization has publicly solicited or supported the judge's or non-judge's candidacy, and ending, if the judge or non-judge is a candidate in the general election for that office, six months after the general election, or if he or she is not a candidate in the general election, six months after the date of the primary election, convention, caucus or meeting.

§100.1 A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Part 100 are to be construed and applied to further that objective.

§100.2 A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES. (A) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

(D) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of age, race, creed, color, sex, sexual orientation, religion, national origin, disability or marital status. This provision does not prohibit a judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.

§100.3 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY. (A) Judicial duties in general. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

(B) Adjudicative responsibilities. (1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(2) A judge shall require order and decorum in proceedings before the judge.

(3) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socio-economic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, against parties witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, sex, sexual orientation or socioeconomic status, or other similar factors are issues in the proceeding.

(6) a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding, except:

(a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and the judge, insofar as practical and appropriate, makes provision for prompt notification of other parties or their lawyers of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge, with the consent of the parties, may confer separately with the parties and their lawyers on agreed- upon matters.

(e) A judge may initiate or consider any ex parte communications when authorized by law to do so.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This paragraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

(9) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(10) A judge shall not disclose or use, for any purpose unrelated to judicial duties, non-public information acquired in a judicial capacity.

(C) Administrative responsibilities. (1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered. A judge shall not appoint or vote for the appointment of any person as a member of the judge's staff or that of the court of which the judge is a member, or as an appointee in a judicial proceeding, who is a relative within the sixth degree of relationship of either the judge or the judge's spouse or the spouse of such a person. A judge shall refrain from recommending a relative within the sixth degree of relationship of either the judge or the judge's spouse or the spouse of such person for appointment or employment to another judge serving in the same court. A judge also shall comply with the requirements of Part 8 of the Rules of the Chief Judge (22 NYCRR Part 8) relating to the appointment of relatives of judges.[1] Nothing in this paragraph shall prohibit appointment of the spouse of the town or village justice, or other member of such justice's household, as clerk of the town or village court in which such justice sits, provided that the justice obtains the prior approval of the Chief Administrator of the Courts, which may be given upon a showing of good cause.

[1] Part 8 of the Chief Judge's Rules *inter alia* prohibits the appointment of court employees who are relatives (within six degrees of consanguinity or affinity) of any judge of the same court within the county in which the appointment is to be made.

(D) Disciplinary responsibilities. (1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.

(3) Acts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties.

(E) Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the judge has a personal bias or prejudice concerning a party or (ii) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge knows that (1) the judge served as a lawyer in the matter in controversy, or (ii) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or (iii) the judge has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other interest that could be substantially affected by the proceeding;

(d) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding;
(ii) is an officer, director or trustee of a party;
(iii) has an interest that could be substantially affected by the proceeding;
(iv) is likely to be a material witness in the proceeding;

(e) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.

(f) Notwithstanding the provisions of subparagraphs (c) and (d) above, if a judge would be disqualified because of the appearance or discovery, after the matter was assigned to the judge, that the judge individually or as a fiduciary, the judge's spouse, or a minor child resid-

ing in his or her household has an economic interest in a party to the proceeding, disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and made a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(F) Remittal of disqualification. A judge disqualified by the terms of subdivision (E), except subparagraph (1)(a)(i), subparagraph (1)(b)(i) or (iii) or subparagraph (1)(d)(i) of this section, may disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

§100.4. A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS. (A) Extra-judicial activities in general. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) detract from the dignity of judicial office; or

(3) interfere with the proper performance of judicial duties and are not incompatible with judicial office.

(B) Avocational activities. A judge may speak, write, lecture, teach and participate in extra-judicial activities subject to the requirements of this Part.

(C) Governmental, civic, or charitable activities. (1) A full-time judge shall not appear at a public hearing before an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(2) (a) A full-time judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy in matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(b) A judge shall not accept appointment or employment as a peace officer or po-

lice officer as those terms are defined in section 1.20 of the Criminal Procedure Law.

(3) A judge may be a member or serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Part.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that ordinarily would come before the judge, or

(ii) if the judge is a full-time judge, will be engaged regularly in adversary proceedings in any court.

(b) A judge as an officer, director, trustee or non-legal advisor, or a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities;

(ii) may not be a speaker or the guest of honor at an organization's fund-raising events, but the judge may attend such events. Nothing in this subparagraph shall prohibit a judge from being a speaker or guest of honor at a bar association or law school function or from accepting at another organization's fund-raising event an unadvertised award ancillary to such event;

(iii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice; and

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, but may be listed as an officer, director or trustee of such an organization. Use of an organization's regular letterhead for fund-raising or membership solicitation does not violate this provision, provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.

(D) Financial activities. (1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position,

(b) involve the judge with any business, organization or activity that ordinarily will come before the judge, or

(c) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge, subject to the requirements of this Part, may hold and manage investments of the judge and members of the judge's family, including real estate.

(3) A full-time judge shall not serve as an officer, director, manager, general partner, advisor, employee or other active participant of any business entity, except that:

(a) the foregoing restriction shall not be applicable to a judge who assumed judicial office prior to July 1, 1965, and maintained such position or activity continuously since that date; and

(b) a judge, subject to the requirements of this Part, may manage and participate in a business entity engaged solely in investment of the financial resources of the judge or members of the judge's family; and

(c) any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from this paragraph during the period of such interim or temporary appointment.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under section 100.3(E);

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and if its value exceeds $150.00, the judge reports it in the same manner as the judge reports compensation in section 100.4(H).

(E) Fiduciary activities. (1) A full-time judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, designated by an instrument executed after January 1, 1974, except for the estate, trust or person of a member of the judge's family, or, with the approval of the Chief Administrator of the Courts, a person not a member of the judge's family with whom the judge has maintained a longstanding personal relationship of trust and confidence, and then only if such services will not interfere with the proper performance of judicial duties.

(2) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

(3) Any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from paragraphs (1) and (2) during the period of such interim or temporary appointment.

(F) Service as arbitrator or mediator. A full-time judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

(G) Practice of law. A full-time judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to a member of the judge's family.

(H) Compensation, reimbursement and reporting. (1) Compensation and reimbursement. A full-time judge may receive compensation and reimbursement of expenses for the extrajudicial activities permitted by this Part, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance

of impropriety, subject to the following restrictions:

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(c) No full-time judge shall solicit or receive compensation for extra-judicial activities performed for or on behalf of: (1) New York State, its political subdivisions or any office or agency thereof; (2) a school, college or university that is financially supported primarily by New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for a lecture or for teaching a regular course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or (3) any private legal aid bureau or society designed to represent indigents in accordance with Article 18-B of the County Law.

(2) Public reports. A full-time judge shall report the date, place and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law.

(I) Financial disclosure. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this section and in section 100.3(F), or as required by Part 40 of the Rules of the Chief Judge (22 NYCRR Part 40), or as otherwise required by law.

§100.5 A JUDGE OR CANDIDATE FOR ELECTIVE JUDICIAL OFFICE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY.

(A) Incumbent judges and others running for public election to judicial office. (1) Neither a sitting judge nor a candidate for public election to judicial office shall directly or indirectly engage in any political activity except (i) as otherwise authorized by this section or by law, (ii) to vote and to identify himself or herself as a member of a political party, and (iii) on behalf of measures to improve the law, the legal system or the administration of justice. Prohibited political activity shall include:

(a) acting as a leader or holding an office in a political organization;

(b) except as provided in section 100.5(A)(3), being a member of a political organization other than enrollment and membership in a political party;

(c) engaging in any partisan political activity, provided that nothing in this section shall prohibit a judge or candidate from participating in his or her own campaign for elective judicial office or shall restrict a non-judge holder of public office in the exercise of the functions of that office;

(d) participating in any political campaign for any office or permitting his or her name to be used in connection with any activity of a political organization;

(e) publicly endorsing or publicly opposing (other than by running against) another candidate for public office;

(f) making speeches on behalf of a political organization or another candidate;

(g) attending political gatherings;

(h) soliciting funds for, paying an assessment to, or making a contribution to a political organization or candidate; or

(i) purchasing tickets for politically sponsored dinners or other functions, including any such function for a non-political purpose.

(2) A judge or non-judge who is a candidate for public election to judicial office may participate in his or her own campaign for judicial office as provided in this section and may contribute to his or her own campaign as permitted under the Election Law. During the Window Period as defined in subdivision (Q) of section 100.0 of this Part, a judge or non-judge who is a candidate for public election to judicial office, except as prohibited by law, may:

(i) attend and speak to gatherings on his or her own behalf, provided that the candidate does not personally solicit contributions;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy, and distribute pamphlets and other promotional campaign literature supporting his or her candidacy;

(iii) appear at gatherings, and in newspaper, television and other media advertisements with the candidates who make up the slate of which the judge or candidate is a part;

(iv) permit the candidate's name to be listed on election materials along with the names of other candidates for elective public office;

(v) purchase two tickets to, and attend, politically sponsored dinners and other functions even where the cost of the ticket to such dinner or other function exceeds the proportionate cost of the dinner or function.

(3) A non-judge who is a candidate for public election to judicial office may also be a

member of a political organization and continue to pay ordinary assessments and ordinary contributions to such organization.

(4) A judge or a non-judge who is a candidate for public election to judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under this Part;

(c) except to the extent permitted by section 100.5(A)(5), shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Part;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly make any false statement or misrepresent the identity, qualifications, current position or other fact concerning the candidate or an opponent; but

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate subparagraphs 100.5(A)(4)(a) and (d).

(5) A judge or candidate for public election to judicial office shall not personally solicit or accept campaign contributions, but may establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions and support from the public, including lawyers, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees may solicit and accept such contributions and support only during the Window Period. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

(B) Judge as candidate for nonjudicial office. A judge shall resign from judicial office upon becoming a candidate for elective nonjudicial office either in a primary or in a general elec-

tion, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(C) Judge's staff. A judge shall prohibit members of the judge's staff who are the judge's personal appointees from engaging in the following political activity:

(1) holding an elective office in a political organization, except as a delegate to a judicial nominating convention or a member of a county committee other than the executive committee of a county committee;

(2) contributing, directly or indirectly, money or other valuable consideration in amounts exceeding $500 in the aggregate during any calendar year to all political campaigns for political office, and other partisan political activity including, but not limited to, the purchasing of tickets to political functions, except that this $500 limitation shall not apply to an appointee's contributions to his or her own campaign. Where an appointee is a candidate for judicial office, reference also shall be made to appropriate sections of the Election Law;

(3) personally soliciting funds in connection with a partisan political purpose, or personally selling tickets to or promoting a fund-raising activity of a political candidate, political party, or partisan political club; or

(4) political conduct prohibited by section 25.39 of the Rules of the Chief Judge (22 NYCRR 25.39).

§100.6 APPLICATION OF THE RULES OF JUDICIAL CONDUCT. (A) General application. All judges in the unified court system and all other persons to whom by their terms these rules apply, e.g., candidates for elective judicial office, shall comply with these rules of judicial conduct, except as provided below. All other persons, including judicial hearing officers, who perform judicial functions within the judicial system shall comply with such rules in the performance of their judicial functions and otherwise shall so far as practical and appropriate use such rules as guides to their conduct.

(B) Part-time judge. A part-time judge:

(1) is not required to comply with sections 100.4(C)(1), 100.4(C)(2)(a), 100.4(C)(3)(a)(ii), 100.4(E)(1), 100.4(F), 100.4(G), and 100.4(H);

(2) shall not practice law in the court on which the judge serves, or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;

(3) shall not permit his or her partners or associates to practice law in the court in

which he or she is a judge, and shall not permit the practice of law in his or her court by the law partners or associates of another judge of the same court who is permitted to practice law, but may permit the practice of law in his or her court by the partners or associates of a judge of a court in another town, village or city who is permitted to practice law;

(4) may accept private employment or public employment in a federal, state or municipal department or agency, provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties.

(C) Administrative law judges. The provisions of this Part are not applicable to administrative law judges unless adopted by the rules of the employing agency.

(D) Time for compliance. A person to whom these rules become applicable shall comply immediately with all provisions of this Part, except that, with respect to section 100.4(D)(3) and 100.4(E), such person may make application to the Chief Administrator for additional time to comply, in no event to exceed one year, which the Chief Administrator may grant for good cause shown.

(E) Relationship to Code of Judicial Conduct. To the extent that any provision of the Code of Judicial Conduct as adopted by the New York State Bar Association is inconsistent with any of these rules, these rules shall prevail, except that these rules shall apply to a non-judge candidate for elective judicial office only to the extent that they are adopted by the New York State Bar Association in the Code of Judicial Conduct.

Text of the Commission's 1998 Determinations

1999 Annual Report

New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

PHILLIP G. BARKER, SR.,

a Justice of the Oppenheim Town Court, Fulton County.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
Michael A. Castle for Respondent

The respondent, Phillip G. Barker, Sr., a justice of the Oppenheim Town Court, Fulton County, was served with a Formal Written Complaint dated February 3, 1997, alleging that he mishandled a small claims case. Respondent answered the charge by letter dated February 13, 1997.

By Order dated March 28, 1997, 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 7, 1997, and the referee filed his report with the Commission on August 18, 1997.

By motion dated November 12, 1997, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion on January 16, 1998. The administrator filed a reply dated January 21, 1998. Oral argument was waived.

On January 29, 1998, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Oppenheim Town Court since 1989.

2. On May 24, 1995, respondent presided over Peter Jaikin v Dean Mosher, a small claims case in which Mr. Jaikin was seeking $2,700 for the installation of a cellar and septic system and excavation on Mr. Mosher's property.

3. In March or April 1995, Mr. Jaikin had done grading work on respondent's property, and respondent had paid him $125 cash. After the work had been completed, Mr. Jaikin returned to retrieve some equipment and did some additional grading without charge.

4. At the trial on May 24, 1995, respondent did not disclose to Mr. Mosher that Mr. Jaikin had performed work on respondent's property a month or two earlier.

5. Mr. Jaikin and Mr. Mosher discussed the merits of the claim, but respondent did not swear them as witnesses, as required by the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.10(j).

6. After the trial, Mr. Mosher retained an attorney, Michael M. Albanese. Mr. Albanese called respondent by telephone and pointed out that the witnesses had not been sworn.

7. Respondent checked with the Office of Court Administration and was told that the witnesses in small claims cases must be sworn. Nonetheless, he did not re-try the case and issued a decision on July 10, 1995, based on unsworn evidence. The decision awarded Mr. Jaikin $2,508.69.

8. Paragraphs 4(c), 4(d) and 4(e) of the Formal Written Complaint are not sustained and are, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1, 100.2(a), 100.3(a)(1)[1] and 100.3(c)(1)[2], and Canons 1, 2A, 3A(1) and 3C(1) of the Code of Judicial Conduct. Paragraphs 4(a), 4(b) and 4(f) of Charge I of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. Paragraphs 4(c), 4(d) and 4(e) of Charge I are dismissed.

Inasmuch as respondent had recently engaged in a business transaction with the plaintiff similar to that at issue in the case before him, his impartiality in Jaikin v Mosher might reasonably be questioned. (See, Rules Governing Judicial Conduct, 22 NYCRR 100.3[E][1] [formerly Section 100.3[c][1]]). Although his disqualification was not mandatory, he should have disclosed the prior business association and should have considered any objections to his presiding. (See, Matter of Cerbone, 1997 Ann Report of NY Commn on Jud Conduct, at 83, 85).

Respondent failed to follow the law by ignoring a legal requirement that he swear witnesses in small claims proceedings. (See, Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.10[j]). He elevated this legal error to judicial misconduct by failing to re-try the matter once he learned of his error.

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

Mr. Berger, Ms. Brown, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.
Mr. Coffey was not present.

Dated: March 17, 1998

[1] Now Section 100.3(B)(1)
[2] Now Section 100.3(E)(1)

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

J. MICHAEL BRUHN,

a Judge of the County Court,
Ulster County.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci and Jean M. Savanyu, Of Counsel) for the Commission
Sise & Sise (By Robert J. Sise) and Cook, Tucker, Netter & Cloonan, P.C. (By Robert E. Netter) for Respondent

The respondent, J. Michael Bruhn, a judge of the County Court, Ulster County, was served with a Formal Written Complaint dated February 5, 1997, alleging that he made improper remarks concerning a pending case as the guest speaker at a police awards dinner. Respondent filed an answer dated March 31, 1997.

By Order dated April 4, 1997, the Commission designated the Honorable Bertram Harnett as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 6 and 7, 1997, and the referee filed his report with the Commission on December 4, 1997.

By motion dated February 17, 1998, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent filed a cross motion dated March 2, 1998. The administrator replied on March 6, 1998. Oral argument was waived.

On March 12, 1998, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a judge of the Ulster County Court since January 1, 1994. As the sole judge of the court, he has jurisdiction over all felony cases in the county. He was a judge of the Kingston City Court from January 1, 1982, to December 31, 1993.

2. In 1995, the state enacted a death penalty statute, which, among other things, provided for a Capital Defender Office. The purpose of the office is to provide representation to indigent defendants in cases in which the death penalty is being sought, to provide training and assistance to other attorneys in capital cases and to provide certain advice to

the Court of Appeals. The office is funded by the state.

3. In September 1995, respondent appointed the Capital Defender Office to represent Larry Whitehurst, who was accused of killing a seven-year-old girl in Kingston.

4. The defender office subsequently filed a number of motions, including one for a change of venue based on extensive pre-trial publicity and one for respondent's recusal based, inter alia, on allegations of bias. Respondent never disposed of the recusal motion.

5. In April 1996, while Whitehurst was pending, respondent was asked to speak at a police awards banquet sponsored by the Ulster County Police Chief's Association. The chairman of the event, Frank Brogden, asked respondent to speak about the Whitehurst case; respondent said that it would be improper for him to do so. Mr. Brogden then asked whether respondent could address the new death penalty statute, and respondent agreed.

6. Respondent addressed between 200 and 300 people at the event on May 18, 1996. More than 40 police officers were honored, including four who had been named as witnesses for the prosecution in Whitehurst. Respondent had no actual knowledge of this at the time, although, he acknowledged:

> Certainly I know the investigation was done by the Kingston Police Department, since that's where the crime was committed. And, certainly, I know many of the members of the Kingston Police Department, from my years on the bench there, and have seen them in and out of the courthouse…. I never know what case they are on, but it certainly is easy to guess -- when you know you have a situation like this -- which officers would probably be involved in the investigation. It's a very small detective staff.

None of the four officers was being honored for his work on the Whitehurst case.

7. Other of the honorees were actual or potential witnesses in other cases pending before respondent.

8. Respondent prefaced his speech by stating that he was not addressing any particular case.

9. In his speech, respondent congratulated the honorees as a group, praised the police generally and commented on the rigors of their work.

10. Without specifying them, respondent spoke of constitutional problems with the new death penalty statute.

11. He was critical of the need for the Capital Defender Office and noted that other states do not have one. He questioned state funding of the office, since its "sole purpose" is the "break down" or "defeat" of the death penalty.

12. Respondent said that murder cases can cost as much as $2 million per case and that half of the convictions are overturned on appeal. Prosecutors had found the statute difficult to work with, he said.

13. He was critical of defense lawyers generally, referring to their use of "technicalities" to block prosecutions and obtain appellate reversals.

14. An account of the speech was published the following day in the Kingston Sunday Freeman.

15. In November 1996, Mr. Whitehurst pleaded guilty to Murder, First Degree, and was sentenced by respondent to life in prison without parole.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A), 100.3(B)(8) and 100.4(A), and Canons 1, 2A, 3A(6) and 5A of the Code of Judicial Conduct. Charge I of the Formal Written Complaint, as amended at the hearing, is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

At a time when one of the first prosecutions under the state's new capital punishment statute was pending before him, respondent gave a speech to an assembly of police officials that cast reasonable doubt on his ability to be impartial in the case. He criticized the Capital Defender Office appearing in the case, talked of the difficulties of bringing prosecutions under the new statute and disparaged the defense bar in general for asserting constitutional protections that respondent trivialized as "technicalities."

"A judge may speak, write, lecture, teach…" (Rules Governing Judicial Conduct, 22 NYCRR 100.4[B]) but must conduct such extra-judicial activities so that they do not "cast reasonable doubt on the judge's capacity to act impartially…." (22 NYCRR 100.4[A][1]). "A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories." (22 NYCRR 100.3[B][8]; see, Matter of Fromer, 1985 Ann Report of NY Commn on Jud Conduct, at 135).

Given the high profile of the Whitehurst case, respondent did not need to mention it by name. His disclaimer that he was not speaking about any particular case was a mockery; he knew that he had been invited to speak because the police chiefs wanted to hear about Whitehurst and the death penalty.

He compromised the proper administration of justice by making such remarks, knowing that claims of bias and adverse pre-trial publicity were already issues in the case.

When he accepted the speaking engagement, respondent should have known that police witnesses in Whitehurst were likely to be among the honorees or in the audience. By praising them, while disparaging the defendant's counsel, he abandoned the mantle of a neutral and detached magistrate. (See, Matter of Wood, 1991 Ann Report of NY Commn on Jud Conduct, at 82, 86). A judge must be unbiased and act at all times "in such a way that the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property." (Matter of Sardino, 58 NY2d 286, at 290-91).

A lawyer judge should be especially sensitive to ethical constraints. (Matter of Salman, 1995 Ann Report of NY Commn on Jud Conduct, at 134, 136). This is particularly so of respondent in view of his two prior censures by this Commission. (See, Matter of Bruhn, 1991 Ann Report of NY Commn on Jud Conduct, at 47; Matter of Bruhn, 1988 Ann Report of NY Commn on Jud Conduct, at 133).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.
Ms. Crotty was not present.

Dated: June 24, 1998

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JAMES V. BURNS,

a Justice of the Ellery Town Court, Chautauqua County.

APPEARANCES:

Gerald Stern for the Commission
Philip A. Cala for Respondent

The respondent, James V. Burns, a justice of the Ellery Town Court, Chautauqua County, was served with a Formal Written Complaint dated April 8, 1998, alleging that he operated a car while under the influence of alcohol. Respondent filed an answer dated April 27, 1998.

On September 11, 1998, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On October 1, 1998, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Ellery Town Court since 1985.

2. On July 5, 1996, at 6:10 P.M., respondent was charged with Operating a Motor Vehicle With a Blood Alcohol Content in Excess of .10 Percent and Driving While Intoxicated after he had driven his automobile erratically and crossed the center of the road.

3. On December 18, 1997, respondent pleaded guilty to Driving While Ability Impaired in satisfaction of both charges.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1 and 100.2(A). Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

A judge who operates a motor vehicle while his or her ability is impaired by alcohol violates the law and endangers public safety.

(Matter of Henderson, 1995 Ann Report of NY Commn on Jud Conduct, at 118). Respondent's failure off the bench to abide by the laws that he is often called upon to apply in court undermines his effectiveness as a judge. (See, Matter of Wray, 1992 Ann Report of NY Commn on Jud Conduct, at 77, 80).

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

Mr. Berger, Ms. Brown, Mr. Goldman, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.
Mr. Coffey and Judge Luciano were not present.

Dated: October 20, 1998

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

V. ROY CACCIATORE,

a Justice of the Freeport Village Court, Nassau County.

APPEARANCES:

Gerald Stern for the Commission
Jaspan Schlesinger Silverman & Hoffman, L.L.P. (Stanley Harwood, Of Counsel) for Respondent

The respondent, V. Roy Cacciatore, a justice of the Freeport Village Court, Nassau County, was served with a Formal Written Complaint dated November 25, 1997, alleging improper political activity. Respondent did not answer the charge.

On December 8, 1997, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On December 11, 1997, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Freeport Village Court during the time herein noted.

2. Respondent was a candidate for re-election in the March 1997 village elections.

3. On March 5, 1997, respondent sent a letter to voters in the village, asking them to support the candidacies of several individuals who were running for non-judicial positions and to oppose the opponents of those candidates.

4. The letter was signed by respondent under the letterhead of respondent and his wife and was enclosed in an envelope with the return address, "The Glacken Team Home Rule Party."

5. In the letter, respondent expressed concern about the financial condition of the village and the "huge tax increase that we all are facing." He also stated that "our

hometown… is being threatened," and he called for the election of "a new Mayor and new Trustees on our Village Board."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2 and 100.5. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Although a judge may participate in political activity during a period in which he or she is a candidate for elective judicial office (Rules Governing Judicial Conduct, 22 NYCRR 100.5[A][1][c]), those campaign activities are significantly circumscribed (see, Matter of Decker, 1995 Ann Report of NY Commn on Jud Conduct, at 111, 112). " …Judges must hold themselves aloof from and refrain from engaging in political activity, except to the extent necessary to pursue their candidacies during their public election campaigns." (Matter of Maney, 70 NY2d 27, at 30).

A judicial candidate may stand as part of a slate for other offices (Opns 90-166, 91-94 of the Advisory Committee on Judicial Ethics) but may not publicly endorse or publicly oppose other candidates (Rules Governing Judicial Conduct, 22 NYCRR 100.5[A][1][e]; see, Matter of Decker, supra). The candidate may not participate in partisan political activity unrelated to the judge's campaign (22 NYCRR 100.5[A][1][c]; see, Matter of Gloss, 1989 Ann Report of NY Commn on Jud Conduct, at 81, 83) and shall not "make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office" (22 NYCRR 100.5[A][4][d][i]).

Respondent violated these standards by endorsing certain candidates for mayor and trustee and criticizing their opponents, and he made statements on partisan political issues in the campaign.

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

Mr. Berger, Ms. Brown, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton and Judge Thompson concur.
Mr. Pope and Judge Salisbury were not present.

Dated: March 31, 1998

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

FRIEDA B. COBLE,

a Justice of the Earlville Village Court,
Madison County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Honorable Frieda B. Coble, pro se

The respondent, Frieda B. Coble, a justice of the Earlville Village Court, Madison County, was served with a Formal Written Complaint dated February 19, 1997, alleging that she failed to remit court funds to the state comptroller and failed to cooperate in the Commission's investigation. Respondent filed an answer dated April 24, 1997.

By Order dated April 29, 1997, the Commission designated Samuel B. Vavonese, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 13, 1997, and the referee filed his report with the Commission on September 22, 1997.

By motion dated November 5, 1997, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent filed a letter in response on November 18, 1997. The administrator filed a reply on December 2, 1997, which included a stipulation between the parties that certain documents be added to the record. Oral argument was waived.

On December 11, 1997, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Earlville Village Court during the time herein noted.

2. Between August 1995 and May 16, 1997, respondent failed to remit any court funds to the state comptroller, as required by UJCA 2021(1), Village Law § 4-410(1)(b) and Vehicle and Traffic Law § 1803(8), even though she collected $5,990 in fines, fees and surcharges during this period.

3. Respondent failed to remit any funds for 22 months even though:

a) the state comptroller requested on October 13, 1995, November 15, 1995, December 15, 1995, and February 15, 1996, that she do so;
b) Commission staff inquired about the matter on February 22, 1996, March 13, 1996, April 2, 1996, and April 17, 1996;
c) she was ordered on October 1, 1996, to give testimony in connection with the Commission investigation; and,
d) formal charges were filed on February 19, 1997.

As to Charge II of the Formal Written Complaint:

4. Respondent failed to cooperate with the Commission in that she:

a) failed to respond to letters from Commission staff on February 22, 1996, March 13, 1996, and April 2, 1996, concerning her failure to remit court funds; and,
b) failed to appear for the purpose of giving testimony during the course of the Commission's investigation, as directed by letter dated October 1, 1996.

Supplemental finding:

5. Respondent remitted a total of $1,205, representing court receipts for May, June and July 1997, on September 4, 1997, notwithstanding that the law requires that court funds be remitted by the tenth day of the month following collection. The May receipts were remitted 86 days late; the June receipts were 56 days late, and the July receipts were remitted 25 days late.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A) and 100.3(C)(1) and its predecessor Section 100.3(b)(1) [renumbered eff. Jan. 1, 1996], and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent retained court funds for 22 months rather than turning them over to the state as required by law, accumulating $5,990 by the end of the period. Numerous letters from the state comptroller and Commission staff and formal charges by the Commission failed to prompt her to undertake these administrative responsibilities until shortly before the hearing.

Her later reports, which she offered in her own defense, indicate that delays persist in meeting statutory deadlines.

Such disdain for statutory recordkeeping requirements and the administrative responsibilities of judicial office constitutes serious misconduct, even if the money can be accounted for and is on deposit. (See, Matter of Ranke, 1992 Ann Report of NY Commn on Jud Conduct, at 64, 65). Such misconduct generally warrants admonition or censure. (Matter of Miller, 1997 Ann Report of NY Commn on Jud Conduct, at 114, 115; see, e.g., Matter of Ranke, supra; Matter of Goebel, 1990 Ann Report of NY Commn on Jud Conduct, at 101).

However, respondent's failure to cooperate in the Commission's investigation demonstrates contumacious disregard of the duties of her office and warrants removal. (See, Matter of Carney, 1997 Ann Report of NY Commn on Jud Conduct, at 78, 79; Matter of Driscoll, 1997 Ann Report of NY Commn on Jud Conduct, at 89, 90; Matter of Miller, supra).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton and Judge Thompson concur. Ms. Crotty, Mr. Pope and Judge Salisbury were not present.

Dated: February 5, 1998

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

FRANK W. DEGENHARDT,

a Justice of the Gallatin Town Court, Columbia County.

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission
Trezza Kane & Effron (By John B. Kane, Jr.) for Respondent

The respondent, Frank W. Degenhardt, a justice of the Gallatin Town Court, Columbia County, was served with a Formal Written Complaint dated February 17, 1998, alleging that he mishandled a small claims case. Respondent did not answer the charge.

On April 14, 1998, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On June 18, 1998, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Gallatin Town Court since January 1, 1996.

2. On April 9, 1997, respondent presided over Linda Colwell v David Colwell, which was scheduled for trial on that day. The plaintiff was suing her son for money that she claimed to have loaned him.

3. During a pretrial conference, the plaintiff showed respondent a list of loans she claimed to have made to her son while he was living at home. The defendant denied that his mother had loaned him money. Respondent said that the defendant had a "moral obligation" to repay his mother.

4. The defendant noted that the date of one of the purported loans was more than six years before the complaint and was, thus, barred by the statute of limitations. Respondent took a recess in order to research the matter and concluded that the statute of limitations was six years. On returning to the bench, respondent noted that this claim was time-barred.

5. No evidence was presented as to the time of most of the other purported loans, and respondent did not inquire concerning the dates.

6. The defendant continued to deny that any of the payments were loans. Respondent repeated that the defendant had a "moral obligation" to repay his mother.

7. Respondent entered a judgment for the full amount of the claim, including the payment that he had concluded was time-barred.

8. Respondent knew when he entered the judgment that he had not held a trial or administered an oath to the witnesses. He knew that he had received no evidence that would support his judgment, that the defendant had no legal obligation to pay the amount claimed and that the decision was contrary to law.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A), 100.3(B)(4) and 100.3(B)(6). Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

Knowing that he had not conducted a trial on a disputed civil claim and that he had no evidentiary or other legal basis for doing so, respondent entered a judgment against Mr. Colwell based on what respondent considered a "moral obligation."
" A judge is obliged by the Rules Governing Judicial Conduct to be faithful to and competent in the law, to insure that all those with a legal interest have a full right to be heard, and to act in a manner that promotes public confidence in the integrity of the judiciary." (Matter of Curcio, 1984 Ann Report of NY Commn on Jud Conduct, at 80, 82).

These standards are violated when a judge disposes of a contested case without affording the opportunity for a trial. (See, Matter of McGee, 59 NY2d 870; Matter of Curcio, supra).
Knowing disregard of the law is especially improper. (See, Matter of LaBelle, 79 NY2d 350, 358; Matter of Schneider, 1991 Ann Report of NY Commn on Jud Conduct, at 71, 73).

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

Mr. Berger, Ms. Brown, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Judge Salisbury and Judge Thompson concur.
Mr. Coffey and Mr. Pope were not present.

Dated: July 27, 1998

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

LUTHER V. DYE,

a Justice of the Supreme Court, Queens County.

APPEARANCES:

Gerald Stern for the Commission
Fabian G. Palomino for Respondent

The respondent, Luther V. Dye, a justice of the Supreme Court, 11th Judicial District, was served with a Formal Written Complaint dated June 26, 1997, alleging four charges of misconduct. Respondent filed an answer dated October 2, 1997, and an amended answer of the same date.

On December 8, 1997, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On December 11, 1997, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. The charge is not sustained and is, therefore, dismissed.

As to Charge II of the Formal Written Complaint:

2. The charge is not sustained and is, therefore, dismissed.

As to Charge III of the Formal Written Complaint:

3. Respondent has been a justice of the Supreme Court during the time herein noted.

4. Between January 1, 1994, and June 18, 1996, Karen Moore was respondent's secretary, and he had control over her continued employment.

5. During this period, respondent made numerous comments to Ms. Moore about the physical appearance and attributes of other women in the courthouse. He boasted of his sexual prowess and sexual experience with other women.

6. Respondent also stated to Ms. Moore:

a) that he enjoyed talking to her because she was physically attractive;
b) that she had attractive legs;
c) that her clothes inspired his sexual feelings;
d) that he had a strong interest in sex and that he wanted to have sex with her; and,
e) that others in the courthouse had asked him whether he was having sex with Ms. Moore and that he had replied that he did not "mix with the hired help."

7. Respondent knew or should have known that the remarks created a hostile or uncomfortable work environment for Ms. Moore.

As to Charge IV of the Formal Written Complaint:

8. The charge is not sustained and is, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2 and 100.3(B)(3) and its predecessor Section 100.3(a)(3) [renumbered eff. Jan. 1, 1996], and Canons 1, 2 and 3A(3) of the Code of Judicial Conduct. Charge III of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established. Charges I, II and IV are dismissed.

Respondent's offensive and undignified remarks to a subordinate in the court were highly improper.

As we said in 1985:

> 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. [Such] [c]omments… are no longer considered complimentary or amusing, especially in a professional setting.
>
> Matter of Doolittle, 1986 Ann Report of NY Commn on Jud Conduct, at 87, 88

Remarks of a personal and sexual nature to a subordinate are especially egregious, even if the woman does not protest and even if the judge makes no explicit threats concerning job security. (See, Matter of Lo Russo, 1994 Ann Report of NY Commn on Jud Conduct, at 73, 77).

"A Judge must conduct his everyday affairs in a manner beyond reproach. 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, 49 NY2d 465, at 469).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton and Judge Thompson concur.
Mr. Pope and Judge Salisbury were not present.

Dated: February 6, 1998

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JAMES J. FASO,

a Justice of the Niagara Town Court, Niagara County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Joseph L. Arbour and James J. Faso, Jr., for Respondent

The respondent, James J. Faso, a justice of the Niagara Town Court, Niagara County, was served with a Formal Written Complaint dated February 24, 1997, alleging two charges of misconduct. Respondent filed an answer dated March 18, 1997.

By Order dated March 31, 1997, the Commission designated Jacob D. Hyman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 10, 1997, and the referee filed his report with the Commission on October 24, 1997.

By motion dated November 12, 1997, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion on November 28, 1997. The administrator filed a reply dated December 2, 1997.

On December 11, 1997, 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 has been a justice of the Niagara Town Court since 1990.

2. In October 1992, respondent attended a mandatory training session offered by the Office of Court Administration.

3. It was customary for the town to pay a $250 advance toward the expenses of travelling to and attending judicial training sessions. The balance of the expenses was customarily paid by the town upon a voucher and receipts submitted by the judge.

4. The state also had a practice of reimbursing some of the expenses of attending training programs. Respondent knew that he could not be reimbursed twice for the same expenses, and he knew that he was expected to turn over to the town any expense reimbursements that he received from the state which had already been paid by the town.

5. Before the 1992 training session, respondent received a $250 advance from the town. After the session, he submitted a voucher to the town for the balance of his expenses in the amount of $509.45. He was paid that amount on December 11, 1992.

6. Respondent also submitted to the state a voucher for $279.81 for some of the same expenses. He was paid $272.86 by the state on January 4, 1993.

7. Rather than turning the money over to the town, respondent cashed or deposited the state check and used the funds for his personal use.

As to Charge II of the Formal Written Complaint:

8. Respondent also attended a training session in October 1993. Before the session, he received a $250 advance from the town. After the session, he submitted a voucher to the town for the balance of his expenses: $559.48. He received a check in that amount on December 16, 1993.

9. Respondent also submitted to the state a voucher for $196 for some of the same expenses. He was paid that amount by the state on December 10, 1993.

10. Rather than turning the money over to the town, respondent cashed or deposited the state check on January 6, 1994, the same day that he negotiated the town check, and used the funds for his personal use.

Supplemental Findings:

11. In late 1993, respondent was told by his fellow judge, John P. Teixeira, that the duplicate expense reimbursement paid by the state had to be turned over to the town. "It's the town's money," Judge Teixeira said. "It goes back to the town."

12. In late 1993 or early 1994, James A. Sacco, who was then the town supervisor, reminded respondent that the state money must be paid to the town.

13. In May 1996, respondent was notified that Commission staff was investigating his failure to reimburse the town for the duplication in expense payments. On July 30, 1996, respondent repaid the town $468.86, covering the amounts that he had received from the state for the 1992 and 1993 training sessions.

14. In 1992, 1993 and 1994, respondent experienced a number of personal and family problems.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1 and 100.2(a), and Canons 1 and 2A of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Knowing that he should not be reimbursed twice for the same expenses, respondent retained for several years more than $450 of public monies until he learned that his conduct was under scrutiny. He was aware that the proper procedure was to repay the

town the duplicate reimbursement that he had received from the state, and he was reminded of that obligation on two occasions by other town officials.

The careless or improper handling of public funds by a judge - even if not for personal profit - constitutes a breach of the public trust and serious misconduct. (Bartlett v Flynn, 50 AD2d 401, 404 [4th Dept]). "Such breaches of public trust have frequently led to removal." (Matter of Murphy, 82 NY2d 491, at 494). However, the severity of the sanction to be imposed depends upon the presence or absence of mitigating or aggravating circumstances. (Matter of Rater, 69 NY2d 208, 209).

A number of mitigating circumstances compel a sanction of less than removal in this case. First, we are not persuaded that the record establishes that respondent's misuse of the money was intentional; it may well have been that his extreme personal and family troubles at the time distracted him from recognizing his responsibility and following the proper procedure. (See, Matter of Miller, 1981 Ann Report of NY Commn on Jud Conduct, at 147, 148 [judge inadvertently used court funds to pay a personal debt and was admonished]). Second, although carelessness alone in handling public monies may warrant removal, respondent's carelessness involved only two checks of an unusual variety and is unaccompanied by the kinds of recordkeeping failures and administrative neglect for which judges charged with mishandling money have been removed. (Compare, e.g., Matter of Vincent, 70 NY2d 208 [for four years, judge failed to promptly deposit court funds and remit them to the state and arbitrarily dismissed cases after defendants failed to pay fines]; Matter of Petrie, 54 NY2d 807 [judge was unable to account for missing court funds and disregarded statutory recordkeeping requirements]; but see, Matter of Salman, 1995 Ann Report of NY Commn on Jud Conduct, at 134, 135 [judge censured after using campaign funds for his personal use]). Third, respondent has admitted his conduct, has expressed contrition and has reimbursed the town. (See, Matter of Slomba, 1994 Ann Report of NY Commn on Jud Conduct, at 106, 108; Matter of Hall, 1992 Ann Report of NY Commn on Jud Conduct, at 46, 48; Matter of Sandburg, 1986 Ann Report of NY Commn on Jud Conduct, at 157, 161).

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

Ms. Brown, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Luciano and Judge Newton concur.
Mr. Berger, Judge Marshall and Judge Thompson dissent as to sanction only and vote that respondent be removed from office.
Mr. Pope and Judge Salisbury were not present.

Dated: February 5, 1998

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

GLENN T. FIORE,

a Justice of the North Hudson Town Court,
Essex County.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci and Jean M. Savanyu, Of Counsel) for the Commission
Thomas J. McDonough for Respondent

The respondent, Glenn T. Fiore, a justice of the North Hudson Town Court, Essex County, was served with a Formal Written Complaint dated February 19, 1997, alleging that he had conveyed the impression that he was authorized to practice law.

Respondent filed an undated answer. By letter dated May 1, 1997, the administrator of the Commission supplemented the charge with an additional specification. Respondent interposed a denial of that allegation at the hearing on July 10, 1997.

By Order dated March 31, 1997, the Commission designated Robert S. Smith, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on May 29 and July 10, 1997, and the referee filed his report with the Commission on November 23, 1997.

By motion dated January 3, 1998, the administrator moved to confirm in part and disaffirm in part the referee's report and for a determination that respondent be censured. Respondent opposed the motion on January 21, 1998.

On March 12, 1998, 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 has been a justice of the North Hudson Town Court since January 1, 1996.

2. Respondent is not a lawyer. He is licensed by the state Workers' Compensation Board to represent clients in its proceedings and has been since 1989. He is also permitted to represent clients before the federal Social Security Administration.

3. Since 1991, respondent has had an informal arrangement with Robert Muller, a

Glens Falls attorney, whereby Mr. Muller refers workers' compensation cases to respondent. They share fees in some cases. Respondent is permitted to use the offices of Mr. Muller's law firm in which to meet clients and, until December 1996, was furnished with stationery and business cards bearing the name of the firm and respondent's name over the title, "WCB Licensed Representative." He has never been an employee of the law firm.

4. Respondent ran for judicial office in the fall of 1995. He composed and mailed to approximately 260 of the 267 residents of the town a letter dated October 30, 1995, and bearing the heading, "Glenn T. Fiore, License [sic] Representative…."

5. Among other things, respondent stated in the letter:

> Since 1989, when I passed the state exam I have been self employed as a New York State Workers' Compensation Licensed Representative, prosecuting injured workers' claims before New York State Administrative Courts on a regular basis. I have also practiced at the Federal level as well. At the present time I am the senior associate of the Law Firm of Muller & Muller from Glens Falls, N.Y. and I been with the firm for four years.

6. Respondent was never authorized by Mr. Muller to use the title senior associate.

7. Specifications 4(a), 4(b), 4(c) and 4(d) of Charge I and Specification 4(f) in the letter of May 1, 1997, are not sustained and are, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1 and 100.2(a), and Canons 1, 2A and 7B(1)(c) of the Code of Judicial Conduct. Specification 4(e) of Charge I is sustained, and respondent's misconduct is established. Specifications 4(a), 4(b), 4(c), 4(d) and 4(f) of Charge I, as supplemented by the letter of May 1, 1997, are dismissed.

A judicial candidate may not "misrepresent his identity, qualifications, present position, or other fact." (Code of Judicial Conduct, Canon 7B[1][c]). By stating that he was a "senior associate" in a law firm, respondent implied to the voters that he was a lawyer and, thereby, enhanced and misrepresented his qualifications for the office of town justice.

Such behavior reflects on his role as a judge, since "deception is antithetical to the role of a Judge who is sworn to uphold the law and seek the truth." (Matter of Myers, 67 NY2d 550, at 554; see also, Matter of Menard, 1996 Ann Report of NY Commn on Jud Conduct, at 93; Matter of Bloom, 1996 Ann Report of NY Commn on Jud Conduct, at 65).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.
Ms. Crotty was not present.

Dated: June 25, 1998

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

STEPHEN W. HERRICK,

a Judge of the Albany City Court,
Albany County.

APPEARANCES:

Gerald Stern for the Commission
Dreyer Boyajian, L.L.P. (By William J. Dreyer) for Respondent

The respondent, Stephen W. Herrick, a judge of the Albany City Court, Albany County, was served with a Formal Written Complaint dated May 28, 1997, alleging improper political activity. Respondent did not answer the charge.

On November 24, 1997, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further proceedings and oral argument.

On December 11, 1997, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Albany City Court since January 1995.

2. In the fall of 1996, respondent was a candidate for Supreme Court. During the campaign, he ran televised advertisements in which he referred to defendants charged with violations of Orders of Protection. In the advertisements, respondent stated:

> You can't elevate somebody or elect somebody to a high judicial position without knowing what they're going to be like when they put the robe on. You need to know that. It's too important a position….
>
> They [defendants] know they violated the Order of Protection. I'll ask them: "You know what's going to happen, don't you?" And they say, "Yes, judge, I'm

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going to jail." And they do.

3. Respondent now acknowledges that the advertisements implied what would occur at an arraignment by him of a defendant charged with violating an Order of Protection.

4. Had respondent been elected to Supreme Court, such matters would rarely have come before him.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A), 100.5(A)(4)(d)(i) and 100.5(A)(4)(d)(ii). Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

The campaign activities of judicial candidates are significantly circumscribed. (See, Matter of Decker, 1995 Ann Report of NY Commn on Jud Conduct, at 111, 112). A judicial candidate may not "make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office," (Rules Governing Judicial Conduct,
22 NYCRR 100.5[A][4][d][i]) and may not "make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court," (22 NYCRR 100.5[A][4][d][ii]). To do so compromises the judge's impartiality. (See, Matter of Birnbaum, NYLJ, Oct. 17, 1997, p. 13, col. 1 [NY Commn on Jud Conduct, Sept. 29, 1997]).

By his campaign statements, respondent promised that he would jail every defendant who came before him charged with a violation of an Order of Protection, rather than judging the merits of individual cases.

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

Mr. Berger, Ms. Brown, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton and Judge Thompson concur.
Mr. Pope and Judge Salisbury were not present.

Dated: February 6, 1998

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

JO HOOPER,

a Justice of the Hinsdale Town Court,
Cattaraugus County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
DiCerbo & Palumbo (By Daniel R. Palumbo) for Respondent

The respondent, Jo Hooper, a justice of the Hinsdale Town Court, Cattaraugus County, was served with a Formal Written Complaint dated October 6, 1997, alleging two charges of misconduct. Respondent did not answer the complaint.

On February 28, 1998, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending a disposition no more severe than admonition and waiving further submissions and oral argument.

On March 12, 1998, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Hinsdale Town Court since January 1995.

2. On July 24, 1996, respondent presided over People v David W. Leavitt, in which the defendant was charged with Speeding. Mr. Leavitt appeared in respondent's office before court was scheduled to begin. He told respondent that he wanted to avoid a disposition that would result in "points" on his driving record and an anticipated increase in his automobile insurance rate.

3. Respondent did not advise Mr. Le **105** return later in the day for the scheduled

court session, and she did not adjourn the matter to allow the prosecution an opportunity to consider Mr. Leavitt's request.

4. Respondent agreed to grant Mr. Leavitt a reduction of the charge to Failure To Obey The Law. She did not notify the prosecution or seek its consent to the reduction, as required by CPL 220.10(3) and 340.20(1).

5. Respondent granted the reduction because she was concerned about Mr. Leavitt being "embarrassed" in court. She believed that he had limited reading and writing skills.

6. Respondent fined Mr. Leavitt $80 with a $25 surcharge.

7. On July 9, 1996, Amargit Singh was charged with Speeding. The matter was returnable on July 31, 1996, before another judge of respondent's court. Respondent was not scheduled to preside on that day.

8. Mr. Singh did not appear in court on July 31, 1996. Sometime between July 9, 1996, and August 6, 1996, Mr. Singh called the court and spoke with respondent. He told respondent that a Speeding conviction would adversely affect his airplane pilot's license.

9. Respondent obtained the Simplified Traffic Information issued to Mr. Singh from her fellow judge's case file. She told Mr. Singh that she was reducing the charge to Failure To Obey The Law in satisfaction of the Speeding charge.

106 Respondent did not notify the on or seek its consent to the disposition, as required by CPL 220.10(3) and 340.20(1).

11. Respondent fined Mr. Singh $110 with a $25 surcharge.

As to Charge II of the Formal Written Complaint:

12. The charge is not sustained and is, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A) and 100.3(B)(6). Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established. Charge II is dismissed.

Respondent reduced the charges in two traffic cases based solely on conversations with the defendants and without notice to, or the consent of, the prosecution. In one of the matters, she reached out to the docket of another judge in order to dispose of a case not before her.

By these extraordinary procedures, respondent failed to meet her ethical obligations to "respect and comply with the law" (Rules Governing Judicial Conduct, 22 NYCRR 100.2[A]; see, Matter of Little, 1988 Ann Report of NY Commn on Jud Conduct, at 191, 193) and to "accord to every person who has a legal interest in a proceeding… the right to be heard according to law," (22 NYCRR 100.3[B][6]). (See also, Matter of Lombardi, 1987 Ann Report of NY Commn on Jud Conduct, at 105).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Luciano, Judge Marshall,

Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.
Ms. Crotty was not present.

Dated: June 29, 1998

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

MARSHALL JARVIS,

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

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission
Jeremiah M. Hayes for Respondent

The respondent, Marshall Jarvis, a justice of the Altamont Town Court and the Tupper Lake Village Court, Franklin County, was served with a Formal Written Complaint dated January 5, 1998, alleging that he improperly handled a criminal case. Respondent filed an answer dated January 27, 1998.

On July 17, 1998, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished or censured and waiving oral argument. On July 20, 1998, respondent submitted a letter with respect to sanction. The administrator filed a letter dated July 21, 1998.

On July 30, 1998, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Tupper Lake Village Court since 1982 and of the Altamont Town Court since 1983.

2. In January 1997, respondent was called by an assistant district attorney, who asked whether he would arraign Calvin Clark, a Tupper Lake police officer who was about to be arrested on charges of Petit Larceny. Respondent replied that he did not want to be involved in the arraignment because he had a close relationship to Mr. Clark's family.

3. Respondent is a former Tupper Lake police officer. He served on the force with Calvin Clark's father. Respondent had played golf with the father and had taken a weekend trip to Pennsylvania with the defendant's parents within the year prior to the arrest.

4. With the agreement of the assistant district attorney assigned to his court, respondent informed the defendant's father of Calvin Clark's imminent arrest because respondent felt compassion for the father and did not want the arrest to come as a shock.

5. The District Attorney's Office made arrangements for Calvin Clark's arraignment to be conducted on February 3, 1997, by a judge in an adjoining town. The other judge in respondent's court was related to the defendant, and the District Attorney's Office believed that both respondent and the other judge were disqualified from handling the case.

6. On February 3, 1997, respondent called the state police barracks where Calvin Clark was being held and directed that he be brought before respondent for arraignment. An investigator told respondent that the defendant was scheduled for arraignment in an adjoining town, but respondent repeated that he wanted the defendant brought before him.

7. Respondent then spoke to the district attorney and asked whether it was necessary to bring criminal charges against Mr. Clark and whether an adjournment in contemplation of dismissal would be an appropriate disposition. The district attorney insisted that criminal charges were necessary and reported that a plea bargain had already been agreed to by the prosecutor and the defendant. The prosecutor consented to respondent's handling of the arraignment and disposition and told respondent that a sentence would be up to the court.

8. On February 3, 1997, respondent presided over the arraignment. The defendant pleaded guilty and was given a conditional discharge. Respondent rejected a fine of $1,000 that had been agreed to by the parties and, instead, imposed no fine.

9. Respondent now acknowledges that, because of his relationship with the family, he should not have arraigned Mr. Clark and disposed of the case.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A), 100.2(B), 100.2(C), 100.3(B)(4) and 100.3(E)(1). Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent reached out to have the criminal charges against a family friend brought before him, knowing that he should not handle the case, then granted a favorable disposition.

Because of his close personal relationship with the defendant's family, respondent's impartiality in the Clark case could reasonably be questioned, and he should have disqualified himself. (See, Matter of Robert, 89 NY2d 745; Matter of Manning, 1987 Ann Report of NY Commn on Jud Conduct, at 115).

Having initially declined to conduct the arraignment because of that relationship, repondent should have had no further participation in the case. (See, Matter of Lomnicki, 1991 Ann Report of NY Commn on Jud Conduct, at 68, 69). Instead he insisted that the case be brought before him,

appealed to the prosecutor to drop the charges, conducted the arraignment, disposed of the case and did so with a disposition more favorable to the defendant than either of the parties had proposed.

"Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequences as if the judicial officer received and was moved by a bribe." (Matter of Bolte, 97 AD 551, 574 [1st Dept]). It is wrong and always has been wrong. (Matter of Byrne, 47 NY2d [b] [Ct on the Judiciary]).

Respondent's conduct is mitigated by the facts that this transgression represents an isolated incident in his judicial career and that he has been cooperative and forthcoming with the Commission. (See, Matter of Edwards, 67 NY2d 153, 155).

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

Mr. Berger, Ms. Brown, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.
Mr. Coffey dissents as to sanction only and votes that respondent be admonished.

Dated: October 20, 1998

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

SAMUEL MAISLIN,

a Justice of the Amherst Town Court,
Erie County.

APPEARANCES:

Gerald Stern for the Commission
Albrecht, Maguire, Heffern & Gregg, P.C. (By Charles H. Dougherty) for Respondent

The respondent, Sam Maislin, a justice of the Amherst Town Court, Erie County, was served with a Formal Written Complaint dated December 30, 1997, alleging three charges of misconduct. Respondent filed an answer dated January 23, 1998.

On June 10, 1998, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On June 18, 1998, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Amherst Town Court since January 1, 1992.

2. On July 30, 1995, respondent spoke with a reporter for the Buffalo News about two criminal cases that were pending in his court, People v Lawrence Gates and People v Troy Gilchrist. Respondent discussed the basis for his rulings in these cases, which had been reversed and remanded to him by Erie County Court Judge John Rogowski. Respondent indicated that he continued to believe that his original decisions in the cases were correct and that he disagreed with the appellate ruling. "I stand firmly by my ruling," respondent said.

As to Charge II of the Formal Written Complaint:

3. On September 24, 1995, respondent spoke with a reporter for the Buffalo News about a criminal case, People v Mark Stevens, which was pending in his court. Respondent indicated that he believed that the defendant was a danger to the community and that the $20,000 bail that he had set was probably not high enough to keep the defendant in jail.

As to Charge III of the Formal Written Complaint:

4. During his campaign for re-election in 1995, respondent ran advertisements which:

a) stated that respondent had "refused to let the Wal-Mart armed robbers, the Berk murderer, the Amherst rapist or the Summer Stalker out on low bail;"

b) implied that he had presided over cases of the "Berk murderer" and the "Amherst rapist;"

c) stated that he "convicted 88% of those charged with alcohol-related offenses" and depicted drawings of jail cell windows and bars;

d) implied that he would take harsh action against "thieves, burglars, stick-up artists, spouse beaters and repeat drunk drivers" and stated that he "has a special place" for them "called jail"; and,

e) used as a campaign slogan, "Do The Crime - Do The Time."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1, 100.2(a) and 100.3(a)(6)[*], and Canons 1, 2A, 3A(6), 7B(1)(a) and 7B(1)(c) of the Code of Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's comments to newspaper reporters on two occasions concerning cases before him conveyed the appearance of pre-judgment. It is wrong for a judge "to make any public comment, no matter how minor, to a newspaper reporter or to any one else, about a case pending before him." (Matter of Fromer, 1985 Ann Report of NY Commn on Jud Conduct, at 135, 137) (emphasis in original). Respondent's remarks were not minor. After two cases had been remanded to him on appeal, he publicly insisted that his original rulings had been correct and that the appellate court was wrong. A trial judge must accede to the directives of appellate courts (Matter of Dier, 1996 Ann Report of NY Commn Jud Conduct, at 79, 81) and should not create the appearance that he intends to do otherwise. On a second occasion, respondent remarked that a defendant that he had arraigned was a danger to the community and should be kept in jail, implying that he presumed him guilty.

Respondent's 1995 campaign advertisements also portrayed him as a judge who is biased against criminal defendants. In them, respondent implied that he would jail all those charged with crime, rather than judge the merits of individual cases. Moreover, he misrepresented the extent of his involvement in certain cases of notoriety.
The campaign activities of judicial candidates are significantly circumscribed. (See, Matter of Decker, 1995 Ann Report of NY Commn on Jud Conduct, at 111, 112). A

[*] Now Section 100.3(B)(8)

judicial candidate may not "make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office…" and should not "misrepresent his identity, qualifications, present position, or other fact." (Canon 7B[1][c] of the Code of Judicial Conduct; see, Matter of Herrick, unreported, NY Commn on Jud Conduct, Feb. 6, 1998). To do so compromises the judge's impartiality. (See, Matter of Birnbaum, NYLJ, Oct. 17, 1997, p. 13, col. 1 [NY Commn on Jud Conduct, Sept. 29, 1997]).

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

Mr. Berger, Ms. Brown, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Judge Salisbury and Judge Thompson concur.
Mr. Coffey and Mr. Pope were not present.

Dated: August 7, 1998

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

DOUGLAS E. McKEON,

a Justice of the Supreme Court,
Bronx County.

APPEARANCES:

Gerald Stern (Alan W. Friedberg and Jean M. Savanyu, Of Counsel) for the Commission
Seiff & Kretz (By Eric A. Seiff) for Respondent

The respondent, Douglas E. Mc Keon, a justice of the Supreme Court, 12th Judicial District, was served with a Formal Written Complaint dated November 26, 1997, alleging three charges of misconduct. Respondent did not answer the Formal Written Complaint.

On March 10, 1998, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4) and stipulating that the Commission make its determination based on the agreed upon facts. The Commission approved the agreed statement by letter dated March 13, 1998. Each side submitted memoranda as to sanction.

On June 18, 1998, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Supreme Court since December 1989.

2. In October 1992, respondent was assigned to preside exclusively over civil cases in which the City of New York was a party. Eugene Borenstein was chief of the torts division of the city Department of Law. The torts division had thousands of cases pending before respondent, and Mr. Borenstein appeared regularly before respondent.

3. In October 1992, a former employee of the Supreme Court was hired as a legal assistant in the torts division but was working as a volunteer pending her placement on a salary line. The employee was a single mother whose youngest child was asthmatic. The woman told respondent that she was concerned about not having health insurance.

4. In October 1992, respondent asked Mr. Borenstein to expedite the hiring of this woman. Mr. Borenstein asked respondent to put his request in writing to the corporation counsel.

5. On October 26, 1992, respondent sent a letter on judicial stationery to O. Peter Sherwood, who was then corporation counsel and chief executive of the city Department of Law. The letter stated:

> I am writing to urge the expeditious hiring of [name deleted] as a law clerk in the Tort Division, Bronx County.
>
> I have known [name deleted] for many years. She was formerly employed by the Office of Court Administration as a court clerk at the Supreme Court, Bronx County. She is a highly qualified and gifted young woman; indeed, she is respected by the Justices who sit in the Bronx.
>
> In truth, your office is fortunate to have obtained the services of this talented employee. I understand that [name deleted] has been working as a volunteer pending her formal appointment as a salaried member of the staff. However, [name deleted] is a single parent and law student who cannot afford a prolonged period of no income.

> You know, I preside over the several thousands of cases which comprise the City Part. I know how desperately your office in the Bronx needs qualified individuals to help with this enormous case load. Therefore, I implore you to use your good offices to expedite the appointment of a young woman with proven skills in the Bronx courthouse.

6. As a result, the woman was placed on a salary line and began receiving health insurance coverage sooner than she would have had respondent made no request on her behalf.

7. From November 1, 1992, to December 31, 1992, respondent engaged in a close, personal relationship with this woman.

8. In June 1993, Mr. Borenstein told respondent that the woman was going to be discharged from her position with the torts division. Respondent said that he felt bad for her and asked Mr. Borenstein, "Gene, you wouldn't consider giving her a second chance?" Mr. Borenstein replied that the decision was final. Respondent asked whether her discharge could be delayed one week until the administrative judge returned. As a result of respondent's request, Mr. Borenstein agreed to postpone the discharge for one week.

As to Charge II of the Formal Written Complaint:

9. On March 8, 1996, respondent received a telephone call from Adam Nossiter, a New York Times reporter who requested a summary of the court proceeding a few hours earlier in School Board Seven v Crew, which was then pending before respondent. The case concerned a challenge of the suspension of a Bronx community school board by Chancellor Rudolph Crew.

10. On March 9, 1996, the Times reported that respondent was interviewed after presiding over a hearing in the case and that he was concerned about using the poor performance of schools as a basis for suspending a school board. Respondent was accurately quoted as saying:

> I felt a degree of uneasiness about using standards of academic achievement as some kind of criteria about whether the board should remain in office. Simply to say things haven't gotten better, and laying that at the doorstep of people who are unsalaried and meet several times a month, that disturbs me.

11. The Times also reported that respondent stated that he wanted the chancellor's attorneys to offer examples of how the school board had failed to take specific steps to improve academic performance:

> On Wednesday I want them to be more specific in what they were referring to. I just don't want to take generalities.

12. The Times reported that respondent's "remarks could provide a clue about how he might rule in the case."

As to Charge III of the Formal Written Complaint:

13. By letter dated August 9, 1996, the Commission cautioned respondent concerning remarks to the newspaper concerning School Board Seven v Crew. Respondent was reminded that the Rules Governing Judicial Conduct provide, "A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories."

14. On nine occasions between September 17, 1996, and January 23, 1997, respondent appeared on the television program "Good Day New York" and discussed the civil case against O. J. Simpson that was then pending in California.

15. Respondent commented on the quality of proof, the effectiveness of the strategies employed by the attorneys and the credibility of witnesses, including Mr. Simpson. Among other things, respondent said:

> Take, for instance, the domestic violence concerning his ex-wife. To this day he insists that he's never punched his wife. Yet we have photographs which if someone looked at would certainly support the notion that punches were involved. ***
> It's interesting and rather incredible that he would be so adamant in his denial of punching her. ***
> I think he failed in the direct examination to avail himself of certain opportunities, for instance, to inject into the case that the blood was planted. I mean, he was asked an open question: "Can you explain why your blood was found in the Bronco?" Logically, he could have answered that someone else put it there, but he didn't. ***
> Well, of course a jury, has to be affected by the fact that the closest people in his life have come forward and contradicted him in certain ways. Of course the ultimate end to be achieved by that from the perspective of the plaintiff is to say, "Well, if he's lying about this, you might assume he's lying about more significant things that are at issue in the case.
> you're right, Jim, I think that [illegible] girlfriend and a lifelong friend step up and are forced to admit that he's been less than candid, it has a rather

> significant effect on the jury. ***
> I think perhaps jurors may be reluctant to brand him as a murderer when they know his children are now living in the same house with him. ***
> [A defense attorney] in an opening statement brought up the lie detector test. That was a mistake, and now Judge Fujisaki had to do something about it. And I suspect that if there's an appeal by Simpson that will be one of the principal points.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2 and 100.3(B)(8). Charges I, II, and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent should not have reached out to a lawyer who regularly appeared before him to seek a favor for a former court employee. His request of Mr. Borenstein to "expedite" putting the woman on the payroll was more than a job reference. Indeed, the woman already had the job; respondent was seeking a salary and benefits for her so that she could support her family. His motives may have been worthy ones, but he improperly used the prestige of his office to advance private interests. This was compounded when respondent attempted to prevent, then delay, her discharge.

> Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of propriety to the end that public perception of the integrity of the judiciary will be preserved [citation omitted]. There must also be recognition that any actions taken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary.
>
> Thus, any communication from a Judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office. That is not to say, of course, that Judges must cloister themselves from the day-to-day problems of family and friends. But it does necessitate that Judges must assiduously avoid those contacts which might create even the appearance of impropriety.
>
> Matter of Lonschein, 50 NY2d 569, at 572. (See also, Matter of Kaplan, 1997 Ann Report of NY Commn on Jud Conduct, at 96; Matter of Wright, 1989 Ann Report of NY Commn on Jud Conduct, at 147.)

The fact that Mr. Borenstein asked respondent to put his request in writing after respondent had made an oral appeal does not make it a response to a solicitation.

It was also improper for respondent to make public comments on cases pending before his and other courts. "A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories." (Rules Governing Judicial Conduct, 22 NYCRR 100.3[B][8]). It is wrong for a judge "to make any public comment, no matter how minor, to a newspaper reporter or to any one else, about a case pending before him." (Matter of Fromer, 1985 Ann Report of NY Commn on Jud Conduct, at 135, 137) (emphasis in original). A judge should not attempt to repeat or summarize out of court what was said in the courtroom. Standing alone, respondent's comments to the newspaper reporter would not warrant public sanction.

However, his television appearances went well beyond explanations of the law and the legal system. Although a judge may "speak, write, lecture, teach…" (Rules Governing Judicial Conduct, 22 NYCRR 100.4 [B]), respondent commented on the merits of the Simpson case, the credibility of witnesses, the strategies of attorneys and the likely reactions of jurors. He clearly violated Section 100.3(B)(8). That he did so repeatedly, only months after being cautioned by this Commission to adhere to the rule, exacerbates his misconduct. (See, Matter of Lenney, 71 NY2d 456, 459).

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

Mr. Berger, Ms. Brown, Judge Luciano, Judge Marshall, Judge Newton, Judge Salisbury and Judge Thompson concur as to sanction.

Judge Marshall dissents only as to Charge II and votes that the charge be dismissed.

Mr. Goldman dissents as to Charge II and votes that the charge be dismissed and dissents as to sanction and votes that respondent be admonished.

Mr. Coffey and Mr. Pope were not present.

Dated: August 6, 1998

DISSENTING OPINION
BY MR. GOLDMAN

I agree with the majority's finding with respect to Charge I that respondent committed misconduct in his requests to Corporation Counsel for favorable treatment of an employee. Although respondent's actions appeared to be motivated by human concern and were not heavy-handed, a judge should not solicit any favorable job treatment for an acquaintance or friend from an attorney who appears before him.

I also agree with the majority's finding with respect to Charge III that respondent committed misconduct in his public comments on the television show "Good Day New York." Section 100.3(B)(8) of the Rules Governing Judicial Conduct contains a broad prohibition severely limiting a judge's freedom to make public statements: "A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories." Thus, even though there appears little possibility that statements by a New York judge on a local television station would have any effect on the outcome of a California proceeding, the rule clearly applies to proceedings in other jurisdictions. Respondent was well aware of the broad scope of the prohibition, and the remarks he made went beyond permissible explanations of law and procedure and included his opinions of how the jurors would evaluate the evidence and of the attorneys' strategies. Respondent has provided no justifiable reason for having violated the rule.

I disagree, however, with the majority's finding with respect to Charge II that respondent committed misconduct in his comments to the New York Times. In view of the First Amendment implications of the restriction on speech and for practical reasons, I would narrowly define the term '
in Section 100.3(B)(8) as a "
observation made in criticism or as an expression of opinion" so that it does not include an accurate factual recitation of what occurred in open court. I believe that in this era where certain segments of the media, without a full understanding of the facts and legal principles involved, sometimes deride

judicial decisions as "junk justice," a judge should be permitted to respond to a press inquiry to the limited extent of relating accurately what transpired in open court, particularly when the judge has been accused of acting improperly or injudiciously. Although it might be a better practice for a judge merely to provide the reporter with a transcript of the court proceedings, transcripts often cannot be made available for the reporter to consider before the deadline for the story.

I believe on balance that censure is too harsh a sanction. Although respondent's conduct in seeking favorable treatment for an employee from an attorney who regularly appears before him was clearly improper, his approach was gentle and his motivation appears benign. Although some of his statements on television about the Simpson civil case were improper, I view this misconduct as considerably less serious than if respondent had made them with respect to a pending case in this state or metropolitan area. I believe an admonition is a sufficient sanction.

Dated: August 6, 1998

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JAMES E. McKEVITT,

a Justice of the Malta Town Court,
Saratoga County.

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission
Francis J. Carroll for Respondent

The respondent, James E. McKevitt, a justice of the Malta Town Court, Saratoga County, was served with a Formal Written Complaint dated January 7, 1998, alleging three charges of misconduct. Respondent filed an undated answer.

On April 30, 1998, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On June 18, 1998, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Malta Town Court since 1990.

2. On July 11, 1996, Frederick Kennison appeared before respondent for arraignment on charges of Speeding and Driving With One Headlight Out. Mr. Kennison asked for a supporting deposition. Respondent told him that he was not entitled to a supporting deposition because he had not requested one within 48 hours of the time that the ticket was issued, even though that is not the time limit set forth in CPL 100.25(4).

3. When Mr. Kennison again asked for a supporting deposition, respondent replied, "You are going to piss the trooper off. I wouldn't do it if I were you, but it's your ass."

4. The case was tried on August 22, 1996, and respondent convicted Mr. Kennison on the Speeding charge. When Mr. Kennison asked how he could appeal, respondent said in a sarcastic manner, "Smart ass. Get a lawyer."

5. Mr. Kennison retained an attorney, who filed a Notice of Appeal. Respondent then contacted the assistant district attorney who had prosecuted the case and discussed ex parte the Return on Appeal. The prosecutor prepared a return and sent it to respondent ex parte. Respondent then adopted it and filed it as his own Return on Appeal.

6. Respondent did not carefully examine the return prepared by the prosecutor; it contained numerous factual errors.

7. Mr. Kennison's attorney wrote to respondent, pointing out various inaccuracies in the return. Respondent then had additional ex parte communications with the prosecutor. Respondent subsequently submitted an amended return in which he adopted the prosecutor's ex parte advice as to how to respond.

As to Charge II of the Formal Written Complaint:

8. In April 1996, respondent convicted Eduard Sadykov of Speeding after a bench trial. Mr. Sadykov appealed to County Court. Respondent then requested, ex parte, information about the trial from the assistant district attorney who had prosecuted it because respondent could not remember what had occurred at the trial.

9. Respondent considered ex parte letters from the prosecutor, who suggested what respondent should say in his Return on Appeal.

As to Charge III of the Formal Written Complaint:

10. Respondent failed to effectuate the rights of defendants at arraignment, as required by CPL 170.10(4)(a), in that he:

a) as a general practice, told defendants who requested supporting depositions in traffic cases that they were not entitled to them because they had not made their requests within 48 hours of arrest, even though that is not the time limit set forth in CPL 100.25(4);

b) in People v Christopher Barum on September 10, 1996, People v Clare Colamaria on September 8, 1996, and People v Indranie Roharshan on September 4, 1996, respondent asked unrepresented defendants who had pleaded not guilty at arraignment to explain their pleas.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct,22 NYCRR 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(3), 100.3(B)(4) and 100.3(B)(6). Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Taken as a whole, respondent's conduct conveys the impression of bias in favor of the prosecution and against defendants. He attempted to discourage defendants from exercising their rights by asking them to explain why they were pleading not guilty. This certainly may give the appearance to defendants that the judge wants them to admit the charges. (See, Matter of Cavotta, 1996 Ann Report of NY Commn on Jud Conduct, at 75, 78). By insisting upon a 48-hour requirement for requesting supporting

depositions, respondent also was attempting to abridge the rights of defendants.

It was also improper for him to engage in ex parte communications with prosecutors and to rely on them without notice to the defense to draft the legal papers that he is required to submit on appeals. Such conduct compromises the fairness of the proceedings. (Matter of Rider, 1988 Ann Report of NY Commn on Jud Conduct, at 212, 215).

Respondent's reference to Mr. Kennison as "smart ass" and his warning not to "piss the trooper off" also conveyed the appearance of partiality and exhibited intemperate judicial demeanor. (See, Matter of Going, unreported, NY Commn on Jud Conduct, July 18, 1997). Breaches of judicial temperament "impair[] the public's image of the dignity and impartiality of courts, which is essential to their fulfilling the court's role in society." (Matter of Mertens, 56 AD2d 456, at 470 [1st Dept]).

This is not the first demonstration of poor demeanor by respondent; in 1996, he was censured for telling the father of a defendant that he was denying bail because he had been forced to get out of bed for the arraignment and for referring in court to the county sheriff as a "fucking asshole." (Matter of McKevitt, 1997 Ann Report of NY Commn on Jud Conduct, at 106).

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

Mr. Berger, Ms. Brown, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Judge Salisbury and Judge Thompson concur.
Mr. Coffey and Mr. Pope were not present.

Dated: June 27, 1998

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

DUANE R. MERRILL,

a Justice of the Hamden Town Court,
Delaware County.

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel) for the Commission
O'Leary & Van Buren (By Terence P. O'Leary) for Respondent

The respondent, Duane R. Merrill, a justice of the Hamden Town Court, Delaware County, was served with a Formal Written Complaint dated August 8, 1997, alleging that he improperly handled a housing dispute. Respondent filed an answer dated September 15, 1997.

On January 9, 1998, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On January 29, 1998, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Hamden Town Court since 1988.

2. In the Fall of 1996, Ed Barbieri called respondent by telephone several times and asked about evicting Charles and Wilhelmina Wright from their home, which Mr. Barbieri had bought at a tax sale.

3. Although no proceeding had been initiated in respondent's court, respondent went to the Wright home on October 5, 1996, and asked the Wrights and their son, Kevin, when they would vacate the property.

4. In this conversation, respondent:

a) identified himself as the town justice;

b) stated that he had come to the house because Mr. Barbieri had called him several times;

c) told Mr. and Ms. Wright and their son that they did not have to have counsel and that it would be best not to bring lawyers into the dispute but that they could do so;

d) stated that, because he was a judge, he would decide how much time they had to move out if they could not resolve the dispute with Mr. Barbieri; and,

e) became embroiled in a heated discussion with Kevin Wright and implied that the family would be evicted if a proceeding were commenced.

5. Mr. Barbieri later brought an eviction proceeding against Charles, Wilhelmina and Kevin Wright in respondent's court, and respondent presided when the parties appeared in court. Respondent did not offer to disqualify himself. The parties agreed to a settlement before the matter was tried.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A), 100.2(C) and 100.3(B)(6). Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

Respondent acted as an advocate for one of the parties to a dispute, using the prestige of his judicial office to advance that party's position. Respondent discouraged the other parties from obtaining representation and implied that he would decide against them if the matter came to court. In doing so, he abused his judicial power and conveyed the appearance of favoritism. (See, Matter of Kristoffersen, 1991 Ann Report of NY Commn on Jud Conduct, at 66; Matter of Colf, 1987 Ann Report of NY Commn on Jud Conduct, at 71).

Having engaged in ex parte communications and having compromised his impartiality, respondent should have offered to disqualify himself when the matter did come to court. (See, Matter of LaMountain, 1989 Ann Report of NY Commn on Jud Conduct, at 99).

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

Mr. Berger, Ms. Brown, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.
Mr. Coffey was not present.

Dated: March 17, 1998

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

WILLIAM POLITO,

a Justice of the Supreme Court,
Monroe County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Richard F. Anderson and Davidson & O'Mara, P.C. (By John F. O'Mara) for Respondent

The respondent, William Polito, a justice of the Supreme Court, 7th Judicial District, was served with a Formal Written Complaint dated October 9, 1997, alleging improper political activity. Respondent filed an answer dated November 4, 1997.

By Motion and Affirmation dated November 12, 1997, respondent moved to dismiss the Formal Written Complaint. The administrator of the Commission opposed the motion by Affirmation and Memorandum dated December 3, 1997. Respondent replied by letter dated December 5, 1997. The administrator replied by letter dated December 9, 1997. By Determination and Order dated December 17, 1997, the Commission denied respondent's motion in all respects.

On September 11, 1998, the administrator, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On October 1, 1998, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Supreme Court since January 1, 1997.

2. Respondent ran for Supreme Court in the fall of 1996.

3. Respondent ran television advertisements that stated, "Violent crimes in our streets," and portrayed a masked man with a gun

attacking a woman outside her car. "The menace of drugs. Sexual predators terrorize our lives." One ad noted respondent's endorsement by several local sheriffs and concluded, "November 5, pull the lever for Bill Polito, and crack down on crime," as a jail door was slammed shut.

4. A second television ad proclaimed, "Many violent criminals and sexual predators have already visited our criminal justice system. Bill Polito will stick his foot in the revolving door of justice. Bill Polito won't experiment with alternative sentences or send convicted child molesters home for the weekend… Criminals belong in jail, not on the street."

5. Respondent also ran print advertisements, bearing the legend, "Crack Down On Crime," and promising that he would "not experiment with 'alternative sentencing.'"

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A), 100.5(A)(4)(a) and 100.5(A)(4)(d)(ii). Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

The campaign activities of a judicial candidate are significantly circumscribed. (See, Matter of Decker, 1995 Ann Report of NY Commn on Jud Conduct, at 111, 112). A judicial candidate relinquishes the First Amendment right to participate as others in the political process. (Matter of Maney, 1987 Ann Report of NY Commn on Jud Conduct, at 109, 112; accepted, 70 NY2d 27). The candidate must "maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary…" (Rules Governing Judicial Conduct, 22 NYCRR 100.5[A][4][a]) and must not "make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court," (22 NYCRR 100.5[A][4][d][ii]). To do so compromises the judge's impartiality. (See, Matter of Birnbaum, 1998 Ann Report of NY Commn on Jud Conduct, at 73, 74).

Respondent's graphic and sensational advertisements lacked the dignity appropriate to judicial office and portrayed him as a judge who is biased against criminal defendants. (See, Matter of Maislin, unreported, NY Commn on Jud Conduct, Aug. 7, 1998). By repeated statements disparaging "alternative sentences," he appeared to commit himself to imposing jail sentences in every case and to rejecting other lawful criminal dispositions.

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

Mr. Berger, Ms. Brown, Mr. Goldman, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.

Mr. Coffey and Judge Luciano were not present.

Dated: December 23, 1998

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

VICTOR E. PUTNAM,

a Justice of the Carlisle Town Court,
Schoharie County.

APPEARANCES:

Gerald Stern for the Commission
Gordon, Siegel, Mastro, Mullaney, Gordon & Galvin, P.C. (By John R. Seebold) for Respondent

The respondent, Victor E. Putnam, a justice of the Carlisle Town Court, Schoharie County, was served with a Formal Written Complaint dated September 29, 1997, alleging that he used the prestige of his office to attempt to influence the outcome of a case before another judge. Respondent filed an answer dated October 17, 1997.

On December 11, 1997, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

Also on December 11, 1997, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Carlisle Town Court since 1996.

2. In the Spring of 1997, a custody proceeding was pending before a judge of Saratoga County. The opposing parties were a friend of respondent and the present husband of respondent's former wife. Respondent was not a party or a witness in the proceeding.

3. By letter dated May 7, 1997, respondent wrote to the presiding judge. No letter from respondent had been solicited by the court.

4. Respondent identified himself as a judge and put forth information about his former wife and her husband that was intended to influence the disposition of the case against the husband and in favor of respondent's friend.

5. Respondent said that his former wife had

interfered with his own visitation rights, and he made other accusations against his former wife and her husband.

6. Respondent said that he would be in court on May 21, 1997, with his friend and offered to answer any of the presiding judge's questions.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A), 100.2(C) and 100.3(B)(6). Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

It was improper for respondent to intervene in a case to which he was not a party and use the prestige of his office in order to attempt to influence the decision of another judge. (See, Matter of Kiley, 74 NY2d 364; Matter of Engle, unreported, NY Commn on Jud Conduct, Feb. 4, 1997; see also, Matter of Wright, 1989 Ann Report of NY Commn on Jud Conduct, at 147).

"A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others…" (Rules Governing Judicial Conduct, 22 NYCRR 100.2[C]) and "shall not initiate… ex parte communications… concerning a pending or impending proceeding…," (22 NYCRR 100.3[B][6]).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton and Judge Thompson concur.

Mr. Pope and Judge Salisbury were not present.

Dated: February 6, 1998

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 T. ROMANO,

a Justice of the Haverstraw Town Court,
Rockland County.

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission
Tracy, Bertolino & Edwards(By John S. Edwards) for Respondent

The respondent, Ralph T. Romano, a justice of the Haverstraw Town Court, Rockland County, was served with a Formal Written Complaint dated October 21, 1996, alleging four charges of misconduct. Respondent filed an answer dated November 13, 1996.

By Order dated December 5, 1996, the Commission designated Edward Brodsky, Esq., as referee to hear and report proposed findings of fact and conclusions of law.

A Supplemental Formal Written Complaint, alleging six additional charges, was served on June 3, 1997. Respondent answered the supplemental complaint on June 24, 1997.

A hearing was held on September 24 and 26, October 6 and 8 and November 5, 7 and 12, 1997, and the referee filed his report with the Commission on April 2, 1998.

On May 5, 1998, the parties exchanged briefs concerning the referee's report. The administrator of the Commission filed a reply dated May 16, 1998.

On June 18, 1998, 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 has been acting justice of the West Haverstraw Village Court since 1976 and a justice of the Haverstraw Town Court since 1978. He is a part-time judge who also practices law in Rockland County.

2. On August 24, 1995, respondent arraigned Steven Whitaker and Juan Espinal on criminal charges. Haverstraw Police Detectives Hector Soto and Michael J. Viohl appeared on the cases. Respondent set bail

for Mr. Espinal at $100 and released Mr. Whitaker.

3. After the proceedings, Detectives Soto and Viohl returned to the police station, where Officer John K. Salter was working as desk officer. Officer Salter was a friend of respondent; they have socialized and vacationed together several times. In the presence of Officer Salter, Detective Viohl remarked to Detective Soto that he could not believe that respondent had set bail for Mr. Espinal but let Mr. Whitaker go. The detectives then realized that respondent had failed to sign a commitment order for Mr. Espinal. Detective Soto told Officer Salter to "call your friend, Judge Romano," to ask him to sign the order. Officer Salter later reported to respondent that he had exchanged words with the detectives.

4. On August 25, 1995, respondent entered the police station and complained that Detective Viohl had criticized respondent's bail decision and had talked to Officer Salter about respondent. In a loud and angry manner, respondent said to Detective Viohl, "If you have anything to say to me, grow some balls and say it to my face." "You're nothing but an asshole and everybody in town knows you're an asshole." "You're nothing but a low life scumbag and everybody in town knows you're shit."

5. Detective Viohl refused to speak to respondent and walked to his office, where Detective Soto was seated. Respondent followed him and again referred to him as an "asshole" and a "scumbag."

6. Respondent threatened to subpoena confidential hospital records from the previous year, when Detective Viohl had been treated after a car accident. Respondent alleged that they would show that the detective had been driving while intoxicated. Although the detective had been in a car accident, he had not been charged with any offense.

7. Addressing Detective Soto, respondent said that, if he had anything to say, he should also "grow some balls" and say it to respondent. Respondent then called the detective a "shoplifter and a thief." Although there was once an incident in a store involving Detective Soto and his child, he had never been convicted of shoplifting.

As to Charge II of the Formal Written Complaint:

8. On September 5, 1995, respondent sent a letter on court stationery to the Haverstraw Town Board, complaining about Detectives Viohl and Soto and their supervisor, Sgt. Richard Rogers, who is now a lieutenant. Respondent's remarks, as set forth in the appended Schedule A, were based on rumors or exaggerations which respondent could not support. Respondent wrote the letter because he was angry with Detectives Viohl and Soto for criticizing him in connection with the Whitaker and Espinal cases.

As to Charge III of the Formal Written Complaint:

9. On August 9, 1995, respondent arraigned Robert Rastelli on a charge of Burglary. The complaining witness was Peter Ruggieri, who had been a client of respondent between six months and a year earlier.

10. No prosecutor was present for the arraignment. Respondent had been called to conduct the arraignment by Detective Soto and disclosed his prior representation of Mr. Ruggieri to him.

11. Respondent did not disqualify himself or offer to disqualify himself.

12. In the presence of the defendant and a police officer, respondent said that the case was weak and that Mr. Ruggieri was "no good" and "a piece of shit."

As to Charge IV of the Formal Written Complaint:

13. Anthony Celentano is a friend and client of respondent. In December 1993, Mr. Celentano had a property dispute with a neighbor, Ben Eskinazi. Mr. Celentano consulted respondent, and respondent advised him to file a complaint with the Haverstraw Police Department. The police determined that the matter was not criminal in nature and declined to file charges.

14. After Mr. Celentano advised respondent of this, respondent went to the police station and asked that a criminal complaint be filed against Mr. Eskinazi. The desk officer declined; respondent then went to Chief Paul Allison. The chief also refused to file charges. Respondent said that there were things that he could do for the chief with the town board and remarked, "One hand washes the other." Chief Allison terminated the conversation.

15. Respondent then spoke with the assistant district attorney assigned to his court, Lisa Cohen, and tried to persuade her to file charges. She looked into the matter and declined to do so.

16. Thereafter, respondent spoke to John Grant, the chief assistant district attorney, and urged him to file charges. Mr. Grant refused, but he directed that the matter be referred for mediation. Ordinarily, no such referrals are made by the District Attorney's Office unless criminal charges are pending.

As to Charge V of the Supplemental Formal Written Complaint:

17. On April 17, 1997, respondent arraigned Robert Schaeffer on charges of Assault and Violation of an Order of Protection. Mr. Schaeffer was accused of striking his wife in the face with a telephone.

18. As respondent was reading the charges from the bench, he said, "What was wrong with this? You need to keep these women in line now and again." Both respondent and the defense attorney, Al Spitzer, laughed.

19. Mr. Spitzer then said, "Do you know why 200,000 women get abused every year?…Because they just don't listen." Respondent and Mr. Spitzer laughed. Respondent did not rebuke the lawyer for the remark.

20. The defendant was present during this colloquy.

As to Charge VI of the Supplemental Formal Written Complaint:

21. On April 2, 1997, respondent arraigned Doreen Folk, who was accused of the sexual abuse of a 12-year-old boy.

22. As respondent read the charges from the bench, he said, "What I want to know is where were girls like this when I was 12." The remark was made in the presence of the defendant and the arresting officer.

23. Respondent then released the defendant in the custody of her mother.

24. After the arraignment and the departure of the defendant and the arresting officer, respondent discussed the case with court clerk Jean Galgano and court officer Richard Hamilton. He again said, "Where was she when I was 12?"

As to Charge VII of the Supplemental Formal Written Complaint:

25. The charge is not sustained and is, therefore, dismissed.

As to Charge VIII of the Supplemental Formal Written Complaint:

26. At various times between 1994 and 1996, respondent made statements off-the-bench to court clerk Jean Galgano and Assistant District Attorney Rachelle Kaufman, indicating that he believed that many domestic assault charges are exaggerated by women and are unfair to men and that he is skeptical about the merits of domestic assault cases in which the primary witness is the victim and the complaint is signed by a police officer instead of the victim.

27. Respondent repeatedly questioned Ms. Kaufman concerning Orders of Protection in such cases. He said that he did not favor issuing an Order of Protection or keeping an alleged abuser out of the home unless the victim had come to court with a "turban of bandages on her head." If a female victim was "truly frightened, [she could] leave the home and go to other family or friends or to the shelter," respondent told Ms. Kaufman. He did not favor throwing a man out of his home on the basis of one person's word, he said. Respondent also told Ms. Kaufman several times that he did not like most domestic violence cases because they involve "he said, she said" issues.

28. Respondent periodically told Ms. Galgano that the police and prosecutors should be "more discreet" with domestic abuse cases and that the police should not always arrest the defendant because, "most likely, the defendant is the father; he's the husband; he's the one who makes the money, and it's not right that they're told that they can't go back into the house."

29. Paragraphs 11, 12, and 13 of Charge VIII are not sustained and are, therefore, dismissed.

As to Charge IX of the Supplemental Formal Written Complaint:

30. In February 1996, respondent arraigned Timothy Harrison on a charge of Harassment. He was accused of threatening Jennifer Ocasio, who had signed the complaint against him.

31. Ms. Ocasio and Police Officer John Weber were present for the arraignment. Ms. Ocasio spoke to respondent and indicated that she did not want the defendant prosecuted. Respondent told her to recant in writing on the complaint itself, and she did so. He did not explain to her the potential adverse consequences of recanting a sworn statement to the police. Respondent then dismissed the charge.

32. Respondent knew that Ms. Ocasio was not represented by counsel. There was no prosecutor present, and respondent did not obtain the consent of the prosecution before dismissing the charge.

As to Charge X of the Supplemental Formal Written Complaint:

33. On January 26, 1994, respondent arraigned Chuck Reynolds on a charge of Driving While Intoxicated. Mr. Reynolds had failed to make previous court appearances because he had been hospitalized with serious injuries, and a bench warrant had been issued by another judge. He appeared voluntarily before respondent after Detective Viohl made arrangements for him to surrender.

34. Assistant District Attorney Rachelle Kaufman recommended that Mr. Reynolds be released pending trial. Instead, respondent set bail at $500.

35. Detective Viohl then approached the bench, advised respondent that the defendant had been hospitalized and had surrendered himself and assured respondent that the defendant would return to court. Respondent replied in a voice loud enough to be heard throughout the courtroom, "Your word and $500 ought to get him back in court."

36. After court, Detective Viohl went to respondent's chambers and asked why respondent had embarrassed him in a courtroom full of people. Respondent replied, "Well, you stick up for a piece of shit like that, you know that's what happens."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2, 100.2(A), 100.3(B)(1), 100.3(B)(2), 100.3(B)(3) and its predecessor Section 100.3(a)(3) [renumbered eff. Jan. 1, 1996], 100.3(B)(4), 100.3(B)(5), 100.3(B)(6) and 100.3(c)(1) in effect at the time (now Section 100.3[E][1]), and Canons 1, 2, 2A, 3A(1), 3A(2), 3A(3), 3A(4) and 3C(1) of the Code of Judicial Conduct. Charges I, II, III and IV of the Formal Written Complaint and Charges V, VI, IX and X and Paragraph 10 of Charge VIII of the Supplemental Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. Charge VII and Paragraphs 11, 12 and 13 of Charge VIII of the Supplemental Formal Written Complaint are dismissed.

In a series of incidents, respondent has exhibited intemperate and biased behavior, disregard of the law and an egregious assertion of influence for private gain.

Especially improper are events on and off the bench that indicate that respondent does not take seriously domestic violence complaints and is reluctant --- if not negligent --- in properly applying the law in such matters. On a number of occasions, he privately remarked to his court clerk and a prosecutor that he is skeptical about such cases and is reluctant to issue Orders of Protection unless the victims show extraordinary proof of abuse, such as a "turban of bandages." Viewed in conjunction with his on-the-bench behavior in such cases as Harrison (Charge IX), in which he dismissed such a case without consulting the prosecution, and Schaeffer (Charge V), in which he made the remark that women need to be kept "in line," it is apparent that respondent is predisposed against the victims of domestic violence. Such judicial indifference and gross insensitivity is inappropriate (Matter of Roberts, 91 NY2d 93, 96) and has the effect of discouraging complaints from those who look to the judiciary for protection (Matter of Bender, 1993 Ann Report of NY Commn on Jud Conduct, at 54, 55; Matter of Chase, 1992 Ann Report of NY Commn on Jud Conduct, at 41, 43).

Even isolated incidents of such remarks cast doubt on a judge's ability to be impartial and fair-minded. (Matter of Duckman, ___ NY2d ___[Slip Op. No. 66, fn. p. 15, July 7, 1998]; Matter of Schiff, 83 NY2d 689, 692-93).

Respondent's disregard for the law that he is sworn to administer is also evident in Schaeffer (Charge V), in which he dismissed

a charge without affording the prosecution an opportunity to be heard. (See, Duckman, supra; Matter of More, 1996 Ann Report of NY Commn on Jud Conduct, at 99).

In addition, respondent's extremely vitriolic behavior toward Detectives Viohl and Soto in the stationhouse confrontation and in a vituperative and spurious letter to the town board is unbecoming a judge. (See, Matter of Cerbone, 61 NY2d 93). His profane and insulting language on the bench in Reynolds (Charge X) and Rastelli (Charge III) and his ill-placed humor in Folk (Charge VI) were also improper. (See, Matter of Mahon, 1997 Ann Report of NY Commn on Jud Conduct, at 104; Matter of Myers, 1985 Ann Report of NY Commn on Jud Conduct, at 203).

Respondent's failure to disqualify himself in Rastelli (Charge III) and his actions in connection with the Celentano dispute (Charge IV) represent an improper confusion of his roles as a judge and a practicing attorney, as well as the use of the prestige of his office on behalf of a client. (See, Matter of Cerbone, 1997 Ann Report of NY Commn on Jud Conduct, at 83; Matter of Watson, 1989 Ann Report of NY Commn on Jud Conduct, at 139).

Notwithstanding his long tenure on the bench and his reputation among some members of the legal community, this record demonstrates that respondent's retention in office would compromise the proper administration of justice. (See, Matter of Esworthy, 77 NY2d 280, 283; Matter of Shilling, 51 NY2d 397, 399).

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

Mr. Berger, Ms. Brown, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Judge Salisbury and Judge Thompson concur as to sanction.

Ms. Brown and Judge Newton dissent only as to Charge VII and vote that the charge be sustained.

Mr. Goldman dissents only as to Charges VIII, IX and X and votes that those charges be dismissed.

Mr. Coffey and Mr. Pope were not present.

Dated: August 7, 1998

SCHEDULE A

Respondent's letter of September 5, 1995, contained the following remarks:

a) the information in People v Steven Whitaker was "clearly defective on its face in that it contained nothing more than a vague allegation that the Defendant threatened the complainant";

b) the information in Whitaker was "totally devoid of any factual allegations whatsoever";

c) respondent had "advised the two detectives [Soto and Viohl] that the information was defective, and it would be subject to a motion to dismiss unless it were corrected, either by filing an amended information, or a deposition";

d) in People v Juan Espinal, the "charge was rather minor";

e) respondent "inquired of the two detectives [Soto and Viohl] why they saw fit, in this particular case, to pick up the Defendant, and bring him in, in handcuffs, when their usual practice was simply to make a telephone call from their office requesting the Defendant to come in on his own";

f) in "cases involving friends or relatives of the detectives, [they] simply…call and tell them to appear in Court";

g) respondent was "somewhat skeptical of [Detective Viohl's] explanation," that "he just happened to be out on patrol when he spotted Juan Espinal and recalled that he was wanted on a bench warrant";

h) "Detectives Soto and Viohl returned to the Police Station, and promptly proceeded to harass Police Officer John Salter, who they know to be a friend of [respondent]";

i) Detectives Soto and Viohl made "derogatory comments about a member of the judiciary [i.e. respondent], in violation of Department rules";

j) Detectives Soto and Viohl then sought to "hide behind these very same rules by claiming that their statements [to Officer Salter] consisted of confidential department business";

k) Detective Sergeant Rogers "of late has sought to establish himself within the Town of Haverstraw as a power answerable only unto himself";

l) Detective Sergeant Rogers "has apparently taken personal offense at the fact that [respondent] would dare to confront" Detectives Soto and Viohl;

m) Detectives Soto and Viohl are "defectives";

n) Detective Sergeant Rogers "has brazenly attacked the Town Board in the press";

o) Detective Sergeant Rogers has made it "known that he does not feel that he is answerable in any way to the Chief" of Police;

p) Detective Sergeant Rogers has "taken it upon himself to conduct his own personal investigation of [respondent] on Department time, using Town resources";

q) Detective Sergeant Rogers and Detectives Soto and Viohl "have contacted at least one client of [respondent's law practice], and possibly several others, making derogatory remarks";

r) Detective Sergeant Rogers and Detectives Soto and Viohl were "urging [a client of respondent's law practice] to go to the District Attorney's office and make a frivolous complaint against [respondent]";

s) Detective Sergeant Rogers improperly "engaged a client of [respondent] in ex-parte conversation while a prisoner in the Town of Haverstraw lock-up";

t) Detective Sergeant Rogers "encouraged the prisoner [respondent's client] to retain another attorney and discharge [respondent] as his counsel";

u) "a review of Departmental tapes of telephone calls, and a review of all phone calls made by Detective Sergeant Rogers on the Detectives' private lines" will verify respondent's allegations and "may even uncover various other misconduct, and possibly even criminal conduct," by the three detectives;

v) respondent is "absolutely shocked by the total lack of accountability on the part of your detective personnel";

w) Detective Sergeant Rogers and Detectives Soto and Viohl "seem to be completely outside of the chain of command, accountable to no one";

x) Detective Sergeant Rogers and Detectives Soto and Viohl "apparently come and go as they please, keeping no record of their activities, whatsoever";

y) Detective Sergeant Rogers and Detectives Soto and Viohl "do not work staggered shifts, which would afford better coverage and less overtime"; instead they "establish their own rules, including if and when they work overtime," particularly when they must be called out on a felony, "which is a convenient way for them to pick up an abundance of overtime";

z) Detective Sergeant Rogers and Detectives Soto and Viohl put "five or ten (5 - 10) minutes at the [felony] scene, and then charges the Police Department for a minimum of four (4) hours overtime";

aa) "even though they complain of being overworked, but hardly underpaid, they seem to have plenty of time to conduct their own private investigations";

bb) Detective Sergeant Rogers and Detectives Soto and Viohl "do not see fit to devote all of their time and effort to Department business [which] may, of course, account for the fact that their crime clearance rates are abysmal";

cc) Sergeant Rogers will "claim that he closed the only homicide we have had in the Town in decades, with an arrest. The truth of the matter is, however, that after working on the case for over a year, he got absolutely no results";

dd) Detective Sergeant Rogers and Detectives Soto and Viohl use "Department resources to conduct private investigations in accordance with their own personal agendas"; and,

ee) Detective Sergeant Rogers and Detectives Soto and Viohl engaged in "a blatant attempt…to intimidate and coerce the Judiciary, and subject it to their wishes," and their "conduct is clearly in violation of Department regulations, and may even be criminal in nature, and therefore should be thoroughly investigated…."

DISSENTING OPINION
BY MR. GOLDMAN

I respectfully dissent as to Charges VIII, IX and X and vote to dismiss those charges. Otherwise, I concur with the majority in its findings of misconduct and sanction of removal.

With respect to Charge VIII, I do not believe that off-the-bench discussions by a judge concerning his judicial philosophy, however politically incorrect or even bizarre, should be the basis for a finding of misconduct.

As to Charge IX, I do not believe that respondent's acceptance of the withdrawal of the charge by the complainant constitutes misconduct. In the lower criminal courts, withdrawals of charges, especially of minor charges made by acquaintances, as in this case, are routinely granted. <The charge was Harassment, Penal Law § 240.26(3), a violation. The complainant alleged that the defendant "did threaten [her] by stating if you don't get in the car I am going to beat your ass." As a matter of law, the factual allegations do not even make out the offense charged. (See, People v Dietze, 75 NY2d 47; People v Hogan, NYLJ, Apr. 22, 1997, p. 31, col. 3 [Crim Ct, Kings Co]).> Respondent was not, in my view, required to explain to Ms. Ocasio the practical consequences of her recantation. As a practical matter, there are no consequences for recanting a complaint prior to arraignment. (See, Penal Law § 210.25 [affirmative defense to perjury if one retracted false statement before it substantially affected proceeding]).

Further, it is not clear to me that, as the majority implies, the prosecutor must consent to a "dismissal" by reason of withdrawal of a complaint. Should the complainant decline to swear to the complaint, there may not even be a valid accusatory instrument upon which to arraign the defendant. (See, CPL 100.10, 170.10). In any case, even if respondent erred in dismissing the complaint in the absence of the prosecutor, I do not believe that this mistake in an unclear area of law constitutes judicial misconduct.

With respect to Charge X, I also do not find misconduct. The remark by the judge to Detective Viohl at the bench apparently was triggered by the apparent provocation of the officer approaching the bench after the judge had set a bail on the detective's friend in an amount higher than recommended by the prosecutor. Those present in the courtroom could undoubtedly sense that the detective was rearguing the court's decision. Under these circumstances, the loud and seemingly sarcastic remark by respondent was not clearly unjustified, and thus, in my opinion, does not rise to the level of judicial misconduct. Lastly, while I am somewhat troubled by the scatological disparagement of a litigant, I do not find misconduct since the remark was made by the judge in private to an acquaintance.

Dated: August 7, 1998

DISSENTING OPINION BY MS. BROWN, WHICH JUDGE NEWTON JOINS

I concur with the majority's findings of misconduct and agree that respondent should be removed from office. However, I would vote to sustain, in addition, Charge VII of the Supplemental Formal Written Complaint in which it was established that respondent made an inappropriate comment that further demonstrates his insensitivity in cases involving domestic violence and sexual abuse.

Kermit Morales was charged with the sexual abuse of a woman with whom he had had a prior relationship. The accusatory instrument described the abuse in the first person as though in the words of the victim, but it was signed by a male police officer. In open court, respondent read the complaint: "The said Defendant…did place his fingers into my vagina"; noted that the complaint had been signed by a male police officer; laughed, and said, "I would like to have seen that happen." Such a remark, in front of the defendant and others, is totally inappropriate and undermines the serious nature of such charges.

Charge VII should be sustained.

Dated: August 7, 1998

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

MARY H. SMITH,

a Judge of the County Court,
Westchester County.

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission
Mancuso, Rubin & Fufidio (By Andrew A. Rubin) for Respondent

The respondent, Mary H. Smith, a judge of the County Court, Westchester County, was served with a Formal Written Complaint dated December 18, 1997, alleging three charges of misconduct. Respondent did not answer the complaint.

On March 11, 1998, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On March 12, 1998, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a judge of the Westchester County Court during the time herein noted.

2. On February 29, 1996, respondent presided over People v Moses Noel Blasini, in which the defendant was charged with Murder. Mr. Blasini was represented by Lawrence A. Porcari.

3. While Mr. Porcari was out of the courtroom, respondent had an ex parte conversation with the defendant in which she attempted to persuade him to plead guilty.

4. When two prosecutors present in the courtroom questioned respondent's conduct in speaking to a defendant when his lawyer was not present, respondent directed the prosecutors to leave the courtroom. One of the prosecutors again asserted that such discussion was improper, but respondent maintained that it was proper. She

continued to suggest to the defendant, in the absence of his counsel, that he plead guilty.

5. In open court, respondent stated that the defendant had indicated a desire to plead guilty, and, in the defendant's presence, she said that she was concerned that Mr. Porcari was not acting in accordance with his client's wish. She disregarded Mr. Porcari's requests that she not speak directly to his client.

6. At one point, Mr. Porcari allowed his client to address the court but instructed him not to respond to respondent. Respondent told Mr. Porcari not to interfere. She persisted, and the defendant said that he did not believe that his bullet had struck the murder victim. This statement was subsequently suppressed by respondent.

7. Respondent encouraged the defendant to speak to her directly, even after Mr. Porcari reminded her that she was undermining the confidence that the defendant should have in his attorney.

As to Charge II of the Formal Written Complaint:

8. On December 15, 1995, respondent presided over People v Kent McDonald. Respondent had an ex parte conversation with the defendant while his attorney was not in the courtroom. Respondent indicated to the defendant that the plea that he and his attorney sought was a good plea and that he should accept it if he was guilty. She reiterated the point when the defendant's attorney returned to court.

As to Charge III of the Formal Written Complaint:

9. Between January 1, 1995, and March 31, 1997:

a) in some cases pending before her, respondent made inappropriate quips and other comments of misplaced humor to attorneys in chambers that appeared to minimize charges brought by the District Attorney's Office;

b) on one occasion, respondent would not allow an assistant district attorney to make a complete record of a recusal application based on respondent's ex parte conversation with defense counsel, and, after giving the prosecutor until 4 P.M. to file a written motion, respondent commenced the non-jury trial at 2:40 P.M.; the prosecutor completed and filed his motion papers by 4 P.M. but later withdrew them because the trial was in progress;

c) respondent made a statement in court which, even though it was not meant to be critical of a particular ethnic group, could reasonably be interpreted as being critical of that group, and her comments implied that, because of the conduct of one defendant, other defendants who were members of that ethnic group might suffer in the future; while evaluating the case in chambers, she also stated that the alleged victims were probably illegal aliens who, either would not testify, or would not be believed if they did because of their status;

d) on one occasion, as she was entering the courtroom, respondent had a brief ex parte conversation with defense counsel under the mistaken belief that counsel had already discussed the subject with the prosecutor; eventually, the prosecutor and defense counsel agreed upon the disposition that was the substance of the ex parte conversation;

e) in a case in which the defendant was accused of forcible sodomy and wished to plead guilty while maintaining his innocence, respondent advised defense counsel not to enter a plea of guilty

unless the prosecutor could prove the charges, and she opined that it was unlikely that the alleged victim would appear at trial; respondent repeated her advice after the prosecutor asserted that the alleged victim would appear; respondent then said that she would not accept a guilty plea unless the victim appeared in court, notwithstanding that the alleged victim had moved to North Carolina and had recently given birth; respondent eventually allowed a guilty plea after receiving an affidavit from the alleged victim; and,

f) on one occasion, after defense counsel was given a pre-sentence report to read, respondent prohibited the prosecutor from reading the pre-sentence report because she was angry with him for requesting the opportunity to read the report when the sentence had been agreed upon by the parties.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2, 100.3(B)(3) and its predecessor, Section 100.3(a)(3) and 100.3(B)(6) and its predecessor, Section 100.3(a)(4) [renumbered eff. Jan. 1, 1996], and the Rules Concerning Court Decorum of the Appellate Division, Second Department, 22 NYCRR 700.5(a) and 700.5(e). Charges I, II and III of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

Respondent has engaged in a pattern of inappropriate behavior that compromised the rights of the parties and created the appearance of partiality.

It was improper for respondent to speak to defendants whom she knew to be represented and urge them to enter guilty pleas, especially outside the presence of their attorneys. In Blasini, she persisted in this conduct, even after prosecutors repeatedly reminded her that this was inappropriate. When the lawyer returned, she continued to address the defendant, even though the lawyer had advised him not to respond. A judge should not interfere in the relationship between a lawyer and a client. (See, Matter of Finley, 1981 Ann Report of NY Commn on Jud Conduct, at 123, 128).

Respondent's ill-placed humor, minimizing charges before her, and her remarks concerning the reliability of prosecution witnesses created the appearance of bias against the prosecution. Comments by a judge indicating ethnic bias or appearing to indicate such bias are undesirable, inappropriate and inexcusable. (See, Matter of Ain, 1993 Ann Report of NY Commn on Jud Conduct, at 51, 53; Matter of Sweetland, 1989 Ann Report of NY Commn on Jud Conduct, at 127, 130). In addition, a judge should not suggest that the conduct of one member of an ethnic group reflects on all members of that group. (See, Matter of Cunningham, 1995 Ann Report of NY Commn on Jud Conduct, at 109, 110).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.
Ms. Crotty was not present.

Dated: June 29, 1998

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

KLAUS SOHNS,

a Justice of the Franklin Town Court,
Delaware County.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
Honorable Klaus Sohns, pro se

The respondent, Klaus Sohns, a justice of the Franklin Town Court, Delaware County, was served with a Formal Written Complaint dated December 30, 1997, alleging that he failed to remit court funds promptly to the state comptroller, that he failed to keep proper court records, and that he failed to dispose of cases. Respondent answered the Formal Written Complaint by letter dated February 7, 1998.

By motion dated March 31, 1998, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct had been established. Respondent did not file any papers in response thereto. By Determination and Order dated June 24, 1998, the Commission granted the administrator's motion.

The administrator filed a memorandum as to sanction. Respondent neither filed a memorandum nor requested oral argument.

On July 30, 1998, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Franklin Town Court since 1980. His caseload consists of 30-to-40 cases a year.

2. Between January 1982 and February 1985, as set forth in Schedule A appended hereto, respondent failed to report cases and remit court funds to the state comptroller within ten days of the month following collection, as required by UJCA 2020 and 2021(1), Town Law §27(1) and Vehicle and Traffic Law §1803(8).

3. By letter dated April 26, 1985, respondent acknowledged to the Commission, "I did file some reports late, not realizing that it was that serious." He promised that future reports would be filed on time.

4. On June 25, 1985, the Commission cautioned respondent to remit funds to the comptroller by the tenth day of the month following collection.

5. Between January 1994 and August 1997, as set forth in Schedule B appended hereto, respondent again failed to report dispositions and remit court funds to the comptroller as required by law.

6. Since 1980, respondent has failed to maintain a docket of motor vehicle cases and, between April 1996 and September 1997, he failed to maintain a docket of criminal cases, as required by UJCA 107 and 2019 and Town Law §31(1)(a).

7. Between January 1994 and September 1997, responded failed to maintain a cashbook, as required by the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.11(3).

8. Between January 1995 and September 1997, respondent failed to issue duplicate receipts, as required by Town Law §31(1)(a).

9. Between October 1986 and September 1997, respondent failed to take action on 111 cases, as set forth in Schedule C appended hereto, in that he failed to send fine notices to defendants who had pleaded guilty by mail; failed to schedule trials for defendants who had pleaded not guilty, and failed to suspend the driving privileges of defendants who had failed to answer summonses, pay fines or appear for trial, as required by Vehicle and Traffic Law §510(4-a)(a). Some of the cases were pending in respondent's court for more than ten years.

10. In People v Harold Carbaugh, Sr., in which the defendant was charged on October 1, 1996, with Sexual Abuse and Endangering the Welfare of a Child, respondent conducted an arraignment and adjourned the matter to allow the defendant to retain an attorney. Respondent did not set an adjourned date and never re-scheduled the matter because "he was asked to come back and never did," respondent testified on October 6, 1997.

11. In People v Norman Epps, in which the defendant was charged on June 25, 1996, with Criminal Contempt on the complaint of his wife, respondent took no action after the defendant came to court and said that he had reconciled with his wife. Respondent never consulted the prosecutor or the victim. "[H]e thought he could work it out with his wife or something, and we left it as such," respondent testified during the investigation.

12. In People v Brian M. Johns, in which the defendant was charged on June 20, 1996, with Criminal Possession of a Weapon, respondent conducted an arraignment and adjourned the matter without date so that the defendant could contact his lawyer. "The attorney never got back and…. a trial date needs to be set up for criminal summons to get him back to court," respondent testified more than a year later.

13. In People v John E. Donnelly, in which the defendant was charged on October 3, 1990, with Inadequate Headlights and No Slow Moving Vehicle Emblem, respondent took no action after the case was transferred to him by another judge because "it never got to that."

14. In People v Brian Frear, in which the defendant was charged on September 5, 1989, with Speed Not Reasonable Nor Prudent, respondent adjourned the matter to October 10, 1989, for a supporting deposition and "nothing has become of it."

15. In People v David L. Hitchcock, in which the defendant was charged on January 28, 1995, with Driving While Intoxicated and pleaded guilty to Driving While Ability Impaired, respondent took no further action because the defendant said that he could not afford to pay a fine and "I really didn't know what to do with the case…."

16. In People v Sharon D. Serra, in which the defendant was charged on October 28, 1993, with Failure to Stop For Stop Sign, respondent took no action after the defendant told him by telephone that she could not come to court from her home in New Jersey.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A), 100.3(B)(1) and its predecessor Section 100.3(a)(1), 100.3(B)(7) and its predecessor Section 100.3(a)(5), and 100.3(C)(1) and its predecessor Section 100.3(b)(1) [renumbered eff. Jan. 1, 1996]. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent has neglected nearly every aspect of his duties as a judge throughout many of his 18 years in office. Although he has a caseload of only 30-to-40 matters per year, he left 111 cases pending for long periods --- some more than ten years. Rather than re-schedule cases for a date certain, he left it to the parties to ask that cases be restored to the court calendar. Even criminal cases were left to languish because defendants said that they needed to consult a lawyer or could not pay a fine, then never volunteered to return to court.

Respondent also failed to report cases and remit funds promptly to the state comptroller as the law requires, even after a Commission caution in 1985 and his promise that he would be more diligent in his handling of court money. Moreover, he failed to keep adequate records of the matters before him.

Such disdain for the administrative and adjudicative responsibilities of judicial office constitutes serious misconduct. (Matter of Vincent, 70 NY2d 208; Matter of Petrie, 54 NY2d 807). Respondent's failure to heed the Commission's caution exacerbates his wrongdoing. (See, Matter of Lenney, 71 NY2d 456, 459).

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

All concur.

Dated: October 19, 1998

Schedule A

Month	Report Submitted	Days Late
January 1982	2/24/82	14
February 1982	3/17/82	7
March 1982	4/16/82	6
April 1982	5/24/82	14
May 1982	8/4/82	55
June 1982	8/4/82	25
July 1982	8/4/82	0

Schedule A (cont'd)

August 1982	11/5/82	56	December 1983	3/19/84	69
September 1982	11/5/82	26	January 1984	3/19/84	38
October 1982	11/5/82	0	February 1984	3/19/84	9
November 1982	12/17/82	7	March 1984	5/24/84	44
December 1982	1/17/83	7	April 1984	5/24/84	14
January 1983	2/18/83	8	May 1984	8/20/84	71
February 1983	3/25/83	15	June 1984	8/20/84	41
March 1983	5/16/83	36	July 1984	8/20/84	10
April 1983	5/16/83	6	August 1984	11/15/84	66
May 1983	6/21/83	11	September 1984	11/15/84	36
June 1983	8/3/83	24	October 1984	11/15/84	5
July 1983	8/3/83	0	November 1984	2/7/85	59
August 1983	10/4/83	24	December 1984	2/7/85	28
September 1983	12/5/83	56	January 1985	2/7/85	0
October 1983	12/5/83	25	February 1985	3/19/85	9
November 1983	12/5/83	0			

Schedule B

Month	**Report Submitted**	**Days Late**	November 1995	2/12/96	64
			December 1995	2/13/96	34
January 1994	2/14/94	4	January 1996	4/18/96	68
February 1994	5/11/94	62	February 1996	4/17/96	38
March 1994	5/11/94	31	March 1996	4/17/96	7
April 1994	5/11/94	1	April 1996	7/19/96	70
May 1994	8/11/94	62	May 1996	7/19/96	39
June 1994	8/11/94	32	June 1996	7/19/96	9
July 1994	8/11/94	1	July 1996	10/10/96	61
August 1994	10/7/94	27	August 1996	10/10/96	30
September 1994	10/7/94	0	September 1996	10/10/96	0
October 1994	1/20/95	71	October 1996	12/2/96	22
November 1994	1/20/95	41	November 1996	12/3/96	0
December 1994	1/20/95	10	December 1996	2/18/97	39
January 1995	3/15/95	33	January 1997	2/14/97	4
February 1995	3/16/95	6	February 1997	4/28/97	49
March 1995	5/18/95	38	March 1997	4/28/97	18
April 1995	5/18/95	8	April 1997	6/4/97	25
May 1995	8/16/95	67	May 1997	6/4/97	0
June 1995	8/15/95	36	June 1997	7/23/97	13
July 1995	8/16/95	6	July 1997	8/29/97	19
August 1995	10/23/95	43	August 1997	9/18/97	8
September 1995	10/23/95	13			
October 1995	11/27/95	17			

Schedule C

Defendant	Date of Charges
Laurie Allen	4/07/92
Susan J. Allison	10/19/86
Xandra Sue Angle	2/13/95
John L. Archer	1/19/92
Tracy Armstrong	2/20/95
David J. Atkinson	2/08/94
Peter C. Baker	1/18/90
Frank J. Balkassare	11/12/89
Daniel J. Banks	4/22/93
Jose R. Barahona	6/09/96
William T. Bateman	12/21/89
	12/22/89
Russell C. Beach	8/09/91
Merle Bell	7/17/94
Kathleen M. Bolger	12/14/92
Loren C. Brooks	6/03/95
John V. Bruzzese	10/29/93
William C. Capek	2/24/95
John P. Caruso	5/05/92
D.B. Christensen	3/24/92
William N. Cocks	10/04/92
Christina D. Cooke	1/29/95
James Corban	8/28/92
Robert E. Coryer	12/21/89
Kalief Cuyler-Gibbs	2/16/96
Amy J. Doenges	7/11/95
John E. Donnelly	10/03/90
D. Drayton	10/17/89
Johnny N. Eastman	10/25/93
Thomas J. Evans	2/02/96
Connie P. Fallon	8/21/95
Eric E. Farrell	3/10/95
Anthony Feltner	3/28/93
Timothy A. Ferguson	4/13/95
Robert Festa	3/28/93
Brian Frear	9/05/89
Vincent J. Gentile	2/09/91
David L. Grant	3/24/94
David L. Grant	4/13/87
Michael S. Gural	7/01/89
Vern E. Hall	11/25/93
Dorothy M. Hamlin	12/05/96
Mark E. Hand	3/18/89
Kenneth E. Hansen, Jr.	12/26/94
William T. Harris	12/02/93
Kerri E. Herlihy	2/24/95
Donald R. Hill	12/29/93
David L. Hitchcock	1/28/95
Brenda L. Holcomb	2/10/93
Connie Hopkins	2/01/96
John A. Howell	10/19/86
LeeAnn L. Hughes	8/19/93
John P. Jaques	1/28/92
Rhonda A. Keene	5/28/95
William H. Kent	12/31/94
James A. Kilmer	9/92
Rebecca L. Kruser	12/05/90
Hugh B. Leonard	10/04/92
Stephen H. Liska	11/30/96
Terry A. Lum	2/29/92
Olga Lyubarov	5/07/96
Joann Maggiore	5/27/94
Joseph T. Martinez	12/23/95
Brian C. Mettler	4/27/95
Robert A. Michelin	8/13/90
Judith A. Miller	2/16/96
Paul T. Miller	12/28/94
Crystall A. Miner	5/23/92
Steven F. Minninger	10/04/92
Raymond J. Mallica	12/23/92
Randall I. Mowers	5/02/94
Vickie L. North	10/27/93
Rein Olvett	5/23/92
Patrick Paolella	1/07/90
John F. Phraner	6/30/94
Kevin C. Place	8/20/94
	10/09/94
Ramona Plance	11/05/95
Jeffrey H. Pomeroy	8/27/92
Angelo Portoro	4/10/92
William M. Pywar, Jr.	1/14/94
Ronald M. Roof	1/27/95
Eric L. Rosa	7/18/92
Sean A. Schmidt	6/13/87
Rusty Schmitz	11/11/88
Frederick W. Schum, III	2/07/95

Sharon D. Serra	10/28/93	Brian T. Williams	11/13/94
Aaron R. Seward	12/04/96	Samuel Williamson	2/26/93
Gregg Sheiowitz	11/12/95	Perry D. Blansett	7/01/96
Arthur J. Smith	6/16/93	Harold E. Carbaugh, Sr.	10/01/96
Michael G. Solden	9/18/95	Andrew D. Clavie	12/07/94
Christine Squassoni	6/09/89	Norman Epps	6/25/96
Homer E. Steele	10/26/88	Jane Evans	1/26/96
Glen M. Stiver	3/02/90	Arthur A. Forziati	1/14/94
Louis B. Summer	7/11/96	David Lee Groat	2/18/95
James L. Thomas, 4th	4/28/92	Brian M. Johns	6/20/96
Joshua C. Touby	6/14/89	Ronald M. Roof	1/27/95
Laura M. Tuazon	12/06/91	Nicah Sickler	9/17/96
Barry R. Waid	1/23/93	Michael S. Silver	7/18/95
George A. Walter	5/27/94		

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

ARTHUR H. STEVENS,

a Justice of the Whitehall Town Court, Washington County.

APPEARANCES:

Gerald Stern for the Commission
Michael S. Martin for Respondent

The respondent, Arthur H. Stevens, a justice of the Whitehall Town Court, Washington County, was served with a Formal Written Complaint dated August 4, 1998, alleging that he improperly interfered in a police investigation of a dispute between his son and a neighbor. Respondent filed an answer dated September 1, 1998.

On October 1, 1998, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On October 1, 1998, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Whitehall Town Court since 1987.

2. On October 26, 1997, Whitehall Village Police Officer Jeffrey Whalen was dispatched to the home of Virgil Holcomb to investigate his complaint that someone had pulled up fence posts near his property line and that of Michael Stevens, who is respondent's son. A survey stake marking the boundary had also been removed.

3. Respondent arrived at the driveway of his son's home while Officer Whalen was investigating the incident.

4. In the presence of Mr. Holcomb, respondent angrily shouted to Officer Whalen that Mr. Holcomb was "crazy" and a "son of a bitch." Respondent twice urged the officer to arrest Mr. Holcomb for pulling up his own fence posts and survey stake. Respondent accused Mr. Holcomb of cutting tree limbs that were on Michael Stevens's

property. Although he had no factual basis to support a charge against Mr. Holcomb, respondent advised Officer Whalen to charge him with Criminal Mischief.

5. When Officer Whalen refused to make any arrest, respondent asked what evidence it would take in order to arrest someone under such circumstances.

6. Respondent was aware that Officer Whalen, who had appeared before him in court, knew that he was a justice of the Whitehall Town Court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A) and 100.2(C). Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent used the prestige of his office to advance his son's interests in a private dispute. (See, Matter of Straite, 1988 Ann Report of NY Commn on Jud Conduct, at 226, 227, 233). His angry, rude and vulgar manner in so doing was unbecoming a judge. (See, Matter of Chase, 1998 Ann Report of NY Commn on Jud Conduct, at 75).

It was especially improper for respondent to implore the police officer to charge Mr. Holcomb with Criminal Mischief without any factual basis for such a charge.

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

Mr. Berger, Ms. Brown, Mr. Goldman, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.
Mr. Coffey and Judge Luciano were not present.

Dated: December 23, 1998

Statistical Analysis of Complaints

1999 Annual Report

New York State
Commission on Judicial Conduct

COMPLAINTS PENDING AS OF DECEMBER 31, 1997

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING								
NON-JUDGES								
DEMEANOR		8	7	6	4	3	11	39
DELAYS			1		1			2
CONFLICT OF INTEREST		1	5	4				10
BIAS		1	1	1	1		1	5
CORRUPTION		2					1	3
INTOXICATION		1			1		1	3
DISABILITY/QUALIFICATIONS								
POLITICAL ACTIVITY		2	2	2			4	10
FINANCES/RECORDS/TRAINING		6	6	8	1	4	3	28
TICKET-FIXING			1					1
ASSERTION OF INFLUENCE		3	6	2		1	3	15
VIOLATION OF RIGHTS		6	12	6	3	1	2	30
MISCELLANEOUS			2	2	1	1		6
TOTALS		30	43	31	12	10	26	152

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NEW COMPLAINTS CONSIDERED BY THE COMMISSION IN 1998

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	502							502
NON-JUDGES	192							192
DEMEANOR	143	47	7	1	2			198
DELAYS	44	6						50
CONFLICT OF INTEREST	32	10	1					43
BIAS	84	12	1	1	1			99
CORRUPTION	26	5	1					32
INTOXICATION	2	1						3
DISABILITY/QUALIFICATIONS		2						2
POLITICAL ACTIVITY	6	12	1					19
FINANCES/RECORDS/TRAINING	9	21	11	4	1			46
TICKET-FIXING	1	1	1					3
ASSERTION OF INFLUENCE	5	5	2	1				13
VIOLATION OF RIGHTS	181	46	8	3				238
MISCELLANEOUS	9	1	1					11
TOTALS	1236	169	34	10	2			1451

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ALL COMPLAINTS CONSIDERED IN 1998: 1451 NEW & 152 PENDING FROM 1997

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	502							502
NON-JUDGES	192							192
DEMEANOR	143	55	14	7	4	3	11	237
DELAYS	44	6	1		1			52
CONFLICT OF INTEREST	32	11	6	4				53
BIAS	84	13	2	2	2		1	104
CORRUPTION	26	7	1				1	35
INTOXICATION	2	2			1		1	6
DISABILITY/QUALIFICATIONS		2						2
POLITICAL ACTIVITY	6	14	3	2			4	29
FINANCES/RECORDS/TRAINING	9	27	17	12	2	4	3	74
TICKET-FIXING	1	1	2					4
ASSERTION OF INFLUENCE	5	8	8	3		1	3	28
VIOLATION OF RIGHTS	181	52	20	9	3	1	2	268
MISCELLANEOUS	9	1	3	2	1	1		17
TOTALS	1236	199	77	41	14	10	26	1603

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ALL COMPLAINTS CONSIDERED SINCE THE COMMISSION'S INCEPTION IN 1975

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	9110							9110
NON-JUDGES	2622							2622
DEMEANOR	1923	55	751	190	69	72	157	3217
DELAYS	880	6	86	40	13	11	16	1052
CONFLICT OF INTEREST	412	11	325	115	43	18	94	1018
BIAS	1221	13	179	35	23	14	18	1503
CORRUPTION	286	7	74	6	23	11	18	425
INTOXICATION	38	2	30	7	6	3	18	104
DISABILITY/QUALIFICATIONS	43	2	25	2	15	10	6	103
POLITICAL ACTIVITY	186	14	137	114	6	15	19	491
FINANCES/RECORDS/TRAINING	176	27	162	101	90	71	81	708
TICKET-FIXING	22	1	71	155	37	61	159	506
ASSERTION OF INFLUENCE	120	8	98	44	9	7	32	318
VIOLATION OF RIGHTS	1608	52	209	97	38	20	23	2047
MISCELLANEOUS	653	1	220	77	25	38	56	1070
TOTALS	19,300	199	2367	983	397	351	697	24,294

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