25th ANNUAL REPORT

2000

NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

* * *

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HON. DANIEL F. LUCIANO

HON. FREDERICK M. MARSHALL

ALAN J. POPE, ESQ.

HON. TERRY JANE RUDERMAN

HON. EUGENE W. SALISBURY

* * *

MEMBER WHOSE TERM RECENTLY ENDED

HON. JUANITA BING NEWTON

* * *

CLERK OF THE COMMISSION

ALBERT B. LAWRENCE, ESQ.

* * *

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March 1, 2000

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, 1999, through December 31, 1999.

Respectfully submitted,

Henry T. Berger, Chair
On Behalf of the Commission

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New York State
Commission on Judicial Conduct

Introduction

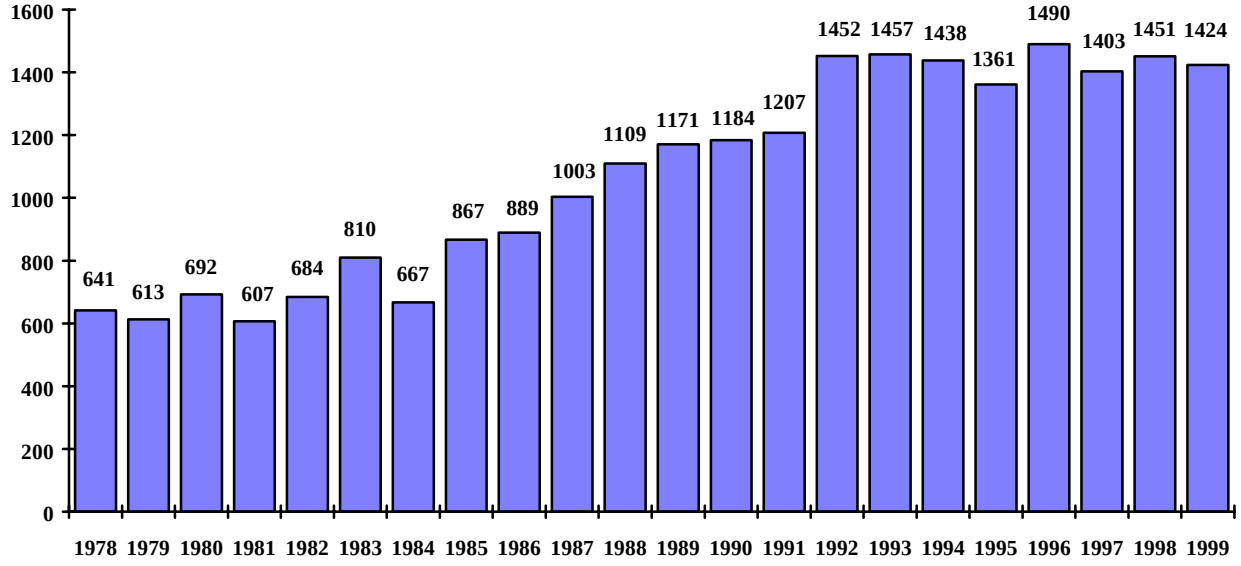
The New York State Commission on Judicial Conduct is the disciplinary agency designated by the State Constitution to review complaints of misconduct against judges of the State Unified Court System, which includes approximately 3,300 judges and justices. The Commission's objective is to enforce high 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. The Rules Governing Judicial Conduct, which are promulgated by the Chief Administrator of the Courts with the approval of the Court of Appeals, are annexed to this Report.

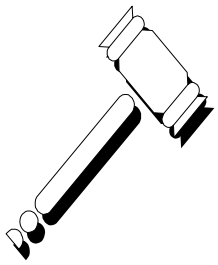
The number of complaints received by the Commission has steadily increased over the 25 years of our operation. In the last seven years, the Commission has averaged 1435 complaints per year.

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). For fiscal year 2000-01, the Governor has proposed a $35,700 *cut* in our budget, notwithstanding our request and demonstrated need for additional investigators. The Commission's budget is discussed further at page 41 herein.

This current Annual Report covers the Commission's activities during 1999.

Complaints Received Since 1978





Action Taken in 1999

Following are summaries of the Commission's actions in 1999, including accounts of all public determinations, summaries of non-public decisions, and various numerical breakdowns of complaints, investigations and other dispositions.

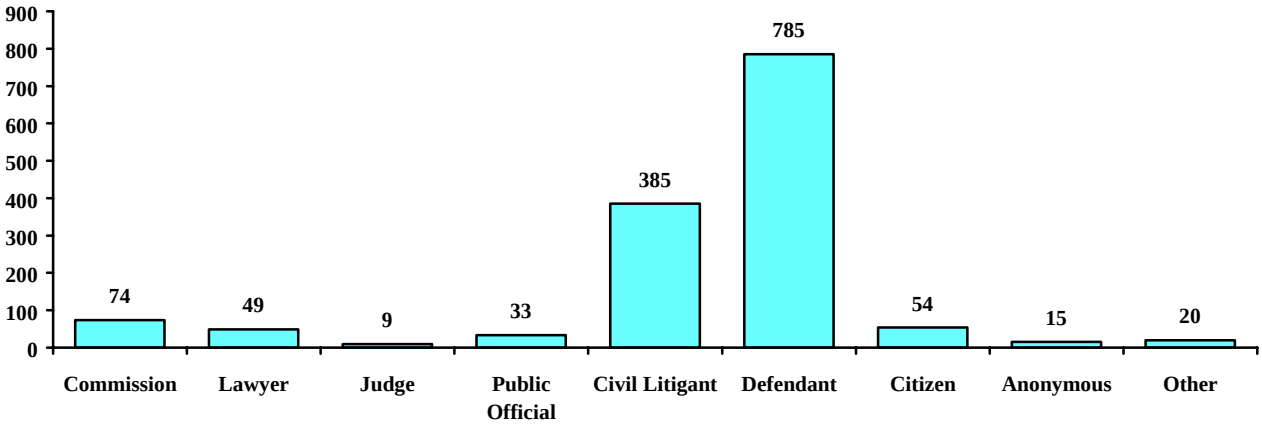
Complaints Received

In 1999, 1424 new complaints were received, marking the eighth consecutive year in which the number of complaints exceeded 1300. Of these, 1182 (83%) were dismissed by the Commission upon initial review, and 242 investigations were authorized and commenced. In addition, 178 investigations and 21 proceedings on formal charges were pending from the prior year.

In 1999, 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 74 initiated by the Commission on its own motion. A breakdown of the source of complaints received in 1999 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 1999



Investigations

On January 1, 1999, 178 investigations were pending from the previous year. During 1999, the Commission commenced 242 new investigations. Of the combined total of 420 investigations, the Commission made the following dispositions:

- 101 complaints were dismissed outright.
- 60 complaints involving 54 different judges were dismissed with letters of dismissal and caution.
- 22 complaints involving 14 different judges were closed upon the judges' resignation.
- 6 complaints involving 6 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.
- 3 complaints involving 2 judges were closed upon the judges' removal on other charges.
- 45 complaints involving 36 different judges resulted in formal charges being authorized.
- 183 investigations were pending as of December 31, 1999.

Formal Written Complaints

On January 1, 1999, Formal Written Complaints from the previous year were pending in 21 matters, involving 15 different judges. During 1999, Formal Written Complaints were authorized in 45 additional matters, involving 36 different judges. Of the combined total of 66 matters involving 51 judges, the Commission made the following dispositions:

- 24 matters involving 18 different judges resulted in formal discipline (admonition, censure or removal from office).
- No matters resulted in a letter of dismissal and caution.
- 2 matters involving 1 judge was closed upon the judge's resignation.
- No matters were closed upon vacancy of office due to reasons other than resignation, such as the judge's retirement or failure to win re-election.
- No matters were dismissed outright.
- 40 matters involving 32 different judges were pending as of December 31, 1999.

Summary of All 1999 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	98	216	314
Complaints Investigated	42	97	139
Judges Cautioned After Investigation	7	37	44
Formal Written Complaints Authorized	5	22	27
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	4	7	11
Formal Complaints Dismissed or Closed	0	1	1

*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	60	119	179
Complaints Investigated	10	12	22
Judges Cautioned After Investigation	2	0	2
Formal Written Complaints Authorized	0	2	2
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	160
Complaints Investigated	13
Judges Cautioned After Investigation	1
Formal Written Complaints Authorized	3
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	156
Complaints Investigated	13
Judges Cautioned After Investigation	1
Formal Written Complaints Authorized	1
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	24
Complaints Investigated	13
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	1
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	8
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	26
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

*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	332
Complaints Investigated	36
Judges Cautioned After Investigation	6
Formal Written Complaints Authorized	2
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	2
Formal Complaints Dismissed or Closed	0

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

Complaints Received	57
Complaints Investigated	2
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	168

*The Commission does not have jurisdiction over non-judges, judicial hearing officers (JHO's), 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

The Commission may impose no public disciplinary sanction 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.

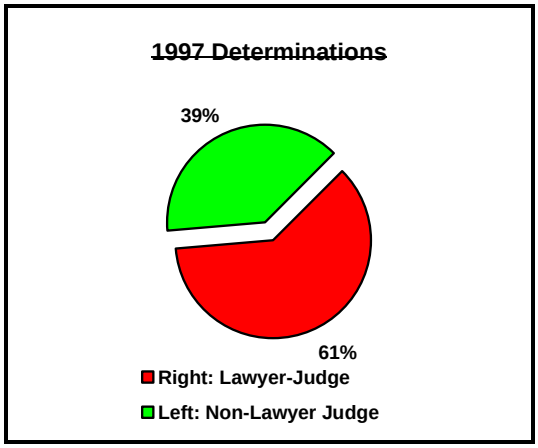
The confidentiality provision of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibits public disclosure by the Commission of the charges served, hearings commenced or related matters, absent a waiver by the judge, until the case has been concluded and a determination of admonition, censure,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

Following are summaries of those matters that were completed and made public during 1999. The texts of the determinations are appended to this Report.

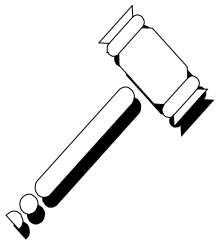
Overview of 1999 Determinations

The Commission rendered 18 formal disciplinary determinations in 1999: four removals, five censures and nine admonitions. Seven of the 18 respondents disciplined were non-lawyer judges, and 11 were lawyer-judges. Eleven of the respondents were part-time town or village justices, and seven were judges of higher courts.

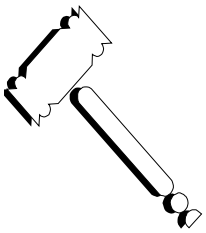
To put these numbers and percentages in some context, it should be noted that, of the 3,300 judges in the state unified court system, approximately 65% are part-time town or village justices. Approximately 80% of the town and village justices, comprising about 55% of all judges in the court system, are 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 1999, the number of public determinations, when categorized by type of court and judge, has roughly approximated the makeup of the judiciary as a whole: 145 (about 68%) have involved town and village justices, and 68 (about 32%) have involved judges of higher courts. Excluding cases involving ticket-fixing, which was largely a town and village justice 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 four disciplinary proceedings in 1999 that resulted in determinations of removal. The cases are summarized below.

Matter of Charles J. Assini

The Commission determined on March 4, 1999, that Charles J. Assini, a part-time Town Justice of East Greenbush, Rensselaer County, should be removed from office for *inter alia* presiding over cases involving a lawyer with whom he was affiliated, refusing for eight months to deal with more than 100 pending cases out of pique because his court clerk was suspended, promoting in his judicial capacity a privately-operated defensive-driving program despite a prior caution not to do so, repeatedly disparaging another judge with vulgar sexist epithets, and engaging in a conflict of interest by representing his former clerk in her suit against the Town. Judge Assini is a lawyer.

Judge Assini requested review by the Court of Appeals, which accepted the Commission's determination and removed the judge from office.

Matter of Karl L. Gregory

The Commission determined on March 23, 1999, that Karl L. Gregory, a part-time Town Justice of Pittsfield, Otsego County, should be removed from office for, *inter alia*, failing to deposit court funds promptly in his official account, failing to remit such funds promptly to the state comptroller, and grossly neglecting court records keeping to such an extent as to make it impossible to reconstruct what cases came before him and how they were disposed. Judge Gregory is not a lawyer.

Judge Gregory did not request review by the Court of Appeals.

Matter of Joseph W. Kosina

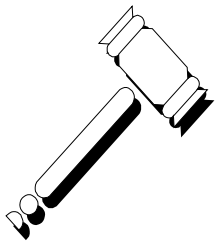
The Commission determined on November 9, 1999, that Joseph W. Kosina, a part-time Town Justice of Plainfield, Otsego County, should be removed from office for threatening the arrest of a defendant in a small claims matter, for consistently failing to deposit and remit funds in a timely matter and for violating various reporting and records keeping requirements. Judge Kosina is not a lawyer.

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

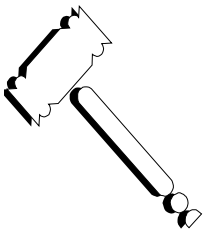
Matter of J. Kevin Mulroy

The Commission determined on August 12, 1999, that J. Kevin Mulroy, a full-time Judge of the County Court, Onondaga County, should be removed from office for *inter alia* referring to a 67-year-old African-American murder victim – in an attempt to persuade a prosecutor to offer a lenient plea reduction – as "just some old nigger bitch;" making disparaging remarks about people of Italian ancestry; improperly pressing a prosecutor to offer a plea in a rape case by the use of profane language; and testifying falsely as a character witness. Judge Mulroy is a lawyer.

The judge requested review by the Court of Appeals, where the case was pending as this Annual Report was being prepared.



Determinations of Censure



The Commission completed five disciplinary proceedings in 1999 that resulted in determinations of censure. The cases are summarized below.

Matter of Paul F. Bender

The Commission determined on December 21, 1999, that Paul F. Bender, a part-time Town Justice of Marion, Wayne County, should be censured for *inter alia* making various improper comments about a female assault victim, such as advising the defendant to "dump" the woman and that "Women can be problems." Judge Bender made such remarks notwithstanding a previous admonition for similar public comments. Judge Bender is a lawyer.

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

Matter of Heather L. Knott

The Commission determined on June 11, 1999, that Heather L. Knott, a part-time Town Justice of Hague, Warren County, should be censured for invoking her judicial office upon being stopped by a police officer in a traffic matter. The Commission noted that Judge Knott has apparently recognized a problem with alcohol and has promised to abstain. Judge Knott is a lawyer.

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

Matter of John D. Pemrick

The Commission determined on December 22, 1999, that John D. Pemrick, a part-time Town and Village Justice of Greenwich, Washington County, should be censured for failing to advise numerous defendants of their constitutional and statutory rights, engaging in *ex parte* discussions with a prosecutor and committing other fundamental legal errors that violated the rights of defendants. Judge Pemrick is not a lawyer.

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

Matter of Herbert B. Ray

The Commission determined on April 26, 1999, that Herbert B. Ray, a full-time Judge of the Family Court, Broome County, should be censured for, *inter alia*, appointing two lawyers with whom he had a political relationship to a disproportionate number of law guardianships, and thereafter failing to scrutinize their bills, which permitted them to inflate their charges and collect unearned public funds. Judge Ray is a lawyer.

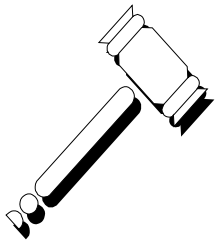
The judge did not request review by the Court of Appeals.

Matter of James H. Shaw, Jr.

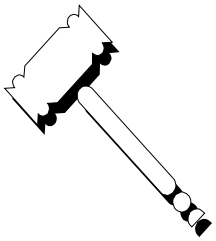
The Commission determined on November 8, 1999, that James H. Shaw, Jr., a Supreme Court Justice, Kings County, should be censured for engaging in sexually harassing behavior toward his secretary over a 12-year period, including "uninvited touching" and "continual remarks of a personal and sexual nature" that constituted "egregious" conduct and warranted "severe sanction."

In censuring the judge, the Commission took note that he was 76 years old and scheduled to retire in another month. Judge Shaw is a lawyer.

The judge requested review by the Court of Appeals, where the case was pending when this Annual Report was being prepared.



Determinations of Admonition



The Commission completed nine disciplinary proceedings in 1999 that resulted in determinations of public admonition. The cases are summarized below.

Matter of Paul G. Feinman

The Commission determined on December 21, 1999, that Paul G. Feinman, a full-time Judge of the New York City Civil Court on assignment to the Criminal Court, New York County, should be admonished for detaining a defendant in handcuffs for a lengthy period, without any lawful basis, after the defendant's pager had sounded in court. Judge Feinman is a lawyer.

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

Matter of Ralph A. Grems, Jr.

The Commission determined on September 15, 1999, that Ralph A. Grems, Jr., a part-time Town Justice of Floyd, Oneida County, should be admonished for presiding and finding for the plaintiff in a small claims case without disclosing his recent business dealing with the plaintiff, and for going to the defendant's home and threatening her with arrest. Judge Grems is not a lawyer.

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

Matter of Mary E. Howard

The Commission determined on December 22, 1999, that Mary E. Howard, a part-time Town Justice of Ontario, Wayne County, should be admonished for abusing her subpoena power by subpoenaing ranking officers of the sheriff's department to court, even though they were not witnesses, because she was irritated that another member of the department had not appeared as scheduled in another case. Judge Howard is a lawyer.

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

Matter of John R. LaCava

The Commission determined on September 16, 1999, that John R. LaCava, a full-time Judge of the County Court, Westchester County, should be admonished for making

specific statements about his opposition to abortion in the course of his re-election campaign, in violation of ethical standards that prohibit a judge from taking positions on controversial issues of law that might come before the courts, in a manner that reflected adversely on his impartiality and created the appearance that he might not follow constitutional and statutory law in such cases if called upon to do so. Judge LaCava is a lawyer.

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

Matter of Frederick H. Muskopf

The Commission determined on September 16, 1999, that Frederick H. Muskopf, a part-time Town Justice of Stafford, Genesee County, should be admonished for automatically setting bail in a particular class of cases without considering the various bail-setting criteria set forth in the Criminal Procedure Law on a case-by-case basis. Judge Muskopf is not a lawyer.

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

Matter of William F. O'Brien

The Commission determined on March 4, 1999, that William F. O'Brien, a full-time Justice of the Supreme Court, Madison County, should be admonished for making inappropriate public comments on a pending case after an appellate court reversed and remanded the matter to him, in part because he was concerned that he would "look bad" at a time he was running for higher judicial office. Judge O'Brien is a lawyer.

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

Matter of Anthony J. Paris

The Commission determined on September 16, 1999, that Anthony J. Paris, a full-time Judge of the Family Court, Onondaga County, should be admonished for participating as guest of honor at a fund-raising event in violation of the Rules Governing Judicial Conduct, notwithstanding that he received a letter in advance of the event from the Commission, questioning his participation. Judge Paris is a lawyer.

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

Matter of Mary Remchuk

The Commission determined on March 29, 1999, that Mary Remchuk, a part-time Town Justice of Howard, Steuben County, should be admonished for taking judicial actions in several matters involving her in-laws, including twice arraigning her brother-in-law

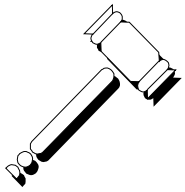
(on charges of assault and violation of an Order of Protection) and issuing a summons to her sister-in-law on an assault charge. The judge thereafter disqualified herself from further participation in the cases. Judge Remchuk is not a lawyer.

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

Matter of Leon F. Taggart

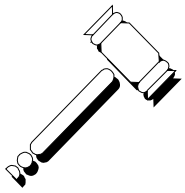
The Commission determined on September 15, 1999, that Leon F. Taggart, a part-time Town and Village Justice of Bath, Delaware County, should be admonished for injecting his personal views in a case by referring to one participant, a public school official, as a "bitch" and another as an "ass." Judge Taggart is not a lawyer.

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



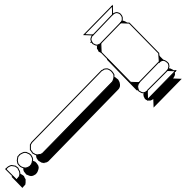
Dismissed or Closed Formal Written Complaints

The Commission disposed of one Formal Written Complaint in 1999 without rendering public discipline. The complaint was closed upon the resignation of the respondent-judge.



Matters Closed Upon Resignation

Fifteen judges resigned in 1999. Fourteen of them resigned while under investigation and one resigned 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-day period that removal is not warranted.



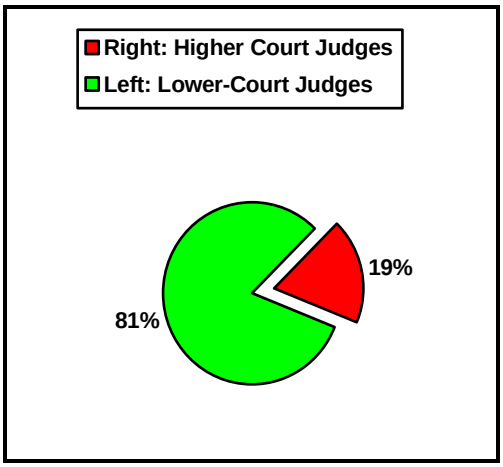
Referrals to Other Agencies

Pursuant to Judiciary Law Section 44(10), the Commission may refer matters to other agencies. In 1999, the Commission referred 34 matters to the Office of Court Administration, typically dealing with relatively isolated instances of delay, poor records keeping or other administrative issues. In addition, three matters were referred to attorney disciplinary committees, one matter was referred to the State Comptroller and one matter concerning a court clerk was referred to the Appellate Division.

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 1999, the Commission issued 54 letters of dismissal and caution, all of which were issued upon conclusion of an investigation; none were issued upon disposition of a Formal Written Complaint. Forty-four town or village justices were cautioned, including seven who are lawyers. Ten 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. Eight judges were cautioned for having unauthorized *ex parte* communications on substantive matters in pending cases. Two town justices, for example, independently visited and spoke to people at the scene at issue in the case. Another town justice directed both sides in a dispute to submit memoranda to him without notice or copies to the other side. Two town justices spoke independently with the arresting officers in cases before them, and two other part-time justices spoke independently with witnesses in cases before them.

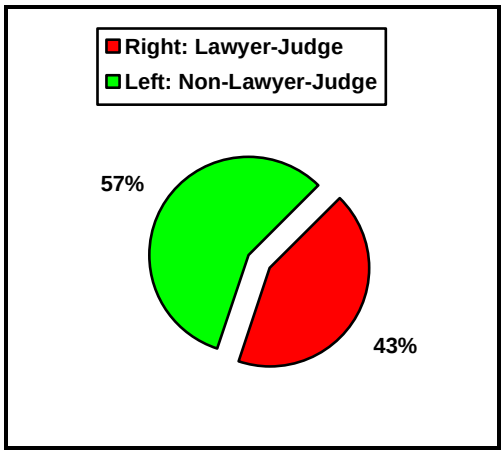
Political Activity. Four judges were cautioned for improper political activity. The Rules Governing Judicial Conduct prohibit judges from attending political gatherings, endorsing other candidates or otherwise participating in political activities except for certain specifically-defined periods when 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 1999, a full-time judge of a higher court was cautioned for communicating with a subordinate court employee about the employee's support of a candidate for local office. One town justice was cautioned for buying tickets to a political event in excess of the two permitted by the Rules. One town justice made impermissible public comments in support of another judicial candidate, and another was cautioned for making a statement that appeared to commit him to certain conduct once in office.

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 1999, a City Court judge was cautioned for failing to disclose a social relationship with the lawyer in a case, and a town justice was cautioned for handling a minor traffic case in which the defendant was one of his relatives.

Inappropriate Demeanor. Nine judges – two Supreme Court, one City Court and six town justices – were cautioned for discourteous, intemperate or otherwise offensive demeanor toward those with whom they deal in their official capacity.

Poor Administration; Failure to Comply with Law. Eleven judges were cautioned for failing to meet certain mandates of law, either out of ignorance or administrative oversight. For example, two town justices were cautioned for discouraging litigants either from retaining counsel or pursuing appeals of the town court's decision in a case.



One town justice failed to dispose of a case or otherwise take action because he thought he lacked jurisdiction to take any sort of action, and another town justice disposed of a series of cases in which he had no jurisdiction. A third town justice issued a bench warrant for failure to appear on a defendant who in fact had appeared before the judge as scheduled. 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 informal 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 1999, four judges were cautioned for such activity, including two who were found to have used the prestige of office in promoting the hiring of a particular candidate as a local prosecutor by the local appointing authority.

Practice of Law by Part-Time Judges. While lawyers who serve as part-time justices of town, village and some city courts are permitted to practice law, there are limitations in the Rules on the scope of that practice. For example, a part-time 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 1999, one part-time judge was cautioned for representing clients whose cases had originated in, but were transferred from, his own court.

Audit and Control. Eleven part-time town or village justices were cautioned for failing to make prompt deposits and remittances to the State Comptroller of court-collected funds, such as traffic fines, after audits by the Comptroller's Office. 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 full-time judge was cautioned for requesting his secretary to use court facilities to type a limited number of letters for an attorney in private practice. Another full-time judge was cautioned for failing to appropriately supervise court personnel in their use of court facilities for a private purpose.

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 1999, the Court of Appeals, in upholding the removal of judge who *inter alia* used the power and prestige of his office to promote a particular private defensive driver program, noted that the judge had persisted in his conduct notwithstanding a prior caution from the Commission that he desist from such conduct. *Matter of Assini v. Commission on Judicial Conduct*, 94 NY2d 26 (1999).

1n 1998, the Commission determined to censure a judge for, *inter alia,* writing an employment letter to the New York City Law Department, which regularly appeared before the judge, and for 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. *Matter of McKeon*, 1999 Annual Report 117.

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 1999, the Court decided the two matters summarized below. Two other matters were pending as of December 31, 1999.

Matter of Charles J. Assini, Jr. v. State Commission on Judicial Conduct

The Commission determined on March 4, 1999, that Charles J. Assini, Jr., a part-time Town Justice of East Greenbush, Rensselaer County, should be removed from office for *inter alia* presiding over cases involving a lawyer with whom he was affiliated, refusing for eight months to deal with more than 100 pending cases out of pique because his court clerk was suspended, promoting in his judicial capacity a privately-operated defensive-driving program despite a prior caution not to do so, repeatedly disparaging another judge with vulgar sexist epithets, and engaging in a conflict of interest by representing his former clerk in her suit against the Town.

The Court of Appeals unanimously accepted the Commission's determination and removed Judge Assini from office in an opinion dated March 30, 1999. 94 NY2d 26 (1999).

The Court held that the judge's sexist, obscene and otherwise reprehensible remarks about another judge over a protracted period were "absolutely indefensible…[and] by itself casts serious doubt on [his] fitness to hold judicial office." The Court held that three of the remaining four "ethical derelictions also bear the earmarks of willfulness" and warrant removal: (1) his deliberate neglect of more than 100 cases over an eight-month period as a result of "pique over the suspension of his court clerk," (2) his use of judicial office to promote a private defensive drivers school despite a caution from the Commission that he desist, and (3) representation as attorney of record his former clerk in her suit against the Town to vacate her dismissal, which "created a patently unmistakable conflict of interest with [his] official position." *Id.* at 30-31.

Matter of Ralph T. Romano v. State Commission on Judicial Conduct

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 as to 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.

The Court of Appeals accepted the Commission's determination and removed Judge Romano from office in an opinion dated July 7, 1999. 93 NY2d 161 (1999).

The Court concluded that with regard to his attempt to influence the police on behalf of a client, Judge Romano "seriously abused his judicial authority." *Id.* at 163. The Court further concluded that the judge's conduct both "on and off the bench demonstrate[d] a pattern of serious disregard for the standards of judicial conduct, which 'exist to maintain respect toward everyone who appears in a court and to encourage respect for the operation of the judicial process at all levels of the system.'" *Id.* at 163.

Observations and Recommendations

The Commission traditionally devotes a section of its Annual Report to a discussion of various topics of special note or interest that have come to our attention in the course of various investigations. 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.

Public Hearings

At present all Commission investigations and formal hearings are confidential by law. Commission activity is only made public at the end of the disciplinary process – when a determination of public admonition, public censure or removal from office is rendered and filed with the Chief Judge pursuant to statute – or when the accused judge requests that the formal disciplinary hearing be public.

For several years beginning in 1996, the Senate Judiciary Committee, chaired by Senator James Lack has supported a bill that the Senate has passed that would make Commission proceedings public 30 days after formal disciplinary charges against the judge were served. (The 30-day period coincides with the judge's time to file a formal answer to the charges.) Discussions on the subject between Senate and Assembly committees have been unsuccessful, however, and in recent years the Legislature has adjourned without further action.

While some facets of the Senate Judiciary Committee proposal raise concerns – particularly the provisions to raise the standard of proof from "preponderance of the evidence" to "clear and convincing evidence," and the imposition of a four-year statute of limitations in most cases – passage of the measure would be an important step forward. Editorials in newspapers throughout the state supported the Senate Judiciary Committee effort.

The Commission has long advocated that post-investigation formal proceedings should be made public, as they were in New York State until 1978, and as they are in 35 other states. Most recently, New Jersey adopted a public hearing standard in 1999. The Commission hopes that renewed efforts to enact such a measure will succeed this year without any encumbrances, such as a four-year statute of limitations.

Fund Raising for a Bar Association or Law School

Section 100.4(C)(3)(b) of the Rules governs a judge's participation in fund-raising activities for civic, charitable or other worthy organizations. For example, a judge "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." Also, the judge "shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation…."

With two exceptions, a judge "may not be a speaker or the guest of honor at an organization's fund-raising events, but the judge may attend such events." The exceptions are that a judge may be a speaker or guest of honor at a bar association or law school function, and a judge may accept "at another organization's fund-raising event an unadvertised award ancillary to such event."

Notwithstanding the fact that a judge may attend a law school or bar association fund-raising event, the judge is still prohibited from personally participating in the solicitation of funds or other fund-raising activities associated with the event. Some judges appear not to be aware of this limitation. For example, the Commission has received complaints indicating that certain judges have directly solicited contributions from fellow judges in association with bar association fund-raising events. In responding to a Commission inquiry in this regard, one judge suggested that there was no impropriety inasmuch as the judges solicited were all colleagues of equal rank; none was a supervisor or subordinate of the others.

There is no exception in the Rules permitting one judge to solicit other judges, regardless of the relative rank of the judges involved. Indeed, the Advisory Committee on Judicial Ethics has specifically stated that the Rules prohibit a judge from soliciting other judges for contributions to charitable causes, and prohibit a judge from personally participating in the solicitation of funds or other fund-raising activities, even in connection with a bar association event at which the judge may accept an award and speak. Advisory Opinions 96-83 and 98-38.

Town and Village Courts Without Listed Addresses or Phones

In the course of investigating complaints against certain part-time justices, the Commission has discovered that at least 86 town or village courts in 39 counties do not have a listed mailing address or a telephone number. To contact

the judge or court in one of these jurisdictions, it is necessary to write to the home of the court clerk or the judge, after determining the name and address of the clerk or judge by communicating with the Office of Court Administration or the Board of Elections.

This situation makes it difficult if not impossible for litigants or other inquirers to communicate with the court, especially for individuals outside the jurisdiction who may have business with the court. Even the web site of the Unified Court System, which has publicly available address and telephone information pertaining to virtually all the courts in New York State, does not have such information as to these 86 town and village courts.

Certainly a court that endeavors to be accessible to the people must be reachable by a readily obtainable mailing address or phone number. The Commission recommends that the Office of Court Administration review this situation and require that all courts in this state have a listed address and telephone number.

Unauthorized *Ex Parte* Communications

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, with limited exceptions. For example, certain scheduling and administrative matters are authorized insofar as they "do not affect a substantial right of any party." A judge, "with the consent of the parties, may confer separately with the parties and their lawyers on agreed-upon matters." A judge may consult with a disinterested expert if the judge gives notice to the parties, provides them with the expert's opinion and gives them reasonable opportunity to be heard. A judge may also consult with other judges and court employees such as law clerks. Town and village justices and city court judges may confer *ex parte* with the Judicial Resource Center, which was established by the Office of Court Administration to provide them assistance.

Over the years, the Commission has publicly disciplined numerous judges for violating the standard on *ex parte* communications, either for having substantive discussions off the record with one of the parties or participants in a case before them, without notice to or the consent of the other side, or for intervening *ex parte* on behalf of a party in a case pending before another judge. The Commission has also commented on this subject in previous Annual Reports, most recently in an extensive section in last year's report. 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.

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.

In numerous instances over the past decade, the Commission has identified situations where local judges have been "briefed" in private prior to the calendar call on cases to be heard that day, often by a police officer or state trooper who is about to appear before the judge. Such briefings plainly constitute improper *ex parte* communications. In some instances, the judge, police officer or troopers have said that their private meetings have been about matters not before the court. Even where court business is not discussed, however, such meetings convey an appearance of impropriety and hence are improper. Town and village justices, who often serve without full-time court staff that can shield them, have to take special precautions against engaging in such *ex parte* pre-court meetings.

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.

The Commission was recently advised by one full-time judge with criminal jurisdiction in a busy city court of a practice in which assistant district attorneys would speak *ex parte* with the judge, usually over the telephone, in advance of appearing in court, to ask what the judge's posture would be as to prospective plea offers in upcoming cases. The judge would often respond with an opinion on the prospective offer.

Such a discussion, however brief, unavoidably addresses a significant substantive issue that should not take place without notice to or the presence of defense counsel. (An *ex parte* conversation of this nature with defense counsel would be equally improper.) Such a case-specific discussion is not in the nature of an administrative meeting, for example, at which the judge and ADAs might generally discuss caseload management or scheduling issues. Nor is it analogous to a settlement discussion in a civil case where the judge, on specific consent of the parties, meets with each side separately to try to facilitate agreement.

In the example above, even where the judge's *ex parte* response to the prosecutor's prospective plea offer was favorable to the defendant, the conversation itself would be improper, for it involves the merits of the matter with the presence and knowledge of only one side. The Commission takes this opportunity to remind all judges of the prohibition against unauthorized *ex parte* communications.

Interim Suspension of Judge Under Certain Circumstances

The State Constitution empowers the Court of Appeals to suspend a judge from office, with or without pay, under certain circumstances:

- while there is pending a Commission determination that the judge be removed or retired,
- while the judge is charged in New York State with a felony, whether by indictment or information,
- while the judge is charged with a crime (in any jurisdiction) punishable as a felony in New York State, or
- while the judge is charged with any other crime which involves moral turpitude.

New York State Constitution, Article 6, Section 22(e–g)

There is no provision for the suspension of a judge who is charged with a misdemeanor that does not involve "moral turpitude." Yet there are any number of misdemeanor charges that may not be defined as involving "moral turpitude" but that, when brought against a judge, would seriously undermine public confidence in the integrity of the judiciary. Misdemeanor level DWI or drug charges, for example, would seem on their face to fall in this category, particularly

where the judge served on a local criminal court and presided over cases involving charges similar to those filed against him or her.

Fortunately, it is rare for a judge to be charged with a crime, but it does happen. In early 1999, one part-time judge of a busy local court was arrested and charged with DWI and drug possession. The judge voluntarily suspended himself from office, did not run for re-election and formally vacated office at the end of the year, when he accepted a plea and sentence on the DWI charge that disposed of the drug charge.

There are non-felony and even non-criminal categories of behavior that seriously threaten the administration of justice and arguably should result in the interim suspension of a judge. Such criteria might well include significant evidence of mental illness affecting the judicial function, or conduct that compromises the essence of the judge's role, such as conversion of court funds or a demonstrated failure to cooperate with the Commission or other disciplinary authorities.

The courts already have discretion to suspend an attorney's law license on an interim basis under certain circumstances, even where no criminal charge has been filed against the respondent. All four departments of the Appellate Division have promulgated rules in this regard. Any attorney under investigation or formal disciplinary charges may be suspended pending resolution of the matter based upon one of the following criteria:

> (i) the attorney's default in responding to the petition or notice, or the attorney's failure to submit a written answer to pending charges of professional misconduct or to comply with any lawful demand of this court or the Departmental Disciplinary Committee made in connection with any investigation, hearing, or disciplinary proceeding, or
>
> (ii) a substantial admission under oath that the attorney has committed an act or acts of professional misconduct, or
>
> (iii) other uncontested evidence of professional misconduct.
>
> Rules of the Appellate Division, First Department, §603.4(e)(1)[1]

[1] See also, Rules of the Appellate Division, Second Department, §691.4(*l*)(1), Rules of the Appellate Division, Third Department, §806.4(f)(1), and Rules of the Appellate Division, Fourth Department, §1022.19(f)(2).

The American Bar Association's Model Rules for Judicial Disciplinary Enforcement suggest a broader definition of the type of conduct that should result in a judge's suspension from office. For example, rather than limit suspension to felony or "moral turpitude" cases, the Model Rules would authorize suspension by the state's highest court for:

- a "serious crime," which is defined as a "felony" or a lesser crime that "reflects adversely on the judge's honesty, trustworthiness or fitness as a judge in other respects,"

- "any crime a necessary element of which … involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft or an attempt, conspiracy or solicitation of another to commit a 'serious crime'," and

- other misconduct for which there is "sufficient evidence demonstrating that a judge poses a substantial threat of serious harm to the public or to the administration of justice."

It would require an amendment to the State Constitution to expand the criteria on which the Court of Appeals could suspend a judge from office. The Commission believes that the limited existing criteria should be expanded. We recommend that the Legislature consider so empowering the Court.

Special Section: Political Activity by Judges And Others Affiliated with the Court System

This year, in addition to the preceding Observations and Recommendations, we offer a detailed review of issues associated with the subject of political activity by judges and others affiliated with the court system. We have previously addressed individual aspects of this subject in numerous Annual Reports. In this Annual Report, we attempt a more comprehensive review of those aspects of political activity that persist and continue to cause concerns.

Background

Most of the 3,300 judicial positions in New York State's unified court system are filled by election. Only a few courts are served by appointed judges – the Court of Appeals and the Court of Claims, whose members are nominated by the Governor and confirmed by the Senate; the Appellate Division, whose members are designated by the Governor from among elected Supreme Court justices; and certain local courts, such as the New York City Criminal and Family Courts, whose members are appointed by the Mayor. The Governor and various local officials may also fill certain mid-term judicial vacancies, pending the next regular or special election.

Although the makeup of the judiciary is determined primarily by election, it has long been public policy in New York State to separate judges and judicial candidates from political activity to a significant extent. Indeed, at least as far back as 1909, when the Canons of Judicial Ethics were adopted by the New York State Bar Association, the inappropriate influence of politics on the judiciary was specifically addressed. Canon 28 warned judges of the "inevitable…suspicion of being warped by political bias" that would result from their partisan political practices, constrained judges from endorsing other political office-seekers and prohibited them from making political speeches or attendance at political gatherings, except on their own behalf.

While the Canons have been superseded by the Rules Governing Judicial Conduct, the public policy on limiting the political activity of judges and judi-

cial candidates has been reaffirmed and strengthened over the years. Both the Election Law and Section 100.5 of the Rules regulate judicial politics and impose important strictures, on the theory that unfettered political activity could seriously compromise the independence and integrity of a judiciary whose decisions are or may reasonably appear to be subject to undue political influence.

General Prohibition on Political Activity

A judge may only engage in certain political activity in relation to his or her own campaign for elective judicial office. Moreover, such activity is limited to a "window period" beginning nine months before and ending six months after the nominating convention, primary or election. A judge may not participate directly or indirectly in any other campaign for any other office and may not contribute directly or indirectly to any political campaign or activity.

Judges may not belong to a political club, organization or party, and they may not permit their names to be used in connection with any political activity by such a club, organization or party. Except during the window period in connection with his or her own judicial campaign, a judge may not even participate in a political organization's *nonpolitical* activities, such as community forums on court-related issues.

Over the past 25 years, the Commission has made great efforts to increase the sensitivity of the judiciary to the proscriptions on political activity. The subject of improper political activity has been addressed in 17 of the Commission's annual reports, dating back to its very first one 25 years ago. Commission members and staff have commented on various aspects of the subject in innumerable public forums and judicial training and education seminars. And dating back to at least 1986, numerous public determinations have been rendered against judges who improperly engaged in political activity. (Several such determinations are cited throughout this Special Section.)

Interpretation of the "Window Period"

Section 100.0(Q) of the Rules Governing Judicial Conduct defines the "window period" of permissible political activity by a candidate for judicial office as follows:

> *Window Period* denotes a period beginning nine months before a primary election, judicial nominating convention, party caucus or other party meet-

> ing 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.

On its face, the rule seems clear. If, for example, there were a September primary for a city court judgeship, the permissible window period would begin nine months before the date of the primary. If there were a judicial nominating convention in September for formally nominating candidates for Supreme Court, the window period would begin nine months before the date of the convention. If there were a local party caucus to formally nominate a candidate for town or village justice, the window period would begin nine months before the caucus.

In connection with the Commission's investigation of various complaints of impermissible political activity by judicial candidates, some judges have suggested that, in their view, a party meeting or caucus for the purpose of *endorsing* a candidate for judicial office, is among the events that trigger the window period. The Commission does not accept this relaxed interpretation of the rule.

The rule plainly refers to events, *e.g.* primaries, conventions or caucuses, at which the nominee of a political party is formally chosen or otherwise qualified to be on the general election ballot. The window period begins nine months before the nomination date, not the endorsement or some other date. That is how the Commission interprets it.

The Commission has also discovered occasional situations in which a judicial candidate starts planning *before* the window period for a political event that is scheduled *during* the window period. For example, a fundraiser may be scheduled for shortly after the start of the window period, but invitations are sent and checks are solicited prior to the window period.

It has been and continues to be the Commission's interpretation of the Rules that political fundraising activity outside the window period is prohibited, even if it is associated with an upcoming event scheduled within the window period.

Participation in Political Activity
Other than the Judge's Own Campaign

Section 100.5 of the Rules could not be clearer in prohibiting a judge from political activity except in connection with his or her own judicial campaign, and even then limited to the specific window period defined in Section 100.0(Q). Nevertheless, in recent years the Commission has rendered several public determinations of misconduct against judges who have violated this stricture.

In *Matter of Maney*, 70 NY2d 27 (1987), a town justice was removed from office for becoming involved in partisan political maneuvering, soliciting support for one faction in an intra-party contest, attending a party caucus and otherwise engaging in active partisan politics over a period of years at times when he was not a candidate. The judge did so notwithstanding an awareness that such activity would result in scrutiny by the Commission.

In *Matter of Decker*, 1995 Annual Report 111, a town justice was publicly admonished *inter alia* for endorsing a candidate for county executive.

In *Matter of Rath*, 1990 Annual Report 150, a Supreme Court justice was publicly admonished for attending two political events in support of his wife's candidacy for public office and for attending two other political events with her. The Rule prohibiting political activity by judges in support of another candidate applies even when the candidate is the judge's spouse.

In *Matter of Gloss*, 1989 Annual Report 81, a town justice was publicly censured for attending partisan political meetings and fund-raisers for non-judicial candidates, distributing tickets to one fund-raiser and engaging in other fund-raising activities on behalf of candidates for county executive and the county legislature.

Notwithstanding the political pressures brought to bear on judges who must run for re-election, the frequent programs in training and education run by the Office of Court Administration, and the Commission's 25-year record of published warnings, confidential cautions and public determinations are or should be a constant reminder that violations of the prohibitions on political activity by judges are regarded seriously and are increasingly resulting in public discipline. Despite this record, however, more than a few judicial candidates continue to authorize or engage in prohibited political activity. Indeed, at year's end the Commission had

several matters pending in which the subject judge was charged with participating in prohibited political activities.

Non-Political Events Sponsored by a Political Organization

Except for the window period of permissible political activity during a judge's own campaign, a judge may not attend political gatherings or even participate in a non-political event sponsored by a political organization. Moreover, the organization need not be a 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. Opinions 88-32 and 88-136 prohibit judges from speaking at a political club about the courts and legal system. Opinion 89-26 prohibits a judge from participating in an essay context sponsored by a political club. Even where the non-political cause is laudatory, the Advisory Committee has placed overriding emphasis on the need to separate non-candidate judges from politics and the inevitable appearances of impropriety that flow from it.

Some judges appear unaware of this limitation, notwithstanding the Advisory Opinions and the attention this subject otherwise gets in judicial training programs and from the Commission. Indeed, the Commission has addressed this issue in previous annual reports and has also confidentially cautioned some judges for participating in non-political activities sponsored by political organizations.

Campaign Activity under the Rules

Defining "Candidate"

In order to qualify as a "candidate" who is eligible to participate in political activity during the window period, a judge must satisfy the definition of "candidate" set forth in Section 100.0(A) of the Rules:

> 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.

A judge who does not do one of two things – make a public announcement of candidacy or initiate fund-raising activity – is not a candidate and cannot attend political gatherings or otherwise participate in political events.

While the Advisory Opinions permit a judge to have discussions with party leaders and potential supporters in the course of deciding whether to run, a judge is still precluded from attending political gatherings, buying tickets to political events and otherwise engaging in political activity, until he or she meets the definition of "candidate" as set forth in the Rules.

Raising and Spending Campaign Funds

During the window period of permissible campaign conduct, certain political activity that would otherwise be prohibited is in fact allowed. However, even where the judge is a candidate as defined by the Rules, certain important limitations on his or her conduct apply.

For example, Section 100.5(A)(5) authorizes a judge to form a committee to raise and dispense funds on behalf of his or her candidacy. (Such committees may only operate during the window period.) The judge may attend and speak at his or her own fund-raiser but may not personally solicit or accept funds.

The judge may purchase two tickets to, and attend, politically sponsored dinners and other functions, even where the cost of the ticket exceeds the proportionate share of the dinner or function. Rules Section 100.5(A)(1)(v).

The judge may appear at political gatherings and on campaign literature with a slate of candidates if the judge is part of that slate. Rules Section 100.5(A)(1)(iii, iv).

Except for the purchase of tickets to political events during the window period, a judge is prohibited from making any other financial contribution to a political organization or candidate. The judge must beware not to make any payments to a political organization in such as a way as to constitute or appear to constitute an impermissible political contribution.

Contributions or Payments to a Political Organization

Candidates for judicial office do not operate in a political vacuum, of course, and in an electoral system cannot reasonably be expected to divorce them-

selves totally from involvement with political organizations. Even though judges are prohibited by the Rules from holding office in or even belonging to a political organization other than as an enrolled member of a political party, they must still of necessity interact with party officials when running for office. For example, judicial candidates speak at political clubs during the window period, appear on literature produced by political organizations and benefit from get-out-the-vote drives and other party efforts on behalf of the entire slate.

However, as noted in Advisory Opinion 92-97, the judge's campaign committee may only reimburse the party for the judge's proportionate share of specified "reasonable and actual" expenses made on behalf of his or her campaign. Any payment to a political organization exceeding such proportionate expenditure would constitute an impermissible political contribution. For several years, the Commission reported on this problem in its annual reports and cautioned individual judges for making large lump-sum payments to political organizations without appropriate receipts, itemizations or other records to support the expenditure or demonstrate that it constituted the judge's proportionate share of a multi-candidate project.

In *Matter of Salman*, 1995 Annual Report 134, a Supreme Court justice was publicly censured for *inter alia* making improper political contributions during the window period of permissible campaign activity. The judge made a lump-sum payment to his local political party, ostensibly for the expenses the party incurred on his campaign's behalf, without obtaining records to verify that such expenditures had in fact been made.

Recently Reported Situation in Suffolk County

Newsday reported in 1999 that numerous Suffolk County judges were solicited for payments of up to $5,000 to advertise in the *Torch Tribune*, an annual pre-election publication issued by the local Conservative Party as an advertisement for its endorsed candidates. Candidates for various public offices advertised in the Torch Tribune. The publication was published on newsprint and was mailed to over 100,000 households.

While a candidate for non-judicial office may contribute to a political party and pay a flat-rate fee to advertise in such a publication, a candidate for judicial office is constrained by the Rules to avoid paying more than a proportionate share of the reasonable and actual cost of such publication. Any payment by a judge above a proportionate share of the reasonable and actual cost would consti-

tute an impermissible contribution to the party and to other candidates whose own advertising costs may have been reduced by a disproportionate contribution by the judge's campaign.

At the very least, a judicial candidate's campaign committee should make inquiries, request receipts, ask for an itemization or otherwise satisfy itself that the amount of money requested by the party from the judge constitutes the reasonable and actual cost of the party's efforts on the judge's behalf. Such inquiries should be made, and unless the standards in the Rules, as interpreted by the Court of Appeals, the Commission and the Advisory Committee on Judicial Ethics, are met, judicial candidates should not advertise in such literature. In fact, the total amount raised exceeded the expenses of producing and distributing the literature, and the Conservative Party effectively had a surplus.

Moreover, judges must avoid even the appearance that they paid, or approved payments of, amounts imposed by a political organization that has endorsed them. Although there is no known connection between the payments to the Torch Tribune and the Conservative Party's endorsements, judges should avoid such payments because they may reasonably be construed as a *quid pro quo* for the nominations.

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

As recently as last year, the Commission commented on the coercive effect of successful judicial candidates raising funds after election day from lawyers who appear in the judge's court. Post-election fund-raising is particularly troublesome when the money will be used to repay outstanding loans previously made by the judge 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 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 fund-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 coercive post-election fund-raising solicitations.

Closing Campaign Financial
Accounts and Properly Disposing
Of Campaign Surpluses After Election

Since a judge may only engage in political activity during the window period specified in the Rules, 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. Numerous Advisory Opinions have held it inappropriate for a judge to keep the campaign committee open beyond the "window period," 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 Commission has authorized formal charges and,

to date, cautioned judges for keeping open campaign committees and retaining surplus funds for use in future elections.

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 *Matter of Salman*, 1995 Annual Report 134, a Supreme Court justice was publicly censured for *inter alia* using campaign funds to purchase a video recorder and car telephone for his personal use. In conjunction with the censure, the judge turned over such equipment to the Office of Court Administration, consistent with the Advisory Opinions.

In 1998, the Commission cautioned a judge 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. (For example, a judicial campaign committee is obliged to return the unused funds to contributors on a *pro rata* basis or use the funds to purchase equipment for the court house, with such equipment becoming the property of the court system.) The judge subsequently ran for judicial office again, lent a large sum of his own money to the campaign and intended to transfer the undisposed funds from the first campaign to his subsequent judicial campaign, in effect to reimburse himself for the outstanding loan.

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.*

In the last two years, the Commission publicly admonished six judges in whole or in part for violating these and other campaign provisions.

In *Matter of John R. LaCava* in this Annual Report, a County Court judge made written and oral public statements on the subject of abortion in such a manner as to reflect adversely on his impartiality should abortion-related such matters come before him.

In *Matter of V. Roy Cacciatore*, 1999 Annual Report 85, 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*, 1999 Annual Report 101, 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*, 1999 Annual Report 103, 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*, 1999 Annual Report 113, a Town Justice *inter alia* ran advertisements which portrayed him as biased against criminal de-

fendants, 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*, 1999 Annual Report 129, 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.'"

The Commission has also cautioned numerous judges for making claims or promises of conduct that were unrelated to judicial office and therefore misleading.

At least two matters are now pending before the Commission involving allegedly inappropriate campaign statements by a judge, including one who allegedly misrepresented certain qualifications and another who made statements that allegedly reflected adversely on impartiality.

Political Activity by Judicial Appointees And Other Court Employees

In addition to the political prohibitions incumbent upon judges, 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.

A judge is also obliged to assure staff compliance with Section 25.39 of the Rules of the Chief Judge, which *inter alia* prohibits court employees from directly or indirectly using the influence of office to induce political contributions, or condition employment on an applicant's political affiliation.

These laudable rules do much to minimize political activity in the courthouse, but improprieties and the appearance of impropriety may still arise. For example, as noted in a previous annual report, the Commission became aware that the personal appointee of one judge was paid several thousand dollars by a second judge to assist in the second judge's re-election campaign. The appointee apparently did the political work on his own time and did not use court facilities in connection with the partisan political activity.

While the Rules prohibit a judge's personal appointee from *"contributing"* money or other valuable consideration to political campaigns in excess of $500 a year, there is no explicit prohibition on moonlighting for pay in this fashion, and thus no apparent basis on which to act against the employee.

Certainly it is anomalous for a full-time court employee to earn several thousand dollars for work on a political campaign when that same employee is prohibited from contributing more than $500 a year to all political campaigns combined. An individual's remunerated contribution to the strategy and management of a campaign may be far more valuable than the maximum cash contribution of $500. Moreover, even if the employee were scrupulously to avoid using court facilities or doing political work on court time, there would appear to be an unseemly nexus between politics and the courthouse in such a situation, with potential for at least the appearance of impropriety in any number of scenarios.

For example, the Rules prohibit the employee's direct participation in fund-raising. Yet if the employee is paid for producing campaign literature which is used in fundraising, or directs other campaign employees on fund raising techniques and leads, the rule would appear to be violated in spirit, if not explicitly in letter. Or, if the candidate-judge were prominently identified with a particular issue that the court employee helped to promote politically, and the employer-judge were subsequently to preside over a case involving that same issue, would the employee's advice to the judge be impartial and appear so the litigants? Would the litigants even know that the judge's appointee had a political interest in the matter?

We respectfully suggest that the Office of Court Administration consider a prohibition or limitation on the political activity in which a full-time court employee may engage, and at least impose a stricture on *paid* political work that would correspond to the very tight limits on political *contributions*.

Judge's Personal Appointee
Serving as an Appointed Party Official

During the course of a recent investigation, the Commission became aware that the personal appointee of one judge gave up his *elected* position as an officer of a local political organization, only to be *appointed* as an officer of the same organization. While the Rules prohibit a judge's personal appointee from holding elective political office, they are silent on the subject of holding appointive

political office. In this case, the local party organization apparently amended its by-laws – converting a particular elective party office into an appointive one – specifically to enable the judge's staff member to remain in the position without being in technical violation of the Rules.

Certainly it is anomalous to prohibit a court employee from holding a particular office by election while permitting the same employee to hold the same position by appointment. If the point of the Rule is to separate politics from the courthouse, the Rule in its current form does not meet the goal.

The Commission recommends that the Office of Court Administration review the Rule and consider extending the prohibition on elective party office to appointive party office as well.

Endorsement of Political Candidates
By Single-Issue Political Organizations

The Rules prohibit a judicial candidate from (1) making pledges or promises of conduct in office or (2) announcing views on disputed legal or political issues. In this regard, the Commission has repeatedly received inquiries as to whether it violates this rule for a candidate to accept the endorsement of a political group which is, in fact or perception, dedicated to a single issue, such as the Right to Life Party. One argument that has been raised is that a judicial candidate is effectively announcing his or her position on abortion by accepting the Right to Life endorsement.

The Commission's 1993 Annual Report addressed this issue, but inquiries and periodic complaints persist, particularly when there is publicity associated with some confrontational abortion-related protest. Arrests at such protests result in court proceedings, of course. Coupled with civil litigants who resort to lawsuits on abortion-related matters, more and more abortion-related cases are coming before the courts. Inevitably, more judges who seek and accept Right to Life endorsement will be presiding over these cases. Whether they can appear to be impartial is a legitimate issue.

In an informal, unpublished letter in 1982, the State Bar Association's Committee on Judicial Election Monitoring advised a judicial candidate that it would violate the Code of Judicial Conduct to accept the Right to Life endorsement. A year later, in a public opinion (83-3), the Committee reversed itself, stating that a judicial candidate *could* accept the party's endorsement. The Committee

acted after being advised by the party's chairman that the party (1) does not require judicial candidates to make pledges on the abortion issue and (2) does "not even inquire of a judicial candidate's views on abortion." The Chairman of the Right to Life Party recently re-affirmed that no effort is made to ask judicial candidates to support the goals or platform of the Right to Life Party.

Although the Committee on Judicial Election Monitoring was subsequently disbanded, no subsequent opinion by the State Bar Association reversed or modified the 1983 opinion.

In 1993, the Advisory Committee on Judicial Ethics issued an opinion (93-52) consistent with State Bar's opinion, declaring that a judicial candidate may accept endorsement from the Right to Life Party, so long as certain conditions are satisfied. For example, the candidate should not sign a pledge to support the party's platform or position, either upon accepting the endorsement or as a condition precedent to the party's endorsement. (The opinion notes that these conditions apply to multi-issue or single-issue political parties.)

The Right to Life Party is not the only one that takes a position on the abortion issue. However, its devotion to this single issue distinguishes it from other political parties and consequently raises concerns for judicial candidates. All the major parties and many smaller ones issue platforms and takes stands on a broad range of issues. A judicial candidate could reasonably argue that accepting such a nomination would not require endorsing every position articulated by the party and therefore would not be tantamount to announcing one's views on abortion. Indeed, Advisory Opinion 93-52 notes the custom of some judicial candidates who accept multi-party cross endorsement, even where the various party platforms are in conflict. In such a situation, a judge could not reasonably be viewed as espousing a particular position on an issue, particularly if the cross-endorsing parties took different stands on that issue.

The situation would appear to be different where the endorsing party is limited to a single issue. It would seem to require a leap in logic to suggest that a candidate would seek and accept the Right to Life endorsement without appearing to be committed to that party's position on the only issue it considers. However, Advisory Opinion 93-52 concludes that a "candidate who accepts the endorsement of a party that limits its platform to one issue, such as the Right to Life Party, does not necessarily imply agreement with the position of that party."

In 1993, prior to the issuance of Advisory Opinion 93-52, the Commission urged all judicial candidates to consider seriously whether or not to accept the endorsement of a single-issue party. In view of the foregoing history, however, and despite its publicly expressed reservations, the Commission's investigations into this subject have been limited to allegations that a judicial candidate pledged support to a party platform or position, or made abortion-related statements that reflected adversely on his or her impartiality. *See*, *Matter of LaCava* in this Annual Report.

Politically Influenced Fiduciary Appointments

The authority to appoint referees, receivers, conservators and guardians is among a judge's most sensitive – and potentially lucrative – powers. Section 100.3(C)(3) of the Rules obliges a judge to "exercise the power of appointment impartially and on the basis of merit [and to] avoid nepotism and favoritism." Certain categories of prohibited appointees, such as relatives of the judge or judge's spouse, are specifically identified in the Rules.

The Court of Appeals and the Commission have taken action in cases involving clear violations of these strictures. For example, in *Matter of Kane*, 50 NY2d 360 (1980), a Supreme Court Justice was removed from office for *inter alia* awarding appointments to his son. In *Matter of Spector*, 47 NY2d 462 (1979), a Supreme Court justice was admonished for the appearance of impropriety in his awarding appointments to the sons of other judges who were contemporaneously appointing his own son in similar matters. In *Matter of Radigan*, 1996 Annual Report 103, a Surrogate was admonished for, *inter alia*, allowing a court-affiliated affirmative action program to be used to hire as interns the non-minority relatives of court employees. In *Matter of Ray* in this Annual Report, a Family Court judge was censured for *inter alia* the appearance of favoritism in his awarding lucrative appointments to a potential political rival who thereafter chose not to oppose the judge's re-election.

In 1986, Part 36 of the Rules of the Chief Judge set forth a uniform statewide procedure for awarding and reporting fiduciary appointments. Those procedures have been refined in subsequent amendments. Among other things, they limit the number of fiduciary appointments an individual may receive in any 12-month period to one, where it is anticipated that the award will exceed $5,000. However, the appointing judge may supersede the rule upon finding that certain "unusual circumstances" exist.

While the Rules set forth certain prohibitions, there are relatively few constraints upon judges in their selection of appointees. For example, appointees must come from an approved list that is simple to get on. One judge once explained that he selects "whoever comes to mind." Certain choices, though not specifically proscribed, inevitably create appearances of impropriety that undermine public confidence in the integrity and impartiality of the judiciary. For example, a fiduciary appointment to a judge's campaign manager, political leader or major contributor raises ethical issues even where the appointee is qualified for the job. The appearance of impropriety is likely to be exacerbated as the size of the appointee's fee increases. Yet except in the most extreme situation, making out a case of favoritism is most difficult, particularly where the appointee is qualified as well as "connected." Indeed, the Advisory Committee has opined that a judge may make appointments to former campaign supporters so long as the appointments are based on merit. Opinion 88-144.

The pattern of awarding lucrative appointments to politically active lawyers and others who have a good relationship to the appointing judge suggests that the appointing judges are aware of the benefits they are conferring and are selective in whom they choose.

Recently Reported Situation in New York City

Several major newspapers have recently reported on a letter written by two attorneys that has ignited controversy over the way fiduciary appointments are made in Kings County (Brooklyn). The essence of the allegation is that judges, who in Kings County are by and large Democratic, award a disproportionate share of lucrative fiduciary appointments to an attorney associated in the practice of law with the local Democratic leader. This attorney would then retain the services of other Democratic-affiliated lawyers to assist. All would share in the lucrative fees.

While there is not necessarily a *quid pro quo* arrangement obligating Democratic judges to appoint Democratic officials and lawyers to such highly remunerative matters, allegations of favoritism and the appearance of favoritism are inevitable.

Various commentators have been reported as suggesting that this problem is not limited to Kings County and indeed may exist in other parts of the state. Indeed, since the initial stories involving Kings County appeared, numerous other articles have reported on similar instances of alleged political favoritism in Queens and New York Counties. For example, the law firm of the Democratic

leader of Queens has reportedly received hundreds of thousands of dollars in fees arising from fiduciary appointments made by judges who were elected as candidates of the Democratic Party.

Chief Judge Judith Kaye responded swiftly to the controversy by appointing a special inspector general to monitor and report on this problem, naming a "blue ribbon" committee to review present procedures and make recommendations for improvements, and advising administrative judges throughout the state to review and make recommendations on the fiduciary appointment practices in their areas. Potential ethical violations would be referred to the Commission and to attorney discipline committees, as appropriate.

The Commission welcomes this initiative by the Chief Judge and hopes that the blue ribbon committee explores various alternatives to the present system.

Selection of Judges

For good reason, the Commission has never taken a position on whether the electoral system for choosing judges should be replaced by a "merit selection" system. The Commission has studiously avoided any appearance that its enforcement of the Rules was in any way influenced by whether a particular judge was elected or appointed.

Of course, no system for selecting judges is perfect. Whether the process is electoral or appointive, there will inevitably be situations in which partisan, regional, ethnic or other political considerations will play a role. Even among the 34 states that have opted for some form of merit selection, there are various permutations, such as appointment by the executive with consent of the legislature, or appointment by the executive with retention approval by the electorate. (The American Judicature Society web site – www.ajs.org – is a useful source of information on this subject.)

While many serious ethical issues associated with the present electoral system would dissipate were New York to adopt an appointive system – *e.g.*, the specter of judges raising money from lawyers who appear before them, awarding lucrative appointments to their campaign supporters, making inappropriate public statements on legal issues in order to win votes, etc. – the appointive process would raise new and different concerns to which the system would have to be alert. Judges who might be relieved to be free of the onerous burdens and demands of

campaign politics might find themselves subject to different demands and pressures under a merit selection system.

Regardless of the method of judicial selection in New York, of course, the Commission's role is the same: to consider individual complaints of alleged judicial misconduct and, where appropriate, discipline judges for violating the Rules Governing on Judicial Conduct.

Amending the Rules

For as long as the judicial selection system in New York remains for the most part electoral, the Rules governing the political activity of judges and court employees will have to be scrutinized regularly and vigilantly. Where appropriate, those rules should be amended when problems are identified. For example, some of the matters raised in this Annual Report might well be addressed more directly and restrictively by the applicable Rules, such as:

- the coercive effect of judges raising funds from lawyers who practice in their courts,
- the impropriety and appearance of impropriety in judges raising post-election funds so as to repay themselves for outstanding "loans" to their campaigns,
- the favoritism and appearance of favoritism in judges awarding lucrative financial appointments to lawyers or others who worked on their campaigns or are otherwise politically well connected,
- the apparent loophole that prohibits a judge's personal appointee from being an elected officer of a political party or organization but permits the appointee to be appointed to such position,
- the dichotomy in restricting a court employee's annual financial contributions to political campaigns while permitting even a full-time court employee to get paid for consulting or other services provided to a political campaign, and
- the need for judicial candidates or their campaign committees to get more detailed information as to political party-sponsored or joint campaign expenses, so as to limit themselves to paying for their proportionate share and to avoid making unauthorized contributions to the party or other candidates.

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 that follows. 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 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 had four years of modest budgetary increases. Inexplicably, however, for the 2000-01 fiscal year, notwithstanding our request to restore three investigators, the Governor's proposed Executive Budget reduces our agency budget by 2%, while at the same time proposing an overall increase of 5.5% throughout State government.

This latest proposed cutback is a serious blow to our slow recovery from the devastating cuts we endured through the mid-1990's. A decline of 2% in an already tight budget of under $2 million will have significant consequences and is totally unjustified given the overall health of the state economy, the overall increase in the state budget, and our own remarkable record of fiscal prudence over 25 years.

That record was underscored by an exhaustive audit in 1989 by the State Comptroller found that the Commission's finances were in order, that our budget practices were all consistent with state policies and rules, and that no changes in our fiscal practices were recommended.

A Perennially Austere Budget

The Commission's total budget for 1988-89 was $2,224,000, or $312,200 more than the Governor proposes for our proposed budget for 2000-01.

The extraordinary task of maintaining a virtually no-growth budget over 20 years has left no "fat" to be trimmed from our operation. The financial cuts that state agencies have endured in recent years continue to hit hard, and among agencies such as the Commission which have demonstrated austerity in pre-crisis times, the current cuts have a disproportionately greater impact. Steep cuts in both personnel and non-personal services were necessary to accomplish past cutbacks. The severe budgetary constraints now being imposed seriously threaten our ability to discharge our constitutionally mandated responsibilities. Over the last 20 years, we cut our staff by 50%, dramatically reduced our office space and rent, and otherwise reduced expenditures. Several years ago, for example, we installed electronic recording equipment instead of relying on stenographers to transcribe testimony. Two

years before legislation imposed it on all commissions, our Commission members agreed to serve without the compensation to which they were entitled under law.

With this new proposed cutback, more reductions will be necessary from an already lean budget. Our ability to conduct comprehensive investigations will be limited because we are short on staff and may have to curtail travel for witness interviews, review of court records, observation of court proceedings and the like, particularly where overnight lodging is required. In some instances in the past, limited finances have even affected the Commission's decisions to investigate complaints, institute formal disciplinary charges or proceed to lengthy hearings. The new proposed cutbacks raise that unfortunate specter again.

These measures adversely affect the constitutional mission of the Commission itself. They also illustrate a regrettable lesson in public service -- that the reward for fiscal prudence is harsh punishment, particularly where, as here, the agency in question plays a valuable role but has no obvious, organized and vocal constituency to take up its cause.

The Commission's Unique Role

Under the New York State Constitution, the Commission is the only agency of state government with the authority to investigate judges for ethical misconduct. Its disciplinary role is unique. The Commission system has served New York well since its inception 25 years ago. More than 500 judges have been publicly disciplined for judicial misconduct, more than 950 have been confidentially cautioned, and nearly 300 have resigned while under inquiry. By contrast, in the 100 years before the Commission was established, 23 judges were disciplined. It is probably fair to say that the judiciary has become more sensitive to its ethical obligations, and that public confidence in the judiciary has consequently improved.

One of the critical features of the Commission system is its structural independence. The 11 Commission members are appointed to staggered four-year terms by various designating authorities -- the Governor, the Chief Judge and the Legislature's leaders -- none of whom controls a majority. The Commission, by law, elects its own chairperson and, by law, appoints an attorney as Administrator. The Administrator, by law, appoints a deputy and other counsel, and support staff. The eight attorneys on staff have been with the Commission for an average of 19 years, providing a professional continuity free of political interference.

Financially inhibiting the Commission's ability to discharge its constitutional responsibilities has important consequences beyond the practical impact of any particular cutback. It is tantamount to thwarting the will of the electorate, which was expressed when the voters overwhelmingly adopted the constitutional amendment that created the Commission.

Any agency of government should strive to live within reasonable budgetary means, however plentiful or scarce resources may be in a given fiscal year. Clearly, the Commission has demonstrated its ability to do precisely that, over the course of its entire existence. We have done more with less, for years. Our fiscal limits were reached in the mid-1990's. The current Executive Budget proposal once again jeopardizes our incomplete financial recovery and already modest operations and threatens the very constitutional structure for examining disciplinary complaints against judges in New York State.

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%	1451	8	6 f/t, 1 p/t	27**
1999-2000	$1,947,500	↑ 4%	1426	8	6 f/t, 1 p/t	27**
2000-01	$1,911,800†	↓ 2%	--	8	6 f/t, 1 p/t	27**

* Number does not include Clerk of the Commission.
** Number includes two part-time staff.
† Proposed

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
FREDERICK M. MARSHALL
ALAN J. POPE
TERRY JANE RUDERMAN
EUGENE W. SALISBURY

APPENDIX

Biographies of Commission Members and Attorneys
Roster of Referees Who Served in 1999
The Commission's Powers, Duties & History
Text of the Rules Governing Judicial Conduct
Text of 1999 Determinations
Statistical Analysis of Complaints

2000 Annual Report

New York State
Commission on Judicial Conduct

BIOGRAPHIES OF 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 graduate of Empire State College with a degree in Community and Human Services. She is a New York State Credentialed Alcohol and Substance Abuse Counselor and is currently employed at the Rockland Council on Alcoholism and other Drug Dependence, Inc., in Nyack, New York. Ms. Brown previously served as primary counselor 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 programs 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 serves on the Attorney General's Crime Victims Advisory Panel and has been a recipient of the Governor George E. Pataki Distinguished Citizenship Award. She volunteers her services as a crime victims' advocate and counselor within her community. 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 Second Vice President 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 received the outstanding criminal law practitioner awards of 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. At present she is in the doctoral program at the State University of New York at Albany, School of Social Welfare, pursuing a Ph.D. in Social Work. 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. He attended Brooklyn Law School earning an LL.B. in 1957.

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, as well as a

Delegate to the House of Delegates of the New York State Bar Association. Justice Luciano is Chair of the Executive Committee 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 President, 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.

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 Terry Jane Ruderman graduated *cum laude* from Pace University School of Law, holds a Ph.D. in History from the Graduate Center of the City University of New York and Masters Degrees from City College and Cornell University. In 1995, Judge Ruderman was appointed to the Court of Claims and is assigned to the White Plains district. At the time she was the Principal Law Clerk to a Justice of the Supreme Court. Previously, she served as an Assistant District Attorney and Deputy County Attorney in Westchester County, and later she was in the private practice of law. Judge Ruderman is a member of the New York State Committee on Women in the Courts and Chair of the Gender Fairness Committee for the Ninth Judicial District, and she has served on the Ninth Judicial District Task Force on Reducing Civil Litigation and Delay. She is also Vice President of the New York State Association of Women Judges, Secretary of the White Plains Bar Association, a board member and former Vice President of the Westchester Women's Bar Association and a former State Director of the Women's Bar Association of the State of New York. Judge Ruderman also sits on the Alumni Board of Pace University School of Law and the Cornell University President's Council of Cornell Women.

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. He is a member of the Board of Trustees of the United Nations International School.

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 served as the advisor to the Sutherland High School Mock Trial Team for eight years. He is the Vice President and a past Treasurer of the Pittsford Golden Lions Football Club, Inc. He is an assistant director and coach for Pittsford Community Lacrosse. He is an active member of the Pittsford Mustangs Soccer Club, Inc.

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 1999

Referee	City	County
Mark S. Arisohn, Esq.	New York	New York
William C. Banks, Esq.	Syracuse	Onondaga
Joseph A. Barrette, Esq.	Syracuse	Onondaga
Joan L. Ellenbogen, Esq.	New York	New York
Robert L. Ellis, Esq.	New York	New York
Hon. Catherine T. England	Centereach	Suffolk
Vincent D. Farrell, Esq.	Mineola	Nassau
Paul A. Feigenbaum, Esq.	Albany	Albany
Hon. C. Benn Forsyth	Rochester	Monroe
Maryann Saccomando Freedman, Esq.	Buffalo	Erie
Douglas S. Gates, Esq.	Rochester	Monroe
Thomas F. Gleason, Esq.	Albany	Albany
Ann Horowitz, Esq.	Albany	Albany
Michael J. Hutter, Esq.	Albany	Albany
Hon. Matthew J. Jasen	Buffalo	Erie
H. Wayne Judge, Esq.	Glens Falls	Warren
Travis H.D. Lewin, Esq.	Syracuse	Onondaga
Stanford G. Lotwin, Esq.	New York	New York
James C. Moore, Esq.	Rochester	Monroe
Jane W. Parver, Esq.	New York	New York
John J. Poklemba, Esq.	Albany	Albany
Roger W. Robinson, Esq.	New York	New York
Laurie Shanks, Esq.	Albany	Albany
Milton Sherman, Esq.	New York	New York
Hon. Richard D. Simons	Rome	Oneida
Robert S. Smith, Esq.	New York	New York
Joseph H. Spain, 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

2000 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

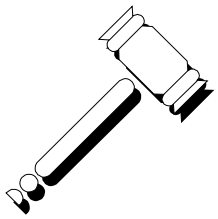
The State Commission on Judicial Conduct is the disciplinary agency constitutionally designated to review complaints of judicial misconduct in New York State. The Commission's objective is to enforce the obligation of judges to observe high standards of conduct while safeguarding their right to decide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

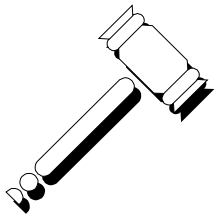
The Commission is composed of 11 members serving four-year terms. Four members are appointed by the Governor, three by the Chief Judge of the Court of Appeals, and one by each of the four leaders of the Legislature. The Constitution requires that four members be judges, at least one be an attorney, and 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 (1997-2001)
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 (1998-2000)
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 (1994-1999)
Hon. William J. Ostrowski (1982-89)
Hon. Karen K. Peters (2000-present)
Alan J. Pope (1997-present)
*Lillemor T. Robb (1974-88)
Hon. Isaac Rubin (1979-90)
Hon. Terry Jane Ruderman (1999-present)
*Hon. Eugene W. Salisbury (1989-2001)
Barry C. Sample (1994-97)
Hon. Felice K. Shea (1978-88)
John J. Sheehy (1983-95)
Hon. Morton B. Silberman (1978)
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 docu-

ments, 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.

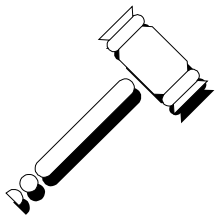
The types of complaints that may be investigated by the Commission include improper demeanor, conflicts of interest, violations of defendants' or litigants' rights, intoxication, bias, prejudice, favoritism, gross neglect, corruption, certain prohibited political activity and other misconduct on or off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

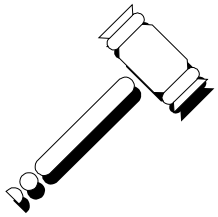
After the Commission authorizes an investigation, the Administrator assigns the complaint to a staff attorney, who works with investigative staff. If appropriate, witnesses are interviewed and court records are examined. The judge may be asked to respond in writing to the allegations. In some instances, 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

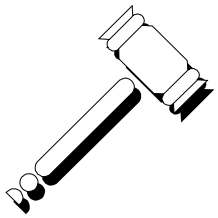
The Temporary State Commission on Judicial Conduct was established in late 1974 and commenced operations in January 1975. The temporary Commission had the authority to investigate allegations of misconduct against judges in the state unified court system, make confidential suggestions and recommendations 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 that resulted in the following:

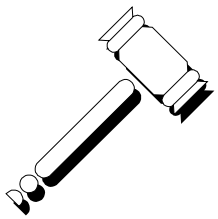
- 15 judges were publicly censured;
- 40 judges were privately admonished;
- 17 judges were issued confidential letters of suggestion and recommendation.

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

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

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

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



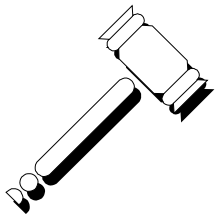
Continuation from 1978 to 1980 of Formal Proceedings Commenced by the Temporary and Former Commissions

Thirty-two formal disciplinary proceedings which had been initiated in the Court on the Judiciary by either the temporary or

former Commission were pending when the former Commission was superseded on April 1, 1978, and were continued without interruption by the present Commission.

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

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



The 1978 Constitutional Amendment

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

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

Summary of Complaints Considered Since the Commission's Inception

Since January 1975, when the temporary Commission commenced operations, 27,006 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 21,556 (80%) were dismissed upon initial review or after a preliminary review and inquiry, and 5450 investigations were authorized. Of the 5450 investigations authorized, the following dispositions have been made through December 31, 2000:

- 2604 were dismissed without action after investigation;
- 1116 were dismissed with letters of caution or suggestions and recommendations to the judge; the actual number of such letters totals 1035, 58 of which were issued after formal charges had been sustained and determinations made that the judge had engaged in misconduct;
- 442 were closed upon resignation of the judge during investigation or in the course of disciplinary proceedings; the actual number of such resignations was 316;
- 372 were closed upon vacancy of office by the judge other than by resignation;
- 738 resulted in disciplinary action; and
- 178 are pending.

Of the 738 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.)

- 135 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);
- 221 judges were censured publicly;
- 168 judges were admonished publicly; and
- 59 judges were admonished confidentially by the temporary or former Commission.

Text of the Rules
Governing Judicial Conduct

2000 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 socioeconomic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct.

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

(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

[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.

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

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and 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 police officer as those terms are defined in section 1.20 of the Criminal Procedure Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) ordinary social hospitality;

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) No full-time judge shall solicit or receive compensation for extra-judicial activities performed for or on behalf of: (1) New York State, its political subdivisions or any office or agency thereof; (2) 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 ex-

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

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

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

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

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

(4) political conduct prohibited by section 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 1999 Determinations

2000 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

CHARLES J. ASSINI,

A Justice of the Greenbush Town Court, Rensselaer County.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
Dreyer Boyajian, L.L.P. (By William J. Dreyer) for Respondent

The respondent, Charles J. Assini, a justice of the East Greenbush Town Court, Rensselaer County, was served with a Formal Written Complaint dated January 5, 1998, alleging six charges of misconduct. Respondent filed an answer dated February 17, 1998.

By Order dated February 24, 1998, the Commission designated the Honorable Richard D. Simons as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 28 and 29 and June 15 and 16, 1998, and the referee filed his report with the Commission on September 30, 1998.

The parties submitted briefs with respect to the referee's report. On December 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 a justice of the East Greenbush Town Court since 1986. He is licensed to practice law and works full time for the state Senate.

2. Respondent also has a small private practice. For approximately 20 years, respondent has shared office space in Albany with attorney Lawrence Long. Respondent pays no rent for the office space, but he appears for Mr. Long as an accommodation on occasion at court appearances and real estate closings.

3. Respondent's name appears on the office door below that of Mr. Long. Respondent's professional stationery lists Mr. Long's address and telephone number, and respondent receives mail and telephone calls at the office. Mr. Long's secretary takes phone messages for respondent and does typing for him on occasion. Respondent has

used the office to meet with clients and to conduct closings.

4. Between 1990 and 1997, respondent presided over the following six cases, in which Mr. Long appeared as attorney:

> *Angela M. Le Pore*; Charge: Petit Larceny; Falsifying Business Records; Disposition Date: 6/28/90.
>
> *Joseph J. Rivenburgh*; Charge: Assault, 3d Degree; Criminal Mischief, 4th Degree; Disposition Date: 6/13/91.
>
> *Timothy W. Sullivan*; Charge: Petit Larceny; Disposition Date: 10/31/91.
>
> *Susan J. Collandra*; Charge: Driving While Intoxicated; Disposition Date: 2/6/92.
>
> *Donald R. Stewart*; Charge: Unlawful Possession of Marijuana; Disposition Date: 6/11/92.
>
> *David A. Elliott*; Charge: Driving While Intoxicated; Disposition Date: 10/12/95.

5. Respondent revealed his relationship with Mr. Long privately to an assistant district attorney on one occasion, but he never disclosed on the record in any of the cases that he shared office space with Mr. Long, nor did he ask whether there were objections to his presiding.

6. In the Elliott case, the defendant had been arraigned by another judge on charges of Driving While Intoxicated and Unsafe Start. On October 12, 1995, Mr. Elliott appeared with Mr. Long before respondent. Respondent was unable to explain how the case came before him when it had originally been assigned to another judge. Respondent accepted Mr. Elliott's guilty plea to a charge of Driving While Ability Impaired, suspended his license for 90 days and imposed a $300 fine. Mr. Elliott was also required to attend a drinking-driver program and a victim-impact panel. Mr. Elliott failed to attend the victim-impact panel and was directed to appear in court on June 20, 1996. Court was canceled on that day, and nothing further was done until March 1997, when Mr. Elliott was directed to appear on March 27. He failed to do so, and a third letter was sent, directing him to appear on April 24, 1997. When the defendant failed to appear on that date, respondent issued an order for his arrest. Respondent acknowledged that it was unusual for so many letters to be sent before a defendant's arrest is ordered for failure to appear in court.

7. Respondent also permitted Mr. Long to appear before other judges of the court.

As to Charge II of the Formal Written Complaint:

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

As to Charge III of the Formal Written Complaint:

9. In June 1996, respondent's court clerk, Roberta Reno, was suspended by the town board. At the time, there were more than 100 of respondent's case files in the clerk's office awaiting action.

10. Respondent was asked several times by court personnel during the summer of 1996 to review the files and authorize action. He failed to do so.

11. On June 18, 1996, Michael Poorman, a town councilman who was liaison to the court, investigated the situation and found that a restitution check had not been deposited and that there were two tables piled with case

files, cash, outdated money orders and outdated checks that had not been processed. The town board brought the situation to respondent's attention and asked that he acknowledge his responsibility for handling the cases. He did so in writing.

12. In August 1996, the state comptroller began an audit of the court. Before issuing a report in October 1996, an examiner advised respondent that approximately 120 case files required action. The situation was again discussed with respondent by the auditor on December 9, 1996.

13. Respondent failed to work on the files until February or March 1997.

As to Charge IV of the Formal Written Complaint:

14. Ms. Reno was suspended after difficulties and complaints by respondent's fellow judge, Catherine Cholakis. After Judge Cholakis had demanded that the town board fire Ms. Reno, Councilman Poorman met with respondent and Judge Cholakis on April 2, 1996. Respondent arrived 30 minutes late for the meeting, which, because of his attitude and conduct, lasted only a matter of minutes. Respondent directed questions at Judge Cholakis in a confrontational manner, without allowing her to respond. Judge Cholakis left in frustration.

15. After her departure, respondent turned to Mr. Poorman and referred to Judge Cholakis as a "fucking cunt."

16. In or after June 1996, respondent stopped at the court to tell clerk Jay Amodeo that respondent was not well and intended to cancel a court session scheduled for that day. When Mr. Amodeo inquired whether respondent would like him to ask Judge Cholakis to substitute, respondent referred to her as a "fucking bitch."

17. In the late summer of 1997, respondent suggested to Mr. Amodeo and the court officer, Ray Ingoldsby, that the Democratic party should run a candidate against that "fucking cunt," referring to Judge Cholakis. A third person was also present.

18. On another occasion, Mr. Amodeo asked respondent whether he should move a case to Judge Cholakis's calendar. Respondent replied that he did not want to give anything to that "fucking bitch."

As to Charge V of the Formal Written Complaint:

19. Prior to May 1995, respondent allowed E. Robert Duffy, the director of a private defensive-driving program, to make recommendations outside of court as to which defendants should be sentenced to take a defensive-driving program. During courtroom sessions, Mr. Duffy was allowed to sit at the bench next to the bailiff. When respondent sentenced defendants to a defensive-driving course, he gave them pamphlets advertising Mr. Duffy's course, stating in bold letters that defendants were required to contact Mr. Duffy's program and, "No other course is acceptable."

20. In 1994 and 1995, Commission staff investigated a complaint concerning this conduct. On January 7, 1995, respondent testified and acknowledged Mr. Duffy's role in the court and that he had allowed Mr. Duffy to write and warn defendants who had failed to attend the program as directed.

21. On May 3, 1995, the Commission cautioned respondent that his conduct violated

the Rules Governing Judicial Conduct. "By these practices, you have lent the prestige of your office to private interests," the Commission advised respondent. "Defendants would reasonably believe that Mr. Duffy and his program were an adjunct to the court and that they had no choice of programs…. You should not permit Mr. Duffy to sit near you as you preside. Nor should you permit Mr. Duffy to speak for the court or write letters that are distributed by the court as the court's letters."

22. After receipt of the Commission's Letter of Dismissal and Caution, until at least March 1996, respondent continued to allow Mr. Duffy to sit at the bench, and respondent continued to distribute his pamphlet. Until Mr. Duffy closed his program sometime in 1996, respondent continued to allow him to make ex parte recommendations as to whom should be required to take the defensive-driving program.

23. After Mr. Duffy no longer appeared in the court, respondent began distributing the pamphlet of another local driving school, E&E.

24. Only if a defendant asked respondent whether a different course could be taken would respondent concede that any certified course was acceptable.

As to Charge VI of the Formal Written Complaint:

25. On July 19, 1996, respondent sought an Order to Show Cause in Supreme Court, listing himself as attorney of record for Ms. Reno, in an action against the East Greenbush Town Board, alleging that her suspension was illegal because the board had not sought his advice and consent. Respondent signed an affidavit in support of the petition.

26. The attorney for the town opposed the motion, inter alia, on the ground that it was improper for respondent to proceed against the municipality in which he sits as judge.

27. Thereafter, respondent referred the matter to Mr. Long, but respondent continued to work on the case. He served a second petition for an Order to Show Cause on the town, and he appeared, but did not argue, at oral argument on the petition.

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); 100.3(A); 100.3(B)(3); 100.3(B)(4); 100.3(B)(6) and its predecessor, Section 100.3(a)(4); 100.3(B)(7); 100.3(C)(1); 100.3(E)(1) and its predecessor, Section 100.3(c)(1), and 100.6(B)(3) and its predecessor, Section 100.5(f) [renumbered eff. Jan. 1, 1996]. Charges I, III, IV, V and VI of the Formal Written Complaint are sustained, and respondent's misconduct is established. Charge II is dismissed.

Respondent has engaged in a pattern of conduct that demonstrates his inattention to the adjudicative, administrative and ethical obligations of his office.

Respondent's persistent refusal over the course of eight months to deal with more than 100 pending cases constitutes neglect of his duties, and it appears to have been motivated by pique over the suspension of his court clerk. This is not a situation in which a hard-working judge was "devoting his full time and energies to his judicial activities" but was "overly optimistic with respect to his management abilities…." (Contra, Matter of Greenfield, 76 NY2d 293, at 295-96). Rather,

respondent was repeatedly reminded by court personnel, the town board and state auditors that there was a crisis in the court, and he deliberately failed to remedy it, apparently to make the point that Ms. Reno was needed in the clerk's office.

Such refusal to cooperate with authorities and such persistence in neglecting court duties calls for discipline, not administrative action. (See, Matter of Greenfield, supra, at 298; see similarly, Matter of Reeves, 63 NY2d 105, 111; Matter of Hanofee, 1990 Ann Report of NY Commn on Jud Conduct, at 109, 114).

Similarly, respondent's continued disparagement of Judge Cholakis before court employees and his obstructionism in dealing with her complaints undermined proper administration of the court.

Moreover, respondent's language in referring to Judge Cholakis was vulgar and unbecoming a judge, especially since it was uttered in connection with judicial duties. (See, Matter of Collazo, 91 NY2d 251, 253-54; Matter of Aldrich, 58 NY2d 279, 281, 283; Matter of Mahon, 1997 Ann Report of NY Commn on Jud Conduct, at 104, 105).

It is also evident from his involvement with Mr. Duffy (Charge V), Mr. Long (Charge I) and Ms. Reno's lawsuit against the town (Charge VI) that respondent is not sensitive to the ethical conflicts that arise between his judicial office and personal and professional interests.

By using Mr. Duffy and his private program as an adjunct to the court, respondent lent the prestige of judicial office to private interests, in contravention of the Rules Governing Judicial Conduct (22 NYCRR 100.2[C]). Especially inappropriate was the practice of allowing Mr. Duffy to make ex parte recommendations as to which defendants should be ordered to attend the defensive-driving course. To what extent respondent followed the recommendations is not the issue; that he received and entertained them without notice to the parties and without allowing them to comment constitutes the wrong. (See, Rules Governing Judicial Conduct, 22 NYCRR 100.3[B] [6][b]; Matter of Fuchsberg, 43 NY2d [j],[u]-[y] [Ct on the Judiciary]). This is not the same as taking the assistance of court personnel. Court clerks and law clerks are disinterested employees of the court, and lawyers and the public at large are aware that judges receive such aid. Without disclosure by the judge, they are not aware that private individuals with a financial stake in their advice are working behind the scenes and counseling the judge. (See, Matter of Fuchsberg, supra).

His misconduct with respect to Mr. Duffy is compounded by the fact that it continued after the Commission investigated it and cautioned respondent that it was improper. (See, Matter of Lenney, 71 NY2d 456, 458-59).

Although they were not partners or associates in the practice of law in the usual sense, respondent and Mr. Long held themselves out to the public as affiliated in some way. Therefore, it was improper for respondent to permit Mr. Long to appear before him or other judges of his court. (See, Rules Governing Judicial Conduct, 22 NYCRR 100.6[B][3]; Matter of Watson, 1989 Ann Report of NY Commn on Jud Conduct, at 139, 142, 143). It would be reasonable for members of the public to presume that they could curry special favor from respondent by employing a lawyer with whom he shared office space or, conversely, for adversaries of Mr. Long to doubt respondent's fairness in

their cases. (See similarly, Matter of Sims, 61 NY2d 349, 355).

Based on the totality of the misconduct, we conclude that respondent is not fit to be a judge.

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

Mr. Berger, Ms. Brown, Mr. Goldman, Judge Joy, Judge Luciano, Judge Newton and Mr. Pope concur as to sanction.

Mr. Berger dissents only as to Charge II and votes that the charge be sustained.

Judge Luciano dissents only as to Charge VI and votes that the charge be dismissed.

Mr. Pope dissents only to Charge II and votes that the charge be sustained and dissents as to Charge III and votes that that charge be dismissed.

Mr. Coffey and Judge Marshall dissent as to Charges III and VI and vote that the charges be dismissed and dissent as to sanction and vote that respondent be censured.

Judge Salisbury dissents as to Charge VI and votes that the charge be dismissed and dissents as to sanction and votes that respondent be censured.

Ms. Hernandez was not a member of the Commission when the vote was taken in this matter.

Dated: March 4, 1999

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

PAUL F. BENDER,

A Justice of the Marion Town Court, Wayne County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Honorable Paul F. Bender, *Pro Se*

The respondent, Paul F. Bender, a justice of the Marion Town Court, Wayne County, was served with a Formal Written Complaint dated October 13, 1999, alleging two charges of misconduct. Respondent did not answer the Formal Written Complaint.

On October 27, 1999, the administrator of the Commission and respondent 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 October 28, 1999, the Commission approved the agreed statement and made the following determination.

Preliminary findings:

1. Respondent has been a justice of the Marion Town Court since 1978. His term ends on December 31, 1999; he did not run for re-election.

2. In 1992, respondent was admonished by the Commission for his remarks during the arraignment of a man for assaulting the woman with whom he lived. Respondent had asked a police investigator whether the case was "just a Saturday night brawl where he smacks her around and she wants him back in the morning." Respondent also advised the defendant to "watch your back" because "women can set you up."

As to Charge I of the Formal Written Complaint:

3. On January 22, 1999, respondent arraigned Robert W. VanDuser on charges of Assault, Third Degree, and Disorderly Conduct based on an incident involving his girlfriend.

4. During the course of the arraignment:

a) respondent stated that the woman could be charged with Trespass;

b) respondent advised the defendant that he could bring an eviction proceeding against the woman;

c) respondent agreed with Mr. VanDuser's statement that he should "dump" the woman; and,

d) when Mr. VanDuser stated that women had caused him problems, respondent replied, "They can do that," and, "Women can be problems."

As to Charge II of the Formal Written Complaint:

5. Also on January 22, 1999, respondent spoke with a reporter for the Rochester Democrat & Chronicle about the VanDuser case. Although he was aware that a judge is required to abstain from public comment about a pending proceeding, respondent told the reporter:

a) "At the time of the arraignment, there were facts deduced that, perhaps, he should have had her arrested because she assaulted him";

b) that respondent did not expect the woman to return to the home that she shared with the defendant; and,

c) "There was not any reason for the alleged victim to be at the apartment to make a problem."

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)(2), 100.3(B)(4) and 100.3(B)(8). Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

Respondent's remarks at an arraignment and to a newspaper reporter afterward indicated a predisposition to believe the defendant and to disfavor the woman that he was charged with assaulting. It was inappropriate and unnecessary for respondent to give advice to the defendant as to what his legal remedies against the woman might be, and it was inexcusable for respondent to publicly suggest that the woman might be guilty of a crime.

Before he had heard any sworn evidence, respondent made remarks indicating that he had taken sides in the dispute before him. A judge's ability to be impartial goes to the heart of proper decision-making. (See, Matter of Sardino, 58 NY2d 286, 290-91). Remarks that indicate gender bias are particularly reprehensible; they have the effect of discouraging victims of domestic abuse from seeking protection from the courts. (Matter of Chase, 1992 Ann Report of NY Commn on Jud Conduct, at 41, 43; Matter of Fromer, 1985 Ann Report of NY Commn on Jud Conduct, at 135, 138). Such indifference to the victims of domestic violence constitutes serious misconduct. (See, Matter of Romano, 93 NY2d 161, 163; Matter of Roberts, 91 NY2d 93, 96).

It was improper for respondent to make any comment to a newspaper reporter concerning a pending case. (Rules Governing Judicial Conduct, 22 NYCRR 100.3[B][8]; Matter of McKeon, 1999 Ann Report of NY Commn on Jud Conduct, at 117, 120-21; Matter of Fromer, supra, at 137). It was especially wrong for him to publicly accuse the alleged victim in VanDuser of committing a crime, particularly since the remark was based only on unsworn conversations at an arraignment.

Respondent knew that he was forbidden to

publicly comment on a case before him, and he ignored this Commission's admonition that similar comments in court in a similar case "conveyed the impression that respondent favors the men in such incidents over the women making the accusations," (Matter of Bender, 1993 Ann Report of NY Commn on Jud Conduct, at 54, 55).

Such repeated conduct casts doubt on respondent's fitness to hold judicial office. However, the purpose of the sanction of removal is not punishment but to protect the public by removing unfit incumbents from the bench. (See, Matter of Duckman, 92 NY2d 141, 152; Matter of Reeves, 63 NY2d 105, 111). Respondent did not seek re-election and is leaving the bench on December 31, 1999. Under these circumstances, the Commission concludes that public rebuke of his conduct is sufficient. (See similarly, Matter of Quinn, 54 NY2d 386, 394-95).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Joy, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Ms. Hernandez, Judge Luciano and Judge Marshall were not present.

Dated: December 21, 1999

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

PAUL G. FEINMAN,

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

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission
Emery Cuti Brinckerhoff & Abady, P.C. (By Richard D. Emery,
John R. Cuti and David H. Gans) for Respondent

The respondent, Paul G. Feinman, a judge of the Civil Court of the City of New York, New York County, was served with a Formal Written Complaint dated April 21, 1999, alleging two charges of misconduct. Respondent filed an answer dated May 10, 1999.

By motion dated August 9, 1999, respondent moved for summary determination and dismissal of the charges. The administrator of the Commission cross moved, by motion dated September 1, 1999, for summary determination and a finding that respondent had engaged in judicial misconduct. Respondent replied to the cross motion in papers dated September 7, 1999. By Decision and Order dated September 10, 1999, the Commission denied respondent's motion and the cross motion in all respects.

On October 20, 1999, 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 28, 1999, 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 New York City Civil Court since January 1, 1997, and is currently assigned to the Criminal Court.

2. On February 25, 1999, respondent was presiding in AP 7, a large calendar part of the Criminal Court. More than 100 defendants

were scheduled to appear that day. Respondent typically instructs court personnel to warn those present of rules of decorum, including that beepers and cell phones are to be turned to the "off" or "vibrate" positions. No one recalls whether such warnings were given on February 25, 1999. During the morning, on two separate occasions, persons in the spectator section were directed by court officers to leave the courtroom for talking loudly and disrupting the proceedings.

3. William Brown, who was charged with Criminal Mischief, 4th Degree, was one of the defendants scheduled to appear before respondent that day. About 15 minutes before the lunch recess, Mr. Brown's pager sounded loudly. A court officer directed that he shut it off. It continued to ring, and the officer ordered Mr. Brown to "take it outside."

4. Respondent then stated, "No, put him on the bench," referring to an area of the courtroom where some defendants who are not at large are seated while they wait to have their cases called. Although respondent did not expressly order that Mr. Brown be handcuffed, he knew that defendants seated "on the bench" are routinely handcuffed by court officers.

5. Initially, respondent intended to have Mr. Brown seated "on the bench" for a few minutes so that respondent could finish the case that he was handling at the time. He intended to then admonish Mr. Brown that beepers and cell phones should not be used while court is in session. Respondent's intention was to then have Mr. Brown returned to the spectator section of the courtroom.

6. However, as Mr. Brown was escorted into the "well" of the courtroom, respondent observed that Mr. Brown appeared to be talking in an agitated fashion to one of the officers, Sgt. Glen Damato; respondent could not hear what Mr. Brown was saying.

7. Mr. Brown was seated "on the bench" and placed in handcuffs.

8. After finishing the case before him, respondent conferred with Sergeant Damato, who told him that Mr. Brown had cursed the sergeant. The sergeant suggested in general terms that Mr. Brown had also cursed the court.

9. Respondent then changed his mind about how to handle the matter. He decided to have Mr. Brown detained while he considered the possibility of holding him in contempt of court.

10. Respondent decided to defer further action until after lunch and, at 1:00 P.M., called a recess.

11. After he had left the bench but was still in the courtroom, respondent was approached by two lawyers of the Legal Aid Society, which was representing Mr. Brown. They asked him to release Mr. Brown during the lunch recess. Mr. Brown also asked whether respondent intended to keep him detained during lunch. Respondent refused to release Mr. Brown and advised the Legal Aid lawyers that he would handle the matter after lunch.

12. At no time did respondent explain to Mr. Brown or Legal Aid attorneys why the defendant was being detained.

13. During the lunch break, respondent concluded that, because he had not directly heard any contumacious statements, he did not have a sufficient basis to hold Mr. Brown in summary contempt. He considered the possibility of holding plenary contempt

proceedings but decided to resolve the matter by releasing Mr. Brown.

14. Court resumed at about 2:20 P.M. Respondent handled two other matters. The Legal Aid attorney assigned to Mr. Brown was not present, but respondent was advised that one of the Legal Aid attorneys who had approached him before lunch would handle the case. The case was called at approximately 2:30 P.M. Mr. Brown was released from the handcuffs, and respondent ruled on pending pretrial matters.

15. The lawyer who had undertaken Mr. Brown's representation attempted to make a record about Mr. Brown's detention during the lunch break. Respondent interrupted him and did not allow him to address the issue.

16. Although respondent did make a record regarding his initial reasons for summoning Mr. Brown from the audience and placing him "on the bench", he did not explain his reasons for having prolonged the detention. At no time did respondent hold Mr. Brown in contempt or order him to desist from any behavior.

17. Mr. Brown was held in handcuffs for approximately one hour and 40 minutes.

18. Respondent has expressed regret for his errors in handling the matter and has pledged not to repeat them.

As to Charge II of the Formal Written Complaint:

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

Supplementary finding:

20. Respondent's reputation among defense attorneys, prosecutors, judges and court staff is that he is a conscientious, intelligent judge who is impartial, diligent and knowledgeable.

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 100.3(B)(3). 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.

It was an abuse of his judicial power for respondent to detain a defendant for one hour and 40 minutes without any basis for doing so and without affording him any legal process.

As a consequence of respondent's order, Mr. Brown was handcuffed and deprived of his liberty based only on respondent's observation of his demeanor. He was given no opportunity to speak and was not even told why he was being held. Even after Legal Aid attorneys appealed to respondent to release him, respondent did not appreciate that he had no legitimate power to order him held during the lunch break.

A judge has broad discretion in the exercise of the contempt power. (See, Judiciary Law §§ 750, 751). But the law allows a judge to summarily punish only contempt "committed in the immediate view and presence of the court…." (Judiciary Law § 751[1]). Respondent acknowledges that he did not hear what Mr. Brown was saying to the court officer and that his decision to hold him through the lunch hour was based only on the officer's unsworn allegations that the defendant had cursed him and the court -- allegations that Mr. Brown had had no

opportunity to contest. Thus, as respondent himself conceded, respondent could not have reasonably concluded from his own observation, that Mr. Brown's behavior was "[d]isorderly, contemptuous, or insolent…." (See, Judiciary Law § 750[A][1]).

Even had respondent personally witnessed the contempt, he would have been required to warn Mr. Brown that his conduct was deemed contumacious and to give him an opportunity to desist. (See, Rules of the Appellate Division, First Department, 22 NYCRR 604.2[c]). He would have been obligated to afford Mr. Brown "a reasonable opportunity to make a statement in his defense or in extenuation of his conduct." (See, Rules of the Appellate Division, First Department, 22 NYCRR 604.2[a][3]).

Having not personally witnessed the alleged contempt, respondent was required to give notice and a hearing before he could impose a punishment. (See, Judiciary Law § 751[1]; Rules of the Appellate Division, First Department, 22 NYCRR 604.2[b]).

Instead, respondent ignored proper legal procedure; he merely ordered Mr. Brown placed "on the bench", which he knew would result in his being handcuffed, and he detained him there throughout the lunch break and afterward. By improperly depriving Mr. Brown of his liberty, even temporarily, respondent deviated from the confines of the law that he is sworn to uphold. (See similarly, Matter of Sharpe, 1984 Ann Report of NY Commn on Jud Conduct, at 134, 139).

Respondent exacerbated the situation by failing at any point to state his reason for holding Mr. Brown, thereby creating the appearance that he was punishing him because his beeper had sounded in the courtroom.

In mitigation, it must be considered that respondent soon recognized that he had no authority to hold Mr. Brown and released him. Respondent has been cooperative and contrite in this proceeding. (See, Matter of Holmes, 1998 Ann Report of NY Commn on Jud Conduct, at 139, 140). Furthermore, he has achieved an admirable reputation in his short tenure on the bench. (See, Matter of Gassman, 1987 Ann Report of NY Commn on Jud Conduct, at 89, 91; Matter of Doolittle, 1986 Ann Report of NY Commn on Jud Conduct, at 87, 89).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Joy, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Ms. Hernandez, Judge Luciano and Judge Marshall were not present.

Dated: December 21, 1999

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

KARL L. GREGORY,

A Justice of the Pittsfield Town Court, Otsego County .

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
Honorable Karl L. Gregory, pro se

The respondent, Karl L. Gregory, a justice of the Pittsfield Town Court, Otsego County, was served with a Formal Written Complaint dated June 24, 1998, alleging that he neglected his judicial duties and failed to cooperate in the Commission's investigation. Respondent failed to answer the charges.

By Motion dated September 3, 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, but a letter dated September 18, 1998, was received concerning his medical condition and purporting to have been sent with respondent's permission and at his request. By Determination and Order dated October 6, 1998, the Commission granted the administrator's motion.

The administrator filed a memorandum as to sanction. Respondent submitted a letter dated November 12, 1998, but did not request oral argument. By letter dated January 16, 1999, respondent announced to his administrative judge that he would resign effective March 31, 1999.

On February 25, 1999, 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 Pittsfield Town Court since January 1986.

2. Notwithstanding that he has handled not more than nine cases a month since 1995, respondent has neglected his judicial duties in that he:

a) failed to maintain proper court records, including dockets, case files, a cashbook, bank statements, canceled checks and a check register, as required by UJCA

107 and 2019; Town Law §31(1)(a), and the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.11(a)(1) and 214.11(a)(3);

b) kept court records in an office in his home that he acknowledged was a "shambles" and that included personal records, newspapers, clothing, boxes, tools, garbage and other litter;

c) when he met with a Commission investigator on January 8, 1998, was unable to locate many of the records requested, even after four hours of searching;

d) continued to be unable to locate the records, even though he was asked to submit them after the interview with a Commission investigator, even though he was asked to produce them when examined by staff counsel on March 5, 1998, and even though he was asked to search and submit them after he gave testimony;

e) from January 1995 to March 1998, as denominated in the attached Schedule A, failed to report cases and remit funds to the state comptroller within ten days of the month following collection, as required by UJCA 2021(1), Town Law §27(1) and Vehicle and Traffic Law §1803(8);

f) acknowledged that he failed to remit court funds in early 1995 in order to "get back" at the town board for refusing to give him additional compensation because he was handling additional cases during a period in which he was the only judge of the court; and,

g) between December 1995 and September 1997, as denominated in the attached Schedule B, failed to deposit court funds in his official account within 72 hours of receipt, as required by the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.9(a), keeping court funds in his personal possession for as long as seven weeks.

As to Charge II of the Formal Written Complaint:

3. Respondent failed to cooperate in the Commission investigation in that he failed to respond to letters from staff counsel sent certified mail, return receipt requested, on June 23, 1997, August 19, 1997, September 18, 1997, March 11, 1998, and April 1, 1998.

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]. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

By his own admission, respondent's records are a "shambles." His gross neglect of court recordkeeping makes it impossible to reconstruct what cases have come before him and to determine how they were handled. (See, Matter of Hutzky, 1984 Ann Report of NY Commn on Jud Conduct, at 94, 98). Respondent has kept public records in such disarray that even he cannot locate them after hours of sustained searching.

His failure to promptly deposit court funds in his official account raises questions about their interim use. (See, Matter of More, 1990 Ann Report of NY Commn on Jud Conduct at 140, 141). His failure to promptly remit money to the state comptroller is also misconduct. (See, Matter of Ranke, 1992 Ann Report of NY Commn on Jud Conduct, at 64). Such disdain for legal requirements and carelessness in handling public funds constitute a serious breach of the public trust and warrant removal. (See, Matter of Petrie, 54 NY2d 807, 808).

In addition, respondent has exacerbated this misconduct by his failure to cooperate in the Commission's investigation, showing "contumacious disregard for the responsibilities of…judicial office." (Matter of Carney, 1997 Ann Report of NY Commn on Jud Conduct, at 78, 79).

Respondent's primary explanation for his omissions is that he has long suffered from depression. Such a condition has been considered mitigating in some instances. (See, Matter of Kelso, 61 NY2d 82, 84, 88 [conduct "unrelated, either directly or peripherally to [[his]] judicial position"]; Matter of Giffin, 1995 Ann Report of NY Commn on Jud Conduct, at 116, 117 [judge failed to deposit and remit for approximately six months]). However, respondent's conduct involves neglect of his official duties and is extensive and persistent. The purpose of sanction in judicial disciplinary cases is not punishment but to protect the public from unfit incumbents. (Matter of Reeves, 63 NY2d 105, 111; Matter of Waltemade, 37 NY2d [nn], [lll][Ct on the Judiciary]). This record demonstrates that respondent is unable or unwilling to perform his judicial duties or to fulfill the requirements for the proper administration of justice.

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

Mr. Berger, Ms. Brown, Mr. Goldman, Ms. Hernandez, Judge Joy, Judge Marshall, Judge Newton and Judge Salisbury concur.

Mr. Pope dissents and would table the matter in order to allow respondent to resign from the bench.

Mr. Coffey and Judge Luciano were not present.

Dated: March 23, 1999

Schedule A

Month	Date Remitted	Days Late
January 1995	3/7/95	25
February 1995	3/7/95	0
March 1995	6/16/95	67
April 1995	6/26/95	47
May 1995	6/23/95	13
June 1995	7/17/95	7
July 1995	8/11/95	1
August 1995	9/14/95	4
September 1995	12/18/95	69
October 1995	1/30/96	81
November 1995	2/15/96	67
December 1995	2/15/96	36
January 1996	3/13/96	32
February 1996	3/13/96	3
March 1996	4/10/96	0
September 1996	12/4/96	55
October 1996	12/10/96	30
November 1996	12/11/96	1
December 1996	3/17/97	66
January 1997	6/16/97	126
February 1997	6/16/97	98
March 1997	6/16/97	67
April 1997	6/26/97	47
May 1997	8/11/97	62
June 1997	8/11/97	32
July 1997	10/27/97	78
August 1997	11/6/97	57
September 1997	11/6/97	27
October 1997	11/12/97	2
November 1997	3/3/98	83

April 1996	6/18/96	39	December 1997	3/3/98	52
May 1996	6/17/96	7	January 1998	3/3/98	21
June 1996	10/3/96	85	February 1998	5/17/98	68
July 1996	10/3/96	54	March 1998	5/17/98	37
August 1996	12/4/96	85			

Schedule B

Party	Date of Receipt	Date of Deposit	Party	Date of Receipt	Date of Deposit
George Hoffman	12/19/95	2/10/96	Jeffrey P. Lubanda	1/13/97	2/10/97
W. P. Bunscheen Claim Service	3/28/96	4/11/96	Angela D. Tedesco	8/1/97	9/9/97
Charles Bishop	5/17/96	6/17/96	Angela D. Tedesco	8/15/97	9/16/97
Shane Dockstader	5/17/96	6/17/96	Shawn Costin	4/18/97	6/11/97

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 A. GREMS, JR.,

A Justice of the Floyd Town Court, Oneida County .

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
Calvin J. Domenico, Jr., for Respondent

The respondent, Ralph A. Grems, Jr., a justice of the Floyd Town Court, Oneida County, was served with a Formal Written Complaint dated January 6, 1999, alleging that he improperly handled a small claims case. Respondent filed an answer dated February 19, 1999.

On May 4, 1999, 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 3, 1999, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Floyd Town Court since 1971.

2. On March 23, 1998, respondent presided over the small claims trial of Rick's Body Shop v Lana Makarchuk. Respondent failed to disclose to the defendant that respondent had recently had his automobile repaired by Rick's Body Shop, even though the quality of repairs to Ms. Makarchuk's vehicle was a contested issue in the case.

3. Respondent ruled in favor of the body shop.

4. Later on March 23, 1998, the plaintiff advised respondent that Ms. Makarchuk had made an error in writing a check for the amount of the judgment.

5. Respondent then went to Ms. Makarchuk's home and requested that she give him a new check made out to the plaintiff. She refused because she intended to appeal the decision.

6. Respondent said that he would call the state police, implying that he would have

Ms. Makarchuk arrested. He did not contact the police, however.

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)(3). Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

A reasonable person might conclude that respondent's recent experience with Rick's Body Shop would affect his judgment about the quality of the work that had been done in the case before him. Therefore, he should have disclosed that he had recently had work done by the shop on his own car, and he should have entertained objections to his presiding. (See, Matter of Barker, 1999 Ann Report of NY Commn on Jud Conduct, at 77.)

In addition, respondent created the appearance that he was acting on behalf of the body shop when he went to Ms. Makarchuk's home, asked her to write a new check and, when she refused, in effect, threatened her with arrest. The plaintiff had remedies at law if the judgment had not been properly paid, and respondent should not have acted outside of court to assist in the collection of the judgment.

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Joy, Judge Newton and Mr. Pope concur.

Judge Luciano, Judge Marshall and Judge Salisbury were not present.

Dated: September 15, 1999

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 E. HOWARD,

A Justice of the Ontario Town Court, Wayne County .

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Fiandach & Fiandach (By Edward L. Fiandach) for Respondent

The respondent, Mary E. Howard, a justice of the Ontario Town Court, Wayne County, was served with a Formal Written Complaint dated April 13, 1999, alleging two charges of misconduct. Respondent filed an answer dated May 12, 1999.

On October 28, 1999, 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 28, 1999, 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 Ontario Town Court since 1988.

2. On May 8, 1998, respondent issued two subpoenas each to Lieutenant Tack and Deputy Benedict of the Wayne County Sheriff's Department, ordering them to appear in court on May 12, 1998, in connection with People v Jeremy C. Peets and People v Roxanne O'Neil.

3. Also on May 8, 1998, respondent issued subpoenas to Lieutenant Tack and Deputy Andriaansen, ordering them to appear on May 12, 1998, in connection with People v Michael W. Johnson.

4. Neither the prosecution nor the defense in Peets, O'Neil, or Johnson had requested the subpoenas, and no one had intended to call Lieutenant Tack as a witness in any of the cases.

5. Respondent issued the three subpoenas for Lieutenant Tack because she was

disturbed that a deputy sheriff had not appeared before her as a witness in a traffic case on May 8, 1998.

As to Charge II of the Formal Written Complaint:

6. On November 3, 1997, respondent sent a letter to Wayne County Court Judge Dennis M. Kehoe in which she requested that Judge Kehoe grant youthful-offender status to a defendant in a case pending before him. Respondent discussed the youth's emotional difficulties and noted that he had no criminal history; she wrote of his family's contributions to the community and predicted that he would not be a danger in the future. Respondent also advised Judge Kehoe that he could contact her at court to discuss the matter further.

7. Respondent sent the letter at the request of the defendant's mother, who was an employee of the Town of Ontario.

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) and 100.3(B)(1). Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

Because she was irritated that a member of the sheriff's department had not appeared before her as scheduled, respondent, on her own motion, subpoenaed a ranking officer in the department to appear in three subsequent cases, even though he was not a witness. The subpoena power is limited to securing the appearance in court of witnesses. (See, CPL 610.10[2], 610.20[1]). Respondent could have used other administrative or legal methods of assuring that the court was not unduly inconvenienced by missing witnesses, but it was an abuse of the subpoena power to bring Lieutenant Tack to court on three cases in which deputies in his department were to testify.

By writing to Judge Kehoe, respondent used the prestige of her office to advance the private interests of others. She appealed to the other judge to grant youthful-offender status to the son of a town employee, putting forth mitigating circumstances and listing her court telephone. "[A]ny communication from a Judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office." (Matter of Lonschein, 50 NY2d 569, at 572). Letters from one judge to another concerning the merits of pending cases have long been held to constitute appeals for special consideration. (See, Matter of Dixon, 47 NY2d 523; Matter of Engle, 1998 Ann Report of NY Commn on Jud Conduct, at 125; Matter of Freeman, 1992 Ann Report of NY Commn on Jud Conduct, at 44).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Joy, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Ms. Hernandez, Judge Luciano and Judge Marshall were not present.

Dated: December 22, 1999

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

HEATHER L. KNOTT,

A Justice of the Hague Town Court, Warren County .

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
John C. Turi for Respondent

The respondent, Heather L. Knott, a justice of the Hague Town Court, Warren County, was served with a Formal Written Complaint dated September 18, 1998, alleging two charges of misconduct. Respondent filed an answer dated November 23, 1998.

On April 8, 1999, 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 April 15, 1999, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent, an attorney, has been a justice of the Hague Town Court since January 1994.

2. On May 25, 1996, respondent was stopped by a police officer in the Village of Ticonderoga for failing to stop at a red light. Respondent identified herself as a Hague town justice and contended that the light had been yellow. The officer did not issue her a ticket.

As to Charge II of the Formal Written Complaint:

3. On various occasions during the summers of 1994, 1995 and 1996, respondent presided in court while under the influence of alcohol. She frequently exuded an odor of alcohol; displayed red, glassy eyes; slurred her speech; had difficulty reading written material, and occasionally made inappropriate comments.

4. The allegation in Paragraph 7 of Charge II is not sustained and is therefore dismissed.

Supplemental finding:

5. In July 1997, respondent was advised by her doctor that she was suffering from alcoholic hepatitis and should refrain from drinking alcohol. Respondent maintains that she has abstained from the use of alcoholic beverages since that time and has promised to refrain from drinking in the future.

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 and Paragraph 6 of Charge II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. The allegation in Paragraph 7 of Charge II is dismissed.

A judge who presides while under the influence of alcohol compromises public confidence in her decisions and judgment. (Matter of Purple, 1998 Ann Report of NY Commn on Jud Conduct, at 149, 150).

It was also wrong for respondent to mention her judicial office when stopped on an alleged traffic infraction. "The mere mention of [] judicial office in order to obtain treatment not generally afforded to others violates the canons of judicial ethics." (Matter of D'Amanda, 1990 Ann Report of NY Commn on Jud Conduct, at 91, 94). "The absence of a specific request for favorable treatment or special consideration is irrelevant…." (Matter of Edwards, 67 NY2d 153, 155).

Respondent's presiding under the influence is, of course, serious misconduct. However, it appears that respondent has recognized that she has a problem and has abstained from drinking alcoholic beverages. She has stated that she will abstain in the future. Thus, we conclude that removal is not necessary. (See, Matter of Giles, 1998 Ann Report of NY Commn on Jud Conduct, at 127, 128).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Joy, Judge Marshall, Judge Newton and Judge Salisbury concur.

Judge Luciano and Mr. Pope were not present.

Dated: June 12, 1999

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JOSEPH W. KOSINA,

A Justice of the Plainfield Court, Otsego County .

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
Honorable Joseph W. Kosina, pro se

The respondent, Joseph W. Kosina, a justice of the Plainfield Town Court, Otsego County, was served with a Formal Written Complaint dated May 12, 1999, alleging five charges of misconduct. Respondent failed to answer the Formal Written Complaint.

By motion dated June 25, 1999, the administrator of the Commission moved for summary determination and a finding that respondent had engaged in judicial misconduct. Respondent failed to file any papers in response thereto. By Decision and Order dated September 15, 1999, the Commission granted the motion in all respects.

The administrator submitted a memorandum as to sanction. Respondent failed to file any papers and waived oral argument.

On October 28, 1999, 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 Plainfield Town Court since 1992.

2. Between January 1995 and June 1998, as denominated in the appended Schedule A, respondent failed to file reports and remit court funds to the state comptroller by the tenth day of the month following collection, as required by UJCA 2020 and 2021(1), Town Law §27(1) and Vehicle and Traffic Law §1803(8).

As to Charge II of the Formal Written Complaint:

3. Between October 1996 and July 1998, respondent failed to issue receipts for fines, complete dockets of his cases or report cases and remit court funds to the comptroller for the matters that he had handled. Instead, respondent agreed with his fellow judge,

Connie L. Cook, that she would issue receipts, prepare dockets and report and remit to the comptroller in her own name, even though respondent had adjudicated the cases. Respondent agreed to adjudicate all of the cases in the court during that period except those from which he might be disqualified.

As to Charge III of the Formal Written Complaint:

4. Between March 1995 and August 1997, as denominated in the appended Schedule B, respondent failed to deposit court funds within 72 hours of receipt, as required by the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.9(a).

5. A $350 fine paid by Linda Miller on February 7, 1996, remained undeposited as of the date of the charges.

As to Charge IV of the Formal Written Complaint:

6. Even though he reported only 51 cases in his own name between January 1995 and March 1998:

a) as denominated in the appended Schedule C, respondent failed to issue receipts in 15 of the 33 cases in which he received court funds, in violation of Town Law § 31(1)(a);

b) respondent failed to maintain suitable records and dockets of all criminal and civil cases, in violation of UJCA 2019 and the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.11; and,

c) respondent failed to maintain a cashbook, in violation of the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.11(a)(3).

As to Charge V of the Formal Written Complaint:

7. In October 1995, in the small claims case, Paul Aikens v Dennis Grosfent, respondent sent a summons to the defendant which stated that a warrant would be issued for his arrest if he did not appear in court in response to the claim.

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); 100.3(A) and its predecessor, Section 100.3, and 100.3(C)(1) and its predecessor, Section 100.3(b)(1). [Renumbered effective Jan. 1, 1996] Charges I, II, III, IV and V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Despite a small caseload, respondent has consistently failed to perform the administrative duties of his judicial office.

He failed to promptly deposit money in his court account, raising questions about its interim use. (See, Matter of More, 1990 Ann Report of NY Commn on Jud Conduct, at 140, 141). He failed to promptly remit money to the state comptroller, as the law requires. (See, Matter of Ranke, 1992 Ann Report of NY Commn on Jud Conduct, at 64). A fine of $350 was apparently never deposited or remitted. He failed to issue receipts in numerous cases, failed to maintain a cashbook and failed to maintain suitable records and dockets in criminal and civil cases. The mishandling of public funds by a judge is serious misconduct, even when not done for personal profit. (Bartlett v Flynn, 50 AD2d 401, 404 [4th Dept]).

The situation was significantly complicated by respondent's arrangement with his fellow judge whereby he adjudicated cases but she handled fines and paperwork, then reported them as her own. Respondent should have known that this unconventional division of labor would create considerable confusion in the recordkeeping and accounting of the court.

Moreover, respondent's threat to arrest a litigant in a civil action indicates fundamental misunderstanding of the difference between civil and criminal cases and the respective powers of a judge in each type of proceeding. (See, Matter of Schiff, 83 NY2d 689, 694).

Respondent is clearly unable or unwilling to perform his duties or to fulfill the requirements for the proper administration of justice.

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Joy, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Ms. Hernandez, Judge Luciano and Judge Marshall were not present.

Dated: November 9, 1999

Schedule A

Month	Date Submitted	Days Late
January 1995	2/27/95	17
February 1995	3/28/95	18
March 1995	5/26/95	46
April 1995	5/30/95	20
May 1995	6/7/95	0
June 1995	9/22/95	74
July 1995	9/22/95	43
August 1995	9/22/95	12
September 1995	11/27/95	48
October 1995	11/27/95	17
November 1995	12/14/95	4
December 1995	1/18/96	8
January 1996	2/26/96	16
February 1996	5/1/96	52
March 1996	5/2/96	22
April 1996	5/31/96	21
May 1996	8/16/96	67
June 1996	8/16/96	37
July 1996	8/16/96	6
August 1996	12/16/96	97
September 1996	1/10/97	92
October 1996	1/10/97	61
November 1996	12/13/96	3
December 1996	1/10/97	0
January 1997	4/7/97	56
February 1997	7/24/97	136
March 1997	4/4/97	0
April 1997	7/24/97	75
May 1997	7/24/97	44
June 1997	7/23/97	13
July 1997	8/12/97	2
August 1997	9/29/97	19
September 1997	11/25/97	46
October 1997	11/25/97	15
November 1997	1/28/98	49
December 1997	1/28/98	18
January 1998	3/18/98	36
February 1998	3/18/98	8
March 1998	5/22/98	42
April 1998	5/22/98	12
May 1998	8/10/98	61
June 1998	8/10/98	31

Schedule B

Defendant	Date Received	Date Deposited	Defendant	Date Received	Date Deposited
Seamus McNulty	3/1/95	3/28/95	Lloyd Harris	1/31/96	2/28/96
Troy Diehl	5/17/95	5/26/95	Linda Miller	2/7/96	Undeposited
Keith Smith	10/18/95	11/16/95	Mandy Ostrosky	2/21/96	5/30/97
Jennifer Barringer	11/2/95	11/16/95	Justin Benedict	9/30/96	11/13/96
John Barringer	11/2/95	11/16/95	Michael Lyon	3/19/97	4/3/97
Ryan Hanson	11/2/95	11/16/95	Jason Belisle	5/21/97	5/30/97
William Christian	12/6/95	12/13/95	Paul Coughlin	8/6/97	9/2/97
Carl Belden	12/28/95	1/17/96			

Schedule C

Defendant	Date of Receipt	Amount Received	Defendant	Date of Receipt	Amount Received
Hibbard v Luther	8/95	$ 10	Justin Benedict	9/30/96	375
Timber Rooney	11/16/95	70	Cheryl Baird	11/10/96	75
Kendra Myers	4/17/96	50	Joseph Pittman	11/10/96	50
Diane Getman	4/17/96	50	Michael Lyon	3/19/97	50
Gary Lee	4/17/96	75	Mandy Ostrosky	6/18/97	100
Derek Kleban	4/17/96	350	Jason Belisle	6/18/97	50
Ralph Sterusky	4/18/96	275	Paul Coughlin	8/6/97	50
Ruth Stillwell	11/10/96	75			

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JOHN R. LA CAVA,

A Judge of the County Court, Westchester County .

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission
Mancuso, Rubin & Fufidio (By Andrew A. Rubin) for Respondent

The respondent, John R. La Cava, a justice of the Supreme Court, 9th Judicial District, was served with a Formal Written Complaint dated January 13, 1999, alleging that he made improper campaign statements. Respondent filed an answer on February 12, 1999.

On May 26, 1999, 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 3, 1999, the Commission approved the agreed statement and made the following determination.

1. Respondent was a judge of the Westchester County Court from 1988 to 1998. He was elected a justice of the Supreme Court, 9th Judicial District, in 1998.

2. In connection with his candidacy for Supreme Court in September 1998, respondent drafted and sent to members of the Right-to-Life Party a letter seeking their support. Among other things, respondent asserted his "commitment to the sanctity of life from the moment of conception," his "strong moral opposition to the scourge of abortion and the termination of the lives of millions of human beings in the womb" and his "outrage[ ] by the continuation of the murderous and barbaric partial birth abortion procedure in this state."

3. In an interview with a reporter on October 5, 1998, respondent stated with respect to abortion, "I think it's murder," and, "I'm a public official, and I think the public has a right to know." The remarks were published in the Gannett Suburban Newspapers on October 5, 1998.

4. Respondent contends that he meant his

remarks to the newspaper reporter to be limited to the partial-birth-abortion procedure and that he does not believe that any woman who obtains a legal abortion is guilty of a crime. He now recognizes, however, that his remarks and the letter to the Right-to-Life Party were improper.

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, 100.5(A)(4)(d)(i) and 100.5(A)(4)(d)(ii). Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

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 may not "make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office" or "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." (Rules Governing Judicial Conduct, 22 NYCRR 100.5[A][4][d][i] and 100.5[A][4][d][ii]; see, Matter of Polito, 1999 Ann Report of NY Commn on Jud Conduct, at 129; Matter of Birnbaum, 1998 Ann Report of NY Commn on Jud Conduct, at 73).

Respondent violated these standards in his letter to Right-to-Life Party members and in his statement to the newspaper. He took positions on controversial issues of public policy and law that might become the source of litigation and would reflect adversely on his impartiality should such matters come before him. His published statement, "I think it's murder," when discussing the issue of abortion created the appearance that he might not follow constitutional and statutory law if called upon to do so.

In mitigation, respondent has acknowledged his wrongdoing and has been cooperative and contrite in this proceeding. (See, Matter of Rath, 1990 Ann Report of NY Commn on Jud Conduct, at 150, 152).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Joy, Judge Newton and Mr. Pope concur.

Judge Luciano, Judge Marshall and Judge Salisbury were not present.

Dated: September 16, 1999

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. KEVIN MULROY,

A Judge of the County Court, Onondaga County .

APPEARANCES:

Gerald Stern (John J. Postel and Seema Ali, Of Counsel) for the Commission
John J. Sheehy and Gardner & Miles, L.L.P. (By Gary W. Miles) for Respondent

The respondent, J. Kevin Mulroy, a judge of the Onondaga County Court, was served with a Formal Written Complaint dated July 30, 1998, alleging seven charges of misconduct. Respondent filed an answer dated August 18, 1998.

By Order dated September 3, 1998, the Commission designated the Honorable Fritz W. Alexander, II, as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on November 4, 5 and 6, 1998, and the referee filed his report with the Commission on April 21, 1999.

The parties submitted briefs with respect to the referee's report. On June 3, 1999, 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 judge of the Onondaga County Court since January 1987.

2. Respondent was scheduled to preside on August 20, 1996, at a pre-trial conference in the cases of Darnell W. Dexter, Shawndell M. Everson, Allen L. Isaac and Clarence D. Paige, who were charged with the murder and robbery of a 67-year-old African-American woman in her home.

3. The night before the pre-trial, respondent attended a golf tournament and dinner at a country club. At the dinner, respondent approached the prosecutor in the murder case, Stephen J. Dougherty. Respondent told Mr. Dougherty that the District Attorney's Office should be "reasonable" in its plea offers to two of the defendants because respondent did not want all four cases to go to trial.

4. Respondent asked Mr. Dougherty

whether the prosecution was worried that, if it made reasonable offers to two of the defendants, it would appear to be "giving away" the cases.

5. Respondent told Mr. Dougherty that he should not worry because no one cared what happened, since the victim was just "some old nigger bitch."

6. At the pre-trial on August 20, 1996, the parties and respondent agreed to a plea reduction for two defendants to a charge carrying a five-to-ten-year sentence. Respondent said that the victim was "no great shakes" and that the District Attorney had "to take into account the victim and that this was an after-hours gin joint."

As to Charge II of the Formal Written Complaint:

7. In February 1996, respondent presided over People v Roberto Carvalho in the Oneida County Court in Utica.

8. While the jury was deliberating the rape charge, respondent became agitated, began zipping and unzipping his robe and put his feet on the bench. He then said to the prosecutor, Bernadette Romano, "You know, I don't know how long I'm going to let this go, Ms. Romano, you know….You better consider your options."

9. Ms. Romano indicated that she would strongly oppose respondent declaring a mistrial. Respondent replied, "Well, you can go ahead and do what you want, but I got to get back to Syracuse 'cause it's Thursday night, and it's men's night out."

10. Ms. Romano then left the courtroom briefly. When she returned, respondent was in an agitated state, spinning around on his chair and looking at his watch and the courtroom clock.

11. He said to Ms. Romano, "Why don't you give this guy a fucking misdemeanor so I can get out of this fucking black hole of Utica. I'm sick of Judge Burke sending me down here. I'm sick of Utica. You guys overcharge everything. This is a ridiculous case. This guy wouldn't have been indicted in Syracuse….You guys overcharge everything."

12. Ms. Romano refused to consider agreeing to offer a guilty plea to a misdemeanor. The jury shortly returned with a verdict of guilty.

As to Charge III of the Formal Written Complaint:

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

As to Charge IV of the Formal Written Complaint:

14. In July 1996, respondent attended a charity dinner at a country club. He was seated at a table with eight other people.

15. During the course of the evening, Oneida County District Attorney Michael Arcuri came to the table to greet those seated there.

16. Mr. Arcuri asked respondent how his re-election campaign was going. Respondent complained that the Democratic Party had nominated a candidate to oppose him.

17. Mr. Arcuri then said, "Some of us have to run for office, and others get it handed to them on a silver platter."

18. Respondent rejoined, "You know how you Italian types are with your Mafia

connections."

19. Mr. Arcuri and respondent's campaign opponent, John La Paro, are of Italian descent. Assistant District Attorney Bernadette Romano, who is also of Italian descent, was among those seated at the table, and she overheard respondent's remark.

20. To respondent's remark, Mr. Arcuri replied, "You know, Judge, you're a real asshole," and he left.

21. During the course of the re-election campaign, respondent referred privately to Mr. La Paro as a "wop," "dago" and "guinea."

As to Charge V of the Formal Written Complaint:

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

As to Charge VI of the Formal Written Complaint:

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

As to Charge VII of the Formal Written Complaint:

24. On February 13, 1997, respondent testified under subpoena as a character witness for Andre R. Sobolevsky, a Syracuse attorney who was being tried before another judge in Supreme Court.

25. Respondent had adjourned proceedings in his own courtroom in order to testify in the Sobolevsky case. Attorneys Joseph V. O'Donnell, Edward J. McQuat and David B. Savlov had appeared before him that day.

26. In the Sobolevsky case, respondent testified that the defendant had a reputation in the legal community for truth and honesty that was "very good" or "excellent."

27. On cross examination, respondent was asked to identify lawyers with whom he had discussed Mr. Sobolevsky's reputation. He named Mr. O'Donnell, Mr. McQuat and Mr. Savlov.

28. Mr. O'Donnell had never discussed Mr. Sobolevsky's reputation with respondent and, in fact, knew little of Mr. Sobolevsky and had no opinion concerning his reputation. When he learned that respondent had used his name during the Sobolevsky case, Mr. O'Donnell confronted respondent. Respondent apologized and said that he had been caught "off-guard" and that the names of Mr. O'Donnell and Mr. McQuat were the first ones that came to mind.

29. Mr. McQuat never had a conversation with respondent concerning Mr. Sobolevsky's reputation and, in fact, had an unfavorable impression of his reputation. When Mr. McQuat confronted respondent about using his name, respondent replied, "Well, if I didn't talk to you guys, I talked to somebody in your office about it."

30. Mr. Savlov had never talked to respondent about Mr. Sobolevsky's reputation and, in fact, believed that it was "not very good."

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), 100.3(B)(3), 100.3(B)(4) and 100.3(B)(6). Charges I, II, IV and VII of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's

misconduct is established. Charges III, V and VI are dismissed.

The record establishes that respondent has attempted to subvert the proper administration of justice in order to suit his personal convenience and whims, has given false or misleading testimony and has repeatedly used language charged with racial and ethnic hatred.

Respondent's comments to the prosecutor that he need not be concerned that he would be "giving away" the murder cases because no one cared, since the victim was only "some old nigger bitch," devalued the life of the victim in a most unprofessional, disturbing and inappropriate way. The use of such a hateful racial epithet should have, as the referee aptly noted, no place in a judge's lexicon (see, Matter of Agresta, 64 NY2d 327; see similarly, Matter of Bloodgood, 1982 Ann Report of NY Commn on Jud Conduct, at 69), even off the bench and apart from judicial business (see, Matter of Kuehnel, 49 NY2d 465, 468).

Respondent's disparaging and ethnically charged remark to Mr. Arcuri at a public social event was obviously calculated to be hurtful and insulting. "[A] deliberate and calculated remark of this nature, even if isolated, 'casts doubt on [a jurist's] ability to fairly judge all cases before him….'" (Matter of Schiff, 83 NY2d 689, at 693, quoting the Commission's Determination, 1994 Ann Report of NY Commn on Jud Conduct, at 97, 99). A judge's use of such language indicates an unacceptable bias and insensitivity that has no place on the bench and warrants the severest possible sanction.

In the Sobolevsky case, respondent testified falsely or with reckless disregard of the truth. Asked to support his claim that Mr. Sobolevsky had a reputation for truth and honesty in the legal community, respondent apparently recited the names of the first three lawyers that came to mind -- three that had appeared before him earlier that day -- even though he had never spoken with them about Mr. Sobolevksy's reputation. Such lack of candor under oath reflects poorly on a judge's ability to swear witnesses, uphold the law and seek the truth. (See, Matter of Bloom, 1996 Ann Report of NY Commn on Jud Conduct, at 65).

Respondent accosted a prosecutor at a social function and suggested that he offer plea reductions at a pre-trial hearing the following day so that four murder cases wouldn't have to go to trial. He attempted to affect the outcome of serious matters at the point of delicate plea negotiations. The comment was not merely idle chatter or overwrought invective; it was a calculated statement designed to produce a result: plea bargains that would lighten respondent's caseload.

Similarly, respondent's remarks during jury deliberations in Carvalho indicate an attempt to twist the ends of justice to accommodate his personal convenience. He improperly pressed a prosecutor to abort the trial and offer a plea, merely so that respondent could get home for "men's night out" and end an assignment that he disliked. In addition to attempting to force a plea for his own personal convenience, the language that he used was unbecoming a judge. (See, Matter of Chase, 1998 Ann Report of NY Commn on Jud Conduct, at 75, 76-77; Matter of Mahon, 1997 Ann Report of NY Commn on Jud Conduct, at 104).

The abuse of judicial authority in order to further a judge's personal interests, or even giving such an appearance, is improper. (See, Matter of McKevitt, 1997 Ann Report of NY Commn on Jud Conduct, at 106;

Matter of Hanofee, 1990 Ann Report of NY Commn on Jud Conduct, at 109; Matter of Reese, 1985 Ann Report of NY Commn on Jud Conduct, at 217; see also, Matter of Molnar, 1989 Ann Report of NY Commn on Jud Conduct, at 115).

Based on the totality of the misconduct in this record, it is clear that respondent lacks proper judicial temperament and is unfit to be a judge.

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Joy and Judge Newton concur as to sanction.

Ms. Brown dissents only as to Charge II and votes that the charge be dismissed.

Mr. Coffey and Mr. Goldman dissent only as to Charges II and VII and vote that the charges be dismissed.

Ms. Hernandez and Judge Newton dissent only as to Charge III and vote that the charge be sustained.

Judge Marshall dissents as to Charges III and VII and votes that Charge III be sustained and that Charge VII be dismissed, and he dissents as to sanction and votes that respondent be censured.

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

Judge Luciano and Judge Salisbury were not present.

Dated: August 12, 1999

Opinion by Mr. Goldman, in which Mr. Coffey joins, concurring in part and dissenting in part.

I concur with the Commission's sanction of removal. I write separately, however, to explain my reasons and also my disagreements in some respects with the majority.

In my view, a single statement, particularly one made outside the courthouse, should not generally warrant termination of a judicial career. Judges, like others, sometimes say things that they did not intend, that upon reflection they would not say or that out of context sound very different from the way they were intended. However, respondent's use of the epithet "some old nigger bitch," made in a plea discussion with the prosecutor (even outside the courthouse), is so ugly, raw and insensitive and so beyond the limits of acceptable conversation, that that single statement alone requires that he no longer sit as a judge.[*]

African-American litigants, witnesses and attorneys who appear before respondent cannot be expected, in view of this statement, to have confidence that they will receive the fair and evenhanded treatment to which they are entitled. In my view, our justice system -- which many African-Americans distrust as biased against them -- cannot tolerate a judge who has demonstrated such insensitivity, even one who it appears has served competently and

[*] I also find improper, although much less troubling, the ex parte aspect of this discussion.

independently for 15 years.[+]

I do, however, disagree with the majority opinion to the extent that it appears to criticize respondent for attempting "to affect the outcome of serious matters at the point of delicate plea negotiations" and for a statement designated to produce a plea bargain that would "lighten [his] caseload." I find no misconduct in the attempt of a judge to involve himself or herself in plea negotiations in an effort to reach an agreement that would lighten the court calendar. As stated above, I do find offensive the manner in which he did so.

I also disagree with the majority in its finding that Charges II and VII should be sustained. With respect to Charge II, I do not find that respondent's banter -- which apparently did not affect the prosecutor -- rises to the level of judicial misconduct, although I do find it inappropriate.

With respect to Charge VII, I believe that a careful examination of the record does not justify the conclusion that respondent deliberately or recklessly testified falsely. Rather, I believe that this finding is based on a misconception of the rules of evidence with respect to the competency of character testimony. Under the rules of evidence, a witness may express the belief that a defendant has a character trait based either on having heard positive statements about the defendant or having heard nothing negative. (See, Richardson on Evidence, 11th ed., p, 165: "Although tactically less appealing than showing a widely held good opinion of the defendant's relevant character trait, the rule remains that good character may be shown by a witness who has heard nothing against the defendant.")

Respondent testified as a character witness for an attorney accused in a criminal case that the defendant's reputation in the legal community with respect "to truth and honesty" was "very good" or "excellent" and, as the basis for that belief, that he had never heard anything derogatory about him. During a vigorous cross-examination, respondent was asked to name lawyers with whom he had spoken about the defendant and mentioned two prosecutors and another attorney. When asked specifically what these attorneys said, he responded merely that these people had never said anything negative about the attorney. He did not say that the lawyers had said anything positive. Whatever these attorneys' actual views of the defendant, the record does not demonstrate that, at the time he testified, respondent did not believe that he had spoken with these lawyers about the attorney on trial and that they had never said anything negative about him. The record, thus, does not justify the conclusion that respondent deliberately or recklessly testified falsely.

Dated: August 12, 1999

Dissenting Opinion by Judge Marshall in which Mr. Pope joins.

After consideration of the facts in this case, as well as the applicable case law, I respectfully dissent from the majority's splintered determination to remove this judge from the bench.

[+] See, e.g., Cole, No Equal Justice: Race and Class in the American Criminal Justice System [The New Press 1999], pp. 10-11: "The racially polarized reactions to the [O.J.] Simpson case illustrate a deep and longstanding racial divide on issues of criminal justice: blacks are consistently more skeptical of the criminal justice system than whites. . . . Perceptions of race and class disparities in the criminal justice system are at the core of the race and class divisions in our society."

It is significant that respondent has acknowledged, with appropriate contrition, that his conduct under the sustained four charges was inappropriate, out of character and isolated. (Compare, Matter of Duckman, 92 NY2d 141, in which the evidence demonstrated a pattern of egregious conduct that continued even after the judge was made aware of his unacceptable behavior).

In this case, respondent has a long and unblemished record on the bench, which should be taken into account in rendering sanction. (See, Matter of Edwards, 67 NY2d 153, 155). Even witnesses against him testified that respondent handled their cases fairly from the bench. The majority of the sustained charges involved matters outside of the courtroom in private settings.

Removal is an extreme sanction that should be imposed only in truly egregious circumstances; it should not be ordered "for conduct that amounts simply to poor judgment, or even extremely poor judgment." (Matter of Cunningham, 57 NY2d 270, at 275). Respondent exercised poor judgment in making a number of ill-advised and careless comments off the bench. While respondent's actions clearly constitute misconduct, no case supports the majority's conclusion that such comments warrant the extreme sanction of removal. (Contra, Matter of Agresta, 64 NY2d 327 [judge censured for remarking from the bench, "I know there is another nigger in the woodpile," in proceeding involving two black defendants and in reference to a particular black person]; Matter of Cavotta, 1996 Ann Report of NY Commn on Jud Conduct, at 75 [judge admonished for pressuring defendants to plead guilty in order to avoid trial]; Matter of Ain, 1993 Ann Report of NY Commn on Jud Conduct, at 51 [judge censured for an intemperate diatribe during a court proceeding in which he made references to a lawyer's ethnic background]; Matter of Bloom, 1996 Ann Report of NY Commn on Jud Conduct, at 65, and Matter of Barlaam, 1995 Ann Report of NY Commn on Jud Conduct, at 105 [judges censured for misleading testimony in attorney disciplinary hearings]).

Accordingly, I find misconduct but deem censure to be the adequate and proper sanction.

Dated: August 12, 1999

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

FREDERICK H. MUSKOPF,

A Justice of the Stafford Town Court, Genesee County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Honorable Frederick H. Muskopf, pro se

The respondent, Frederick H. Muskopf, a justice of the Stafford Town Court, Genesee County, was served with a Formal Written Complaint dated March 12, 1999, alleging that he set bail in traffic cases without considering the factors required by law. Respondent answered by letter dated March 22, 1999.

On July 8, 1999, the administrator of the Commission and respondent 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 September 9, 1999, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Stafford Town Court since 1967.

2. Between February 1997 and December 1997, in 52 traffic cases, as denominated on the annexed Schedule A, respondent set bail after the defendant had pleaded not guilty during his or her initial court appearance. Respondent made no inquiry into the factors that a judge is required by CPL 510.30 to consider in setting bail.

3. Respondent set bail in each case in an amount that corresponded to, and which he used to secure payment of, a subsequent fine and surcharge.

4. During this period, respondent did not set bail for any traffic defendants who had pleaded not guilty by mail.

5. Respondent was aware that, in its 1991 Annual Report, the Commission had criticized the practice of automatically setting bail in traffic cases.

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 100.3(B)(6). Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

A judge who routinely sets bail for every defendant who pleads not guilty fails to follow the law. (Matter of Kelsen, 1998 Ann Report of NY Commn on Jud Conduct, at 145, 146). The Criminal Procedure Law requires consideration of a number of personal factors designed to determine whether an individual is likely to return to court. (See, CPL 510.30[2][a]; Matter of Sardino, 58 NY2d 286, 289). It does not allow a judge to use bail to secure the amount of the fine that he might later impose if the defendant is convicted. Respondent discriminated unfairly against defendants who appeared in court to plead not guilty by automatically requiring them to post bail.

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

Mr. Berger, Ms. Brown, Mr. Goldman, Ms. Hernandez, Judge Joy, Judge Marshall, Judge Newton, Mr. Pope and Judge Salisbury concur.

Mr. Coffey and Judge Luciano were not present.

Dated: September 16, 1999

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 F. O'BRIEN,

A Justice of the Supreme Court, Madison County .

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Honorable William F. O'Brien, III, pro se

The respondent, William F. O'Brien, III, a justice of the Supreme Court, 6th Judicial District, was served with a Superseding Formal Written Complaint dated March 30, 1998, alleging that he made public comments on a pending case. Respondent filed an answer to the superseding complaint on April 2, 1998.

By Order dated February 19, 1998, the Commission designated Maryann Saccomando Freedman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 7, 1998, and the referee filed her report with the Commission on September 8, 1998, and submitted a supplemental report on October 20, 1998.

Both sides filed briefs with respect to the referee's report. On December 18, 1998, the Commission heard oral argument by staff counsel and respondent and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Supreme Court since January 1997. He was a judge of the County Court, Family Court and Surrogate's Court, Madison County, from 1983 to 1996.

2. In December 1995, respondent was seeking the Republican nomination for Supreme Court justice. He was opposed by a fellow judge, Hugh C. Humphreys.

3. On December 29, 1995, respondent was advised that the Appellate Division, Third Department, had overturned the conviction of George H. Wiemeier, who had been tried before respondent and a jury in June 1994. The conviction was reversed on the ground that respondent had improperly communicated with the jury during deliberations by responding to a note without notice and outside the presence of the defendant and his counsel. The case was remanded to respondent for a new trial.

4. On January 11, 1996, respondent was told that Dale Seth, a reporter for the Oneida Daily Dispatch, had called him about the Wiemeier case. When respondent returned Mr. Seth's telephone call, the reporter told him, "Judge, they really beat you up on this one." Respondent spoke with him about the Appellate Division's decision, then discontinued the call, telling Mr. Seth that further comment would be inappropriate.

5. Nevertheless, respondent then prepared a statement for Mr. Seth, entitled, "For Release Re: People v. Wiemeier," in which he stated, inter alia:

> The non-substantive ministerial decision on the note from the jury was not affirmed. A disagreement exists between this court and the Appellate Court on that issue. A further appeal by the District Attorney to the Court of Appeals should resolve this disagreement.

6. On January 16, 1996, the Oneida Daily Dispatch published a front-page story in which it reported respondent's statements to Mr. Seth.

7. On January 22, 1996, respondent received a message from Clarisel Gonzalez, a reporter for The Post-Standard of Syracuse, asking to speak with him concerning Wiemeier.

8. Respondent did not return the call but prepared a statement for Ms. Gonzalez, in which he stated, inter alia:

> There may have been an entirely different result here had District Attorney Cerio gone to Albany and personally presented oral argument to that Court in support of the position he had earlier taken before me on this note.
> ***
> A disagreement exists between this Court and the Appellate Court on the question of this note from the jury. Further appeal by District Attorney Cerio to the Court of Appeals should resolve this disagreement.
> ***
> …[W]hile I respect the Appellate decision, I am satisfied that it was the right thing to do at the time to tell the jury that they could continue their deliberations….

9. On January 24, 1996, The Post-Standard published a story about the case, with the headline, "Judge and DA at Odds. A Man's Convictions Were Overturned. The Prosecutor Said He Is Offended That the Judge Is 'Shifting Blame' To His Office." The story said that respondent did not believe that he had done anything wrong and was "satisfied it was the right thing to do." The paper also reported respondent's remark that the outcome of the appeal might have been different had the district attorney presented oral argument before the Appellate Division.

10. When respondent spoke with Mr. Seth and when he prepared the two press statements, he knew that the Rules Governing Judicial Conduct prohibited judges from making public comments about pending or impending proceedings.

11. On February 19, 1997, respondent testified during a duly-authorized investigation of this matter. Asked why he made the statements, respondent said:

> It has to be that at that particular point in time, it was like, I can't believe it that this DA wouldn't go to Albany to argue this case and allow it to be argued just on the other side. I took that to be an attempt to make me look bad at a very

> important time with the politics that were going on. I had an opponent, Judge Humphreys and the Republicans were gathering to decide who was to be their nominee and it was making me look bad, I mean, and I felt it was an intentional thing here.

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) and 100.3(B)(8). Charge I of the Superseding Formal Written Complaint is sustained, and respondent's misconduct is established.

Because he was concerned that he would "look bad" at a time when he was seeking nomination to a higher office, respondent--even though he knew that it was improper to do so--made a series of public comments on a case that had been remanded to him. "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]). The rule is clear and unequivocal and makes no exception, as respondent would have it, for explanations of a judge's "decision-making" process. A judge should not "make any public comment, no matter how minor, to a newspaper reporter or to anyone 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).

Moreover, in his statements, respondent insisted that his actions in the Wiemeier case had been appropriate, even though a higher court had ruled otherwise. He undermined the proper administration of justice by implicitly criticizing the appellate court. He also improperly blamed the district attorney for failing to argue the case on appeal.

A judge must "respect and comply with the law…." (Rules Governing Judicial Conduct, 22 NYCRR 100.2[A]). "For a trial judge, the law is comprised of both statutes and appellate directives." (Matter of Dier, 1996 Ann Report of NY Commn on Jud Conduct, at 79, 81). A judge must follow the directives of higher courts and should not give the impression that he or she would do otherwise. (Matter of Maislin, unreported, NY Commn on Jud Conduct, Aug. 7, 1998).

Respondent's written statements to two newspapers were misleading in that they described the reversal of Mr. Wiemeier's conviction as merely a disagreement between the two courts. He should not have publicly suggested that the district attorney appeal the Appellate Division's decision in order to "resolve" the matter.

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Joy, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope and Judge Salisbury concur.

Ms. Hernandez was not a member of the Commission when the vote in this matter was taken.

Dated: March 4, 1999

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

ANTHONY J. PARIS,

A Judge of the Family Court, Onondaga County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Rossi & Vavonese (By Emil M. Rossi) for Respondent

The respondent, Anthony J. Paris, a judge of the Onondaga County Family Court, was served on January 28, 1999, with a Formal Written Complaint alleging that he had improperly participated as a guest of honor at a charitable fund-raiser. Respondent filed an answer dated February 10, 1999.

On April 30, 1999, 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 3, 1999, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Family Court since 1993.

2. Respondent agreed to participate and did participate, with members of his family, as guests of honor at the Bishop Joseph T. O'Keefe Memorial Dinner Dance to benefit the Western Region Catholic Schools Foundation on October 23, 1998. He was aware that this was a fund-raiser for a charity.

3. Respondent participated even though, two days before the event, he had received a letter from Commission staff, inquiring into his involvement in a charitable fund-raiser.

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 100.4(C)(3)(b)(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.

A judge may not be the speaker or the guest

of honor at an organization's fund-raising events. (Rules Governing Judicial Conduct, 22 NYCRR 100.4[C][3][b][ii]). Although a judge may participate in charitable activities, this rule clearly prohibits involvement in fund-raising events of the charity. (Matter of Wolfgang, 1988 Ann Report of NY Commn on Jud Conduct, at 245, 249).

Although a confidential caution is sometimes appropriate for such conduct (see, Matter of Harris, 72 NY2d 335, 337), respondent's misconduct is exacerbated by the fact that he had notice that the Commission was questioning his participation in the fund-raiser and did not withdraw (see, Matter of Sims, 61 NY2d 349, 356).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Joy, Judge Newton and Mr. Pope concur.

Judge Luciano, Judge Marshall and Judge Salisbury were not present.

Dated: September 16, 1999

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JOHN D. PEMRICK,

A Justice of the Greenwich Town and Village Courts, Washington County .

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
Catalfimo & Catalfimo (By Michael J. Catalfimo) for Respondent

The respondent, John D. Pemrick, a justice of the Greenwich Town Court and the Greenwich Village Court, Washington County, was served with a Formal Written Complaint dated March 9, 1999, alleging two charges of misconduct. Respondent did not answer the charges.

On October 14, 1999, 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 October 28, 1999, 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 Greenwich Town Court and the Greenwich Village Court since 1987. He was acting justice of the Greenwich Village Court from 1976 to 1987. He is not a lawyer.

2. Ross Davenport was arraigned before respondent on September 18, 1997, on a charge of Misapplication Of Property. He was alleged to have failed to make payments or return a television set pursuant to a rental agreement. Respondent failed to advise Mr. Davenport of his right to counsel and his right to have counsel assigned by the court if he was unable to afford a lawyer, in violation of CPL 170.10(4)(a). Respondent committed the defendant to jail in lieu of $500 bail.

3. On October 7, 1997, Mr. Davenport reappeared in court and asked to be represented by a public defender. Respondent replied that he would have to check with the assistant district attorney.

Respondent then spoke about the case with the prosecutor outside the presence of the defendant and adjourned the case without taking any steps to effectuate the defendant's right to assigned counsel. The assistant district attorney recommended that the case be adjourned in contemplation of dismissal on the condition that Mr. Davenport make restitution.

4. On December 2, 1997, Mr. Davenport returned to court. Respondent informed him that he had waited too long to request a public defender and suggested that he begin making restitution payments before his next court appearance, even though Mr. Davenport had not pleaded guilty and no trial had been held. Respondent had not granted an Adjournment in Contemplation of Dismissal at this point.

5. Mr. Davenport told respondent that the television could not be returned because it had been stolen, but respondent failed to consider this a defense to the charge, even though Penal Law § 165.00(3) provides that it shall be a defense to the charge of Misapplication Of Property that the property has been stolen. Respondent was unfamiliar with this section, since he had never previously handled such a charge or heard of such a defense.

6. Respondent never provided Mr. Davenport with an application to obtain assigned counsel, which, in Washington County, may only be obtained through the court. Nonetheless, Mr. Davenport was able to obtain, through outside intervention, representation by the public defender's office.

7. On February 3, 1998, Mr. Davenport appeared in court, represented by the public defender, and respondent adjourned the charge in contemplation of dismissal. On February 10, 1998, respondent held a restitution hearing in the absence of the public defender and ordered Mr. Davenport to pay $400 for the television.

As to Charge II of the Formal Written Complaint:

8. In Davenport and another case that respondent heard on June 4, 1998, respondent engaged in conferences with the assistant district attorney on the merits of the cases outside the presence of the defense.

9. In three traffic cases that respondent heard on April 8, June 4 and June 9, 1998, respondent granted dismissals or adjournments in contemplation of dismissal without the knowledge and consent of the prosecution, in violation of CPL 170.40, 170.45, 210.45(1) and 170.55(1).

10. In nine cases between January and June 1998, respondent failed at arraignment to advise the defendants -- who were charged with misdemeanors, violations or traffic infractions -- of their right to counsel, in violation of CPL 170.10(4)(a).

11. In one case in June 1998, respondent advised a defendant who was charged with Disorderly Conduct that he was not entitled to assigned counsel, in violation of CPL 170.10(4)(a).

12. In nine cases between January and June 1998, respondent elicited from defendants who had pleaded not guilty statements concerning the charges against them or explanations of 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) and 100.3(B)(6). Charges I and II of the Formal

Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

At every stage of a criminal proceeding, a defendant has the right to counsel. (CPL 170.10[3]). In all cases except those alleging traffic infractions, the defendant also has the right to have counsel assigned by the court if he or she cannot afford a lawyer. (CPL 170.10[3][c]). The judge presiding has an obligation to advise defendants of these rights, to offer them an opportunity to exercise them and to "take such affirmative action as is necessary to effectuate them." (CPL 170.10[4][a]; see, Matter of Wood, 1991 Ann Report of NY Commn on Jud Conduct, at 82, 86).

In the Davenport case, respondent violated his obligation to respect and comply with the law and to be faithful to the law. (See, Rules Governing Judicial Conduct, 22 NYCRR 100.2[A], 100.3[B][1]). Respondent failed to advise Mr. Davenport of these important rights at arraignment or in subsequent proceedings. When the defendant asked for a public defender, respondent failed to give him an application or to take any other steps to ensure that he had representation. Indeed, respondent even discouraged him from getting a lawyer by telling him that he hadn't applied early enough, even though the law grants the right "at the arraignment and at every subsequent stage of the action." (CPL 170.10[3]).

Respondent also made a number of other fundamental errors in the Davenport case that gave the appearance that he was biased against the defendant. He suggested that Mr. Davenport begin paying restitution before the case had been adjudicated. He failed to consider a defense raised by the defendant and clearly denoted in the statute. Once an attorney had made an appearance and the case had been disposed of, respondent held a restitution hearing, even though the attorney was not present.

The facts conceded in Charge II indicate that respondent's failure to properly advise defendants of their rights is not limited to the Davenport case. In addition, he committed a number of other legal errors and ethical transgressions, even though he has more than 20 years of experience as a judge. It is a judge's responsibility to maintain professional competence in the law, and a judge -- lawyer or non-lawyer -- has an obligation to learn and obey ethical rules. (Matter of Meacham, 1994 Ann Report of NY Commn on Jud Conduct, at 87, 91).

A pattern of failing to advise defendants of constitutional and statutory rights is serious misconduct. (Matter of Reeves, 63 NY2d 105, 109; see, Matter of Sardino, 58 NY2d 286, 289). Even if not intentional, a series of legal errors indicates inattention to proper procedure and neglect of judicial duty. (Matter of Spiehs, 1988 Ann Report of NY Commn on Jud Conduct, at 222, 224-25).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Joy, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Ms. Hernandez, Judge Luciano and Judge Marshall were not present.

Dated: December 22, 1999

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

HERBERT B. RAY,

A Judge of the Family Court, Broome County.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
Thomas, Collison & Meagher (By Charles H. Collison) for Respondent

The respondent, Herbert B. Ray, a judge of the Family Court, Broome County, was served with a Formal Written Complaint dated October 8, 1998, alleging that he engaged in favoritism in the appointment of law guardians. Respondent filed an answer dated October 27, 1998.

On February 11, 1999, 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 proceedings and oral argument.

On February 25, 1999, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Broome County Family Court since 1986. In the 1985 election, he ran against attorney William K. Maney.

2. In 1993 and 1994, respondent appointed Mr. Maney and his law partner, Edward Boncek, as law guardians in a disproportionate number of cases, in violation of the Rules of the Appellate Division, Third Department, 22 NYCRR 835.3(b)(4), in that:

a) in 1993, respondent gave Mr. Maney 18 percent of the law-guardian appointments in the court and Mr. Boncek 6.4 percent of the cases; and,
b) in 1994, respondent gave Mr. Maney 17 percent of the appointments and Mr. Boncek 5.4 percent.

3. In these years, there were approximately 90 attorneys on the panel of law guardians.

4. Respondent frequently appointed Mr. Maney or Mr. Boncek from the bench, bypassing the system by which the court

clerk assigned law guardians on a rotating basis.

5. Early in respondent's tenure on the bench, the chief clerk and the deputy chief clerk had spoken to respondent about his practice of departing from the rotation of assignments; they advised respondent that they were receiving complaints from other attorneys that respondent was appointing certain attorneys, particularly Mr. Maney and Mr. Boncek, to a disproportionately high number of cases.

6. Beginning in the early 1990s, respondent received quarterly statements from the Appellate Division's Law Guardian Program which indicated that Mr. Maney and Mr. Boncek were receiving a disproportionately high number of assignments and a disproportionately high income from their work as law guardians in Family Court. In 1993, respondent awarded Mr. Maney $58,177 and Mr. Boncek $20,253 in fees. The average fee for all law guardians assigned by respondent that year was $4,434. In 1994, respondent awarded Mr. Maney $30,660 and Mr. Boncek $13,800; the average fee that year was $3,354.

7. By letter dated June 16, 1994, respondent's administrative judge questioned respondent's excessive appointments of Mr. Maney and Mr. Boncek. Judge Robert W. Coutant said that the pattern of excessive appointments might violate department rules and "suggests improper favoritism…."

8. In January 1995, Mr. Maney informed respondent that he would not oppose respondent for a new term as Family Court judge. Later, Mr. Maney and Mr. Boncek offered to help respondent obtain the cross endorsement of the Democratic party for re-election. Respondent accepted their offer.

9. Through 1995, respondent routinely certified for payment vouchers submitted by Mr. Maney and Mr. Boncek without adequately examining them to ensure that they were "fair and just," as he was required to certify. Had respondent adequately examined the vouchers, it would have been apparent that the attorneys were overbilling, since they regularly disregarded the requirement that they bill in tenths of hours and, instead, billed in hourly increments. At one point prior to 1995, respondent had questioned Mr. Boncek as to why he billed more out-of-court hours than other attorneys but failed to require Mr. Boncek to justify the time billed.

10. Because of respondent's negligence in approving the vouchers, Mr. Maney and Mr. Boncek were paid thousands of dollars in public monies for work that they had not performed.

11. In January 1996, respondent instituted a procedure whereby court clerks accounted for in-court time spent by law guardians in cases before respondent.

12. In May 1996, the Office of Court Administration began auditing the vouchers submitted by Mr. Maney and Mr. Boncek. The audits revealed that--between April 1, 1992, and December 31, 1995--Mr. Maney and Mr. Boncek had submitted vouchers that grossly overstated the number of hours that they had spent on cases and which billed for proceedings that they did not attend or for cases in which they were not the assigned law guardians. Some of the vouchers double-billed for work on cases. On a number of occasions, these attorneys submitted vouchers in which they billed for more in-court hours than the court was in session. The vast majority of the inflated vouchers had been approved by respondent.

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. 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 circumvented the normal procedure and appointed Mr. Maney and Mr. Boncek as law guardians in a disproportionate number of cases. He then failed to scrutinize their bills, permitting them to grossly inflate their charges and collect thousands of unearned dollars in public funds. The combination of these factors created the appearance that the lawyers were getting favored treatment from the judge.

Respondent is required to use his discretion in the appointment of law guardians in a "fair and impartial manner." (Rules of the Appellate Division, Third Department, 22 NYCRR 835.3[b][4]). The court had established a means of ensuring that this standard was upheld: law guardians were designated on a rotating basis.[*] Instead, respondent often appointed Mr. Maney or Mr. Boncek from the bench; from a panel of 90 lawyers, he gave them more than 20 percent of the cases in 1993 and 1994.

Under such circumstances, respondent had a special burden to ensure that their charges were "fair and just," as he was required to certify on their vouchers. Yet -- despite complaints from others on the panel of law guardians and from his administrative judge -- respondent failed to carefully inspect the bills of these two lawyers. Had he done so, it would have been evident that they were sometimes billing for work on cases to which they had not been assigned, were double-billing in some cases and were occasionally billing more in-court hours than court was in session. Even though he noticed that Mr. Boncek was billing for more in-court hours than other law guardians, respondent did nothing more than question him about it; he did not require the lawyer to justify the time, and he did not inspect the vouchers more closely.

Moreover, such laxity, in view of the political relationship of respondent and Mr. Maney, creates the appearance that his serious lack of oversight may have been politically motivated. The two were adversaries in respondent's first run for Family Court. As a result of respondent's excessive appointments of Mr. Maney and his law partner, they received more than $75,000 in 1993 and more than $40,000 in 1994 in court-ordered fees. This was followed by Mr. Maney's decision not to oppose respondent for a second term in 1995 and his subsequent offer of help in obtaining a cross endorsement when respondent came up for re-election. An appearance of favoritism in the making of judicial appointments "is no less to be condemned than is the impropriety itself." (Matter of Spector, 47 NY2d 462, at 466). Such an appearance undermines public confidence in the judiciary, and a judge must avoid creating such a situation. (Rules Governing Judicial Conduct, 22 NYCRR 100.2).

By reason of the foregoing, the Commission

[*] The rules allow for exceptions to be made by the judge when the merits dictate. The judge may consider the experience and qualifications of prospective law guardians, the nature and difficulty of the case or the need for continuity in successive proceedings involving the same minor or minors. (22 NYCRR 835.3[b][1], [2] and [3]). However, respondent has advanced no such justifications for assigning Mr. Maney and Mr. Boncek to a large proportion of the cases in his court.

determines that the appropriate sanction is censure.

Mr. Berger, Ms. Brown, Mr. Goldman, Ms. Hernandez, Judge Joy, Judge Newton, Mr. Pope and Judge Salisbury concur.

Judge Marshall dissents and votes to reject the Agreed Statement of Facts and refer the matter to a referee for a hearing.

Mr. Coffey and Judge Luciano were not present.

Dated: April 26, 1999

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 REMCHUK,

A Justice of the Howard Town Court, Steuben County .

APPEARANCES:

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

The respondent, Mary Remchuk, a justice of the Howard Town Court, Steuben County, was served with a Formal Written Complaint dated October 20, 1998, alleging that she presided over matters involving relatives. Respondent filed an answer on November 9, 1998.

On February 11, 1999, 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 February 25, 1999, 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 Howard Town Court since 1984.

2. On September 15, 1997, respondent went to the home of Douglas Remchuk immediately after an altercation had occurred between him and his wife, Brenda. Mr. Remchuk is the brother of respondent's husband. Respondent spoke with Douglas and Brenda Remchuk about the altercation.

3. On September 25, 1997, respondent arraigned Douglas Remchuk on a charge that he had violated an Order of Protection issued by Family Court inasmuch as he had engaged in the altercation with his wife on September 15, 1997. Respondent released her brother-in-law on his own recognizance.

4. On September 25, 1997, respondent ordered Mr. Remchuk to appear in Family Court the following morning. Respondent then disqualified herself from the case.

As to Charge II of the Formal Written Complaint:

5. On October 10, 1997, respondent issued a criminal summons to Brenda Remchuk on a charge of Assault, Third Degree, stemming from the altercation with Douglas Remchuk on September 15, 1997.

6. On October 14, 1997, respondent issued an Order of Protection against Brenda Remchuk and in favor of Douglas Remchuk.

7. On December 2, 1997, respondent arraigned Brenda Remchuk on the assault charge and released her on her own recognizance.

8. On December 2, 1997, respondent disqualified herself from the case.

As to Charge III of the Formal Written Complaint:

9. On January 20, 1998, respondent arraigned Douglas Remchuk on a charge of Assault, Third Degree, based on the allegations of Jordan Remchuk, who is Douglas Remchuk's daughter and respondent's niece by marriage. Respondent released Mr. Remchuk on his own recognizance.

10. On January 20, 1998, respondent disqualified herself from 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), 100.3(E)(1)(a) and 100.3(E)(1)(d). Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A judge's disqualification is mandatory when a party or a material witness to the proceeding is within the sixth degree of relationship to the judge or the judge's spouse or is married to such a relative. (Rules Governing Judicial Conduct, 22 NYCRR 100.3[E][1][d][i] and 100.3[E][1][d][iv]). Therefore, respondent should not have participated in any way in cases in which her brother-in-law, his wife and his daughter were parties or complaining witnesses. (See, Matter of Tyler, 75 NY2d 525; Matter of Bruhn, 1988 Ann Report of NY Commn on Jud Conduct, at 133; Matter of Pulver, 1983 Ann Report of NY Commn on Jud Conduct, at 157).

Her participation was wrong, even though respondent did not dispose of the cases. (See, Matter of Poli, 1995 Ann Report of NY Commn on Jud Conduct, at 124). Important decisions concerning counsel and bail are made at arraignment, and a judge's ability to make them impartially can be reasonably questioned when the cases involve family members. "The handling by a judge of a case to which a family member is a party creates an appearance of impropriety as well as a very obvious potential for abuse, and threatens to undermine the public's confidence in the impartiality of the judiciary." (Matter of Wait, 67 NY2d 15, at 18).

However, the fact that she disqualified herself before disposition of each of the matters does mitigate the misconduct. (See, Matter of Poli, supra, at 125).

It was also improper for respondent to participate in any way in the cases involving the altercation between her brother-in-law and his wife since respondent had personal knowledge of the situation. (See, Rules Governing Judicial Conduct, 22 NYCRR 100.3[E][1][a][ii]; Matter of Vonder Heide, 72 NY2d 658).

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

admonition.

Mr. Berger, Ms. Brown, Mr. Goldman, Ms. Hernandez, Judge Joy, Judge Marshall, Judge Newton, Mr. Pope and Judge Salisbury concur.

Mr. Coffey and Judge Luciano were not present.

Dated: March 29, 1999

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JAMES H. SHAW, JR.,

A Justice of the Supreme Court, Kings County .

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission
Godosky & Gentile, P.C. (By Richard Godosky) for Respondent

The respondent, James H. Shaw, Jr., a justice of the Supreme Court, 2d Judicial District, was served with a Formal Written Complaint dated February 24, 1999, alleging that he had engaged in offensive, undignified and harassing conduct toward two women in the court system. Respondent filed an answer dated April 16, 1999.

By Order dated March 30, 1999, the Commission designated the Honorable Richard D. Simons as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 6, 7 and 8, 1999, and the referee filed his report with the Commission on September 8, 1999.

Both parties submitted papers with respect to the referee's report. On October 28, 1999, 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 Supreme Court since 1977. He was a judge of the New York City Civil Court from 1968 to 1976.

2. Respondent hired Jacqueline D. Bland as his personal secretary in August 1985. She was 19 years old at the time. Ms. Bland worked for respondent until late 1997. Respondent had the power to hire and fire her.

3. Between October 1985 and November 1997, respondent engaged in offensive, undignified and harassing conduct toward Ms. Bland in that he:

a) repeatedly made explicit comments to her about the manner in which her clothes fit various parts of her body;

b) repeatedly hugged Ms. Bland, rubbed her back and touched her hand without her invitation or consent;

c) repeatedly asked Ms. Bland whether she enjoyed having sex;

d) repeatedly told Ms. Bland that her lips were "wide," "sexy," and "voluptuous";

e) in or about November 1985, in chambers, pulled Ms. Bland into his lap and kissed her on the mouth without her invitation or consent; Ms. Bland jumped up and left the room;

f) repeatedly told Ms. Bland that she had "big tits" and repeatedly made comments about her nipples;

g) on May 24, 1996, told Ms. Bland that, because she had lost weight, "If you didn't have large tits, then you would disappear";

h) while looking at her wedding pictures and referring to her breasts, remarked that her husband "would never go hungry";

i) on one occasion told Ms. Bland that, "from the neck down," she looked "voluptuous"; and,

j) in November 1997, told Ms. Bland that a woman's sole purpose is to make a man feel good in the bedroom.

4. Early in her tenure in respondent's office, Ms. Bland told him that she was young enough to be his granddaughter and asked how he would like it if someone touched his daughter or made her uncomfortable. She endured his remarks and touching for twelve years because she was concerned that no one would take her word over that of a judge. In November 1997, Ms. Bland told respondent that she was tired of his comments and his touching and remarked that he didn't make such comments to his law clerk. On November 24, 1997, she complained to the equal opportunity office of the Office of Court Administration and was transferred to another position shortly thereafter.

5. Paragraphs 4M, 4N and 4O of the Formal Written Complaint are not sustained and are therefore dismissed.

As to Charge II of the Formal Written Complaint:

6. 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 effective January 1, 1996]. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established. Paragraphs 4M, 4N and 4O of Charge I and Charge II are dismissed.

On or off the bench, a judge is held to high standards of conduct. (Matter of Aldrich, 58 NY2d 279, 283). Wherever he or she goes, a judge remains cloaked figuratively in the robes of judicial office. (Matter of Kuehnel, 49 NY2d 465, 469).

Respondent's uninvited touching of a woman in a professional setting and his continual remarks of a personal and sexual nature were inappropriate and demeaning.

(See, Matter of LoRusso, 1994 Ann Report of NY Commn on Jud Conduct, at 73; Matter of Doolittle, 1986 Ann Report of NY Commn on Jud Conduct, at 87). Such sexually harassing behavior is especially egregious. (See, Matter of Dye, 1999 Ann Report of NY Commn on Jud Conduct, at 93). It warrants severe sanction.

However, the purpose of the sanction of removal is not punishment but to protect the public by removing unfit incumbents from the bench. (See, Matter of Reeves, 63 NY2d 105, 111; Matter of Vonder Heide, 72 NY2d 658, 660). In this case, the Commission has taken into consideration that respondent is 76 years old and must leave office at the end of the year. (See, Judiciary Law § 115[2]; Matter of Agresta, 1985 Ann Report of NY Commn on Jud Conduct, at 109, 111, accepted, 64 NY2d 327; Matter of Bloom, 1996 Ann Report of NY Commn on Jud Conduct, at 65, 68).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Joy, Mr. Pope, Judge Ruderman and Judge Salisbury concur as to sanction.

Mr. Berger dissents only as to Paragraph 4M of Charge I and votes to sustain the allegation.

Ms. Brown dissents only as to Paragraphs 4M and 4O of Charge I and votes to sustain those allegations.

Mr. Coffey dissents only as to Paragraphs 4E, 4F and 4G of Charge I and votes to dismiss those allegations.

Mr. Pope dissents only as to Paragraphs 4I and 4J of Charge I and votes to dismiss those allegations.

Judge Salisbury dissents only as to Paragraphs 4A and 4E of Charge I and votes to dismiss those allegations.

Ms. Hernandez, Judge Luciano and Judge Marshall were not present.

Dated: November 8, 1999

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

LEON F. TAGGART,

A Justice of the Bath Town and Village Courts, Steuben County .

APPEARANCES:

Gerald Stern (John J. Postel and Seema Ali, Of Counsel) for the Commission
Rossettie, Rossettie & Martino (By Richard P. Rossettie) for Respondent

The respondent, Leon F. Taggart, a justice of the Bath Town Court and the Bath Village Court, Steuben County, was served with a Formal Written Complaint dated March 12, 1999, alleging that he made inappropriate personal comments during a criminal case. Respondent filed an answer dated April 7, 1999.

On May 28, 1999, 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 3, 1999, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Unified Court System since 1985.

2. On February 28, 1998, respondent presided over People v William Walker, in which the 16-year-old defendant was charged with Disorderly Conduct at Haverling High School.

3. While seated at the bench, respondent spoke to Henry Ballis, the director of a residence for boys in need of supervision who was appearing as the defendant's guardian. Referring to persons involved in the case, respondent said, "[T]his lady can be a bitch, and the teacher is an ass. He's the same one that my kid had a problem with a couple of years ago." The defendant, a student at Haverling High School, was seated in the courtroom and overheard respondent's remark.

4. By "this lady," respondent was referring to Marion Tunney, the principal of the high school; by "the teacher," he was referring to Dean Rossman, a math teacher at the school who was a witness to the incident that led to

the charge against the defendant.

5. Respondent wanted Mr. Ballis to know respondent's opinion of Ms. Tunney and Mr. Rossman. The comments were based on respondent's sole experience with them three years earlier. The principal had enforced a rule against non-students attending a school dance; the teacher and respondent had a disagreement concerning the participation of respondent's son in a scholastic sport.

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)(3). 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's personal experiences and views of two of the persons involved in a case before him had no place in the courtroom. His intemperate remarks cast doubt on his ability to impartially hear the case and, thus, compromised the proper administration of justice. (See, Matter of Going, 1998 Ann Report of NY Commn on Jud Conduct, at 129).

The language that he employed was unbecoming a judge, especially during a court proceeding. (See, Matter of Mahon, 1997 Ann Report of NY Commn on Jud Conduct, at 104).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Joy, Judge Newton and Mr. Pope concur.

Judge Luciano, Judge Marshall and Judge Salisbury were not present.

Dated: September 15, 1999

Statistical Analysis of Complaints

2000 Annual Report

New York State
Commission on Judicial Conduct

COMPLAINTS PENDING AS OF DECEMBER 31, 1998

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING								
NON-JUDGES								
DEMEANOR		17	16	11	4	1	6	55
DELAYS		1	1	3	0	1	0	6
CONFLICT OF INTEREST		4	4	2	0	0	1	11
BIAS		2	7	2	0	0	2	13
CORRUPTION		1	2	0	2	0	2	7
INTOXICATION		1	0	0	0	0	1	2
DISABILITY/QUALIFICATIONS		0	1	0	1	0	0	2
POLITICAL ACTIVITY		1	6	3	3	0	1	14
FINANCES/RECORDS/TRAINING		5	6	8	3	3	2	27
TICKET-FIXING		0	0	0	1	0	0	1
ASSERTION OF INFLUENCE		1	1	4	0	0	2	8
VIOLATION OF RIGHTS		9	16	12	8	2	5	52
MISCELLANEOUS		0	1	0	0	0	0	1
TOTALS		42	61	45	22	7	22	199

*Matters are "closed" upon vacancy of office for reasons other than resignation. "Action" includes determinations of admonition, censure and removal from office by the Commission since its inception in 1978, as well as suspensions and disciplinary proceedings commenced in the courts by the temporary and former commissions on judicial conduct operating from 1975 to 1978.

NEW COMPLAINTS CONSIDERED BY THE COMMISSION IN 1999

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	517							517
NON-JUDGES	168							168
DEMEANOR	102	42	8	5	0	0	2	159
DELAYS	45	7	1	0	1	0	0	54
CONFLICT OF INTEREST	22	10	3	0	0	0	0	35
BIAS	86	1	2	0	0	0	0	89
CORRUPTION	18	12	1	0	1	0	0	32
INTOXICATION	2	1	0	0	0	0	0	3
DISABILITY/QUALIFICATIONS	0	1	1	0	0	0	0	2
POLITICAL ACTIVITY	9	50	3	1	0	0	0	63
FINANCES/RECORDS/TRAINING	12	18	13	5	0	2	0	50
TICKET-FIXING	0	0	0	0	0	0	0	0
ASSERTION OF INFLUENCE	4	11	0	1	0	0	0	16
VIOLATION OF RIGHTS	195	25	7	3	0	0	0	230
MISCELLANEOUS	2	3	1	0	0	0	0	6
TOTALS	1182	181	40	15	2	2	2	1424

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ALL COMPLAINTS CONSIDERED IN 1999: 1424 NEW & 199 PENDING FROM 1998

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	517							517
NON-JUDGES	168							168
DEMEANOR	102	59	24	16	4	0	8	213
DELAYS	45	8	2	3	1	1	0	60
CONFLICT OF INTEREST	22	14	7	2	0	0	1	46
BIAS	86	3	9	2	0	0	2	102
CORRUPTION	18	13	3	0	3	0	2	39
INTOXICATION	2	2	0	0	0	0	1	5
DISABILITY/QUALIFICATIONS	0	1	2	0	1	0	0	4
POLITICAL ACTIVITY	9	51	9	4	3	0	1	77
FINANCES/RECORDS/TRAINING	12	23	19	13	3	5	2	77
TICKET-FIXING	0	0	0	0	1	0	0	1
ASSERTION OF INFLUENCE	4	12	1	5	0	0	2	24
VIOLATION OF RIGHTS	195	34	23	15	8	2	5	282
MISCELLANEOUS	2	3	2	0	0	0	0	7
TOTALS	1182	223	101	60	24	8	24	1622

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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	9628							9628
NON-JUDGES	2790							2790
DEMEANOR	2025	59	775	206	73	72	165	3375
DELAYS	925	8	88	43	14	12	16	1106
CONFLICT OF INTEREST	434	14	332	117	43	18	95	1053
BIAS	1307	3	188	37	23	14	20	1592
CORRUPTION	304	13	77	6	26	11	20	457
INTOXICATION	40	2	30	7	6	3	19	107
DISABILITY/QUALIFICATIONS	43	1	27	2	16	10	6	105
POLITICAL ACTIVITY	195	51	146	118	9	15	20	554
FINANCES/RECORDS/TRAINING	188	23	181	114	93	76	83	758
TICKET-FIXING	22	0	71	155	38	61	159	506
ASSERTION OF INFLUENCE	124	12	99	49	9	7	34	334
VIOLATION OF RIGHTS	1803	34	232	112	46	22	28	2277
MISCELLANEOUS	655	3	222	77	25	38	56	1076
TOTALS	20,483	223	2468	1043	421	359	721	25,718

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