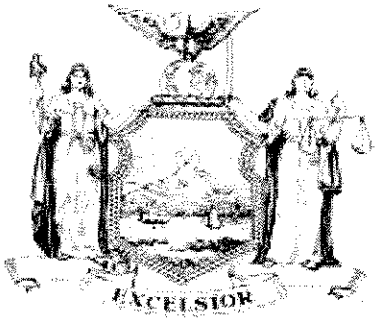
ANNUAL REPORT

2001

NEW YORK STATE



COMMISSION ON JUDICIAL CONDUCT

NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

* * *

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HON. TERRY JANE RUDERMAN

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MEMBER WHOSE TERM RECENTLY ENDED

HON. DANIEL W. JOY

* * *

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* * *

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March 1, 2001

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, 2000, through December 31, 2000.

Respectfully submitted,

Eugene W. Salisbury, Chair
On Behalf of the Commission

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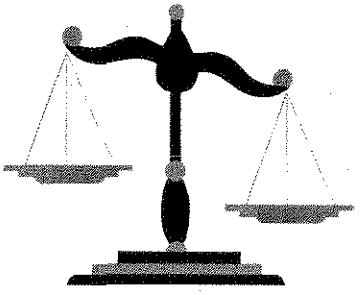
Record of Activities in 2000
And Commentary on Special Topics



2001 Annual Report

New York State
Commission on Judicial Conduct

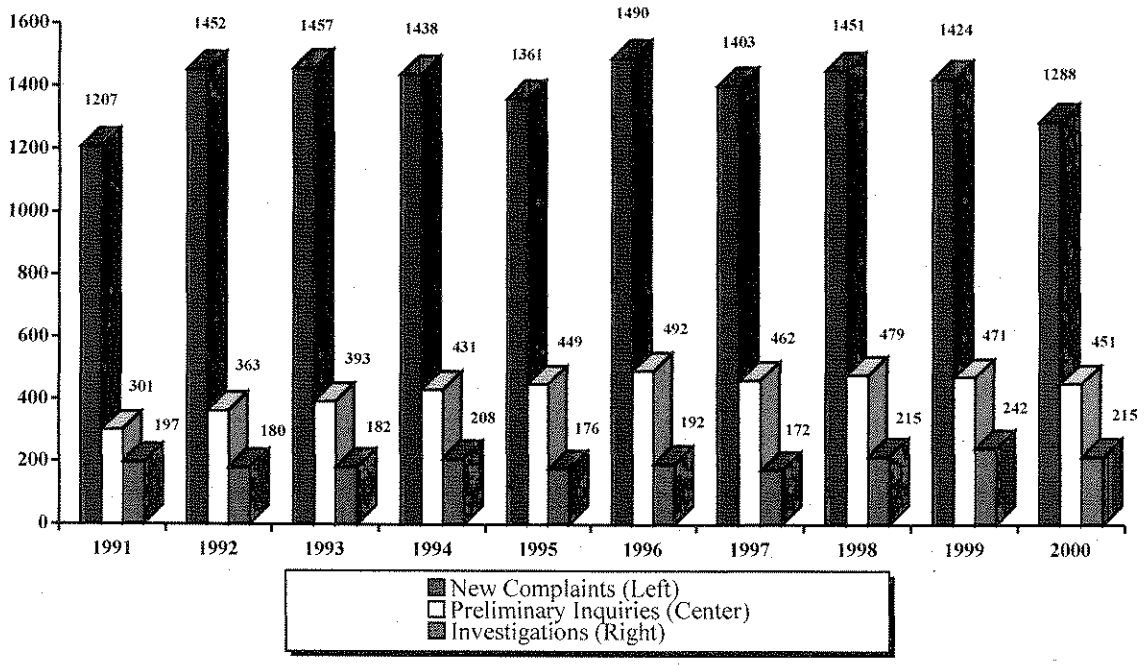
Introduction to the 2001 Annual Report

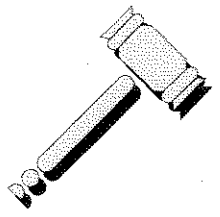
The New York State Commission on Judicial Conduct is the disciplinary agency designated by the State Constitution to review complaints of misconduct against judges of the State Unified Court System, which includes approximately 3,300 judges and justices. The Commission's objective is to enforce high standards of conduct for judges, who must be free to act independently, on the merits and in good faith, but also must be held accountable by an independent disciplinary system, should they commit misconduct. 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 26 years of our operation. In the last ten years, the Commission has averaged approximately 1400 new complaints, 430 preliminary inquiries and 200 full-fledged investigations. Indeed, in each of the last nine years, the number of incoming complaints has been more than double the 641 we received in 1978, while our budget has remained flat and our staff has decreased from 63 to 27 in that same period. The Commission's budget and need for additional investigators is discussed further at page 35.

This current Annual Report covers the Commission's activities in the year 2000.

Complaints, Inquiries & Investigations Since 1991





Action Taken in 2000

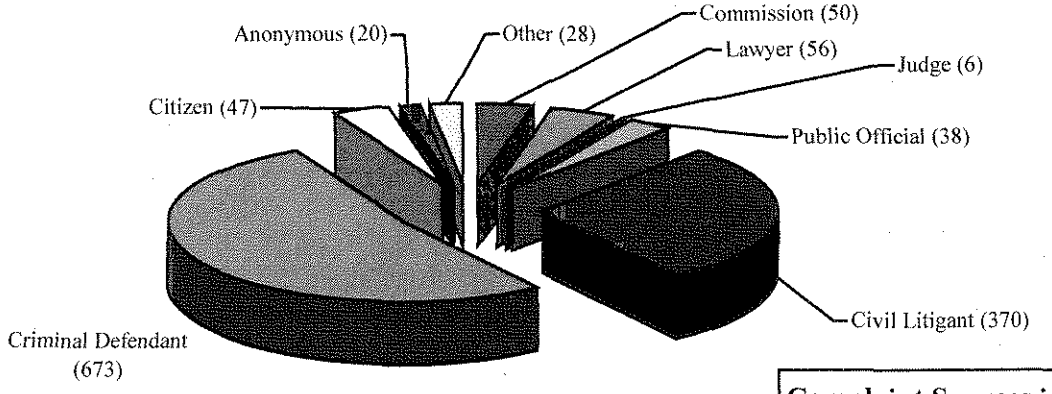
Following are summaries of the Commission's actions in 2000, including accounts of all public determinations, summaries of non-public decisions, and various numerical breakdowns of complaints, investigations and other dispositions.

Complaints Received

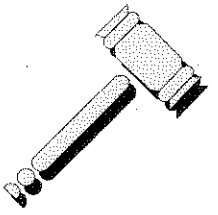
The Commission received 1288 new complaints in 2000. Preliminary inquiries were conducted in 451 of these, requiring such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts. In 215 matters, the Commission authorized full-fledged investigations. Depending on the nature of the complaint, an investigation may entail subpoenaing witnesses to testify and produce documents, assembling and analyzing various court, financial or other records, making court or field observations, and writing to or taking testimony from the judge.

New complaints dismissed upon initial review are those that 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.

A breakdown of the sources of complaints received by the Commission in 2000 appears in the following chart.



Complaint Sources in 2000

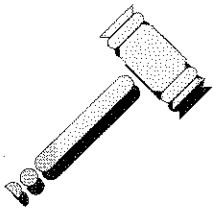


Preliminary Inquiries and Investigations

The Commission's Operating Procedures and Rules authorize "preliminary analysis and clarification" and "preliminary fact-finding activities" by Commission staff upon receipt of new complaints, to aid the Commission in determining whether full investigation is warranted. In 2000, staff conducted 451 such preliminary inquiries, requiring such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts.

During 2000, the Commission commenced 215 new investigations – the second largest number in its history. In addition, there were 183 investigations pending from the previous year. The Commission disposed of the combined total of 398 investigations as follows:

- 135 complaints were dismissed outright.
- 67 complaints involving 63 different judges were dismissed with letters of dismissal and caution.
- 7 complaints involving 7 different judges were closed upon the judges' resignation.
- 6 complaints involving 4 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.
- 2 complaints involving 2 judges were closed upon the judges' removal on other charges.
- 36 complaints involving 27 different judges resulted in formal charges being authorized.
- 145 investigations were pending as of December 31, 2000.



Formal Written Complaints

As of January 1, 2000, there were pending Formal Written Complaints in 40 matters, involving 32 different judges. During 2000, Formal Written Complaints were authorized in 36 additional matters, involving 27 different judges. Of the combined total of 76 matters involving 59 judges, the Commission made the following dispositions:

- 17 matters involving 13 different judges resulted in formal discipline (admonition, censure or removal from office).
- 6 matters involving 5 judges resulted in a letter of dismissal and caution after formal disciplinary proceedings that resulted in a finding of misconduct.
- 1 matter involving 1 judge resulted in a letter of dismissal and caution after formal disciplinary charges were withdrawn.
- 1 matter involving 1 judge was closed upon the judge's removal from office on other charges.
- 14 matters involving 10 judges were closed upon the judge's resignation.
- 5 matters involving 3 judges were closed upon vacancy of office due to reasons other than resignation, such as the judge's death, retirement or failure to win re-election.
- No matters were dismissed outright.
- 32 matters involving 26 different judges were pending as of December 31, 2000.

Summary of All 2000 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 – 2200,* ALL PART-TIME

	Lawyers	*Non-Lawyers*	*Total*
Complaints Received	114	232	346
Complaints Investigated	33	100	133
Judges Cautioned After Investigation	10	36	46
Formal Written Complaints Authorized	4	11	15
Judges Cautioned After Formal Complaint	1	2	3
Judges Publicly Disciplined	0	5	5
Formal Complaints Dismissed or Closed	1	11	12

*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	37	86	123
Complaints Investigated	10	15	25
Judges Cautioned After Investigation	1	1	2
Formal Written Complaints Authorized	1	2	3
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	1	2	3
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	173
Complaints Investigated	13
Judges Cautioned After Investigation	3
Formal Written Complaints Authorized	2
Judges Cautioned After Formal Complaint	1
Judges Publicly Disciplined	1
Formal Complaints Dismissed or Closed	1

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

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

Complaints Received	133
Complaints Investigated	8
Judges Cautioned After Investigation	1
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	1
Formal Complaints Dismissed or Closed	0

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

Complaints Received	11
Complaints Investigated	6
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	1
Judges Publicly Disciplined	1
Formal Complaints Dismissed or Closed	1

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

Complaints Received	26
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	16
Complaints Investigated	2
Judges Cautioned After Investigation	1
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	253
Complaints Investigated	26
Judges Cautioned After Investigation	9
Formal Written Complaints Authorized	6
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	2
Formal Complaints Dismissed or Closed	1

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

Complaints Received	27
Complaints Investigated	2
Judges Cautioned After Investigation	1
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	180

*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

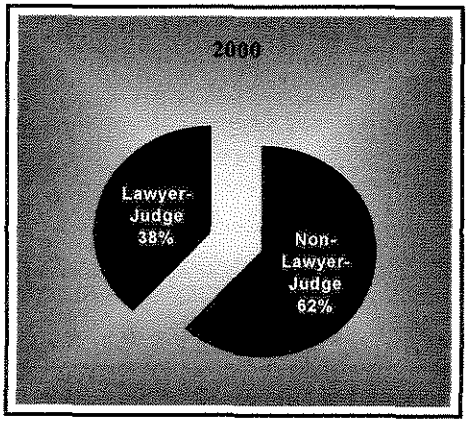
The Commission may not impose a public disciplinary sanction against a judge unless a Formal Written Complaint, containing detailed charges of misconduct, has been served upon the respondent-judge and the respondent has been afforded an opportunity for a formal hearing.

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.

Following are summaries of those matters that were completed and made public during 2000. The texts of the determinations are appended to this Report.

Overview of 2000 Determinations

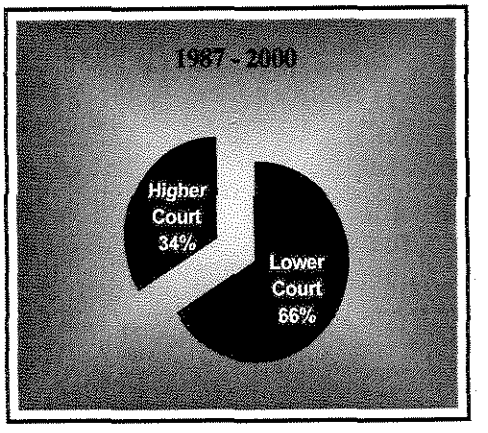
The Commission rendered 13 formal disciplinary determinations in 2000: four removals, one censure and eight admonitions. Five of the 13 respondents disciplined were non-lawyer judges, and eight were lawyer-judges. Five of the respondents were part-time town or village justices, and eight were judges of higher courts.



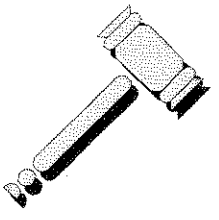
To put these numbers and percentages in some context, it should be noted that, of the 3,300 judges in the state unified court system, approximately 67% are part-time town or village justices. Approximately 82% of the town and village justices, comprising about 55% of all judges in the court system, are 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 2000, the number of public determinations, when categorized by type of court and judge, has roughly approximated the makeup of the judiciary as a whole: 150 (about 66%) have involved town and village justices, and 76 (about 34%) have involved judges of higher courts.

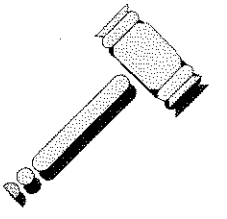
Excluding cases involving ticket-fixing, which was largely a town and village justice court phenomenon (since traffic matters are typically handled by administrative agencies in larger jurisdictions), the overall percentage of town and village justices disciplined since the Commission's inception (66%) is virtually identical to the percentage of town and village justices in the judiciary as a whole (67%).



Determinations of Removal



The Commission completed four disciplinary proceedings in 2000 that resulted in determinations of removal. The cases are summarized below.



Matter of Robert M. Corning, Sr.

The Commission determined on February 10, 2000, that Robert M. Corning, Sr., a part-time Justice of the Ovid Town Court, Seneca County, should be removed from office for *inter alia* deficiencies in his court accounts of nearly $3,000, failing to remit court funds in a timely manner to the State Comptroller, using the prestige of judicial office in a private dispute involving funeral bills to one of his relatives, and suspending a traffic defendant's driver's license because of his pique at the defendant's lawyer. Judge Corning is not a lawyer.

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

Matter of Thomas R. Buckley

The Commission determined on April 6, 2000, that Thomas R. Buckley, a part-time Justice of the Dannemora Town Court and Acting Justice of the Dannemora Village Court, Clinton County, should be removed from office for, *inter*

alia, denying defendants their right to counsel by failing to advise them of the right and by taking action against them without notice to their lawyers when he knew that they were represented; exhibiting bias before conviction by threatening defendants with jail and calling them names; disregarding basic requirements of law by jailing without bail defendants who were statutorily entitled to bail; summarily convicting individuals on Criminal Contempt charges when he concluded, without trial or guilty pleas, that they had violated some order of the court; convicting a defendant without notice three times on the same charge because the defendant allegedly did not complete a term of community service; requiring defendants to "pay" for their assigned counsel by performing community service; and sitting on cases in which he was the complaining witness. Judge Buckley is not a lawyer.

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

Matter of Robert N. Going

The Commission determined on December 29, 2000, that Robert N. Going, the full-time Family Court Judge of Montgomery County, should be removed from office for *inter alia* engaging in a course of "bizarre and erratic" conduct arising out of a personal relationship with his law clerk, which detracted from the dignity of his office, seriously disrupted the operations of the court and constituted an abuse of his judicial and administrative power, and for improperly rescinding an order terminating the suspension of the driver's license of a long-time friend of his. Judge Going is a lawyer.

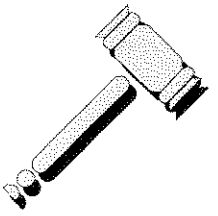
The judge requested review by the Court of Appeals, which suspended him from office, with pay, pending its decision.

Matter of Laura D. Stiggins

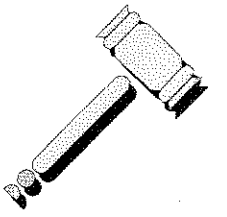
The Commission determined on August 18, 2000, that Laura D. Stiggins, a part-time Justice of the Dansville Town Court, Steuben County, should be removed from office for physically abusing a mentally incompetent patient in a nursing home, for which she was convicted of a misdemeanor for Assault in the Third Degree and Endangering the Welfare of an Incompetent Person. Judge Stiggins is not a lawyer.

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

Determinations of Censure



The Commission completed one disciplinary proceeding in 2000 that resulted in a determinations of censure. The case is summarized below.

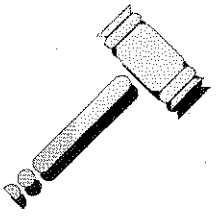


Matter of Kevin G. Young

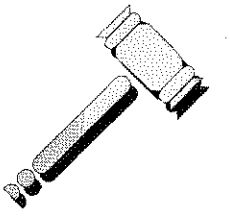
The Commission determined on December 29, 2000, that Kevin G. Young, a full-time Judge of the Syracuse City Court, Onondaga County, should be censured for *inter alia* asserting the prestige and influence of his judicial office on behalf of a friend by initiating *ex parte* communications with a Family Court hearing examiner who was hearing the friend's case. Judge Young is a lawyer.

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

Determinations of Admonition



The Commission completed eight disciplinary proceedings in 2000 that resulted in determinations of public admonition. The cases are summarized below.



Matter of Monroe B. Bishop

The Commission determined on January 10, 2000, that Monroe B. Bishop, a part-time Justice of the Hinsdale Town Court, Cattaraugus County, should be admonished for presiding over a case involving his niece and for issuing a criminal summons to secure the presence in court of a small claims defendant. Judge Bishop is not a lawyer.

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

Matter of E. David Duncan

The Commission determined on December 29, 2000, that E. David Duncan, a part-time Judge of the Albany City Court, Albany County, should be admonished for conveying the "unmistakable impression of bias"

against two traffic defendants, in part because one of them was issued a ticket for speeding in the judge's own neighborhood, and the second defendant was engaged to the first. Judge Duncan is a lawyer.

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

Matter of Walter W. Hafner, Jr.

The Commission determined on December 29, 2000, that Walter W. Hafner, Jr., a full-time Judge of the County Court, Oswego County, should be admonished for engaging in improper political activity in the course of his campaign for Judge of the County Court, in that he made an "unseemly" and "mean-spirited attack" on his opponent (the incumbent) for dismissing charges in specific cases that were described in sensational terms, and conveyed the impression he would treat defendants more harshly than the incumbent because he was "tired of seeing career criminals get a 'slap' on the wrist" – all in contravention of the Rules that state a judicial candidate may not "make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office" nor "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." Sections 100.5(A)(4)(d)(i) and (ii). Judge Hafner is a lawyer.

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

Matter of John C. Howell

The Commission determined on April 6, 2000, that John C. Howell, a part-time Justice of the Lansing Town Court, Tompkins County, should be admonished for asserting the prestige of his judicial office in an intemperate letter to another judge, seeking to advance the prosecutor's position in a criminal case pending before that other judge. Judge Howell is not a lawyer.

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

Matter of John N. Mullin

The Commission determined on September 25, 2000, that John N. Mullin, a full-time Judge of the District Court, Suffolk County, should be admonished for engaging in improper political activity in the course of his campaign for Judge of the District Court, in that he conveyed the mistaken impression that

he was an incumbent judge of that court, published campaign literature that appeared to commit him on abortion-related issues that come before the Court, and made a prohibited contribution to a political party. Judge Mullin is a lawyer.

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

Matter of Robert T. Russell, Jr.

The Commission determined on October 31, 2000, that Robert T. Russell, Jr., a full-time Judge of the Buffalo City Court, Erie County, should be admonished for failing over a seven-year period to file his mandatory financial disclosure statements in a timely manner, resulting in seven Notices to Cure and three Notices of Delinquency being issued against him by the Ethics Commission for the Unified Court System. Judge Russell is a lawyer.

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

Matter of Joseph P. Torraca

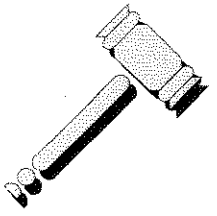
The Commission determined on November 7, 2000, that Joseph P. Torraca, a full-time Justice of the Supreme Court, Ulster County, should be admonished for continuing to participate in the management of a business after becoming a full-time judge, contrary to the Rule prohibiting a full-time judge from being a managing or active participant in any form of business organized for profit, and for presiding over cases without disclosing that one of the lawyers involved was making lease or mortgage payments to him. Judge Torraca is a lawyer.

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

Matter of Penny M. Wolfgang

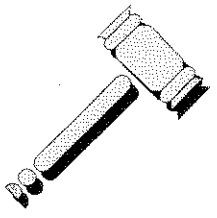
The Commission determined on July 5, 2000, that Penny M. Wolfgang, a full-time Justice of the Supreme Court, Erie County, should be admonished for playing a role in a commercial motion picture movie for which she was compensated, contrary to the Rule prohibiting a full-time judge from engaging in business activity or accepting private employment from a business organized for profit, and contrary to an Advisory Opinion (96-134) that specifically prohibits a judge from acting in a commercial movie. Judge Wolfgang is a lawyer.

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



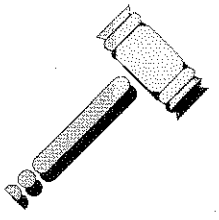
Dismissed or Closed Formal Written Complaints

The Commission disposed of 15 Formal Written Complaints in 2000 without rendering public discipline. Ten complaints were closed upon the resignation of the respondent-judge. Two complaints were closed upon the expiration of the judge's term of office. One complaint was closed upon the judge's removal from office on other charges. One complaint was closed upon the judge's death. One complaint was withdrawn and the judge was sent letter of dismissal and caution.



Matters Closed Upon Resignation

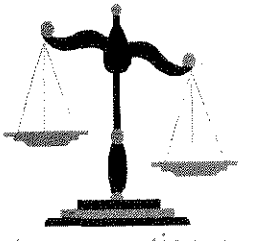
Seventeen judges resigned in 2000. Seven of them resigned while under investigation and ten resigned while under formal charges by the Commission. The matters pertaining to these judges were closed. By statute, the Commission may continue an inquiry for a period of 120 days following a judge's resignation, 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

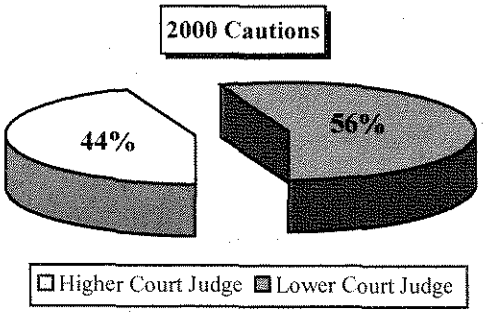
Pursuant to Judiciary Law Section 44(10), the Commission may refer matters to other agencies. In 2000, the Commission referred 29 matters to the Office of Court Administration, typically dealing with relatively isolated instances of delay, poor records keeping or other administrative issues. In addition, three matters were referred to attorney disciplinary committees.

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 that 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 2000, the Commission issued 68 letters of dismissal and caution, 63 of which were issued upon conclusion of an investigation and five of which were issued upon disposition of a Formal Written Complaint. Forty-nine town or village justices were cautioned, including 11 who are lawyers. Nineteen judges of higher courts – all lawyers – were cautioned. The caution letters addressed various types of conduct, as the examples below indicate.



The Commission amended its Operating Procedures and Rules in November 2000, to distinguish between cautionary letters sent to judges in lieu of formal disciplinary proceedings and those cautionary letters sent upon completion of formal disciplinary proceedings. The former are still entitled "Letter of Dismissal and Caution." The latter are now called "Letter of Caution."

Improper *Ex Parte* Communications. Four judges were cautioned for having unauthorized *ex parte* communications on substantive matters in pending cases, such as privately interviewing a witness, consulting with the arresting officer in a traffic case or attempting to persuade another judge that he did not have authority to entertain certain appeals.

Political Activity. Seven 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 a certain specifically-defined "window period" 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, *inter alia* avoiding pledges or promises of conduct if elected, and avoiding misrepresentations of their or their opponent's qualifications. Two judges were cautioned in

2000 for making small contributions to a political campaign outside the permissible window period. Two others were cautioned for attending political events outside the window period. Two others were cautioned for disseminating campaign literature that was misleading as to their or their opponents' qualifications. One judge was cautioned for attempting to involve another judge in his campaign.

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 2000, seven judges were cautioned for relatively isolated conflicts of interest, such as presiding over a case involving a business associate or a personal friend without disclosing the relationship, and doing work for a civic organization that is likely to appear in the judge's court.

Inappropriate Demeanor. Fourteen judges were cautioned for discourteous, intemperate or otherwise offensive demeanor toward those with whom they deal in their official capacity, usually in relatively isolated circumstances rather than as part of a discernible pattern.

Poor Administration; Failure to Comply with Law. Fifteen judges were cautioned for failing to meet certain mandates of law, either out of ignorance or administrative oversight. For example, five town justices were cautioned for such oversights as failing to keep adequate records of cases on the court calendar, or failing to follow proper procedures in preparing a record from which the losing party could appeal.

Another town justice issued an arrest warrant without proper underlying documentation. One full-time judge was cautioned for failing to file mandatory quarterly reports of pending cases in a timely fashion with the Office of Court Administration.

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 insuring proper notice to the parties before conducting proceedings, and 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 2000, three judges were cautioned for such activity, such as promoting a local organization's interest in particular legislation before the local town board.

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 2000, one part-time judge was cautioned for representing a client who brought a lawsuit against the town in which the judge presides.

Audit and Control. Eight 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 judge was cautioned for participating in a charitable organization's fund-raising drive, which is prohibited by the Rules. Another judge was cautioned for failing to file an annual mandatory financial disclosure form in a timely manner.

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).

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 2000, the Court decided the two matters summarized below.

Matter of J. Kevin Mulroy v. State Commission on Judicial Conduct

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 Court of Appeals unanimously accepted the Commission's determination and removed Judge Mulroy from office in an opinion dated April 6, 2000. 94 NY2d 652 (2000).

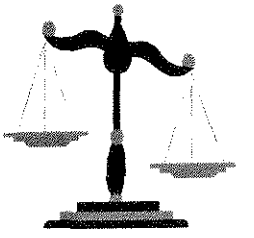
The Court held that the judge's "racially charged assessment of the [murder] case not only devalued the victim's life but also cast doubt on the integrity and impartiality of the judiciary and, by itself, puts into question petitioner's fitness to hold judicial office." *Id.* at 656. The Court held that the judge's anti-Italian language, "whether provoked or in jest, manifested an impermissible bias that threatens public confidence in the judiciary." *Id.* at 657.

The Court also upheld the false character testimony charge and, as to the rape case, found that the judge exhibited "unseemly conduct during jury deliberations" when "as a Judge [he] was duty-bound to preserve the decorum of the courtroom." *Id.* at 656.

Matter of Robert M. Corning, Sr., v. State Commission on Judicial Conduct

The Commission determined on February 10, 2000, that Robert M. Corning, Sr., a part-time Justice of the Ovid Town Court, Seneca County, should be removed from office for *inter alia* deficiencies in his court accounts of nearly $3,000, failing to remit court funds in a timely manner to the State Comptroller, using the prestige of judicial office in a private dispute involving funeral bills to one of his relatives, and suspending a traffic defendant's driver's license because of his pique at the defendant's lawyer. Judge Corning is not a lawyer.

The Court of Appeals accepted the Commission's determination and removed Judge Corning from office in an opinion dated December 14, 2000. 95 NY2d 450 (2000).



The Court sustained all of the specifications charged against Judge Corning and found that his "actions both on and off the bench demonstrate 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 454.

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.

POLITICAL ACTIVITY

Last year's Annual Report featured a special 20-page section on political activity, covering a wide range of topics, including such obligations as closing a judicial campaign committee within six months of the election, avoiding participation in campaigns and political activity other than the judge's own campaign for elective judicial office, and avoiding misrepresentations about oneself or one's opponent. In this Report, we suggest updated language as to two facets of the political activity rules.

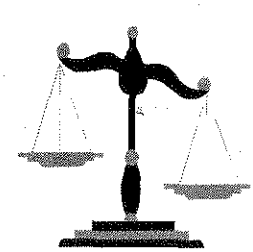
Defining "Candidate"

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.

Under the rule, a judge becomes a candidate when he or she makes a public announcement of candidacy or initiates fund-raising activity. A judge who is not a candidate may not 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.



Some full-time judges satisfy the "public announcement" requirement of the rule by issuing a press release. Others

put their intentions in writing to the Chief Administrative Judge. Still others form campaign committees and initiate fund-raising activities without making any formal announcement of candidacy.

The Office of Court Administration might consider clarifying further the definition of "candidacy" by establishing a more uniform method by which a judicial candidacy may be publicly announced.

Closing a Campaign and Disposing of Unexpended Funds in a Timely Manner

By reading two sections of the Rules conjunctively, both the Advisory Committee on Judicial Ethics and the Commission have repeatedly held that the Rules prohibit the use in subsequent campaigns of funds raised for a prior campaign.

The "Window Period" and Permissible Political Activity

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 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.

Section 100.5 of the Rules *inter alia* authorizes the creation during the window period of a committee to raise funds and otherwise conduct campaign activities on behalf of the judicial candidate.

Since a judicial candidate or campaign committee 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 constitutes *prima facie* evidence of prohibited political activity by the judge. Maintaining campaign funds for an unreasonable period compounds the appearance of political activity.

As far back as 1987, 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 87-02, 88-59, 88-89, 89-152, 90-6, 91-12, 91-87, 92-68, 92-94, 92-104, 93-04 and 93-15.

Judges should close their committees and distribute surplus funds in an appropriate manner within the six-month post-election or nomination window period.

In a recent case, *Matter of Mullen*, (Feb. 9, 2001), the Commission publicly admonished a Court of Claims judge who used unexpended funds from his unsuccessful 1996 campaign for Supreme Court in unsuccessful attempts for the same office in 1997, 1998 and 1999. While it is no excuse in the face of so many published Advisory Opinions to claim that the prohibition is not known or understood, it would make sense for the Rule to explicitly state what the Advisory Opinions have rightly been saying for 14 years, not only as to the manner in which unexpended campaign funds may not be spent (e.g. in a subsequent campaign) but as to the manner in which they may (e.g. returned *pro rata* to donors, or on OCA-approved purchases of court equipment).

If for any reason a judge anticipates difficulty in properly disposing of unexpended funds and closing a campaign committee within the window period, he or she should advise the Chief Administrator of the Courts so that prompt steps may be taken to comply with the Rules. Moreover, to help make certain that all judges understand the necessity of closing campaign committees in a timely fashion and disposing of excess funds in an appropriate manner, we recommend that the Chief Administrative Judge develop guidelines that explicitly cover this subject. We recommend further that the Chief Administrative Judge undertake a review of campaign expenditures, particularly during the post-election portion of the window period, and issue guidelines covering expenditures that may be inappropriate, as discussed in the section below.

Inappropriate Personal
Use of Campaign Funds

In opining that judges must return unexpended campaign funds on a *pro* rata basis to donors or spend the surplus on equipment or supplies for the court, the Advisory Committee on Judicial Ethics has unequivocally stated that a judge may not use campaign funds for his or her own personal benefit. A judge could not, for example, use surplus campaign funds to buy a computer for use at home, even if the equipment were to be used on court-related business. Nor should a judge spend excess campaign funds on charitable causes, however worthy they may be. *See* Advisory Opinions 88-89, 90-06, 91-12, 92-68 and 92-94.

In *Matter of Sulman*, 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 personal use. In conjunction with the censure, the judge turned over the equipment to the Office of Court Administration.

Notwithstanding the unambiguous guidelines offered by the Advisory Opinions and precedents such as the *Sulman* case, as recently as this past year, the Commission has become aware of other situations in which judicial candidates have spent surplus campaign funds for such personal purposes as paying bar association dues, or for tickets to a bar association's or charitable organization's fundraising event. In view of this recurring problem, the Commission recommends that the Chief Administrative Judge consolidate and disseminate appropriate guidelines to the entire judiciary as to the appropriate manner in which to expend surplus campaign funds.

Misrepresentations and Improper Pledges of Future Conduct by Judicial Candidates

In last year's Annual Report, we commented extensively on the problem of judicial candidates who misrepresent their own credentials or improperly disparage their opponents, and the related problem of judicial candidates who inappropriately make pledges of future conduct in office. Unfortunately, the problem persists, and several new cases have come to the Commission's attention in the past year, warranting our commenting on the subject again.

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 three years, the Commission publicly admonished eight judges in whole or in part for violating these and other campaign provisions.

In *Matter of Hafner* in this Annual Report, a successful County Court candidate ran advertisements that said, "Are you tired of seeing career criminals get a 'slap' on the wrist? So am I...." Moreover, Judge Hafner approved of campaign literature that criticized the judicial record of his opponent and said, "Soft judges make hard criminals."

In *Matter of Mullin* in this Annual Report, a District Court judge running for Supreme Court misleadingly gave the impression that he was already on the

Supreme Court by distributing ads that *inter alia* said "John N. Mullin Supreme Court Justice." He also misrepresented the name of his campaign committee by stating that his ads were "Paid for by the Committee to Re-Elect Judge John Mullin" when the campaign committee was named "The Committee to Elect John N. Mullin to the Supreme Court." Moreover, Judge Mullin's ads referred to him as "The Authentic Right To Life Judicial Candidate" and proclaimed him to support "Life...The Verdict For All Of God's Children" and stated that "Judge Mullin Needs And Deserves The Support Of All Who Cherish Life." These statements appeared to commit Judge Mullin on abortion-related issues that come before the Court, and as such were improper.

In *Matter of John R. LaCava*, 2000 Annual Report 123, 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 defendants, implied that he would jail all those charged with crimes, rather than judge the merits of individual cases, and misrepresented the extent of his involvement in certain cases of local notoriety. For example, the ads stated that he had "refused to let the Wal-Mart armed robbers, the Berk murderer, the Amherst rapist or the Summer Stalker out on low bail"; they inaccurately implied that he had presided over cases involving the "Berk murderer" and the "Amherst rapist"; they stated that he "convicted 88% of those charged with alcohol-related offenses" and depicted drawings of jail cell windows and bars; and they 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.

Several matters are now pending before the Commission involving allegedly inappropriate campaign statements by a judge. These include not only situations in which the judicial candidate inflates his or her own credentials, or improperly denigrates an opponent's, but also situations in which representatives of a judicial candidate make the misleading or otherwise inappropriate comments.

Section 100.5(A)(4)(a) of the Rules requires that a judicial candidate "shall maintain the dignity appropriate to judicial office an act in a manner consistent with the integrity and independence of the judiciary." Section 100.5(A)(4)(b) of the Rules requires a judicial candidate to "prohibit employees and officials who serve at the candidate's pleasure," and "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."

A judicial candidate whose campaign makes improper statements cannot avoid responsibility by asserting that he or she delegated the function to campaign officials. The candidate is responsible for explicitly or implicitly suggesting how the candidate would rule as a judge or for inappropriate attacks on other candidates. Judicial candidates are not only obliged to assure compliance with the Rules by those in their employ or under their direction or control, they are also required under Section 100.5(A)(5) of the Rules to designate "responsible per-

sons to conduct campaigns for the candidate." The purpose of this section is to maintain high standards of conduct in judicial campaigns and to place responsibility with the judicial candidates.

Attending a Political Affair Without Making Inquiry as to The Political Nature of the Event

Section 100.5(A)(1)(g) of the Rules prohibits a judge from attending political gatherings of any type at a time when he or she is not a candidate for elective judicial office. Moreover, a judge may not participate in a non-political event that is sponsored by a political organization. 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 contest 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.

In the past several years, the Commission has cautioned several judges who claimed to have unwittingly attended events that they did not know were political until they arrived. Typically, the judge claims to have received an oral invitation from a friend or colleague to attend a dinner or cocktail party and, without making any further inquiry as to the nature or purpose of the event, agrees to go. Thereafter, the judge professes shock upon discovering that the event was politically sponsored and he or she, as a non-candidate, should not be present.

In issuing these cautions, the Commission has pointed out that a judge must make inquiries as to the sponsors and purposes of such events, and otherwise take special precautions against being at political functions when they are not candidates. The judge should ask who the sponsors are, ask to see the invitation, inquire as to whether his or her name is being used as an honoree or in some other way to attract participants, and determine whether the event is a fund-raiser.

Concerns Raised by the Increased Use of Computer Technology in Judicial Campaigns

An increasing number of judicial candidates and their campaign committees are making use of computer technology in connection with their campaigns – from keeping electronic data on contributors to creating campaign web sites on the Internet. In so doing, they must take special care to adhere to the Rules Governing Judicial Conduct and to avoid even the appearance of impropriety that may result from an unintentional violation of the Rules.

For example, it is relatively common for a web site to include electronic links to

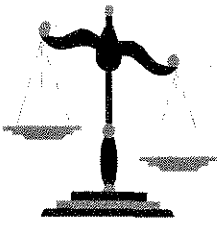
other web sites. Yet since the Rules prohibit a judicial candidate from participating in political activity other than his or her own campaign, it would violate the Rules for a judicial candidate's web site to include electronic links to the web site of another candidate or a political organization. This is especially so since the judicial candidate would have no control over the content of the linked web site.

The Commission has begun to receive complaints in this regard. A recent matter concerned a judicial candidate whose web site included a link to the statewide web site of his political party. Activating the link (with one click of the computer mouse) automatically took the viewer to the state party's web site, then in a few seconds (with no additional clicks) to a web page for the party's US Senate candidate, then a few seconds later to a web page for the party's presidential candidate. Such a link may create the impression that the judicial candidate is supporting those candidates whose web sites are directly or indirectly linked to his or her own.

It would appear no less a violation of the Rules for a judicial campaign to promote a political party or another candidate via the Internet as by a more traditional means, such as circulating promotional literature put out by the party unrelated to the judicial candidate.

The Commission takes this opportunity to remind judicial candidates that they are bound by the Rules regardless of the medium, and they are obliged to make sure their campaign managers and representatives know the Rules and strive to abide by them, even as to the content of web sites and the delivery other electronic services.

The Commission also recommends that the Office of Court Administration note this concern in its regular education and training programs for judges.



FAVORITISM AND THE APPEARANCE OF FAVORITISM IN FIDUCIARY APPOINTMENTS

The authority to appoint referees, receivers, conservators and guardians is among a judge's most sensitive powers and can result in lucrative fees to the recipients. 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 appointment power is subject to particular scrutiny by the public and the press, perhaps because it is potentially so lucrative for those who receive such appointments.

Several major newspapers reported last year on a letter written by two attorneys that has ignited controversy over the way fiduciary appointments are made in Kings County (Brooklyn). The attorneys complained that, for political reasons, lucrative fiduciary assignments they were accustomed to receiving were now being awarded to others. The essence of the allegation is that judges, who in Kings County are by and large enrolled Democrats, 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 suggested that this problem is not limited to Kings County and in fact exists 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 other parts of the state.

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 on fiduciary appointments 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 committee on fiduciaries explores vari-

ous alternatives to the present system. In view of heightened interest in this topic, we take this opportunity to examine certain facets of the current rules and practices.

The Rules on Fiduciary Appointments

Part 36 of the Rules of the Chief Judge governs certain fiduciary and related appointments by judges, including the appointment of receivers, guardians, guardians ad litem, court evaluators and attorneys for allegedly incapacitated persons.[1] Among the highlights of the Rule are the following.

- The Chief Administrator of the Courts is required to provide for and maintain lists of persons and institutions seeking such appointments, and to make such lists available to appointing judges. Judges "may select" appointees from the list, or indicate on the record their reasons for appointing someone who is not on the lists.

- No one shall be appointed who is a relative within six degrees of relationship to the judge or judge's spouse, although the professional associates of such relatives may be appointed.

- Every fee over $2,500 must be explained in writing by the judge making the award.

- Every appointee is required to file a notice of the appointment within ten days with the Chief Administrator of the Courts and certify to the judge that the notice has been filed. A list of all such appointments is periodically published.

- Appointments may not go to full-time court employees.

Part 36 is also intended to limit the number of appointments of a certain value that any one appointee may receive in a 12-month period. Specifically, no person or institution shall be eligible to receive more than one appointment within a 12-month period, calculated from the date of appointment, where the "compensation anticipated to be awarded to the appointee exceeds the sum of $5,000." However, the appointing judge may make exceptions, in writing, due to "unusual circumstances of continuity of representation or familiarity with a case."

Appearing to Elude
The Spirit of the Rules

As with many rules of conduct, reasonable built-in exceptions can be abused or result in at least an appearance of impropriety. The judge who does not "anticipate" that a particular appointment would generate a fee larger than $5,000 may end up awarding additional appointments to the same fiduciary within a 12-month period, some or all of which may ultimately result in fees greater than

[1] Part 36 does not apply to certain types of appointments, such as: law guardians appointed pursuant to Section 243 of the Family Court Act; guardians ad litem pursuant to Section 403-a of the Surrogate's Court Procedures Act or the Mental Hygiene Legal Service; relatives or those with a legal interest in certain individuals (such as an infant or incapacitated person); a nonprofit organization performing social services; a physician where emergency medical services are required; a bank or trust company as a depository for funds; an appointment without compensation; and a person or institution whose appointment is required by law.

$5,000 – and in some cases, much greater than $5,000. In such situations, the Commission has heard from judges who said that, at the time of the appointment, the judge was unaware and could not anticipate that the fees would be $5,000 or more. An apparent method to avoid the intent of the rule is to approve fees of slightly under $5,000 to the same lawyer in numerous cases, thereby avoiding disqualification from a substantially more lucrative appointment within the same 12-month period.

As to the general requirement that appointees come from a recognized list maintained by the Chief Administrator of the Courts, it is simple enough to get on the list. 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 may raise ethical issues even where the appointee is qualified for the job. Yet except in the most extreme situation, establishing a case of favoritism is most difficult, particularly where the appointee is qualified as well as politically prominent. 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.

While a judge's relative may not receive a fiduciary appointment, the relative's partner or associate may, which usually means that the fee awarded to the appointee will be shared by the judge's relative when the law firm makes its regular financial distributions. And of course both the legal community and the public at large might reasonably conclude that the appointment was awarded in the first place because the judge's relative was associated with the appointee, particularly if the resulting fee was substantial.

These and other potential elusions of the rules would appropriately be examined and addressed by the Chief Judge's committee on fiduciaries.

Secondary Appointments

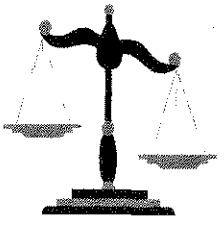
Part 36 of the Rules also specifies that it is the judge who must appoint "persons designated to perform services for a receiver ... upon evaluation by that judge of the qualifications of candidates for appointment."

In March 2000, Chief Administrative Judge Jonathan Lippman issued a memorandum to all judges of the Supreme, County and Surrogate's Courts, reminding them that the judge, not the receiver, is empowered to make these secondary appointments. It is widely known that the secondary appointments become lucrative political "plums" that political leaders and other insiders seek. By delegating control over these secondary appointments to those appointed in the first instance, the judge may convey the appearance that the courts have implicitly authorized political appointments.

Judge Lippman's memorandum generated debate. For example, the Association of Justices of the City of New York

argued that it is impractical for a judge to appoint plumbers and others who would perform services for the receiver, particularly if the service was in response to an emergency or other immediate need. This raised an issue as to the scope of the rule on secondary appointments and whether it was even intended to apply to plumbing services and the like, or more logically was limited to secondary *fiduciary* appointments such as attorneys and accountants.

This is another area in which the Chief Judge's committee on fiduciaries might recommend more specific language in the Rules, so as to define explicitly the kinds of secondary appointments intended to be covered.



Practice of Criminal Law by Part-time Judges

There are approximately 2200 part-time judges and justices throughout New York State's court system, roughly 400 of whom are lawyers. Section 100.6(B) of the Rules sets forth certain prohibitions on those part-time jurists who also practice law.

For example, judges may not practice law in their own courts. Nor may they practice anywhere else in the county before another part-time lawyer-judge. Nor may they permit their partners and associates, or the partners and associates of their co-judges, to practice in their court.

So long as these conditions are met, a part-time lawyer-judge is not prohibited from handling any particular type of case. In certain circumstances, conflicts or the appearance of conflict may arise when a part-time lawyer-judge presides over a case involving a lawyer who is the judge's adversary in another case elsewhere in the county.

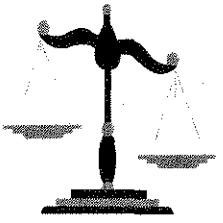
For example, it would not be unusual for a part-time judge to represent the defendant in a criminal case in a neighboring town court. This would make the judge and the local District Attorney adversaries. Yet assistants to that same District Attorney would contemporaneously be prosecuting criminal cases in the judge's own court before that very judge.

Such a circumstance could very well change the tenor and dynamic of the professional relationship between judge and prosecutor. Would there be a subtle pressure on the prosecutor to be less aggressive with an adversary who would be deciding cases involving that same prosecutor in a nearby court? Would the judge be influenced in deciding a criminal case by the fact that the prosecutor is or may be his or her adversary in another proceeding?

Even where both judge and prosecutor act responsibly and honorably, there may be an appearance of impropriety. Prosecution and defense attorneys alike might

reasonably wonder whether the judge's pro-prosecution rulings were motivated by an interest in currying favor with the prosecutor for his own client, or whether the judge's pro-defense rulings might be in retaliation for the prosecutor's hard line against the judge's client in another court.

At various times in the past, there have been rules prohibiting a part-time judge from practicing criminal law in his or her own county. The Commission recommends that the Office of Court Administration revisit this issue and consider amending the Rules in this regard.



THE NEED FOR STATEWIDE GUIDELINES ON ELIGIBILITY FOR ASSIGNED COUNSEL

In 1989, 1992 and 1995, the Commission's Annual Reports discussed in great detail the disparate practices throughout New York State with respect to assigning counsel to indigent defendants. In 1994, the New York State Defenders Association published a major study – Determining Eligibility for Appointed Counsel in New York State – concerning the practice as to assigned counsel in each of New York's 62 counties. Although the Office of Court Administration has devoted increased training and education resources to addressing the judicial obligation to assign counsel to the indigent, problems persist.

If a defendant is financially unable to retain counsel, the court must assign counsel on request.[2] In New York State's larger cities, assigned representation of indigent defendants is usually available as early as arraignment, making it unlikely that a defendant would spend significant time in jail without the benefit of counsel. In smaller communities, however, indigent defendants may be incarcerated for long periods without representation and sometimes may be precluded from legal representation because of archaic financial guidelines.

Except in traffic infraction cases, New York State law requires that all defendants, including those charged with violations, be advised of their right to assigned counsel.[3] CPL Section 170.10(4) requires a judge not only to advise the defendant at arraignment of the right to free representation if eligible but also to "take such affirmative action as is necessary to effectuate the defendant's right to assigned counsel." County Law Section

[2] CPL §§170.10, 180.10; County Law §722; *People v. Witenski*, 15 NY2d 392 (1965); *Scott v. Illinois*, 440 US 367 (1979).

[3] County Law §722-a; CPL §170.10(3)(c), and practice commentary by Joseph W. Bellacosa; *People v. Ross*, 67 NY2d 321 (1986); *People v. Van Florcke*, 467 NYS2d 298 (App Term 9th & 10th Jud Dist, 1983); *Davis v. Shepard*, 399 NYS2d 836 (Sup Ct Steuben Co 1977).

722 requires each county to have an approved plan to provide legal services to those who cannot afford an attorney and that the judge assign counsel in accordance with the county plan. These provisions of law provide a dual responsibility for assigning counsel for the indigent. The judge must effectuate the defendant's rights, and there must be a county plan under which the judge can act.

Over the years, and as recently as this past year, the Commission has become aware of situations in which counsel has not effectively been provided, either because judges are unaware of their obligation to do so in certain types of cases, such as city code violations or other non-traffic violations punishable by incarceration, or because of deficiencies in the county's assigned counsel plan.

The Court of Appeals has held that a pattern of denying constitutional rights, including the right to counsel, constitutes serious misconduct and can result in removal of the judge from office. *Matter of Sardino*, 58 NY2d 286 (1983); *Matter of Reeves*, 63 NY2d 105 (1984). *See also, Matter of Austria*, 1996 Annual Report 51. While a judge may rely on the public defender's office or other assigned counsel plan administrator as to determining eligibility, the judge may not effectively delegate that responsibility by failing to make proper inquiries or otherwise effectuate the defendant's right to counsel.

Among the complications confronting judges in this process are the disparate eligibility standards from county to county and the varying means by which eligibility determinations are made.

The State Defenders Association Report notes that many counties have not revised their income guidelines for years. Although eligibility is supposed to be based on liquid assets – and property such as a home or a car needed to sustain employment are exempt – nearly every county's eligibility questionnaire requests information on home and car ownership. Numerous counties base their eligibility decisions on the parent assets of minor children, despite statutory and constitutional prohibitions to the contrary.

In one situation brought to the Commission's attention last year, a judge, based on an interpretation of written guidelines from the public defender, sought to deny assigned counsel to a minor defendant solely because the defendant's parents owned a home. Even if it were permissible to include parental assets in a determination of eligibility, further inquiry would have been required, to determine, for example, whether the parents refused to support the child, or whether they had enough equity in the house to sustain a loan against it, or whether the value of the house was sufficient to cover legal fees. In other cases, defendants whose income is below the poverty level are denied counsel. Some defendants are denied assigned counsel because they are employed or expect to be employed soon – without any effort by the judge to ascertain whether the defendant can afford to retain counsel, notwithstanding the employment or prospective employment.

In some counties, indigent defendants are required to pay their court-assigned counsel for legal services rendered. For example, in one county, upon being assigned to an indigent defendant, the Public Defender has advised the defendant and the court that he will apply for reimbursement by the defendant at the conclusion of the case. He apparently has made such post-proceeding applications against his own clients, evidently *ex parte*, before town or village justices. In what appears to be a typical result, the court issues an order that recognizes the defendant is unable to retain counsel and is eligible for public defender services, but nevertheless directs the defendant to reimburse the Public Defender. The Public Defender thereafter advises is client that, pursuant to the order, he or she may pay on the installment plan.

In another county, the county's eligibility application states that the applicant "agrees to repay the County ... for money expended on my behalf during the course of my defense."

Such practices, which seem punitive and sometimes so broadly open-ended as to intimidate defendants, may contravene the spirit and letter of the right-to-counsel law. It seems anomalous for the court to declare that a defendant is indigent and entitled to assigned counsel, only to order that same defendant to pay for such legal services. Indeed, in *Matter of Buckley* (in this Annual Report), the Commission publicly disciplined a judge for *inter alia* requiring defendants to pay for assigned counsel.

Varying practices throughout the state require closer scrutiny and the development of uniform standards for both determining eligibility and effectuating the right to assign counsel. It would appear to be beneficial for judges to be advised of the specific standards and their obligations to make certain that defendants who cannot afford to retain counsel are provided with counsel. It has been the Commission's experience that some judges take inadequate steps to safeguard the important right to counsel. The Commission recommends that the Office of Court Administration augment its already substantial training and education work in this area by taking the lead in such an educational effort.

The Commission's Budget

In numerous recent Annual Reports, we have called attention in this space to the fact that the Commission has been persistently and acutely underfunded and understaffed, for at least a decade. As a result, it has been seriously challenged in its endeavor to fulfill its constitutional mandate, *i.e.* to investigate allegations of judicial misconduct and, where appropriate, take disciplinary action against judges.

In fiscal year (FY) 1978-79, the Commission's budget of $1.64 million supported a full-time staff of 63, including 21 lawyers and 18 investigators.

Currently, after more than a decade of serious cutbacks, the Commission's budget of about $2 million supports a staff of 27, including only nine attorneys, and six full-time and one part-time investigators. In contrast, while the California Commission on Judicial Performance also has a staff of 27, it has 16 attorneys and nearly twice the annual budget (i.e. $3.7 million), even though California has significantly fewer judges and handles fewer complaints than New York.

COMPARING THE NEW YORK & CALIFORNIA COMMISSIONS

	NUMBER OF JUDGES	COMPLAINTS (ANNUALLY)	NUMBER OF ATTORNEYS	TOTAL STAFF	ANNUAL BUDGET
California	1,950	1000-1100	16	27	$3.7 million
New York	3,300	1300-1450	9	27	$1.9 million[4]

As a result of staff and funding shortages, investigations take longer and are not as comprehensive as they should be and once were. Because of budget cutbacks, the time it takes to conclude a complex case in which a full hearing is held (*i.e.*, from intake to final disposition) has gone from 20 months to 26 months. The Commission itself only meets seven or eight times a year, instead of 12 times a year as it did when funding was adequate. Yet the number of com-

[4] As a result of recently negotiated cost-of-living allowances for all State employees, the Commission received an additional $137,000 to cover such mandated costs.

plaints handled by the Commission has more than doubled – from 641 in 1978 to 1288 in 2000 – and in seven of the last nine years, the total exceeded 1400.

The Commission's immediate goal for the next fiscal year was for a modest increase in its budget of $232,000, enough to restore three investigator positions (for an agency total of 9½), pay for mandatory salary increases and cover certain essential non-personal service expenses that we otherwise could not afford (e.g. equipment upgrades, in-state investigative field travel, etc.). While this would represent only half the number of investigators on staff two decades ago, it would alleviate the pressures on an overburdened staff and result in more prompt and thorough investigations statewide.

The Governor's Proposed Budget for FY 2001-02 calls for status quo financing of the Commission. Other than contractually mandated salary increases, there will be no new funding. Notwithstanding submission of a detailed memorandum highlighting our need for at least three additional investigators, we will apparently be funded at a level that will permit us only to maintain our current staffing and operations, which will not likely allow us to reduce the time it takes to conclude a complex matter.

Responsible Budget Management

Since its inception 26 years ago, 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.

Our record of fiscal prudence was underscored by an exhaustive audit in 1989 by the State Comptroller, which 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.

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 26 years ago. More than 500 judges have been publicly disciplined for judicial misconduct, more than 1000 have been confidentially cautioned, and more than 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. All but two of the nine attorneys on staff have been with the Commission for more than 15 years, providing a professional continuity free of political interference.

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. It is time now to restore our budget to a level appropriate to our responsibility and our record.

Budget Figures, 1978 to Present

Fiscal Year	Annual Budget	Complaints Received†	New Investigations	Staff Attorneys*	Investigators on Staff	Total Staff
1978-79	$1,644,000	641	170	21	18 f/t	63
≈	≈	≈		≈	≈	≈
1988-89	$2,224,000	1109	200	9	12 f/t, 2 p/t	41
1989-90	$2,211,500	1171	195	9	9 f/t, 2 p/t	41
1990-91	$2,261,700	1184	212	9	8 f/t	37
1991-92	$1,827,100	1207	197	8	7 f/t	32
1992-93	$1,666,700	1452	180	8	6 f/t, 1 p/t	26
1993-94	$1,645,000	1457	182	8	4 f/t, 1 p/t	26
1994-95	$1,778,400	1438	208	8	4 f/t, 1 p/t	26
1995-96	$1,584,100	1361	176	8	3 f/t, 1 p/t	21
1996-97	$1,696,000	1490	192	8	2 f/t, 2 p/t	20
1997-98	$1,736,500	1403	172	8	2 f/t, 2 p/t	20
1998-99	$1,875,900	1451	215	9	6 f/t, 1 p/t	27**
1999-2000	$1,947,500	1426	242	9	6 f/t, 1 p/t	27**
2000-01	$1,911,800‡	1288	215	9	6 f/t, 1 p/t	27**
2001-02	$2,113,300 ††	--	--	9	6 f/t, 1 p/t	27**

* Number includes Clerk of the Commission, who does not investigate or litigate cases.
** Number includes two part-time staff.
‡ Cost-of-living allowances negotiated mid-year for all State employees resulted in an additional $137,000 to cover such mandated costs.
† Complaint figures are calendar year (Jan. 1 – Dec. 31); Budget figures are fiscal year (Apr. 1 – Mar. 31).
†† Proposed.

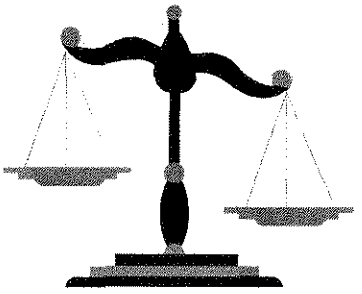
Conclusion

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

Respectfully submitted,

EUGENE W. SALISBURY, CHAIR
HENRY T. BERGER
JEREMY ANN BROWN
STEPHEN R. COFFEY
LAWRENCE S. GOLDMAN
CHRISTINA HERNANDEZ
DANIEL F. LUCIANO
FREDERICK M. MARSHALL
KAREN K. PETERS
ALAN J. POPE
TERRY JANE RUDERMAN

APPENDIX



Biographies of Commission Members and Attorneys
Roster of Referees Who Served in 2000
The Commission's Powers, Duties & History
Text of the Rules Governing Judicial Conduct
Text of 2000 Determinations
Statistical Analysis of Complaints

2001 Annual Report

New York State
Commission on Judicial Conduct

BIOGRAPHIES OF COMMISSION MEMBERS

There are 11 members of the Commission on Judicial Conduct. The Governor appoints four members, the Chief Judge of the Court of Appeals appoints three members, and each of the four leaders of the Legislature appoints one member.

The Governor's four appointees must include a judge or justice of the unified court system, an attorney, and two who are neither judges nor members of the bar. The Chief Judge's three appointees must all be judges; one must be a justice of the Appellate Division, one must be a town or village court justice, and one must be a judge other than on the Court of Appeals or Appellate Division. The leaders of the Legislature may appoint attorneys or non-attorneys, but they may not appoint judges.

APPOINTING AUTHORITY	COMMISSION MEMBER	EXPIRATION OF TERM
Governor	**Jeremy Ann Brown**, CASAC	March 31, 2001
Governor	**Christina Hernandez**, MSW	March 31, 2002
Governor	**Hon. Daniel F. Luciano** Appellate Division, Second Dept.	March 31, 2003
Governor	**Hon. Frederick M. Marshall** Retired Supreme Court Justice, Erie Co.	March 31, 2004
Chief Judge	**Hon. Eugene W. Salisbury** Village Justice of Blasdell, Erie Co.	March 31, 2001
Chief Judge	**Hon. Karen K. Peters** Appellate Division, Third Dept.	March 31, 2002
Chief Judge	**Hon. Terry Jane Ruderman** Court of Claims, Westchester Co.	March 31, 2004
Assembly Speaker	**Lawrence S. Goldman**, Esq.	March 31, 2002
Assembly Minority Leader	**Alan J. Pope**, Esq.	March 31, 2001
Senate President Pro Tem	**Stephen R. Coffey**, Esq.	March 31, 2003
Senate Minority Leader	**Henry T. Berger**, Esq.	March 31, 2004

Honorable Eugene W. Salisbury, *Chair of the Commission*, 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.

Henry T. Berger, Esq., is a graduate of Lehigh University and New York University School of Law. He is in private practice in New York City, concentrating in labor law and election law. 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. Mr. Berger chaired the Commission for ten years, 1990-2000.

Jeremy Ann Brown, CASAC, 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 was 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. She has traveled to both Pennsylvania and Washington, DC, to endorse legislation for improved parole guidelines. 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. He is in private practice in New York City, concentrating in white-collar criminal defense. 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 First 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 National Association of Criminal Defense Lawyers, 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, MSW, is a Board Member of the New York State Crime Victims Board, appointed by Governor George E. Pataki in 1995 and again in 2001. She received a Bachelor of Arts from Buffalo State College, a Masters in Social Work Management from the School of Social Welfare, State University of New York at Albany and a Certificate of Graduate Study in Women and Public Policy from the 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 School of Social Welfare, pursuing a PhD in Social Work. Ms. Hernandez is a former Fellow of the Center for Women In Government. Her assignment as a Fellow was to serve as a Legislative Assistant at the New York State Department of Environmental Conservation and assist in the research and development of policy regarding environmental justice. Ms. Hernandez served as a Member of the New York State

Commission on Domestic Violence Fatalities and the New York State Police Minority Recruitment Task Force. A native of New York City, she now resides in the Capital Region.

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 has served as Chief Trial Assistant in the Erie County District Attorney's office, Senior Erie County Court Judge, President of the New York State County Judges Association, Supreme Court Justice of the State of New York, and President of the State Association of Supreme Court Justices. Justice Marshall has served as Administrative Judge of the Eighth Judicial District and Administrative Justice of the Narcotics Court in the Fourth Judicial Department. In addition to his 30 year tenure in the judiciary, Justice Marshall has been an instructor in constitutional law at the State College at Buffalo, Chairman of the Advisory Council of the Political Science Program at Erie Community College, Chairman of the

New York State Bar Association Judicial Section, and has been designated Outstanding Citizen of the Year by the Buffalo News. In 1989 the Bar Association of Erie County presented Justice Marshall with the Outstanding Jurist Award. The University of Buffalo Alumni Association has conferred upon him its Distinguished Alumni Award. He served as a First Lieutenant in the Infantry in World War II. Justice Marshall and his wife have three sons and live in Orchard Park, New York, and Bradenton, Florida.

Honorable Karen K. Peters is a graduate of George Washington University and New York University School of Law. She was appointed a Justice of the Appellate Division, Third Department, in 1994. In 1992, she became the first woman elected to the Supreme Court in the Third Department. Her judicial career began with her election to the Ulster County Family Court in 1983. Prior to taking the bench, Justice Peters was in the private practice of law and served as an Assistant District Attorney in Dutchess County. She was counsel to the State Division of Alcoholism and Alcohol Abuse from 1979 to 1983, when she became director of the State Assembly Government Operations Committee in 1983. She also served as an assistant professor at the State University of New York at New Paltz.

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, Treasurer 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.

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 was a Fulbright Scholar to Armenia in 1994, teaching graduate courses and lecturing on constitutional law 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, and the Board of Directors of the Civic Education Project.

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.

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.

Vickie Ma, *Staff Attorney*, is a graduate of the University of Wisconsin at Madison and Albany Law School, where she was Associate Editor of the Law Review. Prior to joining the Commission staff, she served as an Assistant District Attorney in Kings County.

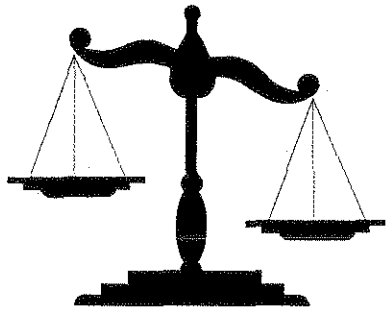
Clerk of the Commission

Jean M. Savanyu, *Clerk of the Commission*, is a graduate of Smith College and the Fordham University School of Law (cum laude). She joined the Commission's staff in 1977 and served as Senior Attorney from 1987 to 2000, when she was appointed Clerk of the Commission. 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.

REFEREES WHO SERVED IN 2000

Referee	City	County
Mark S. Arisohn, Esq.	New York	New York
William I. Aronwald, Esq.	White Plains	Westchester
William C. Banks, Esq.	Syracuse	Onondaga
Joseph A. Barrette, Esq.	Syracuse	Onondaga
Patrick J. Berrigan, Esq.	Niagara Falls	Niagara
A. Vincent Buzard, Esq.	Rochester	Monroe
Jay C. Carlisle, Esq.	White Plains	Westchester
Bruno Colapietro, Esq.	Binghamton	Broome
Joan L. Ellenbogen, Esq.	New York	New York
Robert L. Ellis, Esq.	New York	New York
Vincent D. Farrell, Esq.	Mineola	Nassau
Paul A. Feigenbaum, Esq.	Albany	Albany
Maryann Saccomando Freedman, Esq.	Buffalo	Erie
Douglas S. Gates, Esq.	Rochester	Monroe
Thomas F. Gleason, Esq.	Albany	Albany
Hon. Bertram Harnett	New York	New York
Ann Horowitz, Esq.	Albany	Albany
Michael J. Hutter, Esq.	Albany	Albany
Hon. Janet A. Johnson	White Plains	Westchester
H. Wayne Judge, Esq.	Glens Falls	Warren
Robert M. Kaufman, Esq.	New York	New York
C. Bruce Lawrence, Esq.	Rochester	Monroe
Stanford G. Lotwin, Esq.	New York	New York
James C. Moore, Esq.	Rochester	Monroe
John J. Poklemba, Esq.	Albany	Albany
Peter Preiser, Esq.	Schenectady	Schenectady
Roger W. Robinson, Esq.	New York	New York
Laurie Shanks, Esq.	Albany	Albany
Hon. Felice K. Shea	New York	New York
Milton Sherman, Esq.	New York	New York
Shirley A. Siegel, 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
Nancy F. Wechsler, Esq.	New York	New York
Michael Whiteman, Esq.	Albany	Albany

The Commission's Powers, Duties & History



2001 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

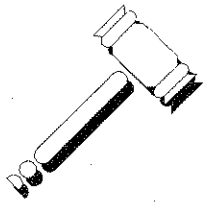
The State Commission on Judicial Conduct is the disciplinary agency constitutionally designated to review complaints of judicial misconduct in New York State. The Commission's objective is to enforce the obligation of judges to observe high standards of conduct while safeguarding their right to decide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

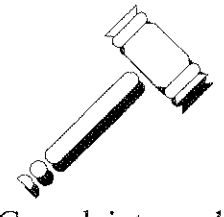
The Commission is composed of 11 members serving four-year terms. Four members are appointed by the Governor, three by the Chief Judge of the Court of Appeals, and one by each of the four leaders of the Legislature. The Constitution requires that four members be judges, at least one be an attorney, and 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.

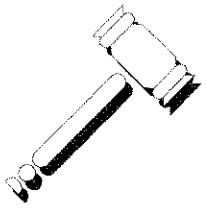
The types of complaints that may be investigated by the Commission include improper demeanor, conflicts of interest, violations of defendants' or litigants' rights, intoxication, bias, prejudice, favoritism, gross neglect, corruption, certain prohibited political activity and other misconduct on or off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

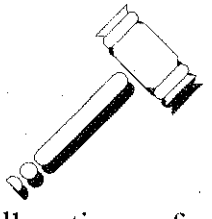
If the Commission finds after an investigation that the circumstances so warrant, it will direct its Administrator to serve upon the judge a Formal Written Complaint containing specific charges of misconduct. The Formal Written Complaint institutes the formal disciplinary proceeding. After receiving 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

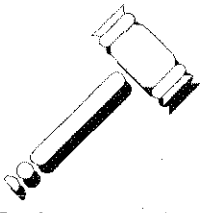
The Temporary State Commission on Judicial Conduct was established in late 1974 and commenced operations in January 1975. The temporary Commission had the authority to investigate allegations of misconduct against judges in the state unified court system, make confidential suggestions and recommendations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

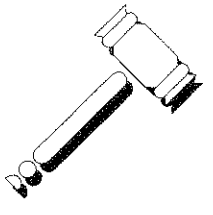
- 15 judges were publicly censured;
- 40 judges were privately admonished;
- 17 judges were issued confidential letters of suggestion and recommendation.

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.



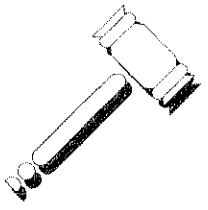
Continuation from 1978 to 1980 of Formal Proceedings Commenced by the Temporary and Former Commissions

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

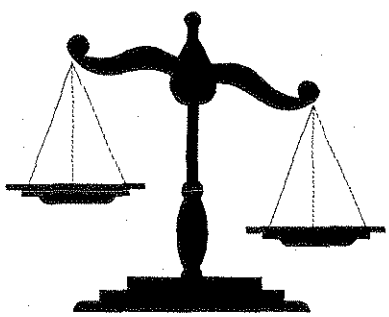
Since January 1975, when the temporary Commission commenced operations, 27,006 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 21,556 (80%) were dismissed upon initial review or after a preliminary review and inquiry, and 5450 investigations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

- 2603 were dismissed without action after investigation;
- 1117 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;
- 373 were closed upon vacancy of office by the judge other than by resignation;
- 738 resulted in disciplinary action; and
- 177 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



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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;

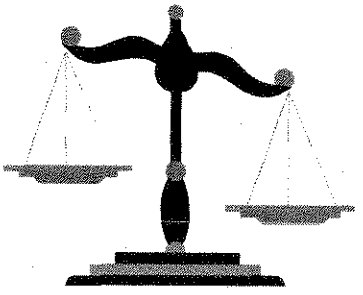
(4) may accept private employment or public employment in a federal, state or municipal department or agency, provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties.

(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 2000 Determinations



2001 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 **MONROE B. BISHOP**, A
JUSTICE OF THE HINSDALE TOWN COURT, CATTARAUGUS COUNTY.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Williams & Associates (By Mark S. Williams) for Respondent

The respondent, Monroe B. Bishop, a justice of the Hinsdale Town Court, Cattaraugus County, was served with a Formal Written Complaint dated September 29, 1999, alleging two charges of misconduct. Respondent filed an answer dated October 22, 1999.

On November 29, 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 December 16, 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 Hinsdale Town Court since 1995.

2. In September 1997, respondent presided over People v Diana E. Dutton, in which the defendant was charged with Speeding. The defendant is respondent's niece.

3. Ms. Dutton pleaded guilty to a reduced charge on September 17, 1997. With the consent of the prosecution, respondent imposed a $35 fine and a $15 surcharge.

As to Charge II of the Formal Written Complaint:

4. On October 19, 1995, respondent issued an information subpoena requiring Douglas Finnerty, a judgment debtor, to respond to written questions in connection with a small claims default judgment granted to Mark Welles on February 17, 1995.

5. On February 1, 1996, respondent issued a criminal summons, ordering Mr. Finnerty to appear in court on a charge of "False Swearing On Information Subpoena," even though no such charge exists and no accusatory instrument had been filed in the court. Respondent made up the charge in order to get Mr. Finnerty into court for

having failed to make payments on the small claims judgment.

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(E)(1)(d)(i). Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A judge's disqualification is mandatory when a party is within the sixth degree of relationship to the judge or the judge's spouse. (Rules Governing Judicial Conduct, 22 NYCRR 100.3[E][1][d][i]). Thus, respondent should not have presided over and disposed of a case in which his niece was the defendant. "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).

It was also improper for respondent to use a criminal summons to secure the presence in court of a defendant in a small claims case. Respondent's fabrication of a charge upon which to base the criminal summons was egregious. (See, Matter of Hamel, 88 NY2d 317, 318-19).

In mitigation, we note that respondent has been cooperative in this proceeding and has conceded that his conduct was improper. (See, Matter of Cunningham, 1995 Ann Report of NY Commn on Jud Conduct, at 109, 110).

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

All concur.

Dated: January 10, 2000

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

IN THE MATTER OF THE PROCEEDING PURSUANT TO
SECTION 44, SUBDIVISION 4, OF THE JUDICIARY LAW, IN
RELATION TO **THOMAS R. BUCKLEY**, A
JUSTICE OF THE DANNEMORA TOWN COURT AND
ACTING JUSTICE OF THE DANNEMORA VILLAGE COURT, CLINTON COUNTY.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
Honorable Thomas R. Buckley, pro se

The respondent, Thomas R. Buckley, a justice of the Dannemora Town Court and the Dannemora Village Court, Clinton County, was served with a Formal Written Complaint dated March 25, 1999, alleging nine charges of misconduct. Respondent answered by letter dated March 30, 1999.

By Order dated April 26, 1999, the Commission designated Travis H.D. Lewin, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 20, 21 and 22 and August 2, 1999, and the referee filed his report with the Commission on November 16, 1999.

Each party submitted papers with respect to the referee's report. Oral argument was waived.

On February 4, 2000, 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 Dannemora Town Court since 1987 and acting justice of the Dannemora Village Court since 1989. He has successfully completed all training sessions required by the Office of Court Administration.

2. On August 13, 1996, Craig L. Bowman was charged with Harassment, Second Degree, on the complaint of his wife. He was arraigned before respondent, who issued an Order of Protection and released him on his own recognizance. Respondent assigned an attorney to represent Mr. Bowman and told him that he would have to perform community service for 50 hours to "pay" for the attorney's services.

3. On September 12, 1996, Mr. Bowman was charged with Criminal Contempt, Second Degree, for violating the Order of Protection. He was arraigned by respondent, who again released him in his own custody.

4. On October 19, 1996, Mr. Bowman's wife again alleged that he had violated the Order of Protection, and Mr. Bowman was

again charged with Criminal Contempt, Second Degree, a misdemeanor.

5. On October 20, 1996, he was arraigned before respondent. At the arraignment, respondent angrily threatened to put Mr. Bowman "so far back" in jail that no one would find him. Respondent used the word "fuck" and told Mr. Bowman to stop "screwing around." Although respondent had known Mr. Bowman as a local resident for many years and had no reason to believe that he would not reappear in court, he ordered him committed to jail without bail. CPL 530.20(1) requires that bail be set on a misdemeanor. Mr. Bowman's assigned counsel, Frank Zappala, was not present. Respondent knew that he was required to set bail or order the release of defendants charged with misdemeanors.

6. On January 16, 1997, in satisfaction of the Criminal Contempt charges, respondent gave Mr. Bowman a conditional discharge and ordered him to serve 150 hours of community service.

7. On January 19, 1997, the probation department complained to respondent that Mr. Bowman had not reported for community service. On February 27, 1997, Mr. Bowman pleaded guilty to Criminal Contempt, Second Degree, and respondent sentenced him to four weekends in jail. Before being admitted to jail, Mr. Bowman was required to have a test for tuberculosis. Respondent gave him a paper which erroneously stated that the tests were given on Tuesdays, when, in fact, they were given on Mondays. When Mr. Bowman inquired about taking the test on Tuesday, March 4, 1997, he was told that he had missed it. Thus, he could not begin his jail sentence as scheduled on Friday, March 7, 1997.

8. Mr. Zappala called respondent to explain that Mr. Bowman could not report to the jail. Respondent issued a bench warrant for his arrest and recorded in his docket that Mr. Bowman was charged with Criminal Contempt, Second Degree.

9. On March 10, 1997, Mr. Bowman appeared before respondent without counsel. The defendant explained why he had not reported for the TB test, but respondent angrily said that he was not taking "the fucking blame" and committed him to jail in lieu of bail.

10. Respondent then asked another attorney, Stephen A. Johnston, to represent Mr. Bowman.

11. On March 13, 1997, Mr. Bowman and Mr. Johnston appeared in court. Mr. Johnston objected to respondent arraigning Mr. Bowman inasmuch as respondent was the complaining witness on the Criminal Contempt charge. Respondent refused to recuse himself and said that he felt that Mr. Bowman should do additional jail time. However, he granted an adjournment so that Mr. Johnston could make an application to county court. Respondent released Mr. Bowman the following morning.

12. On October 22, 1997, respondent dismissed the charge with the consent of the District Attorney's Office.

As to Charge II of the Formal Written Complaint:

13. On June 9, 1996, Eric S. Hulkow, who was then 18 years old, was charged with Driving While Intoxicated and Failure to Keep Right. He appeared before respondent. Without provocation, respondent called him a "con man" and a "finagler." Respondent

and Mr. Hulkow did not know one another before his court appearance.

14. Mr. Hulkow pleaded guilty to Driving While Ability Impaired. On July 20, 1996, respondent gave him a Conditional Discharge, requiring 100 hours of community service.

15. In October 1996, Mr. Hulkow pleaded guilty in the Town of Ellenburg to a charge alleging that he possessed a can of beer at the community-service work site, a State Police barracks.

16. On October 8, 1996, respondent recorded in his docket that Mr. Hulkow was charged with Criminal Contempt based on a violation of his Conditional Discharge, even though no such charge had been lodged in his court. Mr. Hulkow was given no written notice of such a charge.

17. On October 15, 1996, respondent recorded in his docket that he called Mr. Hulkow by telephone and "gave defendant another chance."

18. On October 16, 1996, respondent called attorney Oliver Bickel and asked him to represent Mr. Hulkow on a charge that he had violated a Conditional Discharge.

19. On October 24, 1996, respondent completed a second Conditional Discharge, requiring an additional 25 hours of community service and a drug and alcohol evaluation. Mr. Hulkow was not given these conditions in writing and did not sign the Conditional Discharge.

20. On December 18, 1996, respondent was advised that Mr. Hulkow had not kept an appointment for the evaluation, and, on December 30, 1996, the probation department reported that the defendant had not arranged to complete his community service.

21. Even though he had assigned an attorney to represent him, respondent called Mr. Hulkow by telephone on January 2, 1997, and told him to report the following day to the probation department and St. Joseph's Clinic in Malone.

22. On January 4 and 9, 1997, respondent prepared and signed informations, supporting depositions and bench warrants for Mr. Hulkow's arrest, alleging Criminal Contempt, Second Degree, for failing to fulfill the terms of his Conditional Discharge.

23. On January 13, 1997, respondent arraigned Mr. Hulkow on a charge of Criminal Contempt, Second Degree, and committed him to jail in lieu of bail, even though respondent was the complaining witness. Mr. Bickel was not present. The defendant was released on bail on January 15, 1997.

24. On January 16, 1997, Mr. Hulkow again appeared before respondent without counsel. Mr. Hulkow did not plead guilty, and no trial was held. However, respondent entered a conviction to a charge of Criminal Contempt, Second Degree, and a sentence to time served.

25. Mr. Bickel never saw any paperwork in connection with the case, and neither the attorney nor Mr. Hulkow were aware that the defendant had been convicted of Criminal Contempt.

As to Charge III of the Formal Written Complaint:

26. On May 21, 1997, David Velie, who was then 19 years old and had a history of psychiatric problems, was arraigned before respondent on a charge of Endangering the Welfare of a Child, a misdemeanor. Respondent remanded him to jail without bail, even though CPL 530.20(1) requires that bail be set on a misdemeanor. Respondent assigned attorney John Carter to represent him. The following day, respondent called the jail and ordered Mr. Velie released.

27. On May 24, 1997, after speaking with Mr. Velie and his father by telephone, respondent prepared and signed a supporting deposition and a bench warrant for Mr. Velie's arrest on the grounds that he had left his home for purposes other than employment, contrary to what respondent said were his directions. He did not notify Mr. Carter.

28. Mr. Velie was arrested and brought before respondent. When he refused to sit down and attempted to leave, he was arrested for Resisting Arrest, a misdemeanor. Respondent was a witness to the incident and filed his own supporting deposition regarding the charge.

29. Respondent again committed Mr. Velie to jail without bail, contrary to law.

30. Respondent continued to preside and disposed of the charges on September 4, 1997. The Resisting Arrest charge was dismissed; Mr. Velie pleaded guilty to Endangering the Welfare of a Child and was sentenced to 30 days in jail.

As to Charge IV of the Formal Written Complaint:

31. On July 30, 1997, respondent found Deborah E. Bordeau, who was a neighbor of respondent, guilty of Harboring a Dangerous Dog, ordered her to keep it confined and threatened to have it destroyed if she did not.

32. After Ms. Bordeau returned home, her husband, Mark, went to court and questioned respondent about the case. Respondent angrily told him, "I don't know any stupid ass that would go to jail over a dog," and used the work "fuck."

33. Respondent saw the Bordeaus' dog running loose on August 25 and 26, 1997, and summarily issued an order to have it seized and destroyed.

34. However, respondent then consulted an attorney for the State Department of Agriculture and Markets who suggested that he hold a hearing before having the dog destroyed.

35. He held a hearing on September 4, 1997, even though no new charge had been filed and even though he was a witness to the events. Respondent refused Ms. Bordeau's request for an adjournment to obtain an attorney and ordered her to surrender the dog to be destroyed.

36. On October 2, 1997, respondent called Ms. Bordeau on two occasions and threatened to have her incarcerated if she did not surrender the dog.

37. Ms. Bordeau then retained an attorney, Darrell L. Bowen. On October 16, 1997, Mr. Bowen asked respondent to recuse himself inasmuch as he had personal knowledge of facts underlying the case. Respondent refused.

38. However, respondent agreed to give Ms. Bordeau another hearing on October 23, 1997. After the re-hearing, respondent again ordered the dog destroyed.

As to Charge V of the Formal Written Complaint:

39. On June 15, 1995, respondent sentenced Jason Waldron to three years probation on a charge of Criminal Mischief, Fourth Degree. Mr. Waldron was represented in that proceeding by attorney John Carter.

40. On September 8, 1997, Mr. Waldron's probation officer advised respondent that the defendant had violated the terms of his probation.

41. On September 8, 1997, respondent issued a warrant for Mr. Waldron's arrest. Respondent did not advise Mr. Carter of this action.

42. Mr. Waldron appeared in court on October 4, 1997. Respondent remanded him to jail without bail until October 9, 1997, on a charge of Criminal Contempt, Second Degree, a misdemeanor, even though no accusatory instrument charging him with such an offense had been filed and even though CPL 530.20(1) requires that bail be set on a misdemeanor.

43. Mr. Waldron reappeared on October 9, 1997. When he admitted to violating the terms of his probation, respondent assumed that he had pleaded guilty to Criminal Contempt, although he is not sure that he ever advised Mr. Waldron that he was being charged with Criminal Contempt.

44. Another attorney representing Mr. Waldron, Michael Phillips, ultimately persuaded respondent that the defendant could not be charged with Criminal Contempt.

As to Charge VI of the Formal Written Complaint:

45. On November 2, 1997, Carson F. Arnold, Sr., was charged with Aggravated Harassment, Second Degree, a misdemeanor, on the complaint of Mary A. Yanulavich, stemming from a dispute over some construction work that he had done on her home.

46. Respondent had known Ms. Yanulavich for many years and considered her "more than a casual acquaintance but not a close friend," and he knew that she was dying of cancer. Ms. Yanulavich called respondent before Mr. Arnold's arraignment and told him that she had been threatened by Mr. Arnold.

47. On November 2, 1997, respondent arraigned Mr. Arnold. He read the charge to the defendant but did not advise him of his rights concerning counsel, as required by CPL 170.10(4)(a).

48. Without provocation, respondent told Mr. Arnold to shut up and not to say another word until he was done.

49. Respondent committed Mr. Arnold to jail without bail, even though CPL 530.20(1) requires that bail be set on a misdemeanor.

50. Respondent acknowledges that there was "something about Mr. Arnold" that made him think of "these gypsy contractors" and that he gave Ms. Yanulavich extra credibility in the case.

51. The case was dismissed after Ms. Yanulavich died.

As to Charge VII of the Formal Written Complaint:

52. On November 20, 1997, Sean C. Frey pleaded guilty to Harassment, Second Degree, and was sentenced by respondent to a Conditional Discharge, requiring 40 hours of community service.

53. On January 28, 1998, the probation department advised respondent that Mr. Frey had not completed the community service. On January 30, 1998, respondent issued a warrant for Mr. Frey's arrest, stating as the charge Criminal Contempt, Second Degree.

54. Mr. Frey was arrested the same day and brought before respondent. Mr. Frey requested assigned counsel, and he had been represented by assigned counsel on the original charge. However, respondent did not assign counsel to represent him. Respondent remanded him to jail in lieu of bail. Mr. Frey was released a day later.

55. On February 5, 1998, Mr. Frey reappeared before respondent. The defendant did not know that he was charged with Criminal Contempt and did not plead guilty to that charge. Respondent recorded in his docket and reported to the Department of Criminal Justice Services that Mr. Frey had been convicted of Criminal Contempt and sentenced to time served.

56. On March 31, 1998, the probation department again advised respondent that Mr. Frey had not completed the community service. Respondent issued bench warrants on April 1, 2 and 6, 1998, ordering Mr. Frey's arrest on a charge of Harassment, Second Degree.

57. Mr. Frey was arrested on April 10, 1998, and was brought before respondent. Mr. Frey again asked for assigned counsel, but respondent did not designate one. The defendant was remanded to jail in lieu of bail.

58. On April 16, 1998, Mr. Frey returned to court. Respondent recorded in his docket that Mr. Frey had been found guilty by the court of Harassment, Second Degree, and sentenced to time served and an additional 40 hours of community service.

59. On May 4, 1998, the probation department again reported that Mr. Frey had not completed the community service. On May 9, 1998, respondent again issued a bench warrant on a charge of Harassment, Second Degree.

60. On May 19, 1998, Mr. Frey appeared before respondent. He was committed to jail in lieu of bail.

61. On May 21, 1998, Mr. Frey returned to court. He did not plead guilty to any charge and was not given notice of any additional charge. Respondent recorded in his docket that the defendant pleaded guilty to Harassment, Second Degree, and he sentenced him to 15 days in jail and increased the community service to 120 hours, to be completed within three weeks.

62. No attorney was ever assigned by respondent to represent Mr. Frey at his court appearances after the initial conviction.

As to Charge VIII of the Formal Written Complaint:

63. On June 28, 1998, Timothy R. Baker was charged with Harassment, Second Degree, and Disorderly Conduct. Mr. Baker

was on probation at the time. Respondent ordered him committed to jail in lieu of bail.

64. On July 2, 1998, respondent held a bail hearing. The probation department urged that bail be revoked, and it asked that respondent declare Mr. Baker delinquent as to his probation and schedule a hearing. Respondent revoked Mr. Baker's bail and signed a Declaration of Delinquency.

65. However, respondent did not schedule another court appearance until September 24, 1998, even though Mr. Baker's attorney requested on two occasions that he do so since her client was incarcerated and even though CPL 410.70(1) requires a prompt hearing on a probation violation. By September 24, 1998, Mr. Baker had served the entire sentence; he pleaded guilty, was sentenced to time served and was released.

66. Respondent acknowledged that he wanted to keep Mr. Baker in jail for his own benefit.

As to Charge IX of the Formal Written Complaint:

67. Since 1990, respondent has required defendants who receive assigned counsel to "work it off" by performing community service. Respondent asks attorneys that he appoints to estimate their legal fees, then calculates the hours of community service at the rate of $5 per hour.

68. Respondent continued this practice, even after three defense attorneys and the District Attorney had advised him that it was improper.

69. At the hearing, respondent testified that he wanted to be shown "in black and white where the Constitution says, exactly, it's illegal to make a person work off their assigned counsel fees..." and asserted that he would not accept "some liberal attorney's interpretation...."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(3), 100.3(B)(6), 100.3(B)(7), 100.3(E)(1)(a) and 100.3(E)(1)(d)(iv). Charges I, II, III, IV, V, VI, VII, VIII and IX, as amended at the hearing, are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

This record portrays a biased judge who routinely denies defendants their fundamental rights and ignores proper criminal procedure, as well as ethical constraints on his conduct.

Respondent denied defendants their right to counsel by failing to advise them of the right and by taking action against them without notice to their lawyers when he knew that they were represented. (See, CPL 170.10[4][a]; Matter of Wood, 1991 Ann Report of NY Commn on Jud Conduct, at 82). He exhibited bias before conviction by threatening defendants with jail and by calling them names. (See, Matter of Esworthy, 77 NY2d 280; Matter of Hannigan, 1998 Ann Report of NY Commn on Jud Conduct, at 131). He repeatedly used intemperate language. (See, Matter of Assini, 94 NY2d 26, 29; Matter of McKevitt, 1997 Ann Report of NY Commn on Jud Conduct, at 106, 107).

Respondent has disregarded basic requirements of law by jailing without bail defendants who were statutorily entitled to bail (see, CPL 530.20[1]; Matter of LaBelle,

79 NY2d 350) and by summarily convicting on Criminal Contempt charges individuals whom he concluded, without trial or guilty pleas, had violated some order of the court (see, Matter of Hamel, 88 NY2d 317; Matter of Meacham, 1994 Ann Report of NY Commn on Jud Conduct, at 87, 90). One defendant was convicted three times on the same charge - without knowing it, since respondent gave him no notice. Respondent simply ordered the defendant's arrest and conviction on the original charge each time he received word that he had not completed community service.

Respondent sat on cases in which he was the complaining witness (see, Rules Governing Judicial Conduct, 22 NYCRR 100.3[E][1][d][iv]; Matter of Ross, 1990 Ann Report of NY Commn on Jud Conduct, at 153, 155) and in which he had knowledge of disputed evidentiary facts (see, Rules Governing Judicial Conduct, 22 NYCRR 100.3[E][1][a][ii]; Matter of Vonder Heide, 72 NY2d 658, 659). He frequently engaged in ex parte communications. (See, 22 NYCRR 100.3[B][6]).

By requiring indigent defendants to "pay" for their assigned counsel by performing community service, respondent ignored a fundamental constitutional precept and the warnings of both prosecuting and defense attorneys that the procedure was improper.

A judge who shows a shocking disregard for due process of law, grossly abuses judicial power and process, denies defendants their rights, ignores the mandates of law and demeans defendants has distorted the proper role of a judge and is unfit to remain in office. (Matter of Sardino, 58 NY2d 286, 291-92).

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 Luciano, Judge Marshall, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Mr. Coffey was not present.

Dated: April 6, 2000

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

IN THE MATTER OF THE PROCEEDING PURSUANT TO SECTION 44, SUBDIVISION 4, OF THE JUDICIARY LAW, IN RELATION TO **ROBERT M. CORNING, SR.**, A JUSTICE OF THE OVID TOWN COURT, SENECA COUNTY.

APPEARANCES:

Gerald Stern (John J. Postel and Seema Ali, Of Counsel) for the Commission
Marris & Bartholomae (By William R. Bartholomae) for Respondent

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The respondent, Robert M. Corning, Sr., a justice of the Ovid Town Court, Seneca County, was served with a Formal Written Complaint dated March 10, 1998, alleging financial improprieties and improper demeanor. Respondent filed an answer dated April 8, 1998.

By Order dated May 1, 1998, the Commission designated Bruno Colapietro, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 19, 1998, and the referee filed his report with the Commission on December 9, 1998.

Both parties submitted papers with respect to the referee's report and the issue of misconduct. Oral argument was waived.

On February 25, 1999, the Commission considered the record of the proceeding and made findings of fact 1 through 21 below. Consideration of sanction was deferred.

On February 26, 1999, respondent was served with a second Formal Written Complaint, alleging that he improperly ordered the suspension of a defendant's driver's license. Respondent answered this complaint by letter dated April 23, 1999.

By Order dated April 28, 1999, the Commission designated Michael J. Hutter, Esq., as referee to hear this matter. A hearing was held on June 18, 1999, and the referee filed his report with the Commission on October 20, 1999.

The parties then submitted memoranda with respect to misconduct on the second matter and appropriate sanction with respect to both matters. Oral argument was waived.

On December 16, 1999, the Commission made findings of fact 22 through 31 below and made the following determination.

As to Charge I of the Formal Written Complaint dated March 10, 1998:

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

2. Between August 1996 and December 1996, as set forth in the appended Schedule A, respondent 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). By the end of the period, respondent's account was deficient in the amount of $2,886.64.

3. On January 21, 1997, Commission staff advised respondent that it was investigating financial irregularities in his court.

4. Between February 1997 and May 1997, as denominated in the attached Schedule B, respondent again failed to deposit court funds as required by law. By the end of this period, his account was deficient by $2,842.80.

5. During these periods, respondent was aware that he was required to deposit court funds within 72 hours of receipt.

6. Respondent testified that he kept the money in a briefcase at his home.

As to Charge II of the Formal Written Complaint dated March 10, 1998:

7. Between August 1996 and November 1996, respondent failed to remit court funds to the state comptroller by the tenth day of the month following collection, as required by UJCA 2021(1), Town Law §27(1) and Vehicle and Traffic Law §1803(8).

8. On January 15, 1997, the state comptroller ordered respondent's salary suspended because of his failure to remit monies, and, on January 20, 1997, respondent wrote the comptroller that he had "no reason or alibi" and "no excuse" for failing to remit the funds. On January 21, 1997, Commission staff advised respondent that it was investigating the matter; again, respondent replied, "I have no reason or alibi for being tardy." Respondent filed his reports with the state comptroller about two weeks later.

9. Respondent was aware that he was required to remit funds to the comptroller by the tenth day of the month following collection.

10. Respondent was being treated for depression during 1996 and 1997.

As to Charge III of the Formal Written Complaint dated March 10, 1998:

11. On February 15, 1997, the Wagner Funeral Home sued respondent for burial expenses for his aunt, Mary Corning Rose. Attorney John A. Ward represented the funeral home.

12. On April 14, 1997, respondent called Mr. Ward by telephone to discuss the claim. Respondent told Mr. Ward that he had been a town justice for ten years. Respondent accused Mr. Ward of being dishonest and said that he would discredit the attorney's reputation.

13. On May 13, 1997, Mr. Ward called respondent and asked him not to contact Mr. Ward's client in the lawsuit, Marshall Downing, the owner of the funeral home. Respondent said that he would take Mr. Ward to county court or to a county judge and that he would not cease calling Mr. Downing unless an Order of Protection was issued.

14. Respondent also said that Mr. Downing had "no balls."

15. The same day, Mr. Ward filed a complaint with the Commission concerning his conversations with respondent.

16. On September 29, 1997, respondent appeared at an investigative appearance for the purpose of giving testimony about Mr. Ward's complaint, as well as other matters.

17. On October 31, 1997, respondent went to Mr. Ward's office and spoke with a paralegal. Waiving a legal-size envelope in front of her, respondent angrily told the paralegal that he was going to sue Mr. Ward for slander. The envelope contained a copy of the complaint that Mr. Ward had filed with the Commission against respondent.

18. Later that day, respondent called the paralegal by telephone and apologized.

As to Charge IV of the Formal Written Complaint dated March 10, 1998:

19. On July 10, 1996, People v Richard Woodard came before respondent. The defendant was represented by attorney John M. Sipos. Mr. Sipos had previously filed a complaint with the Commission that respondent had improperly requested him to pay $50 in order to secure a jury trial in another criminal case.

20. Mr. Sipos requested that respondent disqualify himself from the Woodard case because of the complaint to the Commission.

21. Respondent became angry, denied the request and stated, "You should have paid me the $50. You would have had me by the balls."

As to Charge I of the Formal Written Complaint dated February 26, 1999:

22. On September 18, 1997, Sara L. Hunt was charged with Leaving the Scene of An Accident in the Town of Ovid. The matter was returnable before respondent on October 2, 1997. Ms. Hunt appeared as scheduled on October 2 and 9 and November 6, 1997.

23. In November 1997, Ms. Hunt retained David Lee Foster to represent her. On December 1, 1997, Mr. Foster's paralegal, Stephanie Andrews, spoke with respondent by telephone. Respondent told her that he would recuse himself from the case. Because of past dealings with respondent, Mr. Foster would not have agreed to represent Ms. Hunt if respondent were to preside.

24. On December 4, 1997, Ms. Hunt; her mother, Linda L. Brown, and Mr. Foster appeared before respondent on the scheduled adjourned date. Respondent indicated that he had changed his mind and intended to continue presiding over the case.

25. Mr. Foster objected. He directed Ms. Hunt to leave the courtroom.

26. On December 22, 1997, respondent wrote to Mr. Foster, reiterating that he did not intend to recuse himself.

27. On January 24, 1998, respondent notified the Commissioner of Motor Vehicles that Ms. Hunt had failed to appear before him within 60 days of a scheduled court appearance, even though she had appeared for every scheduled court date.

28. On January 29, 1998, pursuant to respondent's notification, the Commissioner of Motor Vehicles ordered Ms. Hunt's license suspended, to be effective March 6, 1998.

29. Respondent knew that Ms. Hunt's license would be suspended in accordance with his notification. He made the

notification out of personal pique with Mr. Foster, whom respondent felt had displayed a "bad attitude," had taken no steps to dispose of Hunt, had left the court "in a huff" and had not called the court to apologize.

30. On March 5, 1998, respondent recused himself from the case.

31. On March 5, 1998, Ms. Hunt appeared before Justice Wayne D. Ewing. Judge Ewing certified that she had appeared, and the suspension order was lifted before it was to take effect. Judge Ewing adjourned the case in contemplation of dismissal.

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(A), 100.3(B)(1), 100.3(B)(3) and 100.3(C)(1). Charges I, II, III and IV of the Formal Written Complaint dated March 10, 1998, as amended at the hearing on August 19, 1998, and Charge I of the Formal Written Complaint dated February 26, 1999, are sustained, and respondent's misconduct is established.

Respondent has abused the power of his office, exhibited a lack of judicial temperament and mishandled public funds. Such a record of misconduct, both on and off the bench, indicates that he is not fit to be a judge.

Respondent used the prestige of judicial office in connection with a private dispute involving funeral bills for his aunt. He mentioned that he is a judge and threatened the attorney for the funeral home and, on a later date, threatened the lawyer's paralegal.

Respondent also abused his judicial authority when he ordered Ms. Hunt's license suspended out of personal pique with her lawyer, falsely certifying that she had not appeared in court. Regardless of his perception of Mr. Foster's behavior, respondent should not have attempted to retaliate by punishing Ms. Hunt. (See similarly, Matter of Slavin, 1990 Ann Report of NY Commn on Jud Conduct, at 158; Matter of Sharpe, 1984 Ann Report of NY Commn on Jud Conduct, at 134). Judicial actions should not be based on the judge's irritation with those involved. (Matter of Lindell - Cloud, 1996 Ann Report of NY Commn on Jud Conduct, at 91; Matter of Miller, 1981 Ann Report of NY Commn on Jud Conduct, at 121).

Respondent displayed improper demeanor in connection with the funeral dispute and, in court, in the Woodard case. On or off the bench, a judge is expected to show proper judicial demeanor. (Matter of Kuehnel, 49 NY2d 465, 469). Angry and profane language in connection with judicial duties is especially serious. (Matter of Mahon, 1997 Ann Report of NY Commn on Jud Conduct, at 104, 105).

Furthermore, respondent's inattention to the financial responsibilities of his court constitutes serious misconduct. (See, Bartlett v Flynn, 50 AD2d 401, 404 [4th Dept]). In particular, his failure to promptly deposit court funds raises questions about their interim use; we have only respondent's word that thousands of dollars in public monies were kept in his briefcase. (See, Matter of More, 1990 Ann Report of NY Commn on Jud Conduct, at 140, 141). This conduct continued, even after respondent knew that the Commission was investigating a complaint about his financial practices. (See, Matter of Sims, 61 NY2d 349, 357).

Irrespective of the high regard in which he is held by some members of the legal community (see, Matter of Gelfand, 70 NY2d 211), we conclude that respondent's retention on the bench is inconsistent with the proper administration of justice (see, Matter of Reeves, 63 NY2d 105, 110-11).

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

Mr. Berger, Ms. Brown, Ms. Hernandez, Judge Joy, Judge Luciano, Judge Marshall, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Mr. Coffey and Mr. Goldman dissent as to sanction only and vote that respondent be censured.

Dated: February 10, 2000

Schedule A			
Date	Amount Received	Amount Deposited	Cumulative Deficiency
8/96	$3,292	$1,384.84	-$1,907.16
9/96	625	0	- 2,532.16
10/96	333	0	- 2,865.16
11/96	15	0	- 2,880.16
12/96	635	628.52	- 2,886.64

Schedule B			
Date	Amount Received	Amount Deposited	Cumulative Deficiency
2/97	$2,887	0	-$2,887
3/97	990	0	- 3,877
4/97	1, 555	$2,459.20	- 2,972.80
5/97	960	1,090	- 2,842.80

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 **E. DAVID DUNCAN**, A JUDGE OF THE ALBANY CITY COURT, ALBANY COUNTY.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
William J. Gray for Respondent

The respondent, E. David Duncan, a judge of the Albany City Court, Albany County, was served with a Formal Written Complaint dated July 2, 1999, alleging that respondent conveyed the appearance of bias in two vehicle and traffic cases and failed to decide motions in the matters in a timely manner. Respondent filed an answer dated November 18, 1999.

By order dated September 21, 1999, 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 in Albany, New York on January 18 and 19 and March 1, 2000, and the referee filed her report with the Commission on August 18, 2000.

The parties filed briefs and replies with respect to the referee's report. On October 23, 2000, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a part-time judge of the Albany City Court since 1983.

2. At the time of these events, respondent was assigned to Albany Traffic Court, where he sat in alternate four-week periods. In the weeks he was assigned to Traffic Court, respondent sat one morning each week for arraignments and one afternoon each week for trials.

3. On September 8, 1995, JoAnn Pitman, a cab driver, received a Speeding ticket in the City of Albany, returnable in the Albany City Court on September 19, 1995. On September 11, 1995, she pleaded not guilty by mail and checked the box requesting a supporting deposition.

4. On October 4, 1995, Robert Libertucci, a cab driver and Ms. Pitman's fiancé, received two tickets in the City of Albany, one for Speeding and one for a red light violation, returnable in the Albany City Court on October 24, 1995. Mr. Libertucci pleaded not guilty by mail and requested a supporting deposition.

5. The Speeding violation with which Mr. Libertucci was charged allegedly occurred on New Scotland Avenue at Harding Street. Respondent resides on Harding Street.

6. Mr. Libertucci called the Traffic Court Clerk's office and asked to appear on the same day as Ms. Pitman. The Clerk approved this request, and both matters were calendared for November 21, 1995.

7. November 21, 1995, was a scheduled arraignment day for respondent; November 22, 1995, was a scheduled trial day.

8. On November 21, 1995, Mr. Libertucci and Ms. Pitman appeared in the Albany City Court; neither appeared with counsel, and neither had received the supporting deposition that had been requested.

9. When Mr. Libertucci's case was called, he moved for dismissal of the October 4 tickets for lack of a supporting deposition. After reviewing the papers before him, respondent granted the motion and dismissed the tickets in accordance with Criminal Procedure Law 100.40(2), which provides that charges are facially insufficient if the arresting officer has failed to provide a supporting deposition within 30 days. Mr. Libertucci then went to the back of the courtroom to wait for Ms. Pitman's case to be heard.

10. Immediately following Mr. Libertucci's case, Ms. Pitman's case was called. Ms. Pitman moved for dismissal of the September 8 ticket for failure of the arresting officer to supply a supporting deposition. Respondent reviewed the papers, then asked Ms. Pitman to wait while he checked something. After conferring with the court clerk and the Assistant Corporation Counsel, respondent instructed Ms. Pitman to return the next day and also directed her to tell Mr. Libertucci to return the next day. Respondent did not rule on Ms. Pitman's motion to dismiss.

11. After Ms. Pitman had related respondent's message to Mr. Libertucci, Mr. Libertucci approached the bench and asked respondent why he had to return to court since his tickets had been dismissed. Respondent replied that he had a question about when the time to provide a supporting deposition begins to run. When Mr. Libertucci asked whether he should return with a lawyer, respondent replied that it would be a good idea to have a lawyer. Respondent directed Mr. Libertucci and Ms. Pitman to return the following day.

12. Prior to Mr. Libertucci's appearance the next day, respondent researched Mr. Libertucci's prior record in the Albany Court. Mr. Libertucci had received multiple Speeding tickets within a few years.

13. On November 22, 1995, Mr. Libertucci and Ms. Pitman appeared in City Court with their attorney, John T. Biscone.

14. Mr. Biscone and Assistant Corporation Counsel William S. Goldstein met in chambers with respondent. Also present was Officer Whitney, who had issued the Pitman ticket. During this conference, respondent said that he would accept a three-point Speeding charge in satisfaction of the charges against the defendants. Respondent commented that the Libertucci speeding violation had occurred in respondent's neighborhood. Respondent also referred to Mr. Libertucci's extensive prior record in the court.

15. After relating the plea offer to the defendants, Mr. Biscone returned and advised respondent that his clients refused the offer since they would suffer a loss or suspension of their licenses with any resolution short of dismissal. Respondent then stated that he would direct that the

tickets be reissued. When Mr. Biscone objected that respondent did not have the authority to do so, respondent agreed and said that he would not and could not do that.

16. When the matter resumed in open court, Mr. Biscone moved to dismiss the Libertucci and Pitman tickets. Respondent again commented on Mr. Libertucci's extensive driving record and the fact that he had previously had traffic charges dismissed for lack of a supporting deposition. Respondent stated that although he had tried to do so, he could not direct reissuance of the tickets and it was up to the police whether or not to reissue them. Respondent dismissed the Pitman ticket. The tickets against Libertucci remained dismissed.

17. Mr. Biscone told respondent that if the tickets came back, he would ask that respondent recuse himself. Respondent replied that if the tickets came back, he would take a disqualification request under advisement at the appropriate time.

18. Officer Whitney, who was present in court, reissued the Pitman ticket on November 22, 1995, before Ms. Pitman left the courthouse. The Libertucci tickets were reissued in February 1996.

19. On November 28, 1995, Mr. Biscone filed a motion to dismiss the reissued Speeding charge against Ms. Pitman. On December 15, 1995, the Assistant Corporation Counsel asked for an extension of time to respond to the motion until "after the new year," but he never filed any response to the motion. Mr. Biscone wrote a letter to respondent in July 1997, inquiring about the status of the motion and noting that no opposition had been filed.

20. Although respondent had the Pitman motion to dismiss under advisement at least by the spring of 1996, he did not decide it until October 1997, when he denied the motion.

21. On February 15, 1996, Mr. Biscone filed a motion to dismiss the reissued Libertucci tickets. No opposition was interposed until June 3, 1996. Although respondent had this motion under advisement by the spring of 1996, respondent did not decide it until July 2, 1997, when he denied the motion.

22. There is no reasonable explanation in the record to excuse respondent's delay in disposing of the motions to dismiss the reissued Pitman and Libertucci tickets.

23. Respondent's delay in deciding the Pitman and Libertucci motions was in violation of the 60-day disposition rule of CPLR 2219(a). In March 1997, respondent reported the pending Libertucci motion to dismiss to his Administrative Judge as undecided for more than 60 days. This was the only occasion respondent had ever reported a case as undecided for more than 60 days.

24. Mr. Biscone appealed the Pitman and Libertucci orders denying the motions to dismiss. After an appellate court remanded the matters for special circumstances hearings, respondent held a special circumstances hearing in the Pitman matter on January 26, 1999. On May 19, 1999, respondent issued a decision dismissing the reissued Pitman ticket.

25. In anticipation of a special circumstances hearing in the Libertucci matter, plea negotiations were held as to the reissued Libertucci tickets as well as additional tickets Mr. Libertucci had received during the pendency of these

matters. In August 1998 Mr. Libertucci agreed to plead guilty to the October 4, 1995 Speeding charge, a plea which allowed him to retain his license.

26. During the pendency of these matters, respondent was on notice that his recusal was being sought. By letter to respondent dated July 17, 1997, Mr. Biscone asked for respondent's recusal in the Libertucci matter. By letter to respondent dated September 28, 1998, Mr. Biscone asked for respondent's recusal in the Pitman matter, a request which respondent denied on October 6, 1998. Respondent's failure to confront the recusal issue during the pendency of these matters exacerbates the impression of bias conveyed by his actions.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(4), 100.3(B)(7) and 100.3(E)(1) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings of fact. Paragraphs 4(e) and 4(f) of Charge I are dismissed.

Respondent's handling of the Libertucci and Pitman matters conveyed the unmistakable impression of bias.

By law, both defendants were entitled to dismissal of the charges against them due to the failure of the arresting officers to furnish the requested supporting depositions (CPL §100.40[2]). As a judge since 1983, respondent had handled many such cases in which he routinely granted motions to dismiss on that basis. Yet, after dismissing the charges against Mr. Libertucci, respondent took a series of extraordinary steps which not only effectively insured that the two cases would not end with a prompt, statutorily required dismissal, but conveyed the clear impression that respondent favored a different result. By directing Mr. Libertucci to return to court the next day along with Ms. Pitman notwithstanding that his case had been dismissed, by researching Mr. Libertucci's driving record although it was irrelevant to the motion to dismiss under Section 100.40(2), and by stating in the presence of the arresting officer in Pitman that he wanted the charges in both cases reissued, respondent acted in a manner which created an appearance of bias. That appearance was compounded by respondent's disapproving remarks about Mr. Libertucci's driving record and by his inappropriate comment that Mr. Libertucci's alleged Speeding violation had occurred in respondent's neighborhood. Unfortunately for Ms. Pitman, who was Mr. Libertucci's fiancée, her case was apparently linked in respondent's view with Mr. Libertucci's (they appeared together, made the same motions and had the same attorney). As the referee concluded, the totality of respondent's behavior as to both matters "conveyed the impression that he was biased, had a personal interest in the outcome of the cases and could not render an impartial decision."

Despite such behavior, respondent continued to sit on the cases after the charges were reissued. His conduct violated Section 100.3(E)(1) of the Rules Governing Judicial Conduct, which requires that a judge "shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned...." Respondent's ongoing failure to confront the recusal issue exacerbated the impression of bias, as did his failure to decide motions to dismiss the reissued charges within 60 days, as required by CPLR 2219(a). In Libertucci, respondent

took over a year to decide the motion; in Pitman, the delay was even longer. While such delay, standing alone, would not constitute misconduct (*see* Matter of Greenfield, 76 NY2d 293), here the delay cannot be separated from the impression of bias permeating respondent's handling of these cases. Moreover, by not reporting the pending Libertucci motion to his administrative judge until March 1997 (well past the 60-day reporting period), and by apparently never reporting the Pitman motion, respondent effectively removed his conduct from administrative scrutiny.

In its totality, respondent's conduct violated the requirement that every judge must not only be impartial, but act "in such a way that the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property." Matter of Sardino, 58 NY2d 286, 290-91 (1983).

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

Mr. Berger, Mr. Goldman, Ms. Hernandez, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Salisbury and Judge Luciano dissent as to paragraph 4(b) and vote to dismiss the allegation concerning respondent's comment that the Speeding charge against Mr. Libertucci occurred on respondent's street.

Ms. Brown and Mr. Coffey were not present.

Dated: December 29, 2000

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

IN THE MATTER OF THE PROCEEDING PURSUANT TO SECTION 44, SUBDIVISION 4, OF THE JUDICIARY LAW, IN RELATION TO **ROBERT N. GOING**, A JUDGE OF THE FAMILY COURT, MONTGOMERY COUNTY.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
E. Stewart Jones, PLLC (By Peter J. Moschetti, Jr.) for Respondent

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The respondent, Robert N. Going, a judge of the Family Court, Montgomery County, was served with a Formal Written Complaint dated June 10, 1999, containing two charges. Respondent filed an answer dated July 9, 1999.

By order dated September 16, 1999, the Commission designated Milton Sherman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 20, 21 and 22, 1999, in Albany, New York, and December 2 and 3, 1999, in New York City. The referee filed his report with the Commission on September 7, 2000.

The parties filed briefs and replies with respect to the referee's report. On October 23, 2000, 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 Montgomery County Family Court since 1995, and is the only Family Court judge in the county. Prior to that, he served as a judge of the Amsterdam City Court.

2. Between 1996, when she was admitted to practice law, and early 1998, Karen Judd appeared before respondent as an assigned law guardian and, occasionally, as retained counsel. She and respondent developed a friendship during that period.

3. On February 13, 1998, respondent offered Ms. Judd a position as his law clerk, which she accepted. Ms. Judd began work as respondent's law clerk on March 16, 1998.

4. Shortly after Ms. Judd began working at the court, respondent and Ms. Judd began a consensual, romantic relationship. Respondent and Ms. Judd openly displayed their affection for each other in view of the court staff, and respondent discussed his affection for Ms. Judd with members of the court staff, making them uncomfortable. Respondent also discussed his affection for Ms. Judd with lawyers who appeared before him in the Family Court.

5. Between April 8 and May 19, 1998, respondent wrote letters, notes and poetry expressing his affection for Ms. Judd, which he left for her at her desk. Some of these were written on respondent's judicial stationery. During this period, Ms. Judd did not regard respondent's poetry and messages as unwanted or unwelcome.

6. Chief Clerk Donna Caravella concluded that the interaction between respondent and Ms. Judd was disruptive to the staff. In April 1998, Ms. Caravella informed Ron Stout, executive assistant to the Fourth Judicial District Administrative Judge, of the relationship between respondent and Ms. Judd.

7. On May 20, 1998, after respondent's secretary informed him that Ms. Judd had been seen at a restaurant with another man, respondent left a note on Ms. Judd's desk intimating that their relationship was ended.

8. On or about May 22, 1998, respondent called Ms. Judd into his office and told her that she had "publicly humiliated" him by dating another man and being seen with the man at a restaurant owned by friends of respondent in respondent's hometown.

9. The romantic relationship between respondent and Ms. Judd ended on or about May 22, 1998. After that date, respondent continued to leave notes and poetry for Ms. Judd at her desk, expressing his feelings for her.

10. After their romantic relationship had ended, the interaction between respondent and Ms. Judd at the court became increasingly hostile. Respondent and Ms. Judd argued frequently about work-related matters, and they had private discussions with members of the court staff in which they derogated each other.

11. As a result of the hostility between respondent and Ms. Judd and their conversations with court staff members concerning these matters, the atmosphere in the court offices became polarized. The termination of the relationship, and respondent's and Ms. Judd's discussions relating to it with members of the staff, detrimentally affected the operation of the court.

12. After the termination of their relationship, respondent told other members of the court staff that he wished he could fire Ms. Judd or that she would leave, statements which were likely to be related to Ms. Judd.

13. Respondent told Ms. Judd that she "served at [his] pleasure" as his law clerk. This statement was incorrect.

14. The termination of the relationship adversely affected respondent's ability to carry out his judicial duties. Respondent experienced symptoms of anxiety and depression and exhibited mood swings. On several occasions in or about June 1998, respondent slept during the work day on a cot in the basement of the court building, in his office and on the bench, although not while court was in session. At times, staff members had to awaken respondent to conduct court business.

15. Respondent occasionally played music in his chambers at a loud volume which was disruptive to staff; at such times, staff would ask respondent to lower to volume, close his door or lower the volume themselves.

16. In June 1998, Ms. Judd informed respondent that she was dating Geoffrey

Major, an attorney who had appeared in Family Court as a law guardian. On June 22, 1998, respondent directed Ms. Caravella not to assign any new cases to Mr. Major as law guardian. Respondent also prepared and signed a letter disqualifying himself for "personal reasons" from the four pending cases to which Mr. Major was assigned. Respondent told Ms. Caravella, "the less I see of [Mr. Major], the better." Respondent's actions directed to Mr. Major were intended as retaliation against Ms. Judd.

17. By directing the Chief Clerk not to make new law guardianship assignments to Mr. Major, respondent ignored the rules established by the Appellate Division for the removal of a law guardian.

18. On Friday, June 19, 1998, at lunchtime, respondent began to experience anxiety symptoms and left the courthouse. He returned a short time later and, without speaking to anyone, went into the basement of the court building. A few minutes later he emerged from the basement, went into his office, and then, in view of members of the court staff, returned to the basement carrying his Swiss Army knife. After Ms. Caravella asked respondent's secretary to check on him, the secretary found respondent sitting on a chair in the basement drinking a beer. After leaving the basement, respondent substantively disposed of a case that had been scheduled, completed some paperwork and left the court. In the parking lot, he began to experience anxiety symptoms and returned to his office. Respondent then decided that he needed time away from the tensions created by working with Ms. Judd. He told his secretary that he needed some time off and went home.

19. At approximately 4:45 P.M. that day, respondent called from home to direct that the following week's court proceedings be cancelled. The timing of respondent's decision forced the court staff to hurriedly take action to notify the parties scheduled to appear on June 22, 1998, that the court would be adjourned.

20. On Monday, June 22, 1998, respondent arrived unexpectedly at the court building. When Ms. Caravella asked respondent why he had come to work after having said he was taking the week off, respondent said he would have to take things "day by day." Ms. Caravella suggested to respondent that he take some time off and said that she would arrange to have judicial hearing officers provide coverage for the rest of the week. Respondent agreed.

21. After Ms. Caravella left a message at the district administrative offices that judicial hearing officers were needed because respondent was having personal problems, Fourth Judicial District Administrative Judge Jan Plumadore called Ms. Caravella and pressed her for details as to the reasons for respondent's unavailability. Ms. Caravella related to Judge Plumadore the events of the previous Friday, June 22, 1998.

22. Respondent did not preside in court during the rest of that week. Judicial hearing officers provided coverage for the court.

23. On June 22, 1998, respondent wrote a letter of recommendation for Ms. Judd, which he left on his desk in a place where he expected she would find it. Ms. Judd saw the letter and made a copy of it. Ms. Judd had not requested a letter of recommendation and had not expressed any intention to seek other employment.

24. On June 25, 1998, respondent received a telephone call at his home from

Judge Plumadore, who directed respondent not to return to the court until after meeting with Judge Plumadore and Deputy Chief Administrative Judge Joseph Traficanti on June 30, 1998. Respondent disregarded Judge Plumadore's directive and went to the court, where he questioned members of the staff about their conversations with Judge Plumadore. While at the court, respondent received a phone call from Judge Plumadore, who told respondent to leave the court and not speak to any of the court staff until after the meeting scheduled for June 30, 1998. Mr. Stout directed a deputy sheriff to take whatever measures were necessary to keep respondent out of the court.

25. Ms. Judd was transferred to an equivalent position in the Saratoga County Family Court. On July 9, 1998, the day before her last day in Montgomery County Family Court, respondent called Ms. Judd into his office and confronted her regarding statements he believed she had been making about him to members of the court staff. Respondent then angrily told Ms. Judd to "Get the fuck out of my office."

26. On August 4, 1998, after Ms. Judd had been transferred to the Saratoga County Family Court, respondent wrote a letter to Judge Plumadore asserting that Ms. Judd "continues to serve at my discretion" and intimating that he would terminate her if requested by Judge Plumadore or the Saratoga County Family Court judges. Respondent sent copies of the letter to several individuals, including Ms. Judd. In response, Judge Plumadore sent a letter to respondent stating that he (respondent) did not have the authority to terminate Ms. Judd.

27. After respondent became aware that Ms. Caravella had reported his conduct to the administrative office, their previous good working relationship became strained. On August 27, 1998, respondent told Ms. Caravella that three of the court staff were threatening to leave because of her and that it was easier to replace one employee than three. On August 31, 1998, respondent wrote a letter to Judge Plumadore, with a copy to Ms. Caravella, recommending that Ms. Caravella be demoted.

28. One member of the staff, Donna Soper, was transferred out of the office, and another staff member requested a transfer. On October 16, 1998, respondent called Ms. Caravella into his office and angrily accused her of lying to him about her asserted non-involvement in Ms. Soper's transfer. When Ms. Caravella returned to her office, respondent followed her, shouting that he was not through with her yet. Respondent shook the doorknob and pounded on the door, which Ms. Caravella had locked, shouting that Ms. Caravella did not belong in her office and that she should sit at the desk of one of the staff members who had left. Respondent shouted to his secretary to have someone remove Ms. Caravella's things from her office. Standing at the window of Ms. Caravella's office, respondent pressed his face against the glass, then took a seat nearby, staring at her through the window. Ms. Caravella remained locked in her office for several hours, unable to work.

29. When respondent received a telephone call concerning this incident from Judge Traficanti, respondent angrily defended his actions and threatened to "go to the press" before hanging up the phone. Respondent then went back to Ms. Caravella's office and accused her of "ruining lives," by which he meant his life and Ms. Soper's life.

30. Respondent and Ms Judd's former fiancé, an attorney and a hearing officer for the Family Court, exchanged e-mail messages for a few months beginning in late June 1998. In one message, following the announcement of Ms. Judd's transfer to the Saratoga County Family Court, respondent wrote, "One down, two to go," referring to his desire that Ms. Judd and two other members of the court staff leave the court. In several messages, respondent stated that Ms. Judd had psychological problems and made other disparaging statements about her. Respondent also made disparaging comments about Ms. Judd to an attorney who appears in the court.

31. In August 1997, when a member of the court staff told respondent that she was expecting a child, respondent replied that he was "shocked" that she "would have a child outside the matrix of holy matrimony." The staff member was upset and hurt by respondent's comment. Respondent's comment was insensitive and improper.

As to Charge II of the Formal Written Complaint:

32. Respondent and John Bintz are "friendly acquaintances" who have known each other since childhood. When respondent ran for Family Court in 1994, Mr. and Mrs. Bintz displayed his campaign sign on their lawn. Beginning in February 1999, respondent and Mr. Bintz participated in weekly rehearsals for a local theater production.

33. In February 1999, Mr. Bintz received notice from the Department of Motor Vehicles that his driver's license would be suspended because he was in arrears in child support payments. After trying unsuccessfully to reach his attorney, during which time the license suspension became effective, Mr. Bintz went to the Montgomery County Family Court on March 8, 1999, and asked to see respondent. Respondent's secretary told respondent that Mr. Bintz wanted to see him and respondent told her to give him an appointment for the next day.

34. Respondent was aware that Mr. and Mrs. Bintz had separated and that they were parties to support cases in the Court.

35. It is the practice of the Court that litigants are not permitted to meet with the judge *ex parte*.

36. On March 9, 1999, respondent met personally with Mr. Bintz in his chambers. Mr. Bintz explained that his driver's license had been suspended for failure to pay child support, that he had been unable to contact his attorney, and that he needed his license reinstated in order to drive to work.

37. Respondent consulted Mr. Bintz's Family Court file, which showed that as of January 6, 1999, Mr. Bintz was $4,888.58 in arrears in child support payments. Respondent saw the Decision and Order of a hearing examiner, who in February 1999 had denied Mr. Bintz's request for a reduction in support payments, holding that he had not made a meaningful attempt to find appropriate employment. Mr. Bintz stated that he intended to file an Objection to the hearing examiner's decision.

38. Respondent called Ms. Caravella into his office and dictated to her a petition and an Order to Show Cause directing Mrs. Bintz to show cause why an order should not be entered terminating the suspension of Mr. Bintz's license. After respondent reviewed the documents, Mr. Bintz signed the petition

and respondent signed the Order to Show Cause, returnable before himself on April 12, 1999.

39. Pursuant to respondent's instructions, Ms. Caravella found an order terminating the license suspension in a form book and gave it to respondent, bringing to his attention the paragraph stating that the support obligation had been satisfied. Respondent crossed out that paragraph and gave the form to Ms. Caravella to be typed. Without giving notice to Mrs. Bintz or her attorney, respondent signed and entered the order terminating the suspension of Mr. Bintz's license.

40. In issuing the order terminating the license suspension, respondent failed to follow the law, which provided that such action could be taken only upon full or partial payment of the arrears (*see* Family Court Act §458-a). Mr. Bintz did not provide respondent with proof of such payment, and respondent did not request proof of such payment.

41. Before he issued the *ex parte* order, respondent did not attempt to determine whether he had statutory authority to rescind the suspension of Mr. Bintz's driving privileges.

42. On March 15, 1999, Mr. Bintz's attorney filed an Objection to the hearing examiner's February 1999 Decision and Order. The Objection was scheduled to be heard by respondent in April 1999. When the matter came before him, respondent recused himself from hearing both the Objection and the Order to Show Cause, in part because of his social relationship with Mr. and Mrs. Bintz.

43. Both proceedings were transferred to the Fulton County Family Court, where a hearing officer denied the Objection to the hearing examiner's Decision and Order. The hearing officer did not issue an order reinstating the suspension of Mr. Bintz's license, and as of December 1999, Mr. Bintz had not been notified that any further action had been taken to reinstate the suspension of his license.

44. Respondent's involvement in the Bintz case went well beyond the assistance the Court typically provides to *pro se* litigants.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B), 100.3(B)(3), 100.3(B)(6), 100.3(C)(1) and 100.4(A)(2) of the Rules Governing Judicial Conduct. Charge I is sustained insofar as it is consistent with the above findings of fact. Paragraph 4(m) of Charge I is not sustained and is dismissed. Charge II is sustained.

Respondent engaged in a course of conduct, arising out of a personal relationship with his law clerk, which detracted from the dignity of his office, seriously disrupted the operations of the court and constituted an abuse of his judicial and administrative power.

During the two-month relationship, respondent's conduct, particularly his physical display of affection for the law clerk in view of court staff and his discussions of the relationship with members of the court staff and with attorneys who appeared before him, was so disruptive that the chief clerk felt compelled to report his actions to court administrators. After the relationship ended, respondent's hostile, retaliatory behavior toward the law clerk created an atmosphere of polarization

and mistrust among court staff, further disrupting the operation of the court, and constituted a flagrant abuse of his judicial position. Respondent implicitly threatened the law clerk's continued employment by stating that she served at his pleasure; he wrote an unsolicited letter of recommendation for her, which he intentionally left in a place where he expected she would find it; he derogated her in conversations with court staff and told some that he wished she would leave or that he could fire her. Even after the law clerk was transferred to another court, respondent sent a letter to the administrative judge asserting that she still served at his discretion and intimating that he would terminate her if asked. Respondent's disparaging statements about the law clerk to her former fiancé, a Family Court hearing examiner, and to another attorney further demonstrated the continuing animus motivating respondent's acts. Respondent's actions were clearly intended to damage the law clerk personally and professionally and were threatening, intimidating and retaliatory.

Also retaliatory were respondent's efforts to undermine the authority of the chief clerk, whom he apparently regarded as the law clerk's principal ally and who had reported his actions to administrative authorities, and to bar an attorney from appearing as a law guardian in the court solely because the attorney was dating the law clerk. *See* Matter of Hanofee, 1990 Ann Rep of NY Commn on Jud Conduct 109. Respondent's direction to his staff not to assign any new cases to the attorney, which effectively removed him as a law guardian without following the rules and procedures of the Appellate Division, was particularly egregious. Respondent's explanation that he did so in order to avoid an appearance of impropriety is unacceptable since other, non-punitive options were available, including disqualifying the law clerk from those cases.

Respondent's bizarre and erratic behavior in the weeks that followed the end of his relationship with the law clerk further disrupted the operations of the court and eroded the dignity of his judicial position. Respondent's decision at 4:45 P.M. on a Friday to cancel all court proceedings for the following week because he was unable to cope with the tension between him and the law clerk, his sleeping during the work day, his drinking beer in the court basement prior to a court proceeding, his display of a knife under circumstances that alarmed his staff, and his explosive display of rage toward the chief clerk exacerbated the turmoil created by his conduct with respect to the law clerk.

With respect to Charge II, respondent engaged in favoritism by issuing an *ex parte* order terminating the suspension of the driver's license of a long-time acquaintance. Although respondent knew of the Bintzes' ongoing support proceedings in Family Court, respondent met privately in chambers with Mr. Bintz, whose license had been suspended because he owed nearly $5,000 in child support payments. After checking the case file, respondent dictated a petition and an Order to Show Cause, returnable before himself more than a month later. Respondent then directed his chief clerk to type an order terminating the license suspension, crossed out the paragraph stating that the support obligation had been satisfied and signed the order, without giving Mrs. Bintz or her attorney any opportunity to be heard. Such conduct was contrary to Family Court Act §458-a, which provides that such action can be taken only upon full or partial payment of the arrears. Respondent's actions created an appearance of impropriety, conveying the unmistakable

impression that respondent had gone to extraordinary lengths to benefit his long-time acquaintance.

With respect to the issue of sanctions, we are mindful that the extreme sanction of removal "is not normally to be imposed for poor judgment, even extremely poor judgment." Matter of Sims, 61 NY2d 349, 356 (1984). In this case, however, respondent's misconduct "transcends poor judgment," and it is compounded by his persistent, astonishing failure to recognize the impropriety of his admitted acts with respect to both charges. Matter of Sims, *supra*; Matter of Shilling, 51 NY2d 397 (1980). Also permeating this record is evidence of respondent's arrogant insistence that others were responsible for the turmoil in the court and his unwillingness to accept direction from his administrative judges, who were called upon to deal with the consequences of his inappropriate behavior. Such conduct demonstrates a total lack of recognition of the ongoing, serious problems created by his willful, aberrant acts.

We also note that in July 1997, a month before he made an insensitive remark to a member of his staff who was expecting a child, respondent was disciplined for having made an inappropriate, discourteous comment to a litigant. Matter of Going, 1998 Ann Rep of NY Commn on Jud. Conduct 129.

Respondent's conduct "demonstrates a blatant lack not only of judgment but also of judicial temperament, and complete disregard of the appearances of impropriety inherent in his conduct." Matter of Shilling, *supra*, 51 NY2d at 399. Respondent's "complete insensitivity to the special ethical obligations of judges" renders him unfit for judicial office (Matter of Shilling, *supra*, 51 NY2d at 404).

By reason of the foregoing, the Commission determines that the appropriate disposition is removal from office.

Judge Salisbury, Mr. Berger, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Ms. Brown and Mr. Coffey were not present.

Dated: December 29, 2000

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

IN THE MATTER OF THE PROCEEDING PURSUANT TO SECTION 44, SUBDIVISION 4, OF THE JUDICIARY LAW, IN RELATION TO **WALTER W. HAFNER, JR.**, A JUDGE OF THE COUNTY COURT, OSWEGO COUNTY.

APPEARANCES:

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

The respondent, Walter W. Hafner, Jr., a judge of the County Court, Oswego County, was served with a Formal Written Complaint dated May 12, 2000, alleging that respondent engaged in improper political activity during his campaign for election as a County Court judge in 1998. Respondent filed an answer dated May 30, 2000.

On October 7, 2000, 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 upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On October 23, 2000, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the County Court since January 1, 1999. In 1998, Respondent was a candidate for election to County Court.

2. During his 1998 campaign for County Court, respondent ran a print advertisement that stated: "Are you tired of seeing career criminals get a 'slap' on the wrist? So am I...."

3. In 1998, during his campaign for County Court, respondent reviewed and approved for distribution campaign literature issued by Conservative Party Chairman Stephen Miller that attacked respondent's opponent's record in dismissing cases and stated: "Soft judges make hard criminals!"

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

The campaign activities of judicial candidates are significantly circumscribed. (See Matter of Decker, 1995 Ann Report of NY Commn on Jud Conduct, at 111, 112.) A judicial candidate may not "make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office"; nor may a candidate

"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" (Sections 100.5[A][4][d][i] and [ii] of the Rules Governing Judicial Conduct). To do so compromises the judge's impartiality. (*See* Matter of Birnbaum, 1998 Ann Report of NY Commn on Jud Conduct, at 73, 74.)

Respondent's 1998 campaign advertisement and the Conservative Party literature, which respondent had approved, conveyed the clear message that, if elected, respondent would treat criminal defendants more harshly than his opponent, the incumbent County Court judge, had done. By stating that he was "tired of seeing career criminals get a 'slap' on the wrist," respondent implied that he would deal harshly with all such defendants, rather than judge the merits of individual cases. (*See* Matter of Maislin, 1999 Ann Report of NY Commn on Jud Conduct, at 113, 114.)

Moreover, the mean-spirited attack on his opponent for decisions to dismiss charges in specific cases (the facts of which were described in sensational terms) was unseemly and highly inappropriate. Such attacks may pander to popular sentiment that all defendants charged with heinous crimes should be convicted and that judges who dismiss such charges are "soft," but they do a disservice to the judiciary and to the public.

While it cannot be determined whether these statements played a significant role in respondent's successful campaign, a judge's election is tarnished when the judge's campaign activity violates the ethical rules. Every judicial candidate should be mindful of the importance of adhering to the ethical standards so that public confidence in the integrity and impartiality of the judiciary may be preserved.

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

Judge Salisbury, Mr. Berger, Ms. Hernandez, Judge Luciano, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Mr. Goldman votes to reject the agreed statement of facts on the basis that the proposed sanction is too lenient.

Ms. Brown and Mr. Coffey and were not present.

Dated: December 29, 2000

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 C. HOWELL**, A
JUSTICE OF THE LANSING TOWN COURT, TOMPKINS COUNTY.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Williamson, Clune & Stevens (By Robert J. Clune) for Respondent

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The respondent, John C. Howell, a justice of the Lansing Town Court, Tompkins County, was served with a Formal Written Complaint dated September 29, 1999, alleging that he wrote to another judge in connection with a pending criminal case. Respondent filed an undated answer.

On December 16, 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 4, 2000, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Lansing Town Court since 1991.

2. On November 3, 1997, based on a request from an assistant district attorney, respondent wrote a letter on court stationery to the judge who was presiding over People v Carmen DeChellis, which was then pending in the Tompkins County Court. Respondent stated that:

a) the defendant had appeared before respondent "almost continuously since January 1993";

b) respondent had "heard this line of 'B.S.' before";

c) the defendant "is a menace to our community"; and,

d) there was no doubt in respondent's mind that the defendant "needs to do real time in State Prison."

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

In an intemperate letter, respondent used the prestige of his judicial office to advance the prosecutor's position in a criminal case pending before another judge. As the Court of Appeals stated in Matter of Lonschein (50 NY2d 569, at 571-72):

> [N]o judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others [citation omitted]. Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved [citation omitted]. There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary. Thus, any communication from a Judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office.

In the past, such conduct has occasioned either admonition or censure, depending on the circumstances. (See, Matter of Putnam, 1999 Ann Report of NY Commn on Jud Conduct, at 131 [judge admonished after writing to another judge on the merits of a pending custody case]; Matter of Engle, 1998 Ann Report of NY Commn on Jud Conduct, at 125 [judge censured after writing to another judge and pleading for a lenient sentence for a defendant in a pending case and after circulating, signing and delivering a petition to the prosecutor on behalf of the same defendant]; Matter of Freeman, 1992 Ann Report of NY Commn on Jud Conduct, at 44 [judge admonished after writing to another judge on behalf of an individual who was seeking to have his pistol permit reinstated]).

In the instant case, we are persuaded that admonition is appropriate. Although it does not excuse his wrongdoing, respondent's misconduct is mitigated by the fact that he wrote the letter at the urging of the prosecutor. (See, Matter of Abbott, 1990 Ann Report of NY Commn on Jud Conduct, at 69, 72; Matter of Reyome, 1988 Ann Report of NY Commn on Jud Conduct, at 207, 209).

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

Mr. Berger, Ms. Hernandez, Judge Joy, Judge Luciano, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Ms. Brown, Mr. Goldman and Judge Marshall dissent and vote to reject the Agreed Statement of Facts.

Mr. Coffey was not present.

Dated: April 6, 2000

DISSENTING OPINION BY MR. GOLDMAN

Although I ordinarily accept a factual and/or sanction stipulation agreed upon by the parties, I vote to reject the Agreed Statement of Facts. In determining sanction, I believe it important to know whether respondent sent the letter ex parte to the county judge and whether defense counsel was made aware of the letter. The determination of these facts, either in a hearing or by a revised stipulated statement, may be crucial to my decision as to the appropriate sanction in this matter.

Dated: April 6, 2000

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 N. MULLIN**, A JUDGE OF THE DISTRICT COURT, SUFFOLK COUNTY.

APPEARANCES:

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

The respondent, John N. Mullin, a judge of the District Court and an acting judge of the County Court, Suffolk County, was served with a Formal Written Complaint dated May 15, 2000, alleging that respondent engaged in improper political activity during his campaign for election as a Supreme Court justice in 1998.

On July 13, 2000, 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 upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On August 10, 2000, the Commission approved the agreed statement and made the following determination.

As to Charges I and II of the Formal Written Complaint:

1. Respondent has been a judge of the District Court since 1984. In 1998, respondent was a candidate for election to Supreme Court.

2. During his 1998 campaign, respondent approved and failed to prevent widespread distribution of a piece of campaign literature and advertisements that implied that respondent was an incumbent Supreme Court justice by containing the statement "John N. Mullin Supreme Court Justice," together with a photograph of respondent in judicial robes.

3. In October 1998, during his campaign for Supreme Court, respondent failed to prevent widespread distribution of an advertisement, placed in the Long Island Catholic newspaper by respondent's campaign, that implied that respondent was an incumbent Supreme Court justice by containing the statements "John N. Mullin Supreme Court Justice – Rows B & F" and "Paid for by the Committee to Re-Elect Judge John Mullin." Respondent's campaign committee was named "The Committee to Elect John N. Mullin to the Supreme Court."

4. The October 1998 advertisement in the Long Island Catholic also contained the statements "John N. Mullin Supreme Court Justice – Rows B & F The Authentic Right To Life Judicial Candidate," "Life...The Verdict For All Of God's Children" and "Judge Mullin Needs And Deserves The Support Of All Who Cherish Life." These statements appeared to commit respondent on abortion-related issues that come before the Court.

5. Respondent tacitly approved the language contained in the Long Island Catholic advertisement by giving his campaign manager, Jerry Garguilo, Esq., authority to compose the text of the advertisement and by having a general discussion with Mr. Garguilo concerning the contents of the advertisement.

As to Charges III and IV of the Formal Written Complaint:

6. On August 18, 1998, at respondent's direction, respondent's campaign for Supreme Court justice made a payment of $1,750.00 to the Smithtown Republican Victory Fund to purchase ten tickets to the Annual Smithtown Republican Cocktail Reception and Buffet, which constituted an improper political contribution.

7. At the time of the purchase of the ten tickets, respondent knew or should have known that Section 100.5(A)(2)(v) of the Rules Governing Judicial Conduct permits a judicial candidate to purchase only two tickets to politically sponsored dinners and other functions.

8. On August 26, 1998, at respondent's direction, respondent's campaign for Supreme Court justice made a payment of $1,000.00 to the Suffolk County Right To Life Party, which constituted an improper campaign contribution. At the time of the payment, respondent had not yet been designated as the candidate of the Right To Life Party, although respondent had been the Party's candidate in three previous judicial elections.

9. In the spring of 2000, during the Commission's investigation of this matter, respondent obtained from the Smithtown Republican Victory Fund and the Suffolk County Right To Life Party the return of the funds improperly paid to those groups by respondent's campaign committee and arranged to return the funds pro rata to the campaign's contributors.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.5(A), 100.5(A)(2)(v), 100.5(A)(4)(a), 100.5(A)(4)(d)(i), 100.5(A)(4)(d)(ii) and 100.5(A)(4)(d)(iii) of the Rules Governing Judicial Conduct. Charges I, II, III and IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's conduct during his 1998 campaign for Supreme Court justice reveals a lack of sensitivity to the ethical standards governing judges. As a judge since 1984, respondent should have been aware of the restrictions on political activity for judicial candidates.

By containing the statement "John N. Mullin Supreme Court Justice," together with a photograph of respondent in judicial robes, respondent's campaign literature and advertisements, which respondent had approved, conveyed the false impression that respondent was an incumbent Supreme Court justice. This impression was underscored by a reference, in one advertisement, to "The Committee to Re-

Elect Judge John Mullin"; in fact, respondent's campaign committee was named "The Committee to Elect John N. Mullin to the Supreme Court." By appearing to portray him as an incumbent Supreme Court justice, respondent's misleading campaign material would be likely to give him an unfair advantage in his campaign for that office and violated Section 100.4(d)(iii) of the Rules Governing Judicial Conduct.

When seeking election for a higher judicial office, a judge may use the term "judge" or "justice" in campaign literature, but in doing so the judge must make clear that he or she is not the incumbent of the office sought (NYSBA Op 612, 28-89, Sept. 7, 1990; Opn Advisory Comm on Jud Ethics 94-50). A judge's campaign material must scrupulously avoid any ambiguity in that regard in order to avoid the potential for deception. Respondent's campaign material fell short of the ethical standards.

Further, by describing respondent as "The Authentic Right To Life Judicial Candidate" and containing the statements "Life...The Verdict For All Of God's Children" and "Judge Mullin Needs And Deserves The Support Of All Who Cherish Life," respondent's campaign advertisement in the Long Island Catholic appeared to commit respondent on abortion-related issues that come before the Court. Although a judicial candidate may accept endorsement from the Right To Life Party, a candidate may not pledge support to a party platform or position or make statements that may reflect on his or her impartiality (Sections 100.4[d][i] and 100.4[d][ii] of the Rules Governing Judicial Conduct).

Respondent's conduct in authorizing his campaign committee to purchase ten tickets to a political dinner was improper since a judicial candidate may buy only two such tickets (Section 100.5[A][2][v] of the Rules Governing Judicial Conduct; Matter of Salman, 1995 Ann Rep of NY Commn on Jud Conduct, at 134 [Jan. 26, 1994]). This constituted an improper political contribution and violated the ethical rules.

Respondent also permitted his campaign committee to give $1,000 to the Suffolk County Right To Life Party. While a judge's committee may reimburse political organizations for the proportionate share of the cost of the judge's election campaign, the judge should obtain documentation of actual costs before the political organization is reimbursed (Opns Advisory Comm on Jud Ethics; Matter of Salman, supra). Although respondent had been the candidate of the Right To Life Party in previous elections, he had not yet been designated as the Party's candidate at the time of the payment, and thus his committee's payment clearly constituted an improper political contribution.

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

Judge Salisbury, Mr. Berger, Mr. Goldman, Ms. Hernandez, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano did not participate.

Ms. Brown and Mr. Coffey and were not present.

Dated: September 25, 2000

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

IN THE MATTER OF THE PROCEEDING PURSUANT TO SECTION 44, SUBDIVISION 4, OF THE JUDICIARY LAW, IN RELATION TO **ROBERT T. RUSSELL, JR.**, A JUDGE OF THE BUFFALO CITY COURT, ERIE COUNTY.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Terrence M. Connors for Respondent

The respondent, Robert T. Russell, Jr., a judge of the Buffalo City Court, Erie County, was served with a Formal Written Complaint dated March 15, 2000, alleging that over a seven-year period respondent failed to file his financial disclosure statements with the Ethics Commission for the Unified Court System within the time required by the Rules of the Chief Judge.

On September 14, 2000, 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 upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On September 14, 2000, 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 Buffalo City Court since 1992.

2. Respondent failed to file his financial disclosure statements for the years 1992 through 1998 with the Ethics Commission for the Unified Court System ("Ethics Commission") within the time required by Section 40.2 of the Rules of the Chief Judge (22 NYCRR 40.2). In each of those years, the Ethics Commission sent respondent a Notice To Cure, and in three of those years, the Ethics Commission sent respondent a Notice of Delinquency, as set forth on the annexed Schedule A.

3. Respondent's delayed filings with the Ethics Commission of his 1996, 1997 and 1998 financial disclosure statements occurred after the Commission had sent respondent a Letter of Dismissal and Caution dated February 7, 1997, pertaining to his failure to file his 1995 financial disclosure statement in a timely manner and cautioning him to file his financial disclosure statements as required by Section 40.2 and Judiciary Law Section 211(4).

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 100.3(C)(1)

of the Rules Governing Judicial Conduct. Charge I is sustained, and respondent's misconduct is established.

As reflected in Judiciary Law Section 211(4) and Rules of the Chief Judge Section 40.2, the Legislature and the Chief Judge have determined that financial disclosure by judges serves an important public function, and it is the duty of every judge to file the required reports promptly. Since becoming a judge in 1992, respondent repeatedly violated the requirement that his financial disclosure statements be filed each year by May 15th; his first report, due on May 15, 1993, was filed 150 days late, and over a seven-year period his reports were late by an average of 85 days. Each year, a month after the May 15th due date, the Ethics Commission sent respondent a Notice To Cure reminding him of his obligation, and in three of those years, when he did not file within 30 days of the Notice To Cure, respondent was sent a Notice Of Delinquency.

Respondent's negligence in this regard is exacerbated by the fact that his pattern of late filing continued even after he received a Letter of Dismissal and Caution from the Commission concerning his failure to file his 1995 financial disclosure statement in a timely manner. Notwithstanding this warning, respondent continued to ignore the relevant ethical rules, and for each of the next three years, he continued to file his reports well past the due date and only after receiving a Notice To Cure.

Respondent's conduct violated Section 100.3(C)(1) of the Rules Governing Judicial Conduct, which requires a judge to diligently discharge his or her administrative responsibilities, maintain professional competence in judicial administration and cooperate with court officials in the administration of court business. Although this behavior does not reflect on respondent's performance on the bench, it is misconduct that warrants public discipline.

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

Judge Salisbury, Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters and Mr. Pope concur. Judge Marshall and Judge Ruderman were not present.

Dated: October 31, 2000

SCHEDULE A

Year	Due Date	Notice To Cure	Notice of Delinquency	Date Filed	Days Late
1992	5/15/93	6/93		10/12/93	150
1993	5/15/94	6/94		7/7/94	53
1994	5/15/95	6/15/95	7/20/95	8/9/95	86
1995	5/15/96	6/17/96	7/30/96	9/10/96	118
1996	5/15/97	6/97		6/23/97	39
1997	5/15/98	6/98		7/14/98	60
1998	5/15/99	6/17/99	7/21/99	8/9/99	86

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 **LAURA D. STIGGINS**, A JUSTICE OF THE DANSVILLE TOWN COURT, STEUBEN COUNTY.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Urbanski & Flynn (By Kevin P. Flynn) for Respondent

The respondent, Laura D. Stiggins, a justice of the Dansville Town Court, Steuben County, was served with a Formal Written Complaint dated February 11, 2000, alleging that respondent physically abused a mentally incompetent patient in a nursing home and, as a result of her actions, was convicted of two misdemeanors.

By motion dated April 12, 2000, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's operating procedures and rules (22 NYCRR 7000.6[c]). Respondent opposed the motion in papers dated April 27, 2000. By Decision and Order dated May 19, 2000, the Commission granted the administrator's motion.

The administrator filed a memorandum as to sanctions. Respondent did not file any papers and did not request oral argument.

On June 22, 2000, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Dansville Town Court since 1986.

2. In 1998, respondent was employed as a licensed practical nurse at the Livingston County Campus Skilled Nursing Facility, a residential health care facility located in Mount Morris.

3. On or about January 25, 1998, respondent physically abused Rosella Carpenter, a patient of the facility who was unable to care for herself due to dementia, by throwing Ms. Carpenter onto the arm of a Geri-Chair, thereby causing a fractured rib.

4. On March 31, 1999, respondent was convicted after a jury trial in the Mount Morris Town Court of Assault, Third Degree, a violation of Section 120.00 of the Penal Law, and Endangering The Welfare Of An Incompetent Person, a violation of Section 260.25 of the Penal Law, in connection with her conduct toward Ms. Carpenter on or about January 25, 1998. Respondent received a sentence of three years probation and 200 hours of community service.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and

100.2(A) of the Rules Governing Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent's conduct, as established in the criminal matter which resulted in her conviction of Assault, Third Degree and Endangering The Welfare Of An Incompetent Person, clearly violated the high standards of conduct required of every judge and demonstrates her lack of fitness for judicial office.

On or off the bench, a judge remains "clothed figuratively with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others." Matter of Kuehnel v. State Comm. on Judicial Conduct, 49 NY2d 465, 469 (1980). Every judge is required to observe high standards of conduct and to conduct himself or herself in a manner that promotes public confidence in the integrity of the judiciary (Sections 100.1 and 100.2[A] of the Rules Governing Judicial Conduct). Any conduct, on or off the bench, "inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual judge to carry out his or her constitutionally mandated function." Matter of Kuehnel, supra.

By physically abusing a mentally incompetent patient in a nursing home, respondent engaged in conduct that is unacceptable by any standard. Such behavior, reprehensible when committed by any individual, is intolerable in one who holds a position of public trust. Matter of Benjamin v. State Comm. on Judicial Conduct, 77 NY2d 296 (1991).

While respondent has been punished for her conduct by the court of law in which she was convicted, it is also imperative for the Commission to act. As a judge, respondent has jurisdiction over the misdemeanor charges of which she was convicted. Respondent's conduct and her subsequent conviction seriously undermine her ability to administer the law effectively and impartially. By her actions, respondent has demonstrated that she is unfit for judicial office.

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

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

Mr. Pope was not present.

Dated: August 18, 2000

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 P. TORRACA**, A JUSTICE OF THE SUPREME COURT, ULSTER COUNTY.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
H. Clark Bell for Respondent

The respondent, Joseph P. Torraca, a justice of the Supreme Court. Third Judicial District, Ulster County, was served with a Formal Written Complaint dated July 11, 2000, alleging that respondent engaged in improper business activity and presided over cases in which the attorney for one of the parties was making lease payments or mortgage payments to respondent.

On September 14, 2000, 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 upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On September 14, 2000, 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 Supreme Court, Third Judicial District since 1982.

2. In 1970, respondent and his law partner Phil Schunk formed a corporation, Schunk and Torraca, P.C., which had as its main asset the building containing the corporation's law office at 40 Main Street, New Paltz, New York. Respondent and Mr. Schunk dissolved their law practice in 1980.

3. From January 1982, when respondent assumed the Supreme Court bench, until October 1999, respondent continued to serve as secretary/treasurer and director of Schunk and Torraca, P.C. During that period, the mailing address of the corporation was respondent's chambers.

As to Charge II of the Formal Written Complaint:

4. From January 1982 to September 1994, Schunk and Torraca, P.C. leased the office building at 40 Main Street in New Paltz to various tenants, including the Ulster County Department of Mental Health. From September 1994 until September 1997, Schunk and Torraca, P.C. leased the building to the law firm of Andrew and Victoria Kossover.

5. In September 1997, Schunk and Torraca, P.C. sold the office building to

Andrew and Victoria Kossover. Schunk and Torraca held a mortgage on the property from September 1997 to July 1999.

6. Between 1994 and 1999, Andrew Kossover represented numerous clients in Supreme Court, Ulster County. Respondent presided to disposition over three of Mr. Kossover's cases without disclosing to Mr. Kossover's adversaries the ongoing financial transactions with Mr. Kossover.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(E)(1), 100.4(A)(1), 100.4(D)(1)(c) and 100.4(D)(3) and former Sections 100.3(c)(1), 100.5(c)(1) and 100.5(c)(2) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

After ascending the bench in 1982, respondent continued to serve for nearly two decades as director and secretary/treasurer of Schunk and Torraca, P.C. During this period, the mailing address of Schunk and Torraca, P.C. was respondent's chambers, and respondent, as a principal of the corporation, collected rents from various tenants who leased the building owned by the corporation. Such conduct is clearly prohibited by Section 100.4(D)(3) of the Rules Governing Judicial Conduct (formerly Section 100.5[c][2]), which provides: "No full-time judge shall be a managing or active participant in any form of business enterprise organized for profit, nor shall he or she serve as an officer, director, trustee, partner, advisory board member or employee of any corporation, partnership or other association organized for profit...."

The prohibitions against business activity by judges are "straightforward and unequivocal...." (Matter of Bayger, 1984 Ann Report of NY Commn on Jud Conduct at 62, 66; see also Matter of Bell, 1996 Ann Report of NY Commn on Jud Conduct at 61). Respondent's ongoing business activity clearly violated the ethical standards.

That respondent's business dealings involved an attorney who appeared in respondent's court compounds his misconduct. During a time when attorney Andrew Kossover was making payments to respondent for the lease of the building owned by Schunk and Torraca, and later for the purchase of the building, respondent presided over Mr. Kossover's cases and did not make disclosure to any of the opposing parties. Such conduct is contrary to the ethical rules which prohibit a judge from engaging in business dealings that cast reasonable doubt on the judge's capacity to act impartially and that involve the judge in frequent transactions or continuous business relationships with lawyers or others likely to come before the judge's court (Sections 100.4[A][1] and 100.4[D][1][c] of the Rules, formerly Section 100.5[c][1]).

Respondent's conduct reveals a lack of sensitivity to the ethical standards for judges and warrants public discipline.

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

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

Judge Peters did not participate.

Judge Ruderman was not present.

Dated: November 7, 2000

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 **PENNY M. WOLFGANG**, A JUSTICE OF SUPREME COURT, ERIE COUNTY.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Connors & Vilardo (By Terrence M. Connors) for Respondent

The respondent, Penny M. Wolfgang, a justice of the Supreme Court, Eighth Judicial District, Erie County, was served with a Formal Written Complaint dated January 19, 2000, alleging that respondent engaged in improper business activity and lent the prestige of judicial office to advance private interests by playing the role of a judge in a commercial motion picture.

On May 10, 2000, 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 upon the agreed facts, jointly recommending that a sanction no more severe than admonition be determined, and waiving further submissions and oral argument.

On May 11, 2000, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Supreme Court, Eighth Judicial District since 1986.

2. In or about April 1998, respondent played the role of a judge in the commercial motion picture "Buffalo 66". Respondent appeared in the movie in one brief scene, wearing her judicial robe and presiding in court over a sentencing proceeding. Her nameplate, visible in the scene, identified her by name. The scene was filmed on a Saturday.

3. For her appearance in the movie, respondent received compensation of $466.00. Respondent subsequently donated the remuneration to charity.

4. Prior to her appearance in the movie, respondent did not request an opinion from the Advisory Committee on Judicial Ethics and was not aware of Advisory Opinion 96-134 (1996), which states that a full-time judge should not be an actor in a commercial motion picture.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.2(C) and 100.4(D)(3) of the Rules Governing Judicial Conduct. The charge in the Formal Written Complaint is sustained, and

respondent's misconduct is established.

By her appearance in a commercial movie, in which she played the role of a judge, wore her judicial robe and was identified by name, respondent lent the prestige of judicial office to advance private interests. Such conduct is prohibited by Section 100.2(C) of the Rules Governing Judicial Conduct and detracts from the dignity of judicial office.

Respondent, who was compensated for her appearance in the movie, also violated the ethical standards which prohibit a full-time judge from engaging in business activity or accepting private employment from any entity organized for profit. The movie was a commercial enterprise, and by participating in the movie, respondent contributed to that enterprise, in violation of Section 100.4(D)(3) of the Rules Governing Judicial Conduct.

While this misconduct, standing alone, might otherwise warrant a confidential disposition, we note that respondent has previously been disciplined for engaging in improper extra-judicial activities. In 1987, respondent was admonished for lending the prestige of her judicial office to advance certain business interests and charitable activities. (See Matter of Wolfgang, 1988 Ann Report of NY Commn on Jud Conduct, at 245.) In that matter, two of the three instances of misconduct occurred after respondent had received a Letter of Dismissal and Caution, explicitly advising her not to use her judicial position to promote private business interests. Thus, respondent should have been especially sensitive to the ethical restrictions concerning extra-judicial activities.

We also note that, notwithstanding these concerns, respondent did not seek advice from the Advisory Committee on Judicial Ethics prior to her appearance in the movie. Had respondent done so, she would have been aware of Advisory Opinion 96-134 (1996), which specifically states that a full-time judge should not be an actor in a commercial motion picture.

In view of the numerous warnings respondent has received concerning her improper extra-judicial activities, any future conduct which violates the ethical rules concerning such conduct may well be met with a more severe sanction.

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

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

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

Dated: July 5, 2000

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 **KEVIN G. YOUNG**, A
JUDGE OF THE SYRACUSE CITY COURT, ONONDAGA COUNTY.

APPEARANCES:

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

The respondent, Kevin G. Young, a judge of the Syracuse City Court, Onondaga County, was served with a Formal Written Complaint dated May 12, 2000, alleging that respondent, at the request of a friend who was the petitioner in a pending Family Court matter, initiated an improper *ex parte* communication with the Family Court hearing examiner assigned to the matter. Respondent filed an answer dated June 12, 2000.

On October 19, 2000, 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 upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On October 23, 2000, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Syracuse City Court since January 1, 1996.

2. Respondent has known Kathleen O'Hara for many years. Ms. O'Hara is a personal friend of respondent's and had been his client when he was in private practice prior to January 1, 1996.

3. In or about July 1998, Ms. O'Hara advised respondent that she had a matter pending in Family Court involving Patsy J. Campolieta, her ex-husband. Ms. O'Hara advised respondent that the matter was before Onondaga County Family Court Hearing Examiner Robert Jenkins and asked respondent if he would "make a call" to Hearing Examiner Jenkins concerning the issue of education-related expenses involving one of Ms. O'Hara's children from her prior marriage to Mr. Campolieta.

4. Respondent initially rejected Ms. O'Hara's request but subsequently contacted Hearing Examiner Jenkins, who was presiding over Kathleen O'Hara v. Patsy J. Campolieta, and left a message that the Hearing Examiner contact "Judge Young."

5. Respondent initially advised Ms. O'Hara that he would not contact Hearing Examiner Jenkins because he recognized

that a judge should not contact another judicial officer concerning a pending matter at the request of a personal friend.

6. When Hearing Examiner Jenkins returned respondent's call, respondent advised him that Mr. Campolieta was a "hard ass" and was being "unreasonable" by not contributing to the college expenses of one of the children of the parties. Hearing Examiner Jenkins was aware that respondent was a Syracuse City Court judge, and he recused himself from the matter as a consequence of respondent's *ex parte* communication.

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

By contacting a Family Court Hearing Examiner on behalf of a friend whose case was pending before the Hearing Examiner, respondent intervened on behalf of another in a pending proceeding and used the prestige of judicial office in an attempt to advance his friend's private interests. Such assertion of influence is clearly prohibited by the ethical standards (Section 100.2[C] of the Rules Governing Judicial Conduct). As the Court of Appeals stated in Matter of Lonschein (50 NY2d 569, 571-72):

No judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.

Difficult as it may be to refuse the request of a close friend or relative to "make a call" on his or her behalf, every judge must be mindful of the importance of adhering to the ethical standards so that public confidence in the integrity and impartiality of the judiciary may be preserved. Respondent had ample opportunity to reflect upon the impropriety of the call he was requested to make. Indeed, when his friend asked that he "make a call" on her behalf, he initially declined to do so because he recognized the impropriety of such conduct. Then, when he made the call to the Hearing Examiner, he left word that "Judge Young" had called. Not until the Hearing Examiner returned the call did respondent deliver an emphatic message on behalf of his friend.

Having identified himself as a judge, respondent, who had been his friend's attorney before becoming a judge, acted as her advocate. He described his friend's former husband in derogatory language and advised the Hearing Examiner that the former husband was being "unreasonable." Clearly, the purpose of such *ex parte* advocacy was to influence the Hearing Examiner on his friend's behalf. Indeed, the Hearing Examiner felt constrained to recuse himself from the matter as a consequence of respondent's improper intervention. Such a solicitation of special consideration "is wrong, and always has been wrong," and undermines the administration of justice. Matter of Byrne, 420 NYS2d 70, 71 (Ct on the Jud 1979); *see also* Matter of McGee, 1985 Ann Report of NY Comm on Jud Conduct, at 176; Matter of DeLuca, 1985 Ann Report of NY Comm on Jud Conduct, at 119.

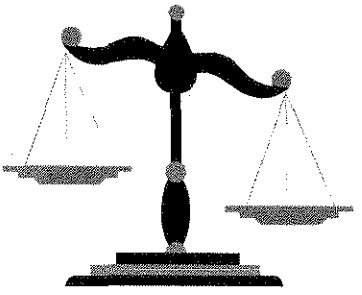
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

Judge Salisbury, Mr. Berger, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Ms. Brown and Mr. Coffey and were not present.

Dated: December 29, 2000

Statistical Analysis of Complaints



2001 Annual Report

New York State
Commission on Judicial Conduct

COMPLAINTS PENDING AS OF DECEMBER 31, 1999

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING								
NON-JUDGES								
DEMEANOR		9	24	14	3	3	6	59
DELAYS		1	3	3	1	0	0	8
CONFLICT OF INTEREST		2	7	2	0	1	2	14
BIAS		0	1	1	0	0	1	3
CORRUPTION		6	2	2	2	1	0	13
INTOXICATION		0	1	0	1	0	0	2
DISABILITY/QUALIFICATIONS		0	1	0	0	0	0	1
POLITICAL ACTIVITY		4	36	8	1	0	2	23
FINANCES/RECORDS/TRAINING		2	5	8	5	1	2	23
TICKET-FIXING		0	0	0	0	0	0	0
ASSERTION OF INFLUENCE		3	3	4	0	0	2	12
VIOLATION OF RIGHTS		8	15	9	0	1	1	34
MISCELLANEOUS		0	2	1	0	0	0	3
TOTALS		35	100	52	13	7	16	223

*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 2000

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	448							448
NON-JUDGES	179							179
DEMEANOR	143	34	1	8	0	0	0	186
DELAYS	37	2	1	0	0	0	0	40
CONFLICT OF INTEREST	22	10	2	1	0	0	0	35
BIAS	86	61	7	4	2	0	0	74
CORRUPTION	13	7	1	0	1	0	0	22
INTOXICATION	0	1	1	0	0	0	0	2
DISABILITY/QUALIFICATIONS	0	0	0	0	0	0	0	0
POLITICAL ACTIVITY	8	18	3	0	0	0	1	30
FINANCES/RECORDS/TRAINING	4	20	22	6	0	0	0	52
TICKET-FIXING	0	1	0	0	0	0	0	1
ASSERTION OF INFLUENCE	5	3	1	0	0	0	0	9
VIOLATION OF RIGHTS	143	37	14	3	0	0	0	197
MISCELLANEOUS	10	2	1	0	0	0	0	13
TOTALS	1073	142	51	20	1	0	1	1288

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ALL COMPLAINTS CONSIDERED IN 2000: 1288 NEW & 223 PENDING FROM 1999

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	448							448
NON-JUDGES	179							179
DEMEANOR	143	43	19	22	6	6	6	245
DELAYS	37	3	4	3	1	0	0	48
CONFLICT OF INTEREST	22	12	9	3	0	1	2	49
BIAS	61	7	5	3	0	0	1	77
CORRUPTION	13	13	3	2	3	1	0	35
INTOXICATION	0	1	2	0	1	0	0	4
DISABILITY/QUALIFICATIONS	0	0	1	0	0	0	0	1
POLITICAL ACTIVITY	8	22	39	8	1	0	3	81
FINANCES/RECORDS/TRAINING	4	22	25	16	5	1	2	75
TICKET-FIXING	0	1	0	0	0	0	0	1
ASSERTION OF INFLUENCE	5	6	4	4	0	0	2	21
VIOLATION OF RIGHTS	143	45	21	12	4	5	1	231
MISCELLANEOUS	10	2	3	1	0	0	0	16
TOTALS	1073	177	135	74	21	14	17	1511

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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	10,076							10,076
NON-JUDGES	2969							2969
DEMEANOR	2168	43	794	228	79	78	171	3561
DELAYS	962	3	92	46	15	12	16	1146
CONFLICT OF INTEREST	456	12	341	120	43	19	97	1088
BIAS	1368	7	193	40	23	14	21	1666
CORRUPTION	317	13	80	8	29	12	20	479
INTOXICATION	40	1	32	7	7	3	19	109
DISABILITY/QUALIFICATIONS	43	0	28	2	16	10	6	105
POLITICAL ACTIVITY	203	22	185	126	10	15	23	584
FINANCES/RECORDS/TRAINING	192	22	206	130	98	77	85	810
TICKET-FIXING	22	1	71	155	38	61	159	507
ASSERTION OF INFLUENCE	129	6	103	53	9	7	36	343
VIOLATION OF RIGHTS	1946	45	253	124	50	27	29	2474
MISCELLANEOUS	665	2	225	78	25	38	56	1089
TOTALS	21,556	177	2603	1117	442	373	738	27,006

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