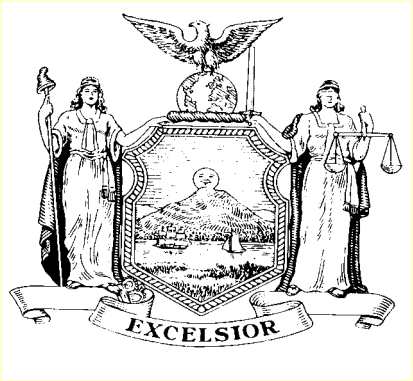
ANNUAL REPORT

2004

NEW YORK STATE



COMMISSION ON JUDICIAL CONDUCT

NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

* * *

COMMISSION MEMBERS

HENRY T. BERGER, ESQ., CHAIR

HON. FRANCES A. CIARDULLO

STEPHEN R. COFFEY, ESQ.

RAOUL LIONEL FELDER, ESQ.

LAWRENCE S. GOLDMAN, ESQ.

CHRISTINA HERNANDEZ, M.S.W.

HON. DANIEL F. LUCIANO

MARY HOLT MOORE
(Served to September 2003)

HON. KAREN K. PETERS

ALAN J. POPE, ESQ.

HON. TERRY JANE RUDERMAN

* * *

CLERK OF THE COMMISSION

JEAN M. SAVANYU, ESQ.

* * *

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Note: The New York City and Rochester Offices were preparing to relocate to the addresses above as this report went to press.

COMMISSION STAFF

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Administrator and Counsel

CHIEF ATTORNEYS

Cathleen S. Cenci (Albany)
Alan W. Friedberg (New York)
John J. Postel (Rochester)

STAFF ATTORNEYS

Kathryn Blake
Melissa R. DiPalo
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Sara S. Miller Zilberstein
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BUDGET/FINANCE OFFICER

Shouchu (Sue) Luo

ADMINISTRATIVE PERSONNEL

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Lee R. Kiklier
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Linda J. Pascarella
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SECRETARIES/RECEPTIONISTS

Georgia A. Damino
Linda Dumas
Lisa Gray Savaria
Evaughn Williams

SENIOR CLERK

Miguel Maisonet

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*Staff who recently left the Commission for other employment.

RETIREMENTS

There were two retirements from the Commission staff in 2003 that merit special recognition.

Gerald Stern was appointed the Commission's first Administrator in 1974. In his 29 years at the helm, Mr. Stern inexhaustibly devoted his skills and energy to improving the quality of our judiciary and the administration of justice, such that his very name became synonymous with the Commission's work. He set a standard for fair and honest public service that will long be remembered.

Stephen F. Downs was the first attorney Mr. Stern hired in the Commission's fledgling days. Mr. Downs worked first in the Commission's New York City office, then was named Chief Attorney in the Albany office, where he served more than two decades. His high ideals and dedication to justice made him an exemplary representative of the Commission in our state's capital.

We extend the gratitude of the citizens of our state and all the Commission members who served over the years with Mr. Stern and Mr. Downs, and we wish them both the very best in their future pursuits.

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

38-40 STATE STREET
ALBANY, NEW YORK 12207

March 1, 2004

To the 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 through December 31, 2003.

Respectfully submitted,

Henry T. Berger, Chair
On Behalf of the Commission

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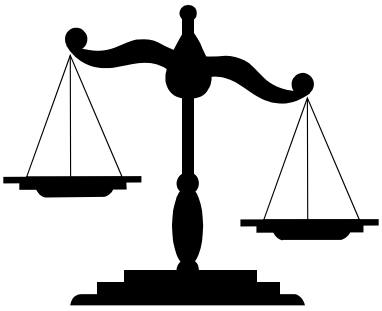
Commission Activities
In the Year 2003



2004 Annual Report

New York State
Commission on Judicial Conduct

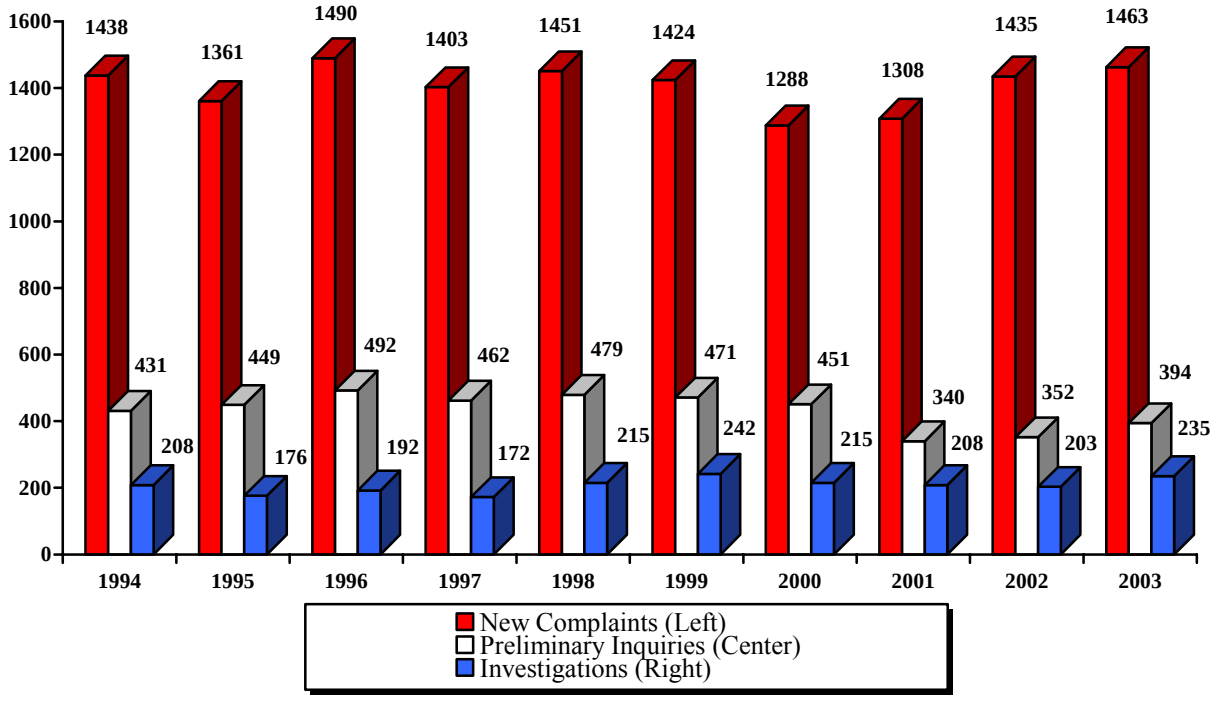
INTRODUCTION TO THE 2004 ANNUAL REPORT

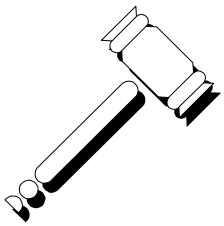
The New York State Commission on Judicial Conduct is the independent agency designated by the State Constitution to review complaints of misconduct against judges of the State Unified Court System, which includes over 3,400 judges and justices. The Commission is not part of the Office of Court Administration. 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 text of the Rules Governing Judicial Conduct, promulgated by the Chief Administrator of the Courts with the approval of the Court of Appeals, is annexed.

The number of complaints received by the Commission in the past 12 years has substantially increased compared to the first 17 years of the Commission's existence. Since 1992, the Commission has averaged approximately 1400 new complaints per year, 400 preliminary inquiries and 200 investigations. In each of the last 12 years, the number of incoming complaints has been more than double the 641 we received in 1978. Yet our budget has not kept pace – indeed, our staff has decreased from 63 in 1978 to 28 last year, when 235 investigations were authorized. (See the budget analysis on pages 29-30.)

This current Annual Report covers the Commission's activities in the year 2003.

Complaints, Inquiries & Investigations in the Last 10 Years





Action Taken in 2003

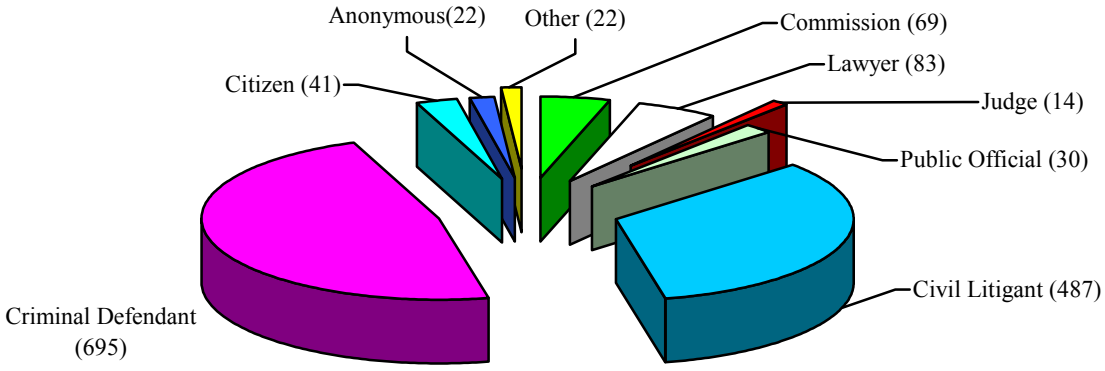
Following are summaries of the Commission's actions in 2003, including accounts of all public determinations, summaries of non-public decisions, and various numerical breakdowns of complaints, investigations and other dispositions.

Complaints Received

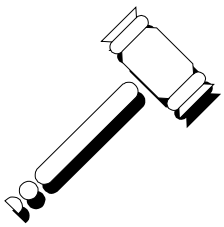
The Commission received 1463 new complaints in 2003. Preliminary inquiries were conducted in 394 of these, requiring such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts. In 235 matters, the Commission authorized full-fledged investigations. Depending on the nature of the complaint, an investigation may entail interviewing witnesses, subpoenaing witnesses to testify and produce documents, assembling and analyzing various court, financial or other records, making court 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 2003 appears in the following chart.



Complaint Sources in 2003

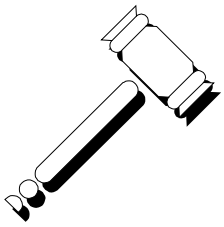


Preliminary Inquiries and Investigations

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 an investigation is warranted. In 2003, staff conducted 394 such preliminary inquiries, requiring such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts.

During 2003, the Commission commenced 235 new investigations. In addition, there were 143 investigations pending from the previous year. The Commission disposed of the combined total of 378 investigations as follows:

- 110 complaints were dismissed outright.
- 30 complaints involving 30 different judges were dismissed with letters of dismissal and caution.
- 16 complaints involving 11 different judges were closed upon the judges' resignation.
- 7 complaints involving 3 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.
- 27 complaints involving 17 different judges resulted in formal charges being authorized.
- 188 investigations were pending as of December 31, 2003.



Formal Written Complaints

As of January 1, 2003, there were pending Formal Written Complaints in 49 matters, involving 30 different judges. During 2003, Formal Written Complaints were authorized in 27 additional matters, involving 17 different judges. Of the combined total of 76 matters involving 47 judges, the Commission made the following dispositions:

- 26 matters involving 17 different judges resulted in formal discipline (admonition, censure or removal from office).
- 4 matters involving 4 judges resulted in a letter of caution after formal disciplinary proceedings that resulted in a finding of misconduct.
- 3 matters involving 3 judges were dismissed outright.
- 18 matters involving 9 judges were closed upon the judge's resignation.
- 25 matters involving 14 different judges were pending as of December 31, 2003.

Summary of All 2003 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 – 2,236*, ALL PART-TIME

	Lawyers	*Non-Lawyers*	*Total*
Complaints Received	96	304	400
Complaints Investigated	13	94	107
Judges Cautioned After Investigation	3	13	16
Formal Written Complaints Authorized	1	8	9
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	1	10	11
Formal Complaints Dismissed or Closed	1	7	8

Note: Approximately 400 town and village justices are lawyers.

TABLE 2: CITY COURT JUDGES – 388, ALL LAWYERS

	Part-Time	*Full-Time*	*Total*
Complaints Received	33	116	149
Complaints Investigated	8	17	25
Judges Cautioned After Investigation	2	3	5
Formal Written Complaints Authorized	1	3	4
Judges Cautioned After Formal Complaint	0	1	1
Judges Publicly Disciplined	0	1	1
Formal Complaints Dismissed or Closed	0	1	1

Note: Approximately 100 City Court Judges serve part-time.

*Refers to the approximate number of such judges in the state unified court system.

TABLE 3: COUNTY COURT JUDGES – 127 FULL-TIME, ALL LAWYERS

Complaints Received	169
Complaints Investigated	20
Judges Cautioned After Investigation	5
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	1
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	1

TABLE 4: FAMILY COURT JUDGES – 124, FULL-TIME, ALL LAWYERS

Complaints Received	150
Complaints Investigated	19
Judges Cautioned After Investigation	3
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

TABLE 5: DISTRICT COURT JUDGES – 49, FULL-TIME, ALL LAWYERS

Complaints Received	25
Complaints Investigated	7
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

TABLE 6: COURT OF CLAIMS JUDGES – 59, FULL-TIME, ALL LAWYERS

Complaints Received	26
Complaints Investigated	3
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

TABLE 7: SURROGATES – 63, FULL-TIME, ALL LAWYERS

Complaints Received	24
Complaints Investigated	5
Judges Cautioned After Investigation	1
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	1
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

TABLE 8: SUPREME COURT JUSTICES – 337, FULL-TIME, ALL LAWYERS

Complaints Received	277
Complaints Investigated	49
Judges Cautioned After Investigation	3
Formal Written Complaints Authorized	2
Judges Cautioned After Formal Complaint	1
Judges Publicly Disciplined	5
Formal Complaints Dismissed or Closed	2

TABLE 9: COURT OF APPEALS JUDGES – 7 FULL-TIME, ALL LAWYERS; APPELLATE DIVISION JUSTICES – 57 FULL-TIME, ALL LAWYERS

Complaints Received	31
Complaints Investigated	0
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

TABLE 10: NON-JUDGES*

Complaints Received	212

* The Commission reviews such complaints to determine whether to refer them to other agencies.

Note on Jurisdiction

The Commission's jurisdiction is limited to judges and justices of the state unified court system. The Commission does not have jurisdiction over non-judges, retired judges, judicial hearing officers (JHO's), administrative law judges (*i.e.* adjudicating officers in government agencies or public authorities such as the New York City Parking Violations Bureau), housing judges of the New York City Civil Court, or federal judges. Legislation that would have given the Commission jurisdiction over New York City housing judges was vetoed in the 1980s.

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.

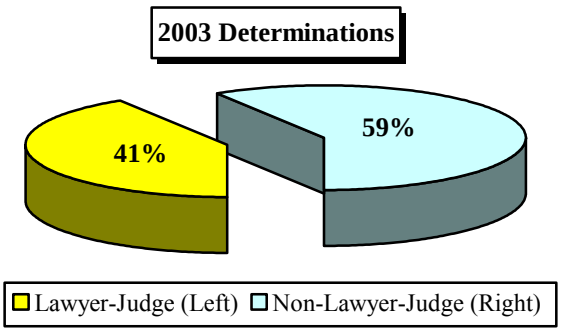
The confidentiality provision of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibits public disclosure by the Commission of the charges, hearings or related matters, absent a waiver by the judge, until the case has been concluded and a determination of admonition, censure, removal or retirement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

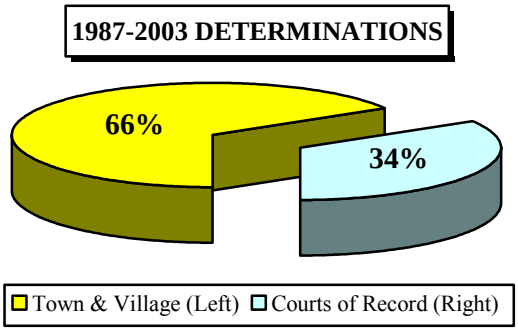
Following are summaries of those matters that were completed and made public during 2003. The actual texts are appended to this Report.

Overview of 2003 Determinations

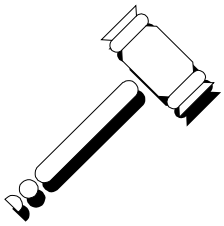
The Commission rendered 17 formal disciplinary determinations in 2003: 3 removals, 9 censures and 5 admonitions. In addition, 5 matters were disposed of by stipulations made public by agreement of the parties. Ten of the 17 respondents disciplined were non-lawyer judges, and 7 were lawyer-judges. Eleven of the respondents were part-time town or village justices, and 6 were judges of higher courts.

To put these numbers and percentages in some context, it should be noted that, of the 3,363 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.)





Excluding cases from 1978 to 1982 involving ticket-fixing, which was largely a town and village justice court phenomenon – in larger jurisdictions, traffic matters are typically handled by administrative agencies – 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%). Of course, no set of dispositions in a given year will exactly mirror those percentages. However, from 1987 to 2003, the number of public determinations, when categorized by type of court and judge, has roughly approximated the makeup of the judiciary as a whole: 195 (about 66%) have involved town and village justices, and 102 (about 34%) have involved judges of higher courts.



Determinations of Removal

The Commission completed three formal proceedings in 2003 that resulted in determinations of removal. The cases are summarized below, and the texts are appended.

Matter of Joseph J. Cerbone

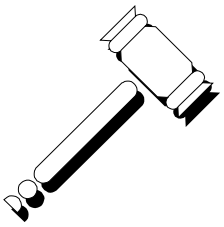
The Commission determined on September 19, 2003, that Joseph J. Cerbone, a part-time Justice of the Mount Kisco Town Court, Westchester County, should be removed for engaging in financial improprieties as an attorney, resulting in his suspension from the practice of law for one year, and for using his courtroom as a forum for expressing his personal grievances against the District Attorney. Judge Cerbone requested review by the Court of Appeals, where the case is pending.

Matter of Pamela L. Kadur

The Commission determined on May 28, 2003, that Pamela L. Kadur, a part-time Justice of the Root Town Court, Montgomery County, should be removed for presiding over cases involving her relatives, making false entries in court records to conceal her misconduct, and failing to testify candidly during the Commission's investigation. Judge Kadur, who is not a lawyer, did not request review by the Court of Appeals.

Matter of Calvin M. Westcott

The Commission determined on February 3, 2003, that Calvin M. Westcott, a part-time Justice of the Hancock Town Court, Delaware County, should be removed based upon his conviction of Endangering The Welfare Of A Mentally Retarded Person, a crime that involves moral turpitude. Judge Westcott, who is not a lawyer, did not request review by the Court of Appeals.



Determinations of Censure

The Commission completed nine formal proceedings in 2003 that resulted in determinations of censure. The cases are summarized below, and the texts are appended.

Matter of Luther V. Dye

The Commission determined on September 19, 2003, that Luther V. Dye, a Justice of the Supreme Court, Queens County, should be censured for making inappropriate comments on two occasions that conveyed the appearance of bias. Judge Dye, who is a lawyer, did not request review by the Court of Appeals.

Matter of Joseph Esposito, Sr.

The Commission determined on September 19, 2003, that Joseph Esposito, Sr., a part-time Justice of the Kent Town Court, Putnam County, should be censured for referring to his judicial office while complaining to the newly-appointed tax assessor that a particular assessment was too low and for failing to be candid in connection with litigation pertaining to his son's purchase of a car. Judge Esposito, who is not a lawyer, did not request review by the Court of Appeals.

Matter of Leigh W. Fuller

The Commission determined on September 19, 2003, that Leigh W. Fuller, a part-time Justice of the Canajoharie Town and Village Courts, Montgomery County, should be censured for making statements at arraignment that indicated bias and prejudgment concerning the charges, engaging in improper, *ex parte* questioning of unrepresented defendants, and failing to advise defendants of the right to counsel as required by law. Judge Fuller, who is not a lawyer, did not request review by the Court of Appeals.

Matter of Jo Hooper

The Commission determined on May 28, 2003, that Jo Hooper, a part-time Justice of the Hinsdale Town Court, Cattaraugus County, should be censured for transferring two cases from her court, disqualifying not only herself but her co-justice, based on the unsubstantiated allegations of a third party. Judge Hooper, who is not a lawyer, did not request review by the Court of Appeals.

Matter of John R. Jarosz

The Commission determined on May 28, 2003, that John R. Jarosz, a part-time Justice of the Paris Town Court, Oneida County, should be censured for negligent supervision of his court clerk, who falsified entries in court records concealing the receipt of funds that were not deposited and remitted as required. Judge Jarosz, who is not a lawyer, did not request review by the Court of Appeals.

Matter of Diane A. Lebedeff

The Commission determined on November 5, 2003, that Diane A.

Lebedeff, a Judge of the Civil Court of the City of New York and Acting Justice of the Supreme Court, New York County, should be censured for creating an appearance of impropriety by failing to pay her accountant for tax preparation services over the same period that she was appointing the accountant as a fiduciary and approving compensation for her. Judge Lebedeff, who is a lawyer, did not request review by the Court of Appeals.

Matter of Debra M. McCall

The Commission determined on March 28, 2003, that Debra M. McCall, a part-time Justice of the Cherry Valley Town Court and Acting Justice of the Cherry Valley Village Court, Otsego County, should be censured for mishandling a small claims case and failing to cooperate with the Commission's investigation of the matter. Judge McCall, who is not a lawyer, did not request review by the Court of Appeals.

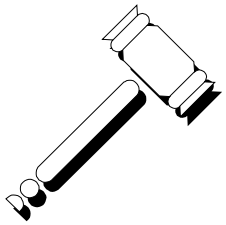
Matter of Charles Pennington

The Commission determined on November 3, 2003, that Charles Pennington, a part-time Justice of the Alexandria Bay Village Court, Jefferson County, should be censured for intervening in his son's case by contacting the district attorney to discuss the matter and for asserting his judicial office during a confrontation with state park police. Judge Pennington, who is not a lawyer, did not request review by the Court of Appeals.

Matter of Ira J. Raab

The Commission determined on February 3, 2003, that Ira J. Raab, a Justice of the Supreme Court, Nassau County, should be censured for participating in a political party's screening interviews of candidates and in a phone bank for a candidate, making a lump sum payment to a political party and telling an attorney who had appealed his order that he had a "long memory." Judge Raab, who is a lawyer, requested review by the Court of Appeals, which accepted the determination of censure.

Determinations of Admonition



The Commission completed five formal proceedings in 2003 that resulted in determinations of public admonition. The cases are summarized below, and the texts are appended.

Matter of John C. Bivona

The Commission determined on December 29, 2003, that John C. Bivona, a Justice of the Supreme Court, Suffolk County, should be admonished for signing an *ex parte* order at his home, in a case assigned to another judge, at the request of an attorney who was then representing Judge Bivona in a civil case. Judge Bivona, who is a lawyer, did not request review by the Court of Appeals.

Matter of Sharon C. Canfield

The Commission determined on September 19, 2003, that Sharon C. Canfield, a part-time Justice of the Harford Town Court, Cortland County, should be admonished for (1) issuing an amended order of protection after an *ex parte* communication with the victim and after disqualifying herself from the case and (2) making derogatory comments in court about an attorney arising out of her personal animosity toward the attorney, who had represented the judge's former husband in divorce and custody litigation. Judge Canfield, who is not a lawyer, did not request review by the Court of Appeals.

Matter of John G. Connor

The Commission determined on September 22, 2003, that John G. Connor, a Justice of the Supreme Court, Columbia County, should be admonished for considering law guardians' reports without furnishing a copy to the parties and for disqualifying himself from a case on spurious grounds. Judge Connor, who is a lawyer, did not request review by the Court of Appeals.

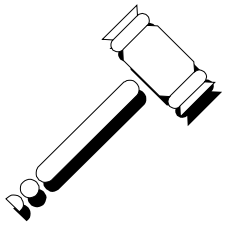
Matter of Martin Schneier

The Commission determined on September 22, 2003, that Martin Schneier, a Justice of the Supreme Court, Kings County, should be admonished for authorizing unexpended funds from his Civil Court campaign to be transferred to his campaign for Supreme Court and for authorizing unexpended funds from his Supreme Court campaign to be used for his private benefit. Judge Schneier, who is a lawyer, did not request review by the Court of Appeals.

Matter of Pasquale F. Valentino

The Commission determined on February 3, 2003, that Pasquale F. Valentino, a part-time Justice of the Stanford Town Court, Dutchess County, should be admonished for presiding over a proceeding involving an individual who had done odd jobs for the judge and for seeking *ex parte* advice from a prosecutor concerning a pending case. Judge Valentino, who is not a lawyer, did not request review by the Court of Appeals.

Other Public Dispositions



The Commission completed five other proceedings in 2003 that resulted in public dispositions. The cases are summarized below, and the texts are appended.

Matter of William R. Crosbie

Pursuant to a stipulation, the Commission discontinued a proceeding on July 17, 2003, involving William R. Crosbie, a part-time Justice of the Tarrytown Village Court, Westchester County, after serving the judge with formal charges alleging that he made ethnic-based remarks and remarks of a racial nature in connection with two matters. The judge resigned from judicial office, acknowledged that he could not successfully defend the charges and affirmed that he would neither seek nor accept judicial office at any time in the future.

Matter of Robert Hamley

Pursuant to a stipulation, the Commission discontinued a proceeding on December 16, 2003, involving Robert Hamley, a part-time Justice of the Hunter Village Court, Greene County, after serving the judge with formal charges alleging that he made improper statements about victims of domestic violence and improperly disposed of two cases although he did not have jurisdiction over the matters. The judge resigned from judicial office, acknowledged that he could not successfully defend the charges and affirmed that he would neither seek nor accept judicial office at any time in the future.

Matter of Beverly J. LaClair

Pursuant to a stipulation, the Commission discontinued a proceeding on September 18, 2003, involving Beverly J. LaClair, a part-time Justice of the Constable Town Court, Franklin County, after serving the judge with formal charges alleging that she engaged in inappropriate *ex parte* communications, sentenced a defendant without a guilty plea or a trial, mishandled several cases, failed to appreciate her proper judicial role, and suffered from physical infirmities which render her unable to fully perform her judicial duties. The judge resigned from judicial office, acknowledged that she could not successfully defend the charges and affirmed that she would neither seek nor accept judicial office at any time in the future.

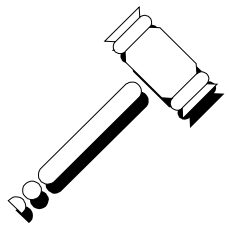
Matter of Alan L. Lebowitz

Pursuant to a stipulation, the Commission closed a proceeding on October 28, 2003, involving Alan L. Lebowitz, a Justice of the Supreme Court, Richmond County, after serving the judge with a formal complaint containing one charge. The judge denied the charge, and it was stipulated that the charge did not involve any act of moral turpitude that would result in a recommendation of removal. The judge had announced that he would retire at the

end of 2003 and would not seek re-certification.

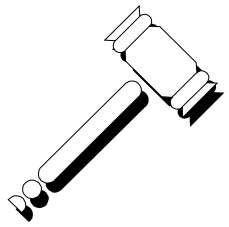
Matter of Ira J. Raab

Pursuant to a stipulation, the Commission closed an investigation of several pending complaints against Ira J. Raab, a Justice of the Supreme Court, Nassau County, on August 27, 2003. It was stipulated that the judge had resigned because of the Commission's investigation and that he would not seek or accept judicial office or a position as a judicial hearing officer at any time in the future.



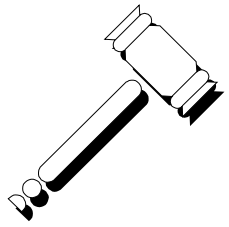
Dismissed or Closed Formal Written Complaints

The Commission disposed of 16 Formal Written Complaints in 2003 without rendering public discipline. Nine complaints were closed upon the resignation of the respondent-judge; four of these were closed pursuant to a stipulation in which the judge waived confidentiality; in three of these four, the judge stipulated that he or she could not successfully defend the charges and agreed not to seek judicial office in the future. Four complaints were disposed of with a letter of caution, upon a finding by the Commission that judicial misconduct was established but that public discipline was not warranted. In three cases, Formal Written Complaints were dismissed after formal hearings were held.



Matters Closed Upon Resignation

Twenty judges resigned in 2003 while complaints against them were pending at the Commission. Eleven of them resigned while under investigation and nine 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 2003, the Commission referred 42 matters to other agencies. Thirty-two matters were referred to the Office of Court Administration, typically dealing with relatively isolated instances of delay, poor record keeping or other administrative issues. Seven matters were referred to an attorney disciplinary committee. One matter was referred to the Office of the State Comptroller. Two matters were referred to a District Attorney.

Letters of Dismissal and Caution

A *Letter of Dismissal and Caution* contains confidential suggestions and recommendations to a judge upon conclusion of an investigation, in lieu of commencing formal disciplinary proceedings. A *Letter of Caution* is a similar communication to a judge upon conclusion of a formal disciplinary proceeding and a finding that the judge's misconduct is established. Cautionary letters are authorized by the Commission's rules, 22 NYCRR 7000.1(l) and (m).

Such cautionary letters serve as an educational tool and, when warranted, allow the Commission to address a judge's conduct without making the matter public.

In 2003, the Commission issued 30 Letters of Dismissal and Caution and four Letters of Caution. Sixteen town or village justices were cautioned, including four who are lawyers. Eighteen judges of higher courts – all lawyers – were cautioned. The caution letters addressed various types of conduct, as the examples below indicate.

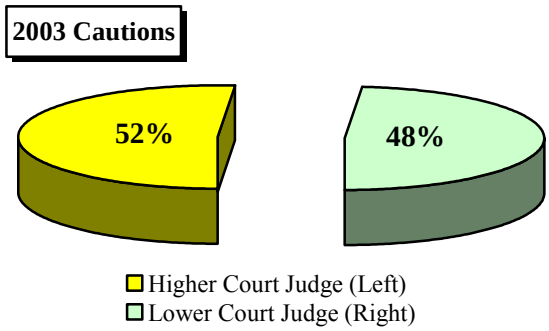
Improper *Ex Parte* Communications. One town justice was cautioned for engaging in an unauthorized *ex parte* communication on a substantive matter in a pending case, which involved a visit by the judge, without the knowledge or consent of the parties, to a scene at issue in the pending case.

Political Activity. Nine 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 own or their opponent's qualifications. Five judges were cautioned for not keeping appropriate records and one judge was cautioned for attending a political event outside the permissible "window period." Another was cautioned for inaccurately stating in campaign literature that he was the incumbent in the office he was seeking.

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 2003, three judges were cautioned for relatively isolated conflicts of interest. For example, one part-time judge acted as a lawyer in a matter that was related to a case over which he had previously presided.

Inappropriate Demeanor. One judge was cautioned for discourteous, intemperate or otherwise offensive demeanor toward a litigant, in isolated circumstances rather than as part of a discernible pattern.

Poor Administration;
Failure to Comply with Law. Ten judges were cautioned for failing to meet certain mandates of law, either out of ignorance or administrative oversight. For example, three were cautioned for inordinate delays in scheduling or deciding particular cases, typically because of poor records and case management. Another was cautioned for failing to let a litigant have access to public court records in his own case.



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 2003, one judge was cautioned for using judicial letterhead in connection with a private dispute. Another was cautioned for directing an attorney to appear in chambers for discussion of a personal matter involving a member of the judge's family. Two other judges were cautioned for invoking their judicial office in connection with fundraising events.

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.

A Caution May Be Used in Subsequent Proceedings. 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 2003, the Court decided the six matters summarized below.

Matter of Timothy C. Tamsen

The Commission determined on July 2, 2002, that Timothy C. Tamsen, a part-time Justice of the Newburgh Town Court, Orange County, should be removed for misappropriating client funds and altering records as an attorney, for which he had been disbarred.

The Court of Appeals unanimously accepted the determination and removed Judge Tamsen from office in an opinion dated April 3, 2003. 100 NY2d 19 (2003). The Court *inter alia* held that Judge Tamsen's misappropriation of funds and related subterfuge warranted his removal from judicial office and that it was irrelevant that the misconduct had occurred off the bench, noting that "in determining the appropriate sanction, it is imperative to also consider 'the effect of the Judge's conduct on and off the Bench upon public confidence in his [or her] character and judicial temperament.'" *Id.* at 21.

Matter of Edmund G. Fitzgerald, Jr.

The Commission determined on July 1, 2002, that Edmund G. Fitzgerald, Jr., a Judge of the Yonkers City Court, Westchester County, should be removed for being unqualified to serve as a city court judge after having been disbarred for engaging in various financial improprieties as an attorney.

The Court of Appeals unanimously accepted the determination and removed Judge Fitzgerald from office in an opinion dated May 1, 2003. 100 NY2d 52 (2003). The Court *inter alia* held that it was a continuing constitutional requirement for a City Court Judge to be a lawyer throughout his or her term as a judge. The Court rejected Judge Fitzgerald's argument that, since he had been a lawyer at the time of assuming office, he was qualified to hold the office notwithstanding his disbarment.

Matter of Reynold N. Mason

The Commission determined on June 21, 2002, that Reynold N. Mason, a Justice of the Supreme Court, Kings County, should be removed for collecting rent on a rent-stabilized apartment without the landlord's consent, putting the funds into his attorney escrow account and using them for personal purposes, failing to cooperate with the Commission's investigation by not responding to six letters seeking his response to questions, and giving evasive, incredible testimony during the investigation.

The Court of Appeals unanimously accepted the determination and removed Judge Mason from office in an opinion dated May 1, 2003. 100 NY2d 56 (2003).

Matter of William Watson

The Commission determined on December 26, 2002, that William Watson, a Judge of the Lockport City Court, Niagara County, should be removed for making statements during his campaign for judicial office that conveyed the appearance of pro-prosecutorial bias, blamed the incumbents for an increase in crime, and used misleading arrest statistics.

The Court of Appeals unanimously accepted the Commission's finding that Judge Watson had engaged in misconduct but rejected the sanction determination and censured Judge Watson in an opinion dated June 10, 2003. 100 NY2d 290 (2003).

The Court found *inter alia* that Judge Watson's campaign statements that he intended to "work with" and "assist" the police and other law enforcement personnel violated the prohibition against a judicial candidate making "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office." (*See*, Section 100.5(A)(4)(d)(i) of the Rules Governing Judicial Conduct.) The Court explicitly rejected Judge Watson's claim that the "pledges or promises" clause impermissibly abridged his rights under the First Amendment to the United States Constitution because it circumscribes constitutionally protected campaign speech.

Matter of Ira J. Raab

The Commission determined on February 3, 2003, that Ira J. Raab, a Justice of the Supreme Court, Nassau County, should be censured for engaging in unauthorized political activity, making an improper contribution to a political party and making threatening and intimidating remarks to an attorney who had obtained an appellate stay of an order issued by Judge Raab.

The Court of Appeals unanimously accepted the determination and censured Judge Raab in an opinion dated June 10, 2003. 100 NY2d 305 (2003). The Court explicitly rejected Judge Raab's

constitutional challenge to the political activity restrictions encoded in the Rules Governing Judicial Conduct. The Court held that the judge's impermissible political activity, coupled with the intimidating remarks to the lawyer, "merits our strong disapproval and closely approaches grounds for removal." *Id.* at 317.

Matter of Roseanna H. Washington

The Commission determined on October 1, 2002, that Roseanna H. Washington, a part-time Judge of the White Plains City Court, Westchester County, should be removed for delays in disposing of numerous small claims cases, failing to report the delays to court administrators, and failing to cooperate with the Commission's investigation by not responding to several letters seeking her response to questions.

The Court of Appeals unanimously accepted the determination and removed Judge Washington from office in an opinion dated October 21, 2003. 100 NY2d 873 (2003).

The Court *inter alia* upheld the finding that the judge defied administrative directives and attempted to subvert the system by filing false reports with her superiors concerning the delayed cases.

CONSTITUTIONAL CHALLENGES TO THE RULES GOVERNING JUDICIAL CONDUCT AND RELATED CHALLENGES TO THE COMMISSION'S PROCEDURES

In federal and state proceedings commenced by three judges, the Commission litigated significant constitutional and procedural issues in 2002-2003, pertaining to the political activity constraints imposed on judges by the Rules Governing Judicial Conduct. The three challenges relied in part on a June 2002 decision of the United States Supreme Court, *Republican Party of Minnesota v. White*, 536 US 765 (2002).

Background

The Model Code of Judicial Conduct, adopted by the American Bar Association (ABA) in 1972 and since amended, has been adapted and promulgated by most of the 50 states and the District of Columbia. *Minnesota v. White* involved the so-called "announce clause" from the ABA Model Code. The announce clause prohibited a judge or a non-judge candidate for judicial office from announcing his or her views on disputed legal or political issues.

The *White* case arose after a candidate for election to the Minnesota Supreme Court produced campaign literature that criticized decisions of that Court on issues such as crime, welfare and abortion, and after the state's ethics enforcement body expressed concerns as to the constitutionality of the announce clause but declined to express a view as to whether it intended to enforce the announce clause.

In deciding *White*, the Supreme Court applied a "strict scrutiny" standard and determined that the announce clause violated the First Amendment. The Court rejected the defense that the announce clause was constitutional because it furthered the compelling state interest in a judiciary that both was and appeared to be impartial. The Court determined that the announce clause was not narrowly tailored to serve impartiality, *i.e.* open-mindedness or lack of bias for or against either party to the proceeding, and that it failed the strict scrutiny test because it was under-inclusive, prohibiting announcements by judges and judicial candidates only at certain times and in certain forms.

The New York version of the code, *i.e.* the Rules Governing Judicial Conduct, does not include the announce clause.

Both New York and Minnesota adopted the so-called "pledges or promises" clause from the 1972 ABA Model Code, which 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."

The pledges or promises clause was not challenged in *White*, and the Supreme Court explicitly noted that it was not expressing a view on that clause. *Id*. at 770. Other provisions of the Code of Judicial Conduct were not at issue in *White* and therefore were not addressed by the Supreme Court, such as Canons 1 and 2A, which *inter alia* require a judge to respect and comply with the law and act in a manner that promotes the integrity, independence and impartiality of the judiciary.

Federal Litigation:
Matter of Spargo et al. v. Commission on Judicial Conduct et al.

On October 17, 2002, United States District Court Judge Lawrence E. Kahn, Northern District of New York, signed an Order to Show Cause with a Temporary Restraining Order, enjoining the Commission from taking any action with respect to a pending Formal Written Complaint against New York State Supreme Court Justice Thomas J. Spargo of Albany County. The TRO effectively postponed a hearing that was scheduled to commence the following Monday in Albany before a referee designated by the Commission.

By commencing federal litigation, Judge Spargo made public that Commission proceedings had been initiated against him. The court papers include descriptions of and documents from the Commission proceedings.

The Formal Written Complaint against Judge Spargo alleged various violations of the political activity restrictions in the Rules Governing Judicial Conduct. Judge Spargo was charged *inter alia* with making $5,000 payments to two individuals who supported his nomination at their parties' judicial nominating conventions in 2001, with participating in a disruptive protest of the 2000 presidential vote recount in Florida, and with distributing items of value, such as coupons for gasoline, coffee and doughnuts, to potential voters. Judge Spargo was also charged with failing to disclose to the parties in criminal cases that he had performed election law services for the District Attorney and was owed $10,000 for such services.

Judge Spargo's federal action was transferred to United States District Court Judge David N. Hurd, who considered the plaintiffs' motion for a preliminary injunction. The essence of Judge Spargo's claim was that the specific provisions of the judicial conduct rules charged against him were unconstitutional, relying in part on the decision of the United States Supreme Court in *Republican Party of Minnesota v. White, supra*.

Judge Hurd heard oral argument on the issues of law on November 29, 2002, and issued a decision on February 20, 2003. Judge Hurd held that Sections 100.1, 100.2(A), 100.5(A)(1)(c)-(g) and 100.5(A)(4)(a) of the Rules Governing Judicial Conduct are unconstitutional and

ordered that the Commission is permanently enjoined and restrained from enforcing those sections. The Commission was not enjoined from proceeding as to the charge involving Judge Spargo's failure to disclose his relationship with the District Attorney, since that charge cited other sections of the Rules.

While Sections 100.5(A)(1)(c)-(g) and 100.5(A)(4)(a) all explicitly involve prohibitions on political activity by judges and judicial candidates, Sections 100.1 and 100.2(A) impose ethical mandates that are not limited to political activity. For example, they require a judge to "respect and comply with the law," and to observe high standards of conduct in furtherance of the independence, integrity and impartiality of the judiciary. The Commission has relied on Sections 100.1 and 100.2(A) over the years to discipline judges for such off-the-bench conduct as driving while intoxicated or, in the case of part-time judges who practice law, misappropriating law firm or client funds.

The Commission appealed Judge Hurd's decision to the United States Court of Appeals for the Second Circuit.

On December 9, 2003, the Second Circuit vacated the judgment of the District Court and remanded the case to Judge Hurd with the instruction that he abstain from exercising jurisdiction. 351 F3d 65 (2003). Thereafter, Judge Hurd issued an order dismissing the case.

The Second Circuit held that, in declining to abstain under the *Younger* abstention doctrine, the District Court had mistakenly relied on the uncertainty of state procedures for raising constitutional claims in a judicial disciplinary proceeding.[1] In addition, the New York Court of Appeals had subsequently clarified the scope of available review of constitutional challenges to the Rules Governing Judicial Conduct. The Second Circuit held that Judge Spargo had a sufficient opportunity to raise constitutional claims in proceedings before the Commission and thereafter in the New York State Court of Appeals.

The Second Circuit also held that *Younger* abstention applied to the derivative claims of Judge Spargo's co-plaintiffs, both of whom are non-judges, since their First Amendment interests were inextricably intertwined with the judge's First Amendment interests.

Judge Spargo filed a petition for *certiorari* in 2003, seeking review by the United States Supreme Court. Decision was pending as this report went to press.

[1] The doctrine derives its name from the federal case in which it is articulated: *Younger v. Harris*, 401 US 37 (1971), holding that federal courts should generally refrain from enjoining pending state court proceedings.

State Litigation:
Matter of Watson and Matter of Raab

The New York State Court of Appeals considered two matters in which judges whom the Commission had determined to discipline challenged *inter alia* the constitutionality of the Rules Governing Judicial Conduct as they applied to political conduct.

In *Matter of Watson*, 100 NY2d 290 (2003), the Court considered the Commission's determination that Lockport City Court Judge William Watson (Niagara County) should be removed from office for making statements during his campaign for judicial office that conveyed the appearance of pro-prosecutorial bias, blamed the incumbents for an increase in crime, and used misleading arrest statistics.

The Court unanimously accepted the Commission's finding that Judge Watson had engaged in misconduct but rejected the sanction determination and censured Judge Watson.

The Court found *inter alia* that Judge Watson's campaign statements – ***e.g.*** that he intended to "work with" and "assist" the police and other law enforcement personnel "[a]s they aggressively work towards cleaning up our city streets", and urging the voters to elect him and "put a real prosecutor on the bench" – violated the prohibition against a judicial candidate making "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office." (*See*, Section 100.5(A)(4)(d)(i) of the Rules Governing Judicial Conduct.)

Consistent with *White*, the Court noted that "statements that merely express a viewpoint do not amount to promises of future conduct." 100 NY2d at 298. The Court also noted that the New York Rules Governing Judicial Conduct do not contain a provision analogous to the "announce clause" that was invalidated as unconstitutional in *White*. ***Id.*** at 300.

The Court found that Judge Watson had violated the "pledges or promises clause," which was not at issue in ***White.*** The Court held that "candidates need not preface campaign statements with the phrase 'I promise' before their remarks may reasonably be interpreted by the public as a pledge to act or rule in a particular way if elected. A candidate's statements must be reviewed in their totality and in the context of the campaign as a whole to determine whether the candidate has unequivocally articulated a pledge or promise of future conduct or decisionmaking that compromises the faithful and impartial performance of judicial duties." ***Id.*** at 298.

Having found that Judge Watson had violated the pledges or promises clause, the Court turned to the constitutional issues.

The Court held that even under the "strict scrutiny" standard for review applied by the Supreme Court in *White*,

the pledges or promises clause meets that exacting standard and passes constitutional muster. The Court agreed with the Commission and the New York State Attorney General (who appeared as *amicus curiae*) that there is a compelling state interest in preventing bias and the appearance of bias toward parties in a judicial proceeding, and in furthering open-mindedness and the appearance of open-mindedness in the state's judiciary. This compelling state interest is consistent with the due process clause of the United States Constitution. Due process "guarantees litigants a fair and impartial magistrate and the State, as steward of the judicial system, has the obligation to create and maintain a system that ensures equal justice and due process." *Id.* at 301.

The Court went on to declare that the pledges or promises clause furthers the State's interests in preventing actual or apparent bias toward a party and in promoting open-mindedness because it prohibits a judicial candidate from making promises that compromise the candidate's ability to behave impartially, or to be perceived as unbiased and open-minded by the public, once on the bench.

> Such promises, even if they are not kept once the candidate is elected, damage the judicial system because the newly elected judge will have created a perception that will be difficult to dispel in the public mind. With all the uncertainties inherent in litigation, litigants and the bar are entitled to be free of the additional burden of wondering whether the judge to whom their case is assigned will adjudicate it without bias or prejudice and with a mind that is open enough to allow reasonable consideration of the legal and factual issues presented.
>
> A campaign pledge to favor one group over another if elected has the additional deleterious effect of miseducating voters about the role of the judiciary at a time when their attention is focused on filling judicial vacancies. Judges must apply the law faithfully and impartially -- they are not elected to aid particular groups, be it the police, the prosecution or the defense bar. Campaign promises that suggest otherwise gravely risk distorting public perception of the judicial role. *Id.* at 302.

The Court explicitly rejected Judge Watson's claim that the pledges or promises clause impermissibly abridged his rights under the First Amendment to the United States Constitution because it circumscribes constitutionally protected campaign speech. The Court cited its own precedents in declaring that the Rule at issue "does not ban all 'pledges or promises' but only those that compromise the faithful and impartial performance of the duties of the office.

> [M]ost statements identifying a point of view will not implicate the 'pledges or promises' prohibition. The rule precludes only those statements of intention that single out a party or class of litigants for special treatment, be it favorable or unfavorable, or convey that the

> candidate will behave in a manner inconsistent with the faithful and impartial performance of judicial duties if elected. Rule 100.5(A)(4)(d)(i) does not suffer from the same infirmity as Minnesota's announce clause, determined to be fatally underinclusive in part because it restricted announcement of views on legal issues only during a campaign, because New York judges who make such injudicious comments outside the campaign context are also subject to discipline under other rules. [Citations omitted.] *Id.* at 302-03.

The Court concluded that "the pledges or promises clause – essential to maintaining impartiality and the appearance of impartiality in the State judiciary – is sufficiently circumscribed to withstand exacting scrutiny under the First Amendment." *Id.*

In *Matter of Raab*, 100 NY2d 305 (2003), the Court considered the Commission's determination that Supreme Court Justice Ira J. Raab (Nassau County) should be censured for *inter alia* engaging in unauthorized political activity, including making telephone calls on behalf of a candidate for county legislature, participating in a political party's screening and endorsement interviews of other candidates, and making a contribution to a political party.

Judge Raab argued that, to the extent New York imposes restrictions on the ability of judges to engage in political conduct, the pertinent provisions of the Rules Governing Judicial Conduct are not sufficiently narrow in scope to serve a compelling state objective and therefore do not withstand strict scrutiny analysis. Relying on *White*, he asserted that the Rules were constitutionally infirm in that they distinguish between permissible campaign activity by a judicial candidate on his or her own behalf versus impermissible activity by the judicial candidate on behalf of political parties or other candidates.

The Court disagreed that *White* compels such a conclusion and held that, "even applying strict scrutiny review, the rules are constitutionally permissible because they are narrowly tailored to further a number of compelling State interests, including preserving the impartiality and independence of our State judiciary and maintaining public confidence in New York State's court system." *Id*. at 312. The Court agreed with the Commission's conclusion that *White* was "significantly distinguishable" from *Raab*. *Id.* at 313.

Again applying the strict scrutiny standard, the Court held that the Rules prohibiting certain political activity by judges and judicial candidates are narrowly tailored in furtherance of the compelling state interest in a judiciary that is and appears to be "fair and impartial for all litigants, free of the taint of political bias or corruption, or even the appearance of such bias or corruption." *Id*. at 315. For example, the prohibition on political contributions is intended to insure that the political parties cannot "extract contributions from persons seeking nomination for

judicial office in exchange for a party endorsement," and "preventing candidates from making contributions in an effort to buy – and parties attempting to sell – judicial nominations. It also diminishes the likelihood that a contribution, innocently made and received, will be perceived by the public as having had such an effect. Needless to say, the State's interest in ensuring that judgeships are not -- and do not appear to be – 'for sale' is beyond compelling. The public would justifiably lose confidence in the court system were it otherwise and, without public confidence, the judicial branch could not function." *Id*. at 315-16.

The Court held that the Rules do not burden the ability of judicial candidates to participate in their own campaigns, while the restrictions on participating in political party activities and the campaigns of others protect against a "heightened risk that the public, including litigants and the bar, might perceive judges as beholden to a particular political leader or party after they assume judicial duties." *Id*. at 316. The Rules at issue[2] survive constitutional challenge "because they are narrowly constructed to address the interests at stake, including the State's compelling interest in preventing political bias or corruption, or the appearance of political bias or corruption, in its judiciary." *Id.* at 316.

By contributing a substantial sum of money to a political party – in that he wrote a check without verifying that the payment was to cover expenditures related to his own campaign and not applied to other candidates or to the party in general – and by making phone calls in support of another candidate and participating in an endorsement screening process for other candidates, Judge Raab went beyond what was "necessary or integral" to his own election race. *Id.* at 317.

[2] Sections 100.5(A)(1)(c), (d), (e), (f), (g) and (h) of the Rules Governing Judicial Conduct.

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. Our current fiscal year budget of $2.26 million supports a staff of 28 employees, including 10 lawyers and seven investigators, whereas our 1978-79 appropriation of $1.64 million supported a full-time staff of 63, including 21 lawyers and 18 investigators.

In the current economic environment, in which state government agencies in New York and throughout the country are making significant sacrifices, the Governor's Proposed Budget for FY 2004-05 essentially calls for status quo financing of the Commission at $2.4 million. The modest increase of about $131,000 is primarily to cover the increased rent occasioned by the relocation of the Commission's principal office from midtown to lower Manhattan.

Responsible Budget Management

Since its inception 29 years ago, the Commission has managed its finances with extraordinary care. In periods of relative plenty, we kept our budget small; in previous 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 State Comptroller conducted a follow-up review over a two-month period in 2002, with the same excellent result. The Commission's finances were examined for cash management and accounting controls, payroll management and review, purchasing policies and procedures, and equipment purchasing and management. Although the Commission is not a revenue-producing agency, the Comptroller reviewed our procedures and remittal practices for such minor financial transactions as fulfilling requests for photocopying public records. In all categories, the Commission received the highest possible rating.

A comparative breakdown of the Commission's budget and staff over the years appears on the following page in chart form.

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
≈	≈	≈	≈	≈	≈	≈
1992-93	$1,666,700	1452	180	8	6 f/t, 1 p/t	26
≈	≈	≈	≈	≈	≈	≈
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	1424	242	9	6 f/t, 1 p/t	27
2003-04	$2,266,000	1463	235	9	6 f/t, 1 p/t	27
2004-05	$2,397,000≠	--	--	10	7 f/t	28

* Number includes Clerk of the Commission, who does not investigate or litigate cases.
† Complaint figures are calendar year (Jan 1 – Dec 31); Budget figures are fiscal year (Apr 1 – Mar 31).
≠ Proposed.

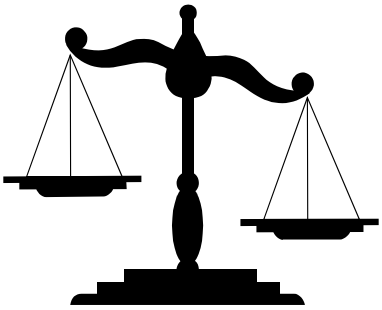
CONCLUSION

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,

HENRY T. BERGER, CHAIR
FRANCES A. CIARDULLO
STEPHEN R. COFFEY
RAOUL L. FELDER
LAWRENCE S. GOLDMAN
CHRISTINA HERNANDEZ
DANIEL F. LUCIANO
KAREN K. PETERS
ALAN J. POPE
TERRY JANE RUDERMAN

APPENDIX



Biographies of Commission Members and Attorneys
Roster of Referees Who Served in 2003
The Commission's Powers, Duties & History
Text of the Rules Governing Judicial Conduct
Text of 2003 Determinations
Statistical Analysis of Complaints

2004 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. Members serve terms of four years and are eligible for reappointment.

Henry T. Berger, Esq., *Chair of the Commission*, 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 New York State Bar Association and the Association of the Bar of the City of New York, where he chairs the Special Committee on Election Law. Mr. Berger served as a member of the New York City Council in 1977.

Honorable Frances A. Ciardullo received her B.A. from Cornell University and her J.D. from Syracuse University College of Law, where she was an Editor on the Law Review. Since 1989 she has served part-time as the Schroeppel Town Justice in Oswego County. She has practiced health law for over 20 years, first as a partner in the law firm of Costello, Cooney & Fearon, LLP and presently as staff counsel with the firm of Fager & Amsler. Justice Ciardullo has served as an Adjunct Professor in Health Law for the Syracuse University College of Law, and has served on the teaching faculty for many educational institutions, including the New School for Social Research, Graduate School of Management in the Master's Degree Program in Health Care Administration, the State University of New York Health Science Center, and the Institute for Health Care Ethics in Syracuse, New York. She is a member of the teaching faculty for the New York State Office of Court Administration certification programs for town and village justices throughout the State. Justice Ciardullo is a past president of the Central New York Women's Bar Association.

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.

Raoul Lionel Felder, Esq., was appointed to the Commission in 2003 by Governor Pataki. He is a graduate of New York University and the New York University Law School and attended the University of Berne, College of Medicine. He is in private practice in New York City, heading his own law firm. Mr. Felder served previously as an Assistant United States Attorney for the Eastern District of New York. Over the years, he has served on many professional and civic association boards and committees, such as the New York State Trial Lawyers Association, whose Matrimonial Law Committee he chaired, the Association of the Bar of the City of New York, on whose Matrimonial Law Committee he served, the New York State Commission on Child Abuse, the New York City Economic Development Corporation and the New York City Cultural Affairs Advisory Commission. Mr. Felder has received awards from, and been honored by many civic and charitable organizations including: Recipient of Defender of Jerusalem Medal from the Israeli Prime Minister (1990); Chairman of USA Day, Washington, D.C. (1991); Grand Marshal of The Israeli Day Parade (1991); Citation of Merit presented by The National Arts Club (1992); Exhibit of Photographs at The National Arts Club (1992); Volunteer Service Award presented by The National Kidney Foundation (1992); Award, 'Man of the Year' from The Brooklyn School for Special Children (1990); Award, Guest of Honor at The Metropolitan Jewish Geriatric Center's Annual Dinner (1991); Chairman of Dinner for The Jewish Reclamation Project; Co-Director of food drive for New York City Homeless (1991); Member, Board of Trustees, National Kidney Foundation; Member, Board of Advisors, Cop Care; Member, Board of Directors, Big Apple Greeters; Member, Board of Directors, Kidney & Urology Foundation of America, Inc. (2003); Award, 12th Annual Joint Meeting of Brandeis Association and The Catholic Lawyers Guild (1999); Award, Child Abuse Prevention Services ─ Child Safety Institute (1998); Award, The Shield Institute for the Mentally Retarded and Developmentally Disabled (1997). He is the author of seven books (including a legal textbook that has been updated 27 times), and numerous articles on the law and public affairs. He appears regularly on television and radio giving commentaries on the law and contemporary events, as well as lecturing at various bar associations.

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 immediate past 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 New York 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 Rockefeller College 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. Currently she serves on the Board of the National Association of Crime Victim Compensation Boards, as a Board Member of the Center for Women in Government and Civil Society, and a Member of the New York State Hispanic Heritage Month Committee. A native of New York City, Ms. Hernandez 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 from August 1954 to July 1956, 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. 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, and served as a Delegate to the House of Delegates of the New York State Bar Association. Justice Luciano served as President and all other elected offices in the Association of Justices of the Supreme Court of the State of New York and is currently a member of the Executive Committee. Justice Luciano was a Director of the Suffolk County Women's Bar Association. Additionally, he is a member of the Dean's Advisory Council of the Touro College, Jacob D. Fuchsberg Law Center. 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, Justice Luciano was appointed by Governor George E. Pataki as an Additional Justice to the Appellate Division, Second Judicial Department. After he was re-elected to the Supreme Court in November of 1996, Governor Pataki redesignated him as an Additional Justice to the Appellate Division, Second Judicial Department. Upon reaching the age of 70, Justice Luciano was Certified by the State of New York Administrative Board of the Courts for an additional two year term as a retired Justice of the Supreme Court, and was redesignated by Governor Pataki to serve as an Additional Justice of the Appellate Division, Second Judicial Department, for a two year term commencing January 1, 2001. In 2002, after having been again Certified by the State of New York Administrative Board of the Courts for an additional two year term as a retired Justice of the Supreme Court, Justice Luciano was redesignated by Governor Pataki to serve as an Additional Justice of the Appellate Division, Second Judicial Department, for a second two year term, commencing January 1, 2003. Justice Luciano was appointed to the Commission by Governor Pataki in 1996, reappointed by Governor Pataki to a four year term in 1999, and reappointed in 2003 for a third term expiring March 31, 2007.

Mary Holt Moore received her B.A. in Classics and the Humanities from Hunter College, her M.A. in Education from the College of New Rochelle, and she attended the Columbia University School of Library Science. She is retired from the New York City Board of Education, where she was named Teacher of the Year by the New York City High School Division of Special Education in 1992. Ms. Moore is active in numerous Irish American organizations and was elected Grand Marshal of the New York City St. Patrick's Day Parade in 1991. Ms. Moore is a member of the Community Advisory Committee of Our Lady of Mercy Hospital. She is a life-long resident of the Bronx, residing with her husband of 50 years, Thomas A. Moore, Deputy Chief of the Fire Department of New York (Retired). She is the mother of eight children and the grandmother of 19. Ms. Moore resigned from the Commission in September 2003.

Honorable Karen K. Peters received her B.A. from George Washington University (*cum laude*) and her J.D. from New York University (*cum laude*; Order of the Coif). From 1973 to 1979 she was engaged in the private practice of law in Ulster County, served as an Assistant District Attorney in Dutchess County and was an Assistant Professor at the State University of New York at New Paltz, where she developed curricula and taught courses in the area of criminal law, gender discrimination and the law, and civil rights and civil liberties. In 1979 she was selected as the first counsel to the newly created New York State Division on Alcoholism and Alcohol Abuse and remained counsel until 1983. In 1983 she was the Director of the State Assembly Government Operations Committee. Elected to the bench in 1983, she remained Family Court Judge for the County of Ulster until 1992, when she became the first woman elected to the

Supreme Court in the Third Department. Justice Peters was appointed to the Appellate Division, Third Department, by Governor Mario M. Cuomo on February 3, 1994. Justice Peters has served as Chairperson of the Gender Bias Committee of the Third Judicial District, and on numerous State Bar Committees, including the New York State Bar Association Special Committee on Alcoholism and Drug Abuse, and the New York State Bar Association Special Committee on Procedures for Judicial Discipline. Throughout her career, Justice Peters has taught and lectured extensively in the areas of Family Law, Judicial Education and Administration, Criminal Law, Appellate Practice and Alcohol and the Law.

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, and a past member of the Broome County Environmental Management Council.

Honorable Terry Jane Ruderman graduated cum laude from Pace University School of Law and 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, Assistant Presiding Member of the New York State Bar Association Judicial Section, President 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

Robert H. Tembeckjian, *Administrator and 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. Mr. Tembeckjian serves on the Advisory Committee to the American Bar Association Commission to Evaluate the Model Code of Judicial Conduct. He also serves on the Government Ethics Committee of the Association of the Bar of the City of New York, on the Board of Directors of the Association of Judicial Disciplinary Counsel and on the Board of Directors of the Civic Education Project. He was previously a Trustee of the Westwood Mutual Funds and the United Nations International School.

Cathleen S. Cenci, *Chief Attorney (Albany)*, 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 has been a judge of the Albany Law School moot court competitions and a member of Albany County Big Brothers/Big Sisters.

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, *Chief Attorney (New York)*, 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.

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.

Leena D. Mankad, *Staff Attorney*, is a *cum laude* graduate of Union College and the Syracuse University College of Law, where she was the Associate Director of the Moot Court Honor Society, a Teaching Assistant for first-year students, and Student Prosecutor for the College of Law. Prior to joining the Commission staff, she was in private practice as a civil litigation defense attorney. She is a member of the Order of Barristers and the New York State Bar Association.

Kathryn J. Blake, *Staff Attorney*, is a graduate of Lafayette College and Cornell Law School, where she was a Note Editor for the *Cornell Journal of Law and Public Policy* and a member of the Moot Court Board. Prior to joining the Commission staff, she served as an Assistant Attorney General for the State of New York and was in private practice in New York, California and New Jersey.

Jennifer Tsai, *Staff Attorney*, is a graduate of Columbia University and Cornell Law School, where she was an Editor of the Law Review and a member of the Moot Court Board. Prior to joining the Commission's staff, she practiced as a criminal defense attorney at The Legal Aid Society (Appeals Bureau) and the Neighborhood Defender Service of Harlem.

Melissa R. DiPalo, *Staff Attorney*, is a graduate of the University of Richmond and Brooklyn Law School, where she was a Lisle Scholar and a Dean's Merit Scholar. Prior to joining the Commission's staff, she was an Assistant District Attorney (Appeals Bureau) in Bronx County.

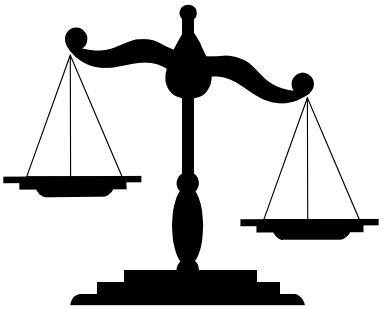
Clerk of the Commission

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 until being appointed Clerk of the Commission in 2000. 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 2003

Referee	City	County
Mark S. Arisohn, Esq.	New York	New York
William I. Aronwald, Esq.	White Plains	Westchester
Roger W. Avery, Esq.	Rochester	Monroe
Joseph A. Barrette, Esq.	Syracuse	Onondaga
A. Vincent Buzard, Esq.	Rochester	Monroe
Jay C. Carlisle, Esq.	White Plains	Westchester
Bruno Colapietro, Esq.	Binghamton	Broome
Robert L. Ellis, Esq.	Scarsdale	Westchester
Vincent D. Farrell, Esq.	Mineola	Nassau
Paul A. Feigenbaum, Esq.	Albany	Albany
David M. Garber, Esq.	Syracuse	Onondaga
Douglas S. Gates, Esq.	Rochester	Monroe
Thomas F. Gleason, Esq.	Albany	Albany
Victor J. Hershdorfer, Esq.	Syracuse	Onondaga
Michael J. Hutter, Esq.	Albany	Albany
Hon. Janet A. Johnson	White Plains	Westchester
Gerard LaRusso, Esq.	Rochester	Monroe
C. Bruce Lawrence, Esq.	Rochester	Monroe
Hon. Herbert J. Lipp		Kings/Nassau
Richard M. Maltz, Esq.	New York	New York
James C. Moore, Esq.	Rochester	Monroe
Vincent A. O'Neil, Esq.	Syracuse	Onondaga
Philip C. Pinsky, Esq.	Syracuse	Onondaga
John J. Poklemba, Esq.	Albany	Albany
Hon. Leon B. Polsky	New York	New York
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
Robert Straus, Esq.	New York	Kings
Justin L. Vigdor, Esq.	Rochester	Monroe
Nancy F. Wechsler, Esq.	New York	New York
Steven Wechsler, Esq.	Syracuse	Onondaga
Michael Whiteman, Esq.	Albany	Albany

The Commission's Powers, Duties & History



2004 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.

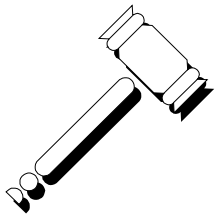
The Commission's Powers, Duties, Operations and History

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

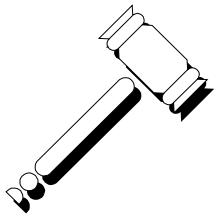
The Commission is composed of 11 members serving four-year terms. Four members are appointed by the Governor, three by the Chief Judge of the Court of Appeals, and one by each of the four leaders of the Legislature. The Constitution requires that four members be judges, at least one be an attorney, and 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. Frances A. Ciardullo (2001-present)
Hon. Carmen Beauchamp Ciparick (1985-93)
E. Garrett Cleary (1981-96)
Stephen R. Coffey (1995-present)
Howard Coughlin (1974-76)
Mary Ann Crotty (1994-98)
Dolores DelBello (1976-94)
Hon. Herbert B. Evans (1978-79)
Raoul L. Felder (2003-present)
*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 (1996-2002)
Hon. Ann T. Mikoll (1974-78)
Mary Holt Moore (2002-2003)
Hon. Juanita Bing Newton (1994-99)
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 documents, and make appropriate determinations as to dismissing complaints or disciplining judges within the state unified court system. This authority is derived from Article 6, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law of the State of New York.

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

> shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of

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

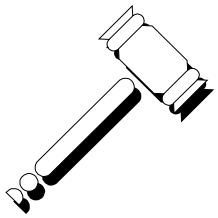
The types of complaints that may be investigated by the Commission include improper demeanor, conflicts of interest, violations of defendants' or litigants' rights, intoxication, bias, prejudice, favoritism, gross neglect, corruption, certain prohibited political activity and other misconduct on or off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

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

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

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

In accordance with its rules, the Commission may also issue a confidential letter of dismissal and caution to a judge, despite a dismissal of the complaint, when it is determined that the circumstances so warrant. In some cases the Commission has issued such a letter after charges of misconduct have been sustained.



Procedures

The Commission meets several times a year. At its meetings, the Commission reviews each new complaint of misconduct and makes an initial decision whether to investigate or dismiss the complaint. It also reviews staff reports on ongoing matters, makes final determinations on

completed proceedings, considers motions and entertains oral arguments pertaining to cases in which judges have been served with formal charges, and conducts other Commission business.

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

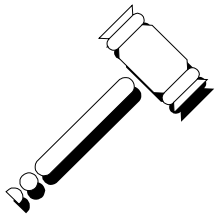
After the Commission authorizes an investigation, the Administrator assigns the complaint to a staff attorney, who works with investigative staff. If appropriate, witnesses are interviewed and court records are examined. The judge may be asked to respond in writing to the allegations. In some instances, the Commission requires the appearance of the judge to testify during the course of the investigation. The judge's testimony is under oath, and 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.



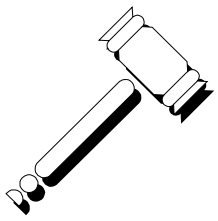
Temporary State Commission on Judicial Conduct

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.

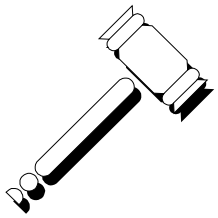
The former Commission also initiated formal disciplinary proceedings in the Court on the Judiciary against 45 judges and continued six proceedings left pending by the temporary Commission. Those proceedings resulted in the following:

- 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.

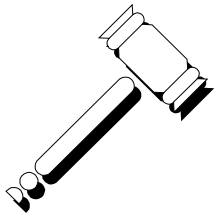


Continuation from 1978 to 1980 of Formal Proceedings Commenced by the Temporary and Former Commissions

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, 31,212 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 25,116 were dismissed upon initial review or after a preliminary review and inquiry, and 6,096 investigations were authorized. Of the 6,096 investigations authorized, the following dispositions have been made through December 31, 2003:

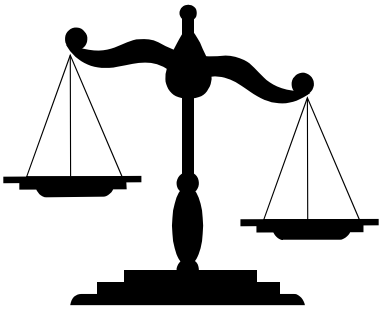
- 845 complaints involving 659 judges resulted in disciplinary action. (See details below and on the following page.)
- 1258 complaints resulted in cautionary letters to the judge involved. The actual number of such letters totals 1168, 68 of which were issued after formal charges had been sustained and determinations made that the judge had engaged in misconduct.
- 505 complaints involving 357 judges were closed upon resignation of the judge during investigation or in the course of disciplinary proceedings.
- 390 complaints were closed upon vacancy of office by the judge other than by resignation.

- 2885 complaints were dismissed without action after investigation.
- 213 complaints are pending.

Of the 845 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.)

- 145 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);
- 253 judges were censured publicly;
- 197 judges were admonished publicly; and
- 59 judges were admonished confidentially by the temporary or former Commission.

Text of the Rules
Governing Judicial Conduct



2004 Annual Report

New York State
Commission on Judicial Conduct

THE RULES GOVERNING JUDICIAL CONDUCT

22 NYCRR PART 100

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. 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 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 court employee organization, 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 expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees may solicit and accept such contributions and support only during the Window Period. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

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

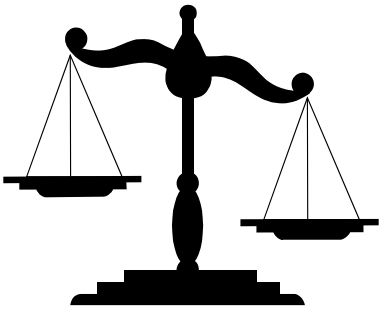
(4) may accept private employment or public employment in a federal, state or municipal department or agency, provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties.

(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 2003 Determinations



2004 Annual Report

New York State 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. BIVONA**, a Justice of the Supreme Court, 10th Judicial District, Suffolk County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Vickie Ma, Of Counsel) for the Commission
John L. Juliano for Respondent

The respondent, John Bivona, a Justice of the Supreme Court, 10th Judicial District, Suffolk County, was served with an amended Formal Written Complaint dated February 12, 2003, containing one charge. Respondent filed an amended answer dated February 14, 2003.

On October 17, 2003, the Administrator of the Commission, respondent's counsel and respondent 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, recommending that respondent be admonished and waiving further submissions and oral argument.

On October 23, 2003, the Commission approved the agreed statement and made the following determination.

1. Respondent has served as a Supreme Court Justice since January 1, 2001.

2. On October 31, 2001, Suffolk County Supreme Court Justice Denise F. Molia issued an Order which stayed the highly publicized civil matter of *Scott Conlon v. Lizzie Grubman and Allen J. Grubman* ("*Conlon*") pending the resolution of related criminal charges, except that the parties were permitted to proceed with non-party discovery.

3. On or about November 1, 2001, the law office of Cozen & O'Connor, counsel to Lizzie Grubman, served a non-party witness, William Maston, with a subpoena for a deposition scheduled for November 27, 2001. Notice of Mr. Maston's deposition was sent to the attorney for the plaintiff, Christopher Modelewski, on November 1, 2001.

4. At no time did Mr. Modelewski move to quash the subpoena or otherwise object to the deposition before the assigned judge, Judge Molia. Indeed, he agreed to the rescheduling of Mr. Maston's deposition, which was ultimately scheduled for Monday, December 10, 2001, at the offices of Ohrenstein & Brown, counsel for co-defendant, Allen J. Grubman.

5. On Friday, December 7, 2001, at approximately 12:15 P.M., the office of Cozen & O'Connor served a non-party witness, Joseph Conlon III, the plaintiff's father, with a subpoena for a deposition scheduled for January 11, 2002. Mr. Modelewski did not seek any judicial intervention from the assigned judge, Judge Molia, but waited until the following evening, on Saturday, to seek relief from respondent at his home on grounds of purported abuse of discovery.

6. On the evening of December 8, 2001, a Saturday, respondent signed an *ex parte* Order to Show Cause in *Conlon* that was submitted by Mr. Modelewski. At the time, Mr. Modelewski was representing respondent in a real estate matter, *Auto Land Realty v. Caldwell Realty, Inc., Josephine Hall and John C. Bivona* ("*Auto Land*"). Mr. Modelewski and respondent had a close professional and social relationship. Respondent's Order effectively stayed the depositions of all non-party witnesses, one of whom, William Maston, was scheduled for the following Monday, December 10, 2001. Judge Molia's previous Order in *Conlon* had explicitly permitted the parties to proceed with non-party discovery.

7. While Mr. Modelewski was at respondent's home seeking respondent's signature on the Order to Show Cause, respondent and Mr. Modelewski discussed the *Auto Land* matter.

8. If called as witnesses, the attorneys for the defendants would testify that as a result of respondent's Order, the depositions of non-party witnesses were delayed for several months and that the attorneys sustained substantial costs.

9. The practice in Suffolk County Supreme Court is for judges to be assigned on a rotating basis to handle off-hour (weekend) Special Term matters. On December 8, 2001, respondent was one of two Suffolk County Supreme Court Justices assigned to Special Term. However, when Mr. Modelewski went to respondent's home on December 8, 2001, Mr. Modelewski was unaware of respondent's assignment to Special Term matters.

10. Despite respondent's assignment to Special Term matters, because of his relationship with Mr. Modelewski, he should not have presided over an *ex parte* application that was submitted by Mr. Modelewski.

11. On the morning of December 10, 2001, Gail Ritzert (counsel for Allen Grubman), John McDonough (counsel for Lizzie Grubman), James LiCalzi and his client, William Maston, and a court reporter appeared at the offices of Ohrenstein & Brown for Mr. Maston's deposition. Mr. Modelewski appeared at the deposition with the Order signed by respondent enjoining the defendants from conducting any non-party discovery, including depositions of five named witnesses who had been previously served with subpoenas.

12. By Order dated December 19, 2001, Judge Molia determined that respondent's Order was null and void and that Mr. Modelewski's application was not supported by an affidavit of emergency. The parties were further ordered to obtain permission from the Court before seeking any relief by way of Order to Show Cause.

13. Mr. Maston's deposition was rescheduled and conducted on February 1, 2002.

14. Respondent has had a close social and professional relationship with Mr. Modelewski and his law partner, Michael McCarthy, Esq., for more than ten years.

15. Mr. Modelewski represented respondent in the *Auto Land* civil action, which was commenced in November 2000. A Stipulation of Settlement in *Auto Land* was signed and so ordered by Suffolk County Supreme Court Justice Alan D. Oshrin on November 15, 2001. A Stipulation of Discontinuance was filed on December 10, 2001, the same day that a condition of the Stipulation of Settlement was satisfied. The Stipulation of Discontinuance in *Auto Land* was filed on December 10, 2001, two days after respondent granted Mr. Modelewski's request for an Order to Show Cause in *Conlon*.

16. Respondent did not pay Mr. Modelewski any legal fees relative to *Auto Land* until after the Commission sought respondent's written response as part of its investigation in this matter.

17. Respondent paid Mr. Modelewski $1,000 by check dated May 11, 2002, for his legal services in connection with *Auto Land*.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(B)(1) and 100.3(E)(1) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained insofar as it consistent with the above findings and conclusions, and respondent's misconduct is established.

Well-established ethical standards require a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned (Rules Governing Judicial Conduct §100.3[E][1]).

Respondent did not comply with these standards when he signed an *ex parte* Order to Show Cause in *Scott Conlon v. Lizzie Grubman and Allen J. Grubman* that was presented to him by the plaintiff's attorney, Christopher Modelewski, who was then representing respondent in a civil case, *Auto Land Realty v. Caldwell Realty, Inc., Josephine Hall and John C. Bivona* ("*Auto Land*"). Respondent's impartiality could reasonably be questioned in the *Conlon* matter in view of his existing attorney-client relationship with Mr. Modelewski as well as his long-time close social and professional relationship with Mr. Modelewski and his law partner.

Notwithstanding that the *Auto Land* matter was in the process of being completed, respondent should have recognized that his existing attorney-client relationship with Mr. Modelewski required his disqualification. The conflict was starkly apparent when respondent and the attorney discussed the *Auto Land* matter while the attorney was at respondent's home seeking his signature on an Order on behalf of another client. Numerous opinions of the Advisory Committee on Judicial Ethics have held that a judge may not permit his or her personal attorney to appear before the judge for two years after the representation was concluded, and then only if the judge believes he or she can be impartial and if the judge discloses the relationship (*e.g*., Adv Op 92-54, 96-102, 97-30).

The *ex parte* nature of the application by Mr. Modelewski, who came to respondent's home with the requested Order on a Saturday night, effectively precluded any opportunity for respondent to make disclosure or for the opposing attorneys to consent or object to his participation in the matter. Under the circumstances, it was especially improper for respondent to sign the order presented by Mr. Modelewski, which stayed the imminent deposition of a non-party witness for which Mr. Modelewski had had more than a month's notice.

This was not a situation where respondent's obligation not to preside over his friend's matters might be outweighed by an emergency that prompted him to decide the matter. There was no valid reason under these circumstances for respondent to prevent the scheduled depositions from taking place. Mr. Modelewski had sufficient time during the preceding weeks to seek a stay of the deposition from the judge assigned to the case. Even if respondent had been advised by Mr. Modelewski that he only realized the need to make the application on Saturday, when the courts were closed, respondent should have required Mr. Modelewski to present his papers to Judge Molia on Monday morning. Respondent should have realized that Judge Molia would be in a far better position to determine the merits of the application. Thereafter, Judge Molia vacated respondent's Order and authorized discovery to continue, so that the practical effect of respondent's intervention was to create a delay of several weeks for the depositions to be held.

In 1987, the Commission admonished a Nassau County Court judge who had considered a bail application by a defendant in a Monroe County criminal proceeding who had been arrested in Queens County. *Matter of Winick*, l988 Ann Rep 239 (1987). The judge had been asked to conduct the proceeding while he was at his Country Club by his friend who was a member of the same club. He agreed to consider the application as a favor to his friend, and did so at his home after considering the opposing views expressed by telephone by a Nassau County assistant district attorney. The Commission concluded that because the matter "conveyed an appearance of favoritism," the judge's conduct warranted a public disciplinary sanction, "not to punish [the judge] but to maintain public confidence in the judiciary" (*Id*. at 243).

Respondent's actions conveyed the appearance that he was not impartial, which is precisely why he should have been expected to disqualify himself from Mr. Modelewski's case.

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

Mr. Berger, Judge Ciardullo, Mr. Felder, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Mr. Goldman dissents and votes to reject the agreed statement of facts on the basis that the disposition is too lenient.

Judge Luciano did not participate.

Mr. Coffey was not present.

Dated: December 29, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **SHARON C. CANFIELD**, a Justice of the Harford Town Court, Cortland County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Leena D. Mankad, Of Counsel) for the Commission
David C. Alexander for Respondent

The respondent, Sharon C. Canfield, a justice of the Harford Town Court, Cortland County was served with a Superseding Formal Written Complaint dated March 6, 2003, containing two charges. Respondent filed an answer dated May 14, 2003.

On September 5, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing 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 18, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a justice of the Harford Town Court, Cortland County since 1996. Respondent is not an attorney. Respondent has attended all required judicial training courses and has received all appropriate certifications from the Office of Court Administration.

As to Charge I of the Formal Written Complaint:

2. On or about October 10, 2001, respondent read a prepared statement disqualifying herself from *Allen v. Brown*, a summary proceeding for the eviction of a single mother, and publicly disparaging the petitioner-landlord's attorney, William J. Pomeroy, as a consequence of her personal animosity toward Mr. Pomeroy arising from his having represented respondent's ex-husband in divorce and custody litigation against her. Respondent stated in open court:

I am well acquainted with the manner in which Mr. Pomeroy postures himself in such cases involving females in marital or family situations and I find it distasteful.

3. Respondent did not thereafter take action to transfer the case to another court until October 28, 2001, notwithstanding that she had been contacted by Mr. Pomeroy on or about October 23, 2001, concerning her delay in transferring the case.

4. Respondent has disqualified herself from all subsequent actions involving Mr. Pomeroy.

As to Charge II of the Formal Written Complaint:

5. On or about October 24, 2001, respondent presided over *People v. Raymond R. Kohout*, in which the defendant had been charged with Menacing, Second Degree, following a domestic incident with his wife. After discussions with the defendant's attorney and the assistant district attorney, respondent issued a limited Temporary Order of Protection directing the defendant to refrain from certain harassing conduct toward his wife. Respondent then disqualified herself from the case.

6. On or about October 25, 2001, respondent engaged in an *ex parte* discussion with the alleged victim in *People v. Raymond R. Kohout* and issued, *sua sponte*, an amended Temporary Order of Protection directing that the defendant "stay away" from the alleged victim and her children, notwithstanding that:

(a) respondent had no discussion with the defendant's counsel about the *ex parte* communication or the amended order;

(b) respondent did not contact the Cortland County District Attorney's office about the *ex parte* discussion prior to issuing the amended order;

(c) the alleged victim had not requested an amended Order of Protection; and

(d) respondent had previously disqualified herself from the case.

7. Respondent had no further involvement in the case, which was subsequently transferred to another court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.3(B)(3), 100.3(B)(6) and 100.3(C)(1) of the Rules Governing Judicial Conduct and engaged in misconduct that was prejudicial to the administration of justice pursuant to Article 6, Section 22a of the New York State Constitution and Section 44(1) of the Judiciary Law. Charges I and II of the Superseding Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

It was improper for respondent to issue an amended Order of Protection in a case after disqualifying herself from the matter and after engaging in an *ex parte* communication with the alleged victim. Such conduct violates well-established ethical standards prohibiting a judge from permitting or considering *ex parte* communications (Rules Governing Judicial Conduct §100.3[B][6]).

In another matter, respondent compromised the independence and impartiality of the judiciary by using her judicial office as a forum to express her personal animosity toward an attorney which stemmed from her own matrimonial proceedings. Respondent's personal views about the attorney were obviously biased and in any event had no place in her courtroom. Moreover, her public, derogatory comments, criticizing the attorney's conduct toward women in family-related proceedings, concerned a highly sensitive subject and thus were particularly hurtful. By making such comments, respondent violated her duty as a judge to be an exemplar of dignity, courtesy and neutrality. Further, her delay in transferring the attorney's case after disqualifying herself, even after being reminded to do so by the attorney, conveyed the appearance that her bias affected her discharge of her responsibilities as a judge.

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Felder, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano and Ms. Moore were not present.

Dated: September 19, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **JOSEPH J. CERBONE**, a Justice of the Mount Kisco Town Court, Westchester County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.[1]
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission
Richard E. Grayson for Respondent

The respondent, Joseph J. Cerbone, a Justice of the Mount Kisco Town Court, Westchester County, was served with a Formal Written Complaint dated August 6, 2002, containing two charges. Respondent filed an answer dated August 26, 2002.

By Order dated October 3, 2002, the Commission designated Robert H. Straus, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on December 3, 2002, in New York City, and the referee filed his report with the Commission dated March 21, 2003.

The parties submitted briefs with respect to the referee's report. At the Commission's request, the parties submitted supplemental briefs with respect to the applicability of Sections 100.1 and 100.2(A) of the Rules Governing Judicial Conduct. On May 21, 2003, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has served as a part-time justice of the Town of Mount Kisco since 1979. He is an attorney who was admitted to the bar in 1966.

As to Charge I of the Formal Written Complaint:

[1] Mr. Felder was appointed to the Commission on August 25, 2003. The vote in this matter was taken on May 21, 2003.

2. Respondent was retained by Diane Treanor shortly after the death of her father, Anthony De Laura, on July 19, 1997, to handle the probate of the estate. Ms. Treanor was the named executrix in the will, which had been drafted by respondent.

3. On or about July 8, 1999, New York State issued a refund check in the amount of $18,393.36, payable to the order of "Diane Treanor, executrix, c/o Joseph J. Cerbone, Esq."

4. Respondent deposited that check into his attorney escrow account at the Hudson Valley Bank, without Ms. Treanor's endorsement, knowledge or consent. Respondent thereby engaged in conduct that adversely reflects upon his fitness as a lawyer, in violation of DR 1-102(A)(7) of the Code of Professional Responsibility.

5. On or about July 12, 1999, respondent issued check #1433 in the sum of $6,490.00 from his attorney trust account, payable to his own order. That sum represented legal fees allegedly due and owing respondent with respect to the estate of Anthony De Laura.

6. Respondent issued check #1433 without the knowledge and/or consent of Ms. Treanor, the executrix, and thereby converted funds belonging to the De Laura estate.

7. By converting funds entrusted to him to be held in escrow, respondent breached his fiduciary duty to maintain a duly-constituted escrow account. Such conduct adversely reflects upon respondent's fitness as a lawyer, in violation of DR 1-102(A)(7) of the Code of Professional Responsibility.

8. As a result of the misconduct set forth above, respondent was suspended from the practice of law for one year, commencing on June 13, 2002, by the Appellate Division, Second Department (295 AD2d 66 [2d Dept 2002]).

As to Charge II of the Formal Written Complaint:

9. In 1996 the Commission issued a public admonition to respondent for, *inter alia*, making an improper *ex parte* telephone call to the complainant/witness in a criminal assault case over which respondent was presiding. As a result of respondent's remarks, the complainant was persuaded to request that the charges be dismissed. Respondent, who had previously represented the defendant's parents and brother in unrelated matters, then dismissed the charges, over the District Attorney's objections, without disclosing his prior relationships or the telephone call. The Grievance Committee for the Ninth Judicial District subsequently issued a letter of admonition to respondent based upon the same conduct.

10. From November 2001 through August 2002, respondent engaged in behavior in the Mount Kisco Town Court which is set forth in paragraphs 11-15 below.

11. Respondent prepared and distributed to defense attorneys who appeared before him in criminal cases a form letter which he asked them to complete and mail to the office of the District Attorney. The form letter disclaimed any professional or social relationship between the defendant and respondent.

12. In distributing the form letter, respondent frequently made remarks to the effect that the District Attorney had previously filed a complaint against him which had cost him half a million dollars to defend against and that due to illnesses in his family he had neither the time or money to defend himself against future complaints. Respondent requested that the defense attorneys send the completed forms to the District Attorney to show that he had no relationship with their clients.

13. Pursuant to respondent's request, defendants' attorneys sent numerous letters to the District Attorney.

14. Respondent recused himself *sua sponte* from four shoplifting cases while stating that he was doing so because the District Attorney had failed to prosecute former Mount Kisco employees for their private use of computers belonging to the Town, despite clear evidence of their crimes. As a result of respondent's recusals, the cases were to be reassigned to respondent's co-justice, sitting the following month.

15. On several occasions, respondent stated to courtroom attendees that his office telephone was "tapped," that the District Attorney was keeping "dossiers" on him, and that he was "being watched."

16. In making the statements and taking the actions described in paragraphs 11-15, respondent acted vindictively, seeking to retaliate against the District Attorney for having made the complaint which had led to respondent's admonition by the Commission and by the Grievance Committee for the Ninth Judicial District.

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)(2), 100.3(B)(3), 100.3(B)(4), 100.3(B)(7), 100.4(A)(2) and 100.4(A)(3) of the Rules Governing Judicial Conduct [2] and engaged in conduct that adversely affects his fitness to perform the official duties of a judge pursuant to Article 6, Section 22(a) of the Constitution of the State of New York and Section 44 of the Judiciary Law. Charge I and Charge II, paragraphs 8(B), 8(C), 8(D) and 9, of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established. Paragraphs 8(A) and 8(E) of Charge II are not sustained and therefore are dismissed.

Considered together, respondent's misbehavior on the bench and his financial improprieties as an attorney establish that he lacks the judgment and temperament to sit on the bench and is unfit for judicial office.

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[2] Although earlier this year the Commission was barred from enforcing Sections 100.1 and 100.2(A) of the Rules (*Spargo v. NYS Commn on Jud Conduct*, 244 F Supp2d 72 [NDNY 2003]), the U.S. Court of Appeals for the Second Circuit issued a temporary stay of the *Spargo* decision on May 8, 2003, and extended the stay pending appeal on May 20, 2003. As there is no bar to enforcing those provisions, we find that respondent's conduct violated Sections 100.1 and 100.2(A), as charged. We further find that the other cited provisions, standing alone, support the finding of misconduct and the sanction imposed.

Respondent's financial improprieties as an attorney, for which he was suspended for one year from the practice of law, constitute serious misconduct. As found by the Appellate Division, respondent converted funds entrusted to his care and made an unauthorized deposit into his attorney escrow account. *Matter of Cerbone*, 295 AD2d 66 (2d Dept 2002). Those facts, which were established in the disciplinary proceeding before the Appellate Division, may not be relitigated here (*see Matter of Tamsen v.Commn on Jud Conduct*, 100 NY2d 19 [2003]). Such fiduciary misdeeds by a judge who is permitted to practice law are incompatible with the high standards of conduct, both on and off the bench, required by the Rules.

On the bench, respondent used his courtroom as a forum for expressing his personal grievances against the District Attorney, whose previous complaint had led to respondent's admonition in 1996. Respondent's gratuitous distribution to defense attorneys of a form letter, addressed to the District Attorney, in which the defendant disclaimed any relationship with respondent served no salutary purpose but was simply a retaliatory demonstration of pique. In distributing the letter, respondent frequently stated that it had cost him a half a million dollars to defend himself against the District Attorney's complaint, that the District Attorney was keeping "dossiers" on him and that his telephone was being "tapped." As the referee concluded, such hostile comments detracted from the dignity of his office and underscored the impression that the disclaimer form was merely "a contrivance which permitted [respondent] to express his anger."

Respondent decided to disqualify himself in four shoplifting cases simply because he disagreed with the District Attorney's decision not to prosecute larceny charges against two former town employees. Under such circumstances, respondent's recusal was a demonstration of pique and was clearly improper.

Whatever respondent's personal views, it was inappropriate for respondent to use his courtroom as a soapbox for airing his grievances and to abuse his judicial powers pursuant to a personal agenda. Respondent's claim that his conduct was somehow justified because of his purported mistreatment by certain public officials is unpersuasive and reflects a serious misunderstanding of the proper role of a judge.

Respondent's disciplinary history, including a prior admonition and four letters of dismissal and caution, bolsters the conclusion that he lacks sensitivity to the special ethical obligations of judges. *See Matter of Cerbone*, 1997 Ann Rep 83 (Commn on Jud Conduct, March 21, 1996). The underlying improprieties include a variety of activities, including, significantly, retaliatory conduct towards an attorney who had made a complaint against him (Letter of dismissal and caution, Nov. 4, 1999 [Appendix 7, Commission counsel's brief to the Commission).

Respondent's claim that he desisted from particular acts of misconduct whenever they were pointed out to him is hardly reassuring. He repeatedly failed to recognize and avoid misconduct. We are also unpersuaded by respondent's argument that his various misdeeds are, at worst, minor, unrelated transgressions that do not indicate a lack of fitness for judicial office. Respondent's apparent inability or unwillingness to learn from his past mistakes, to recognize misconduct and to adhere to the high ethical standards required of judges demonstrates that he is unfit to serve as a judge. "[T]he purpose of judicial disciplinary proceedings is 'not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents.' " *Matter of Reeves v. Comm on Jud Conduct*, 63 NY2d 105, 111 (1984), quoting *Matter of Waltemade*, 37 NY2d (a), (lll) (Ct on the Jud 1975).

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Ms. Hernandez, Ms. Moore, Mr. Pope and Judge Ruderman concur.

Mr. Goldman dissents only as to Charge II, paragraph 8(D) concerning respondent's statements that his telephone has been "tapped" and the District Attorney is keeping "dossiers" on him, and votes to dismiss that allegation.

Judge Luciano and Judge Peters were not present.

Dated: September 19, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **JOHN G. CONNOR**, a Justice of the Supreme Court, 3rd Judicial District, Columbia County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.[3]
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
Tobin and Dempf LLP (By Kevin A. Luibrand) for Respondent

The respondent, John G. Connor, a Justice of the Supreme Court, 3rd Judicial District, Columbia County, was served with a Formal Written Complaint dated March 4, 2002, containing two charges. Respondent filed an answer dated March 25, 2002.

On May 21, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing 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 May 21, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a Justice of the Supreme Court since 1982. Respondent, who is over the age of 70, is currently serving as a certificated justice through 2003.

As to Charge I of the Formal Written Complaint:

[3] Mr. Felder was appointed to the Commission on August 25, 2003. The vote in this matter was taken on May 21, 2003.

2. The case of *Cooney v. Cooney* was initially assigned to Columbia County Court Judge John Leaman. On December 1, 2000, Judge Leaman informed the attorneys that he was recusing himself because the plaintiff's attorney, John Clark, had recently been hired as Judge Leaman's confidential law assistant. Mr. Clark had also notified respondent that he was hired by Judge Leaman and that his employment would begin on December 21, 2000.

3. After respondent's assignment to the *Cooney* case, he presided over a one-day trial on December 5, 2000. By a previous Family Court order, the defendant, James Cooney, had been granted residential custody of the couple's young daughter who had resided with Mr. Cooney for approximately two years.

4. Shortly after the conclusion of the *Cooney* trial, respondent met with his law clerk and instructed him to order a transcript of the trial and prepare a letter directing the parties to submit proposed findings of fact. On December 11, 2000, respondent sent a letter to the parties' attorneys requesting proposed findings of fact and conclusions of law within 60 days of the date of the letter. Ten days later, on December 21, 2000, without having received any post-trial submissions, respondent issued his decision. The parties' attorneys had intended to submit proposed findings and conclusions as requested by respondent.

5. Respondent's decision of December 21, 2000, granted the divorce to Mrs. Cooney and granted her sole legal and residential custody of the couple's daughter. Respondent adopted and made part of his decision the law guardian's recommendations, which had not been furnished to the attorneys. Respondent had specifically directed the law guardian to submit his report to the court *ex parte*.

6. Respondent maintains a general policy that requires law guardian reports to be submitted to him *ex parte* to first ascertain whether the report contains sensitive material. After a review of the law guardian report, respondent decides if it should be revealed to the parties.

7. Respondent's decision in *Cooney* was issued the same day that the plaintiff's attorney, Mr. Clark, became employed as Judge Leaman's confidential law assistant. Respondent's failure to provide the parties with a fair opportunity to be heard is compounded by keeping the report from the parties by instructing the law guardian to submit the report *ex parte* and then relying on the report in his decision.

As to Charge II of the Formal Written Complaint:

8. In November 1999, Bethene Lindstedt-Simmons, the attorney for Bettina Broer, brought a motion for summary judgment that her client should be granted a divorce from William Hellerman, based upon a separation agreement the parties had entered into a year before; the motion also requested a judgment of arrears in child support and maintenance. Respondent issued a decision on July 5, 2000, denying summary judgment for the divorce and directing Mr. Hellerman to pay half of the children's medical expenses and temporary support of less than half of what had been agreed to in the separation agreement. Respondent's decision did not address the issue of arrears or maintenance.

9. A hearing was set for August 17, 2000, on all of the issues with respect to Ms. Broer's application to move with the children to Hawaii. Ms. Broer, who had been residing with the children on the island of Nantucket by agreement of the parties, was required to move from the residence she had been living in rent-free. On August 17, 2000, Ms. Broer, her fiancé and her children, who had traveled from Nantucket, the parties' attorneys and the law guardian were all present at the courthouse in expectation of a hearing.

10. An order to show cause was signed by Judge George Cobb returnable on August 17, 2000, to determine a motion on where the children could be moved. Respondent did not hold a hearing on August 17, 2000, although all of the parties were present and ready to proceed, but held a conference in chambers with the attorneys and the law guardian, John Clark. Ms. Lindstedt-Simmons discussed her client's urgent need to relocate because the children were not enrolled in the costly private school in Nantucket and her client was required to move from the home she had been living in rent-free. Either Ms. Lindstedt-Simmons or Mr. Clark broached the subject of an alternative move to Florida because Mr. Hellerman objected to moving the children to Hawaii; the law guardian supported the move to either Hawaii or Florida.

11. During the conference on August 17, 2000, Ms. Lindstedt-Simmons stressed the importance for respondent to decide the matter before school began on September 1, 2000. At the conference, there was a discussion among the parties' attorneys, the law guardian and respondent regarding a move by Ms. Broer and the children to a location other than Hawaii. Florida was proposed as an alternative and the parties were going to explore that as a possibility. Respondent said he would allow a move to someplace reasonable. Respondent made no decision at the August 17, 2000 conference nor were any orders issued permitting Ms. Broer to move to Florida.

12. Respondent set August 23, 2000, as the date for the filing of any supplemental papers. On August 23, 2000, respondent's law clerk extended the time for Mr. Hellerman's attorney to submit his supplemental papers. This extension was given without any consent or notice to Ms. Broer's attorney, who filed timely supplemental papers. By cover letter attached to her supplemental papers, Ms. Lindstedt-Simmons specifically requested an expeditious decision because the children were required to be in school by September 1, 2000.

13. Respondent did not issue his decision until September 18, 2000, at which time he denied a move to either Hawaii or Florida and also denied that part of Ms. Broer's motion to find Mr. Hellerman in violation of respondent's July 2000 order of support.

14. The law guardian submitted his report on August 23, 2000, *ex parte*, with the request that respondent keep the report confidential. While respondent did not instruct the law guardian to submit his report *ex parte*, respondent did consider the report in making his decision of September 18, 2000, and did not distribute the report to the attorneys.

15. Thereafter, Ms. Broer retained new counsel, Jason Shaw, who, prior to making a formal appearance in the case, stopped at respondent's chambers on December 20, 2000, and informed respondent that Ms. Broer had made a complaint about respondent to the Commission. Respondent asked Mr. Shaw, who had not seen the complaint, to find out more about it and to "get back" to him regarding the nature of the complaint.

16. In February 2001, respondent held a conference in *Broer v. Hellerman*. Respondent did not disclose his earlier meeting with Mr. Shaw to the parties' attorneys or offer to disqualify himself because he did not consider that there was anything improper about Mr. Shaw's December 20, 2000, visit.

17. Thereafter, Mr. Shaw filed a motion to compel Mr. Hellerman to appear for a deposition and for summary judgment. Mr. Hellerman's attorney cross- moved to quash a subpoena Mr. Shaw had issued to Mr. Hellerman's previous attorney and to disqualify Mr. Shaw from representing Ms. Broer. It was alleged that Mr. Hellerman had discussed his matrimonial matters with Mr. Shaw's law partner and that Mr. Shaw should therefore be disqualified.

18. On May 25, 2001, respondent disqualified himself from *Broer v. Hellerman* on the spurious basis that Mr. Shaw's visit to inform him of Ms. Broer's complaint five months earlier had prompted the disqualification. The decision stated that although respondent did not wish "to reward Plaintiff or her counsel's actions by succumbing to their request for recusal," in light of Mr. Shaw's "requests," respondent had no choice but to recuse himself.

19. Although respondent's decision states that Mr. Shaw had requested respondent's disqualification, Mr. Shaw did not, in fact, request that respondent disqualify himself.

20. From Mr. Shaw's initial contact with respondent on December 20, 2000, until respondent's decision on May 25, 2001, respondent did not consider his communication with Mr. Shaw to be an improper *ex parte* contact. As of May 25, 2001, respondent did not have any actual knowledge as to whether Ms. Broer had, in fact, made a complaint against him to the Commission. Additionally, respondent was aware that the mere fact that a litigant filed a complaint with the Commission is not a basis for a judge's recusal.

21. If respondent genuinely believed that the *ex parte* comments by Mr. Shaw should lead to respondent's recusal, it was improper for respondent to wait five months before doing so. The evidence establishes that the disqualification was based on spurious grounds.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 100.3(B)(6) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

A judge is required to provide all legally interested persons the right to be heard and is prohibited from engaging in *ex parte* communications outside the presence of the parties or their lawyers (Section 100.3[B][6] of the Rules Governing Judicial Conduct). Respondent violated this standard in the *Cooney* and *Broer* cases by considering the law guardians' reports in rendering his decisions without furnishing the report to the parties. A law guardian is not a member of the judge's staff, but independent legal counsel for the child. It follows that a judge should not have private communications with a law guardian to which the parties and their attorneys are not privy. *See* Adv Op 95-29 of the Advisory Committee on Judicial Ethics; Standard B-7 of the NYSBA Law Guardian Representation Standards.

In the *Cooney* case, respondent specifically directed the law guardian to submit his report *ex parte*, consistent with respondent's general policy of requiring a report to be filed *ex parte* to permit respondent to ascertain whether it contains "sensitive material" before deciding whether to provide it to the parties. However well-intentioned, withholding a law guardian's report from the parties is inconsistent with due process and deprives the parties of the opportunity to address the law guardian's recommendations.

In *Cooney*, respondent further deprived the parties of an opportunity to be heard by issuing his decision 10 days after he had accorded the attorneys 60 days for post-trial submissions and without having received any submissions from them. Respondent's conduct in that regard compounds the impropriety of relying on the law guardian's *ex parte* recommendations.

In *Broer*, respondent's decision implicitly blames the plaintiff's attorney for respondent's need to disqualify himself, citing an *ex parte* meeting initiated by the plaintiff's attorney in which the attorney disclosed that his client had filed a complaint about respondent's conduct, and stating inaccurately that the attorney had requested respondent's recusal. Such grounds were spurious, as respondent has stipulated. (S*ee Matter of Leonard*, 2003 Ann Rep 136 [Commn on Jud Conduct, Dec 26, 2002].) Moreover, even if respondent genuinely believed that the *ex parte* comments by the attorney should lead to respondent's recusal, it was improper for respondent to wait five months before doing so.

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Ms. Moore, Mr. Pope and Judge Ruderman concur.

Judge Luciano and Judge Peters were not present.

Dated: September 22, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **WILLIAM R. CROSBIE,** a Justice of the Tarrytown Village Court, Westchester County.

STIPULATION

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (hereinafter, "Commission"), the Honorable William R. Crosbie, the respondent in this proceeding, and Martin N. Silberman, Counsel to respondent.

1. This Stipulation is presented to the Commission in connection with a formal proceeding presently pending against respondent.

2. Respondent, an attorney, is 79 years of age and has served as Village Justice of Tarrytown since 1987. He has also served on the Tarrytown Village Board and the Westchester County Board of Legislators, was temporarily assigned as Acting City Judge of Yonkers City Court in July 2001, and has been active in civic affairs in Tarrytown. Respondent was elected in March 2003 to a four-year term as Justice of the Village Court of Tarrytown. His judicial salary is $33,000 per year.

3. By letter of May 21, 2003, the Commission advised respondent that it had initiated an investigation on its own motion with respect to certain ethnic-based remarks allegedly made by respondent on May 15, 2003, to a defendant in a parking violation case. The Commission also advised respondent in that letter that it had initiated an investigation based on a written complaint alleging that a few weeks earlier respondent had made remarks of a racial nature to a judge concerning a defendant in a case. Earlier, respondent allegedly had made similar racial remarks to the defendant in that case, and at the request of defense counsel, respondent disqualified himself from the matter.

4. Respondent submitted his resignation as a Tarrytown Village Court Justice, effective June 5, 2003.

5. On June 12, 2003, the Commission served charges against respondent with respect to the above allegations.

6. Pursuant to law, the Commission has 120 days from the date of a judge's resignation to complete an investigation, file charges, conduct a formal proceeding, and, if the Commission determines that the judge should be removed from office, file a determination in the Court of Appeals.

7. Respondent's counsel submitted to the Commission letters from respondent's physicians stating that respondent is suffering from certain medical conditions that would prevent him from assisting in his own defense.

8. The parties to this Stipulation respectfully request that the Commission close the pending matter based on (a) respondent's acknowledgment, by this Stipulation, that he cannot successfully defend the charges presently pending against him and (b) other relevant factors, including respondent's age, health and long service to the Village of Tarrytown. Respondent affirms that he will neither seek nor accept judicial office at any time in the future.

9. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law to the limited extent that this Stipulation will be made public if approved by the Commission. All parties to this Stipulation agree that under the present circumstances and in view of respondent's present medical condition, this resolution of the pending matter is in the best interest of the respondent and the public.

Dated: July 7, 2003 s/Hon. William R. Crosbie, Respondent
July 8, 2003 s/Martin N. Silberman, Esq., Counsel to Respondent
July 9, 2003 s/ Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **WILLIAM R. CROSBIE,** a Justice of the Tarrytown Village Court, Westchester County.

DECISION AND ORDER

THE COMMISSION

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES

Robert H. Tembeckjian (Gerald Stern, Of Counsel) for the Commission
Silberman & Rhine LLP (by Martin N. Silberman) for Respondent

The matter having come before the Commission on July 16 , 2003; and the Commission having before it the Formal Written Complaint dated June 12, 2003, and the Stipulation dated July 9, 2003; and respondent having resigned from judicial office effective June 5, 2003, and having affirmed that he will not seek or accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law §45 to the extent that the Stipulation will be public upon approval by the Commission; now, therefore, it is

DETERMINED, on the Commission's own motion, that the pending proceeding be discontinued and the case closed pursuant to the terms of the Stipulation; and it is

SO ORDERED.

Dated: July 17, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **LUTHER V. DYE**, a Justice of the Supreme Court, 11th Judicial District, Queens County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.[4]
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

The respondent, Luther V. Dye, a Justice of the Supreme Court, Queens County, was served with a Formal Written Complaint dated March 18, 2003, containing two charges. Respondent filed an answer dated April 7, 2003.

On May 15, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing 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 May 21, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent served as a judge of the Civil Court of the City of New York from 1989 to 1993. Respondent has served as a Supreme Court Justice from 1994 to the present.

2. Respondent will be 70 years old in 2003, and his term as a Supreme Court Justice will expire at the end of 2003. He is eligible to apply this year for a two-year term as a certificated Supreme Court Justice, and if certificated, would be eligible to seek re-certification for additional two-year terms and to serve as a certificated Supreme Court Justice through 2009. The decision to grant certification is within the discretion of the Administrative Board of the unified court system.

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[4] Mr. Felder was appointed to the Commission on August 25, 2003. The vote in this matter was taken on May 21, 2003.

As to Charge I of the Formal Written Complaint:

3. On August 6, 2002, respondent presided over *Catherine Capanelli; natural guardian, Esther I. Benitez* v. *Wycoff Park Associates*, in which the infant plaintiff and her mother and guardian appeared before respondent concerning an application that $6,000.00 be withdrawn from funds previously awarded to Ms. Capanelli in connection with a negligence matter and used to pay educational expenses for Ms. Capanelli, including tuition, at Christ the King Regional High School, a Catholic parochial secondary school. Respondent denied the request.

4. During the *Capanelli* proceeding, respondent made inappropriate comments about education at Catholic parochial schools and inappropriately referred to publicized allegations concerning the Catholic Church. Respondent stated that he would not send his children to a Catholic parochial school, although, in fact, he had done so, and he asked Ms. Benitez if she has read the newspapers about what was occurring in Catholic schools and stated that he would not permit any funds to be used for such a purpose.

5. Respondent asserts that at the time of the *Benitez* proceeding, he was not biased against the Catholic Church or a Catholic education and that he rendered a decision in the *Benitez* case on the merits and on what he believed was in the best interests of the child.

6. In addition to the comments included in the charge, respondent stated that it was in the child's best interests to attend a public school. Respondent took into account the fact that the sole remaining funds being held for the child was $12,614.03, of which educational expenses would have been $6,000.00. Respondent asserts that he believed it was best for the child to have those funds used for other purposes, subject to the discretion of the Court. Respondent asserts further that he regrets making the comments that are the subject of this charge and he apologizes for any impression he conveyed that he was critical of the Catholic Church, of a Catholic school education, or of Ms. Benitez or Ms. Capanelli for making the application.

7. Commission Counsel asserts that respondent's words in court conveyed the appearance of bias, and it is not relevant whether respondent's decision was on the merits or whether another judge would have made the same decision. If respondent had denied the application without making the statements that are the basis of the charge, he would not have been charged with misconduct. Based on the beliefs he expressed, however, he should have disqualified himself, which would have resulted in another judge hearing the matter.

As to Charge II of the Formal Written Complaint:

8. From August 21, 2002, to August 30, 2002, respondent presided over a jury trial in *Philip Ougourlian and Arpena Ougourlian* v. *NYC Health & Hospitals Corp.*, a medical malpractice matter.

9. During the proceeding and outside the presence of the jury, respondent acted in an undignified and discourteous manner toward Steven B. Samuel, Esq., who represented the plaintiffs, by:

(a) stating repeatedly that Mr. Samuel should "shut up";

(b) threatening to mark the matter off the trial calendar after Mr. Samuel requested a one-day adjournment on the grounds that the daughter of the plaintiff, Philip Ougourlian, had been involved in an automobile accident; and

(c) stating, without adequate basis, that Mr. Samuel should return to court with an attorney after the trial for a sanctions hearing to determine if Mr. Samuel had manipulated the court because he had submitted an affidavit of the plaintiff, Philip Ougourlian, in support of a request for a one-day adjournment of the trial after Mr. Ougourlian's daughter was involved in an automobile accident.

10. During the proceeding, on August 22, 2002, Mr. Samuel stated to respondent that Mr. Samuel was offended because respondent had accused him of having manipulated the court and Mr. Samuel added that he intended to file a complaint concerning respondent's conduct. Respondent was annoyed with Mr. Samuel and believed him to be an aggressive lawyer.

11. On August 26, 2002, at the end of the court day, respondent and Mr. Samuel engaged in a contentious dialogue. Respondent accused Mr. Samuel of attacking him and told Mr. Samuel that any complaint Mr. Samuel would make to the Commission was "as worthless as a bucket of spit." As Mr. Samuel was leaving the courtroom, after the matter was adjourned until August 28, 2002, respondent asked Mr. Samuel whether he was Jewish.

12. On August 28, 2002, Mr. Samuel complained on the record about being asked by respondent if he was Jewish. Mr. Samuel asked, "Why did the Court ask me that question?" Respondent stated that he would answer the question, but then turned to Steve Rubin, Esq. of the New York City Law Department, who was representing the defendant, and said, "Mr. Rubin, why don't you answer that, you know the answer, you answer it." Mr. Rubin then stated:

> I don't think there was anything meant by it. I don't think it was a reflection of any type of bias. It was more just a friendly remark. I know that because the Judge asked me if I was Jewish and said there weren't – he knew I was from Virginia, that there weren't too many Jewish people that are from Virginia, and it stemmed out of that. The Judge is from North Carolina. That was my understanding.

Respondent then made the following statement on the record:

> I was born and bred in North Carolina. I saw no Jewish people, none. I saw no West Indians. I didn't know what a West Indian was until I came to New York. The only Chinese people I saw were in the laundry. I never saw a Jewish person. I never saw a temple. I never saw a synagogue. Didn't know what it was. I thought everybody went to church. I thought everybody was Christian. That's why I asked. Does that answer your question?

Mr. Samuel replied that it did not answer his question, and a contentious discussion ensued.

13. Respondent had left North Carolina for New York City in approximately 1949.

14. Respondent recognizes that he cannot successfully defend the charges, and for the purposes of discipline to be imposed, if the Commission accepts this Agreed Statement, the Commission is authorized to consider the prior determination of censure, dated February 6, 1998, against respondent.

15. In consideration of the disposition of this proceeding, respondent has agreed that, if the Agreed Statement of Facts is accepted by the Commission, he will not seek or accept certification as a Supreme Court Justice, will retire from the judiciary on December 31, 2003, and will not seek or accept any judicial position in the unified court system in the State of New York, including as a Judicial Hearing Officer, at any time in the future.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.3(B)(1), 100.3(B)(3), 100.3(B)(4) and 100.3(E)(1) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

"A judge must be and appear to be unbiased at all times so 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.'" *See Matter of Ain*, 1993 Ann Rep 51 (Commn on Jud Conduct, Sept 21, 1992), quoting *Matter of Sardino*, 58 NY2d 286, 290-91 (1983). Any statements by a judge that reflect religious or ethnic bias will not be tolerated. *See, e.g., Matter of Schiff*, 83 NY2d 689 (1994); *Matter of Ain, supra*. Respondent's inappropriate comments on two separate occasions conveyed the appearance of bias and warrant a severe sanction.

Respondent has acknowledged that during a proceeding to determine whether a child's funds could be used to pay for her educational expenses at a Catholic parochial secondary school, he made inappropriate comments about education at Catholic parochial schools, referred to publicized allegations concerning the Catholic Church, and stated that he would not send his own children to a Catholic parochial school. The fact that respondent has sent his own children to a Catholic parochial school does not mitigate the appearance of bias conveyed by his statements. At the very least, his comments created the appearance that he could not be impartial in the case and that his decision would be influenced by his personal bias, and he should not have handled the matter.

Respondent's inappropriate comments about the Catholic Church were not an isolated instance of misconduct. Three weeks later, after a series of hostile, discourteous comments to an attorney, respondent asked the attorney whether he was Jewish. The record establishes that earlier in the case, respondent had repeatedly told the attorney to "shut up," accused the attorney of manipulating the court and directed him to appear for a sanctions hearing after the trial. Shortly before asking that question, respondent and the attorney had engaged in a contentious dialogue and respondent accused the attorney of attacking him. In that context, respondent's question was so inappropriate that the conclusion is unavoidable that it was hostile and biased. As such, it constitutes misconduct. Two days later, when the attorney asked respondent on the record to explain why he had asked the question, respondent's explanation was not only evasive, but bizarre. Explaining that he "saw no Jewish people" while growing up in North Carolina, respondent also commented that he "saw no West Indians" and "[t]he only Chinese people I saw were in the laundry." That "explanation" is unacceptable.

We are mindful that in 1998, respondent was censured for making "offensive and undignified remarks….of a personal and sexual nature" to his secretary. *Matter of Dye*, 1999 Ann Rep 93 (Commn on Jud Conduct, Feb 6, 1998). The Commission's determination stated in part:

> A Judge must conduct his everyday affairs in a manner beyond reproach. Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function. (*Matter of Kuehnel*, 49 NY2d 465, at 469).

Viewed in its totality, the record suggests that respondent lacks sensitivity to the special ethical obligations of judges and indicates the need for a severe sanction.

In imposing a sanction short of removal, we have considered that respondent's term of office expires at the end of 2003 and that respondent has stipulated that he will retire at the end of the year and will not serve in any judicial capacity in the future. Effectively, this disposition ensures that respondent's fifteen-year judicial career will end this year. We believe this result is appropriate. This is particularly so since, absent a stipulated disposition, it is uncertain whether a disciplinary proceeding resulting in any public sanction could have been completed prior to respondent's departure from the bench.

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Mr. Pope and Judge Ruderman concur.

Ms. Moore dissents and votes to reject the Agreed Statement of Facts on the basis that the disposition is too lenient.

Judge Luciano and Judge Peters were not present.

Dated: September 19, 2003

DISSENTING OPINION BY MARY HOLT MOORE

The record establishes that in the *Capanelli* proceeding, respondent made inappropriate comments about education at Catholic parochial schools, referred to publicized allegations concerning the Catholic Church, and stated that he would not send his own children to a Catholic parochial school. It is shocking to me that a judge, who is supposed to be impartial and a model of neutrality and dignity, would make such comments. Even if no one objected to his words at the time, his statements were biased and insulting.

In another case, after a contentious exchange with an attorney, respondent asked the attorney whether he was Jewish. It was totally inappropriate for respondent to ask the attorney about his religion. Respondent's effort to justify the question by referring to his own upbringing was unbelievable and, if anything, even more offensive. Respondent is 70 years old and came to New York City more than 50 years ago, so it is frankly ridiculous to attribute his question to his upbringing in North Carolina.

In my view, respondent's admitted statements establish that he lacks the impartiality, temperament and judgment to serve as a judge. I feel strongly that, on these facts, any disposition other than removal is too lenient. Accordingly, I respectfully dissent and vote to reject the Agreed Statement of Facts.

Dated: September 19, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **JOSEPH ESPOSITO, SR.**, a Justice of the Kent Town Court, Putnam County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Vickie Ma, Of Counsel) for the Commission
Frank E. Redl and Marvin Ray Raskin for Respondent

The respondent, Joseph Esposito, a justice of the Kent Town Court, Putnam County, was served with a Formal Written Complaint dated October 1, 2002, containing three charges. Respondent filed an answer dated January 15, 2003.

On February 7, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing 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 September 18, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a justice of the Kent Town Court since 1989. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. W. James Dove was a Kent Town justice from 1987 to December 1998. He is not an attorney. His wife is Jean Morris.

3. By January 1999, the relationship between respondent and former Judge Dove had become contentious. Among other things, respondent and Judge Dove filed complaints against each other with the Commission prior to January 1999. Respondent was aware that Judge Dove had filed at least one complaint against him prior to January 1999.

4. In January 1999, Christopher Boryk was the newly appointed tax assessor for the Town of Kent.

5. In January 1999, respondent approached Mr. Boryk in Town Hall, introduced himself, showed Mr. Boryk some highlighted papers of a property assessment and inventory belonging to Jean Morris, Mr. Dove's wife, and complained that the property tax assessment was too low and should be raised. Mr. Boryk advised respondent that he could not selectively reassess one property and that what respondent was asking him to do was improper. In the course of their discussion, respondent indicated that he was a judge.

6. In February 2001, when Mr. Boryk had not taken any action on respondent's complaint about Mr. Dove's property assessment, respondent complained to Annmarie Baisley, the Kent Town Supervisor. Ms. Baisley serves on the Kent Town Board and is Mr. Boryk's supervisor. Ms. Baisley agreed to look into the matter and thereafter asked Mr. Boryk to review Mr. Dove's property assessment. Thereafter, as a result of a countywide reassessment, Mr. Dove's property assessment was increased by 74%.

7. Respondent now appreciates that, whether on or off the bench, he must avoid putting himself in situations where he even appears to be using the prestige of his judicial office to advance a private purpose.

As to Charge II of the Formal Written Complaint:

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

As to Charge III of the Formal Written Complaint:

9. Respondent and his son, Joseph Esposito, Jr., lived at the same address until 2000, when respondent's son moved out after getting married.

10. In October 2000, respondent accompanied his son to an automobile dealership, GMC Pontiac Meadowland of Carmel ("Meadowland"), in connection with his son's interest in purchasing a truck. Respondent's son contracted to purchase the truck, and in February 2001 respondent accompanied his son to Meadowland to pick it up. In connection with his purchase of the vehicle, respondent's son provided Meadowland with respondent's address, although he was no longer living there at the time.

11. On June 14, 2001, Meadowland served a Summons and Complaint on respondent that was evidently meant for his son. The Meadowland papers identified the defendant as "Joseph Esposito." Respondent knew from conversations with his son that Meadowland had claimed there was an unpaid balance on the truck his son had bought.

12. Several days later, respondent telephoned the attorney for Meadowland, identified himself as "Joseph Esposito," confirmed his address and stated that he had not purchased a truck. Respondent did not indicate that he was Joseph Esposito, "Sr." or that there was a Joseph Esposito, "Jr."

13. On June 19, 2001, respondent, acting without counsel, interposed an Answer in the *Meadowland* case. Respondent's Answer denied knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to the purchase of the vehicle.

14. Respondent's Answer also alleged that Meadowland's action was without merit and was designed to harass him and impugn his reputation.

15. Subsequent to respondent's Answer, Meadowland's attorney filed a Demand for Interrogatories and thereafter moved to strike respondent's Answer for failure to respond to the Demand for Interrogatories.

16. Respondent retained counsel, and on February 28, 2002, in a preliminary conference before the Supreme Court Justice to whom the case was assigned, respondent's counsel disclosed for the first time that a truck had been purchased not by respondent but by respondent's son.

17. Respondent now recognizes that, as a judge, he had a duty under the circumstances to be candid in the litigation and that he should not have denied knowledge of his son's purchase of the truck.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.4(A)(2) of the Rules Governing Judicial Conduct.[5] Charges I and III of the Formal Written Complaint are sustained insofar as they are consistent with the above facts, and respondent's misconduct is established. Charge II is not sustained and is, therefore, dismissed.

Respondent's conduct was inconsistent with the high standards of conduct that judges are required to observe both on and off the bench.

By referring to his judicial office while complaining to the newly-appointed tax assessor that a particular assessment was too low, respondent conveyed the appearance of using the prestige of his judicial status for a private purpose. Regardless of the merits of respondent's complaint, it was improper for respondent to refer to his judicial status in connection with the matter. *See, e.g., Matter of Lonschein v. State Commn on Jud Conduct*, 50 NY2d 569, 571-72 (1980). Moreover, in singling out the assessment of property owned by the wife of his former colleague, with whom he had a contentious relationship, respondent's conduct created the appearance that he was retaliating against the individual, who had previously made a complaint about respondent to the Commission.

As a judge who is sworn to uphold the law and seek the truth, respondent has a duty to be candid in the litigation process. As the Court of Appeals has stated:

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[5] Although the Commission was barred from enforcing Sections 100.1 and 100.2(A) of the Rules by the U.S. District Court in *Spargo v. NYS Comm'n on Jud Conduct*, 244 F Supp2d 72 (NDNY 2003), the U.S. Court of Appeals for the Second Circuit on May 20, 2003, stayed the injunction in *Spargo* pending appeal. Accordingly, there is no bar to enforcing those provisions.

> Judges personify the justice system upon which the public relies to resolve all manner of controversy, civil and criminal. A society that empowers judges to decide the fate of human beings and the disposition of property has the right to insist upon the highest level of judicial honesty and integrity. A judge's conduct that departs from this high standard erodes the public confidence in our justice system so vital to its effective functioning. *Matter of Mazzei v. Commn on Jud Conduct*, 81 NY2d 568, 571-72 (1993).

Respondent did not respond candidly in his Answer to Meadowland's Complaint when he denied knowledge or information sufficient to respond to the allegations, despite having accompanied his son to the dealership and knowing of his son's billing dispute. Nor was he candid in discussing the matter with the plaintiff's attorney. Respondent's deceptive conduct, in an apparent effort to shield his son by thwarting the litigation process, was improper. Judges are held to stricter standards than "'the morals of the market place'" and are required to observe "standards of conduct on a plane much higher than for those of society as whole…so that the integrity and independence of the judiciary will be preserved." *Matter of Spector v. Commn on Jud Conduct*, 47 NY2d 462, 468 (1979), *quoting Meinhard v Salmon*, 249 NY 458, 464; *Matter of Kuehnel v. Commn on Jud Conduct*, 49 NY2d 465, 469 (1980).

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Felder, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano and Ms. Moore were not present.

Dated: September 19, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **LEIGH W. FULLER**, a Justice of the Canajoharie Town and Village Courts, Montgomery County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci, Of Counsel) for the Commission
Kelli P. McCoski for Respondent

The respondent, Leigh W. Fuller, a justice of the Canajoharie Town and Village Courts, Montgomery County was served with a Superseding Formal Written Complaint dated March 17, 2003, containing two charges. Respondent filed an undated answer.

On August 25, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing 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 September 18, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a justice of the Canajoharie Town Court since 1981 and a justice of the Canajoharie Village Court since 1985. He is not an attorney. Respondent has successfully completed all required training sessions for town and village justices.

As to Charge I of the Formal Written Complaint:

2. As set forth below, respondent was rude, made statements at arraignment which indicated bias and prejudgment concerning the charges, and engaged the defendants in improper *ex parte* communications, notwithstanding that the Commission, by a determination of December 26, 2001, had publicly admonished respondent for engaging in an improper, *ex parte* communication.

(a) On or about April 12, 2002, at the arraignment of the defendant in *People v. Trey Wilson* on a charge of Criminal Trespass, 3rd Degree:

(i) respondent stated in a raised voice to the defendant, who had not yet entered a plea, "What part of trespassing don't you understand?" and "You can't be up at the school trespassing";

(ii) respondent further stated to the defendant, "You're a good looking fellow. I don't want to see you get in any deeper than you already are";

(iii) when the defendant's mother objected that her son was not guilty, respondent threatened to hold her in contempt and to send her to jail if she spoke further; and

(iv) after the defendant pleaded not guilty, respondent said he could "throw" the defendant in jail, but would release him on recognizance.

(b) On or about August 2, 2002, at the arraignment of the defendant in *People v. Christopher Mickus*, after informing the defendant that he was charged with Consuming Alcohol In A Motor Vehicle, respondent added, "Which is pretty stupid," notwithstanding that the defendant had not yet entered a plea.

(c) On or about August 2, 2002, at the arraignment of the defendant in *People v. Stephanie Homkey* on a charge of Falsely Reporting An Incident, 2nd Degree, a felony, respondent stated to the defendant that she "should know better, even if [she] didn't do it."

(d) On or about August 2, 2002, at the arraignment of the defendant in *People v. Richard Dodson*, prior to any plea by the defendant, respondent informed the defendant that he was charged with Petit Larceny (for allegedly stealing beer) and then said, "Why do you do things like this?" When the defendant replied that he did not know, respondent stated that the defendant's actions made no sense and that it was probably the most expensive beer the defendant would ever drink in his life. Respondent added that the defendant should not even have been drinking and stated, "Why there aren't more charges, I don't know."

(e) On or about August 2, 2002, at the arraignment of the defendant in *People v. James Blair* on a charge of Harassment, respondent listened to the defendant's *ex parte* recitation of the circumstances surrounding the offense and then commented that respondent did not blame the defendant for defending himself during the altercation.

(f) On or about October 4, 2002, at the arraignment of the defendant in *People v. Richard Dodson* on charges of Possession Of Alcohol Under 21 and Consuming Alcohol In A Motor Vehicle, respondent stated to the defendant, who had not yet entered a plea, "Don't you understand you can't drink? You shouldn't even drink at 21 in a motor vehicle."

(g) On or about October 4, 2002, at the arraignment of the defendant in *People v. Gregory Zelezny*, respondent informed the defendant, who had not yet entered a plea to the charge of Disorderly Conduct, that had the defendant been immediately arraigned after the incident, respondent would have sent him to jail.

3. Respondent made the statements set forth in paragraphs 2(a) to (g) above in a misguided attempt to deter the young defendants from further transgressions with the law. Respondent now recognizes that his remarks were improper and conveyed the impression that he had prejudged the defendants' guilt.

As to Charge II of the Formal Written Complaint:

4. As set forth below, respondent failed to properly advise defendants of their rights to counsel and to assigned counsel, and failed to take affirmative action to effectuate the defendants' rights to counsel, as required by Section 170.10(4) of the Criminal Procedure Law.

(a) On or about August 2, 2002, at the arraignment of the defendant in *People v. James Blair* on a charge of Harassment, respondent failed to inform the defendant of his right to counsel and to assigned counsel.

(b) On or about August 2, 2002, at the arraignment of the defendant in *People v. William Skotarczak* on charges of Aggravated Unlicensed Operation, 3rd Degree, No Front Plate and Unlawful Possession Of Marijuana, respondent failed to advise the defendant of his right to counsel and to assigned counsel before accepting the defendant's guilty plea to the charges and imposing fines.

(c) On or about August 2, 2002, at arraignment, respondent accepted a guilty plea to a charge of Disorderly Conduct from the defendant in *People v. Joseph Dolly* without advising the defendant of his right to counsel and to assigned counsel.

(d) On or about August 2, 2002, at arraignment, respondent accepted a guilty plea from the defendant in *People v. John Doxstader* to a charge of Disorderly Conduct without advising the defendant of the right to counsel and to assigned counsel.

(e) On or about August 2, 2002, at arraignment on a charge of Consuming Alcohol In A Motor Vehicle, respondent failed to advise the defendant in *People v. Christopher Mickus* of his right to counsel before accepting a guilty plea and imposing a fine.

(f) On or about August 9, 2002, respondent arraigned the defendant in *People v. Katina Sarantopoulos* on a charge of Disorderly Conduct and accepted the defendant's guilty plea to the charge without advising her of her right to counsel; in addition, respondent told the defendant she was not entitled to assigned counsel.

(g) On or about September 6, 2002, at the arraignment of the defendant in *People v. Joshua Meade* on charges of Harassment and Possession Of Alcohol Under 21, respondent informed the defendant that he was not entitled to assigned counsel because the charges were violations.

(h) On or about October 4, 2002, at the arraignment in *People v. Gregory Zelezny*, respondent accepted a guilty plea from the defendant to a charge of Disorderly Conduct, without advising him of his right to counsel and to assigned counsel.

(i) On or about October 4, 2002, at arraignment on a charge of Loitering, respondent failed to advise the defendant in *People v. Charles Bastedo* of the right to counsel and to assigned counsel.

(j) On or about October 4, 2002, at arraignment, prior to accepting a guilty plea, respondent failed to advise the defendant in *People v. Robert Epting* of his right to counsel and to assigned counsel on a charge of Disorderly Conduct and informed the defendant that respondent could not assign an attorney because he did not intend to sentence the defendant to jail.

(k) On or about October 4, 2002, at arraignment on a charge of Loitering, respondent failed to advise the defendant in *People v. Christopher Taylor* of his right to counsel and to assigned counsel and informed the defendant that if he wanted an attorney, he could get one himself. The defendant pleaded guilty on a later date without counsel, and respondent imposed a fine.

(l) On or about October 4, 2002, respondent conducted an arraignment of the defendant in *People v. Jamie Herb* on charges of Loitering, Possession Of Alcohol Under 21 and Unlawful Possession Of Marijuana and failed to advise the defendant of the right to counsel and to assigned counsel.

(m) On or about October 4, 2002, at arraignment, respondent failed to advise the defendant in *People v. Trey Wilson* of his right to assigned counsel with respect to charges of Loitering, Possession Of Alcohol Under 21 and Throwing Refuse In Public Water.

(n) On or about October 4, 2002, at arraignment on a charge of Loitering, respondent failed to advise the defendant in *People v. Edward Fehring* of his right to assigned counsel and informed the defendant that if he needed an attorney, "hire one." The defendant pleaded guilty to the charge on a subsequent date, and respondent imposed a fine.

(o) On or about October 4, 2002, at the arraignment of the defendant in *People v. Richard Dodson*, respondent accepted guilty pleas from the defendant to charges of Possession Of Alcohol Under 21 and Consuming Alcohol In A Motor Vehicle, without advising the defendant of his right to counsel.

(p) On or about October 4, 2002, at arraignment on a charge of Possession Of Alcohol Under 21, respondent failed to advise the defendant in *People v. Richard Santos* of the right to counsel.

(q) On or about October 4, 2002, at arraignment, respondent accepted a guilty plea from the defendant in *People v. Destiny Baker* to a charge of Possession Of Alcohol Under 21 and imposed a fine, without informing the defendant of her right to counsel.

5. Respondent asserts that he was under the misapprehension that assigned counsel was not available to defendants charged with violations. He now recognizes the importance of advising all defendants of their right to counsel, and advising defendants of their right to assigned counsel in all cases in which jail is an authorized sentence, other than vehicle and traffic infractions. Respondent stipulates that he will properly advise all defendants in the future and will take such steps as are necessary to effectuate the defendants' rights to counsel and to assigned counsel.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.3(B)(1), 100.3(B)(3), 100.3(B)(4) and 100.3(B)(6) of the Rules Governing Judicial Conduct, engaged in misconduct in office prejudicial to the administration of justice and should be disciplined "for cause," within the meaning of Article 6, Section 22(a) of the State Constitution and Section 44(1) of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

In numerous cases, respondent made statements at arraignment which indicated bias and prejudgment concerning the charges, engaged in improper, *ex parte* questioning of unrepresented defendants, and failed to advise defendants of the right to counsel as required by law.

At a time when the defendants were entitled to a presumption of innocence, respondent not only made statements which assumed the defendants' guilt, but cross-examined the defendants about the underlying facts. By his improper, *ex parte* questioning of defendants who had not yet entered a plea, respondent created a risk of eliciting admissions of guilt. Respondent's conduct was antithetical to the proper role of a judge at an arraignment, which is to be an impartial arbiter, and was inconsistent with the fair and proper administration of justice. It is inappropriate for a judge to lecture defendants about their transgressions before they have been afforded the full panoply of rights and before they have entered a plea. Respondent's hectoring, biased statements violated his duty to be "patient, dignified and courteous" to litigants and to refrain from improper, *ex parte* communications (Rules Governing Judicial Conduct, 22 NYCRR §§100.3[B][3] and 100.3[B][6]).

A judge is also required to advise all defendants charged with offenses for which a sentence of a term of imprisonment is authorized, other than vehicle and traffic infractions, of the right to assigned counsel and must take such affirmative steps as are necessary to effectuate the right (Criminal Procedure Law §170.10[4]; *Matter of Pemrick*, 2000 Ann Rep 141 [Commn on Jud Conduct]). Although respondent should be familiar with this fundamental principle of law after more than 20 years of experience as a judge, he repeatedly violated the statutory requirement, either by omission or, in some cases, by erroneously advising unrepresented defendants that they were not entitled to assigned counsel before accepting their guilty pleas. By his conduct, respondent failed to "be faithful to the law" as required by Section 100.3(B)(1) of the Rules Governing Judicial Conduct. In mitigation, respondent now recognizes the importance of properly advising defendants of their right to counsel and asserts that in the future he will properly do so.

We note that in December 2001, only a few months before his misconduct in these matters, respondent was admonished by the Commission for engaging in an improper, *ex parte* communication. In view of his prior discipline, respondent should have been especially sensitive to the high standards of conduct expected of judges.

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Felder, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano and Ms. Moore were not present.

Dated: September 19, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law, in Relation to **ROBERT HAMLEY**, a Justice of the Hunter Village Court, Greene County.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission on Judicial Conduct ("Commission"), and Honorable Robert Hamley ("respondent"), who is represented in these proceedings by Sean Doolan, Esq., as follows:

1. This Stipulation is presented to the Commission in connection with a formal proceeding pending against respondent.

2. Respondent, who is not an attorney, is 50 years old and has served as a Justice of the Hunter Village Court since 1997. His current term of office expires in March 2005. His judicial salary is approximately $4,500 per year.

3. Respondent was served with a Formal Written Complaint, dated July 17, 2003, containing two charges.

> (A) Charge I alleges *inter alia* that (i) respondent improperly assumed jurisdiction of two traffic charges, *i.e.* Speeding and Uninspected Motor Vehicle, that were before another court, against a defendant who was doing work for the Village of Hunter, (ii) made improper *ex parte* calls to the judges of the other court in an unsuccessful attempt to get the case transferred to him, (iii) had improper *ex parte* communications with the mayor of Hunter and the defendant, (iv) improperly dismissed the Speeding charge without notice to or the consent of the prosecution as required by law, over the objection of the arresting officer, notwithstanding that he did not have jurisdiction to dispose of the case and (v) improperly accepted the defendant's guilty plea and imposed a fine as to the Uninsured Motor Vehicle charge, notwithstanding that he did not have jurisdiction to dispose of the case.
>
> (B) Charge II alleges that respondent made improper statements abut the victims of domestic violence, *i.e.* a statement in court to one alleged victim that all domestic cases are "dragged out" and are a "waste of the court's time," and a statement to a trooper that most women enjoy being abused and that they ask to get "smacked around."

4. Respondent submitted an Answer, in which he admitted, in part, and denied, in part, the allegations of the charges, and the Commission designated Joseph Barrette, Esq., as referee to hear and report to the Commission. The referee scheduled a hearing to be held on November 18 and 19, 2003.

5. Respondent tenders his resignation on November 17, 2003, the date of this Stipulation, effective immediately. Respondent's resignation will be submitted to the Hunter Village Clerk and the Office of Court Administration today, November 17, 2003. A copy of respondent's letter of resignation is appended to this Stipulation.

6. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of a judge's resignation to complete the proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.

7. The parties to this Stipulation respectfully request that the Commission close the pending matter based on respondent's acknowledgement, by this Stipulation, that he cannot successfully defend the charges.

8. Respondent affirms that he will neither seek nor accept judicial office at any time in the future.

9. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law to the limited extent that this Stipulation will be made public if approved by the Commission. All parties to this Stipulation agree that under the present circumstances, this resolution of the pending matter is in the best interest of the respondent and the public.

Dated: November 17, 2003
s/ Honorable Robert Hamley, Respondent
s/ Sean Doolan, Attorney for Respondent
s/ Robert H. Tembeckjian, Administrator & Counsel to the Commission
By: Cathleen S. Cenci, Of Counsel

LETTER OF RESIGNATION

Village of Hunter Board
Village Hall
Main Street
Hunter, NY 12442

Dear Board Members:

Effective immediately, for personal reasons, I am submitting my resignation as Justice of the Village Court of Hunter, NY.

Thank you. Your courtesies are appreciated.

Sincerely,

s/ Robert J. Hamley

Honorable Robert J. Hamley

DECISION AND ORDER

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **ROBERT HAMLEY** a Justice of the Hunter Village Court, Greene County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci, Of Counsel) for the Commission
Sean J. Doolan for Respondent

The matter having come before the Commission on December 11, 2003 ; and the Commission having before it the Formal Written Complaint dated July 17, 2003, respondent's Answer dated August 6, 2003,and the Stipulation dated November 17, 2003; and respondent having acknowledged, by the Stipulation, that he cannot successfully defend the charges; and respondent having resigned from judicial office on November 17, 2003, effective immediately, and having affirmed that he will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law §45 to the limited extent that the Stipulation will be made public if approved by the Commission; now, therefore, it is

DETERMINED, on the Commission's own motion, that the pending proceeding be discontinued and the case closed pursuant to the terms of the Stipulation; and it is

SO ORDERED.

Dated: December 16, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **JO HOOPER**, a Justice of the Hinsdale Town Court, Cattaraugus County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

The respondent, Jo Hooper, a justice of the Hinsdale Town Court, Cattaraugus County, was served with a Formal Written Complaint dated October 22, 2002, containing one charge. Respondent filed an answer dated December 30, 2002.

On April 10, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing 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 May 21, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a justice of the Hinsdale Town Court, Cattaraugus County since January 1995. Respondent is not an attorney. Respondent has attended all required judicial training courses and has received appropriate certifications from the Office of Court Administration.

2. On September 12, 2001, respondent arraigned the defendant in *People v. Kelly Howard*, in which the defendant was charged with a traffic violation, and adjourned the case to give the defendant an opportunity to obtain counsel.

3. On September 26, 2001, respondent adjourned the trial that had been scheduled on *People v. Bruce Burlingame*, in which the defendant was charged with a violation of the Environmental Conservation Law, and set the matter down for rescheduling at a later date.

4. On or about September 30, 2001, respondent was told by a local resident that respondent's co-judge, Monroe Bishop, had "urged" Ms. Howard and Mr. Burlingame to file complaints with the Commission concerning respondent's conduct in an unrelated matter.

5. On October 4, 2001, respondent was contacted by Ms. Howard's attorney, who requested that respondent disqualify herself from *People v. Kelly Howard.*

6. On October 5, 2001, respondent sent a letter to Cattaraugus County Court Judge Larry Himelein in which she advised the judge of her disqualification in *People v. Howard* and *People v. Burlingame* and sought the transfer of both cases out of the Hinsdale Town Court. In her letter to Judge Himelein, respondent stated that Judge Bishop, her co-judge, was also disqualified from hearing the two cases "as he has been in contact with all parties to write letters to Judicial Conduct against me…."

7. At the time that respondent sent the letter to Judge Himelein, respondent had no basis in law or fact for requesting such a transfer and no basis in law or fact for representing to Judge Himelein that Judge Bishop was also disqualified from both cases. Respondent had had no discussions with either party to substantiate her hearsay belief that Judge Bishop had spoken with them, and had had no discussions with Judge Bishop about his contacts with either defendant or about whether he would disqualify himself from either case.

8. At the time that respondent sent the letter to Judge Himelein, she had made no attempt to transfer either case to Judge Bishop.

9. At the time that respondent sent the letter to Judge Himelein, Judge Bishop had had no contact with either defendant, as respondent had believed.

10. At the time that respondent sent the letter to Judge Himelein, respondent and Judge Bishop were unfriendly and did not have a speaking relationship.

11. In a determination dated June 29, 1998, respondent was admonished by the Commission as a result of her actions in reducing the charges in two traffic cases without notice to or the consent of the District Attorney, including one case that was pending before Judge Bishop at the time respondent disposed of it.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.3(B) and 100.3(C)(1) of the Rules Governing Judicial Conduct. [[6]] Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions, and respondent's misconduct is established.

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[6] Sections 100.1 and 100.2(A) of the Rules were also charged in the Formal Written Complaint but were not included in the Agreed Statement of Facts, following the decision on February 20, 2003, in *Spargo v. NYS Comm'n on Jud Conduct*, 244 F Supp2d 72 (NDNY 2003), which barred the Commission from enforcing those provisions. Although the *Spargo* decision has been stayed by the U.S. Court of Appeals for the Second Circuit pending appeal, Sections 100.1 and 100.2(A) are not included in this determination, which is limited to the stipulated conclusions of law.

It was improper for respondent to transfer two cases from her court, disqualifying not only herself but also her co-justice, based upon the unsubstantiated allegations of a third party. By such conduct, respondent failed to be faithful to the law and to maintain professional competence in it and failed to diligently discharge her administrative responsibilities (*see* Sections 100.3[B] and 100.3[C][1] of the Rules Governing Judicial Conduct).

Respondent had no basis in fact or in law to disqualify her co-justice from the two cases. It was especially inappropriate to do so without any inquiry into the unsubstantiated information she had received, and without even discussing it with her fellow judge. The ethical standards require every judge to "cooperate with other judges and court officials in the administration of court business" (Section 100.3[C][1] of the Rules), and communication and cooperation are an essential element of good administration. Respondent should have been especially sensitive to these ethical mandates since she was previously admonished by the Commission, *inter alia*, for disposing of a case pending before her co-justice. *Matter of Hooper*, 1999 Ann Rep 105 (Commn on Jud Conduct, June 29, 1998).

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Ms. Moore, Mr. Pope and Judge Ruderman concur.

Judge Peters was not present.

Dated: May 28, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **JOHN R. JAROSZ**, a Justice of the Paris Town Court, Oneida County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
George F. Aney for Respondent

The respondent, John R. Jarosz, a Justice of the Paris Town Court, Oneida County, was served with a Formal Written Complaint dated October 7, 2002, containing two charges. Respondent filed an answer dated October 25, 2002.

On March 13, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing 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 March 13, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a Justice of the Paris Town Court since January 1995. He is not an attorney. Respondent has attended and successfully completed all required training sessions for judges.

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

2. Respondent failed to supervise his court clerk, who is also his wife, with the result that, between January 2001 and October 2001, as set forth on Schedule A, respondent's clerk failed to deposit into the court account or to remit to the State Comptroller over $3,000 in court funds, as required by Section 214.9(a) of the Uniform Civil Rules For The Justice Courts, Section 27 of the Town Law, Sections 2020 and 2021(1) of the Uniform Justice Court Act and Section 1803 of the Vehicle and Traffic Law, and as of October 11, 2001, the balance in respondent's official bank account was only one dollar.

3. During that same period of time, the clerk engaged in a pattern of falsifying entries in the court records, so as to conceal the receipt of the funds which were not deposited or remitted to the comptroller, and respondent failed to examine or check any of the court's financial records, which were maintained by his court clerk, despite receiving ten letters from the State Comptroller's office between January 2001 and September 2001, notifying him that his reports and remittances were late, and notwithstanding that in September 2001, respondent's judicial salary was stopped for his failure to file the reports and remittances as required.

4. By check dated December 6, 2002, respondent made restitution to the State Comptroller in the amount of $3,205 for the missing court funds. By letter dated December 6, 2002, respondent's attorney requested that the State Comptroller's office conduct a full audit of respondent's court, so as to identify any additional missing funds. Respondent agrees to cooperate with the comptroller's investigation and that he will pay to the comptroller any additional funds identified as missing by the comptroller's office.

5. Respondent's court clerk resigned in July 2002, and the other clerk of the court has taken over respondent's record-keeping and financial responsibilities. Respondent assures the Commission that he now reviews the court's financial records and exercises proper supervision over the court clerk's record-keeping and the depositing, reporting and remitting of court funds.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.3(A), 100.3(C)(1) and 100.3(C)(2) of the Rules Governing Judicial Conduct[7] and engaged in misconduct in office and conduct prejudicial to the administration of justice, as defined in Article 6, Section 22a of the New York State Constitution and Section 44, subdivision 1 of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

A town or village justice is personally responsible for monies received by the court (1983 Opinion of the State Comptroller, No 83-174). Such monies must be properly documented, promptly deposited and remitted to the State Comptroller by the tenth day of the month following collection (UJCA §2021[1]; Town Law §27; Vehicle and Traffic Law §1803; Uniform Civil Rules For The Justice Courts §214.9[a]). Although these responsibilities may be delegated, a judge is required to exercise super-visory vigilance to ensure the proper performance of these important functions. *See Matter of Restino*, 2002 Ann Rep 145 (Commn on Jud Conduct, Nov 11, 2001).

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[7] Sections 100.1 and 100.2(A) of the Rules were also charged in the Formal Written Complaint but were not included in the Agreed Statement of Facts, following the decision on February 20, 2003, in *Spargo v. NYS Comm'n on Jud Conduct*, 244 F Supp2d 72 (NDNY 2003), which barred the Commission from enforcing those provisions. Although the *Spargo* decision has been stayed by the U.S. Court of Appeals for the Second Circuit pending appeal, Sections 100.1 and 100.2(A) are not included in this determination, which is limited to the stipulated conclusions of law.

As a consequence of respondent's inadequate supervision, respondent's wife, who served as his court clerk until her resignation in July 2002, was able to falsify entries in court records to conceal the receipt of over $3,000 in court monies, which were not deposited or remitted as required.

Significantly, respondent was on notice during that period of problems connected with the clerk's performance of her duties, having received ten letters from the State Comptroller's office notifying him that his reports and remittances were late. Such repeated notices should have prompted respondent to personally review the court's financial records and to take such other prompt, remedial action as necessary to ensure the proper safeguarding of court monies.

In mitigation, we note that respondent's attorney has asked the State Comptroller's office to conduct a full audit of respondent's court and that respondent has agreed to cooperate with the comptroller's investigation and to pay to the comptroller any additional funds identified as missing. We also note respondent's assurances that he now reviews the court's financial records and exercises proper supervision over the court clerk's record-keeping and the depositing, reporting and remitting of court funds.

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Ms. Moore, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

Dated: May 28, 2003

Note: The Schedules appended to the Determination are available on the Commission's website: http://www.scjc.state.ny.us/Determinations/J/jarosz_appendix.htm

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **PAMELA L. KADUR**, a Justice of the Root Town Court, Montgomery County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

The respondent, Pamela L. Kadur, a Justice of the Root Town Court, Montgomery County, was served with a Formal Written Complaint dated February 28, 2002, containing four charges. Respondent filed an answer dated April 8, 2002.

By Order dated April 18, 2002, the Commission designated Paul A. Feigenbaum, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on September 17 and 18 and October 30, 2002, in Albany, New York, and the referee filed his report with the Commission dated January 29, 2003.

Commission counsel filed a brief with respect to the referee's report. Respondent's counsel did not file a brief but filed a letter dated February 28, 2003, advising the Commission of respondent's resignation effective March 5, 2003. Oral argument was waived. On March 13, 2003, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Root Town Court since 1993. She has attended and successfully completed all required training sessions for judges. At all times relevant herein, respondent was aware of the prohibition against presiding over cases in which she was related to a party.

As to Charge I of the Formal Written Complaint:

2. On July 24, 1999, respondent's son, Gunter Eric Kadur, was charged by the state police with No Seat Belt. According to court records, on September 7, 1999, respondent presided over the case and imposed a fine of $25 with a $25 mandatory surcharge. Respondent testified that she did not dispose of the case in court, but handled the charge in her kitchen at her home, where her son lived with her.

3. On March 3, 2000, respondent's son, Gunter Eric Kadur, was charged by the Montgomery County Sheriff's Department with Speeding (70 mph in a 55 mph zone). Five months later, in August 2000, while the regularly assigned ADA was on vacation, respondent approached an assistant district attorney ("ADA"), who was not the ADA assigned to respondent's court, concerning her son's ticket. Respondent did not disclose to the ADA that respondent was the judge presiding over the charge, and the ADA consented to a reduction. On August 23, 2000, respondent reduced the charge to Parking On The Pavement, a violation which carries no points on a driver's license, and assessed a fine of $50. In May 2001, respondent testified during the Commission's investigation that her son had paid the fine and that she had remitted it to the state comptroller. In fact, respondent did not require her son to pay the fine until July 1, 2001, after she knew she was under investigation by the Commission. Respondent admitted that she "took [her] time" adjudicating her son's ticket because she knew she should not have been handling the matter. Respondent did not docket the charge until July 2001 because she knew she should not have handled the case.

4. On September 10, 1998, respondent's nephew, Paul Thomas Beam, was charged with No Seat Belt. Respondent failed to disqualify herself and accepted a guilty plea from her nephew in court on or about September 30, 1998. Respondent assessed a fine of $30 with a $30 mandatory surcharge, which her nephew did not pay until March 9, 1999, five months after the adjudication by respondent.

5. On February 6, 2001, respondent's nephew, Paul Thomas Beam, was charged with driving an Uninspected Motor Vehicle. Respondent failed to disqualify herself from the matter, and when her nephew initially appeared before her in court, respondent advised him not to plead guilty. Later, Mr. Beam returned to court and entered a guilty plea. Respondent waived any fine, based upon her knowledge of her nephew's personal circumstances, but imposed a $30 mandatory surcharge, which he paid in June 2001.

6. In January 2001, respondent presided over a violation of the dog ordinance against her brother-in-law, Richard Kadur, and imposed a fine of $5.

7. In 1996, respondent failed to disqualify herself and presided over a Speeding charge against her husband's first cousin, Christopher Walther, by accepting a plea to a reduced charge of Parking On The Pavement. Respondent assessed a fine of $50. Respondent did not disclose to the prosecution that the defendant was her relative.

8. In August 2000, respondent failed to disqualify herself and presided over a charge of No Seat Belt against her husband's first cousin, Christopher Walther. Respondent waived a fine because she felt sorry for the defendant.

As to Charge II of the Formal Written Complaint:

9. In an attempt to conceal that she had presided over her son's March 2000 Speeding charge, as described under Charge I, paragraph 3, above, respondent recorded her son's name in her cashbook for July 2001 as "G.E. Kadul" and in her July 2001 report to the State Comptroller as "G.E. Kadel." At the time she made those entries, respondent knew that she was under investigation by the Commission for presiding over her son's cases.

10. In an attempt to conceal that she had presided over the No Seat Belt charge against her son described under Charge I, paragraph 2, above, respondent recorded her son's name in her cashbook for September 1999 as "G.E. Kadell," with the second "l" added in different color ink. After July 25, 2001, and sometime before January 2, 2002, when she was asked to appear before the Commission and to bring her cashbook, respondent altered the original entry by overwriting on it to change the spelling of the defendant's name to "Kadur."

11. Respondent's testimony that she made the original false entries in her records to conceal from the town board, and not from the Commission, that she had presided over these cases is lacking in candor. Respondent's testimony that by altering the 1999 entry back to "Kadur" she was trying to "correct" it rather than conceal her original misconduct is lacking in candor.

As to Charge III of the Formal Written Complaint:

12. On October 12, 1995, respondent's son, Gunter Eric Kadur, and a co-defendant were charged by the Montgomery County Sheriff's Department with Speeding at 100 mph in a 55 mph zone, a violation carrying eleven points on a driver's license upon conviction. In or about November 1995, on the consent of the district attorney's office, respondent's son and his co-defendant each entered a plea before respondent's co-judge, Hubert Janke, to a reduced charge of Speeding at 79 mph in a 55 mph zone, a violation carrying six points. Judge Janke assessed each defendant a fine of $100, with a $25 mandatory surcharge. The co-defendant paid his fine and surcharge in December 1995, but respondent's son did not.

13. Judge Janke did not act to suspend respondent's son's license out of deference to respondent. However, for a period of approximately two years until Judge Janke left office in December 1997, he reminded respondent on a monthly basis that her son had not paid his fine and that the ticket was still outstanding.

14. In December 1997, as Judge Janke was preparing to leave judicial office, he handed respondent an envelope containing the ticket issued to her son in October 1995, along with the district attorney's plea agreement, and said to respondent, "Pam, this ticket is not going to go away. You have to do something with this ticket." Respondent knew at that time that shortly she would be the only judge in the Town of Root.

15. Thereafter, respondent deliberately neglected to take action either to transfer her son's ticket to another jurisdiction or to suspend her son's license or collect the fine until shortly before the hearing before the referee, when she remitted the fine to the state comptroller. Respondent knew that the ticket was pending before her.

16. Respondent was not candid when she testified on January 2, 2002, during the Commission's investigation that: (a) she did not know that her son had not paid the fine because she and Judge Janke "never really talked about the case"; (b) Judge Janke might have mentioned "a couple of times" that her son had not paid the fine; (c) she could not recall a conversation about the case as Judge Janke was leaving office; (d) she never saw the ticket; and (e) the case did not appear on her TSLED reports. Respondent was not candid in her testimony at the hearing when she maintained that Judge Janke did not hand her the ticket upon leaving office.

17. On August 22, 2000, respondent's son, Gunter Eric Kadur, was charged by the state police with Speeding (72 mph in a 55 mph zone) in the Town of Root. Respondent received the ticket in her judicial capacity and, thereafter, failed to take any action either to transfer the case to a court which could hear the matter or to adjudicate the charge.

18. Respondent was aware that the charge was pending before her and she knew she should not handle the matter.

19. On January 2, 2002, respondent was not candid or credible when she testified during the Commission's investigation that she mailed her son's August 2000 Speeding ticket to the Town of Glen Court after first calling the court clerk to alert her. Respondent's testimony was inherently unbelievable on this point, and was directly contradicted by Heather Rose, the Glen Town Court clerk, and by respondent's own previous statement to a Commission investigator that respondent had "personally delivered" the ticket.

20. Respondent's testimony at the hearing was not candid when she maintained that she had transferred the charge to the Town of Glen.

As to Charge IV of the Formal Written Complaint:

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

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.2(B) and 100.3(E)(1)(d)(i) of the Rules Governing Judicial Conduct.[8] Charges I through III of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established. Charge IV is not sustained and is therefore dismissed.

[8] Sections 100.1 and 100.2(A) of the Rules were also charged in the Formal Written Complaint. On February 20, 2003, in *Spargo v. NYS Comm'n on Jud Conduct*, 244 F Supp2d 72 (NDNY 2003), the Commission was barred from enforcing those provisions, and by letter dated March 3, 2003, Commission counsel requested that the Commission render a determination in the instant matter without reference to those sections. Accordingly, although the *Spargo* decision has been stayed by the U.S. Court of Appeals for the Second Circuit pending appeal, Sections 100.1 and 100.2(A) are not included in this determination.

As found by the referee, respondent knowingly presided over cases involving her relatives, made false entries in her official court records in an effort to conceal her misconduct, and failed to testify candidly during the Commission's investigation of her conduct. This record of deception, dishonesty and abuse of judicial power amply demonstrates respondent's lack of fitness to serve as a judge.

Between 1996 and 2001, respondent handled seven cases involving her relatives, including her son, nephew, brother-in-law and husband's first cousin. Such conduct violates well-established ethical standards requiring a judge's disqualification when a party to a proceeding is within the sixth degree of relationship to the judge or the judge's spouse, or is married to such a relative (Jud Law §14; Rules Governing Judicial Conduct §100.3[E][1][d][i]). As the Court of Appeals has stated:

> 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. Any involvement by a judge in such cases or any similar suggestion of favoritism to family members has been and will continue to be viewed…as serious misconduct.
>
> *Matter of Wait*, 67 NY2d 15, 18 (1986); *see also Matter of Thwaits*, 2003 Ann Rep __ (Commn on Jud Conduct, Dec 30, 2002).

As respondent has conceded, she not only failed to disqualify herself from these cases but generally accorded lenient treatment to her relatives, basing the dispositions on information she knew about them because they were family members. For example, with respect to her son's Speeding ticket, respondent imposed a lenient disposition (a no-point violation) because she did not want to jeopardize his commercial driver's license; moreover, she "took [her] time" disposing of the matter, waiting five months to dispose of the case and not requiring her son to pay the fine for another ten months, after learning that she was under investigation by the Commission.

Respondent compounded her misconduct by making false entries in her official court documents on two occasions, deliberately misspelling her son's name in order to conceal that she had presided over her son's cases. In the latter instance, respondent made the false entries, in her cashbook and report to the State Comptroller, at a time when she knew she was under investigation by the Commission for presiding over her son's cases. "Such deception is antithetical to the role of a judge, who is sworn to uphold the law and seek the truth" and "cannot be condoned." *Matter of Myers*, 67 NY2d 550, 554 (1986); *Matter of Intemann*, 73 NY2d 580, 581-82 (1989); *Matter of Moynihan*, 80 NY2d 322 (1992).

Respondent's lack of candor both during the Commission's investigation and at the hearing about her handling of her son's cases exacerbates her misconduct. *Matter of Gelfand*, 70 NY2d 211 (1987). A judge is obligated to testify truthfully in Commission proceedings, and the failure to do so impedes the efficacy of the disciplinary process and is destructive of a judge's usefulness on the bench.

In its totality, respondent's conduct demonstrates "a level of dishonesty and lack of judgment that is unacceptable for a member of our state's judiciary." *Matter of Conti*, 70 NY2d 416 (1987).

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

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Ms. Moore, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

Dated: May 28, 2003

In the Matter of the Proceeding Pursuant to Section 44, Subdivision 4, of the Judiciary Law, in Relation to **BEVERLY J. LACLAIR**, a Justice of the Constable Town Court, Franklin County.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between ROBERT H. TEMBECKJIAN, ESQ., Administrator and Counsel to the Commission on Judicial Conduct ("Commission"), and the HONORABLE BEVERLY J. LA CLAIR ("respondent"), as follows:

1. This Stipulation is presented to the Commission in connection with a formal proceeding presently pending against respondent.
2. Respondent, who is not an attorney, is 57 years old and has served as a Justice of the Constable Town Court since January 1, 2001. Her current term of office expires December 31, 2004. Her judicial salary is $3,000.
3. Respondent was served with a Superceding Formal Written Complaint, dated March 18, 2003, alleging, *inter alia*, that she engaged in inappropriate *ex parte* communications; that she sentenced a defendant without a guilty plea or a trial; that she mishandled several cases; that she failed to appreciate her proper judicial role; and, that she suffers from physical infirmities which render her unable to fully perform her judicial duties. Respondent submitted an Answer in which she admitted in part and denied in part the allegations of the charges.
4. Respondent tenders her resignation on August 26, 2003, the date of this Stipulation, effective immediately. Respondent's resignation will be submitted to the Constable Town Clerk and the Office of Court Administration today, August 26, 2003. A copy of respondent's letter of resignation is appended to this Stipulation.
5. Pursuant to law, the Commission has 120 days from the date of a judge's resignation to complete the proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.
6. The parties to this Stipulation respectfully request that the Commission close the pending matter based on: (a) respondent's acknowledgment, by this Stipulation, that she cannot successfully defend the charges pending against her and (b) other relevant factors, including respondent's health.
7. Respondent affirms that she will neither seek nor accept judicial office at any time in the future.
8. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law to the limited extent that this Stipulation will be made public if approved by the Commission. All parties to this Stipulation agree that under the present circumstances and in view of respondent's present medical condition, this resolution of the pending matter is in the best interest of the respondent and the public.

s/ Beverly J. LaClair, Respondent
s/ Robert H. Tembeckjian, Administrator and Counsel to the Commission
By: Cathleen S. Cenci, Of Counsel

Dated: August 26, 2003

LETTER OF RESIGNATION

TO: TOWN CLERK, TOWN OF CONSTABLE

I, Beverly J. LaClair, hereby tender my resignation as Constable Town Justice, effective immediately.

s/ Beverly J. LaClair

Dated: August 26, 2003

DECISION AND ORDER

In the Matter of the Proceeding Pursuant to Section 44, Subdivision 4, of the Judiciary Law, in Relation to **BEVERLY J. LACLAIR**, a Justice of the Constable Town Court, Franklin County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci, Of Counsel) for the Commission
Honorable Beverly J. LaClair, *pro se*

The matter having come before the Commission on September 18, 2003; and the Commission having before it the Superceding Formal Written Complaint dated March 18, 2003, the undated Answer postmarked May 1, 2003, and the Stipulation dated August 26, 2003; and the Commission, by order dated May 14, 2003, having designated David M. Garber, Esq., as referee to hear and report proposed findings of fact and conclusions of law; and a hearing having commenced on August 25, 2003; and respondent having stipulated that she cannot successfully defend the charges pending against her; and respondent having resigned from judicial office effective August 26, 2003, and having affirmed that she will not seek or accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law §45 to the extent that the Stipulation will be public if approved by the Commission; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is approved and that the pending proceeding is hereby discontinued and the matter closed pursuant to the terms of the Stipulation; and it is

SO ORDERED.

Dated: September 18, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary aw in Relation to **DIANE A. LEBEDEFF**, a Judge of the Civil Court of the City of New York and an Acting Justice of the Supreme Court, New York County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore[9]
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian for the Commission
Gair, Gair, Conason, Steigman & Macauf (By Ben B. Rubinowitz) for Respondent

The respondent, Diane A. Lebedeff, a judge of the Civil Court of the City of New York and an acting justice of the Supreme Court, New York County, was served with a Formal Written Complaint dated October 8, 2002, containing one charge. Respondent filed an answer dated November 12, 2002.

On September 8, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing 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 September 18, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a judge of the Civil Court since January 1983 and an acting justice of the Supreme Court since 1988. She has handled all aspects of cases involving guardianships for Allegedly Incapacitated Persons ("AIPs"), having been assigned approximately 200 such cases a year for several years. By the end of 1998 and for the next two years, respondent was assigned 60% of the guardianship cases in Manhattan, which amounted to approximately 200 such cases per year.

[9] Ms. Moore resigned from the Commission on September 22, 2003. The vote in this matter was taken on September 18, 2003.

2. Alice Krause is an accountant who specialized in preparing personal income tax returns. Operating out of her apartment in Manhattan, she prepared approximately 800 tax returns annually, until terminating her practice after suffering a stroke in March 2002.

3. Ms. Krause first met respondent around 1978, when they served together on a Community Board in Manhattan. They became friends, and Ms. Krause has been respondent's annual federal and state tax preparer since approximately 1980.

4. On three occasions, respondent appointed Alice Krause as a fiduciary or guardian of the personal needs of an AIP, and on two occasions respondent approved compensation to Ms. Krause for her services in such matters. In making such appointments, respondent specifically advised the parties in those litigations that Ms. Krause was her personal accountant, and there were no objections to Ms. Krause's service.

5. Alice Krause was one of more than 600 people appointed in more than 400 guardianship cases pending before respondent.

6. From 1980 to 1996, as a general practice, Ms. Krause prepared and contemporaneously billed respondent for her annual tax preparation services, and respondent paid such bills in a timely manner. Ms. Krause's billing practices were not always consistent and her bills were not always accurate. In at least one year during this period, respondent paid Ms. Krause more than the amount for which she should have been billed, and in the following year, respondent's bill from Ms. Krause was reduced accordingly.

7. On December 17, 1993, respondent made her first fiduciary appointment of Alice Krause, as Guardian of the Person and Property of Miriam Seborer.

8. On June 28, 1996, respondent made her second fiduciary appointment of Alice Krause, as Trustee of the Helen Marks Supplemental Needs Trust.

9. On March 28, 1997, respondent approved a fee of approximately $16,500 to Ms. Krause in the *Seborer* case.

10. On October 15, 1997, Ms. Krause prepared respondent's 1996 federal and state income tax returns, but respondent was not billed for such services until July 2001 and did not pay until after July 2001.

11. On November 7, 1997, respondent approved a fee of approximately $5,393 to Ms. Krause in the *Marks* case.

12. On December 2, 1997, Ms. Krause prepared respondent's 1995 federal and state income tax returns, but respondent was not billed for such services until July 2001 and did not pay until after July 2001.

13. On April 27, 1999, Ms. Krause prepared respondent's 1997 federal and state income tax returns, but respondent was not billed for such services until July 2001 and did not pay until after July 2001.

14. On December 14, 1999, respondent made her third fiduciary appointment of Ms. Krause, as Trustee for Michael Sanchez, an AIP. Although Ms. Krause had not yet submitted a request for payment as of January 2003, she has indicated that she intends to do so.

15. On February 2, 2001, Ms. Krause prepared respondent's 1998 federal and state income tax returns, but respondent was not billed for such services until July 2001 and did not pay until after July 2001.

16. Ms. Krause's standard charge for tax preparation services was $300 a year per client.

17. Ms. Krause averred that during the subject time period she had every intention of billing respondent for her tax preparation services and did not realize until quite some time had passed that, as a result of a glitch in her computer program, a couple of bills had not been generated or sent to several of her clients, including but not limited to respondent.

18. On July 17, 2001, after Ms. Krause was questioned about her relationship with respondent by the court system's Special Inspector General for Fiduciary Appointments, Ms. Krause (through her lawyer) sent respondent invoices of $300 each for the 1995, 1996, 1997 and 1998 tax returns. Respondent at first expressed her surprise to Ms. Krause that the bills had not previously been paid, and she thereafter paid Ms. Krause $1,200.

19. Notwithstanding that Ms. Krause's tax preparation and billing practices were at times delayed and inconsistent, respondent should have known that for a four-year period in which she was awarding fiduciary appointments and fees to Ms. Krause, respondent herself was not being billed for and was not paying for the tax preparation services Ms. Krause was providing to her.

20. Respondent concedes that she created an appearance of impropriety by not paying for income tax preparations by Ms. Krause in the same four-year time period that respondent was making fiduciary appointments and approving fiduciary fees to Ms. Krause. Respondent acknowledges that the timing and nature of the relationship and transactions between respondent and Ms. Krause required respondent to insure that she was receiving bills from Ms. Krause and paying her on a timely basis for the personal services Ms. Krause was rendering to her.

21. Commission Counsel does not allege or offer evidence to support a claim that there was a *quid pro quo* or similar understanding between respondent and Ms. Krause concerning the facts herein.

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

By failing to pay her accountant for tax preparation services over the same period that she was appointing the accountant as a fiduciary and approving more than $21,000 in compensation for her, respondent engaged in misconduct that created an appearance of impropriety.

Respondent appointed her accountant and long-time friend, Alice Krause, as a fiduciary in 1993 and 1996, and in March 1997, she approved an initial fee of $16,500 for Ms. Krause. Thereafter, Ms. Krause, who had prepared respondent's income tax returns since 1980 and had, as a general practice, contemporaneously billed her for such services, prepared respondent's income tax returns for the years 1995 to 1998 but did not bill respondent for those services until July 2001, after the court system's Special Inspector General had questioned Ms. Krause about her relationship with respondent. Respondent then paid Ms. Krause a total of $1,200 for her work on the 1995-1998 returns.

The timing of respondent's receipt of that $1,200 benefit – during a period when she was conferring a benefit on Ms. Krause by appointing her and approving her compensation – creates the appearance of a *quid pro quo*. It has been stipulated that no *quid pro quo* has been alleged or proved. Nonetheless, the appearance of such a serious breach of judicial ethics diminishes public confidence in the integrity of the judiciary and requires disciplinary action. As the Court of Appeals stated in *Matter of Spector*, 47 NY2d 462, 465, 466 (1979), in admonishing a judge for the "appearances of impropriety" stemming from his appointments:

> [In addition], and this is peculiar to the judiciary, even if it cannot be said that there is proof of the fact of disguised nepotism, ***an appearance of such impropriety is no less to be condemned than is the impropriety itself.*** [Emphasis added.]

In *Spector*, the judge had awarded appointments to the sons of two other judges who were contemporaneously appointing his son. The Court noted that while there was no finding of a *quid pro quo*, the "circumstantial appearance of impropriety" permitting such an inference required public discipline (*Id*. at 468, 469). The Court stated:

> Reluctance to impose a sanction in this case would be taken as reflecting an attitude of tolerance of judicial misconduct which is all too often popularly attributed to the judiciary. To characterize the canonical injunction against the appearance of impropriety as involving a concern with what could be a very subjective and often faulty public perception would be to fail to comprehend the principle. The community, and surely the judges themselves, are entitled to insist on a more demanding standard. As Chief Judge Cardozo wrote in *Meinhard v Salmon* (249 NY 458, 464): "A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior." And there is no higher order of fiduciary responsibility than that assumed by a judge. 47 NY2d at 468-69

When appointing Ms. Krause as a fiduciary, respondent had a duty to avoid even the appearance of receiving any financial benefits from her appointee. Since she continued to use Ms. Krause's services as an accountant while appointing her and approving her fees, respondent should have been particularly careful to ensure that she paid for those services, and her failure to do so cannot be excused by inattention or oversight. Her dereliction of her ethical responsibilities created an appearance of impropriety permitting an inference that she accepted free tax preparation services from her appointee over a four-year period which ended only with the Special Inspector General's inquiry into the matter. This departure from the high standards of conduct required of every judge, both on and off the bench, jeopardizes the public's respect for the judiciary as a whole, which is essential to the administration of justice.

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Felder, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Mr. Goldman did not participate.

Judge Luciano and Ms. Moore were not present.

Dated: November 5, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **ALAN L. LEBOWITZ,** a Justice of the Supreme Court, 2nd Judicial District, Richmond County.

STIPULATION

1. Justice Alan L. Lebowitz, whose term of office expires on December 31, 2003, previously announced that he is not seeking certification and will retire on this date.

2. There is a formal written complaint pending against Justice Lebowitz with the Commission on Judicial Conduct, alleging a single charge, a charge which he denies and does not involve any act of moral turpitude which would result in a recommendation by Commission Counsel that Justice Lebowitz be removed from office.

3. The parties to this Stipulation respectfully request that the Commission close the pending matter based on the foregoing.

4. Respondent waives confidentiality as provided by section 45 of the Judiciary Law to the limited extent that this stipulation will be made public if approved by the Commission. All parties to this Stipulation agree that this resolution of the pending matter is in the best interests of all parties.

Dated: October 10, 2003
s/ Honorable Alan L. Lebowitz, Respondent
s/ Jerome Karp, Esq., Attorney for Respondent
s/ Robert H. Tembeckjian, Esq., Administrator of the Commission
(Alan W. Friedberg, Of Counsel)

DECISION AND ORDER

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **ALAN L. LEBOWITZ**, a Justice of the Supreme Court, 2nd Judicial District, Richmond County.

THE COMMISSION:
Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Alan W. Friedberg, Of Counsel) for the Commission
Jerome Karp for Respondent

The matter having come before the Commission on October 23, 2003 ; and the Commission having before it the Formal Written Complaint dated June 5, 2003, respondent's Answer dated July 7, 2003,and the Stipulation dated October 10, 2003; and respondent, whose term of office expires on December 31, 2003, having announced that he is not seeking certification and will retire on that date; and respondent having waived confidentiality as provided by Judiciary Law §45 to the limited extent that the Stipulation will be made public if approved by the Commission; now, therefore, it is

DETERMINED, on the Commission's own motion, that the pending proceeding be discontinued and the case closed pursuant to the terms of the Stipulation; and it is

SO ORDERED.

Dated: October 28, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **DEBRA M. McCALL**, a Justice of the Cherry Valley Town Court and Acting Justice of the Cherry Valley Village Court, Otsego County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission
Honorable Debra M. McCall, *pro se*

The respondent, Debra M. McCall, a Justice of the Cherry Valley Town Court and Acting Justice of the Cherry Valley Village Court, Otsego County, was served with a Formal Written Complaint dated October 4, 2002, containing two charges. Respondent filed an answer dated November 16, 2002.

On March 12, 2003, the Administrator of the Commission and respondent entered into an Agreed Statement of Facts, agreeing that the Commission make its determination based upon the referee's findings of fact and conclusions of law, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On March 13, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a Justice of the Cherry Valley Town Court and an Acting Justice of the Cherry Valley Village Court since 1998. She is not an attorney. Respondent has attended and successfully completed all required training sessions for judges.

As to Charge I of the Formal Written Complaint:

2. On or about September 12, 2001, the small claims case of *Thompson v. Ludder* was scheduled to commence at 7:00 PM, and the parties had been notified to be present at 7:00 PM. The claimant, Mr. Thompson, arrived early, and respondent, believing that the case had been noticed for 6:30 PM, commenced the hearing 20 to 30 minutes earlier than it had been noticed for, and prior to the arrival of the defendant.

3. Respondent heard evidence from the claimant in *Thompson v. Ludder* prior to the arrival of the defendant. When the defendant arrived on time, she showed respondent the notice to appear, and respondent proceeded with the balance of the hearing.

4. On September 12, 2001, at the conclusion of the hearing, respondent mistakenly awarded the claimant double the court costs and awarded attorneys' fees of $50, notwithstanding that the claimant had not been represented by counsel at the hearing. Respondent's judgment was for $65 more than the amount claimed in the notice of claim. Respondent believed that the claimant was entitled to recover attorneys' fees because the claimant stated that he had incurred attorneys' fees in attempting to collect from the defendant.

As to Charge II of the Formal Written Complaint:

5. Respondent failed to cooperate with the Commission in that respondent failed to respond to three letters from the Commission, dated, respectively, March 25, April 12, and April 24, 2002, concerning respondent's handling of *Thompson v. Ludder*, and failed to appear to give testimony on June 3, 2002, as requested by the Commission in a letter dated May 20, 2002.

6. Respondent ultimately appeared before the Commission on June 19, 2002, and explained that she opened the letter of March 25 and did not respond to it because of the stress of personal matters. The letter of March 25 was a follow-up letter to a letter of response respondent had previously submitted to the Commission concerning her handling of *Thompson v. Ludder*. Respondent explained in her testimony that she did not respond to the subsequent letters because she had not opened them, although she knew that the envelopes contained letters from the Commission. Respondent asserts that the letters from the Commission were the only official mail that she failed to open, and she recognizes that it was improper to have neglected to open the correspondence and respond.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.3(B)(1), 100.3(B)(6) and 100.3(C)(1) of the Rules Governing Judicial Conduct[10] and engaged in misconduct in office and conduct prejudicial to the administration of justice, as defined in Article 6, Section 22a of the New York State Constitution and Section 44, subdivision 1 of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

[10] Sections 100.1 and 100.2(A) of the Rules were also charged in the Formal Written Complaint. By order of the U.S. District Court in *Spargo v. NYS Comm'n on Jud Conduct*, ___ F Supp2d ___, 2003 WL 355467 (NDNY Feb 20, 2003), the Commission has been barred from enforcing those provisions.

Respondent's mishandling of a small claims case violated her obligation to perform her judicial duties diligently and fairly. A judge is required to accord to all interested parties a full right to be heard under the law (Section 100.3[B][6] of the Rules Governing Judicial Conduct). By commencing the hearing in *Thompson v. Ludder* in the defendant's absence before the scheduled time and by failing to re-start the hearing when the defendant arrived and advised her of the error, respondent deprived the defendant of a full opportunity to be heard. Since respondent had already heard evidence from the claimant before the defendant arrived at the scheduled time, respondent should have re-started the proceeding. Respondent further conveyed the appearance of partiality towards the claimant by a series of errors, including mistakenly awarding the claimant double the court costs and awarding attorneys' fees, notwithstanding that the claimant had not been represented by counsel at the hearing.

Respondent committed serious misconduct by her failure to cooperate with the Commission during its investigation of the matter. Pursuant to Section 7000.3, subdivisions (c) and (e), of the Commission's Operating Procedures and Rules (22 NYCRR §7000.3[c] and [e]), the Commission is authorized to "request a written response from the judge who is the subject of the complaint" and to take a judge's testimony during an investigation. Respondent's failure to open mail which she recognized was from the Commission is unacceptable and obviously does not excuse her failure to respond to the letters and her failure to appear for testimony. Respondent's lack of cooperation demonstrates a lack of respect for the process, created by Constitution and statute, under which the Commission is empowered to investigate the conduct of judges. *Matter of Cooley*, 53 NY2d 64 (1981). In mitigation, respondent ultimately appeared for testimony as requested and has acknowledged that her conduct was improper.

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

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

Judge Ciardullo votes to reject the Agreed Statement of Facts on the basis that paragraph 4 does not constitute misconduct, but concurs with the disposition of censure.

Judge Luciano was not present.

Dated: March 28, 2003

CONCURRING OPINION BY JUDGE CIARDULLO

Once again I am compelled to comment upon the distinction between errors of law and judicial misconduct. *See, Matter of Cox*, 2003 Annual Report ___ (Dec 30, 2002). Here, respondent stands accused of "mistakenly" awarding a small claims claimant $65 more than the amount originally claimed, plus double court costs and attorneys fees. The record reflects that respondent awarded attorneys fees upon evidence that the claimant had consulted with an attorney, notwithstanding that the attorney did not appear at the hearing.

I do not view these mistakes as judicial misconduct. They are not egregious violations of basic fundamental rights (*Matter of LaBelle*, 79 NY2d 350 [1992]), nor do they demonstrate respondent's general unfitness to perform her duties. Moreover, I do not find these errors so grievous as to suggest total disregard of legal principles, bias, incompetence or insensitivity to the proper role of a judge (*e.g., Matter of Reeves*, 63 NY2d 105, 110-11 [1984]). Rather, I believe respondent's errors resulted from her ignorance of certain legal restrictions surrounding an award of money judgments. This should be addressed through additional educational efforts rather than by disciplinary action.

On the other hand, respondent deprived the defendant of his fundamental and basic due process rights by hearing the case prior to the scheduled time and in his absence. This constitutes judicial misconduct. Standing alone, respondent's action would not warrant a censure. However, respondent's intentional and repeated refusal to cooperate with the Commission's inquiry justifies the imposition of a harsh sanction. Therefore, I concur in the result.

Dated: March 28, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **CHARLES PENNINGTON**, a Justice of the Alexandria Bay Village Court, Jefferson County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the Commission
Capone Law Firm (by Andrew N. Capone) for Respondent

The respondent, Charles Pennington, a justice of the Alexandria Bay Village Court, Jefferson County, was served with a Formal Written Complaint dated August 9, 2002, containing two charges. Respondent filed an answer dated August 29, 2002.

On July 29, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into a Superseding Agreed Statement of Facts, agreeing 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 September 18, 2003, the Commission approved the Superseding Agreed Statement of Facts and made the following determination.

1. Respondent has been a justice of the Alexandria Bay Village Court, Jefferson County since 1982. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint:

2. On or about December 1, 1994, respondent's son was charged with a criminal offense in the Village of Alexandria Bay. Respondent disqualified himself and the arraignment was conducted by the acting village justice.

3. Following his son's arraignment, respondent contacted and met with the Jefferson County District Attorney to review the pending charge. Respondent's wife and son were present. Respondent told the District Attorney that he was meeting with him in his capacity as the defendant's father and that he was not there to ask for any favors or to use his position. Respondent was aware that the District Attorney knew him as the Alexandria Bay Village Justice.

4. Respondent's purpose in meeting with the District Attorney was to object to the manner in which the police were investigating the case and the way in which respondent believed his son had been treated by the police. The District Attorney assured respondent that he would review the case.

5. Respondent recognizes that by meeting privately with the prosecutor, who knew him to be a judge, to discuss his son's case, respondent created the appearance that he was lending the prestige of his office to advance his son's private interest. He also now recognizes that while many fathers facing similar circumstances would choose to meet with the District Attorney, a judge has a far greater chance both of obtaining such a meeting and getting the District Attorney's heightened attention.

6. The charge against respondent's son was subsequently dismissed in local court for lack of prosecution, which suggests that respondent's advocacy was successful.

As to Charge II of the Formal Written Complaint:

7. On July 31, 2000, respondent was stopped by the New York State Park Police in Keeywadin State Park, in the Town of Alexandria, as he drove a truck towing a boat and trailer through the park entrance. The police had stopped respondent for allegedly entering the park without paying a fee.

8. Respondent exited his vehicle and spoke with a New York State Park Police Sergeant about the matter. When questioned about his actions by the Police Sergeant, respondent objected to being stopped, told the Police Sergeant that he had permission from the Police Sergeant's boss to use the boat ramp whenever he needed and stated, "I see that the two sides communicate really well with each other, and that you should find out what the fuck you are doing because you are harassing me right now." The Police Sergeant asked respondent if he had verbal permission, and respondent, who was agitated, yelled at the Sergeant, "Yes, I told you that already, this is fucking bullshit, I'm going to call my legislator, I'm the fucking judge here in this village."

9. The Park Police Sergeant issued tickets to respondent, charging him with various violations of the New York State Park regulations.

10. On March 21, 2001, respondent was convicted in the Antwerp Town Court, to which the case had been transferred, of two counts of Commercial Activity Without A Permit (9 NYCRR §372.7[b]) and Failing To Pay A Fee Upon Entrance Into A State Park (9 NYCRR §375.1[g]). Respondent paid $140 in fines for both offenses.

11. Respondent recognizes that if he were an average citizen using that language, he would have risked further action by the police.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.2(C) and 100.4(A)(2) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

By contacting the district attorney in connection with his son's case and meeting with the district attorney to discuss the investigation and the treatment of respondent's son by the police, respondent intervened in a pending proceeding and lent the prestige of his judicial status to advance his son's private interests. Such conduct is prohibited by well-established ethical standards, even in the absence of a specific request for special consideration (Rules Governing Judicial Conduct §100.2[C]); s*ee, e.g., Matter of Edwards*, 67 NY2d 153 (1986). As the Court of Appeals has stated:

> [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. 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. 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. [Citations omitted.] *Matter of Lonschein,* 50 NY2d 569, 571-72 (1980)

Although respondent told the District Attorney that he was not seeking any special treatment for his son because of his judicial position, respondent has acknowledged that the mere fact of his judicial status increased the likelihood that he could not only obtain such a meeting, but get the District Attorney's "heightened attention" to his concerns about his son's treatment. Notwithstanding his concerns as a parent, respondent, who is not an attorney, could not properly assert his son's legal interests or act as his son's legal advocate, a role which should properly be delegated to an attorney. Respondent's "'paternal instincts' do not justify a departure from the standards expected of the judiciary" (*Matter of Edwards, supra*, 67 NY2d at 155).

It was also improper for respondent to assert his judicial office in connection with an incident at a state park, after being stopped by police and questioned about his actions. By identifying himself as a judge while objecting to the conduct of the park police, he gratuitously interjected his judicial status into the incident, which was inappropriate. *See Matter of D'Amanda*, 1990 Ann Rep 91 (Commn on Jud Conduct, April 2, 1989); *Matter of Werner*, 2003 Ann Rep 198 (Commn on Jud Conduct, Oct 1, 2002). As the Commission has stated:

> Judges must be particularly careful to avoid any conduct that may create an appearance of seeking special consideration simply because of their judicial status. Public confidence in the fair and proper administration of justice requires that judges, who are sworn to uphold the law, neither request nor receive special treatment when the laws are applied to them personally. *Matter of Werner, supra,* 2003 Ann Rep at 199

Here, respondent not only explicitly asserted his judicial office, but did so during a highly charged confrontation after leaving his vehicle, yelling at the police sergeant, using profane language and threatening to call his legislator, all in an apparent effort to avoid paying a park fee. As respondent now recognizes, this unseemly display of invective and intimidation was inappropriate.

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

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

Judge Ciardullo dissents and votes to reject the Agreed Statement of Facts on the basis that the 1994 incident set forth in Charge I is stale and warrants, at most, a letter of dismissal and caution, but concurs that the appropriate disposition with respect to Charge II is censure.

Judge Luciano and Ms. Moore were not present.

Dated: November 3, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **IRA J. RAAB**, a Justice of the Supreme Court, Nassau County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission
Emery Cuti Brinckerhoff & Abady PC (By Richard D. Emery and John R. Cuti) for Respondent

The respondent, Ira J. Raab, a Justice of the Supreme Court, Nassau County, was served with a Formal Written Complaint dated November 15, 2001, containing five charges. Respondent filed an answer dated January 9, 2002.

On August 7, 2002, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, stipulating that the Commission make its determination based upon the agreed facts. The Commission approved the agreed statement on September 19, 2002. Each side submitted memoranda as to sanction.

On December 12, 2002, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following determination.

1. Respondent was admitted to the practice of law in the State of New York in 1958. He was elected a Nassau County District Court Judge in November 1996 and assumed office in January 1997. He was elected as the Presiding Judge of the District Court in November 1999 and assumed office in January 2000. He was elected a Justice of the Supreme Court in November 2000 and assumed office in January 2001.

2. In each of his campaigns for judicial office, respondent financed his campaign with his own personal funds in order to avoid potential conflicts of interest. Neither he nor any committee on his behalf solicited or accepted campaign funds from lawyers, law firms or other individuals or groups**,** although respondent notes that the solicitation of funds from campaign committees was and continues to be an accepted practice for judicial candidates on Long Island and elsewhere. Respondent filed reports of his campaign expenditures with the State Board of Elections as required.

3. Respondent maintains that he is a conscientious, efficient and productive judge and that, during his years of service in the District Court and in the Supreme Court, respondent has initiated many novel procedures – including ordering oral argument on all motions and encouraging lawyers to participate in telephone conferences (often during the lunch recess or in the evening) to resolve motions and other aspects of pending cases – that dramatically reduced the number of resource-wasting adjournments and significantly decreased the court's docket.

As to Charge I of the Formal Written Complaint:

4. From 1990 through 1994, the Nassau County law firm of Russ & Russ represented Jay Schadoff in matters that were not before respondent. In 1995, Russ & Russ commenced an action against Mr. Schadoff entitled *Russ & Russ PC v. Jay Schadoff* to recover legal fees that Mr. Schadoff had not paid for services rendered from 1990 through 1994.

5. In November 1995, after trial, Mr. Schadoff signed a confession of judgment for $81,332.55 in legal fees and disbursements that he owed to Russ & Russ, exclusive of interest, for the period from 1990 through 1994.

6. From November 1995 to April 2001, notwithstanding the confession of judgment, Mr. Schadoff did not pay the debt owing to Russ & Russ.

7. In November 1996, Mr. Schadoff commenced a professional malpractice suit against Russ & Russ, which was finally dismissed by the Appellate Division, Second Department, in December 2000. Russ & Russ had not sought to execute the confession of judgment pending final disposition of the malpractice action.

8. Mr. Schadoff and his ex-wife Carole Schadoff owned a parcel of vacant land in Nassau County. Pursuant to a real property execution brought on by Russ & Russ after the Appellate Division's dismissal of Mr. Schadoff's malpractice suit, the Sheriff of Nassau County scheduled a sale of Mr. Schadoff's interest in the real estate for May 2, 2001.

9. In January 2001, respondent was assigned to hear matrimonial cases in Nassau County. One of the cases assigned to respondent was *Jay Schadoff v. Carole Schadoff*, in which a judgment of divorce had previously been granted and in which the parties were litigating equitable property distribution issues.

10. By order to show cause dated April 3, 2001, in connection with the *Schadoff v. Schadoff* matrimonial action, a case in which Russ & Russ was not involved, Mr. Schadoff moved to stay the Sheriff's sale which was pending in connection with the *Russ & Russ v. Schadoff* debt collection case. The order to show cause contained an *ex parte* temporary restraining order (TRO) staying the sale pending a hearing and determination on the motion.

11. Respondent granted the TRO on April 3, 2001. Notwithstanding some concern by respondent and his law secretary that he may not have jurisdiction over Russ & Russ, they concluded that it was appropriate to issue the TRO.

12. On April 9, 2001, Kenneth Lauri, an attorney in the Russ & Russ firm, appeared before Appellate Division Justice Sandra J. Feuerstein pursuant to CPLR 5704 to seek review of respondent's *ex parte* TRO. Attorneys for both Jay Schadoff and Carole Schadoff were present. After hearing argument, Justice Feuerstein struck the TRO.

13. Justice Feuerstein's law secretary instructed Mr. Lauri to serve Justice Feuerstein's order on respondent promptly. Mr. Lauri immediately proceeded to respondent's courtroom.

14. When Mr. Lauri arrived in respondent's courtroom in the late afternoon of April 9, 2001, there were no cases remaining on respondent's calendar for the day. Respondent was engaged in a telephone conference at the bench. The only other person present was respondent's law secretary, Jennifer Feingold. The courtroom is relatively small.

15. Ms. Feingold was fully familiar with the *Schadoff* matrimonial case. She and respondent had worked diligently in the preceding months to effectuate a settlement of the outstanding equitable property distribution issues between Jay Schadoff and Carole Schadoff. Ms. Feingold and respondent believed they had effected such a settlement, which depended in part on a private sale of the parcel of land in Nassau County, which Carole and Jay Schadoff had indicated that she had negotiated with a potential buyer.

16. Respondent and Ms. Feingold believed that the settlement in the *Schadoff v. Schadoff* matrimonial action would be thwarted if the parcel of land were sold at a Sheriff's sale, which they believed would result in a lower sale price than what Carole Schadoff had said she had privately arranged.

17. When he came into respondent's courtroom on April 9, 2001, Mr. Lauri spoke first with Ms. Feingold, informing her that Appellate Division Justice Feuerstein had vacated respondent's TRO. Ms. Feingold was upset with the potential consequences of the appellate order and conveyed her views to Mr. Lauri, explaining in exasperated tones that vacating the TRO would not advance the interests of any party in either of the underlying litigation**s**. Ms. Feingold, in essence, was trying to persuade Mr. Lauri not to proceed with the Sheriff's sale of the Schadoff property.

18. Respondent was on the telephone, but noticed that Mr. Lauri and Ms. Feingold were conversing and that Ms. Feingold was upset. When respondent got off the telephone, Mr. Lauri and Ms. Feingold approached the bench. Respondent asked Ms. Feingold what was going on, and Ms. Feingold told respondent she was upset.

19. After respondent attempted to defuse the tension by making a facetious remark, Ms. Feingold told him that Justice Feuerstein had vacated his TRO as to the *Schadoff* property sale, and that the settlement respondent had worked so hard at effecting would be jeopardized.

20. Respondent told Mr. Lauri that Ms. Feingold was right about the negative effect a Sheriff's sale would have on the *Schadoff* case.

21. Mr. Lauri indicated that his firm intended to proceed with the sale now that the TRO had been vacated.

22. Respondent then said he would be on the bench for 11 more years, that he had a "long memory," that he would "remember" what Mr. Lauri's firm had done should it appear before him on other matters, and that it was a "good thing" the firm did not practice matrimonial law.

23. Respondent states that although he did not intend to threaten or intimidate Mr. Lauri, on reflection, respondent realizes that his comments were inappropriate and intimidating and could be construed as a threat. Respondent states that when he said it was a "good thing" the *Russ* firm did not practice matrimonial law, he meant that the firm would not do well in such cases because it did not seem to understand the intricacies of matrimonial litigation, and that Mr. Schadoff would be in a position to pay his full debt**,** including interest**,** to the law firm from the proceeds of the property sale that was part of the matrimonial settlement respondent had worked out. Respondent now realizes that his comment could reasonably be construed to mean that he would be biased against the firm should it appear before him in matrimonial cases.

24. Subsequently, on plaintiff's motion, respondent disqualified himself from *Russ & Russ v. Jay Schadoff*. Thereafter**,** Jay Schadoff apparently satisfied the judgment against him with proceeds from the sale of a property other than the parcel of land at issue in the TRO. The Nassau County Sheriff did not conduct a sale of the disputed property, which had not been sold privately or otherwise as of the date of the Formal Written Complaint against respondent in this proceeding, *i.e.* November 15, 2001.

As to Charge II of the Formal Written Complaint:

25. In the spring of 2000, respondent, who was then a District Court judge, announced that he was a candidate for the Democratic nomination for Supreme Court.

26. The judicial nominating convention for selecting Democratic Party candidates for Supreme Court was scheduled for mid-September 2000. The general election was scheduled for November 2000.

27. Respondent, who had been endorsed by the Working Families Party (WFP) in prior years when he was a Democratic candidate for judicial office, planned on seeking that party's support in his Supreme Court campaign in 2000.

28. On June 3, 2000, the WFP held a screening meeting in Nassau County at which candidates for various judicial and non-judicial offices were questioned in connection with the party's intention to endorse candidates. Respondent was not scheduled to be interviewed on that date.

29. Respondent nevertheless attended the screening meeting on June 3, 2000. He does not recall who invited him to attend.

30. When he arrived, respondent sat at a table with members of the WFP who would be questioning the various candidates scheduled to appear for interviews. Respondent advised the party members that it would be inappropriate to ask a judicial candidate to express substantive views on particular issues.

31. Respondent remained at the meeting for the interviews of at least the following five candidates: State Senate candidates Michael Balboni and Charles Fuscillo, and judicial candidates Denise Sher, Francis Rucigliano and William O'Brien. Respondent asked each of these five candidates at least one question: whether they would publicize the WFP endorsement on their campaign literature, should they in fact be endorsed. Respondent believed that such a commitment would both publicize the party and benefit his own campaign should he be endorsed by the WFP later in the year for Supreme Court.

32. Respondent did not participate in the WFP's deliberations or decisions on the endorsement of candidates.

33. Respondent's motive in attending and participating in this WFP meeting was to generate good will within the party for his own candidacy and to enhance his chances of being endorsed by the party later in the year for Supreme Court. Respondent maintains he was so motivated in light of the political realities of Nassau County, where from around 1963 to 1996 virtually all elections for full-time judicial office were won by candidates who were on the Republican and/or Conservative ballot lines. Respondent never ran on either of these ballot lines.

34. Respondent now realizes that his mere attendance at, let alone participation in, a meeting in which a political party was screening candidates for endorsement purposes constituted improper participation in partisan party politics and the political campaigns of others, notwithstanding that he was himself a candidate for judicial office at the time. Respondent regrets and apologizes for having attended this meeting and having participated in the screening interviews of other candidates.

35. Respondent was nominated for Supreme Court by the Democratic Party in September 2000, was endorsed by the WFP and appeared on their ballot line (as well as being endorsed by and on the ballot line of the Independence, Right to Life, and Liberal parties, and receiving the endorsement of the Green and Libertarian parties), and was elected to Supreme Court in November 2000. He assumed his new office in January 2001.

As to Charge III of the Formal Written Complaint:

36. In March 2000, during a special election to fill a vacancy in the Nassau County Legislature, the Working Families Party (WFP) operated a "phone bank" on behalf of Democratic candidate Craig Johnson, who also had the endorsement of the WFP. The purpose of the phone bank was to telephone registered voters and encourage them to vote for Mr. Johnson in the special election.

37. On one evening in March 2000, respondent, who was then a District Court judge, attended and participated in the WFP phone bank, at an office in Nassau County. He does not recall who invited him to attend.

38. For approximately one hour, respondent made telephone calls to prospective voters on behalf of Craig Johnson. In making such phone calls, respondent did not mention his own name or identify himself as a judge.

39. Respondent's motive in attending and participating in the WFP phone bank was to generate good will within the party for his own candidacy and to enhance his chances of being endorsed by the party later in the year for Supreme Court.

40. Respondent now realizes that his mere attendance at, let alone participation in, a political party phone bank for a candidate other than himself, constituted improper participation in partisan party politics and the political campaign of another, notwithstanding that he was himself a candidate for judicial office at the time. Respondent regrets and apologizes for having attended and participated in the WFP phone bank on behalf of another candidate.

As to Charge IV of the Formal Written Complaint:

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

As to Charge V of the Formal Written Complaint:

42. In the spring of 1995, respondent, who was not a judge at the time, announced that he was a candidate for the Democratic nomination for Supreme Court.

43. The judicial nominating convention for selecting Democratic Party candidates for Supreme Court was scheduled for mid-September 1995. The general election was scheduled for November 1995.

44. During the spring and summer of 1995, respondent met several times with other prospective Democratic judicial candidates and with the party's then-chair, Steve Sabbeth, to discuss and coordinate certain joint campaign activities and expenses of the judicial slate of candidates. It was agreed that respondent's share of such joint expenses would be about $10,000; respondent maintains that other candidates for judicial office also agreed to pay round figure sums.

45. During the spring and summer of 1995, respondent participated with the other Democratic judicial candidates in active campaigning.

46. Pursuant to Section 100.5 of the Rules and Opinions of the Advisory Committee on Judicial Ethics, *e.g.* Opinion 91 of 1994, a judicial candidate may reimburse actual expenses incurred by a political organization on the judicial candidate's behalf.

47. On September 21, 1995, after winning the Democratic nomination for one of several available Supreme Court Justice positions, respondent paid $10,000 by personal check to the Nassau County Democratic Committee.

48. The $10,000 payment was in part to cover expenditures already made by the party's judicial campaign committee – at a time when respondent was not yet the party's official nominee – to promote in a general way the election of the entire slate of Democratic judicial candidates that would be on the ballot in November 1995.

49. The $10,000 payment was also in part to cover expenditures the party intended to make over the next six weeks on behalf of respondent's candidacy.

50. At the time respondent made the $10,000 payment, he did not seek or have an itemized accounting from the party as to its actual expenses on behalf of his own campaign, and he took no steps to assure that his payment was used strictly to reimburse the party for reasonable and actual expenses incurred on his behalf.

51. Respondent, who was defeated in the November 1995 general election, reported the $10,000 payment in a timely manner to the State Board of Elections.

52. Although the foregoing practice may not have seemed unusual at the time, respondent now realizes that it is improper for a judicial candidate to make a lump sum retroactive payment to a political party to offset general, non-itemized expenditures previously made on behalf of a slate or individual candidates before the judicial candidate is an actual nominee of the party. Respondent also now realizes that it is improper for a judicial candidate to make a lump sum advance payment to a political party for non-itemized expenditures not yet made on his behalf.

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)(3), 100.3(B)(4), 100.5(A)(1) and 100.5(A)(1)(c), (d), (e), (f), (g) and (h) of the Rules Governing Judicial Conduct and Section 700.5(e) of the Rules of the Appellate Division, Second Department. Charges I, II, III and V of the Formal Written Complaint are sustained insofar as they are consistent with the above facts, and respondent's misconduct is established. Charge IV of the Formal Written Complaint is not sustained and is therefore dismissed.

Respondent's threatening, intimidating statements to an attorney and his partisan political activity violated well-established ethical standards and represent a significant departure from the proper role of a judge.

It was undeniably intimidating and inappropriate for respondent to tell an attorney, who had sought appellate relief from respondent's order, that respondent had a "long memory" and "would remember" the attorney's conduct and that it was a "good thing" the attorney's firm did not practice matrimonial law. (At the time, respondent was assigned to hear matrimonial cases.) Respondent's words could only be construed as a threat that, if the opportunity arose, he would show his displeasure by using his judicial authority to retaliate against the attorney and his firm. Even the suggestion of using judicial power as a weapon of retaliation is a serious distortion of a judge's proper role as a neutral, unbiased arbiter. Such comments erode public confidence in the fair administration of justice and violate ethical standards requiring a judge to avoid bias and the appearance of bias and to be dignified and courteous in performing judicial duties (Rules

Governing Judicial Conduct §§100.2[A], 100.3[B][3] and 100.3[B][4]; Rules of the Appellate Division, 2nd Dept §700.5[e]).

No attorney should be subjected to such intimidation, especially one who had not engaged in any impropriety but merely acted as an advocate by voicing a legitimate legal argument. Under such circumstances, a threat of retaliation has a chilling effect on an attorney's duty to represent a client "zealously…through reasonably available means permitted by law" (Code of Professional Responsibility DR 7-101[A][1]).

Respondent's political transgressions – first as a candidate and later as a judge seeking to enhance his candidacy for higher judicial office – demonstrated a blatant disregard for the applicable ethical standards. Judicial candidates and judges are strictly prohibited from engaging in political activity other their own campaigns for judicial office (Rules Governing Judicial Conduct §100.5[A][1]). By participating as a panelist in a political party's screening interviews of political candidates, by appearing at the party's "phone bank" for a candidate for the county legislature and by making phone calls on behalf of the candidate, respondent flouted this prohibition. While those precise activities are not specified in the ethical rules, respondent surely should have recognized that such conduct was improper in view of the significant body of law concerning the broad restrictions on the political activity of judges. *See, e.g.*, *Matter of Maney*, 70 NY2d 27 (1987); *Matter of Gloss*, 1989 Ann Rep 81 (Commn on Jud Conduct, Dec 21, 1988); *Matter of Rath*, 1990 Ann Rep 150 (Commn on Jud Conduct, Feb 21, 1989); *Matter of Decker*, 1995 Ann Rep 111 (Commn on Jud Conduct, Jan 27, 1994); Adv Op 89-116, 88-100 and 94-37 of the Advisory Committee on Judicial Ethics.

Respondent's conduct is not excused by the motivation to enhance his own political prospects by generating good will in support of his own candidacy. *See Matter of Maney*, *supra*, where the Court of Appeals, in removing a judge for impermissible political activity, rejected the contention that his partisan political involvement "was necessitated by the political realities that face elected judges" and underscored that the governing rules "only allow involvement in a political organization under narrowly circumscribed conditions" (70 NY2d at 30, 31).

It was also improper for respondent to make a lump sum payment to a political party, in part to cover expenditures already made – before respondent had been officially nominated – for general promotional purposes, and in part as an advance payment for intended future expenditures on respondent's behalf. Such a payment, without appropriate receipts, itemization or other records to support the expenditure, was not a mere technical violation of the ethical rules, but a prohibited political contribution. *See Matter of Salman*, 1995 Ann Rep 134 (Commn on Jud Conduct, Jan 26, 1994) (issued the year before respondent's conduct). A judge may not make a contribution to a political party or organization, but may reimburse the party for the judge's proportionate share of actual and reasonable expenses made on behalf of the judge's campaign (Rules Governing Judicial Conduct §100.5[A][1]; *see* Adv Op 92-97, 91-94). Moreover, an agreement by a candidate to make such a lump sum payment before actually being nominated inevitably conveys the appearance of a *quid pro quo* – which would, of course, be an egregious impropriety.

We reject respondent's contention that he should not be disciplined for his political transgressions because the cited restrictions on political activity are constitutionally infirm. The applicable rules are not within the ambit of *Republican Party of Minnesota v. White*, 536 US 765 (2002), in which the U.S. Supreme Court recently held that the First Amendment protects the right of judicial candidates to "announce [their] views on disputed legal or political issues."

In rejecting the sanction of removal recommended by Commission counsel, we do not minimize the seriousness of respondent's ethical transgressions. When a judge repeatedly flouts well-established ethical standards to advance his own political interests and threatens to retaliate against an attorney out of personal pique, the sanction of removal may well be necessary. In mitigation, we note that respondent seems sincerely remorseful for his offensive utterances towards the attorney and for his political improprieties. Lacking the power to suspend a judge without pay, we choose to censure respondent, although we gave serious consideration to determining that he should be removed from the bench.

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Judge Luciano, Ms. Moore, Judge Peters and Judge Ruderman concur.

Ms. Hernandez and Mr. Pope were not present.

Dated: February 3, 2003

Note: On review of this determination, the Court of Appeals accepted the censure. *Matter of Raab*, 100 NY2d 305 (2003).

In the Matter of the Investigation of Complaints Pursuant to Section 44, subdivisions 1 and 2, of the Judiciary Law in Relation to **IRA J. RAAB,** a Justice of the Supreme Court, Nassau County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (hereinafter, "Commission") and the Honorable Ira J. Raab and his attorneys, Emery Celli Cuti Brinckerhoff & Abady (By Richard D. Emery and John J. Cuti).

1. This Stipulation is presented to the Commission in connection with its investigation of several complaints presently pending against the Honorable Ira J. Raab.

2. Justice Raab, an attorney admitted to practice law in the State of New York, is 68 years old.

3. In November 1996, Justice Raab was elected as a District Court Judge, Nassau County, for a term that commenced in January 1997. In November 2000, he was elected as a Justice of the Supreme Court, Nassau County, for a term that commenced in January 2001.

4. At various times during 2003, Justice Raab was advised by the Commission that it was investigating complaints against him. These complaints were unrelated to the Commission determination and Court of Appeals review that resulted in the public censure of Justice Raab on June 10, 2003.

5. On July 31, 2003, Justice Raab submitted a letter of retirement/resignation, effective immediately. Justice Raab did so because of the Commission's investigation.

6. Notwithstanding Justice Raab's letter, the Commission continued its investigation pursuant to Section 47 of the Judiciary Law, which extends the Commission's jurisdiction for 120 days from the date of a judge's resignation to complete proceedings resulting in a determination that the judge be removed from office.

7. The Administrator of the Commission is authorized to represent that, upon execution of this Stipulation, the Commission will close its investigation as to the pending complaints against Justice Raab, based upon the Justice's retirement/resignation and upon the following:

a. Justice Raab acknowledges that he will not seek or accept judicial office or a position as a Judicial Hearing Officer, at any time in the future.

b. Justice Raab waives confidentiality as provided by Section 45 of the Judiciary Law to the limited extent that this Stipulation will be made public upon execution.

s/ Ira J. Raab
s/ John R. Cuti, Esq.
Emery Celli Cuti Brinckerhoff & Abady
Counsel to Justice Raab

s/ Robert H. Tembeckjian, Esq.
Administrator and Counsel
New York State
Commission on Judicial Conduct

Dated: August 27, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **MARTIN SCHNEIER**, a Justice of the Supreme Court, Kings County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.[11]
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Vickie Ma, Of Counsel) for the Commission
Molod, Spitz, DeSantis & Stark, P.C. (by Martin J. Semel) for Respondent

The respondent, Martin Schneier, a Justice of the Supreme Court, Kings County, was served with a Formal Written Complaint dated November 27, 2002, containing four charges. Respondent filed an answer dated December 11, 2002.

On May 13, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing 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 May 21, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent was elected to the Supreme Court, Kings County, on November 2, 1999. His term commenced on January 1, 2000 and will expire on December 31, 2004, at which time he will have reached the age of 70 and would be eligible for three, two-year terms as a certificated Justice. Prior to January 2000, respondent served as a Civil Court Judge for 20 years.

As to Charge I of the Formal Written Complaint:

2. In 1999, respondent was campaigning for re-election to the Civil Court when he received a nomination to the Supreme Court. After his nomination, respondent withdrew his candidacy for re-election to the Civil Court.

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[11] Mr. Felder was appointed to the Commission on August 25, 2003. The vote in this matter was taken on May 21, 2003.

3. Respondent's campaign treasurer sent a letter dated September 22, 1999, to each contributor to respondent's Civil Court campaign advising the contributor of respondent's nomination to the Supreme Court and the formation of respondent's Supreme Court campaign committee. The letter further provided the contributors with the option of having their contributions returned to them or transferred to respondent's Supreme Court election committee. The letter stated, in part,

> If I do not hear from you within ten days, I will assume that you wish your prior contribution to be used to elect Judge Schneier to the Supreme Court and I will turn over your contribution to the "**Committee to Elect Judge Martin Schneier Justice of the Supreme Court**."
>
> If however, you wish to have your prior contribution returned to you, please indicate this on the enclosed self addressed postal card and return the card to me within ten days. (Emphasis in original.)

4. The letter of September 22, 1999, sent to campaign contributors did not justify the transfer of funds from one campaign to the other. No contributor requested a refund.

5. Respondent authorized the transfer of funds from his Civil Court campaign committee to his Supreme Court campaign committee. His Civil Court campaign committee made two transfers totaling $19,415 to his Supreme Court election campaign.

6. The only authorized methods of disposing of unexpended campaign funds are to return the funds to the contributors on a *pro rata* basis or to use the funds to purchase office equipment or furniture for the court, provided that such items become the property of the court.

As to Charge II of the Formal Written Complaint:

7. Under Section 100.0 (Q) of the Rules Governing Judicial Conduct, the applicable window period during which respondent, as a judicial candidate, could participate in authorized political activity ended six months after the November 1999 election, *i.e*., on or about May 2, 2000.

8. Respondent retained surplus funds totaling $10,923 in his campaign committee account until December 22, 2000, which was more than seven months after the window period ended and more than a year after his election to the Supreme Court. Respondent failed to take steps to close his campaign committee account within a reasonable time after his election to the Supreme Court.

9. On December 22, 2000, respondent authorized his Supreme Court campaign committee to contribute $10,923 in unexpended campaign funds to the Respect for Law Alliance, a not-for-profit organization.

As to Charge III of the Formal Written Complaint:

10. Respondent authorized his Supreme Court campaign committee to spend $19,949 in unexpended campaign funds to finance an induction reception and dinner that was held at the Brooklyn Marriott Hotel on November 18, 1999, to celebrate his election to the Kings County Supreme Court. More than 500 persons were invited; and more than 250 guests, including family members, members of the judiciary, and employees of the Unified Court System, attended the reception. About 175 persons had contributed to respondent's campaign.

11. The amount expended for the dinner was an unreasonably large amount of campaign funds to be spent for a dinner to celebrate respondent's induction as a Supreme Court Justice. Pursuant to existing rules and policies, the surplus funds should have been returned to contributors on a *pro rata* basis or used to purchase office equipment or furniture for the court.

As to Charge IV of the Formal Written Complaint:

12. Between November 1999 and March 2000, as set forth below, respondent authorized his Supreme Court campaign committee to make payments totaling $710 from unexpended campaign funds for his attendance at various post-election, non-political functions, which was an unjustified use of unexpended campaign funds.

DATE	AMOUNT	EVENT
11/13/99	$75	Dinner of the Association of Justices of the Supreme Court of the State of New York, held on 12/8/99
11/13/99	$175	Dinner of the Brooklyn Bar Association, held on 12/6/99
11/13/99	$80	Brooklyn Law School alumni luncheon, held on 12/5/99
2/18/00	$200	Dinner of the Flatbush Development Corp., a not-for-profit organization
2/18/00	$60	Breakfast of the Council of Jewish Organizations of Flatbush, Inc., a not-for-profit organization
3/8/00	$120	Function of Queensborough Community College

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)(1) and 100.5(A)(5) of the Rules Governing Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

By authorizing unexpended funds from his Civil Court campaign to be transferred to his campaign for Supreme Court in 1999 and by authorizing unexpended funds from his Supreme Court campaign to be used for his private benefit, respondent violated both the letter and spirit of the ethical standards pertaining to judicial campaign funds.

The Rules Governing Judicial Conduct explicitly prohibit the use of campaign funds for the candidate's private benefit (Section 100.5[A][5]), and, since 1987, numerous opinions of the Advisory Committee on Judicial Ethics have interpreted this provision to strictly limit the permissible use of any unexpended funds. The Advisory Opinions have held unequivocally that unexpended campaign funds may not be used in a subsequent campaign for office, or even contributed to charity, but must be returned to the donors on a *pro rata* basis or used to purchase such items as office equipment which become the property of the court system (Adv. Op. 87-02, 88-59, 88-89, 89-152, 90-6, 91-87, 92-68, 92-94, 92-104, 93-04).

The transfer of over $19,000 raised by respondent's Civil Court campaign to his campaign for Supreme Court was clearly improper, even with the consent of the contributors (*see* Adv Op 91-12, 93-15). In this case, the "consent" of the donors was passive at best, since respondent's campaign placed the onus on the donors to specifically request a refund if they did not want the funds to be transferred. In any event, the consent of donors would not permit a candidate to use unexpended campaign funds in a manner prohibited by the ethical standards.

Under the applicable guidelines, it was also improper for respondent to use campaign funds totaling $710 to attend various post-election, non-political functions, $11,000 for a contribution to the Respect For Law Alliance, a not-for-profit organization, and nearly $20,000 for a post-election reception and dinner. There is no justification in the rules for using unexpended campaign funds to pay such expenses. Although surplus funds may be used to finance a "modest and reasonable" victory party (Adv Op 87-16), the amount expended for respondent's celebratory reception and dinner was, as he has acknowledged, "unreasonably large."

By permitting his campaign funds to be used in a manner inconsistent with well-established ethical standards, respondent was insensitive to the special ethical obligations of judges and judicial candidates.

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Ms. Moore, Mr. Pope and Judge Ruderman concur.

Judge Luciano and Judge Peters were not present.

Dated: September 19, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **PASQUALE F. VALENTINO**, a Justice of the Stanford Town Court, Dutchess County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Vickie Ma, Of Counsel) for the Commission
Sall, Caltagirone & Coleman (by Paul Caltagirone) for Respondent

The respondent, Pasquale F. Valentino, a Justice of the Stanford Town Court, Dutchess County, was served with a Formal Written Complaint dated October 1, 2002, containing three charges. Respondent filed an answer dated October 10, 2002.

On January 6, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing that the Commission make its determination based upon the referee's findings of fact and conclusions of law, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On January 30, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent is a Justice of the Stanford Town Court, Dutchess County, who began serving a second four-year term that commenced in January 2002 and expires in December 2005. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. Respondent has known Charles Zammiello, who is paid to remove snow and perform other odd jobs for respondent, since 1999.

3. On September 27, 2000, respondent presided over a probable cause and suppression hearing in *People v. Charles Zammiello,* a Driving While Intoxicated ("DWI") case. Respondent did not disclose his relationship with the defendant to the attorneys.

4. Respondent failed to obtain a remittal of disqualification, in that he neither disclosed on the record any basis for his disqualification nor incorporated into the record an agreement by the attorneys that respondent could participate in the hearing. There is no evidence that respondent's ruling was influenced by his relationship with Mr. Zammiello.

5. Respondent recused himself from the case in June 2001, and the matter was transferred to another judge.

As to Charge II of the Formal Written Complaint:

6. In 2000, while the *Zammiello* matter was pending before respondent, he engaged in an *ex parte* conversation with George Hazel, a DWI prosecutor who was not assigned to the *Zammiello* case. Respondent asked Mr. Hazel to review the *Zammiello* file and offer respondent his opinion as to the lawfulness of the arrest. Mr. Hazel advised respondent that the arrest was lawful.

7. Respondent did not disclose his conversation with Mr. Hazel to the assigned assistant district attorney, Angela LoPane, or to the defense attorney.

As to Charge III of the Formal Written Complaint:

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

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(B)(6) and 100.3(E) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established. Charge III is not sustained and is, therefore, dismissed.

A judge's disqualification is required in any proceeding in which the judge's impartiality might reasonably be questioned (Rules Governing Judicial Conduct §100.3[E][1]). It was improper for respondent to preside over any aspect of a proceeding involving an individual whom the judge had paid to perform odd jobs. *See Matter of Ross*, 1990 Ann Rep 153 (Commn on Jud Conduct, Sept 29, 1989) (judge failed to disqualify himself in matters involving his business clients, his tenant, his personal attorney and his relatives); *Matter of Barker*, 1999 Ann Rep 77 (Commn on Jud Conduct, March 17, 1998) (judge failed to disqualify himself in a small claims case involving a party who had recently done work for the judge similar to that at issue in the case). Handling such a case creates an appearance of impropriety, which is prohibited by Section 100.2 of the Rules. Notwithstanding that there is no evidence that respondent's ruling was influenced by his personal relationship with the defendant, respondent's conduct was improper.

Respondent also engaged in misconduct by seeking *ex parte* advice from a prosecutor as to lawfulness of the defendant's arrest. While a judge may seek advice on a pending matter from a "disinterested expert on the law" (Rules §100.3[B][6][b]), a prosecutor whose office was prosecuting the case cannot be considered impartial. The ethical rules also impose strict safeguards in such instances, including notice to the parties and an opportunity to respond (*Id*.). Respondent's consultation with the prosecutor was an unauthorized *ex parte* communication, which is prohibited by the ethical standards (Rules §100.3[B][6]).

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Ms. Moore, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

Dated: February 3, 2003

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **CALVIN M. WESTCOTT**, a Justice of the Hancock Town Court, Delaware County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

The respondent, Calvin M. Westcott, a Justice of the Hancock Town Court, Delaware County, was served with a Formal Written Complaint dated December 12, 2002, containing one charge.

On January 7, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be removed and waiving further submissions and oral argument.

On January 30, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a Justice of the Hancock Town Court since November 1, 1984.

2. On or about September 30, 2002, respondent was indicted for knowingly engaging in sexual relations between January 31, 2001, and March 27, 2002, with a mentally retarded woman who had been entrusted to his care.

3. On November 12, 2002, respondent was convicted of Endangering The Welfare Of A Mentally Retarded Person, in violation of Section 260.25 of the Penal Law, a crime that involves moral turpitude.

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. Charge I of the Formal Written Complaint is sustained.

The New York State Constitution provides that upon conviction of a crime involving moral turpitude, a judge shall be removed from office. NY Const Art 6 §22(f); Jud Law §44, subd 8(b). By law, respondent's conviction of Endangering The Welfare Of A Mentally Retarded Person (Penal Law §260.25), a crime that involved moral turpitude, warrants his removal.

Respondent's conduct, as established in the criminal matter resulting in his conviction[12], amply demonstrates his lack of fitness for judicial office. Such behavior is intolerable in one who holds a position of public trust and irreparably damages respondent's ability to serve as a judge. *See Matter of Stiggins*, 2001 Ann Rep 123 (Commn on Jud Conduct, Aug 18, 2000) (judge was convicted of Penal Law §260.25 and §120.00 [Assault Third Degree] in connection with her conduct towards a patient in a nursing facility).

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

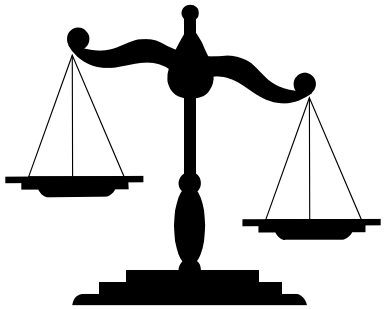
By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office.

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Ms. Moore, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

Dated: February 3, 2003

[12] Penal Law Section 260.25 states: "A person is guilty of endangering the welfare of an incompetent or physically disabled person when he knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself or herself because of physical disability, mental disease or defect." The crime is a Class A misdemeanor.

Statistical Analysis of Complaints



2004 Annual Report

New York State
Commission on Judicial Conduct

COMPLAINTS PENDING AS OF DECEMBER 31, 2002

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR AFTER PRELIM'RY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING								
NON-JUDGES								
DEMEANOR		11	24	4	4	4	8	55
DELAYS		3	5	1	4	0	0	13
CONFLICT OF INTEREST		2	11	4	1	0	4	22
BIAS		1	2	1	1	0	1	6
CORRUPTION		3	5	0	0	0	3	11
INTOXICATION		1	1	0	0	0	0	2
DISABILITY/QUALIFICATIONS		0	0	0	0	0	0	0
POLITICAL ACTIVITY		4	13	9	0	0	4	30
FINANCES/RECORDS/TRAINING		2	4	2	4	0	1	13
TICKET-FIXING		0	1	0	1	0	0	2
ASSERTION OF INFLUENCE		0	2	1	0	0	3	6
VIOLATION OF RIGHTS		7	11	6	4	1	2	31
MISCELLANEOUS		0	1	0	0	0	0	1
TOTALS		34	80	28	19	5	26	192

*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 2003

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR AFTER PRELIM'RY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	569							569
NON-JUDGES	212							212
DEMEANOR	142	50	16	2	6	1	0	217
DELAYS	45	6	1	1	1	1	0	55
CONFLICT OF INTEREST	15	21	6	1	0	0	0	43
BIAS	96	8	3	0	1	0	0	108
CORRUPTION	20	10	0	0	3	0	0	33
INTOXICATION	4	1	0	0	1	0	0	6
DISABILITY/QUALIFICATIONS	2	0	0	0	0	0	0	2
POLITICAL ACTIVITY	18	12	1	0	0	0	0	31
FINANCES/RECORDS/TRAINING	7	11	1	1	1	0	0	21
TICKET-FIXING	1	1	0	0	0	0	0	2
ASSERTION OF INFLUENCE	7	11	0	0	0	0	0	18
VIOLATION OF RIGHTS	79	45	5	1	2	0	0	132
MISCELLANEOUS	11	3	0	0	0	0	0	14
TOTALS	1228	179	33	6	15	2	0	1463

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ALL COMPLAINTS CONSIDERED IN 2003: 1463 NEW & 192 PENDING FROM 2002

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR AFTER PRELIM'RY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	569							569
NON-JUDGES	212							212
DEMEANOR	142	61	40	6	10	5	8	272
DELAYS	45	9	6	2	5	1	0	68
CONFLICT OF INTEREST	15	23	17	5	1	0	4	65
BIAS	96	9	5	1	2	0	1	114
CORRUPTION	20	13	5	0	3	0	3	44
INTOXICATION	4	2	1	0	1	0	0	8
DISABILITY/QUALIFICATIONS	2	0	0	0	0	0	0	2
POLITICAL ACTIVITY	18	16	14	9	0	0	4	61
FINANCES/RECORDS/TRAINING	7	13	5	3	5	0	1	34
TICKET-FIXING	1	1	1	0	1	0	0	4
ASSERTION OF INFLUENCE	7	11	2	1	0	0	3	24
VIOLATION OF RIGHTS	79	52	16	7	6	1	2	163
MISCELLANEOUS	11	3	1	0	0	0	0	15
TOTALS	1228	213	113	34	34	7	26	1655

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ALL COMPLAINTS CONSIDERED SINCE THE COMMISSION'S INCEPTION IN 1975

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR AFTER PRELIM'RY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	11,698							11,698
NON-JUDGES	3578							3578
DEMEANOR	2589	61	893	261	94	83	199	4120
DELAYS	1094	9	103	55	21	13	17	1312
CONFLICT OF INTEREST	511	23	372	132	45	20	108	1211
BIAS	1623	9	213	48	26	15	25	1959
CORRUPTION	358	13	94	9	34	13	27	548
INTOXICATION	46	2	33	7	9	3	21	121
DISABILITY/QUALIFICATIONS	50	0	31	2	16	10	6	115
POLITICAL ACTIVITY	259	16	216	152	10	18	34	705
FINANCES/RECORDS/TRAINING	214	13	226	155	110	79	90	887
TICKET-FIXING	23	1	73	157	39	61	160	514
ASSERTION OF INFLUENCE	146	11	110	57	10	7	48	389
VIOLATION OF RIGHTS	2235	52	294	145	65	30	53	2874
MISCELLANEOUS	692	3	227	78	26	38	57	1121
TOTALS	25,116	213	2885	1258	505	390	845	31,212

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