

NEW YORK STATE

**COMMISSION ON JUDICIAL
CONDUCT**



**ANNUAL REPORT
2018**

**NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT**



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March 1, 2018

To Governor Andrew M. Cuomo,
Chief Judge Janet DiFiore, 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, 2017.

Respectfully submitted,

A handwritten signature in blue ink, reading "Robert H. Tembeckjian".

Robert H. Tembeckjian, Administrator
On Behalf of the Commission

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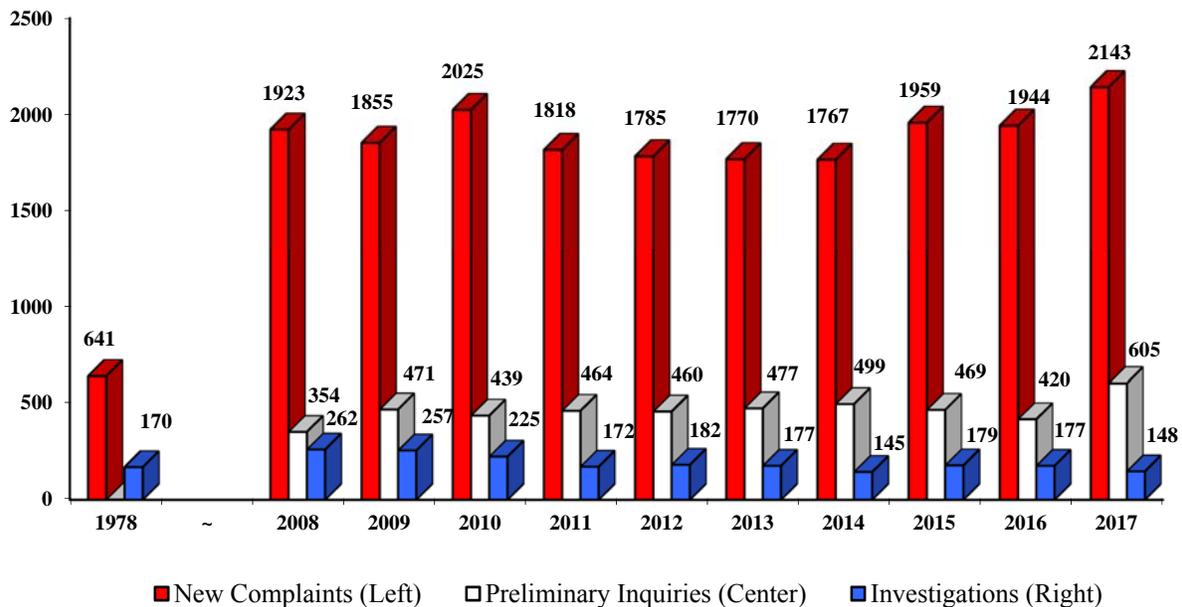
INTRODUCTION TO THE 2018 ANNUAL REPORT

The New York State Commission on Judicial Conduct is the independent agency designated by the State Constitution to review complaints of misconduct against judges and justices of the State Unified Court System and, where appropriate, render public disciplinary determinations of admonition, censure or removal from office. There are approximately 3,350 judicial positions in the system filled by approximately 3,150 individuals, in that some town or village justices serve in more than one town or village court.

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 should they commit misconduct. The text of the Rules Governing Judicial Conduct, promulgated by the Chief Administrator of the Courts on approval of the Court of Appeals, is annexed.

The number of complaints received annually by the Commission in the past 10 years has substantially increased compared to the first three decades of the Commission’s existence. Since 2007, the Commission has averaged 1,890 new complaints per year, 466 preliminary inquiries and 192 investigations. Last year, 2,143 new complaints were received, the highest total ever. Every complaint was reviewed by investigative and legal staff, and a report was prepared for each complaint. All such complaints and reports were reviewed by the entire Commission, which then voted on which complaints merited opening full scale investigations. As to these new complaints, there were 605 preliminary reviews and inquiries and 148 investigations.

This report covers Commission activity in the year 2017.



COMPLAINTS, INQUIRIES & INVESTIGATIONS IN THE LAST TEN YEARS

ACTION TAKEN IN 2017

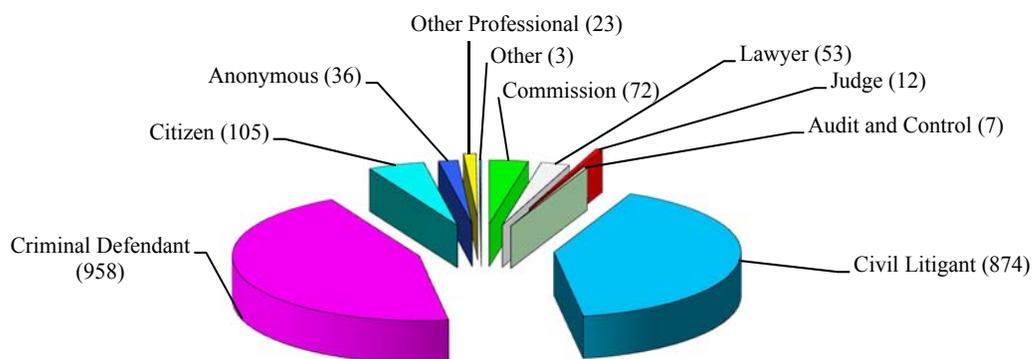
Following are summaries of the Commission's actions in 2017, including accounts of all public determinations, summaries of non-public dispositions, and various numerical breakdowns of complaints, investigations and other dispositions.

COMPLAINTS RECEIVED

The Commission received 2,143 new complaints in 2017. All complaints are summarized and analyzed by staff and reviewed by the Commission, which votes whether to investigate.

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 non-judges, federal judges, administrative law judges, judicial hearing officers, referees 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 intervene in a pending case, or reverse or remand trial court decisions.

A breakdown of the sources of complaints received by the Commission in 2017 appears in the following chart.



COMPLAINT SOURCES IN 2017

PRELIMINARY INQUIRIES AND INVESTIGATIONS

The Commission's Operating Procedures and Rules authorize "preliminary analysis and clarification" and "preliminary fact-finding activities" by staff upon receipt of new complaints, to aid the Commission in determining whether an investigation is warranted. In 2017, staff conducted 605 such preliminary inquiries, requiring such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts.

In 148 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.

During 2017, in addition to the 148 new investigations, there were 177 investigations pending from the previous year. The Commission disposed of the combined total of 325 investigations as follows:

- 80 complaints were dismissed outright.
- 30 complaints involving 27 different judges were dismissed with letters of dismissal and caution.
- 25 complaints involving 15 different judges were closed upon the judge's resignation, four becoming public by stipulation and 11 that were not public.
- Four complaints involving four different judges were closed upon vacancy of office due to reasons other than resignation, such as the expiration of the judge's term.
- 31 complaints involving 17 different judges resulted in formal charges being authorized.
- 155 investigations were pending as of December 31, 2017.

FORMAL WRITTEN COMPLAINTS

As of January 1, 2017, there were pending Formal Written Complaints in 16 matters involving nine judges. In 2017, Formal Written Complaints were authorized in 31 additional matters involving 17 judges. Of the combined total of 47 matters involving 26 different judges, the Commission acted as follows:

- 18 matters involving eight different judges resulted in formal discipline (admonition, censure or removal).
- One matter involving one judge resulted in a letter of caution after formal disciplinary proceedings that resulted in a finding of misconduct.
- Eight matters involving five different judges were closed upon the judge's resignation from office, four of which became public by stipulation.
- Two matters involving two judges were closed upon vacancy of office due to reasons other than resignation, such as the expiration of the judge's term.
- 18 matters involving 10 different judges were pending as of December 31, 2017.

SUMMARY OF ALL 2017 DISPOSITIONS

The Commission's investigations, hearings and dispositions in the past year involved judges of various courts, as indicated in the following ten tables.

TABLE 1: TOWN & VILLAGE JUSTICES – 1,848,* ALL PART-TIME

	<i>Lawyers</i>	<i>Non-Lawyers</i>	<i>Total</i>
Complaints Received	118	162	280
Complaints Investigated	35	48	83
Judges Cautioned After Investigation	8	13	21
Formal Written Complaints Authorized	3	8	11
Judges Cautioned After Formal Complaint	0	1	1
Judges Publicly Disciplined	1	5	6
Judges Vacating Office by Public Stipulation	1	6	7
Formal Complaints Dismissed or Closed	0	2	2

NOTE: Approximately 712 town and village justices are lawyers.

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

TABLE 2: CITY COURT JUDGES – 351, ALL LAWYERS

	<i>Part-Time</i>	<i>Full-Time</i>	<i>Total</i>
Complaints Received	23	355	378
Complaints Investigated	1	29	30
Judges Cautioned After Investigation	0	1	1
Formal Written Complaints Authorized	0	2	2
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	0	0	0
Judges Vacating Office by Public Stipulation	0	0	0
Formal Complaints Dismissed or Closed	0	0	0

NOTE: Approximately 51 City Court Judges serve part-time.

TABLE 3: COUNTY COURT JUDGES – 96, FULL-TIME, ALL LAWYERS*

Complaints Received	259
Complaints Investigated	4
Judges Cautioned After Investigation	3
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

* Includes six who also serve as Surrogates, six who also serve as Family Court Judges, and 39 who also serve as both Surrogates and Family Court Judges.

TABLE 4: FAMILY COURT JUDGES – 127, FULL-TIME, ALL LAWYERS

Complaints Received	266
Complaints Investigated	10
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 5: SURROGATES – 30, FULL-TIME, ALL LAWYERS*

Complaints Received	39
Complaints Investigated	0
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

*Many Surrogates also serve concurrently as Judges of the County and/or Family Court

TABLE 6: DISTRICT COURT JUDGES – 49, FULL-TIME, ALL LAWYERS

Complaints Received	28
Complaints Investigated	2
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 7: COURT OF CLAIMS JUDGES – 51, FULL-TIME, ALL LAWYERS

Complaints Received	83
Complaints Investigated	2
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 8: SUPREME COURT JUSTICES – 462, FULL-TIME, ALL LAWYERS*

Complaints Received	344
Complaints Investigated	16
Judges Cautioned After Investigation	2
Formal Written Complaints Authorized	3
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	2
Judges Vacating Office by Public Stipulation	1
Formal Complaints Dismissed or Closed	0

* Includes 12 who serve as Justices of the Appellate Term.

**TABLE 9: COURT OF APPEALS JUDGES – 7, FULL-TIME, ALL LAWYERS;
APPELLATE DIVISION JUSTICES – 71, FULL-TIME, ALL LAWYERS**

Complaints Received	73
Complaints Investigated	1
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

**TABLE 10: NON-JUDGES AND OTHERS NOT WITHIN THE COMMISSION’S
JURISDICTION***

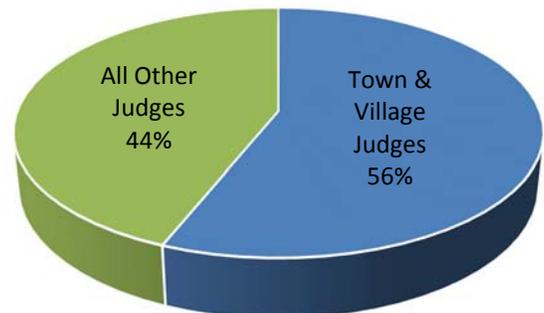
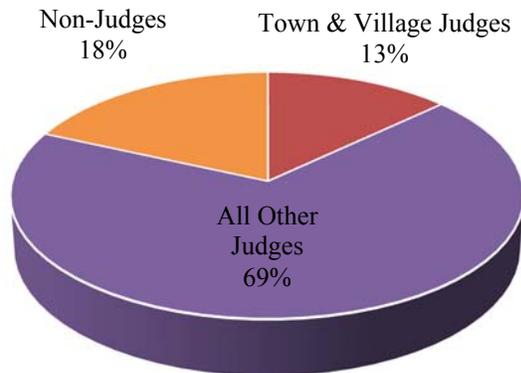
Complaints Received	393
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* The Commission reviews such complaints to determine whether to refer them to other agencies.

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, 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.

SUMMARY OF TABLES 1-10



COMPLAINTS RECEIVED BY JUDGE TYPE

**INVESTIGATIONS AUTHORIZED
TOWN & VILLAGE JUDGES v ALL OTHER JUDGES**

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.

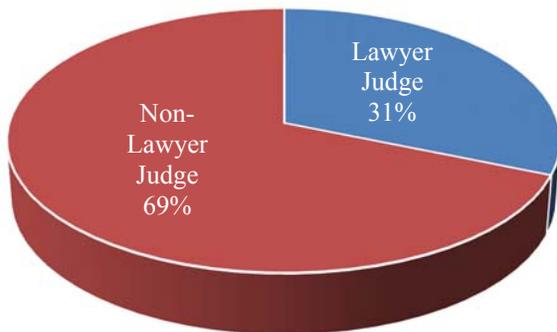
The confidentiality provision of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibits public disclosure by the Commission of the charges, hearings or related matters, absent a waiver by the judge, until the case has been concluded and a determination of admonition, censure, removal or retirement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

Following are summaries of those matters that were completed and made public during 2017. The actual texts are appended to this Report in Appendix F.

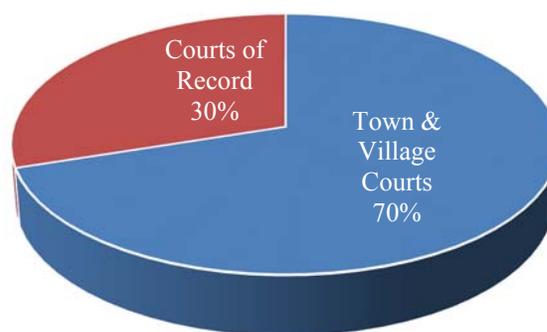
OVERVIEW OF 2017 DETERMINATIONS

The Commission rendered eight formal disciplinary determinations in 2017: one removal, five censures and two admonitions. In addition, eight matters were disposed of by stipulation made public by agreement of the parties (four such stipulations were negotiated during the investigative stage, and four after a Formal Written Complaint had been served). Eleven of the 16 judges were non-lawyer judges and five were lawyers. Thirteen of the 16 judges were town or village justices and three were judges of higher courts.

To put these numbers and percentages in some context, it should be noted that, of the roughly 3,150 judges in the state unified court system, approximately 60% are part-time town or village justices. About 61% of the town and village justices, *i.e.* 36% of all judges in the court system, are not lawyers. (Town and village justices serve part-time and need not be lawyers. Judges of all other courts must be lawyers.)



2017 DISPOSITIONS



1978-2017 DISPOSITIONS

DETERMINATION OF REMOVAL

The Commission completed one formal proceeding in 2017 that resulted in a determination of removal. The case is summarized below and the full text can be found in Appendix F.

Matter of J. Marshall Ayres

On May 4, 2017, the Commission determined that J. Marshall Ayres, a Justice of the Conklin Town Court, Broome County, should be removed from office for lending the prestige of his judicial office to get his daughter's traffic ticket dismissed and for trying to influence a County Court Judge to uphold restitution orders he had issued in a separate, unrelated case. In 2015, after learning that his adult daughter had been issued a traffic ticket for using a cell phone while driving, Judge Ayres made two back-channel attempts to have the case transferred to a different judge because he believed the assigned judge could not handle the case fairly. When those attempts failed, Judge Ayres, who is not an attorney, attended a pre-trial conference with his daughter and acted as her advocate, attempted to intimidate the prosecutor and invoked his judicial position while arguing that the ticket should be dismissed. In its determination, the Commission stated that Judge Ayres violated ethical standards when he intervened in his daughter's case and that "viewed in their totality," the judge's actions, "coupled with [his] continuing insistence that his actions were appropriate, 'demonstrate[] an unacceptable degree of insensitivity to the demands of judicial ethics.'" The Commission also found that, in a case unrelated to his daughter, Judge Ayres sent eight unauthorized letters – five of which were *ex parte* – to the County Court Judge who was handling the appeal of restitution orders Judge Ayres had issued. Judge Ayres requested review by the Court of Appeals, which accepted the Commission's determination of removal (*see* page 17 for a summary of the Court of Appeals' decision).

DETERMINATIONS OF CENSURE

The Commission completed five formal proceedings in 2017 that resulted in public censure. The cases are summarized below and the full text can be found in Appendix F.

Matter of Michael R. Clark

On March 13, 2017, the Commission determined that Michael R. Clark, a Justice of the Hastings Town Court, Oswego County, should be censured for *inter alia* (1) dismissing or reducing charges without notice or consent of the prosecution; (2) failing to provide a defendant with the opportunity to be heard regarding bail and increasing bail in an improper manner; (3) imposing conditions of release on a defendant that were without basis in law; (4) making improper comments about a defendant's physical appearance, denigrating him for wearing a nose ring and ear gauges; and (5) at an arraignment, failing to advise a defendant of the right to counsel, asking incriminatory questions, and imposing improper conditions for permitting the defendant to negotiate a plea. In determining the appropriate sanction, the Commission noted that the judge's comments and directions to defendants "while improper, were well-intentioned, that he believed he was acting in the interests of justice and that his errors of law were isolated and unintentional." Judge Clark, who is not an attorney, did not request review by the Court of Appeals.

Matter of James J. Piampiano

On March 13, 2017, the Commission determined that James J. Piampiano, a Justice of the Supreme Court, Monroe County, should be censured for making public comments on a pending case, and for threatening to handcuff and jail a prosecutor for attempting to address him when he granted a defense motion to dismiss a murder charge. In 2015, while presiding in County Court over the trial in *People v Charles J. Tan*, Judge Piampiano gave three separate media interviews during which he made prohibited public comments about the case. In its determination the Commission stated: “Although [Judge Piampiano’s] comments indicate[d] that he was aware of the ethical prohibition (at one point he stated, ‘I’m not at liberty to discuss the prosecutor’s remarks or this case in particular’)...he granted three one-on-one media interviews in which he proceeded to discuss the case at length.” The Commission noted that it was also improper during a post-trial proceeding to threaten to have the prosecutor placed in handcuffs and put in jail when the attorney asked to speak as Judge Piampiano was announcing his decision on the defense motion to dismiss. The Commission called the judge’s language a “substantial overreaction to the attorney’s conduct.” Judge Piampiano did not request review by the Court of Appeals.

Matter of Daniel P. Sullivan

On March 13, 2017, the Commission determined that Daniel P. Sullivan, a Justice of the Whitestown Town Court, Oneida County, should be censured for using his judicial title on behalf of a defendant appearing before another judge on a traffic charge. In 2015, Judge Sullivan “notarized” and added his judicial title to a letter to the judge of another court, concerning a traffic ticket issued to the son of the judge’s acquaintance. Judge Sullivan is not a notary. The Commission stated that “By signing his name and judicial title beneath a defendant’s signature on a letter to the Oxford Village Court, [Judge Sullivan] added his judicial clout and imprimatur to the defendant’s request to change his plea, from not guilty to guilty.” The Commission noted that witnessing the signature on the letter to another court would have been improper regardless of whether or not the judge was a notary, but the Commission concluded that the judge witnessed the letter only because he mistakenly thought he was empowered to do so, and was not “intentionally asserting his judicial status to advance the defendant’s interests.” Judge Sullivan, who is not an attorney, did not request review by the Court of Appeals.

Matter of James A. Aluzzi

On June 26, 2017, the Commission determined that James A. Aluzzi, a Justice of the Volney Town Court, Oswego County, should be censured for trying to fix a tinted windows ticket for a local businessman in 2015. Judge Aluzzi took the ticket to the court where the case was pending and told the court clerk to give it to the judge handling the case and “have him dismiss it for me.” The clerk reluctantly took the ticket because the request was from a judge. Three days later, Judge Aluzzi returned to the court to ensure the ticket did not get “lost in the shuffle.” The judge did not stop his efforts to fix the ticket until the clerk referred him to a supervising judge. The ticket was subsequently dismissed on motion of the District Attorney for having been improperly issued. In its determination, the Commission stated: “It is undisputed that [Judge Aluzzi] used the prestige of his judicial office in an attempt to obtain special consideration for an acquaintance who had received a traffic ticket.” In determining the appropriate sanction the Commission considered the judge’s remorse, his otherwise unblemished record as a judge and his testimony that he “wasn’t

thinking clearly” at the time since his mother had recently died. The Commission stated that “ticket-fixing will not be tolerated and that any such conduct will be condemned with strong measures, including, in appropriate circumstances in the future, the sanction of removal.” Judge Aluzzi, who is not an attorney, did not request review by the Court of Appeals.

Matter of Joan M. Kline

On December 26, 2017, the Commission determined that Joan M. Kline, a Justice of the Guilford Town Court and the Oxford Town and Village Courts, Chenango County, should be censured. The Commission found that over a two-year period Judge Kline (1) failed to properly inform two defendants of their right to counsel, and denied another defendant’s request for an adjournment so she could meet with her attorney; (2) failed to properly inform a defendant of the charges and did not provide the defendant a copy of the charges as required by law, then asked questions that conveyed an appearance of prejudgment and elicited incriminatory responses; (3) made injudicious statements in several other cases conveying the appearance that she had prejudged the matters at hand or would decide future cases not on the merits but on the basis of her annoyance with the defendants; (4) disposed of court records before the mandatory retention period had ended; and (5) held two positions that were incompatible with judicial office when (A) she served simultaneously as both the court clerk and the Acting Village Justice of the Oxford Village Court and (B) she was as a member of the local fire police squad. The Commission found that the totality of Judge Kline’s misconduct was “a significant departure from the high standards of conduct required of every judge and reflects adversely on the judiciary as a whole,” though it was not “truly egregious,” which could have warranted removal from office. Judge Kline, who is not an attorney, did not request review by the Court of Appeals.

DETERMINATIONS OF ADMONITION

The Commission completed two proceedings in 2017 that resulted in public admonition. The cases are summarized as follows and the full texts can be found in Appendix F.

Matter of Leticia M. Ramirez

On May 4, 2017, the Commission determined that Leticia M. Ramirez, a Judge of the Civil Court of the City of New York and an Acting Justice of the Supreme Court, 1st Judicial District, New York County, should be admonished for improperly invoking her judicial position in communications with other courts in two unrelated cases, seeking favorable results for a friend and for her own son. In 2013, Judge Ramirez invoked her judicial title on behalf of her childhood babysitter, in a letter that was filed in another court in connection with an application to vacate a nine-year old misdemeanor conviction. Then in the fall of 2014, Judge Ramirez invoked her judicial office in affirmations that she wrote on behalf of her son’s pro se petition for a writ of habeas corpus in connection with his conviction on a felony charge. In its determination the Commission stated: “When a litigant is the beneficiary of influential support from a judge based on personal connections, it creates two systems of justice, one for the average person and one for those with ‘right’ connections, and undermines public confidence in the impartial administration of justice and in the integrity of the judiciary as a whole.” Judge Ramirez did not request review by the Court of Appeals.

Matter of James P. Curran

On November 14, 2017, the Commission determined that James P. Curran, a Justice of the Hebron Town Court, Washington County, should be admonished for improperly receiving information outside of court about an assault case, and conveying the appearance that he relied on the information to the defendant's detriment. In 2015, a few months after arraigning a defendant on assault charges and issuing an order of protection, Judge Curran received unsolicited, unsubstantiated information outside court from two individuals claiming that the defendant had violated the order of protection. The judge failed to disclose the communications to the prosecutor and defense counsel. In its determination the Commission stated: "[Judge Curran] was obligated to disclose these out-of-court communications... and to provide the defendant with an opportunity to rebut the information in court." Judge Curran compounded the misconduct when he repeatedly reiterated the unsubstantiated information as fact, including a claim that the defendant had repeatedly violated the order of protection, notwithstanding that he had not been charged with such a violation. Judge Curran, who is an attorney, did not request review by the Court of Appeals.

OTHER PUBLIC DISPOSITIONS

The Commission completed eight other proceedings in 2017 that resulted in public dispositions. The cases are summarized below and the full text can be found in Appendix F. Four of the matters were concluded during the investigative stage, and four after formal proceedings had been commenced.

Matter of Walter C. Purtell

On March 15, 2017, pursuant to a stipulation, the Commission discontinued a proceeding involving Walter C. Purtell, a Justice of the York Town Court, Livingston County, who resigned from office after being served with a Formal Written Complaint alleging, *inter alia*, that he made injudicious comments, dismissed charges without notice to prosecutors and failed to effectuate the right to counsel at certain arraignments. The judge was also apprised by the Commission in January 2017 that it was investigating a separate complaint regarding his conduct handling a recent arraignment. Judge Purtell, who is not attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Jacques Michel

On June 14, 2017, pursuant to a stipulation, the Commission discontinued a proceeding involving Jacques Michel, a Justice of the Spring Valley Village Court, Rockland County, who resigned from office after being served with a Formal Written Complaint alleging that he did not meet the legal qualifications to serve as a Village Justice as a result of a 1978 federal felony conviction. Judge Michel, who is not an attorney, affirmed that he would neither seek nor accept judicial office at any time in the future, unless his felony conviction was vacated by a final order of a court of the United States.

Matter of Linda J. Drake

On June 16, 2017, pursuant to a stipulation, the Commission discontinued a proceeding involving Linda J. Drake, a Justice of the Rossie Town Court, St. Lawrence County, who resigned from office after being served with a Formal Written Complaint which alleged that she: (1) failed to properly deposit court funds into her court bank account which resulted in a cumulative deficiency of deposits totaling \$3,047.50; (2) deposited \$448 in court funds into the court's bank account and received a \$100 cash withdrawal from those funds in violation of town law, and failed to report or remit the \$100 in funds on her monthly report to the Office of the State Comptroller Justice Court Fund; (3) failed to file timely reports to the Justice Court Fund from May 2012 through September 2016; and (4) from January 2012 through August 2016, failed to report the dispositions in 615 cases to the Department of Motor Vehicles as required by law. Judge Drake, who is not an attorney, agreed that she would neither seek nor accept judicial office at any time in the future.

Matter of Daniel J. McCullough

On June 16, 2017, pursuant to a stipulation, the Commission discontinued a proceeding involving Daniel J. McCullough, a Judge of the Court of Claims and an Acting Justice of the Supreme Court, 1st Judicial District, New York County, who retired from office after being served with a Formal Written Complaint which alleged: (1) that since April 2014 the judge persistently failed to perform his judicial duties and (2) that the judge should be retired from judicial office because a physical disability prevented him from properly performing his judicial duties. Judge McCullough agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Gary M. Poole

On June 16, 2017, pursuant to a stipulation, the Commission closed its investigation of complaints against Gary M. Poole, a Justice of the Rose Town Court, Wayne County, who resigned from office after being apprised by the Commission that it was investigating complaints alleging that he engaged in repeated, undignified and discourteous conduct toward a woman with whom he had been involved romantically. Among other things, the judge was alleged to have yelled demeaning and derogatory things about her and her new boyfriend in public, spuriously threatened her with prosecution, demanded the return of certain personal property and threatened to encourage her ex-husband to commence a custody battle over her children if she did not return such property. Judge Poole, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of James D. LaPiana

On August 7, 2017, pursuant to a stipulation, the Commission closed its investigation of complaints against James D. LaPiana, a Justice of the Mount Morris Town and Village Courts, Livingston County, who resigned from office after being apprised by the Commission that it was investigating complaints alleging that over a two-year period beginning in May 2015, Judge LaPiana: (1) failed to follow the law when he engaged in extensive *ex parte* communications with a defendant at arraignment concerning the facts of the case and subsequently presided over a non-jury trial in the matter; (2) failed to follow the law when he directed a defendant to enter a local

business to pay restitution, in violation of an order of protection; and, (3) repeatedly exhibited discourtesy and other inappropriate demeanor, such as directing an officer to procure duct tape and thereafter repeatedly threatening to tape shut a defendant's mouth. Judge LaPiana, who is an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Roger C. Maclaughlin

On October 30, 2017, pursuant to a stipulation, the Commission closed its investigation of a complaint against Roger C. Maclaughlin, a Justice of the Steuben Town Court, Oneida County, who resigned from office after being apprised by the Commission that it was investigating a complaint that he dismissed a misdemeanor charge of driving while intoxicated, on his own motion, after conducting an *ex parte* investigation of the matter, and that in five additional matters he appeared to have engaged in *ex parte* communications and/or dismissed matters without a statutory basis. Judge Maclaughlin, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Christopher C. Clarkin

On December 8, 2017, pursuant to a stipulation, the Commission closed its investigation of a complaint against Christopher C. Clarkin, a Justice of the Floyd Town Court, the Oriskany Village Court and the Whitesboro Village Court, Oneida County, who resigned from office after being apprised by the Commission that it was investigating a complaint that he (1) made public comments on Facebook criticizing public officials and a New York State gun regulation law, and (2) conveyed bias in favor of law enforcement and against a political organization, a social activist group and members of a religious group. Judge Clarkin, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

OTHER DISMISSED OR CLOSED FORMAL WRITTEN COMPLAINTS

The Commission disposed of two Formal Written Complaints in 2017 without rendering public dispositions. The complaints were closed upon vacancy of the judges' office due to reasons other than resignation, such as the expiration of the judge's term.

MATTERS CLOSED UPON RESIGNATION

In 2017, 19 judges resigned while complaints against them were pending before the Commission, and the matters pertaining to those judges were closed. Five of those judges resigned while under formal charges by the Commission, four of those pursuant to public stipulation. Fourteen judges resigned while under investigation, four of those pursuant to public stipulation. 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 other 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 2017, the Commission referred 32 matters to other agencies; in some cases a matter was referred to multiple agencies. Twenty-nine matters were referred to the Office of Court Administration, typically dealing with relatively isolated instances of delay, poor record-keeping or other administrative issues. Two matters were referred to law enforcement, one matter was referred to the Attorney General, two matters were referred to the Office of the State Comptroller, and one matter was referred to an attorney grievance committee.

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 with a finding that the judge's misconduct, albeit minor, is established.

Cautionary letters are authorized by the Commission's Rules, 22 NYCRR 7000.1(1) and (m). They serve as an educational tool and, when warranted, allow the Commission to address a judge's conduct without making the matter public.

In 2017, the Commission issued 28 Letters of Dismissal and Caution and one Letter of Caution. Twenty-one town or village justices were cautioned, including eight who are lawyers. Six judges of higher courts – all lawyers, as required by law – were cautioned. Two judges received two such cautions in 2017. The caution letters addressed various types of conduct as indicated below.

Assertion of Influence. One judge was cautioned for lending the prestige of judicial office to advance the private interests of his law firm by linking his law firm website to a personal website detailing his judicial position.

Audit and Control. Five judges were cautioned for failing to properly supervise court clerks, which resulted in misappropriated court funds.

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. Three judges were cautioned for various isolated or promptly redressed conflicts of interest. One judge failed to disclose that a complaining witness was a judge who reviews his cases. Another judge failed to recuse himself from a matter after personally witnessing the alleged violation. A third judge failed to immediately recuse himself from a case despite the fact that he had a personal relationship with the complaining witness.

Inappropriate Demeanor. The Rules require every judge to be patient, dignified and courteous to litigants, attorneys and others with whom the judge deals in an official capacity. One judge was cautioned for making inappropriate comments to a litigant appearing before her. Another judge was cautioned for making public statements about criminal matters pending in his court. A part-time lawyer judge was cautioned for filing frivolous lawsuits in his capacity as an attorney. A fourth judge was cautioned for making inappropriate social media comments on Facebook.

Improper *Ex Parte* Communications. Three judges were cautioned for engaging in isolated and relatively minor instances of unauthorized out-of-court communications with parties in pending cases.

Financial Disclosure. Three judges were cautioned for failing to file a financial disclosure statement with the Ethics Commission for the Unified Court System in a timely manner. Section 211(4) of the Judiciary Law and Section 40.2 of the Rules of the Chief Judge require judges to file an annual financial disclosure statement by May 15th of each succeeding year.

Miscellaneous. One judge was cautioned for beginning court proceedings with a prayer from the bench.

Political Activity. The Rules Governing Judicial Conduct prohibit judges from publicly endorsing or publicly opposing (other than by running against) another candidate for public office and from participating in any political campaign for any office other than their own. The Rules also require a judge to conduct all extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge. One judge was cautioned for circulating nominating petitions for someone other than himself and for participating in town board budget sessions on matters not involving court operations.

Violation of Rights. The Rules require that a judge respect, comply with, be faithful to and maintain professional competence in the law. Sections 100.2(A), 100.3(B)(1). Four judges were cautioned for relatively isolated incidents of violating or not protecting the rights of parties appearing before them. Two judges were cautioned for uniformly setting bail in cases where defendants' licenses were suspended in vehicle and traffic cases for failure to appear, without affording them an opportunity to be heard. Another judge was cautioned for re-sentencing a defendant to jail in the absence of his attorney. A fourth judge was cautioned for improperly holding a defendant in contempt of court.

Follow Up on Caution Letters. Should the conduct addressed by a cautionary letter continue or be repeated, the Commission may authorize an investigation of a new complaint, which may lead to formal charges and further disciplinary proceedings. In certain instances, the Commission will authorize a follow-up review of the judge's conduct to assure that promised remedial action was indeed taken. In 1999, the Court of Appeals, in upholding the removal of a 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 DETERMINATION REVIEWED BY THE COURT OF APPEALS

Pursuant to statute, a respondent-judge has 30 days to request review of a Commission determination by the Court of Appeals, or the determination becomes final. In 2017, the Court of Appeals upheld the Commission's determination of removal in one case.

Matter of J. Marshall Ayres

On May 4, 2017, the Commission determined that J. Marshall Ayres, a Justice of the Conklin Town Court in Broome County, should be removed from judicial office for (1) repeatedly using his judicial status in an attempt to influence the disposition of a traffic ticket issued to his adult daughter, and being discourteous and condescending to the prosecutor in the process, and (2) when two of his decisions were appealed to County Court, abandoning his role as a neutral arbiter and becoming an advocate in *ex parte* letters he wrote to the County Court judge.

On May 23, 2017, Judge Ayres filed a request for review with the Court of Appeals, asking the Court to reject the Commission's determination that he be removed from office. In his brief to the Court, Judge Ayres argued, *inter alia*, that he was acting as a parent, not a judge, when he attempted to intervene in the disposition of his daughter's traffic ticket and that he spoke to the prosecutor authoritatively, but not improperly. With respect to his actions in connection with appeals of his decisions, the judge argued that it was his duty to point out the shortcomings in the appellant's case, but he conceded that the tone of his letters to the County Court judge was at times "snarky."

In a decision dated October 17, 2017, the Court of Appeals accepted the Commission's determination that Judge Ayres should be removed from office, holding that

it was improper and a violation of petitioner's ethical duty for him to use his judicial position to interfere in the disposition of his daughter's traffic ticket. It was further improper for petitioner to tell the prosecutor that in his opinion and that of his colleagues the matter should be dismissed. By these actions petitioner did more than act as would any concerned parent, as he now maintains. Instead, he used his status to gain access to court personnel under circumstances not available to the general public, and, in his effort to persuade the prosecutor to drop the matter, gave his unsolicited judicial opinion. Furthermore, petitioner's imperious and discourteous manner towards the prosecutor on the case undermined "the integrity . . . of the judiciary."

The Court went on to find that Judge Ayres's conduct with respect to the appeals of two of his decisions, including his several *ex parte* communications, "were also highly improper." The Court further observed that the judge's misconduct was "compounded by his failure to recognize these breaches of our ethical standards and the public trust." *Matter of Ayres*, 30 NY3d 59, 64-65 (2017) (citations omitted).

OBSERVATIONS AND RECOMMENDATIONS

The Commission traditionally devotes a section of its Annual Report to a discussion of topics of special note that have come to its attention in the course of considering complaints. It does so for public education purposes, to advise the judiciary as to potential misconduct that may be avoided, and pursuant to its statutory authority to make administrative and legislative recommendations.

THE ASSERTION OF INFLUENCE

The Rules Governing Judicial Conduct prohibit judges from lending the prestige of their office to advance the private interests of others and from otherwise allowing personal relationships to influence their judicial conduct and judgment. 22 NYCRR 100.2. It is a fundamental principle of the American system of justice that judicial office is a high public trust which may not be traded upon for private gain. This subject is a focal point of virtually every presentation made by representatives of the Commission at judicial ethics and education programs organized for judges and judicial associations around the state. Nevertheless, a significant number of judges have been disciplined in recent years for engaging in such behavior and violating that trust. In the last 20 years, approximately 50 judges have been disciplined in whole or in part for inappropriately asserting the influence of judicial office to benefit themselves or to benefit or harm others.

Most recently, in *Matter of Ayres*, 30 NY3d 59 (2017), the Court of Appeals upheld the removal of a town justice who attempted (1) to obtain a favorable disposition from another judge and then from a prosecutor as to a traffic ticket issued to his daughter and (2) to influence an appellate judge on a pending matter by repeatedly communicating with the appellate judge, *ex parte*, on the merits of the case. The Court noted: “When a judge intervenes in another judge’s courtroom, it compromises the court system as a whole. Thus, ‘as a general rule, intervention in a proceeding in another court should result in removal.’” *Id* at 64.

Also in 2017, the Commission admonished an Acting Supreme Court Justice for twice invoking her judicial office in communications with other courts on behalf of litigants who had pending applications in those courts. *See Matter of Ramirez* in this annual report.

Any communication by a judge seeking some benefit or advantage on behalf of a friend, relative, former client or anyone else may constitute an improper request for special consideration and should assiduously be avoided. In *Matter of Smith*, an appellate judge was admonished for sending an unsolicited letter to the parole board in support of an inmate’s application for release, notwithstanding her limited knowledge of the case and her having played no role in the prior adjudication of it. 2014 Annual Report 208. In *Matter of Dixon*, a city court judge was censured for using her position to initiate improper substantive *ex parte* communications with the judge presiding over her own personal injury lawsuit against an insurance company. 2017 Annual Report 100. In *Matter of LaBombard*, a town court justice was removed from office for a variety of misconduct, including identifying himself as a judge after a traffic accident in order to get favorable treatment, and seeking favorable treatment from another judge on behalf of a relative who was a defendant before that judge. 11 NY3d 294 (2008).

A judge’s desire to assist a friend or relative may be understandable, and it may sometimes be difficult to say no when asked for assistance, but as the Court of Appeals said 38 years ago, in the earliest days of the Commission’s existence:

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. *Matter of Lonschein*, 50 NY2d 569, 572 (1980)

In *Lonschein*, a Supreme Court justice was admonished for inquiring of a municipal agency about the reasons for the delay in a friend's application for a business license. The Court of Appeals held that even a simple inquiry by a judge may be improper because of the perception that the judge is implicitly (if not explicitly) asserting the influence of judicial office to obtain some benefit. The request need not be specific for the assertion of influence to be obvious – and avoided. The standard articulated in *Lonschein* is as applicable today as it was in 1980. The Commission urges judges to be sensitive to it and thereby avoid the disciplinary consequences of ignoring it.

A TOWN OR VILLAGE JUSTICE'S FIDUCIARY OBLIGATIONS

Throughout the state, in all but the town and village courts, funds collected by the court are handled by professional administrative personnel or other non-judicial staff. In the town and village courts, however, that responsibility rests with the individual justices.

Money collected by town or village court justices from fines, fees, bail and other sources must by law be deposited promptly into official court bank accounts, recorded promptly in court record books, and reported and remitted promptly to the State Comptroller. While improper financial management and record keeping most often result from honest mistakes, inadvertent oversight or insufficient clerical assistance, they sometimes indicate serious misconduct, either by the judge or by the court staff in whom the judge has reposed significant responsibility to track the court's finances.

The Commission has publicly disciplined approximately 100 town and village justices for significant violations of the various rules regarding the handling of court funds. Approximately 225 other judges have been cautioned for relatively minor violations of the applicable standards, most recently five in 2017 and four in 2016.

When a judge fails to deposit court funds for long periods of time, or deposits less money than he or she had collected since the previous deposit, the suspicion inevitably arises that the money is being used by the judge for personal purposes. Serious misconduct may also be indicated by such financial irregularities as lengthy delays in remitting court funds to the State Comptroller, large deficiencies (or surpluses) in the court account, negligence in failing to safeguard such funds, and failing to keep adequate records of court finances.

“Carelessness in handling public moneys is a serious violation of [the judge's] official responsibilities” and a “breach of the public's trust” which may warrant removal from office. *Matter of Petrie*, 54 NY2d 807, 808 (1981); *see also Matter of Rater*, 69 NY2d 208 (1987); *Matter of Vincent*, 70 NY2d 208 (1987). In *Matter of Cooley*, 53 NY2d 64 (1981), the Court of Appeals also noted that a judge's willful failure to make appropriate entries in court records, such as a docket book and cashbook, is a serious violation of a the judge's administrative responsibilities, and may be punishable as a misdemeanor.

Even where venality is not an issue, negligence sometimes is. The Commission has disciplined town or village justices who kept court funds at home, in such inappropriate places as a shoebox or a freezer. In *Matter of Murphy*, 82 NY2d 491 (1993), a removal case, the judge claimed that he placed court funds in the trunk of his car, forgot about the money, then sold the car; the Court of Appeals stated that whether such conduct resulted from carelessness or calculation, “the mishandling of public money by a judge is serious misconduct even when not done for personal profit.” *Id.* at 494.

In recent years, the Commission has become aware of several jurisdictions in which court clerks were prosecuted and convicted for the theft of court funds. While increased reliance on computers, accounting software, electronic banking and wire transfers has tended to increase the ability to perform audits and reconciliations on the one hand, it has also made it easier for computer-savvy employees to evade oversight by a computer-challenged judge.

The Commission reminds town and village justices that it is *their* responsibility to account for court funds and to certify compliance with applicable financial mandates in reports to the State Comptroller. Where a judge does not perform the financial responsibilities personally, he or she must exercise rigorous oversight of the court staff to whom such responsibilities have been assigned. That means reviewing the work of staff, performing spot checks to correlate the bail or fine assessed in a particular case with the amount actually collected, or periodically initiating an independent audit.

Where court staff have been convicted of theft of court funds, the judge may not be publicly disciplined if he or she had made reasonable efforts at oversight but was deceived by a clerk who cleverly hid the evidence of theft. But where the judge exercised little to no effort at oversight, he or she may be subject to public discipline for the failure to supervise that led to theft, notwithstanding innocence as to the theft itself.

The Commission urges town and village court justices to take their fiduciary responsibilities seriously and, when they need help, to consult with their local Supervising Judge, the court system’s City, Town and Village Court Resource Center, and/or the State Magistrates Association.

THE COMMISSION'S BUDGET

The Commission's budget is submitted to the Legislature as a recommendation by the Governor in the Executive Budget. In 2007, for the first time in a generation, the Legislature significantly increased the Commission's funding over what the Executive recommended. Since 2008, however, the Commission's resources have been relatively flat, while its workload has increased. The average number of complaints in the 10 years since 2008 has been 1,890, compared to an average of 1,469 in the 10 preceding years. In 2017, a record 2,143 were received and considered.

"Flat" funding is regressive. To meet rising expenses (such as rent and mandated salary increases) on the same dollar amount each year, significant cuts have resulted. Our allotment of 55 full-time employees was reduced to 50, with funds now available for only 41½. This reduction in workforce and other economies, such as zero funding for transcription services, lengthens the time it takes to exonerate judges who are innocent of wrongdoing and to discipline those who are guilty.

In order to keep current and prevent even further cuts and delays in deciding matters, the Commission requested a \$541,000 increase for the fiscal year beginning April 1, 2018, while the Executive Budget recommends an increase of \$112,000. The Commission has appealed to the Legislature for additional assistance.

SELECTED BUDGET FIGURES: 1978 TO PRESENT

Fiscal Year	Annual Budget ¹	New Complaints ²	Prelim Inquiries	New Investig'ns	Pending Year End	Public Dispositions	Attorneys on Staff ³	Investig'rs ft/pt	Total Staff
1978	1.6m	641	N.A.	170	324	24	21	18	63
1988	2.2m	1109	N.A.	200	141	14	9	12/2	41
1996	1.7m	1490	492	192	172	15	8	2/2	20
2000	1.9m	1288	451	215	177	13	9	6/1	27
2006	2.8m	1500	375	267	275	14	10	7	28½
2007	4.8m	1711	413	192	238	27	17	10	51
2008	5.3m	1923	354	262	208	21	19	10	49
2009	5.3m	1855	471	257	243	24	18	10	48
2010	5.4m	2025	439	225	226	15	18	10	48
2011	5.4m	1818	464	172	216	14	17	9	49
2012	5.4m	1785	460	182	206	20	19	9	49
2013	5.4m	1770	477	177	201	17	19	9	50
2014	5.5m	1767	499	145	171	12	18	7	47
2015	5.6m	1959	469	179	203	16	19	7	46
2016	5.6m	1944	420	177	193	13	19	7	45
2017	5.6m	2143	605	148	173	16	16½	6	41½
2018	6.2m ⁴	~	~	~	~	~	16½	6	41½

¹ Budget figures are rounded off; budget figures are fiscal year (Apr 1 – Mar 31).

² Complaint figures are calendar year (Jan 1 – Dec 31).

³ Number includes Clerk of the Commission, who does not investigate or litigate cases.

⁴ Proposed by the Commission; the Executive Budget recommends \$5.7 million.

CONCLUSION

Public confidence in the independence, integrity, impartiality and high standards 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 those ideals, 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,

JOSEPH W. BELLUCK, ESQ., *CHAIR*
PAUL B. HARDING, ESQ., *VICE CHAIR*
JOEL COHEN, ESQ.
JODIE CORNGOLD
HON. JOHN A. FALK
TAA GRAYS, ESQ.
HON. LESLIE G. LEACH
HON. ANGELA M. MAZZARELLI
RICHARD A. STOLOFF, ESQ.
HON. DAVID A. WEINSTEIN
AKOSUA GARCIA YEBOAH

APPENDIX A: BIOGRAPHIES OF COMMISSION MEMBERS

There are 11 members of the Commission on Judicial Conduct. Each serves a renewable four-year term. Four members are appointed by the Governor, three by the Chief Judge, and one each by the Speaker of the Assembly, the Minority Leader of the Assembly, the Temporary President of the Senate (Majority Leader) and the Minority Leader of the Senate.

Of the four members appointed by the Governor, one shall be a judge, one shall be a member of the New York State bar but not a judge, and two shall not be members of the bar, judges or retired judges. Of the three members appointed by the Chief Judge, one shall be a justice of the Appellate Division, one shall be a judge of a court other than the Court of Appeals or Appellate Division, and one shall be a justice of a town or village court. None of the four members appointed by the legislative leaders shall be judges or retired judges.

The Commission elects a Chair and a Vice Chair from among its members for renewable two-year terms, and appoints an Administrator who shall be a member of the New York State bar who is not a judge or retired judge. The Administrator appoints and directs the agency staff. The Commission also has a Clerk who plays no role in the investigation or litigation of complaints but assists the Commission in its consideration of formal charges, preparation of determinations and related matters.

Member	Appointing Authority	Year First App'ted	Expiration of Present Term
Joseph W. Belluck	Governor Andrew M. Cuomo	2008	3/31/2020
Paul B. Harding	Assembly Minority Leader Brian M. Kolb	2006	3/31/2021
Joel Cohen	(Former) Assembly Speaker Sheldon Silver	2010	3/31/2018
Jodie Corngold	Governor Andrew M. Cuomo	2013	3/31/2019
John A. Falk	Chief Judge Janet DiFiore	2017	3/31/2021
Taa Grays	Senate Minority Leader Andrea Stewart-Cousins	2017	3/31/2020
Leslie G. Leach	Chief Judge Janet DiFiore	2016	3/31/2020
Angela M. Mazzarelli	Chief Judge Janet DiFiore	2017	3/31/2018
Richard A. Stoloff	(Former) Senate President Pro Tem Dean Skelos	2011	3/31/2019
David A. Weinstein	Governor Andrew M. Cuomo	2012	3/31/2018
Akosua Garcia Yeboah	Governor Andrew M. Cuomo	2016	3/31/2021

Joseph W. Belluck, Esq., *Chair of the Commission*, graduated *magna cum laude* from the SUNY-Buffalo School of Law in 1994, where he served as Articles Editor of the Buffalo Law Review and where he is an adjunct lecturer on mass torts. He is a partner in the Manhattan law firm of Belluck & Fox, LLP, which focuses on asbestos and serious injury litigation. Mr. Belluck previously served as counsel to the New York State Attorney General, representing the State of New York in its litigation against the tobacco industry, as a judicial law clerk for Justice Lloyd Doggett of the Texas Supreme Court, as staff attorney for Public Citizen in Washington, D.C., and as Director of Attorney Services for Trial Lawyers Care, an organization dedicated to providing free legal assistance to victims of the September 11, 2001 terrorist attacks. Mr. Belluck has lectured frequently on asbestos, product liability, tort law and tobacco control policy. He is an active member of several bar associations, including the New York State Trial Lawyers Association and was a recipient of the New York State Bar Association's Legal Ethics Award. He is also a member of the SUNY Board of Trustees and sits on the board of several not-for-profit organizations.

Paul B. Harding, Esq., *Vice Chair of the Commission*, is a graduate of the State University of New York at Oswego and the Albany Law School at Union University. He is the Managing Partner in the law firm of Martin, Harding & Mazzotti, LLP in Albany, New York. He is on the Board of Directors of the New York State Trial Lawyers Association and the Marketing and Client Services Committee for the American Association for Justice. He is also a member of the New York State Bar Association and the Albany County Bar Association. He is currently on the Steering Committee for the Legal Project, which was established by the Capital District Women's Bar Association to provide a variety of free and low cost legal services to the working poor, victims of domestic violence and other underserved individuals in the Capital District of New York State.

Joel Cohen, Esq., is a graduate of Brooklyn College and New York University Law School, where he earned a J.D. and an LL.M. He is Of Counsel at Stroock & Stroock & Lavan LLP in Manhattan, which he joined in 1985. Mr. Cohen previously served as a prosecutor for ten years, first with the New York State Special Prosecutor's Office and then as Assistant Attorney-in-Charge with the US Justice Department's Organized Crime & Racketeering Section in the Eastern District of New York. He is a member of the Federal Bar Council and is an Adjunct Professor of Law teaching Professional Responsibility and a course named "How Judges Decide" at Fordham Law School. He widely lectures on Professional Responsibility. Mr. Cohen is the author of three books dealing with religion -- *Moses: A Memoir* (Paulist Press 2003), *Moses and Jesus: A Conversation* (Dorrance Publishing, 2006) and *David and Bathsheba: Through Nathan's Eyes* (Paulist Press, 2007). He also authored *Truth Be Veiled: A Justin Steele Murder Case* (Coffeetown Press, 2010), a novel on legal ethics and truth, and "Blindfolds Off: How Judges Decide" (ABA Publishing, 2014). Mr. Cohen has authored over 350 articles and columns for the New York Law Journal, Huffington Post and The Hill.

Jodie Corngold graduated from Swarthmore College. She oversees communications for Kolot Chayeinu, a synagogue in Brooklyn, and previously served as Director of Communications for the Berkeley Carroll School, a college preparatory school in Brooklyn. She sits on the Board of the Brooklyn Heights Montessori School, is a marathon runner, and is engaged in a variety of activities associated with her alma mater.

Honorable John A. Falk is a graduate of LeMoyne College and the University of Dayton School of Law. He is a partner with the firm Faraci Lange, LLP, in Rochester, where he focuses on personal injury litigation. He previously served as an Assistant District Attorney in Monroe County prosecuting violent felony offenses. He has served as a Justice of the Brighton Town Court since 2008. Justice Falk is a member of the American Board of Trial Advocates, the American Association for Justice, the New York State Trial Lawyers Association, the New York State Bar Association, the Monroe County Bar Association, the Genesee Valley Trial Lawyers Association, the New York State Magistrates Association, and the Monroe County Magistrates Association. He has been a lecturer for the Monroe County Bar Association and the Monroe Community College Police Academy and is active in the greater Rochester community, having served on such boards as the Western New York Chapter of the American Liver Foundation, the Town of Brighton Planning Board and the Parks and Recreation Citizens' Advisory Committee.

Taa Grays, Esq., is a graduate of Harvard University, *cum laude*, and Georgetown University Law Center. She is Vice President & Associate General Counsel for Information Governance at MetLife, Inc., having served in other senior positions at MetLife since 2003. She previously served as an Assistant District Attorney in the Bronx. Ms. Grays is 1st Judicial District Vice President of the New York State Bar Association, serves on the Board of Directors of the Metropolitan Black Bar Association, where she previously served as president, and is on the New York Law Journal Board of Editors. She has received numerous awards and recognition for her leadership in bar and diversity endeavors.

Honorable Leslie G. Leach is a graduate of Queens College, CUNY, the University of Massachusetts, with an MS in labor studies, and Columbia Law School. He presently serves as an elected Justice of the Supreme Court, Queens County. Justice Leach was appointed to the New York City Criminal Court first by Mayor David N. Dinkins in 1993 and then by Mayor Michael R. Bloomberg. He was an Acting Justice of the Supreme Court from 1995 to 2003. He was then elected as a Justice of the Supreme Court from 2004 to 2007, and served as the Administrative Judge of the Eleventh Judicial District, Queens County. In 2007, Justice Leach left the bench to serve as Andrew M. Cuomo's Executive Deputy Attorney General of the Division of State Counsel and, from 2011-2012, as Governor Cuomo's Appointments Secretary. Thereafter, he taught as Distinguished Lecturer at Queens College until his return to the bench in 2015. Justice Leach began his legal career at the labor law firm Jackson Lewis, and then served as a law clerk in the Criminal Court, Supreme Court, and with the Hon. Fritz W. Alexander II in the Appellate Division, First Department, and the New York State Court of Appeals. Between 1985 and 1993, he was a staff attorney in the Departmental Disciplinary Committee and court attorney in the First Department. He taught as an adjunct at York College, CUNY for some 30 years. Justice Leach was a Director of the Macon B. Allen Black Bar Association, chaired the Association of the Bar of the City of New York's Special Committee to Encourage Judicial Service, and was a member of that bar's Council on Judicial Administration.

Honorable Angela M. Mazzarelli is a graduate of Brandeis University and the Columbia University School of Law, where she was a teaching fellow in property law. She served as a Judge of the New York City Criminal Court from 1985 to 1988, when she was designated as an Acting Supreme Court Justice. She has served as an elected Supreme Court Justice since 1992. She presently serves as a Justice of the Appellate Division, First Department, having been

appointed in 1994. Prior to her judicial career, Justice Mazzarelli served as a Bronx Legal Services lawyer, as a Law Assistant in the Civil Term of the Supreme Court in Manhattan, and later as a Principal Law Clerk to a state Supreme Court Justice. She also was a partner in the law firm Wresien & Mazzarelli, specializing in civil litigation. Justice Mazzarelli is a member of the New York State Commission on Forensic Science and is the Chair of the Executive Committee of the Board of Trustees of the Practising Law Institute. She serves as a member of the Board of Directors of the National Organization of Italian American Women and was a member and co-vice Chair of the *New York Pattern Jury Instructions* Committee for over ten years.

Richard A. Stoloff, Esq., graduated from the CUNY College of the City of New York, and Brooklyn Law School. He maintains a law practice, Richard A. Stoloff PLLC, in Monticello, New York. He also served for 19 years as Town Attorney for the Town of Mamakating. Mr. Stoloff is a past President of the Sullivan County Bar Association and has chaired its Grievance Committee since 1994. He is a member of the New York State Bar Association and has served on its House of Delegates. He is also a member of the American Bar Association and the New York State Trial Lawyers Association.

Honorable David A. Weinstein is a graduate of Wesleyan University and Harvard Law School, where he was Notes Editor for the Harvard Human Rights Journal. He is a Judge of the Court of Claims, having been appointed by Governor Andrew M. Cuomo in 2011 for a term ending in 2018. Judge Weinstein served previously as Assistant Counsel and First Assistant Counsel to Governors Cuomo, David A. Paterson and Eliot L. Spitzer, as a New York State Assistant Attorney General, as an Associate in the law firm of Debevoise & Plimpton, as Law Clerk to United States District Court Judge Charles S. Haight (SDNY) and as *Pro Se* Law Clerk to the United States Court of Appeals for the Second Circuit. He also served as an Adjunct Professor of Legal Writing at New York Law School and has written numerous articles for legal and other publications.

Akosua Garcia Yeboah received her B.A. from the State University of New York at New Paltz and her M.S. in Urban Planning and Environmental Studies from Rensselaer Polytechnic Institute. She is the Senior Information Technology Project Manager for the City of Albany, Office of the Mayor. She previously worked for IBM. Since 2011, Ms. Yeboah has served on the Attorney Grievance Committee of the Appellate Division, Third Department. She also served as a member of the Commission on Statewide Attorney Discipline in 2015. Ms. Yeboah served as a member and secretary of the Albany Citizen's Police Review Board from 2010 to 2015. Previously, she served as a member of the Advisory Board of the Center for Women in Government & Civil Society, and Chair of the Advisory Board of the New York State Office of the Advocate for Persons with Disabilities.

RECENT MEMBERS

Honorable Rolando T. Acosta served on the Commission from 2010 to 2017. He is Presiding Justice of the Appellate Division, First Department, having been appointed to that position by Governor Andrew M. Cuomo in May 2017. Judge Acosta is a graduate of Columbia College and the Columbia University School of Law. A more detailed biography is available on page 28 of the Commission's 2017 Annual Report: <http://cjc.ny.gov/Publications/AnnualReports/nyscjc.2017annualreport.pdf>.

Richard D. Emery, Esq., served on the Commission from 2004 to 2017. He is a graduate of Brown University and Columbia Law School (*cum laude*), where he was a Harlan Fiske Stone Scholar. He is a founding partner of Emery Celli Brinckerhoff & Abady LLP. His practice focuses on commercial litigation, civil rights, election law and litigation challenging governmental actions. A more detailed biography is available on page 29 of the Commission's 2017 Annual Report: <http://cjc.ny.gov/Publications/AnnualReports/nyscjc.2017annualreport.pdf>.

Honorable Thomas A. Klonick served on the Commission from 2005 to 2017. He is a graduate of Lehigh University and the Detroit College of Law, where he was a member of the Law Review. He maintains a law practice in Fairport, New York, with a concentration in the areas of commercial and residential real estate, corporate and business law, criminal law and personal injury. Since 1995 he has served as Town Justice for the Town of Perinton, New York. A more detailed biography is available on page 29 of the Commission's 2017 Annual Report: <http://cjc.ny.gov/Publications/AnnualReports/nyscjc.2017annualreport.pdf>.

APPENDIX B: BIOGRAPHIES OF COMMISSION ATTORNEYS

Cathleen S. Cenci, *Deputy Administrator in Charge of the Commission's Albany office*, is a graduate of Potsdam College (*summa cum laude*) and the Albany Law School of Union University. In 1979, she completed the *Course Superior* at the Institute of Touraine in Tours, France. Ms. Cenci joined the Commission staff in 1985. She has been a judge of the Albany Law School moot court competitions and a member of Albany County Big Brothers/Big Sisters.

Brenda Correa, *Senior Attorney*, is a graduate of the University of Massachusetts at Amherst and Pace University School of Law in New York (*cum laude*). Prior to joining the Commission staff, she served as an Assistant District Attorney in Manhattan and was in private practice in New York and New Jersey focusing on professional liability and toxic torts respectively.

Daniel W. Davis, *Staff Attorney*, is a graduate of New York University (*cum laude*), earned a Masters in Public Administration at NYU and graduated from the Benjamin N. Cardozo School of Law, where he was Articles Editor on the law review and a teaching assistant. Prior to joining the Commission staff, he was Senior Consultant with a business advisory firm.

Kelvin S. Davis, *Staff Attorney*, is a graduate of Yale University and the University of Virginia Law School. Prior to joining the Commission staff, he served as an Assistant Staff Judge Advocate in the United States Air Force and as Judicial Law Clerk to New Jersey Superior Court Judge Eugene H. Austin.

Melissa DiPalo, *Special Counsel*, is a graduate of the University of Richmond and Brooklyn Law School. She previously served as Administrative Counsel and as a Staff Attorney at the Commission. She has also served as an Assistant District Attorney in the Bronx and as a Court Attorney in Kings County Civil Court.

David M. Duguay, *Senior Attorney*, is a graduate of the State University of New York at Buffalo (*summa cum laude*) and the SUNY at Buffalo Law School. Prior to joining the Commission's staff, he was Special Assistant Public Defender and Town Court Supervisor in the Monroe County Public Defender's Office. He served previously as a staff attorney with Legal Services, Inc., of Chambersburg, Pennsylvania.

Mary C. Farrington, *Administrative Counsel*, is a graduate of Barnard College and Rutgers Law School. She previously served as an Assistant District Attorney in Manhattan, most recently as Supervising Appellate Counsel, until April 2011, when she joined the Commission staff. She has also served as Law Clerk to United States District Court Judge Miriam Goldman Cedarbaum, and as an associate in private practice with the law firm of Fried, Frank, Harris, Shriver & Jacobson in Manhattan.

Stephanie A. Fix, *Staff Attorney*, is a graduate of the State University of New York at Brockport and Quinnipiac College School of Law in Connecticut. Prior to joining the Commission staff she was in private practice focusing on civil litigation and professional liability in Manhattan and Rochester. She has served on the Monroe County Bar Association (MCBA) Board of Trustees

and is a member of the MCBA's Professional Performance Committee. She has served on the Bishop Kearney High School Board of Trustees. Ms. Fix received the President's Award for Professionalism from the Monroe County Bar Association in 2004 for her participation with the ABA "Dialogue on Freedom" initiative. She is a member of the New York State Bar Association and Greater Rochester Association of Women Attorneys (GRAWA). Ms. Fix is an adjunct professor at St. John Fisher College.

Alan W. Friedberg, *Special Counsel*, 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 Chief Counsel to the Departmental Disciplinary Committee of the Appellate Division, First Department, as Deputy Administrator in Charge of the Commission's New York City Office, as a Senior Attorney at the Commission, as a staff attorney in the Law Office of the New York City Board of Education, as an adjunct professor of business law at Brooklyn College, and as a junior high school teacher in the New York City public school system.

Thea Hoeth, *Former Senior Attorney*, is a graduate of St. Lawrence University and Albany Law School. After practicing law with Adams & Hoeth in Albany, she served in public sector posts including Executive Director of the New York State Ethics Commission, Special Advisor to the Governor for Management and Productivity, Deputy Director of State Operations, and Executive Director of the New York State Office of Business Permits and Regulatory Assistance. She has lectured and written on public sector ethics and taught legal ethics at The Sage Colleges. She is a former member of the Advisory Committee of Albany Law School's Government Law Center and has extensive not-for-profit management experience.

Mark Levine, *Deputy Administrator in Charge of the Commission's New York office*, is a graduate of the State University of New York at Buffalo and Brooklyn Law School. He previously served as Principal Law Clerk to Acting Supreme Court Justice Jill Konviser and Supreme Court Justice Phylis Skloot Bamberger, as an Assistant Attorney General in New York, as an Assistant District Attorney in Queens, and as law clerk to United States District Court Judge Jacob Mishler. Mr. Levine also practiced law with the law firms of Patterson, Belknap, Webb & Tyler, and Weil, Gotshal & Manges.

Edward Lindner, *Deputy Administrator for Litigation*, is a graduate of the University of Arizona and Cornell Law School, where he was a member of the Board of Editors of the Cornell International Law Journal. Prior to joining the Commission's staff, he was an Assistant Solicitor General in the Division of Appeals & Opinions for the New York State Attorney General. He has been a Board Member and volunteer for various community organizations, including Catholic Charities, The Children's Museum at Saratoga, the Saratoga Springs Public Library and the Saratoga Springs Preservation Foundation.

M. Kathleen Martin, *Senior Attorney*, is a graduate of Mount Holyoke College and Cornell Law School (*cum laude*). Prior to joining the Commission's staff, she was an attorney at the Eastman Kodak Company, where among other things she held positions as Legal Counsel to the Health Group, Director of Intellectual Property Transactions and Director of Corporate

Management Strategy Deployment. She also served as Vice President and Senior Associate Counsel at Chase Manhattan Bank, and in private practice with the firm of Nixon, Hargrave, Devans & Doyle.

S. Peter Pedrotty, *Staff Attorney*, is a graduate of St. Michael's College (*cum laude*) and the Albany Law School of Union University (*magna cum laude*). Prior to joining the Commission staff, he served as an Appellate Court Attorney at the Appellate Division, Third Department, and was engaged in the private practice of law in Saratoga County and with the law firm of Clifford Chance US LLP in Manhattan.

John J. Postel, *Deputy Administrator in Charge of the Commission's Rochester office*, is a graduate of the University of Albany and the Albany Law School of Union University. He joined the Commission staff in 1980. Mr. Postel serves on the Board of Directors of the Association of Judicial Disciplinary Counsel. He 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.

Karen Kozac Reiter, *Chief Administrative Officer*, is a graduate of the University of Pennsylvania and Brooklyn Law School. Prior to re-joining the Commission staff in June 2007, she was an administrator in the nonprofit sector. She previously served as a Staff Attorney at the Commission, as an Assistant District Attorney in New York County, and in private practice as a litigator. She has served as a Vice President of NYSICA, the New York State Internal Controls Association. She has been a Board Member and volunteer for various community organizations including the Larchmont-Mamaroneck Hunger Task Force, the Town of Mamaroneck Selection Committee and Larchmont Temple.

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. Ms. Savanyu has taught in the legal studies program at Hunter College and previously taught legal research and writing at Marymount Manhattan College. Prior to joining the Commission staff, she was a writer and editor.

Roger J. Schwarz, *Former Senior Attorney*, is a graduate of Clark University (Phi Beta Kappa) and the State University of New York at Buffalo Law School (honors), where he served as editor of the Law and Society Review and received the Erie County Trial Lawyers' award for best performance in the law school's trial practice course. For 23 years, Mr. Schwarz practiced law in his own firm in Manhattan, with an emphasis on criminal law and criminal appeals, principally in the federal courts. Mr. Schwarz has also served as an associate attorney for the Criminal Defense Division of the Legal Aid Society in New York City, clerked for Supreme Court Justice David Levy (Bronx County) and was a member of the Commission's staff from 1975-77.

Erica K. Sparkler, *Former Staff Attorney*, is a graduate of Middlebury College (cum laude) and Fordham University School of Law (magna cum laude). Prior to joining the Commission staff, she was an associate in private practice with the law firms of Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer and Gibson, Dunn & Crutcher. She also served as law clerk to United States District Court Judge Peter K. Leisure.

Eteena J. Tadjigoueu, *Staff Attorney*, is a graduate of Boston University and Washington University in St. Louis School of Law, where she served as associate editor of the *Journal of Law & Policy*, and earned a Dean's Service Award for providing seventy-five hours of community service during law school. Prior to joining the Commission, she worked as a communications professional in the non-profit global health sector. She is a member of the Capital District Women's Bar Association.

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 served on the Advisory Committee to the American Bar Association Commission to Evaluate the Model Code of Judicial Conduct from 2003-07. He is on the Board of Directors of the Association of Judicial Disciplinary Counsel and previously served as a Trustee of the Westwood Mutual Funds and the United Nations International School, and on the Board of Directors of the Civic Education Project. Mr. Tembeckjian has served on various ethics and professional responsibility committees of the New York State and New York City Bar Associations, and he has published numerous articles in legal periodicals on judicial ethics and discipline. He was a member of the editorial board of the Justice System Journal, a publication of the National Center for State Courts, from 2007-10.

Pamela Tishman, *Principal Attorney*, is a graduate of Northwestern University and New York University School of Law. She previously served as Senior Investigative Attorney in the Office of the Inspector General at the Metropolitan Transportation Authority. Ms. Tishman also served as an Assistant District Attorney in New York County, in both the Appeals and Trial Bureaus.

APPENDIX C: REFEREES WHO SERVED IN 2017

Referee	City/Town	County
Mark S. Arisohn, Esq.	New York	New York
G. Michael Bellinger, Esq.	New York	New York
Peter Bienstock, Esq.	New York	New York
A. Vincent Buzard, Esq.	Pittsford	Monroe
Jay C. Carlisle, Esq.	Hudson	Columbia
Cristine Cioffi, Esq.	Schenectady	Schenectady
Linda J. Clark, Esq.	Albany	Albany
Bruno Colapietro, Esq.	Binghamton	Broome
William T. Easton, Esq.	Rochester	Monroe
Edward B. Flink, Esq.	Lake Placid	Essex
David M. Garber, Esq.	Syracuse	Onondaga
Thomas F. Gleason, Esq.	Albany	Albany
Henry Greenberg, Esq.	Albany	Albany
Michael J. Hutter, Esq.	Albany	Albany
Nancy Kramer, Esq.	New York	New York
Sherman F. Levey, Esq.	Rochester	Monroe
Roger Juan Maldonado, Esq.	New York	New York
Gregory S. Mills, Esq.	Clifton Park	Saratoga
Hugh H. Mo, Esq.	New York	New York
Gary Muldoon, Esq.	Rochester	Monroe
Malvina Nathanson, Esq.	New York	New York
Steven E. North, Esq.	New York	New York
Edward J. Nowak, Esq.	Penfield	Monroe
Margaret Reston, Esq.	Rochester	Monroe
Lucille M. Rignanese, Esq.	Rome	Oneida
Hon. Stewart A. Rosenwasser	Montgomery	Orange
Laurie Shanks, Esq.	Albany	Albany
Hon. Felice K. Shea	New York	New York
James T. Shed, Esq.	New York	New York
Michael Whiteman, Esq.	Albany	Albany

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

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

Hon. Rolando T. Acosta (2010-17)
Hon. Sylvia G. Ash (2016)
Hon. Fritz W. Alexander, II (1979-85)
Hon. Myriam J. Altman (1988-93)
Helaine M. Barnett (1990-96)
Herbert L. Bellamy, Sr. (1990-94)
*Joseph W. Belluck (2008-present)
*Henry T. Berger (1988-2004)
*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 (2001-05)
Hon. Carmen Beauchamp Ciparick (1985-93)
E. Garrett Cleary (1981-96)
Stephen R. Coffey (1995-2011)
Joel Cohen (2010-present)
Jodie Corngold (2013-present)
Howard Coughlin (1974-76)
Mary Ann Crotty (1994-98)
Dolores DelBello (1976-94)
Colleen C. DiPirro (2004-08)
Richard D. Emery (2004-17)
Hon. Herbert B. Evans (1978-79)
Hon. John A. Falk (2017-present)
*Raoul Lionel Felder (2003-08)
*William Fitzpatrick (1974-75)
*Lawrence S. Goldman (1990-2006)
Taa Grays (2017-present)
Hon. Louis M. Greenblott (1976-78)
Paul B. Harding (2006-present)
Christina Hernandez (1999-2006)
Hon. James D. Hopkins (1974-76)
Elizabeth B. Hubbard (2008-2011)
Marvin E. Jacob (2006-09)

Hon. Daniel W. Joy (1998-2000)
Michael M. Kirsch (1974-82)
*Hon. Thomas A. Klonick (2005-17)
Hon. Jill Konviser (2006-10)
*Victor A. Kovner (1975-90)
William B. Lawless (1974-75)
Hon. Leslie G. Leach (2016-present)
Hon. Daniel F. Luciano (1995-2006)
William V. Maggipinto (1974-81)
Hon. Frederick M. Marshall (1996-2002)
Hon. Angela M. Mazzarelli (2017-present)
Hon. Ann T. Mikoll (1974-78)
Mary Holt Moore (2002-03)
Nina M. Moore (2009-13)
Hon. Juanita Bing Newton (1994-99)
Hon. William J. Ostrowski (1982-89)
Hon. Karen K. Peters (2000-12)
*Alan J. Pope (1997-2006)
*Lillemor T. Robb (1974-88)
Hon. Isaac Rubin (1979-90)
Hon. Terry Jane Ruderman (1999-2016)
*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)
Richard A. Stoloff (2011-present)
Hon. William C. Thompson (1990-98)
Carroll L. Wainwright, Jr. (1974-83)
Hon. David A. Weinstein (2012-present)
Akosua Garcia Yeboah (2016-present)

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, 56,523 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 47,529 were dismissed upon initial review or after a preliminary review and inquiry, and 8,994 investigations were authorized. Of the 8,994 investigations authorized, the following dispositions have been made through December 31, 2017:

- 1,142 complaints involving 856 judges resulted in disciplinary action (this does not include the 71 public stipulations in which judges agreed to vacate judicial office). (See details below and on the following page.)
- 1,752 complaints resulted in cautionary letters to the judge involved. The actual number of such letters totals 1,614, 91 of which were issued after formal charges had been sustained and determinations made that the judge had engaged in misconduct.
- 802 complaints involving 568 judges were closed upon resignation of the judge during investigation or in the course of disciplinary proceedings.
- 592 complaints were closed upon vacancy of office by the judge other than by resignation.
- 4,533 complaints were dismissed without action after investigation.
- 173 complaints are pending.

Of the 1,142 disciplinary matters against 856 judges as 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.) These figures take into account the 97 decisions by the Court of Appeals, 16 of which modified a Commission determination.

- 168 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);
- 352 judges were censured publicly;
- 271 judges were admonished publicly;
- 59 judges were admonished confidentially by the temporary or former Commission; and
- 1 matter was dismissed by the Court of Appeals upon the judge's request for review.

Court of Appeals Reviews

Since 1978, the Court of Appeals, on request of the respondent-judge, has reviewed 97 determinations filed by the present Commission. Of these 97 matters:

- The Court accepted the Commission's sanctions in 81 cases (72 of which were removals, 6 were censures and 3 were admonitions);
- The Court increased the sanction from censure to removal in 2 cases;
- The Court reduced the sanction in 13 cases:
 - 9 removals were modified to censures;
 - 1 removal was modified to admonition;
 - 2 censures were modified to admonitions; and
 - 1 censure was rejected and the charges were dismissed.
- The Court remitted 1 matter to the Commission for further proceedings.

APPENDIX E: RULES GOVERNING JUDICIAL CONDUCT

22 NYCRR § 100 *et seq.*

Rules of the Chief Administrator of the Courts Governing Judicial Conduct

Preamble

Section 100.0 Terminology.

Section 100.1 A judge shall uphold the integrity and independence of the judiciary.

Section 100.2 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Section 100.3 A judge shall perform the duties of judicial office impartially and diligently.

Section 100.4 A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

Section 100.5 A judge or candidate for elective judicial office shall refrain from inappropriate political activity.

Section 100.6 Application of the rules of judicial conduct.

Preamble

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

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

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

is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

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

Section 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 more than a *de minimis* legal or equitable interest, 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

(5) "*de minimis*" denotes an insignificant interest that could not raise reasonable questions as to a judge's impartiality.

(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) "Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic 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, nonpartisan 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.

(R) "Impartiality" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

(S) An "independent" judiciary is one free of outside influences or control.

(T) "Integrity" denotes probity, fairness, honesty, uprightness and soundness of character. "Integrity" also includes a firm adherence to this Part or its standard of values.

(U) A "pending proceeding" is one that has begun but not yet reached its final disposition.

(V) An "impending proceeding" is one that is reasonably foreseeable but has not yet been commenced.

Historical Note

Sec. filed Feb. 1, 1996 eff. Jan. 1, 1996.

Amended (D) and (D)(5) on Sept. 9, 2004.

Added (R) - (V) on Feb. 14, 2006

Section 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.

Historical Note

Sec. filed Aug. 1, 1972; renum. 111.1, new added by renum. and amd. 33.1, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Section 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.

Historical Note

Sec. filed Aug. 1, 1972; renum. 111.2, new added by renum. and amd. 33.2, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Section 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, religion, national origin, disability, marital status 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:

(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(b) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(10) 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.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(12) It is not a violation of this Rule for a judge to make reasonable efforts to facilitate the ability of unrepresented litigants to have their matters fairly heard.

(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 fourth 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 fourth 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 (i) 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;

(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 or is likely to be a material witness in the proceeding.

(f) the judge, while a judge or while a candidate for judicial office, has made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or has made a public statement not in the judge's adjudicative capacity that commits the judge with respect to

(i) an issue in the proceeding; or

(ii) the parties or controversy in the proceeding.

(g) 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 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 make 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.

Historical Note

Sec. filed Aug. 1, 1972; amd. Filed Nov. 26, 1976; renum. 111.3, new added by renum. and amd. 33.3, filed Feb. 2, 1982; amds. filed: Nov. 15, 1984; July 14, 1986; June 21, 1988; July 13, 1989; Oct. 27, 1989; replaced, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Amended 100.3 (B)(9)-(11) & (E)(1)(f) - (g) Feb. 14, 2006

Amended 100.3(C)(3) and 100.3(E)(1)(d) & (e) Feb. 28, 2006

Added 100.3(B)(12) Mar. 26, 2015

Section 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) 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 designated 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 in excess of \$150, 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.

Historical Note

Sec. filed Aug. 1, 1972; amd. filed Nov. 26, 1976; renum. 111.4, new added by renum. and amd. 33.4, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996; amds. filed: Feb. 27, 1996; Feb. 9, 1998 eff. Jan. 23, 1998. Amended (C)(3)(b)(ii).

Section 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, provided that the cost of the ticket to such dinner or other function shall not exceed the proportionate cost of the dinner or function. The cost of the ticket shall be deemed to constitute the proportionate cost of the dinner or function if the cost of the ticket is \$250 or less. A candidate may not pay more than \$250 for a ticket unless he or she obtains a statement from the sponsor of the dinner or function that the amount paid represents 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 impartiality, 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 that are inconsistent with the impartial performance of the adjudicative duties of the office;

(ii) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office;

(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).

(f) shall complete an education program, either in person or by videotape or by internet correspondence course, developed or approved by the Chief Administrator or his or her designee any time after the candidate makes a public announcement of candidacy or authorizes solicitation or acceptance of contributions for a known judicial vacancy, but no later than 30 days after receiving the nomination for judicial office. The date of nomination for candidates running in a primary election shall be the date upon which the candidate files a designating petition with the Board of Elections. This provision shall apply to all candidates for elective judicial office in the Unified Court System except for town and village justices.

(g) shall file with the Ethics Commission for the Unified Court System a financial disclosure statement containing the information and in the form, set forth in the Annual Statement of Financial Disclosure adopted by the Chief Judge of the State of New York. Such statement shall be filed within 20 days following the date on which the judge or non-judge becomes such a candidate; provided, however, that the Ethics Commission for the Unified Court System may grant an additional period of time within which to file such statement in accordance with rules promulgated pursuant to section 40.1(t)(3) of the Rules of the Chief Judge of the State of New York (22 NYCRR). Notwithstanding the foregoing compliance with this subparagraph shall not be necessary where a judge or non-judge already is or was required to file a financial disclosure statement for the preceding calendar year pursuant to Part 40 of the Rules of the Chief Judge. This requirement does not apply to candidates for election to town and village courts.

(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.

(6) A judge or a non-judge who is a candidate for public election to judicial office may not permit the use of campaign contributions or personal funds to pay for campaign-related goods or services for which fair value was not received.

(7) Independent Judicial Election Qualifications Commissions, created pursuant to Part 150 of the Rules of the Chief Administrator of the Courts, shall evaluate candidates for elected judicial office, other than justice of a town or village court.

(B) Judge as candidate for nonjudicial office. A judge shall resign from judicial office upon becoming a candidate for elective nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

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

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

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

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

(4) political conduct prohibited by section 50.5 of the Rules of the Chief Judge (22 NYCRR 50.5).

Historical Note

Sec. filed Aug. 1, 1972; renum. 111.5, new added by renum. and amd. 33.5, filed Feb. 2, 1982;

amds. filed: Dec. 21, 1983; May 8, 1985; March 2, 1989; April 11, 1989; Oct. 30, 1989; Oct. 31, 1990; repealed, new filed; amd. filed March 25, 1996 eff. March 21, 1996. Amended (A)(2)(v).

Amended 100.5 (A)(2)(v), (A)(4)(a), (A)(4)(d)(i)-(ii), (A)(4)(f), (A)(6), (A)(7) Feb. 14, 2006; 100.5(A)(4)(g) Sept. 1, 2006.

Added 100.5 (A)(4)(g) on Sept. 1, 2006

Amended 100.5 (A)(4)(g) on Sept. 1, 2006

Amended 100.5 (A)(4)(f) on Oct. 24, 2007 [previous version]

Section 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 section 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.

(5) Nothing in this rule shall further limit the practice of law by the partners or associates of a part-time judge in any court to which such part-time judge is temporarily assigned to serve pursuant to section 106(2) of the Uniform Justice Court Act or Section 107 of the Uniform City

Court Act in front of another judge serving in that court before whom the partners or associates are permitted to appear absent such temporary assignment.

(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.

Historical Note

Sec. filed Aug. 1, 1972; repealed, new added by renum. 100.7, filed Nov. 26, 1976; renum. 111.6, new added by renum. and amd. 33.6, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Amended 100.6(E) Feb. 14, 2006

Added 100.6(B)(5) March 24, 2010

**APPENDIX F:
DECISIONS RENDERED BY THE
COMMISSION IN 2017**

STATE OF NEW YORK
 COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

JAMES A. ALUZZI,

a Justice of the Volney Town Court,
 Oswego County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
 Paul B. Harding, Esq., Vice Chair
 Honorable Rolando T. Acosta
 Joel Cohen, Esq.
 Jodie Corngold
 Honorable John A. Falk
 Taa Grays, Esq.
 Honorable Leslie G. Leach
 Richard A. Stoloff, Esq.
 Honorable David A. Weinstein
 Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, David M. Duguay and Kathleen
 Martin, Of Counsel) for the Commission

Robert F. Julian for respondent

Respondent, James A. Aluzzi, a Justice of the Volney Town Court, Oswego
 County, was served with a Formal Written Complaint dated June 15, 2016, containing
 one charge. The Formal Written Complaint alleged that respondent lent the prestige of

judicial office to advance private interests by seeking special consideration from court officials in connection with a friend's traffic ticket. Respondent filed a verified Answer dated July 19, 2016.

By Order dated September 21, 2016, the Commission designated Gary Muldoon, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on November 18, 2016, in Syracuse. The referee filed a report dated February 17, 2017.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Commission counsel recommended the sanction of removal, and respondent's brief argued that removal was too harsh. On April 27, 2017, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Volney Town Court, Oswego County, since 2003. His current term expires on December 31, 2017. He is not an attorney.

2. On April 10, 2015, D. S. was issued a Uniform Traffic Ticket for having tinted windows on his vehicle in violation of Section 375.12-a, subdivision (b)(2) of the Vehicle and Traffic Law. The ticket was returnable in the Fulton City Court on April 23, 2015.

3. Respondent was acquainted with Mr. S. from seeing him around town and from businesses that Mr. S. owned. The two did not have a social relationship.

4. A day or two before April 20, 2015, Mr. S. drove to respondent's recycling business and asked respondent to help him get the ticket dismissed. Respondent told Mr. S. that he would try to help get the ticket dismissed, and took the ticket.

5. At the hearing before the referee, respondent acknowledged that when he agreed to help Mr. S. get his traffic ticket dismissed, he knew that doing so was a "big mistake" and was inconsistent with his ethical obligations; he had learned through his training as a judge that ticket-fixing was serious misconduct and that judges are subject to removal for the practice. He testified that he wanted to help Mr. S., who was sick and in his 70's, as a personal favor.

6. In April 2015 Judge David Hawthorne was the full-time Fulton City Court Judge. The Oswego County District Attorney prosecutes traffic tickets in the Fulton City Court, and every Thursday, traffic arraignments were conducted and an assistant district attorney was available at the court beginning at 9:00 AM to discuss traffic tickets with defendants and attorneys.

7. On April 20, 2015, respondent went to the window of the Fulton City Court clerk's office and spoke to a court office assistant, Shelly Fantom. Ms. Fantom knew respondent as a Town Justice from various interactions over the years in connection with respondent's role as a judge. The Town of Volney adjoins the City of Fulton, and respondent occasionally dropped off court papers in connection with arraignments he had performed.

8. Respondent gestured to Ms. Fantom to come out, and when she opened the security door, he attempted to hand Mr. S.'s ticket to her and said, "Give this

to Judge Hawthorne and have him dismiss it for me.” In doing so, respondent understood that he was using his judicial status to help Mr. S. get his traffic ticket dismissed.

9. Ms. Fantom raised her hands in a “stop” motion and said to respondent, “We don't do that here. If you want that ticket reduced or dismissed, you have to go through the DA’s office.” Ms. Fantom’s statements were consistent with both court policy and the policy of the District Attorney’s office, as she understood it.

10. Respondent continued holding out the ticket toward Ms. Fantom and stated, “Just take it, and just give it to him.” Ms. Fantom did not take the ticket because she understood that “[t]he court is not allowed to do that.”

11. Respondent put the ticket on the counter. Pointing to the ticket, respondent told Ms. Fantom to write his name and telephone number on it and to have Judge Hawthorne call him about the ticket.

12. As directed, Ms. Fantom wrote respondent’s name (“Jim Aluzzi”) and telephone number on the ticket. She then took the ticket and time-stamped it, in accordance with office policy, “RECEIVED Fulton City Court 2015 APR 20 AM 8:54.” Ms. Fantom testified, “I’m a clerk and he’s a judge, and he’s telling me to take it, so I should take it.” Ms. Fantom was concerned that she would be in trouble for taking the traffic ticket at respondent’s direction.

13. Ms. Fantom also wrote a note documenting her interaction with respondent that states: “Jim Aluzzi came to the window with this ticket. Advised me to ‘give this to the Judge and have him Dismiss it for me.’” That afternoon, she gave Mr. S.’s ticket to the chief clerk, Maureen Ball, and told her what had occurred.

14. The next morning, Ms. Ball took the ticket to Judge Hawthorne and explained what Ms. Fantom had told her. They agreed that they should contact the District Administrative Office about respondent's actions, and Ms. Ball sent an email describing the incident to the District Executive and to Judge James Tormey, Administrative Judge for the Fifth Judicial District.

15. On Thursday, April 23, 2015, the return date of the ticket, respondent returned to the Fulton City Court between 9:00 and 9:30 AM and again went to the window of the court clerk's office. When Ms. Ball came to the window, respondent asked to speak with her at the door. Ms. Ball knew respondent to be a Volney Town Justice and had seen him on numerous occasions at the Fulton City Court on court-related business.

16. Respondent asked Ms. Ball to find out from Judge Hawthorne about Mr. S.'s ticket, to make sure "that it hadn't got lost in the shuffle." Ms. Ball said she would do so.

17. While respondent waited, Ms. Ball went into the courtroom where Judge Hawthorne was on the bench and asked him to take a recess to discuss the matter. Judge Hawthorne instructed her to call Judge Tormey before she spoke with respondent. Ms. Ball was unable to reach Judge Tormey but spoke with Judge Tormey's secretary, Kathy Vaeth. Ms. Vaeth directed her to give respondent the name and telephone number of Judge David Gideon, who supervises town and village justices in the Fifth Judicial District. Ms. Ball wrote Judge Gideon's name and telephone number on a Post-it note, which she gave to respondent, who was still waiting some 90 minutes after she had left

him.

18. Respondent then stated that Mr. S. was willing to plead guilty to the charge and that he was sick, but “could come right down” to the court. Ms. Ball advised respondent that Mr. S. had 60 days to appear in court to resolve the ticket before his license would be suspended. Respondent asked if the assistant district attorney was still at the court, and Ms. Ball advised that he was not.

19. On April 30, 2015, Judge Hawthorne dismissed Mr. S.’s traffic ticket pursuant to a motion by the District Attorney’s office, whose written recommendation indicated “Ticket not proper.”

20. Respondent testified at the hearing that his intent on April 23, 2015, was to retrieve Mr. S.’s ticket and get an attorney for Mr. S., but he acknowledged that in his initial conversation with the chief clerk he only asked about the status of the ticket, that he told Ms. Ball that he did not want it to get “lost in the shuffle,” and that he did not ask for the ticket to be returned to him. Only after the clerk had returned and indicated that he should contact Judge Gideon did respondent tell her that Mr. S. could come immediately to the court and ask whether Mr. S. could meet with the assistant district attorney.

21. On March 3, 2015, less than two months before the events described above, respondent’s mother died. Respondent had tended to her in her last years and was still deeply affected by her death at the time of the April 2015 incident.

22. At the hearing and oral argument, respondent was contrite and acknowledged that his actions were improper.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B) and 100.2(C) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. 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.

It is undisputed that respondent used the prestige of his judicial office in an attempt to obtain special consideration for an acquaintance who had received a traffic ticket. With knowledge that such conduct was prohibited by the ethical standards required of judges, he violated those standards by agreeing to help D. S. get his ticket dismissed, taking the ticket to the Fulton City Court, and, with an explicit directive that unmistakably conveyed his request for favoritism, asking a court assistant to give it to the judge handling the matter and “[h]ave him dismiss it for me.” Even after the clerk rebuffed him (“We don’t do that here”), he persisted in his efforts (“Just take it, and just give it to him”), and when the clerk refused again to take the ticket, he placed it on the counter and directed her to write his name and telephone number on it. Feeling pressured because of respondent’s judicial status, the clerk reluctantly complied with his directive and took the ticket although she knew that doing so was contrary to the proper procedures and feared she would get into trouble. Three days later, on the return date of the ticket, respondent returned to the court and asked about the ticket to make sure it did not get

“lost in the shuffle.” Not until the chief clerk referred him to a supervising judge did respondent desist from his efforts and tell the clerk that the defendant was willing to meet immediately with the assistant district attorney to discuss the matter.

By attempting to obtain a favorable disposition of a traffic ticket based on an assertion of special influence, respondent engaged in ticket-fixing, which is a form of favoritism that has long been condemned. *E.g.*, *Matter of Byrne*, 47 NY2d (b) (Ct on the Judiciary 1979); *Matter of Dixon*, 47 NY2d 523 (1979); *Matter of Conti*, 70 NY2d 416 (1987). Such conduct violates fundamental ethical principles prohibiting judges from lending the prestige of judicial office to advance private interests and requiring judges to observe high standards of conduct both on and off the bench (Rules, §§100.2[A], 100.2[C]).

Ticket-fixing – asserting special influence to obtain favorable treatment in traffic cases, or acceding to requests for special consideration – strikes at the heart of our system of justice, which is based on equal treatment for all. As the Commission stated 40 years ago in a special report, ticket-fixing results in “two systems of justice, one for the average citizen and another for people with influence” (“*Ticket-Fixing: The Assertion of Influence in Traffic Cases*,” NYSCJC Interim Report, 6/20/1977, p 16). In *Matter of Byrne*, *supra*, 47 NY2d at (b), (c), the Court on the Judiciary equated ticket-fixing with favoritism, which “is wrong, and always has been wrong,” and declared that “a judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge’s court, is guilty of *malum in se* misconduct constituting cause for discipline.” From the late 1970s, when the Commission uncovered a widespread pattern

of ticket-fixing throughout the state, through the mid-1980s, some 150 judges were publicly disciplined for the practice, including one who was removed for a single incident of ticket-fixing after a previous censure for similar conduct (*Matter of Reedy*, 64 NY2d 299 [1985]). In *Reedy*, the Court of Appeals declared that “[t]icket-fixing is misconduct of such gravity as to warrant removal, even if this matter were [the judge’s] only transgression” (*Id* at 302). Since then, the prevalence of such behavior has declined sharply¹, and with the benefit of this significant body of case law, every judge in New York State should be cognizant that such conduct is prohibited.

Indeed, respondent, who had been a judge for twelve years at the time of his actions here, has acknowledged that when he agreed to help Mr. S. get his ticket dismissed, he knew that doing so was inconsistent with his ethical obligations; he was also aware, through his training as a judge, that ticket-fixing is serious misconduct and that judges are subject to removal for the practice. Nevertheless, despite ample time to reflect on the matter (he went to the court a day or two later), respondent asked the Fulton City Court judge, using a court assistant as an intermediary, to dismiss the ticket based on nothing more than respondent’s personal request. Although respondent did not explicitly invoke his judicial office, the court personnel knew of his position because of his prior dealings with the court, and thus his request was implicitly supported by his judicial status (*see Matter of Lonschein*, 50 NY2d 569, 572-73 [1980]). Respondent’s behavior in these circumstances showed a clear disregard of basic ethical precepts, which are

¹ After more than a decade with no cases involving such behavior, there have been ten cases involving various kinds of ticket-fixing in the past 15 years.

fundamental to ensuring public confidence in the fairness and integrity of judicial proceedings.

As to respondent's intent in returning to the Fulton City Court three days after his initial visit, his actions seem to belie his claim – and the referee's finding – that he went to the court because he “on his own recognized that his conduct was improper and attempted to retrieve the ticket” (Report, p 12). Although a referee's findings are entitled to due deference, the Commission is not bound by them (*Matter of Marshall*, 8 NY3d 741, 743 [2007]), and we find little evidence in the record to support this particular finding except for respondent's testimony about what was in his mind at the time. More persuasive, in our view, are respondent's admitted actions: that he told the chief clerk that he did not want the ticket to get “lost,” that he did not ask for the ticket back, and that he did not tell the clerk that the defendant was willing to meet with the assistant district attorney until the clerk, after talking to Judge Hawthorne and Judge Tormey's secretary, referred respondent to his supervising judge. We also note that attempting to get the ticket back could be viewed as an attempt to cover up the earlier misconduct since respondent's name and telephone number were written on it. We thus conclude that respondent's intent in his second visit to the court is, at best, uncertain, though the evidence seems to weigh against respondent's claim. Moreover, even if it were proved that respondent attempted to undo his wrongdoing by retrieving the ticket three days later, that would not negate his misconduct on the earlier date, which is the primary basis for our finding of wrongdoing.

It should not inure to respondent's benefit that the Fulton City Court

personnel, recognizing the impropriety of respondent's request for favoritism, responded appropriately to his breach of judicial ethics and did not effectuate the requested "fix"; nor is it ameliorating that the violation the defendant was charged with was a minor infraction that was ultimately dismissed on the prosecutor's recommendation. Those facts are irrelevant to the impropriety of respondent's intervention in the case.

Respondent should have recognized that had Judge Hawthorne acceded to respondent's request, he too would have been implicated in serious misconduct.

In considering the appropriate sanction, we are mindful that while the Court of Appeals has declared that "as a general rule, intervention in a proceeding in another court should result in removal," the Court also stated that that principle, enunciated in *Matter of Reedy, supra*, did not "establish[] a per se rule of removal in all cases, precluding consideration of mitigating factors" (*Matter of Edwards*, 67 NY2d 153, 155 [1986] [reducing the sanction from removal to censure for judge who made an implicit request for special consideration in several phone calls and letters to the judge handling his son's traffic case]). *See also, e.g., Matter of Lew*, 2009 NYSCJC Annual Report 130 (censuring judge who dismissed a Speeding charge based on *ex parte* emails from his friend, the defendant's husband, who was serving in Iraq); *Matter of LaClair*, 2006 NYSCJC Annual Report 199 (censuring judge who sought special consideration for two defendants charged with Speeding; one of the incidents had occurred eight years earlier, and the judge disclosed it to the Commission during its investigation). Of the ten cases in the past 15 years involving judges who engaged in various types of ticket-fixing, many involved a joint recommendation as to the sanction, and only one judge was removed, in

a case that involved two incidents and particularly egregious circumstances (*Matter of Schilling*, 2013 NYSCJC Annual Report 286). Thus, we must explore “the presence or absence of mitigating and aggravating circumstances” in this case to determine the severity of the sanction to be imposed (*Matter of Rater*, 69 NY2d 208, 209 [1987]; *Matter of Edwards*, *supra*, 67 NY2d at 155).

In doing so, we have noted several aggravating factors, including that respondent knowingly violated the ethical standards by using his judicial influence to advance private interests and that he persisted in his efforts even when the court clerk’s resistance should have brought the impropriety of his actions to his attention. However, we are also mindful that the referee, who heard and assessed the witnesses’ testimony, cited numerous factors in mitigation. We conclude, based on our own careful review of the entire record, that there is compelling mitigation presented here. Notably, throughout the proceedings respondent forthrightly acknowledged that his actions were improper (his answer to the Formal Written Complaint admits the charge in its entirety) and he appears to be sincerely remorseful. Further, we note that this incident appears to be an isolated occurrence and that respondent has had an otherwise unblemished record in 14 years as a judge. We have also considered that, as the referee found, respondent did not act for personal gain, that he believed Mr. S. to be in poor health, and that at the time of these events, respondent was deeply affected by his mother’s recent death and, as he testified, “wasn’t thinking properly.” To be sure, by using his judicial influence in an attempt to get a minor traffic charge dismissed for an individual whom, the record indicates, he barely knew, respondent clearly showed extremely poor judgment, but we recognize that

his judgment may have been affected by his personal circumstances at the time (*see Matter of Edwards, supra*, 67 NY2d at 155).

Weighing these factors, we have concluded, based on the particular facts presented here, that a public censure is appropriate and reflects the seriousness with which we view misconduct of this nature. We emphasize that ticket-fixing will not be tolerated and that any such conduct will be condemned with strong measures, including, in appropriate circumstances in the future, the sanction of removal.

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

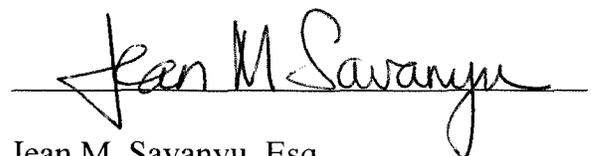
Mr. Belluck, Mr. Harding, Judge Acosta, Mr. Cohen, Ms. Corngold, Judge Falk, Judge Leach, Mr. Stoloff, Judge Weinstein and Ms. Yeboah concur.

Ms. Grays was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: June 26, 2017



Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
 COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

J. MARSHALL AYRES,

a Justice of the Conklin Town Court,
 Broome County.

THE COMMISSION¹:

Joseph W. Belluck, Esq., Chair
 Paul B. Harding, Esq., Vice Chair
 Honorable Rolando T. Acosta
 Joel Cohen, Esq.
 Jodie Corngold
 Richard D. Emery, Esq.
 Honorable John A. Falk
 Taa Grays, Esq.
 Honorable Thomas A. Klonick
 Honorable Leslie G. Leach
 Richard A. Stoloff, Esq.
 Honorable David A. Weinstein
 Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Eteena Tadjioqueu,
 Of Counsel) for the Commission

Honorable J. Marshall Ayres, *pro se*

¹ The vote in this matter was taken on March 9, 2017. Mr. Emery resigned from the Commission effective March 15, 2017; Judge Klonick's term as a member of the Commission expired on March 31, 2017; Ms. Grays was appointed to the Commission effective March 16, 2017; and Judge Falk was appointed to the Commission on April 3, 2017.

The respondent, J. Marshall Ayres, a Justice of the Conklin Town Court, Broome County, was served with a Formal Written Complaint dated March 15, 2016, containing two charges. The Formal Written Complaint alleged that respondent lent the prestige of judicial office to advance his daughter's private interests with respect to a traffic ticket she was issued, attempted to influence the disposition of the ticket and was discourteous to the prosecutor (Charge I), and that in connection with the appeal of his orders of restitution, respondent sent eight letters to the County Court that contained factual and legal arguments and biased, discourteous statements about the defendant and his attorney. Respondent filed an Answer dated May 2, 2016.

By Order dated December 17, 2014, the Commission designated Michael J. Hutter, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 15 and 16, 2016, in Albany. The referee filed a report dated December 2, 2016.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Commission counsel recommended the sanction of removal, and respondent's brief argued that removal was too harsh. On March 9, 2017, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Conklin Town Court, Broome County, since 2009. His current term expires in 2020. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. On December 30, 2014, respondent's daughter Julie Ayres, who was then age 30, was issued a Uniform Traffic Ticket by State Trooper Matthew Pokigo, charging her with using a cell phone while operating a motor vehicle, a violation of Section 1225-d of the Vehicle and Traffic Law. Prior to issuing the ticket, Trooper Pokigo, who had observed Ms. Ayres holding a cell phone while driving, told Ms. Ayres why he had stopped her and asked what she was doing with her cell phone. Ms. Ayres, whose two young children were in the back seat of her vehicle, responded that she was going to "turn on music" for her children, and Trooper Pokigo told her that there was a general prohibition against using a cell phone while driving. The ticket was returnable in the Kirkwood Town Court on January 27, 2015, at 10:00 AM. After the trooper gave her the ticket, Ms. Ayres told him that she was "Judge Ayres' daughter." Trooper Pokigo informed Ms. Ayres that she would have to go to court to dispose of the ticket.

3. Later, Ms. Ayres showed the ticket to respondent and told him that the cell phone had been turned off and that she was passing it to her son. Respondent advised her to plead not guilty and to speak to the assistant district attorney ("ADA") who would be prosecuting the ticket. Ms. Ayres pled not guilty by mail and thereafter received a notice, issued by Kirkwood Town Justice Ward E. Coe, of a pre-trial conference scheduled for February 18, 2015.

4. Prior to the scheduled conference, respondent went to the Kirkwood Town Court. Judge Coe's court clerk, Carrie Aurelio, recognized respondent as the Conklin Town Justice and let him into the office. (The office is secured by a locked

door, and individuals cannot walk in without being admitted by court staff.) Respondent told Ms. Aurelio that his daughter had received a ticket and asked Ms. Aurelio to transfer the ticket from Judge Coe's docket to that of the other Kirkwood Town Justice, Benjamin Weingartner. Ms. Aurelio told respondent that she would "keep an eye out" for the ticket because, she testified, she felt "obligated to just go along" and did not think it was "[her] place" to tell a judge "that's not the way things are done." She did not transfer the ticket.

5. Before the pre-trial conference, respondent also telephoned Judge Weingartner. A secretary told Judge Weingartner that "Judge Ayres" was on the phone, and, after some small talk, respondent mentioned that his daughter had received a traffic ticket and asked how tickets were handled in the Kirkwood Town Court. Judge Weingartner explained that Judge Coe handled tickets that were returnable at 10:00 AM and he handled tickets that were returnable at 2:00 PM.

6. Respondent asked Judge Weingartner if he would handle the ticket because some years earlier, when Judge Coe's wife had been respondent's court clerk, he "had to let her go." (Judge Coe's wife had sued respondent unsuccessfully after she was terminated, and respondent testified that his relationship with Judge Coe is poor.) Judge Weingartner told respondent that a ticket is usually not moved from one judge to the other and that he would not handle Ms. Ayres' ticket.

7. Respondent began to talk about the facts of the case and told Judge Weingartner that he did not think his daughter deserved the ticket. Judge Weingartner said he did not want to hear about the matter and told respondent that his daughter should talk to the ADA handling the case. Respondent asked Judge Weingartner for the name of

the prosecuting attorney, which Judge Weingartner provided.

8. On February 18, 2015, Ms. Ayres, without counsel, attended the pre-trial conference at the Kirkwood Town Court and discussed the ticket with ADA Laura Parker. Ms. Ayres gave Ms. Parker cell phone records that showed her text, data and talk usage, and she told Ms. Parker that she had only been passing her phone to her son. She also mentioned that her father was “a judge across the river.” Ms. Parker, who had been an ADA for only a short time, did not know respondent.

9. According to Ms. Parker, the Broome County District Attorney’s office has a policy that cell phone tickets should not be reduced or dismissed since the offense is “very serious.” Based on that policy and Ms. Ayres’ admission that she was holding her cell phone while driving, Ms. Parker offered a plea to the charge with a minimum fine and the mandatory surcharge. Ms. Ayres did not accept the offer, and Judge Coe adjourned the case to March 18, 2015, for another conference.

10. On March 18, 2015, respondent arrived in the Kirkwood Town Court before his daughter and sat in the courtroom. Judge Coe asked him to approach the bench and asked why he was in court, and respondent said that he planned to watch his grandchildren while his daughter conferenced her case. (Respondent’s grandchildren never came to court that day; he testified that those plans changed.) Respondent asked for the prosecutor’s name, and Judge Coe gave him ADA Parker’s name and said she was new and was working out well.

11. From her sign-in sheet, ADA Parker called the names of three defendants, including Ms. Ayres, to come into her office for their conferences.

Respondent accompanied Ms. Ayres into the conference room. Ms. Parker testified that she did not know who respondent was but assumed he was Ms. Ayres' father, and she recalled Ms. Ayres' earlier comment that her father was a judge. Respondent testified that when the ADA called the cases, she looked at him and asked, "Are you the father?" Ms. Parker testified that she did not recall that but acknowledged that it was not uncommon for a parent to attend a conference with a defendant, especially if the defendant was very young.

12. After the two other defendants left, Ms. Parker began reviewing Ms. Ayres' cell phone records. When she asked Ms. Ayres what time the ticket was issued, respondent said, in a tone that Ms. Parker described as "authoritative" and "condescending," "Well, don't you have a copy of the ticket?" Ms. Parker replied that she meets with hundreds of defendants each week and does not retain a copy of every ticket. She left to get a copy of the ticket from the court file and returned to the conference room with it.

13. As Ms. Parker reviewed the phone records, she explained that the statute regulating cell phone use contained a rebuttable presumption that a cell phone in one's hand constituted "use." Respondent told the ADA that she had to prove the case beyond a reasonable doubt, and Ms. Parker responded that while she had to prove her case beyond a reasonable doubt at trial, they were presently only conferencing the case.

14. As Ms. Parker continued reviewing the records, respondent threw a stapled packet of papers on the table in her direction, "slamm[ing] it down," and in a "very condescending" and "controlling" tone, said, "Don't you know the law?" Ms.

Parker replied that there is probable cause to write a ticket if a person is driving with a cell phone in his or her hand.

15. Ms. Ayres, who had not spoken up to that point, told Ms. Parker, “My father’s a judge.” That was Ms. Ayres’ only comment during the conference.

16. Respondent then told Ms. Parker, “Well, I wasn’t going to bring that up, but since it was brought up, if this ticket was in my courtroom, I’d dismiss it”; he also said he had spoken to “several other judges” who “all agreed that this should be dismissed.” According to respondent, he then added, “You’ve got to make your own decision. You can’t let Judge Coe or myself influence you.”

17. Ms. Parker, who testified that she was feeling “extreme pressure” to dismiss the ticket, said that she wanted to speak with her supervisor. At that point, she was “distraught” and “on the brink of tears” because of respondent’s behavior and tone, which, she felt, conveyed that he thought she was a “young little girl who didn’t know anything and that he knew better.” Although she had previously encountered spouses and parents who accompanied a defendant into the pre-trial conference, Ms. Parker testified that she had never dealt with a defendant’s parent when the defendant was an adult; nor had she ever experienced a defendant’s parent speak to her in a controlling and condescending manner, “throwing papers at” her, and pressure her to dismiss a ticket.

18. Before leaving the room, Ms. Parker asked respondent if he represented his daughter, and he responded, “Not yet.”

19. Ms. Parker saw Judge Coe and Ms. Aurelio in the courtroom and told them about respondent’s behavior. Judge Coe, who was surprised to learn that

respondent was at the conference, suggested that Ms. Parker call her supervisor.

20. Ms. Parker called her supervisor and told her what had occurred. They discussed the case and, after reviewing the court and phone records, the supervisor directed her to dismiss the ticket. Ms. Parker returned to the conference room and announced that the ticket would be dismissed. According to Ms. Parker's testimony, respondent's demeanor then changed dramatically; he was very gracious and thanked her.

21. As they were leaving the conference room, respondent told Ms. Parker that she should not conference tickets with multiple defendants because it "breached confidentiality." Ms. Parker testified that she was "very shocked" by respondent's unsolicited advice.

22. On the record, Ms. Parker made a motion to dismiss. Judge Coe, who was surprised by the motion, did not accept it and said that he was going to adjourn the case in order "to give it some more thought." He testified that he did so in part because he was concerned that respondent's presence at the conference had influenced the outcome of the case.

23. At respondent's suggestion, Ms. Ayres then asked Judge Coe if he would recuse himself "because of history." Judge Coe said that he would recuse himself because, at the time, he thought it might be the best way to proceed.

24. After going off the record, Judge Coe, who felt that he "had been put in a real bad spot" by respondent's presence in the court, asked respondent to meet with him privately. In a back room, Judge Coe told respondent that as a judge he was "way out of line" to have attended his daughter's pre-trial conference.

25. After some research, Judge Coe later concluded that it was not necessary to recuse himself in the matter because there was “no history” between himself and respondent and he felt that he could “serve justice” in the case.

26. Judge Coe later adjourned the case again to give Ms. Parker more time to discuss the case with the trooper. By letter dated April 23, 2015, Ms. Parker moved to dismiss the charge, stating that after reviewing the telephone records and discussing the case with her supervisor and the trooper, it was the People’s position that the case “must be dismissed” as “the People would be unable to meet their burden” at trial. On April 28, 2015, Judge Coe dismissed the charge.

27. After the pre-trial conferences on March 18th, Judge Coe met with his co-judge to discuss what had occurred that day. Judge Weingartner told Judge Coe that respondent had called him earlier about his daughter’s ticket and asked him to handle the case. That same day, Ms. Aurelio told Judge Coe that respondent had asked her to transfer the ticket to Judge Weingartner. Judge Weingartner said he thought Judge Coe was obligated to report respondent’s conduct to the Commission.

28. Judge Coe asked the Advisory Committee on Judicial Ethics about his obligation to report respondent’s conduct. After receiving the Committee’s response advising that he “must report” to the Commission the allegations he described, Judge Coe sent a letter to the Commission about respondent’s conduct.

29. At the hearing and oral argument, respondent stated that he believed at the time, and still believes, that his actions with respect to his daughter’s ticket were consistent with the ethical standards since (i) he was acting “as a parent,” not as a judge,

and took care not to use his judicial title and (ii) he did not seek special treatment but only wanted his daughter's case to be handled fairly and was attempting to help her obtain the result she was entitled to by law. He denied that he was discourteous to the prosecutor and testified that "[i]f she was easily intimidated, that's not my problem."

As to Charge II of the Formal Written Complaint:

30. On June 28, 2009, Stephen Finch was charged with two counts of Petit Larceny and other offenses, arising from an incident in the Town of Windsor. On October 13, 2009, Windsor Town Justice Jon S. Bowman appointed Craig R. Fritzsch, Esq. to represent the defendant because of a conflict of interest within the Office of the Public Defender. On February 1, 2010, at the request of the District Attorney, County Court Judge Joseph F. Cawley transferred the case to the Conklin Town Court.

31. On May 27, 2010, the defendant pled guilty to Petit Larceny and Disorderly Conduct. Respondent sentenced him to a one-year conditional discharge, an order of protection in favor of the complaining witness, and restitution, the amount of which was to be determined. On November 5, 2010, respondent held a restitution hearing and thereafter ordered Mr. Finch to pay the complaining witness \$2,949.42.

32. On November 15, 2010, Mr. Fritzsch filed a Notice of Appeal from the restitution order, and on December 21, 2010, he filed an "Affirmation of Errors/Memorandum of Law" with the County Court. In his papers, Mr. Fritzsch questioned whether the amount of restitution was proper since the complaining witness did not testify and the vehicle at issue had more than 130,000 miles. Respondent

received the Notice of Appeal on November 16, 2010, and the “Affirmation of Errors/Memorandum of Law” on January 3, 2011.

33. On October 6, 2011, Mr. Fritzsich filed a motion in County Court seeking an order directing respondent to file a return in the *Finch* case. On October 25, 2011, County Court Judge Martin E. Smith issued an order directing respondent to file a return in the above matter by November 8, 2011.

34. In a letter to Judge Smith dated December 20, 2011, which was copied to Mr. Fritzsich but not to the District Attorney’s office, respondent claimed that he was unaware of Judge Smith’s order until November 4, 2011, four days before the return was due, and that he had contacted Mr. Fritzsich to obtain clarification on “what he was requesting” but had received no response. Respondent requested that the “appeal be dismissed as it has not been perfected as required” and also argued that the appeal did not excuse the defendant from paying restitution.

35. Following receipt of respondent’s letter, Mr. Fritzsich filed another affirmation requesting that Judge Smith order respondent to file a return and stay of execution of the sentence. By order dated February 1, 2012, Judge Smith granted Mr. Fritzsich’s request for a stay and, on the same date, directed Mr. Fritzsich to file an affidavit of errors directly with respondent and advised respondent to file his return within 30 days of receiving it. Mr. Fritzsich faxed and mailed to respondent’s court an affirmation of errors dated February 1, 2012. (Unlike his “Affirmation of Errors/Memorandum of Law,” this affirmation was affirmed under penalty of perjury.)

36. On February 14, 2012, respondent sent Judge Smith an admittedly

“snarky” letter in response to the affirmation of errors. Respondent’s letter, which was not copied to Mr. Fritzsich or the District Attorney’s office, advanced a number of arguments in support of his contention that the appeal was “without merit” and should be denied, including that:

- A. Mr. Fritzsich’s “contention” that restitution was limited to the Disorderly Conduct charge was “baseless and inconsistent” with the plea agreement;
- B. Mr. Fritzsich “knew, or should have known” that restitution included damages to the complaining witness’ vehicle;
- C. The defense did not provide “any evidence” that the condition of the complaining witness’ vehicle was different on the day of inspection versus the date it was allegedly damaged (emphasis in original);
- D. The complaining witness’ failure to testify was not “an issue of sufficient importance”;
- E. It was “intuitively obvious to the casual observer” that the defense was “attempting to place inappropriate restrictions” on the collection of restitution;
- F. Any efforts by the defense to restrict restitution were “irresponsible,” “unwarranted” and “unjustified”;
- G. Respondent had “acted appropriately and within the parameters of the law.”

37. On July 9, 2012, Judge Smith issued a Decision and Order, finding “merit” in Mr. Fritzsich’s argument that the record did not support respondent’s restitution order and stating that “only the victim” could testify concerning certain factors that were necessary to determine the appropriate amount of restitution. Judge Smith modified the judgment and remitted the case to respondent for further proceedings.

38. Respondent held a second restitution hearing on November 8, 2012,

and, by memorandum dated November 29, 2012, he ordered the defendant to pay \$1,700 in restitution and issued a second order of protection.

39. On December 19, 2012, Mr. Fritzsch filed a Notice of Appeal and an affirmation of errors in County Court and with respondent.

40. On December 21, 2012, respondent sent a letter to the County Court, with copies to Mr. Fritzsch, the ADA and the Public Defender, after receiving “yet another” (respondent’s words) affirmation of errors from Mr. Fritzsch. In the letter, respondent noted that Mr. Fritzsch was assigned to handle Mr. Finch’s case due to a conflict of interest within the Public Defender’s office and argued that the matter should have reverted back to the Public Defender to determine whether the conflict still existed and that until that assessment was made, Mr. Fritzsch “no longer has any standing in this matter and therefore any actions taken by [him] are invalid.” Respondent’s letter concluded: “[I]t is the opinion of this Court that Mr. Fritzsch’s actions are unsustainable due to his lack of standing and this appeal should be summarily dismissed.”

41. In response, Mr. Fritzsch wrote to Judge Smith asking to be formally appointed to represent Mr. Finch, and he requested another stay. Judge Smith issued an order of assignment on January 7, 2013, and a stay on February 6, 2013.

42. On January 18, 2013, respondent sent Judge Smith a letter, with copies to the ADA, Mr. Fritzsch and the Public Defender, expressing disappointment with his decision appointing Mr. Fritzsch to represent Mr. Finch and asking that the appeal be denied. Respondent’s letter accused Judge Smith of “unilaterally usurp[ing] the authority” of the Conklin Town Court and “undermining our credibility,” and argued

that the case should have been reassigned to the Public Defender’s office for “numerous” reasons including to determine whether “this is a legitimate reason for an appeal or possibility [sic] an effort for any attorney to pad their bill at the expense of the Broome County taxpayers.” His letter stated that while he did not object to a “legitimate appeal” of his decisions, the “proper process on how these appeals are handled should have been protected” (emphasis in original). In what he concedes was a “snarky” tone, respondent also told Judge Smith that the Conklin Town Court did “not claim the power to heal the sick, walk on water, or raise the dead and while we do ask for Divine intervention in guiding our decisions, it is rarely granted.” Respondent’s letter also:

- A. repeated his argument that Mr. Fritzsich lacked “standing” and that “any actions taken by him prior to [his appointment on January 7, 2013] should be “dismissed”;
- B. told Judge Smith that he had “no appeal to consider” until Mr. Fritzsich refiled the appeal;
- C. asserted that Mr. Fritzsich should pursue the appeal *pro bono* or that the defendant should pay because the Public Defender “cannot be expected to be responsible for this charge”;
- D. attacked Mr. Fritzsich’s legal arguments as “ludicrous at best,” “totally beyond any rational thought process,” and “defies logic”;
- E. questioned whether Judge Smith wanted to establish a precedent of rewarding a defendant’s refusal to pay restitution; and
- F. stated that the defendant “has issues regarding his self-control” and thus “presents a clear and present danger to the victim.”

43. On February 6, 2013, Judge Smith sent respondent a letter stating that “it appears that you may misunderstand certain areas of the appellate process, and the respective roles of this Court, your court and counsel within the process.” Judge Smith’s

four-page letter, *inter alia*, described respondent's argument that Mr. Fritzsch had no standing to appeal as "misplaced," explained that "[i]n most instances" attorneys "must follow the very practice employed by Mr. Fritzsch in this case," advised respondent that there was no "particular procedure" in place for assigning counsel in cases where the Public Defender did not represent the defendant at trial, noted that the Public Defender was not responsible for charges incurred by assigned counsel in an appeal, and stated that County Court had "inherent authority to appoint an attorney to an indigent defendant" and did not "'unilaterally usurp' the Town of Conklin's authority to appoint Mr. Fritzsch." Judge Smith's letter noted that he found respondent's comments concerning the appeal's merit to be "the most troubling part of your letter," and he wrote: "Simply put, the Town of Conklin Court may not decide whether any appeal from its orders and judgments is legitimate." Judge Smith also instructed respondent that the return must be filed within ten days of receiving the affidavit of errors and cautioned that "[t]he failure to timely file the return may permit this Court to deem admitted the allegations contained in the affidavit of errors." Judge Smith concluded that he did not expect respondent to "heal the sick, walk on water, or raise the dead," but did expect him to abide by the federal and state constitutions, state statutes, the rules of the Chief Judge and the discretionary authority of the County Court, and that to the extent respondent "may have been unaware of the proper process, or had an incomplete understanding of the same, I hope you have found this letter instructive." Judge Smith's letter was copied to Mr. Fritzsch, the ADA and the Public Defender.

44. On April 22, 2013, Mr. Fritzsch filed a motion in County Court

seeking an order to compel respondent to file the return in *Finch*. On May 30, 2013, Judge Smith issued an order directing respondent to file the return by June 21, 2013. The order stated that the return must “set forth or summarize evidence, facts, occurrences in or adduced at the proceedings resulting in the judgment, sentence or order, which constitute the factual foundation for the contentions alleged in the affidavit of errors’ (CPL §460.10[3][d]).”

45. In response, on June 3, 2013, respondent sent the County Court a copy of the second page of his January 18th letter, with a cover letter stating that his “position has not changed” since that letter was written. That page, from the same letter that Judge Smith had described as “troubling,” contained respondent’s assertions that Mr. Fritzsich’s arguments were “ludicrous at best,” were “totally beyond any rational thought process,” and “def[y] logic.” The letter included respondent’s opinion the defendant had “issues regarding his self-control” and presented “a clear and present danger to the victim.” Respondent did not send a copy of his response to Mr. Fritzsich or the ADA.

46. On July 30, 2013, Mr. Fritzsich sent a fax to Judge Smith notifying him that “no return has been received by me from the lower court in this matter.”

47. On October 3, 2013, at the request of Judge Smith’s law clerk, respondent re-sent his June 3, 2013 letter and copied Mr. Fritzsich and the ADA. Respondent’s cover letter commented that the case has been “dragging on for some time” and that “anything you can do to expedite it will be appreciated.”

48. A month later, Mr. Fritzsich submitted a Memorandum to respondent arguing that the amount of restitution ordered was not proper and the judgment should be

vacated. In his Memorandum, Mr. Fritzsch commented that respondent had “attacked” him for “simply doing the job that defense counsel is required to do” and that respondent’s “return” contained “personal attacks and name calling,” expressed “venom for the defendant and his counsel,” amounted to a “near taunting” of the County Court, and was “much more in the style of an advocate than of unbiased impartial finder of fact.” In response, respondent sent Judge Smith an undated letter stating that he “hesitated” in responding to Mr. Fritzsch because “his case continues not to have any merit,” told Judge Smith that “the main question” before him was whether “substantial justice was performed,” opined that Mr. Fritzsch’s claim of his bias was an attempt to “deflect[] attention from the fact that there is simply no merit to his appeal” and asked Judge Smith to “confirm this appeal is without merit.” Respondent copied the letter to Mr. Fritzsch but not to the ADA.

49. On October 6, 2014, Judge Smith issued a Decision and Order finding that respondent had properly awarded \$1,700 in restitution and remitted the matter to the Conklin Town Court. On October 14, 2014, the defendant signed an order agreeing to pay \$1,700 plus a surcharge to the County Probation Department.

50. Subsequently, after the defendant found a CARFAX report that showed that the vehicle the complaining witness testified she had “junked or scrapped” was still on the road, Mr. Fritzsch filed an order to show cause requesting that the restitution order be vacated by County Court. On December 12, 2014, respondent sent a letter to Judge Smith concerning the motion to vacate and what respondent termed the “continuing saga” of the *Finch* case. Respondent did not send a copy of the letter to the

ADA. In his letter, respondent argued that the motion should be denied and that the report generated by Mr. Finch could not be given “much credence” because the defendant “clearly ... has a conflict of interest” and that it was “inherently obvious to the casual observer that this motion is without merit and should be denied immediately”; he called the motion “ludicrous,” stated that the defendant “was in fact guilty,” and requested “an immediate denial of this action.”

51. On January 29, 2015, the defendant paid restitution and a surcharge in the amount of \$1,785, fulfilling the terms of respondent’s restitution order. In February 2015 Mr. Fritzsch filed a third Notice of Appeal in *Finch*. On December 31, 2015, Judge Smith dismissed the appeal as abandoned.

52. At the hearing and oral argument, respondent stated that he was “biased against the appeal” in *Finch* because he thought it was meritless, but denied that he was biased against the defendant or his attorney. He conceded that some of his communications with County Court were ex parte, but stated that he believed it was Judge Smith’s responsibility to make sure that the copies were distributed properly. He testified that the *Finch* case was the “first and only appeal” he handled; that “[a]t the time, I didn’t know any better,” but “[w]ith hindsight” he now recognized that he did not “follow proper procedures” and “clearly” misunderstood the appellate process; that “mistakes were made by a variety of people in this process”; and that “I was trying to do this job to the best of my ability, with the training that I’ve received and I believe under these circumstances, I did the best I could with the knowledge that I had.”

Upon the foregoing findings of fact, the Commission concludes as a matter

of law that respondent violated Sections 100.1, 100.2(A), 100.2(B), 100.2(C), 100.3(B)(4) and 100.3(B)(6) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, 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.

When a judge’s family member is involved in a court proceeding, the judge’s involvement is constrained by his or her ethical responsibilities, including the duty to refrain from “lend[ing] the prestige of office to advance ...private interests” and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” and avoid even the appearance of impropriety (Rules, §§100.2[C], 100.2[A]). As the Court of Appeals has stated:

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. [Citation omitted.]

Matter of Lonschein, 50 NY2d 569, 572 (1980). By intervening in a case involving a traffic ticket issued to his daughter and engaging in multiple efforts to influence the disposition of the ticket, respondent violated these ethical standards. While such

behavior is improper even in the absence of an overt assertion of special influence (*Id.*), the impropriety was exacerbated when respondent attempted to circumvent the normal judicial process in attempting to have the case transferred from a judge whom he viewed as biased and when he made pointed references to his judicial status while arguing with the prosecutor that the ticket should be dismissed. Viewed in their totality, these actions, coupled with respondent's continuing insistence that his actions were appropriate, "demonstrate[] an unacceptable degree of insensitivity to the demands of judicial ethics" (*Matter of Conti*, 70 NY2d 416, 419 [1987]).

As the record shows, after learning that his daughter had been issued a traffic ticket for using a cell phone while driving, respondent made two back-channel attempts to have the case transferred from the docket of the judge before whom it was returnable, Kirkwood Town Justice Ward E. Coe, because respondent believed Judge Coe could not handle the case fairly. Having been a judge for six years, respondent certainly knew or should have known that the proper procedure for a defendant who wanted her case heard by a different judge was to make a request for recusal that complied with statutory requirements. Instead, prior to the scheduled pre-trial conference, respondent visited the Kirkwood Town Court and asked a court clerk, whom he knew, to transfer the ticket to the docket of the other Kirkwood justice, Benjamin Weingartner. The clerk, who recognized immediately that "that's not the way things are done" but was hesitant to refuse a judge's request, told respondent that she "would keep an eye out" for the ticket. Respondent also contacted Judge Weingartner directly, ignoring the ethical implications of initiating an ex parte communication with a judge concerning a pending matter and

placing Judge Weingartner in a potentially compromising position (*see, e.g., Matter of Dixon*, 2017 NYSCJC Annual Report 100). In a telephone call to Judge Weingartner, respondent told him about his daughter's ticket and asked him to handle the matter in view of respondent's history with Judge Coe's spouse (whom he had fired when she was his court clerk); he also attempted to provide facts about the case before Judge Weingartner cut him off and refused his request. Respondent's requests to the court clerk and Judge Weingartner, who both knew respondent was a judge, were implicitly supported by his judicial status (*see Matter of Lonschein, supra*, 50 NY2d at 572-73, where the Court of Appeals noted that although a judge who asked a city official to expedite a friend's license application "never asserted his judicial office in seeking special consideration on [his friend's] behalf," the judge "was aware that [the official] knew of his position and should have realized that his requests would be accorded greater weight by an administrative official than they would have been had petitioner not been a judge."

After these attempts to have the ticket transferred proved unsuccessful, respondent attended the pre-trial conference with his daughter, where, though not an attorney, he acted as her advocate, attempted to intimidate the prosecutor and invoked his judicial position in arguing that the ticket should be dismissed. Regardless of whether he accompanied his daughter into the conference room on his own initiative or at the prosecutor's tacit invitation, there is little question that his behavior during the conference was inconsistent with ethical standards requiring every judge to act at all times in accordance with "standards of conduct more stringent than those acceptable for

others” (*Matter of Kuehnel*, 49 NY2d 465, 469 [1980]). Throughout the conference he addressed the prosecutor in a condescending manner, questioned whether she knew the law and was familiar with the facts, and, at one point, “threw” papers on the table in her direction to underscore his argument that the ticket should be dismissed. When his daughter, who until that point had not said a word, then attempted to assert respondent’s judicial office to bolster his arguments, her comment (“My father’s a judge”) should have placed him on high alert to avoid any appearance of using his judicial position to further his daughter’s interests and should have signaled to him that he should desist from his efforts on her behalf. Instead, respondent, who maintains that he was always careful not to use his judicial title in connection with the case, emphasized his judicial office, stating, “Well, I wasn’t going to bring that up, but since it’s been brought up, if this ticket was in my courtroom, I’d dismiss it.” He underscored that message by adding that he had spoken to “several other judges” about the ticket and that they “all agreed that this should be dismissed.” Standing alone, these references to his judicial status, implying that as a judge he had a superior knowledge of the law, conveyed the appearance that he was invoking his judicial office to bolster his arguments on his daughter’s behalf. *See, e.g., Matter of Magill*, 2005 NYSCJC Annual Report 177 (“It is not an excuse that respondent was simply trying to assist his wife in connection with [her] case, since any such ‘assistance’ is patently impermissible when the power and prestige of judicial office are invoked”). The fact that the ticket was ultimately dismissed based on the prosecutor’s motion does not excuse respondent’s egregious conduct.

Throughout the Commission’s proceedings, including at the oral argument,

respondent insisted that all of his actions in connection with his daughter's case were ethically permissible since he was acting "as a parent," not as a judge, and never asked for special treatment but was only attempting to help her obtain the result that she was entitled to by law. While the instinct to help a child is understandable, a judge's "paternal instincts" do not justify a departure from the standards expected of the judiciary" (*Matter of Edwards*, 67 NY2d 153, 155 [1986]), and the referee properly rejected respondent's argument that he had "absolute immunity" to intervene as a parent on behalf of his daughter in an ongoing judicial proceeding. Respondent's daughter was not a minor, but a 30-year old adult with a traffic ticket, and there is no indication that she was incapable of handling the matter on her own or engaging an attorney to represent her. Before intervening and acting on her behalf, respondent had ample opportunity to reflect upon the propriety of doing so. The conclusion is inescapable that he either ignored or misunderstood his ethical obligations and intervened in the case simply because he believed that he had a better chance of getting the ticket dismissed than his daughter had on her own. In view of the significant body of Court of Appeals decisions and Commission determinations involving judges who have been disciplined for lending the prestige of judicial office to advance private interests, as well as numerous opinions of the Advisory Committee on Judicial Ethics addressing the subject, respondent had ample notice that such conduct was improper.²

² *E.g.*, *Matter of LaBombard*, 11 NY3d 294, 299 (2008) (judge's invocation of his judicial status in connection with a motor vehicle accident and his ex parte contact with the judge handling his relative's criminal case "suggest a willingness to misuse his judicial office for personal advantage – a quality that is antithetical to the judicial role"); *Matter of Lonschein, supra*, 50 NY2d at 572-73

Also highly improper are respondent's eight unauthorized letters – five of which were ex parte – over a period of three years to the County Court Judge who was handling the appeal of respondent's restitution orders in *People v Finch*. Instead of submitting a return to the defendant's affidavit of errors that set forth the "evidence, facts or occurrences in or adduced at the proceedings" as required (CPL §460.10[3][d]), respondent abandoned his role as a neutral arbiter and became an advocate, repeatedly telling the court that the appeal lacked "merit" and should be dismissed and advancing factual and legal arguments in support of his claims while making biased, discourteous

(judge's call to a city official to expedite a friend's license application was improper even though the judge "never asserted his judicial office in seeking special consideration"); *Matter of Dixon, supra* (judge initiated two prohibited, ex parte communications with the judge handling her lawsuit against an insurance company); *Matter of Sullivan*, 2016 NYSCJC Annual Report 209 (in two conversations with law enforcement officials, judge sought leniency as to impending charges against his son); *Matter of Smith*, 2014 NYSCJC Annual Report 208 (at the request of a friend of the judge's relative, judge sent unsolicited letter on judicial stationery to parole board in support of inmate's application for parole); *Matter of Hurley*, 2008 NYSCJC Annual Report 141 (judge called the police on behalf of a friend to report an alleged violation of an order of protection and identified himself as a judge); *Matter of Dumar*, 2005 NYSCJC Annual Report 151 (judge asserted his judicial office in a dispute with a dealership over repairs to a snowmobile, threatened a lawsuit and said he knew how "the system" worked); *Matter of Magill, supra* (after disqualifying himself from a case in which his wife was the complaining witness, judge asserted his judicial prestige by personally delivering the file to the transferee court and leaving his judicial business card on which he noted a request for an order of protection); *Matter of Pennington*, 2004 NYSCJC Annual Report 139 (judge met with the district attorney to discuss his son's case and asserted his judicial office when charged with infractions by a state park official); *Matter of Nesbitt*, 2003 NYSCJC Annual Report 152 (judge sent letter on judicial stationery to his son's school challenging an administrative determination); *Matter of Krauciunas*, 2003 NYSCJC Annual Report 132 (judge asserted his judicial status in his daughter's small claims case by referring to his judicial office while arguing with the presiding judge and "persisted in acting as his daughter's advocate" even after that judge told him that he could not speak for his daughter); *Matter of Whalen*, 2002 NYSCJC Annual Report 171 (judge made three phone calls to an attorney who was involved in a fee dispute with the judge's wife; though he did not explicitly invoke his judicial status, he "confirmed" he was a judge). See also, e.g., Advisory Ops 04-126, 07-178, 07-205, 10-197, 12-143, 13-113 (advising that a judge, as an observer, may attend court proceedings involving a relative or friend, but in doing so "should not draw attention to his/her presence or judicial status," "have any ex parte contact with the presiding judge" or "invoke his/her judicial office").

and undignified statements about the defendant and his attorney. These letters were ethically and procedurally improper. *See Matter of Gumo*, 2015 NYSCJC Annual Report 98; *Matter of Van Woeart*, 2013 NYSCJC Annual Report 316.

Advising the County Court Judge, for example, that the appeal did not excuse non-payment of restitution and should “be dismissed as it has not been perfected as required,” that his own actions were “within the parameters of the law,” that the defendant’s attorney “lack[ed] standing” and that his claims were “baseless and inconsistent” with the plea agreement was impermissible advocacy before the court that would consider the matter. Respondent not only criticized the defense attorney’s arguments in highly disparaging terms (describing his claims as “ludicrous,” “defies logic” and “totally beyond any rational thought process”), but suggested that the attorney was attempting to “pad [his] bill” at taxpayer expense; respondent even accused the County Court of “unilaterally usurp[ing] the authority” of the town court and “undermining our credibility” by reappointing the attorney to represent the defendant. Even if respondent was unfamiliar with appellate procedures in handling his first appeal and misunderstood his proper role in that process, it is inexcusable that his improper behavior continued even after the County Court Judge sent him a detailed letter advising him of the proper procedures and admonishing him for his “troubling” statements about the merits of the appeal. Although respondent testified that he “backed off some” after receiving the County Court Judge’s “instructive” letter, the evidence demonstrates that in four subsequent letters he continued to make factual and legal arguments addressing the merits of the case and to disparage the defendant and his attorney. These subsequent

letters stated, for example, that “the main question” was “whether substantial justice had been performed,” that the attorney’s claim accusing him of bias was an attempt to “deflect[] attention from the fact that there is simply no merit to his appeal,” that the attorney’s motion was “ludicrous,” “without merit and should be denied immediately,” and that the defendant’s evidence should not be given “much credence” because he “has a conflict of interest” and “was in fact guilty.”

We also note that despite multiple orders and directives from the County Court, respondent repeatedly failed to submit the court’s return in a timely manner. Regardless of his personal views concerning the merits of the appeal and regardless of any questions, legitimate or otherwise, that might have been raised regarding the procedures that were followed, respondent was obligated to comply with the County Court’s directives.

There is a direct connection between respondent’s impermissible, ex parte advocacy in County Court, which preceded his involvement in his daughter’s case, and his actions in connection with his daughter’s ticket. In *Finch* he continued to address the merits of the appeal in ex parte letters even after the County Court admonished him for his “troubling” comments. Thereafter, in his daughter’s case, he attempted to have the ticket transferred through ex parte contacts with the court clerk and Judge Weingartner and also attempted to discuss the case privately with Judge Weingartner, which raises concern about his failure to recognize a core principle in our courts. If a judge initiates ex parte communications, the public would have reason to doubt whether the judge would reject such private discussions in his own court. Notwithstanding that Judge Weingartner

rebuffed his attempt to act as his daughter's advocate, he continued to act as her advocate, and in the pre-trial conference, after his daughter in his presence said he was a judge, he grasped at that opportunity to state what he would do if the case were before him and even added the professed, private opinions of other judges who, he said, had told him they would also dismiss the charge. That is not how a judge should behave, and respondent has shown numerous signs that he appears to have no understanding of his role as a judge in avoiding unauthorized communications and advocacy.

In considering the appropriate sanction, we are mindful that the Court of Appeals has indicated that for many types of misconduct the severity of the sanction “depends upon the presence or absence of mitigating and aggravating circumstances” (*Matter of Rater*, 69 NY2d 208, 209 [1987] [“in the absence of any mitigating factors, (such conduct) might very well lead to removal ... On the other hand, if a judge can demonstrate that mitigating circumstances accounted for such failings, such a severe sanction may be unwarranted”]; *see also Matter of Edwards, supra*, 67 NY2d at 155 [“as a general rule, intervention in a proceeding in another court should result in removal,” but this does not “preclud[e] consideration of mitigating factors”]). Indeed, in cases involving judges who intervened in proceedings in other courts or otherwise misused judicial prestige, removal has generally been limited to instances where there were significant aggravating circumstances, such as additional misconduct or prior discipline for similar conduct (*supra* at pp 23-24; *see also Matter of Reedy*, 64 NY2d 299 [1985]).

Compounding respondent's misconduct in this case is his insistence throughout the Commission's proceedings that all of his activities in connection with his

daughter's case were permissible. Although both the court clerk and Judge Weingartner recognized that respondent's informal attempts to have the case transferred were improper, respondent, even after hearing their testimony, testified that his requests to both individuals were "appropriate" in light of his concern that the judge assigned to the case could not be fair. He believed that it was proper "as a father" to advocate at the pre-trial conference that his daughter's ticket should be dismissed, and he argued to the referee that he had "absolute immunity" as a parent for his actions on her behalf. Rather than concede that his treatment of the prosecutor was discourteous, he testified that if she was "oversensitive" and "easily intimidated" she "may want to take another job." At the oral argument, having had an opportunity to reflect on the referee's report and to review the cases cited in the briefs, respondent conceded, for the first time, that "now I can see where there's a problem" and said that if the situation recurred he would not be involved, but when asked what he did wrong, he said that the problem was that his actions, including his statements during the pre-trial conference, caused "misunderstandings" and "could have been misinterpreted." It thus appears that respondent still lacks an understanding of why his conduct was improper. We also note that in connection with the appeal in *Finch*, he persisted in his advocacy and disparaging comments even after the County Court's effort to instruct him. Respondent's failure to recognize the impropriety of his actions and to modify his behavior when ethical concerns were brought to his attention exacerbates the underlying misconduct and "strongly suggests that, if he is allowed to continue on the

bench, we may expect more of the same” (*Matter of Bauer*, 3 NY3d 158, 165 [2004]).³

While we recognize that removal from office is an “extreme sanction” that “should be imposed only in the event of truly egregious circumstances” (*Matter of Cunningham*, 57 NY2d 270, 275 [1982]), in our view respondent’s multiple efforts to influence the disposition of his daughter’s ticket, coupled with his additional misconduct and the aggravating factors presented here, demonstrate that he “is not fit for judicial office” (*Matter of Robert*, 89 NY2d 745, 747 [1997]) and thus that the sanction of removal is warranted.

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

Mr. Harding, Judge Acosta, Mr. Cohen, Ms. Corngold, Judge Klonick, Judge Leach, Mr. Stoloff, Judge Weinstein and Ms. Yeboah concur.

Mr. Belluck and Mr. Emery were not present.

³ See also *Matter of Hart*, 7 NY3d 1, 10 (2006) (judge’s “adamant assertion that no misconduct occurred” and his “fail[ure] to this day ‘to recognize that the awesome contempt power should be exercised only with appropriate restraint and within the carefully mandated safeguards’” were “troubling,” and a “judge’s ‘fail[ure] to recognize the inappropriateness of his actions ...’ is a significant aggravating factor on the issue of sanctions” [quoting *Matter of Aldrich*, 58 NY2d 279, 283 (1983)]; *Matter of Sims*, 61 NY2d 349, 357 (1984) (where judge signed release orders for defendants who were represented by judge’s husband, her “failure to acknowledge any appearance of wrong ... compound[s] her misconduct”); *Matter of Shilling*, 51 NY2d 397, 404 (1980) (“Compounding those four separate instances of impropriety ... is petitioner’s continued insistence that his actions involved neither impropriety nor the appearance of impropriety”).

CERTIFICATION

It is certified that the foregoing is the determination of the State
Commission on Judicial Conduct.

Dated: May 4, 2017

A handwritten signature in cursive script, reading "Jean M. Savanyu", is written over a horizontal line.

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

J. MARSHALL AYRES,

a Justice of the Conklin Town Court,
Broome County.

CONCURRING OPINION
BY MR. STOLOFF

While I agree that the record supports the findings of misconduct with respect to Charges I and II of the Formal Written Complaint, I am constrained to write this concurring opinion in order to address what I view as the procedural errors involving the defendant's appeal to the County Court in *People v. Finch*, the subject of Charge II, and to underscore that the finding of misconduct with respect to that charge is based solely on the tone of respondent's letters to the County Court and not, as alleged in the Formal Written Complaint, on his failure to file a timely return to the affidavit of errors. Since the record indicates that the appeal was not perfected in a timely manner and since the appeal should have been dismissed at an early stage as this was a jurisdictional defect, the exacerbation of respondent's misconduct might have been avoided if the proper procedures had been followed.

It is my opinion that the appeal in *Finch* cannot be deemed to have been taken on December 21, 2010, contrary to the County Court's determination, because the

so-called “Affirmation of Errors/Memorandum of Law” by defendant’s counsel dated December 21, 2010 (i) was not sworn to or affirmed under penalty of perjury, (ii) was not copied to the Justice Court of the Town of Conklin, and (iii) was not received by the Justice Court until January 3, 2011, which was more than 30 days after the notice of appeal had been filed (on or about November 12, 2010), all of which were inconsistent with the statutory requirements.

Criminal Procedure Law section 460.10(3)(a) provides:

“An appeal taken as of right to a county court ...from a judgment, sentence or order of a local criminal court in a case in which the underlying proceedings were not recorded by a court stenographer is taken as follows: (a) Within thirty days after entry or imposition in such local criminal court of the judgment, sentence or order being appealed, the appellant must file with such court either (i) an affidavit of errors, setting forth alleged errors or defects in the proceedings which are the subjects of the appeal, or (ii) a notice of appeal. Where a notice of appeal is filed, the appellant must serve a copy thereof upon the respondent in the manner provided in paragraphs (b) and (c) of subdivision one, and, within thirty days after the filing thereof, must file with such court an affidavit of errors.”

Section 460.10(3)(b) of the statute provides in relevant part that “[n]ot more than three days after the filing of the affidavit of errors,... [i]f the defendant is the appellant, such service must be made on the district attorney of the county in which the local criminal court is located.” Section 460.10(3)(c) then provides: “Upon the filing and service of the affidavit of errors as prescribed in paragraphs (a) and (b), the appeal is deemed to have been taken.”

The record indicates that the defendant did not comply with these

requirements in appealing respondent's first restitution order in *Finch*, for the reasons mentioned above, and thus that Judge Smith's determination, by order dated October 25, 2011, that the defendant had "timely filed an Affidavit of Errors on or about December 21, 2010," was erroneous. It therefore appears that when respondent asserted in the first of his letters to Judge Smith, dated December 20, 2011 (Exhibit 32), that the appeal had "not been perfected as required," his statement was accurate, even if he likely did not understand why it was correct.

The defendant's attorney's belated submission on February 1, 2012, of an affirmation of errors that complied with the statutory requirements could not cure the jurisdictional defect. The record shows that Judge Smith advised respondent by letter on that date that "[t]he defendant appeared before the Court this morning and the Court granted his counsel, Craig Fritzsich, Esq., further time to file an affidavit of errors" and directed him to do so by the end of that day. However, the record does not contain a written motion seeking such relief and, in any event, the time to do so had expired since the notice of appeal had been filed well over a year earlier.¹ The only means to grant such an extension at that stage would have been by writ of coram nobis on the grounds that counsel was ineffective in failing to file a proper affidavit of errors. The record does not reflect that any writ of coram nobis petition was filed.

The Court of Appeals recently confirmed that the failure to comply with the

¹ CPL §460.30(1) permits a court to grant a 30-day extension for filing a notice of appeal or affidavit of errors in certain circumstances but requires that an application for such an extension "must be made with due diligence after the time for taking such an appeal has expired, and in any case not more than one year thereafter."

requirement to file an affidavit of errors is a jurisdictional defect. In *People v. Smith*, 27 NY3d 643, 647 (2016), the Court stated that “CPL §460.10 contains the procedural requirements for the taking of a criminal appeal, and adherence to those requirements is a jurisdictional pre-requisite for the taking of an appeal,” citing *People v. Duggan*, 69 NY2d 931, 932 (1987).² Similarly, the Court had stated in *People v. Andrews*, 23 NY3d 605, 611 (2014), that the statutory “one-year grace period” for seeking permission to file a late notice of appeal “is strictly enforced... ‘since the time limits within which appeals must be taken are jurisdictional in nature and courts lack inherent power to modify or extend them,’” citing *People v. Corso*, 40 NY2d 578, 581 (1976), and *People v. Thomas*, 47 NY2d 37, 43 (1979). On remand in *Smith*, *supra*, the Appellate Term of the Second Department for the 2nd, 9th and 10 Judicial Districts acknowledged that the failure to file an affidavit of errors required dismissal of the appeal but simultaneously granted a writ of coram nobis on the grounds that counsel was ineffective in failing to file the appeal, thereby permitting the appeal to go forward (*People v. Smith*, 43 Misc3d 143[A]).

It is thus evident, based on the record before us, that the County Court did not obtain jurisdiction of the appeal in *Finch* in December of 2010, or likely thereafter.

Nevertheless, while the aforementioned irregularities and jurisdictional defects might have been raised by the District Attorney or the County Court on its own

² A year before his February 2012 order in *Finch*, Judge Smith cited *Duggan* in granting a timely-requested 30-day extension under CPL §460.30(1) in *People v. Bartholomew*, 31 Misc3d 698 (Broome Co Ct 2011), stating that “[a]ny procedural requirement must be adhered to strictly” and that “the “failure to comply with applicable appellate procedure is a jurisdictional defect and results in dismissal of the appeal.”

motion, it was not respondent's place to become an advocate in the appellate process, as the Commission's determination has noted. Notwithstanding the procedural irregularities in the filing and prosecution of the appeal, I agree that respondent's eight letters to the County Court Judge, five of which were *ex parte*, cannot be condoned. In the letters, respondent abandoned his role as a neutral arbiter and became an advocate, advancing factual and legal arguments in support of his claims while offering his personal opinions about the merits of the appeal, making biased and undignified statements about the defendant and his attorney, and impugning the integrity of the County Court. Even if the orders and directives of the County Court were not enforceable, that does not mitigate the misconduct demonstrated in the eight letters, which were ethically and procedurally improper.

I therefore concur with the majority in finding misconduct with respect to Charges I and II, subject to the reservations expressed herein, and in concluding that respondent's removal is warranted.

Dated: May 4, 2017


Richard A. Stoloff, Esq., Member
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

J. MARSHALL AYRES,

a Justice of the Conklin Town Court,
Broome County.

CONCURRING OPINION
BY MS. YEBOAH

I concur with the majority's findings that Charges I and II of the Formal Written Complaint are sustained, and I believe that based on the record presented, the respondent's serious misconduct may well warrant his removal from office, the most severe sanction available by law. However, I believe that the circumstances of this case require additional comment.

Having reviewed the record of the proceedings before the referee and having participated in the oral argument as a Commission member, it appeared to me that the respondent, a town justice who is not a lawyer, was at a significant disadvantage because he was unrepresented by counsel in the proceedings.¹ This was particularly evident at the oral argument, where the choice between censure and removal hung in the

¹ In his answer to the Formal Written Complaint, Judge Ayres stated that "due to financial restraints" he would not be represented by an attorney, and he added, "While clearly it would be in my best interest to have legal counsel present throughout this process, fiscally this is not possible." I expect that the cost of legal representation in a contested Commission matter might be substantial, especially as compared with the salary of a modestly-paid part-time judge.

balance. Although Judge Ayres vigorously attempted to defend his actions and was given every opportunity to do so,² his inconsistent presentation and responses to questions that might have tipped the scales in his favor clearly fell short. (This was especially true of questions that probed his understanding of the ethical issues his conduct involved.) As the Commission's determination indicates, the judge's "failure to recognize the impropriety of his actions" was a significant factor in determining that removal was appropriate, a factor that was based on his hearing testimony and his statements at the oral argument. While it may be that even with the advice and assistance of legal counsel to help shape a more coherent, persuasive argument, the result might well have been the same, it is unfortunate that, with so much at stake, the judge lacked such assistance.

Although a judge may obtain review of a Commission determination by the Court of Appeals upon request, the review process delineated in the Court's rules (22 NYCRR §§530.2, 530.5) requires a substantial effort and likely entails considerable expense for any judge; for an unrepresented lay justice, it may present an almost insurmountable challenge. Mindful of the consequences of the Commission's decision today, I note these circumstances to express my concerns about a disciplinary system that provides no support for a judge who, "due to financial restraints," is unable to present an adequate defense.

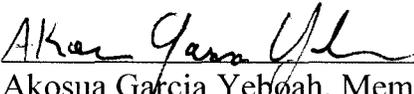
Further, I believe that the function of discipline is not only to punish but

² The Commission accommodated the judge's request, which was also based on financial considerations, to have the oral argument take place in the Commission's Albany office, with some Commission members participating by videoconference.

also to instruct. While the Commission's decision in this case may serve as instruction to others who might read it, I am concerned that the opportunity to instruct Judge Ayres is lost because his career as a judge is now over, subject to review by the Court of Appeals. The record before us shows no history of prior discipline or even cautionary warnings issued to him where he might or should have learned his lesson.

I note that in several cases and in its annual reports (including the 2017 Report), the Commission has urged the Legislature to consider a constitutional amendment providing for suspension from office without pay as a sanction available to the Commission and the Court of Appeals, a sanction that could be considered in a case where the judge's conduct is more serious than would warrant a censure, yet where removal, which permanently bars a judge from holding judicial office in the future, might be too harsh. If such a sanction were available, I might consider it in this case since, on the totality of the record, I am not entirely persuaded that Judge Ayres' conduct is irredeemable and that, given the opportunity, he could not learn from his mistakes.

Dated: May 4, 2017



Akosua Garcia Yehpah, Member
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

MICHAEL R. CLARK,

a Justice of the Hastings Town Court,
Oswego County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Honorable Rolando T. Acosta
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Honorable David A. Weinstein
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APPEARANCES:

Robert H. Tembeckjian, (David M. Duguay and John J. Postel, Of Counsel)
for the Commission

Michael A. Santo for the Respondent

The respondent, Michael R. Clark, a Justice of the Hastings Town Court,
Oswego County, was served with a Formal Written Complaint dated July 2, 2014,

containing six charges. The Formal Written Complaint alleged that respondent engaged in ex parte communications with defendants and dismissed or reduced charges without notice to or the consent of the prosecution; failed to provide a defendant the opportunity to be heard regarding bail; increased bail in an improper manner; imposed conditions of release on a defendant that were without basis in law; made improper comments about a defendant's physical appearance; and, at an arraignment, failed to advise a defendant of the right to counsel, asked incriminatory questions and imposed improper conditions for permitting the defendant to negotiate a plea. Respondent filed a verified Answer dated August 5, 2014.

By Order dated August 20, 2014, the Commission designated William T. Easton, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The parties entered into a stipulation dated February 24, 2015, closing the matter in view of respondent's resignation from judicial office by letter dated February 3, 2015, effective May 31, 2015. After respondent withdrew his resignation and requested a hearing, the Commission again designated Mr. Easton as referee by Order dated May 20, 2015, and a hearing was held on September 17 and 18, 2015, in Syracuse. The referee filed a report dated August 23, 2016.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Commission counsel recommended the sanction of removal, and respondent's counsel recommended a sanction no greater than censure. On December 8, 2016, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Hastings Town Court, Oswego County, since January 2000. His current term of office expires on December 31, 2019.

He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. In the Hastings Town Court, the prosecutor was often not present for the disposition of charges. The last Wednesday of each month was designated a “district attorney day” when a prosecutor would attend, although during court proceedings on that day the prosecutor would often be in a separate room conferencing cases.

People v. B. B.

3. On April 27, 2011 respondent presided over *People v. B. B.*, involving a defendant charged with Speeding and Operating a Motor Vehicle with a Suspended or Revoked Registration, a misdemeanor.

4. After reviewing the signed plea recommendation form from the district attorney’s office, respondent accepted Mr. B.’s guilty plea to the reduced offenses of Operating an Unregistered Vehicle and Standing on the Pavement.

5. While explaining the surcharge, respondent asked the defendant about his military service in Iraq. Then, without notice to the prosecution, respondent vacated the defendant’s plea to the reduced offense of Operating an Unregistered Vehicle and dismissed the original misdemeanor charge in the interest of justice, stating, “I don’t like the resolution of this. So I’m going to dismiss the 401(1)(a) in the interest of justice and the other one’s a parking ticket, and you don’t owe us nothing on it anyway.”

People v. Joseph Scafidi

6. On June 1, 2011, Joseph Scafidi appeared before respondent for disposition and/or sentencing on a charge of Petit Larceny and several traffic offenses including Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree (“AUO”), a misdemeanor.

7. Mr. Scafidi’s attorney, Charles E. Pettit, confirmed to respondent that there was an agreed-upon disposition with the district attorney’s office reducing the Petit Larceny charge to Disorderly Conduct contingent upon restitution and community service and that Mr. Scafidi had paid restitution and performed 45 hours of community service at a local cemetery.

8. In response to respondent’s inquiry, Mr. Scafidi stated that he had worked for Theresa Green at the cemetery, and respondent remarked that “she does a great job.” At the hearing, Mr. Pettit testified that Theresa Green was a friend of respondent’s wife.

9. Respondent accepted Mr. Scafidi’s guilty plea to Disorderly Conduct and sentenced him to a conditional discharge, waiving the surcharge. The waiver of the surcharge resided within respondent’s discretion since the defendant had paid restitution prior to sentencing.

10. Without notice to or the consent of the prosecution, respondent reduced the misdemeanor AUO offense to a traffic violation and dismissed another violation of Improper Turn, stating that he was doing so “on [his] own volition.”

11. The district attorney’s policy was not to agree to a reduction of a

misdemeanor AUO offense if a defendant, like this defendant, had outstanding fines in another court.

People v. C. T.

12. On July 13, 2011, respondent arraigned Mr. T. on a charge of Disobeying a Traffic Control Device. After the defendant said he wanted to explain what had occurred, respondent advised him that he could seek a reduction of the charge from the district attorney's office. Respondent then asked him where he worked, and Mr. T. stated that he worked as an intern at the Calvary Baptist Church in Brewerton and was pursuing a master's degree. He also told respondent that he had not received a ticket within the previous 18 months.

13. Without notice to the prosecution, respondent dismissed the traffic infraction, stating, "Okay, I'm going to dismiss this case in the interest of justice, *sua sponte*."

14. At the hearing before the referee, respondent testified that he believed he had authority to reduce an AUO charge in certain circumstances and to dismiss a traffic infraction in the furtherance of justice without notice to the prosecution, but that he now recognizes that such conduct is improper.

Additional Finding

15. As the referee found, respondent's exchanges with the defendants in the *B.*, *Scafidi* and *T.* cases were either innocuous or permissible in the context of sentencing and were not *ex parte* communications. However, respondent had a responsibility to afford the prosecution notice of the information that he elicited and the

action that he was about to take in dismissing or reducing charges on his own motion.

As to Charge II of the Formal Written Complaint:

16. On July 13, 2011, respondent arraigned Timothy B. Fuller on a charge of Menacing in the Third Degree, a misdemeanor, and Harassment in the Second Degree, a violation. Mr. Fuller was appearing pursuant to an appearance ticket. Respondent ascertained that Mr. Fuller qualified for assigned counsel, directed that he be taken into custody and set bail at \$1,500 cash. Respondent then inquired whether any attorney in attendance in the courtroom wished to represent Mr. Fuller, and Mara J. Holst, Esq., agreed to represent him.

17. After Ms. Holst was appointed, the following exchange occurred:

“JUDGE CLARK: Okay. Come on up counselor. This is your new attorney. Give her your paperwork, Mr. Fuller. He’s charged with Menacing 3rd, a B misdemeanor and the Harassment 2nd violation. Here, Mel, you’ll need to make this out. You’re going to probably make a motion for ROR or pre-trial, or something of that sort.

MS. HOLST: Yes, judge.

JUDGE CLARK: Okay, motion denied. Bail. You sure you haven’t been drinking?

MR. FULLER: Positive. I am not lying to you.

JUDGE CLARK: Let’s stay with the 1,500 cash, 3,000 bond ...”

Ms. Holst never made a bail application.

18. At the hearing before the referee, Ms. Holst (Wegerski) testified that she did not make an argument for her client’s release because she believed the bail respondent had set was fair (“if I believed that the bail...was not fair, I would have pushed the issue”) and because she did not think that making an argument would “make a

difference” in light of respondent’s statements and his bail decisions in earlier cases that day. She also testified that she believed respondent’s handling of the proceeding did not violate her client’s rights and was “within the parameters of the law.”

19. After the proceeding, respondent sent the paperwork in the matter to the County’s pre-trial release program, and Mr. Fuller was released the next day.

As to Charge III of the Formal Written Complaint:

20. On July 13, 2011, respondent arraigned Matthew J. Stuper and Justin Cote, who were charged with Harassment in the Second Degree, a violation.

21. Mr. Stuper was a town resident who had appeared before respondent for nearly two years on two cases which were still pending. He had not had a bench warrant issued against him in these cases.

22. In preparation for his court appearance, Mr. Stuper had borrowed money from his fiancée’s mother in anticipation of needing cash to post bail.

23. At the arraignment, respondent asked attorney Charles E. Pettit, who was representing Mr. Stuper on the pending matters, if he wanted to represent him on the new charge. Mr. Pettit agreed to accept the appointment solely for the purposes of arraignment.

24. Respondent addressed Mr. Stuper about the other charges pending against him. According to the transcript, after Mr. Stuper reported that he was in the pre-trial release program, the following exchange occurred:

“JUDGE CLARK: Okay, your bail is set at 3,500 cash.
MR. STUPER: I’ll post it now.”

JUDGE CLARK: Get it out.

MR. STUPER: I want to post Mr. Cote's bail as well.

JUDGE CLARK: Well, maybe I'm not going take it from you, sir. How much you got in there?

MR. STUPER: Well, Mr. Pettit told me to bring a little more than necessary.

JUDGE CLARK: Mr. Pettit? 3,500, by the way, will [sic], no, I can't do that.

MR. STUPER: I don't have much more than that.

JUDGE CLARK: No. Well, it doesn't really matter how much you have. What matters is that you're in more trouble while you have charges pending. Well, let's make sure I'm correct about a couple things here."

25. Mr. Pettit informed respondent that Mr. Stuper's plea to a reduced charge of Attempted Endangering the Welfare of a Child had been vacated after an investigation found the complaint to be unfounded. Mr. Stuper confirmed that he was reporting to pre-trial release every week and told respondent that his fiancée needed his help in caring for their four children as she had a fractured tibia. After Mr. Stuper said he had attended an anger management program, respondent stated, "I find it hard to believe that someone who just attends anger management winds up in another similar situation where there appears to be anger involved." The transcript indicates that the following colloquy then occurred:

"JUDGE CLARK: We now have three criminal files for you.

MR. STUPER: Understand, sir.

JUDGE CLARK: Do you have 5,000 there?

MR. STUPER: Maybe, maybe, close. I'm –

JUDGE CLARK: Start counting. Because you need 5,000 cash. Do you want to step aside a second while you're counting?

MR. STUPER: Yes, sir. ...

JUDGE CLARK: ... Count it out. Make sure what you have.

* * *

JUDGE CLARK: What are we up to there, counselor?

MR. PETTIT: 5,000.

JUDGE CLARK: Good. Here, Mel. Mr. Stuper is going to post \$5,000 cash bail.”

26. Mr. Stuper posted his bail as well as Mr. Cote’s \$500 bail.

27. At the hearing before the referee, respondent testified that he was still reviewing the file when he set bail at \$3,500 and that he changed the bail amount after reviewing the prior and pending charges against the defendant and determining that he was “a flight risk.”

28. In September 2011 respondent granted an adjournment in contemplation of dismissal in the matter and issued an order of protection. The allegation in the Formal Written Complaint pertaining to the order of protection is not sustained and therefore is dismissed.

As to Charge IV of the Formal Written Complaint:

29. On September 8, 2010, respondent arraigned Thor E. Lentz pursuant to an appearance ticket on charges of Criminal Mischief in the Fourth Degree, Harassment in the Second Degree and Unlawful Possession of Marijuana. Respondent assigned Charles E. Pettit, Esq., to represent Mr. Lentz.

30. Prior to releasing the defendant, respondent directed him with respect to his attorney, “[Y]ou’re going to have to make an appointment with his office, and you’re going to have to go there”; “You have to make each and every appointment with him”; and “If I’m going to release you in your own custody today, you’re going to report to your attorney when he says to, you’re going to do what he says, how he says. Understand?”

31. Respondent also told the 21-year old defendant, “Any of the people that you usually hang around with, you’re not going to hang around with them anymore”; “stay out of trouble” and “when you’re not working, go home, watch TV, do something different, right?”; and “There will not be any drinking of alcohol until this case is closed, and God forbid you go out there and do any illegal drugs.” Mr. Lentz had no co-defendants on the pending charges, and there was no indication in the papers that alcohol was involved in the matters.

32. In addition, respondent told Mr. Lentz, who had not pled to any offense, “Start a little community service or something, maybe. Is that going to hurt you?”; “you need to start some community service, get yourself a few hours going, 20, 25 hours ... you’re going to start doing some community service, right?” He also asked Mr. Lentz, “Do you go to church? ... Well maybe you need to start ... So, you can, you know, check out the churches....”

33. On November 3, 2010, Mr. Pettit faxed a letter to the court asking to be relieved as Mr. Lentz’s attorney and stating that Mr. Lentz had missed his first appointment and had indicated he would not appear for his next appointment because of a lack of transportation. Respondent signed a bench warrant for Mr. Lentz bearing a notation, “Failed to meet conditions of ROR.” Respondent testified that the warrant was a draft that was placed in the court file and was never given to a law enforcement agency or executed.

34. At the hearing, Mr. Pettit testified that he did not object to respondent’s instructions to Mr. Lentz because he regarded them as “unenforceable.”

Respondent testified that while there is “no excuse” for his instructions to the defendant, he made those statements “because I care about this kid”; his “intent was to take this young man and get him set on the right course,” and at the time he thought he “was doing the right thing.” He recognizes that by engaging in such behavior, he improperly “bridge[d] social work with being a judge” and testified that he will not repeat such conduct.

As to Charge V of the Formal Written Complaint:

35. On February 9, 2011, respondent presided over a status conference in *People v. Adam J. Colbert*, involving a 21-year old defendant charged with two counts of Driving While Intoxicated, Inadequate Lights, and Unlawful Possession of Marijuana. Mr. Colbert was represented by Richard H. Jarvis, Esq.

36. Mr. Colbert has a nose piercing and ear gauges.

37. Respondent began the proceeding by saying to Mr. Colbert, “What’s that thing in your nose, Adam?” and “When I was a kid we used to do that to all the bulls on the farm.” Respondent’s comments provoked laughter in the courtroom. A few moments later, respondent continued, “I was mentioning what we used to do. That’s all, rings in their noses, made them behave better.” Respondent then commented on Mr. Colbert’s ear gauges, saying, “What is going on with your earlobes?”

38. At the hearing, Mr. Colbert testified that he felt respondent “was poking a little fun at” his physical appearance and that he was nervous because he did not know if his ear gauges would affect “what was going on in court.”

39. Five months later, on July 13, 2011, Mr. Colbert appeared before respondent to enter a plea. In reference to the ear gauges, respondent asked Mr. Colbert, “Aren’t those bigger than the last time I saw you?” When Mr. Colbert acknowledged that that they were, respondent replied, “Well, why would you do that?” and said, “You afraid I’m not seeing you up here or something?” Respondent continued to speak about Mr. Colbert’s physical appearance, stating:

“Well, it’s not because I don’t care. I mean, I’m just concerned about his ears. Court will reflect into the record that Mr. Colbert just appeared, and I believe last time he had pierced ears with holes in them that were approximately dime size, and today he appears, and I’m not sure, but they’re somewhere between quarter and half dollar, and that’s what we’re discussing.”

40. Mr. Colbert pleaded guilty to one count of Driving While Intoxicated in satisfaction of all charges. Respondent imposed a conditional discharge with a \$1,000 fine, a \$400 surcharge and 40 hours of community service. After imposing the sentence, respondent told Mr. Colbert:

“Additional [sic], there will be no more, geez, how do we say this, how about we just put it this way, you don’t increase the size of your earlobes for the next twelve months. Because if I have to look at you again, I don’t want to look at that.

* * *

Man, you got to find a new hobby – I’m letting you know.

* * *

I don’t know why you do that, hey, you know what – maybe that’s cool, maybe that’s what you like, I don’t know.”

41. At the hearing, Mr. Colbert testified that he understood that his conditional discharge required that for a year he “was not to stretch the size of my ears anymore,” that he was “not happy” because he “did not believe my ears had anything to

do with the case,” and that he was embarrassed by respondent’s comments and by laughter in the courtroom when respondent made them. He also testified that he believed that respondent “cared about” him.

42. Mr. Colbert’s attorney testified that respondent “had clearly taken an interest” in Mr. Colbert, “was monitoring him very, very closely” and had developed “a rapport” with him over numerous court appearances. He testified that he did not object to respondent’s statements because he regarded them as “good natured” and did not think the defendant “was being ridiculed or embarrassed.”

43. At the argument before the Commission, respondent stated that his comments to Mr. Colbert were an “attempt which was fool-hearted to relax the atmosphere” for a young defendant whom he had a rapport with and cared about. He testified at the hearing, and reiterated at his appearance before the Commission, that he now recognizes that such comments are inappropriate and that he will not engage in such conduct in the future.

As to Charge VI of the Formal Written Complaint:

44. On November 10, 2010, D. C., who was 17 years old, appeared before respondent for arraignment on a charge of Imprudent Speed, a traffic infraction. Mr. C.’s father was present.

45. Respondent asked Mr. C. to show him the documents he was holding, and Mr. C. gave him an accident information form. Without advising Mr. C. that he had a right to be represented by counsel or asking for a plea, respondent

questioned Mr. C. about the underlying incident, asking, *inter alia*, “So, you had an accident?”; “Was it your fault?”; “Was anybody hurt?”

46. Respondent asked Mr. C. why he did not live with his parents and asked Mr. C.’s father whether he wanted D. “to move home.” When Mr. C.’s father said he did, respondent asked Mr. C., “Been to the Public Safety Center? Never been to jail? ... Thinking about it? ... I am.” Respondent questioned Mr. C. several times about why he was not living at home.

47. Respondent asked Mr. C. if he wanted to “just plead guilty” and “go to the Public Safety Center” where he “could go for up to ten days just on this charge. That’s a week and a half.” He added, “You don’t think you want to go there? ... It’s jail.” Respondent then engaged in the following exchange with the defendant:

“JUDGE CLARK: Oh but that jogged you pretty well, didn’t it? You don’t want to go to jail?”

MR. C.: No.

JUDGE CLARK: Me either. So, how soon can you move back home?

MR. C.: As quick as possible.

JUDGE CLARK: Pardon me?

MR. C.: As quick as possible.

JUDGE CLARK: There you go. How long is that going to take?”

48. After Mr. C. confirmed that he would move in with his parents, respondent stated, “I’ll tell you what, I’ll make you a deal. How’s that? You want my help ... or do you want to continue down the course you are heading right now?”

49. Respondent directed Mr. C. to never again come to court without his report card so respondent could confirm that he was passing his classes, then stated,

“Then if you’re doing what I think you ought to be doing, I’ll line up a meeting with you and the district attorney, and you can try and negotiate your way through this. Maybe he’ll offer you a lesser charge.” Respondent continued:

“But, I’m the ultimate authority that decides what happens to this. Now, if you earn your way through this by going back home to live, like you should be anyways, and forgetting all about your goombas, and you get good grades in school, and you don’t get in more trouble, you never know, maybe I’ll dismiss it ... do you want part of the deal or not? ... Do we have a contract between us?”

50. Respondent then told Mr. C. he would adjourn the case for 60 days “to give you a couple months to perform.” Respondent summarized the terms he had set: “To achieve a C-level in school, report cards, and the promise. Promises will let you negotiate with the ADA, and then I’ll do what I think is right, up to and including the possibility of 15 days of incarceration.”

51. The case history report in the *C.* case contains a notation stating: “def needs to move back home...needs to imp[r]ove on his grades, bring grades to court.” For the next four months Mr. C. returned to respondent’s court several times to provide respondent with his report cards. The case history report indicates that the defendant met with the district attorney on March 20, 2011, four months after his arraignment.

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)(1), 100.3(B)(3), 100.3(B)(6) and 100.3(B)(7) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law.

Charges I through VI of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

The record before us demonstrates that in performing his judicial duties in several cases in 2010 and 2011, respondent overreached his judicial authority, misapprehended his role as a judge and failed to comply with well-established legal requirements. As respondent has acknowledged, he deserves to be disciplined for his behavior, which was inconsistent with ethical standards requiring every judge, *inter alia*, to be an exemplar of courtesy, to be faithful to the law and maintain professional competence in it, and to accord to every person with a legal interest in a proceeding the right to be heard according to law (Rules, §§100.3[B][3], 100.3[B][1], 100.3[B][6]). Although it appears that in many respects respondent's conduct was well-intentioned and that his errors of law were isolated and unintentional, it is not disputed that he disregarded his ethical obligations and abused the power of his office.

Most serious, we believe, was respondent's misconduct in connection with the *Colbert* and *Stuper* matters.

Respondent's remarks regarding Mr. Colbert's appearance, delivered at two separate court appearances five months apart, were improper and unfitting for a judge. At a time when the young defendant facing serious charges was appearing before the judge to report on his treatment and later for sentencing, respondent commented on Mr. Colbert's nose piercing and ear gauges, remarking, *inter alia*, "What's that thing in your

nose? ... When I was a kid we used to do that to all the bulls on the farm”; “What is going on with your earlobes?”; “Aren’t those bigger than the last time I saw you? ... Why would you do that?” Further, in sentencing Mr. Colbert to a conditional discharge on a plea to Driving While Intoxicated in satisfaction of multiple serious charges, respondent advised him, “Additional [sic]... you don’t increase the size of your earlobes for the next twelve months. Because if I do have to look at you again, I don’t want to look at that.” As the referee aptly stated, “That these comments were aimed at a twenty one year old young man struggling with a substance abuse problem only accentuates their inappropriateness.”

Conceding that his comments, on their face, appear to be mocking the defendant, respondent asserts that he was only attempting to “relax the atmosphere” for a young defendant whom he cared about and had developed a rapport with over numerous court appearances. Mr. Colbert, testifying about the incident four years later, said that while he had felt embarrassed by respondent’s remarks, he believed that respondent “cared about” him, and his attorney concurred that the judge “had clearly taken an interest in this young man” and spoke to him in a manner that was “good-natured,” not mean-spirited. Even if dispensed with good intentions, such comments to a vulnerable young defendant, delivered in a courtroom full of spectators, were inconsistent with Section 100.3(B)(3) of the Rules, which requires a judge to be “patient, dignified and courteous” to litigants; at the very least, they could be perceived as demeaning and belittling and thus were detrimental to the public’s confidence in this particular judge to perform his judicial duties in an appropriate manner, as well as in the judiciary as a

whole. Even a single instance of denigrating, disrespectful statements to a litigant, standing alone, may warrant public discipline. *See, e.g., Matter of Hannigan*, 1998 NYSCJC Annual Report 131 (during plea discussions, judge referred to a young defendant as “trash” and “garbage” who had used her “constitutional right ... to lay back, ... to have babies, ...to be stupid”); *Matter of Going*, 1998 NYSCJC Annual Report 129 (judge told a litigant he appeared to be “more than a little nuts” and repeated the remark when the litigant objected). *See also Matter of Assini*, 2006 NYSCJC Annual Report 191.

In the arraignment of defendant Matthew Stuper on a Harassment charge, which occurred on the same date that respondent sentenced Mr. Colbert, the transcript of the proceeding indicates that respondent increased the bail from \$3,500 to \$5,000 with no explanation after Mr. Stuper indicated that he was prepared to post the initial amount, suggesting that respondent increased the amount simply because the defendant could post it. While respondent maintains that he spoke too quickly in setting the initial bail amount since he was still reviewing the file and that he subsequently determined that a higher amount was appropriate because of the defendant’s prior convictions and pending charges, respondent failed to ensure that the record reflected the statutorily mandated criteria he considered in changing his bail determination (*see* CPL §510.30[2]). In the absence of such a record, respondent’s increase of the bail amount appeared to be arbitrary and punitive, which demeaned the critical importance of procedural regularity and fairness in determining bail. *See Matter of Hopkins*, 1987 NYSCJC Annual Report 93 (judge revoked recognizance, set bail and jailed a defendant charged with a traffic

violation after he requested an adjournment). This was contrary to respondent's ethical obligation to be faithful to the law and to avoid impropriety and the appearance of impropriety in performing his judicial duties (Rules §§100.3[B][1], 100.2[A]).

On the same date, in *Matter of Fuller*, respondent made a pre-emptive, peremptory denial of a motion for the defendant's release by announcing "Motion denied" before any application had been made. Before making that comment, respondent, who had just assigned counsel to represent the defendant, remarked that the attorney was "probably" going to move for the defendant's release. The defendant's attorney never made a bail application, testifying at the hearing that she chose not to "push the issue" because she believed that the bail respondent had set was fair and because she felt it would be futile to do so in view of respondent's comments and prior bail decisions. Respondent's comment, at the very least, discouraged the attorney from making an application and therefore constituted a failure to accord to every person who has a legal interest in a proceeding the right to be heard in violation of Section 100.3(B)(6) of the Rules. Procedural due process, which includes allowing a defendant an opportunity to be heard regarding his or her liberty interests, is of fundamental importance not only to the defendant, but to the public's confidence in the fairness, integrity and competence of the judiciary. *See Matter of Jung*, 11 NY3d 365 (2008). Whether the application would have been futile or not, the defendant was denied the right to be heard regarding his release.

In two other arraignments, both involving young defendants, respondent overstepped his judicial authority by appearing to impose improper and far-ranging

conditions that had no basis in law and no relation to the charges against the defendants. In *Matter of Lentz*, he released on his own recognizance a 21-year old defendant charged with various offenses after directing the defendant, *inter alia*, to “make each and every appointment” with his assigned counsel and “do what he asks you to do ... how he says, what he says”; he further advised the defendant that “when you’re not working, go home, watch TV, do something different, right?”; “the people you usually hang around with, you’re not going to hang around with them anymore”; and no “drinking of alcohol until this case is closed.” He even told the defendant, who had not been convicted of any offense, to “start a little community service or something, maybe. Is that going to hurt you? ... get yourself a few hours going, 20, 25 hours”; and after asking the defendant if he went to church, respondent told him, “Well maybe you need to start ... check out the churches.” In *Matter of C.*, involving an unrepresented 17-year old charged with a traffic infraction, respondent coerced the defendant to agree to move back home by underscoring his authority to send the young man to jail and pressing him for an explanation of why he did not live with his parents before asking, “So, how soon can you move back home?” Respondent also directed the defendant to bring his report cards to subsequent court appearances as a condition for “lin[ing] up a meeting between you and the DA” to discuss a possible plea. Despite respondent’s professed motive to help the young defendants whom he “cared about” to get “set on the right course,” such actions were an abuse of his judicial authority and, as he has acknowledged, wrongfully “bridge[d] social work with being a judge.” Respect for the law is better fostered by strict compliance with the requirements of due process than by *ad hoc*, informal

procedures that, even if well-intentioned, abrogate those requirements.

Finally, it was improper for respondent to dismiss traffic charges in three cases and to reduce a charge (from the misdemeanor of Aggravated Unlicensed Operation to a traffic infraction in *Scafidi*) without according the prosecution an opportunity to be heard. While a judge has discretion to dismiss a charge *sua sponte* in the furtherance of justice “even though there may be no basis for dismissal as a matter of law” (CPL §170.40), such dispositions require notice to the prosecutor (CPL §§170.45, 210.45), and reducing a charge requires the prosecutor’s consent (CPL §220.10[3]). In each instance, respondent appears to have acted based on information he acquired, in the prosecutor’s absence, during colloquy with the defendants concerning their military or community service. By his actions, respondent failed to be faithful to the law and maintain professional competence in it and failed to accord every person who has a legal interest in a proceeding the right to be heard according to law in violation of Sections 100.3(B)(1) and 100.3(B)(6) of the Rules. *See Matter of Cook*, 2006 NYSCJC Annual Report 119 (censuring a judge, *inter alia*, for reducing or dismissing charges in 40 cases without notice to or the consent of the prosecution, in many instances based on *ex parte* communications). Admitting that these dispositions were inconsistent with statutorily required procedures, respondent testified that he had mistakenly believed that he could dismiss a traffic infraction in the interest of justice and had authority from the district attorney to reduce an AUO charge in certain circumstances. We note that there is no indication in the record before us that the district attorney, who appeared in respondent’s court only once a month although respondent presided twice each week, ever objected to

or appealed these dispositions. Further, though the dispositions were improper, it appears that respondent's leniency was prompted by what he had ascertained about the defendants' character and conduct, not by favoritism or other improper purpose.

In considering the sanction, we note that the Court of Appeals has stated that "the extreme sanction of removal" should be imposed only in the event of "truly egregious circumstances" (*Matter of Steinberg*, 51 NY2d 74, 83 [1980]). While serious in several respects, the misconduct described herein does not rise to the level of "truly egregious" misbehavior that has been held to warrant the sanction of removal (*compare, e.g., Matter of Restaino*, 10 NY3d 577 [2008]; *Matter of Bauer*, 3 NY3d 158 [2004]; *Matter of Sardino*, 58 NY2d 286 [1983]). Based on the totality of the record before us, we therefore conclude that the sanction of censure is appropriate and consistent with Commission precedents, especially in view of the mitigating circumstances presented here. It appears that respondent's comments and directions to defendants, while improper, were well-intentioned, that he believed he was acting in the interests of justice, and that his errors of law were isolated and unintentional (*compare, e.g., Matter of Duckman*, 92 NY2d 141 [1998] [removing a judge for knowingly ignoring the law and demonstrating bias and intemperate conduct on repeated occasions]). We are also mindful that respondent appears to be a caring, hard-working judge in a busy court and that, at the hearing and oral argument, he readily acknowledged that his actions were improper and has vowed not to repeat them. Finally, we note that all of respondent's misconduct occurred more than five years ago, with no indication in the record before us of any prior or subsequent complaints regarding his judicial service (*see Matter of*

Skinner, 91 NY2d 142, 144 [1997]). Based on the totality of the record presented, we are persuaded that respondent is committed to ensuring that his conduct in the future is consistent with the ethical standards required of every judge.

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

Mr. Belluck, Mr. Harding, Judge Acosta, Mr. Cohen, Ms. Corngold, Mr. Emery, Judge Klonick, Judge Leach, Mr. Stoloff and Judge Weinstein concur.

Mr. Emery files a concurring opinion.

Ms. Yeboah did not participate.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: March 13, 2017

A handwritten signature in black ink, reading "Jean M. Savanyu", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "J".

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

MICHAEL R. CLARK,

a Justice of the Hastings Town Court,
Oswego County.

CONCURRING OPINION
BY MR. EMERY

I concur in the sanction of censure despite my first reaction to Judge Clark's inexcusable comments to a vulnerable young defendant. At a time when the young man, facing serious charges and struggling with substance abuse issues, was appearing before the judge to report on his treatment and later for sentencing, Judge Clark's gratuitous statements about the youth's nose piercing and ear gauges mocked and denigrated his appearance. Without question, such comments are "improper and unfitting for a judge," as the Commission's determination states. *See, e.g., Matter of Duckman*, 92 NY2d 141 (1998) (judge who engaged in intemperate, bullying tirades towards prosecutors, *inter alia*, appeared to mock a blind attorney by waving papers in his face and saying, "Do you see me?"); *Matter of Hannigan*, 1998 NYSCJC Annual Report 131 (during plea discussions, judge referred to a young defendant and her witnesses as "trash" and "garbage" and referred to her constitutional rights "to relax, to lay back, ...to have

babies,...to be stupid”). In my view, Judge Clark’s comments to this defendant, standing alone, might warrant the ultimate sanction of removal, as recommended by Commission counsel, since such behavior so seriously damages public confidence in this particular judge to perform his judicial duties in an appropriate manner, as well as, in the judiciary as a whole.

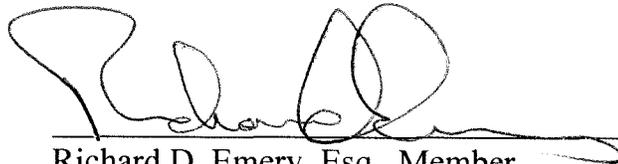
The Commission’s Determination fairly describes the mitigating factors which support the result we reach. One of them, however, deserves a bit more elucidation, in my view. The chronology of this case, though long delayed for reasons not in the record, has ironically aided this judge in his quest to remain on the bench. The events took place more than five years ago and the record before us does not reveal any similar misconduct before or, more importantly, since. Because we took so long to bring this case to conclusion, the judge plainly benefited from his, apparently, blemishless record. Ironically, the delay in this case supports the conclusion that Judge Clark has demonstrated that he can perform his duties properly and effectively and, therefore, is not a threat to the public.

By noting this factor in this case, I do not want to imply that we should suspend our process so that a judge can demonstrate her fitness after misconduct has occurred. I do not think there was any intent to allow this case to meander for so long. It is indisputable that delays of this length are bad for the judge, the Commission and the public. It just so happens that in this case, notwithstanding that the charges pending against the judge must have weighed heavily on his mind, the lengthy delay and the

judge's ability to function effectively during the pendency of his case worked to his benefit. Hopefully, we can make fair decisions without inordinate delay.

For these reasons, I respectfully concur with the determined sanction of censure.

Dated: March 13, 2017

A handwritten signature in black ink, appearing to read "Richard D. Emery", written over a horizontal line.

Richard D. Emery, Esq., Member
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

CHRISTOPHER C. CLARKIN,

a Justice of the Floyd Town Court, Oriskany Village
Court and Whitesboro Village Court, Oneida County.

**DECISION
AND
ORDER**

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Eteena Tadjioqueu,
Of Counsel) for the Commission

Leslie R. Lewis for Judge Clarkin

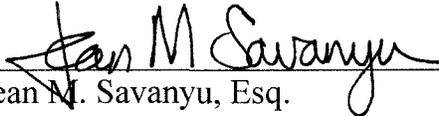
The matter having come before the Commission on December 7, 2017; and
the Commission having before it the Stipulation dated December 6, 2017; and Judge

Clarkin having tendered his resignation as Justice of the Floyd Town Court, Oriskany Village Court and Whitesboro Village Court by letters dated December 6, 2017, affirming that he will vacate judicial office effective December 31, 2017, and having affirmed that after vacating his judicial offices he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: December 8, 2017



Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

CHRISTOPHER C. CLARKIN,

STIPULATION

A Justice of the Floyd Town Court, the Oriskany
Village Court, and the Whitesboro Village Court,
Oncida County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H.
Tembeckjian, Administrator and Counsel to the Commission, and the Honorable
Christopher C. Clarkin and his attorney, Leslie R. Lewis, Esq.

1. Christopher C. Clarkin has been a Justice of the Floyd Town Court, Oncida
County, since 1999; a Justice of the Oriskany Village Court, since *2006*; and a Justice of
the Whitesboro Village Court, since *2008*. His current terms expire on December 31,
2019, March 31, 2019 and March 31, 2018 respectively. Judge Clarkin is not an attorney.

2. Judge Clarkin was apprised by the Commission in November 2017 that it was
investigating a Complaint that he made public comments on Facebook criticizing public
officials and a New York State gun regulation law and conveying bias in favor of law
enforcement and against a political organization, a social activist group, and members of
a religious group.

3. Judge Clarkin has tendered his resignation as Justice of the Floyd Town
Court, Oriskany Village Court and Whitesboro Village Court, by letters dated *12/6/17*.

copies of which are annexed as Exhibit 1. Judge Clarkin affirms that he will vacate judicial office effective December 31, 2017.

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

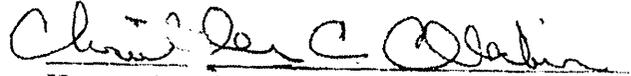
5. Judge Clarkin affirms that, having resigned his judicial office, he will neither seek nor accept judicial office at any time in the future.

6. Judge Clarkin understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, rescind his letter of resignation, or remain in office beyond December 31, 2017, the Commission's investigation of the Complaint will be revived.

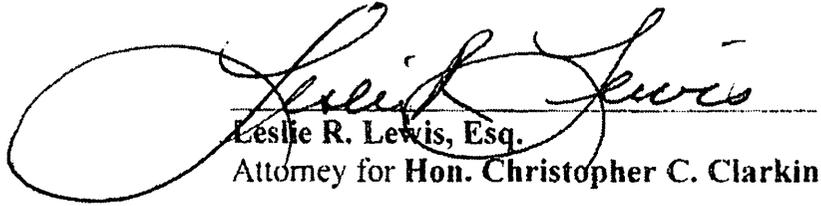
7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge Clarkin waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (A) this Stipulation will become public upon being signed by the signatories below, and (B) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 12/6/17


Honorable Christopher C. Clarkin

Dated: 12/6/17


Leslie R. Lewis, Esq.
Attorney for Hon. Christopher C. Clarkin

Dated: 12/6/2017


Robert H. Tembeckjian
Administrator and Counsel to the Commission
(Cathleen S. Cenci and Eteena J. Tadjiguen,
Of Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: JUDGE'S LETTERS OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JAMES P. CURRAN,

a Justice of the Hebron Town Court,
Washington County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty,
Of Counsel) for the Commission

Honorable James P. Curran, *pro se*

The respondent, James P. Curran, a Justice of the Hebron Town Court,
Washington County, was served with a Formal Written Complaint dated June 16, 2017,

containing one charge. The Formal Written Complaint alleged that in a 2015 case respondent engaged in, considered and failed to disclose improper *ex parte* communications and conveyed the appearance of bias. Respondent filed a Verified Answer dated September 5, 2017.

On October 17, 2017, the Administrator and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, 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 26, 2017, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Hebron Town Court, Washington County, since January 1, 2012. His current term expires on December 31, 2019. Respondent was admitted to the practice of law in New York in 1992.

2. As set forth below, in 2015, in presiding over *People v Michael T. Eastman*, respondent failed to avoid impropriety and the appearance of impropriety; engaged in, considered and failed to report improper *ex parte* communications; and conveyed the appearance of bias against the defendant and/or the alleged victim in the case.

3. On February 25, 2015, Michael T. Eastman was charged with Criminal Obstruction of Breathing, in violation of Penal Law Section 121.11, Assault in

the Third Degree, in violation of Penal Law Section 120.00(1), and Criminal Mischief in the Fourth Degree, in violation of Penal Law Section 145.00(1). The alleged victim was S. M., with whom the defendant was or had been engaged in a personal relationship.

4. From August 2014 through September 2014, Ms. M. had been employed by Virginia Curran, respondent's wife, at the Bedlam Corners General Store in Hebron, New York. Respondent was aware that Ms. M. had been so employed.

5. Respondent's wife owns the Bedlam Corners General Store and also serves as respondent's court clerk.

6. On February 25, 2015, respondent arraigned Mr. Eastman and issued a temporary order of protection directing him to stay away from Ms. M.

7. By letter dated March 5, 2015, Senior Crime Victim Specialist Rebecca A. Evansky of the Washington County District Attorney's Office notified respondent that Ms. M. had made a written request to modify the order of protection, and she enclosed a copy of the request.

8. On March 30, 2015, Mr. Eastman appeared before respondent with his attorney, John K. Oswald. Assistant District Attorney ("ADA") Brandon Rathbun was also present. Mr. Oswald orally moved for respondent's recusal on the basis that Ms. M., who was present in court, had previously worked at a business owned by respondent. Respondent denied the motion, stating:

"The person worked for my wife, not for me. I don't own the store. I have an office located upstairs. I had no contact with the person, didn't hire her, didn't interview her, and if I've seen her at the store twice and spoken to her twice, that was-- that was a lot."

Mr. Oswald stated that, “[w]ith that understanding,” he was withdrawing his motion at that time.

9. On April 20, 2015, Mr. Eastman appeared before respondent with Mr. Oswald. ADA Rathbun was also present. The following occurred:

A. Mr. Oswald stated that he had prepared a motion to dismiss based on the affirmative defense of mental defect, pursuant to Penal Law Section 40.15, but had not filed it because a plea agreement had been reached.

B. Mr. Oswald then listed the terms of the proposed plea agreement, which included, *inter alia*, a “non-violent” order of protection.

C. Respondent said he could not agree to a “non-violent” order of protection.

D. Mr. Oswald stated that the “non-violent” order of protection was the “principal reason” his client had been willing to plead guilty, and he summarized his argument to dismiss the charges.

E. Respondent set a schedule for the prosecution to file opposition papers and for Mr. Oswald to file a reply.

F. ADA Rathbun advised respondent that Ms. M. had requested that the charges be dropped, but that the prosecution was prepared to go forward.

G. Respondent replied that he had seen Ms. M.’s letter, and the proceeding concluded.

10. On April 20, 2015, several minutes after Mr. Eastman and Mr.

Oswald had left the court, respondent and ADA Rathbun joked about Mr. Oswald having inquired of ADA Rathbun about rumors that he and respondent went to dinner together. With respect to the motion to dismiss, respondent told ADA Rathbun, “Just get me your papers. You can give it to me when we go out to dinner, but it’s going to be a pretty easy decision for me to write.”

11. On May 4, 2015, ADA Rathbun filed his papers in opposition to the defendant’s motion to dismiss.

12. By decision and order dated May 15, 2015, respondent denied the defendant’s motion and scheduled the matter for a pre-trial conference.

13. By motion dated June 11, 2015, Mr. Oswald renewed his request for respondent’s recusal, based on a sworn affidavit by Ms. M. that *inter alia* (A) elaborated on her alleged relationship with respondent and respondent’s wife while employed at Bedlam Corners General Store and (B) asserted that respondent and his wife had made denigrating comments to her about Mr. Eastman.

14. By letter dated June 29, 2015, ADA Rathbun wrote in response to Mr. Oswald’s motion, “the People will defer to the discretion of [respondent] on this matter.”

15. By decision and order dated June 29, 2015, respondent denied the motion, finding that Ms. M.’s affidavit was “inaccurate and clearly prepared to bolster the motion.”

16. On July 11, 2015, a man who identified himself to respondent as Ms. M.’s husband and the father of her children approached respondent at a gas station and

claimed, in sum or substance, that Mr. Eastman and Ms. M. had been traveling to Vermont to engage in trysts and that the children had traveled with them. Respondent did not know the man and did not know whether the information he relayed was true.

Respondent did not disclose this conversation to defense counsel or the prosecutor.

17. On July 17, 2015, respondent received a voicemail message on his cell phone from an anonymous female caller who repeated, in sum or substance, essentially the same allegation raised by the man who had approached respondent at the gas station. Respondent did not disclose to defense counsel or the prosecutor that he had received this voicemail.

18. On July 20, 2015, during a pre-trial conference in the *Eastman* case, the following occurred:

A. Respondent incorrectly accused Mr. Eastman of having violated the order of protection by impregnating Ms. M. after the order of protection had been issued.

B. When Mr. Oswald attempted to refute the accusation, respondent questioned whether the pregnancy was the result of “the immaculate conception” and asserted that “someone perjured themselves.”

C. Although respondent subsequently acknowledged his error after both attorneys and Mr. Eastman corrected him as to the date of the issuance of the order of protection, respondent nevertheless continued to accuse Mr. Eastman of having violated the order of protection, stating: “I’m aware there’s been multiple violations of the order of protection. Multiple.” Respondent did not disclose how he was aware of these alleged “multiple violations,” even after Mr. Oswald questioned the propriety of respondent

presiding over the case in light of such knowledge.

D. Subsequently, respondent twice directed Mr. Oswald to tell Mr. Eastman that he (respondent) was aware of multiple violations of the order of protection.

E. Respondent told Mr. Oswald, “I don’t trust your client and I don’t trust [Ms. M.], that’s the problem, and I’m not letting them off the hook.”

19. On July 20, 2015, after the pre-trial conference, respondent (A) accepted Mr. Eastman’s guilty plea to the charge of Criminal Obstruction of Breathing, in satisfaction of all charges, (B) sentenced him to a conditional discharge with the conditions that he complete 50 hours of community service and anger management training and (C) imposed a fine of \$800 and a surcharge of \$205. Respondent also issued a six-month “stay-away” order of protection in favor of Ms. M., with leave for Mr. Eastman to apply for an 18-month “non-violent” order of protection upon the birth of Ms. M.’s and Mr. Eastman’s child, and a “non-violent” order of protection in favor of Ms. M.’s sister.

20. On July 20, 2015, after pronouncing the sentence, respondent said the following to Mr. Eastman:

“Let me tell you this, all right? And we’re still on the record. I’m aware that you violated that order of protection on multiple occasions since it was issued.”

21. When Mr. Oswald directed Mr. Eastman not to respond, respondent stated:

“And I don’t want you to say anything, but I’m aware that you violated it and I’m aware that [Ms. M.] knowingly violated it with you, so you can’t-- just because you go to

Vermont and you're not in New York when you do the violation, that doesn't mean it doesn't count. All right? So, don't violate it again, because if you come back here and you violated it again and you're found guilty after a hearing, you're going to get the maximum."

22. Respondent did not disclose how he was aware of the information he related in the preceding paragraph.

Additional Factors

23. Respondent acknowledges that he should have disclosed to the parties the sources and substance of the two unsolicited *ex parte* communications he received about the defendant's alleged violations of the order of protection. Respondent also acknowledges that he should not have repeatedly accused Mr. Eastman of having violated the order of protection based upon such unsubstantiated *ex parte* allegations.

24. Respondent acknowledges that, after disclosing the source and substance of the *ex parte* information to the parties, he should then have entertained objections regarding his continuing to preside over the case.

25. Respondent avers that his statements to the defendant were intended as a warning to Mr. Eastman against violating the order of protection in the future. Respondent nevertheless acknowledges that it was inappropriate to rely on such unsubstantiated and undisclosed *ex parte* information in this manner.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(4) and 100.3(B)(6) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause,

pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law. 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.

Respondent's handling of *People v Eastman* was contrary to the above-cited ethical standards and conveyed the appearance that he was biased against the defendant and/or the alleged victim based upon unsubstantiated, *ex parte* contacts.

A few months after arraigning the defendant on charges of Assault and other offenses and issuing an order of protection, respondent received unsolicited *ex parte* information from two sources (an individual who approached him out of court and an anonymous voicemail message) claiming that the defendant had violated the order of protection by taking trips with the complaining witness. Respondent was obligated to disclose these out-of-court communications to the prosecutor and defense counsel and to provide the defendant with an opportunity to rebut the information in court. Instead, at a pre-trial conference a few days later, he not only failed to disclose the communications but compounded the impropriety by repeating the information he had received as fact ("I'm aware there's been multiple violations of the order of protection"), notwithstanding that the defendant had not been charged with violating the order. He reiterated the accusations when he accepted a plea agreement, sentenced the defendant and issued a six-month order of protection, warning the defendant that he would "get the maximum" if he violated the order "again." These unsubstantiated accusations conveyed the appearance

that respondent had received and was influenced by undisclosed, unauthorized information that the defendant, unaware of its source, was unable to refute. Even after defense counsel interjected that if respondent had such information he should not be handling the case, respondent did not disclose the communications.

The requirement to disclose *ex parte* communications is inherent in a judge's obligation to "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" (Rules, §100.3[B][6]). A party who is unaware of *ex parte* information a judge has received is unable to address or rebut it. To the extent such communications include information that may be relevant to the merits of a pending case, they must be disclosed to the parties and their attorneys even if the communications were unsolicited. *See Matter of Marshall*, 2008 NYSCJC Annual Report 161 (judge was obligated to report unauthorized information she received "[e]ven if the *ex parte* communications were ... brief and unsolicited"), *accepted*, 8 NY3d 741 (2007); *Matter of Feeder*, 2010 NYSCJC Annual Report 143 (judge failed to disclose *ex parte* conversation with a defendant's mother, who had approached him after a court session and asked him not to sentence her daughter to jail); NY Jud. Adv. Op. 07-192.

As respondent has stipulated, his handling of the *Eastman* case conveyed the appearance of bias against the defendant and/or the alleged victim in the case.¹ After

¹ There was no charge that respondent was biased, which would have required disqualification (*see* Rule 100.3[E][1][a][i], requiring disqualification in a proceeding in which the judge "has a personal bias or prejudice concerning a party").

being told *ex parte* of their alleged travel together, respondent repeatedly accused the defendant of violating the order of protection, warned him of the serious consequences of violating the order “again,” and told the defendant’s attorney, “I don’t trust your client and I don’t trust [Ms. M.], that’s the problem, and I’m not letting them off the hook.” Respondent’s comments, which conveyed the appearance that he considered the defendant guilty of violating the order and the alleged victim complicit in the violations, were inconsistent with his obligation to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary and to avoid even the appearance of impropriety (Rules, §100.2[A]). Every person with a legal interest in a case has a right to have the matter heard before a judge who both is, and appears to be, impartial (*Matter of Herder*, 2005 NYSCJC Annual Report 169 [totality of judge’s conduct, including causing defendant’s arrest based on *ex parte* information, conveyed the appearance of bias]; *Matter of Rock*, 2002 NYSCJC Annual Report 149 [judge relied on *ex parte* information to the detriment of defendants, which “created an appearance of bias”]).

As the Commission has stated, “We reject the contention... that the concept of *ex parte* communications is ‘esoteric’ and that it is unrealistic to expect lay justices to be fully familiar with the ethical and procedural rules” (*Matter of Gori*, 2002 NYSCJC Annual Report 101 [judge solicited *ex parte* information from defendants in a small claims case and conveyed the appearance that he prejudged the case based upon the inappropriate, *ex parte* contacts]). All judges must be mindful of this important ethical mandate.

In accepting the stipulated sanction, we note that despite these *ex parte*

communications and his troubling statements indicating that he accepted the information he received as true, respondent did not take any punitive action against the defendant for violating the order of protection. He accepted a plea agreement, and his insistence on a “stay-away” order of protection as part of the agreement was consistent with his position throughout the case, predating the two communications. We also note that respondent has acknowledged that his failure to disclose the communications and his reliance on the undisclosed, unsubstantiated information he received were inconsistent with his ethical obligations.

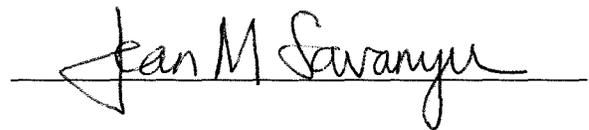
By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

Mr. Belluck, Mr. Harding, Mr. Cohen, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzairelli, Mr. Stoloff, Judge Weinstein and Ms. Yeboah concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: November 14, 2017

A handwritten signature in black ink, reading "Jean M. Savanyu", is written over a horizontal line.

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

LINDA J. DRAKE,

a Justice of the Rossie Town Court,
St. Lawrence County.

**DECISION
AND
ORDER**

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Honorable Rolando T. Acosta
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Eteena J. Tadjioqueu,
Of Counsel) for the Commission

Henry J. Leader for the respondent

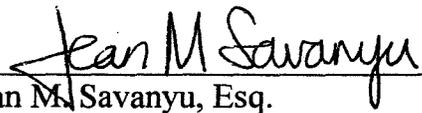
The matter having come before the Commission on June 14, 2017; and the
Commission having before it the Stipulation dated May 10, 2017; and respondent having

been served with a Formal Written Complaint dated February 16, 2017, having tendered her resignation dated May 5, 2017, and having affirmed that she will vacate judicial office on May 19, 2017 and that, having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: June 16, 2017



Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

LINDA J. DRAKE,

STIPULATION

a Justice of the Rossie Town Court,
St. Lawrence County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Linda J. Drake (“Respondent”) and her attorney, Henry J. Leader, Esq.:

1. Respondent has been a Justice of the Rossie Town Court, St. Lawrence County, since 1998. Her current term expires December 31, 2017. She is not an attorney.
2. Respondent was served with a Formal Written Complaint dated February 16, 2017 containing four charges. The Formal Written Complaint is appended as Exhibit 1.
3. Respondent enters into this Stipulation in lieu of filing an Answer to the Formal Written Complaint.
4. Respondent tendered her resignation dated May 5, 2017, a copy of which is appended as Exhibit 2. Respondent affirms that she will vacate judicial office on May 19, 2017.
5. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of a judge’s resignation to complete proceedings, and if the Commission

determines that the judge should be removed from office, file a determination with the Court of Appeals.

6. Respondent affirms that, having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future.

7. Respondent understands that, should she abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the present proceedings before the Commission will be revived and the matter will proceed to a hearing before a referee.

8. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that this matter be concluded, by the terms of this Stipulation, without further proceedings.

9. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (A) this Stipulation will become public upon being signed by the signatories below, and (B) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: *May 05, 2017*

Linda J. Drake
 Honorable Linda J. Drake
 Respondent

Dated: *5/5/17*

Henry J. Leader
 Henry J. Leader, Esq.
 Attorney for Respondent

Dated: May 10, 2017

Robert H. Tembeckjian
 Robert H. Tembeckjian
 Administrator and Counsel to the Commission
 (Eteena J. Tadjigoueu and Cathleen S. Cenci,
 Of Counsel)

THE FOLLOWING EXHIBITS ARE
 AVAILABLE AT WWW.CJC.NY.GOV
 EXHIBIT 1: FORMAL WRITTEN COMPLAINT
 EXHIBIT 2: RESPONDENT'S LETTER OF
 RESIGNATION

STATE OF NEW YORK
 COMMISSION ON JUDICIAL CONDUCT

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

JOAN M. KLINE,

DETERMINATION

a Justice of the Guilford Town Court, the
 Oxford Town Court and the Oxford Village
 Court, Chenango County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
 Paul B. Harding, Esq., Vice Chair
 Joel Cohen, Esq.
 Jodie Corngold
 Honorable John A. Falk
 Taa Grays, Esq.
 Honorable Leslie G. Leach
 Honorable Angela M. Mazzarelli
 Richard A. Stoloff, Esq.
 Honorable David A. Weinstein
 Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty,
 Of Counsel) for the Commission

Scott Clippinger for the respondent

The respondent, Joan M. Kline, a Justice of the Guilford Town Court,
 Oxford Town Court and Oxford Village Court, Chenango County, was served with a

Formal Written Complaint dated July 11, 2017, containing seven charges. The Formal Written Complaint alleged that in several cases respondent acted in a manner that appeared to coerce guilty pleas (Charge I), undermined the right to counsel (Charge II), conveyed an appearance of bias (Charge III), elicited incriminatory responses from a defendant at arraignment (Charge IV), and made discourteous and threatening comments (Charge V); it was also alleged that she destroyed court records without authorization (Charge VI) and held extra-judicial positions, as a court clerk and as a fire police officer, that were incompatible with judicial office (Charge VII). Respondent filed an Answer dated August 29, 2017.

On October 17, 2017, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On December 7, 2017, the Commission accepted the Agreed Statement and made the following determination:

1. From 2008 to the present, respondent has been a Justice of the Guilford Town Court, Chenango County. Her current term expires on December 31, 2017.
2. From March 2013 to July 2016, respondent served as Acting Justice of the Oxford Village Court, Chenango County. From March 2013 to May 4, 2017, respondent also served as clerk of the Oxford Village Court, Chenango County.

3. From 2009 to May 4, 2017, respondent served as a clerk of the Oxford Town Court, Chenango County.

4. From 2013 to the present, respondent has served as a clerk of the Bainbridge Town Court, Chenango County.

5. On May 16, 2017, respondent was temporarily assigned as a Justice of the Oxford Town Court and the Oxford Village Court, Chenango County, by Sixth Judicial District Acting Administrative Judge M. Rita Connerton, for terms to expire on December 31, 2017.

6. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint:

7. As set forth below, from December 2014 to January 2015, with respect to *People v Nathaniel R. Smith* and *People v Leslie G. Lapham*, in which the defendants were charged in the Oxford Village Court with violations of the Vehicle and Traffic Law (“VTL”), respondent, while acting in her capacity as court clerk but simultaneously holding the position of Acting Justice, acted in a manner that appeared intended to coerce the defendants to plead guilty by telling them that they could not enter a plea of not guilty to the charges against them.

People v Nathaniel R. Smith

8. On December 5, 2014, Nathaniel Smith was charged in the Oxford Village Court with Disobeying a Traffic Control Device, a violation of VTL Section 1110(a). The simplified information and supporting deposition both indicated “N.

CANAL 57-40.”

9. Mr. Smith pled not guilty by mail. Mr. Smith also sent a letter to the Oxford Village Court, dated December 18, 2014, stating, “I am hoping my charges can be reduced or possibly thrown out.”

10. On December 19, 2014, Mr. Smith initiated a telephone conversation with respondent, who told him that he was not allowed to plead not guilty because he had “already had a reduction.” Mr. Smith told respondent that he would change his plea to guilty. On Mr. Smith’s letter of December 18, 2014, respondent wrote: “He is remailing a Guilty Plea.”

11. By letter dated December 21, 2014, then-Oxford Village Justice John V. Weidman notified Mr. Smith that the court accepted his guilty plea and assessed a fine and surcharge totaling \$220.

12. By letter dated January 1, 2015, Mr. Smith wrote to the court “to formally change [his] plea to guilty” and enclosed a check in the amount of \$220.

People v Leslie G. Lapham

13. On December 27, 2014, Leslie G. Lapham was charged in the Oxford Village Court with Disobeying a Traffic Control Device, in violation of VTL Section 1110(a), as to which a conviction would result in two points on a driver’s license. The ticket and supporting deposition both indicated “S. CANAL 50 IN 30.”

14. On January 5, 2015, Mr. Lapham telephoned the court and first spoke with respondent. Mr. Lapham asked for directions, stating that he had received a traffic ticket and that he wanted to appear in court. Respondent did not give him directions but

discouraged him from coming to court by stating that he could not plead not guilty to the charge in court and that, if he pled not guilty by mail, the police officer would rewrite the ticket for Speeding. Conviction on such a charge would result in six points on a driver's license.

15. Respondent then transferred Mr. Lapham's call to Judge Weidman, who also told Mr. Lapham that he could not plead not guilty in court, that if he pled not guilty by mail the officer who issued the ticket would rewrite it for Speeding, that the matter would then go to a jury trial, that the district attorney would probably want to interview him and that he may want to retain an attorney.

16. On January 6, 2015, Mr. Lapham pled guilty to the ticket by mail but attached a two-page explanation to Judge Weidman requesting that he consider dismissing the charge.

17. On January 8, 2015, the court issued a letter, signed by "Joan M. Kline, Court Clerk" over the typed name of Judge Weidman, accepting Mr. Lapham's guilty plea and assessing a fine and surcharge totaling \$220.

As to Charge II of the Formal Written Complaint:

18. As set forth below, from July 2014 to September 2014, while presiding over three cases in which the defendants were each charged with at least one misdemeanor, respondent engaged in the following conduct:

A. In *People v Randy McCole*, in which the defendant appeared without counsel, respondent failed to properly inform the defendant of his right to an attorney

and/or his right to assigned counsel if financially eligible, then accepted a guilty plea to a misdemeanor without conducting an inquiry into whether the defendant had knowingly entered the plea.

B. In *People v Bridgitt Eggleston*, respondent (i) refused the defendant's request for an adjournment due to the absence of her attorney, (ii) negotiated a plea agreement with the prosecutor in the defense attorney's absence and (iii) accepted the defendant's guilty plea without confirming whether the defendant waived her right to counsel and without allocuting the defendant.

C. In *People v D. R.*, respondent engaged in an improper *ex parte* conversation about potential evidence with the defendant and prematurely destroyed and/or failed to maintain the court's records of the case, contrary to Section 2019 of the Uniform Justice Court Act, Section 214.11(a)(1) of the Uniform Civil Rules for the Justice Courts and Section 104 of the Rules of the Chief Administrator of the Courts, which require the retention of dismissed misdemeanor cases for six years.

People v Randy McCole

19. On July 22, 2014, respondent presided in Guilford Town Court over *People v Randy McCole*, involving charges, dating from 1998, of Aggravated Unlicensed Operation in the Second Degree, in violation of VTL Section 511(2)(a)(i), a misdemeanor, and Speeding, in violation of VTL Section 1180(b).

20. Mr. McCole, who appeared without an attorney, told respondent that he had previously been represented on the charges by an attorney who was now a judge and no longer practicing law. Mr. McCole also stated that he had talked to the assistant

district attorney, who advised him that he should seek representation.

21. Respondent did not inform the defendant of his rights to the aid of counsel, to an adjournment to obtain counsel or to assigned counsel if he were financially eligible.

22. After Mr. McCole had an opportunity to speak with the prosecutor, respondent accepted Mr. McCole's guilty plea to reduced charges of Aggravated Unlicensed Operation in the Third Degree, a misdemeanor under VTL Section 511(1)(a), and Disobeying a Traffic Control Device, a violation under VTL Section 1110(a), without conducting an inquiry to determine whether the defendant was entering the plea knowingly and intelligently.

People v Bridgitt Eggleston

23. On September 11, 2013, Bridgitt Eggleston was charged with Facilitating Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree, a violation of VTL Section 511-a(1), and was arraigned in Guilford Town Court on October 8, 2013.

24. On May 15, 2014, Ms. Eggleston was charged with Operation While Registration or Privilege Suspended or Revoked, a misdemeanor under VTL Section 512, and was arraigned in Guilford Town Court on May 29, 2014.

25. On July 22, 2014, Ms. Eggleston appeared before respondent in the Guilford Town Court in relation to the two above-referenced charges. Ms. Eggleston told respondent that she was unable to meet with her attorney, Joseph Ermeti, before her appearance, but that he had instructed her to request an adjournment. Respondent replied

that she would do nothing until she heard from Ms. Eggleston's attorney. When Ms. Eggleston asked what would happen if that did not occur that day, respondent said, "then that means he is not your attorney and you will have to answer this." Respondent did not adjourn Ms. Eggleston's case.

26. Approximately one hour later, respondent called the assistant district attorney to the bench where, in the absence of Ms. Eggleston, respondent said, "What I am going to do is I am going to cover the facilitating." The assistant district attorney agreed. Respondent then called Ms. Eggleston to the bench and, without giving the defendant an option to decline, said, "[T]he assistant DA to this court, has agreed to reduce 512 down to a 401(1)(a), which is an unregistered motor vehicle and you have a \$177 fine and a mandatory \$93 surcharge." When Ms. Eggleston indicated she did not have the money to pay, respondent said, "What I'm going to do is give you until August 21st." Ms. Eggleston said, "Okay. Thank you very much." Respondent made no inquiry as to whether Ms. Eggleston had waived her right to counsel and failed to conduct a plea allocation.

People v D. R.

27. On September 11, 2014, in Guilford Town Court, respondent arraigned D. R., who was charged with Failure to Provide Proper Sustenance, a misdemeanor, in violation of Section 353 of the Agriculture and Markets Law. Respondent advised Mr. R. that he was "entitled to an attorney at each and every part of these proceedings" and asked if he wished to have an attorney. Mr. R. responded, "Not at this time." Notwithstanding the provisions of Sections 170.10(3) and (4) of the Criminal

Procedure Law (“CPL”), respondent did not inform the defendant of his right to have assigned counsel if he were financially eligible.

28. At the arraignment, at which neither a prosecutor nor defense counsel was present, respondent engaged in a discussion with the defendant about the animals he was alleged to have neglected, viewed photographs of the allegedly abused animals that the defendant had with him, and inappropriately commented on their admissibility, noting that the photographs were undated.

29. On September 23, 2014, respondent dismissed the charge against the defendant.

30. Respondent prematurely destroyed and/or failed to maintain the court’s records pertaining to *People v D. R.*, contrary to Section 2019 of the Uniform Justice Court Act, Section 214.11(a)(1) of the Uniform Civil Rules for the Justice Courts and Section 104 of the Rules of the Chief Administrator of the Courts, which require the retention of records of dismissed misdemeanor cases for six years.

As to Charge III of the Formal Written Complaint:

31. As set forth below, from April 2013 to October 2014, in connection with summary proceedings to recover possession of property pursuant to the Real Property Actions and Proceedings Law, respondent conveyed an appearance of bias or prejudice in favor of landlords and against tenants by engaging in the following conduct:

A. In *Drapaniotis v Coffyn*, respondent provided advice to and engaged in ex parte conversations with the landlords about the substance of the grounds for

eviction, without disclosing to the tenant the substance of such ex parte communications or offering to recuse herself as a result of such ex parte communications.

B. In *Hills v DeMorier*, respondent threatened to incarcerate the tenant if he failed to make timely payment of the amount respondent awarded to the landlord.

Drapaniotis v Coffyn

32. On July 24, 2014, Yuliya and Theodore Drapaniotis appeared before respondent and respondent's then co-judge, David P. Daniels, in the Guilford Town Court and stated that they were seeking to evict their tenant, Mitchell Coffyn.

33. On July 24, 2014, in the absence of Mr. Coffyn, respondent and Judge Daniels engaged the Drapaniotises in an ex parte conversation lasting approximately 45 minutes, during which, *inter alia*, the Drapaniotises alleged that Mr. Coffyn had brandished a shotgun at Mr. Drapaniotis, threatened and harassed them, was living with a woman who was verbally abusive to Ms. Drapaniotis, used illicit drugs and damaged their property.

34. Respondent gave detailed instructions to the Drapaniotises about how to effectuate personal and substituted service of the summary proceeding papers on Mr. Coffyn. She also assisted them in completing the legal forms.

35. Judge Daniels called a law enforcement authority to determine whether charges had been filed against Mr. Coffyn as a result of the alleged shotgun incident, then informed respondent and the Drapaniotises that Mr. Coffyn had been incarcerated after being charged in another court with Obstruction of Governmental Administration. Respondent and Judge Daniels advised the Drapaniotises that it was

unclear whether the obstruction charge was related to the alleged shotgun incident.

36. On August 5, 2014, respondent presided over *Drapaniotis v Coffyn*, a summary landlord-tenant proceeding to recover possession of real property. Respondent neither disclosed to Mr. Coffyn (the tenant) the substance of the ex parte conversation that had occurred on July 24, 2014, nor offered to recuse herself from the matter as a result of such conversation.

37. During the proceeding, Ms. Drapaniotis testified that she was seeking the tenant's eviction "[a]s a consequence of the mobile home tenant criminal action in violation of the law." After an extensive discussion, Mr. Coffyn stated that he was willing to move his trailer off the landlord's property, and respondent ordered the tenant to remove the trailer within 90 days and to clean up the lot.

38. After the proceeding concluded, respondent and Judge Daniels continued to converse with the Drapaniotises in the courtroom. Respondent said that she would have "gladly given" the Drapaniotises an order of protection if criminal charges had been filed against the tenant in her court. Respondent also stated, "I wish I could have done more ... I know you are upset with me."

39. On October 9, 2014, the Drapaniotises appeared again before respondent and, *inter alia*, complained that Mr. Coffyn was dismantling the trailer, had broken the water line and left dogs on the property. Mr. Coffyn was not present in court. In a conversation lasting approximately 16 minutes, the Drapaniotises catalogued several instances of their tenant's misbehavior, and respondent asked many questions and advised the Drapaniotises to call the sheriff. Respondent also said that if the tenant had

not vacated the premises by the court's deadline, she would "do a letter for criminal contempt." If the tenant failed to appear, respondent stated she would "send a warrant out for him." Despite professing that she could not give legal advice and that the landlords should seek an attorney, respondent advised them they could file a civil claim for the damaged water pipe.

Hills v DeMorier

40. On April 2, 2013, in Guilford Town Court, respondent presided over *Hills v DeMorier*, a summary landlord-tenant proceeding to recover possession of real property for failure to pay rent.

41. After the parties agreed that the tenant could remain on the premises until the end of April and pay the landlord rent in the amount of \$635, respondent gratuitously threatened the tenant that if he failed to pay the amount "by the end of April ... we will put you in jail."

As to Charge IV of the Formal Written Complaint:

42. On October 21, 2014, while presiding over the arraignment in *People v D. B.*, respondent engaged in the following conduct:

- A. Respondent failed to properly read the charges to the defendant;
- B. Respondent asked questions of the defendant that created the appearance that respondent had prejudged the case and which could and did elicit incriminatory responses;
- C. Respondent adjourned the charges in contemplation of dismissal

without notice to and the consent of the prosecution, as required by CPL Section 170.55(1); and

D. Respondent prematurely destroyed and/or failed to maintain the court's records pertaining to the case, contrary to Section 2019 of the Uniform Justice Court Act, Section 214.11(a)(1) of the Uniform Civil Rules for the Justice Courts and Section 104 of the Rules of the Chief Administrator of the Courts, which require the retention of dismissed violations cases for six years.

43. On October 8, 2014, D. B. was issued four appearance tickets, directing her to appear in Guilford Town Court on October 21, 2014, on two counts of failure to license and six counts of dog running at large, in violation of Sections 118(1)(a) and (d) of the Agriculture and Markets Law.

44. On October 21, 2014, Ms. B. and her husband appeared in court before respondent. Ms. B. was not represented by counsel and the prosecutor was not present.

45. Without informing Ms. B. of the sections of law with which she was charged or furnishing her with copies of the accusatory instruments, as required by CPL Section 170.10(2), respondent immediately asked, "Why are [the dogs] running at large and where are they running at large? Are they running on the neighbors?" and "Are they leashed?" The B.'s answered respondent's questions and discussed the circumstances in which their dogs were kept. Respondent adjourned the case in contemplation of dismissal without notice to or the consent of the prosecution, as required by CPL Section 170.55(1).

46. Respondent prematurely destroyed and/or failed to maintain the court's records pertaining to *People v D. B.*, contrary to Section 2019 of the Uniform Justice Court Act, Section 214.11(a)(1) of the Uniform Civil Rules for the Justice Courts and Section 104 of the Rules of the Chief Administrator of the Courts, which require the retention of dismissed violations cases for six years.

As to Charge V of the Formal Written Complaint:

47. As set forth below, on various occasions from February 2014 to September 2014, respondent made undignified, discourteous and, at times, threatening remarks to defendants, and in one such case respondent purposely or ignorantly misled the defendant by fundamentally misstating the meaning and significance of an adjournment in contemplation of dismissal.

People v Desiree Prosser

48. On February 25, 2014, Desiree Prosser appeared before respondent in the Guilford Town Court, on a warrant for failure to pay a court-ordered surcharge of \$125 for a conviction of Harassment, a violation. With the consent of the prosecutor and Ms. Prosser's public defender, respondent vacated the original sentence of a conditional discharge and the imposition of the surcharge and resented Ms. Prosser to 15 days in jail, to run concurrently with a sentence imposed by another court.

49. During resentencing, respondent said to Ms. Prosser, "If you're in here again, it's not going to happen again. There will be no reduction anywhere. Not a one." Respondent added, "No more reductions for future charges. That means no matter

what you come in here with, I don't care if it's a misdemeanor, felony, I don't care, you are not going to get a reduction.... I'm sick of seeing you in here for stupid things.”

50. Respondent wrote on the cover of the defendant's case file, “No Reduction(s) on future charges.” Respondent also wrote on the commitment order dated February 25, 2014, “No more reductions for future charges.”

51. On April 20, 2014, Ms. Prosser appeared before respondent. Respondent stated that Ms. Prosser was produced in court as a result of “court error.” After a deputy sheriff noted that Ms. Prosser was going to be released from jail the next day, respondent said to Ms. Prosser:

“[Y]ou really don't want to be back in this court Because there will be no reductions. You will go to jail. You will have whatever jail time we can give you I have this note on your file, “No reductions on future charges.” And we will not reduce it, no matter what the DA says, no matter if the officers come in and say you've been behaving yourself, it does not matter You will go to jail I deal with the Village of Oxford, the Town of Oxford, the Town of Bainbridge. If you're in any of those three courts, you're going to be brought here because this is part of it. You're not getting into any trouble, and you will go to jail for it. So, you've got four courts at least that you don't want to be anywhere near.”

People v Peter J. Seneck, Jr.

52. On May 8, 2014, Peter J. Seneck, Jr., was charged with Trespass, in violation of Penal Law Section 140.05, a violation, and Removal of Trees, in violation of Environmental Conservation Law Section 09-1501, a misdemeanor.

53. On July 22, 2014, Mr. Seneck appeared before respondent in the Guilford Town Court. Respondent advised Mr. Seneck that his application for a public defender had been denied. Mr. Seneck stated, “I was going to get an attorney. I just

can't afford one at this time." Respondent adjourned the case to August 26, 2014, but stated, "This is the last time I'm adjourning it. After that, if you don't show up with an attorney, then I'll just send you to jail."

People v D. S.

54. On August 27, 2013, respondent's then co-judge, David P. Daniels, granted an adjournment in contemplation of dismissal for a period of six months to D. S., who had been charged with Trespass, in violation of Penal Law Section 140.05. Respondent was present at the proceeding.

55. According to the court's case history report and the certificate of disposition, the charge against Mr. S. was dismissed by Judge Daniels on February 27, 2014, pursuant to the expiration of the period of the adjournment in contemplation of dismissal.

56. On August 12, 2014, Mr. S. came to the Guilford Town Court and asked to speak confidentially with respondent about the "expungement" of his record. Mr. S. implored respondent, *inter alia*, to confirm that his record had been "expunged," that all law enforcement agencies had been notified of the disposition of his case, and that his certificate of disposition include a reference to Section 160.50 of the "penal code."

57. Notwithstanding the provisions of CPL Sections 160.50(3)(b) and 170.55(8), respondent repeatedly and erroneously told Mr. S. that the disposition of his case had not been favorable to him. She told him, *inter alia*: "You were found guilty," "You know you were found guilty of it," "This was not an order dismissing the entire instrument," "It wasn't a complete acquittal," and "There is nothing which invalidated the

conviction.”

58. When Mr. S. asked about the return of his fingerprints, respondent interrupted him and repeatedly and sharply asked if he was an attorney. When Mr. S. acknowledged that he was not, respondent said, “[W]hen you become an attorney, sir, then you can come back and talk to me. Otherwise, I am done with you.”

59. Once, when Mr. S. stated that the certificate of disposition of his case needed to include a reference to the “penal code,” respondent said sharply, “Unless you’re an attorney, sir, I’m going to give it to you the way you have it Then you will take the seal as it is.”

60. On August 19, 2014, Mr. S. returned to court to discuss the status of his records again. Respondent began the conversation with, “I’ll listen to you one more time and that’s it ... And then we’re done I’ve done all I could If it’s not what you want, I don’t care.” Respondent explained to Mr. S. that she had confirmed with an attorney at the OCA resource center that his records had been sealed, not expunged. When Mr. S. questioned whether that meant his records were “destroyed” and then interrupted respondent, she said, “Just listen to me or I will throw your butt out of here.” Respondent attempted to explain that she had notified the appropriate authorities that his file was “sealed” and that, as a result, no one could access it. In contrast to her erroneous statements on August 12, 2014, respondent confirmed that Mr. S. had not been convicted of any crime. But when Mr. S. continued to ask about the expungement of his court records, respondent said, “[Y]ou need to leave ... or I will get you for contempt of court and then you will be in jail. You don’t want that.” Respondent explained that when his

file was sealed at the expiration of his adjournment in contemplation of dismissal period, it was like “[i]t never happened.” Respondent stated that she would no longer speak to him about the issue but offered to speak further with his attorney, if he returned to the court with one.

People v Michael Gronowski

61. On September 16, 2014, in the Guilford Town Court, respondent arraigned Michael Gronowski, who was charged with Speeding, a violation of VTL Section 1180(b).

62. Respondent inquired as to how Mr. Gronowski knew to contact the assistant district attorney before appearing in court and then admonished him for having done so, stating, “You just jumped over the court and I’m not thrilled about it.” Respondent stated that she would accept the plea agreement to a reduction, adding, “I’m not happy about it but, if you ever get another ticket, don’t ever leave the court out of the proceedings Like I said, there’s nothing on the ticket that says go to the district attorney.” After imposing a \$127 fine and \$93 surcharge, respondent threatened, “And since you got one reduction already, if you ever get another ticket in this court, there will be no reduction.”

As to Charge VI of the Formal Written Complaint:

63. As set forth below, from December 2008 to December 2015, respondent engaged in the improper practice of routine destruction of court records, by shredding the contents of Guilford Town Court, Oxford Village Court and Oxford Town

Court records for VTL cases, contrary to Section 2019 of the Uniform Justice Court Act, Section 214.11(a)(1) of the Uniform Civil Rules for the Justice Courts and Section 104 of the Rules of the Chief Administrator of the Courts.

64. Respondent engaged in the improper practice of routinely shredding the contents of the courts' records of VTL cases, within one year of the dispositions of the cases, making no electronic or any other copy of the destroyed documents, nor even summarizing the contents of the destroyed documents, notwithstanding various authorities requiring retention of all court records of VTL cases for six years and permission to destroy or to reproduce records in alternative formats. Respondent did not seek permission of the Deputy Chief Administrator for Management Support or other competent authority before shredding of court records, notwithstanding the requirement to do so.

65. The result of the unauthorized destruction of the paper records of respondent's courts is that the only remaining indication of the charges, actions and dispositions of such cases are the entries made by respondent into the court's computer-generated case history reports and the Simplified Informations and supporting depositions as originally transmitted electronically by the arresting officers.

As to Charge VII of the Formal Written Complaint:

66. At various times from March 2008 to October 2016, respondent held the extra-judicial positions of Oxford Village Court Clerk and Guilford Fire Department police officer, which are incompatible with judicial office.

67. From June 2008 to October 2016, respondent served as a fire police officer with the Guilford Fire Department while simultaneously serving as Guilford Town Justice, Oxford Town Justice and/or Acting Oxford Village Justice.

68. Respondent became a fire police officer in 2004, several years prior to becoming a town or village justice. In her capacity as fire police officer, respondent received training in the direction of traffic control and directed traffic during responses to fire calls. Respondent avers that she avoided directing traffic related to vehicular accidents to avoid potential conflicts of interest, that she issued no tickets or citations and that she did not carry a firearm. The Administrator has no evidence to the contrary.

69. Pursuant to CPL Sections 1.20(33) and 2.10(41) and General Municipal Law Section 209-c, members of fire police squads “have the powers of and render service as peace officers.”

70. Respondent resigned from her position as fire police officer effective October 5, 2016.

71. In March 2013 respondent was appointed by the Oxford Village Board to the positions of Acting Oxford Village Justice and Court Clerk of the Oxford Village Court. As Court Clerk, respondent reported to Oxford Village Justice John V. Weidman.

72. By letter dated July 21, 2016, respondent notified the Oxford Village Board that she was resigning from her office as Acting Oxford Village Justice effective July 31, 2016, while retaining the Court Clerk position. Respondent’s letter cited the

Commission's inquiry into her practice as the reason for her resignation.

Additional Factors

73. Respondent avers that she has halted the practice of the unauthorized destruction of court records, as a result of the Commission's investigation. She had believed she was complying with applicable record-retention requirements as long as the court's computer had a case history report. She now understands and acknowledges that she is required to keep and maintain all court records pertaining to criminal actions and civil proceedings for the time periods provided in the records retention and disposition schedules promulgated by the Office of Court Administration Division of Court Operations Office of Records Management ("ORM"). She further acknowledges that before disposing of any records pursuant to the retention and disposition schedules, she must first submit a records disposition request form to ORM and receive ORM's prior approval.

74. Although respondent avers that she was acting in her capacity as Oxford Village Court Clerk to former Judge Weidman when she improperly informed defendants Smith and Lapham (Charge I, *supra*) that they could not enter a plea of not guilty to the charges against them, she also acknowledges that, having simultaneously held the position of Acting Village Court Justice, she was bound by the Rules Governing Judicial Conduct to respect and to be faithful to and professionally competent in the law. Respondent acknowledges that her statements to the defendants were inaccurate and could have been perceived as coercive, and she pledges to refrain from any such conduct in the future.

75. Respondent now understands that her simultaneous holding of the positions of both court clerk and justice created the potential for conflicts of interest and for the receipt of and engagement in impermissible ex parte communications.

76. Respondent now understands that she must not engage litigants, including but not limited to those seeking to file petitions in landlord/tenant proceedings, in ex parte substantive conversations concerning their pending or impending proceedings.

77. Respondent acknowledges that her demeanor toward defendants and litigants as indicated herein was inappropriate, and she pledges to be patient, dignified and courteous to all those with whom she deals in an official capacity in the future.

78. Respondent now understands that it is inappropriate to ask defendants questions at arraignments that could potentially elicit incriminatory responses, and she pledges to refrain from such conduct in the future.

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)(1), 100.3(B)(3), 100.3(B)(4), 100.3(B)(6), 100.3(C)(1), 100.4(A)(3), 100.4(C)(2)(b) and 100.6(B)(4) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I through VII of the Formal Written Complaint are sustained, and respondent’s misconduct is established.

In numerous cases over a two-year period respondent made significant procedural errors, made inappropriate comments to litigants and engaged in other conduct

that was inconsistent with her ethical obligations as a judge, including the duty to be faithful to the law, to be patient, dignified and courteous to litigants, and to accord to everyone with a legal interest in a matter a full opportunity to be heard according to law (Rules, §§100.3[B][1], 100.3[B][3], 100.3[B][6]).

As a judge, respondent undermined the right to counsel in three cases by failing to properly inform two defendants charged with misdemeanors of the right to an attorney and/or to assigned counsel if eligible, and by denying another defendant's request for an adjournment so she could meet with her attorney. The right to counsel is a fundamental constitutional and statutory right, and it includes in all criminal cases the right to have an attorney assigned if the defendant is financially unable to retain counsel. At arraignment, a judge is required *inter alia* to advise a defendant of the right to counsel and to "take such affirmative action as is necessary to effectuate" the defendant's rights (CPL §§170.10[3][c], 170.10[4][a]). As the Court of Appeals has stated: "The right to counsel, in practical respects, remains absolutely fundamental to the protection of a defendant's other substantive rights" (*Matter of Bauer*, 3 NY3d 158, 164 [2004]; *see also, e.g., Matter of Fuller*, 2004 NYSCJC Annual Report 104; *Matter of Wood*, 1991 NYSCJC Annual Report 82). Informing defendants of the right to counsel is one of a judge's most important responsibilities at an arraignment, and the failure to do so cannot be excused even in isolated instances and even if the ultimate outcome of the case might be viewed as favorable. (Of the three cases here, one was dismissed outright and two resulted in a plea to reduced charges and a fine.) *See Matter of Reeves*, 63 NY2d 105, 109 (1984) (rejecting argument that the failure to advise parties of their rights was

inconsequential since most of the matters were settled). Respondent's handling of each of these cases included other procedural errors, including engaging in a substantive ex parte discussion with an unrepresented defendant, negotiating a plea ex parte with the prosecutor, and accepting a plea without inquiring whether the defendant had entered it knowingly and intelligently. As the Commission has stated, "Even if not intentional, a series of legal errors indicates inattention to proper procedure and neglect of judicial duty" (*Matter of Pemrick*, 2000 NYSCJC Annual Report 141).

In arraigning another defendant, respondent failed to properly inform him of the charges or to provide a copy of the charges as required by law (CPL §170.10[2]) and asked questions that conveyed the appearance of prejudgment and elicited incriminatory responses. Questioning an unrepresented defendant at arraignment about the relevant facts places the defendant in jeopardy of making incriminating admissions, which occurred in this instance as the defendant and her husband provided a detailed account of the underlying events. *See Matter of Trickler*, 2016 NYSCJC Annual Report 222; *Matter of Moore*, 2002 NYSCJC Annual Report 125; *Matter of Pemrick*, *supra*. The impropriety was compounded by another procedural error when respondent adjourned the case in contemplation of dismissal without the consent of the prosecutor, which was inconsistent with the statutory requirement (CPL §170.55[1]). It is a judge's responsibility to maintain professional competence in the law, and every judge – lawyer or non-lawyer – has an obligation to learn and adhere to the mandated procedures and ethical rules.

It is also the duty of every judge to be an exemplar of neutrality and

courtesy not only during court proceedings, but to everyone with whom the judge deals in an official capacity (Rules, §100.3[B][3]; *see, e.g., Matter of Going*, 1998 NYSCJC Annual Report 129; *Matter of Mahon*, 1997 NYSCJC Annual Report 104). In several cases respondent violated this standard by making injudicious comments and conveying the appearance of bias. For example, she repeatedly admonished a defendant in a traffic case for negotiating a plea with the prosecutor before his arraignment, then told him, out of apparent pique, that he would not get another reduction in her court if he ever got a ticket again. In another case, after misinforming the defendant about the significance of an adjournment in contemplation of dismissal by stating, either purposely or ignorantly, that he had been “found guilty,” respondent was rude and dismissive when he continued to press her about the status of the records of his case; she told him, “Just listen to me or I will throw your butt out of here,” stated he could not talk to her unless he was a lawyer, and threatened to hold him in contempt unless he left the court. She conveyed the appearance of pro-landlord bias in *Hills* by threatening to send a tenant to jail if he did not pay the rent she had ordered, and in *Drapaniotis* by, *inter alia*, engaging in lengthy, substantive *ex parte* discussions with the landlords, coaching them about how to proceed and giving them legal advice, communications which she never disclosed before ordering the tenant to move from the property. While advising a prospective litigant about procedures is permissible, hearing specific information about the party’s grievances *ex parte* is inconsistent with Rule 100.3(B)(6), which requires a judge to accord to every person with a legal interest in a case the right to be heard according to law. *See Matter of Curran*, 2018 NYSCJC Annual Report __; *Matter of Herder*, 2005 NYSCJC Annual

Report 169; *Matter of Rock*, 2002 NYSCJC Annual Report 149.

In addition, respondent did not properly perform her administrative responsibilities in that she did not comply with court-mandated retention schedules governing court records. Respondent has acknowledged that for seven years she shredded records of traffic and other cases after one year notwithstanding that such records are required to be maintained for six years, and that she did not submit a written request to court administrators, as required, prior to disposing of the records. While it is stipulated that respondent believed that she was acting in accordance with the applicable requirements, every judge is required to be familiar with the relevant standards and to maintain professional competence in judicial administration (*see* Rules, §100.3[C][1]). The failure to retain court records as required can have deleterious consequences, including thwarting the Commission's efforts to obtain a full record of relevant facts when examining a judge's conduct.

Finally, respondent held two extra-judicial positions that were incompatible with judicial office. It was contrary to the ethical rules for her to serve simultaneously for three years as court clerk of the Oxford Village Court and as acting justice of that court since doing so created the potential for conflicts of interest and impermissible ex parte communications (*Matter of Post*, 2011 NYSCJC Annual Report 141; *and see* NY Jud Ops 98-113 and 03-22). In addition, since members of fire police squads "have the powers of and render service as peace officers" (Gen Municipal Law §209-c), it was improper for respondent to continue to serve as a fire police officer after she became a judge, notwithstanding her claim that she avoided certain fire police activities in order to

avoid potential conflicts (Rules, §100.4[C][2][b]; *Matter of Miller*, 1995 NYSCJC Annual Report 121; *Matter of Straite*, 1988 NYSCJC Annual Report 226). Respondent resigned as a fire police officer in October 2016.¹

In accepting the stipulated recommendation of censure, the most severe sanction available short of removal, we find that the totality of respondent's misconduct, and particularly the procedural and substantive irregularities in the record before us, represents a significant departure from the high standards of conduct required of every judge and reflects adversely on the judiciary as a whole. We believe, however, that the misconduct depicted herein, while serious in many respects, does not rise to the level of "truly egregious" misbehavior which has been held to warrant the ultimate sanction of removal (*Matter of Jung*, 11 NY3d 365, 375 [2008], quoting *Matter of Cunningham*, 57 NY2d 270, 275 [1982]). We note that respondent has acknowledged that her conduct was inconsistent with the ethical mandates and the procedures required by law, and we trust that she will abide by her pledge to conform to these standards in the future.

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

Mr. Belluck, Mr. Harding, Mr. Cohen, Ms. Corngold, Judge Falk, Ms.

¹ As to Charge I, while we accept the stipulation that it was improper for respondent to tell two defendants that a plea of not guilty could not be entered, we note that in doing so it appears she was acting in her capacity as a court clerk and conveying the court's policy as to defendants who had received leniency in the issuance of their traffic tickets. Such a policy would undoubtedly tend to coerce a guilty plea and thus would be improper. As a judge, respondent had an obligation to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (Rules, §100.2[A]).

Grays, Judge Leach, Judge Mazzairelli, Mr. Stoloff, Judge Weinstein and Ms. Yeboah concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: December 26, 2017

A handwritten signature in black ink, reading "Jean M. Savanyu", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "J".

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

JAMES D. LAPIANA,

a Justice of the Mount Morris Town Court and
the Mount Morris Village Court, Livingston
County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of Counsel)
for the Commission

Honorable James D. LaPiana, *pro se*

The matter having come before the Commission on August 3, 2017; and the
Commission having before it the Stipulation dated August 2, 2017; and Judge LaPiana

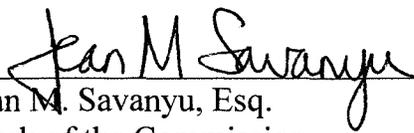
having tendered his resignation as Justice of the Mount Morris Town Court and the Mount Morris Village Court by letters dated August 2, 2017 addressed to the Chief Administrator of the Courts and the Mount Morris Town and Village Clerks, which will become effective August 31, 2017, and having affirmed that after vacating his judicial offices he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Mr. Harding and Ms. Grays were not present.

Dated: August 7, 2017



Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

JAMES D. LAPIANA,

STIPULATION

a Justice of the Mount Morris
Town Court and the Mount Morris
Village Court, Livingston County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable James D. LaPiana.

1. James D. LaPiana has been a Justice of the Mount Morris Town Court, Livingston County, since January 1, 2006, and a Justice of the Mount Morris Village Court, Livingston County, since May 13, 2010. His current terms of office expire on December 21, 2018, and April 5, 2019, respectively.
2. Judge LaPiana was apprised by the Commission in June 2017 that it was investigating several Complaints alleging that, over a two-year period beginning in May 2015, he:
 - A. failed to follow the law when he engaged in extensive *ex parte* communication with a defendant at arraignment concerning the facts of the case and subsequently presided over a non-jury trial in the matter;

- B. failed to follow the law when he directed a defendant to enter a local business to pay restitution in violation of an order of protection; and
- C. repeatedly exhibited discourtesy and other inappropriate demeanor, including directing an officer to procure duct tape and thereafter repeatedly threatening to tape shut a defendant's mouth.

3. Judge LaPiana has tendered his resignation as Justice of the Mount Morris Town Court and of the Mount Morris Village Court by letters dated August 2, 2017, addressed to the Chief Administrator of the Courts and the Mount Morris Town and Village Clerks. Judge LaPiana's resignations will become effective August 31, 2017. Copies of the resignation letters are annexed as Exhibit A and Exhibit B.

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

5. Judge LaPiana affirms that, after vacating his judicial offices, he will neither seek nor accept judicial office at any time in the future.

6. Judge LaPiana understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the Complaints would be revived, he could be served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge LaPiana waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 8/2/17



Honorable James D. LaPiana

Dated: 8/2/2017



Robert H. Tembeckjian
Administrator and Counsel to the Commission
(**John J. Postel** and **David M. Duguay**, Of Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV
EXHIBITS A & B: JUDGE'S LETTERS OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

ROGER C. MACLAUGHLIN,

a Justice of the Steuben Town Court,
Oneida County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Eteena J. Tadjioqueu,
Of Counsel) for the Commission

Honorable Roger C. Maclaughlin, *pro se*

The matter having come before the Commission on October 26, 2017; and
the Commission having before it the Stipulation dated October 11, 2017; and Judge

Maclaughlin having tendered his resignation as Justice of the Steuben Town Court by letter dated September 12, 2017, addressed to the Steuben Town Supervisor and Town Board Members, stating that he will resign as Steuben Town Justice effective December 31, 2017, and having affirmed that after vacating his judicial office he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: October 30, 2017



Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

ROGER C. MACLAUGHLIN,

STIPULATION

A Justice of the Steuben Town Court,
Oneida County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Roger C. Maclaughlin.

1. Roger C. Maclaughlin has been a Justice of the Steuben Town Court, Oneida County, since 1995. His current term expires on December 31, 2019. He is not an attorney.
2. Judge Maclaughlin was apprised by the Commission in August 2017 that it was investigating a complaint that he dismissed *sua sponte* a misdemeanor charge of driving while intoxicated after conducting an *ex parte* investigation of the matter, and that in five additional matters he appeared to have engaged in *ex parte* communications and/or dismissed matters without a statutory basis.
3. Judge Maclaughlin tendered his resignation as Justice of the Steuben Town Court by letter dated September 12, 2017, a copy of which is annexed as Exhibit 1. Judge Maclaughlin affirms that he will vacate judicial office effective December 31, 2017.

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

5. Judge Maclaughlin affirms that, having resigned his judicial office, he will neither seek nor accept judicial office at any time in the future.

6. Judge Maclaughlin understands that, should he abrogate the terms of this Stipulation, hold any judicial position at any time in the future, rescind his letter of resignation, or remain in office beyond December 31, 2017, the Commission's investigation of the Complaint will be revived.

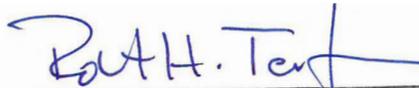
7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge Maclaughlin waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (A) this Stipulation will become public upon being signed by the signatories below, and (B) the Commission's Decision and Order regarding this Stipulation will become public.

Dated:


Honorable Roger C. Maclaughlin

Dated: *OCTOBER 11, 2017*



Robert H. Tembeckjian
Administrator and Counsel to the Commission
(**Cathleen S. Cenci** and **Eteena J. Tadjioqueu**,
Of Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: JUDGE'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DANIEL J. McCULLOUGH,

a Judge of the Court of Claims and an
Acting Justice of the Supreme Court,
1st Judicial District, New York County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Honorable Rolando T. Acosta
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Brenda Correa, Of Counsel)
for the Commission

Roger Bennet Adler for the respondent

The matter having come before the Commission on June 14, 2017; and the
Commission having before it the Stipulation dated May 15, 2017; and respondent having

been served on May 9, 2017, with a Formal Written Complaint dated May 4, 2017, having filed for retirement on May 5, 2017, effective May 29, 2017, and having affirmed that he will vacate judicial office on May 29, 2017 and will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: June 16, 2017



Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

**STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT**

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

DANIEL J. McCULLOUGH,

STIPULATION

**A Judge of the Court of Claims and an
Acting Justice of the Supreme Court,
1st Judicial District, New York County.**

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H.

**Terbeckjian, Administrator and Counsel to the Commission, and the Honorable Daniel J.
McCullough and his attorney, Roger Bennet Adler, of Roger Bennet Adler, P.C.**

- 1. Daniel J. McCullough was admitted to the practice of law in New York in 1996. He has been a Judge of the Court of Claims and an Acting Justice of the Supreme Court, New York County, since November 29, 2010. His current term expires on May 29, 2019.**
- 2. Judge McCullough was apprised by the Commission in October 4, 2016, that it was investigating a complaint alleging that he had been unable to fulfill the duties of his judicial offices for an extended period of time due to his poor physical health.**
- 3. Judge McCullough was served with the attached the Formal Written Complaint on May 9, 2017. (See Exhibit 1)**
- 4. Thereafter, the Commission was provided with a copy of Respondent's application for retirement filed on May 5, 2017 and effective May 29, 2017.**
- 5. Judge McCullough acknowledges his physical health is such that he is unable to return to his judicial duties in the foreseeable future.**

6. Judge McCullough affirms that he will vacate judicial office as of May 29, 2017, and that he will neither seek nor accept judicial office at any time in the future.

7. Judge McCullough understands that, should he abrogate the terms of this Stipulation, withdraw his retirement application and/or hold any judicial position at any time in the future, the present proceedings before the Commission would be revived, and the matter would proceed to a hearing before a referee.

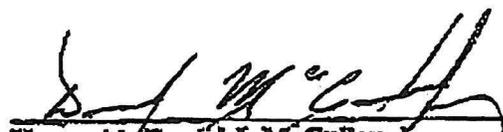
8. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of a judge's resignation to complete proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.

9. Upon execution by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

10. Judge McCullough waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

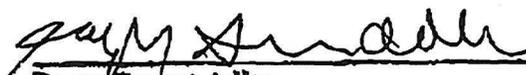
Dated:

5/15/17


Honorable Daniel J. McCullough

Dated:

5/25/17


Roger Bennet Adler
Roger Bennet Adler, P.C.
Attorney for Judge McCullough

Dated:

5/15/17


Robert H. Tembeckjian
Administrator and Counsel to the Commission
(Brenda Correa, Of Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT
WWW.CJC.NY.GOV
EXHIBIT 1: FORMAL WRITTEN COMPLAINT

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JACQUES MICHEL,

a Justice of the Spring Valley Village
Court, Rockland County.

**DECISION
AND
ORDER**

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Honorable Rolando T. Acosta
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine, Of Counsel) for the Commission
Phillips & Millman LLP (by Jeffrey T. Millman) for the respondent

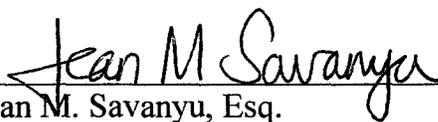
The matter having come before the Commission on June 14, 2017; and the Commission having before it the Stipulation dated June 7, 2017; and respondent having been served with a Formal Written Complaint dated May 1, 2017, having tendered his

resignation by letter dated June 5, 2017, and having affirmed that, having resigned his judicial position, he will neither seek nor accept judicial office at any time in the future unless his federal felony conviction is vacated by a final order of a court of the United States; and respondent having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: June 14, 2017


Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JACQUES MICHEL,

STIPULATION

A Justice of the Spring Valley Village Court,
Rockland County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Jacques Michel¹ (“Respondent”), who is represented in these proceedings by Jeffrey T. Millman, Esq., as follows:

1. Respondent was appointed Justice of the Spring Valley Village Court by the Mayor of Spring Valley on or about October 31, 2016, to fill a vacancy created when the Court of Appeals accepted the Commission’s determination to remove Alan M. Simon from judicial office. Respondent signed an Oath of Office for Rockland County on November 1, 2016, and an Oath of Office for the Village of Spring Valley on November 2, 2016. Respondent’s term expires on December 31, 2017. He is not an attorney.
2. Respondent was served with a Formal Written Complaint dated May 1, 2017, containing one charge, which alleges that he does not meet the legal qualifications to serve as a Village Justice as a result of a 1978 federal felony conviction.

¹ Respondent is also known as “Jacques O’l Michel” and “Jacques O. D’l Michel.”

3. Respondent enters into this Stipulation in lieu of filing an Answer to the Formal Written Complaint.

4. Respondent tendered his resignation by letter, dated June 5, 2017, a copy of which is annexed as Exhibit 1.

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

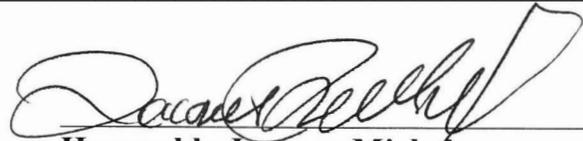
6. Respondent affirms that, having resigned his judicial position, he will neither seek nor accept judicial office at any time in the future unless his federal felony conviction is vacated by a final order of a court of the United States.

7. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time, the present proceedings before the Commission will be revived and the matter will proceed to a hearing before a referee.

8. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

9. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 6-6-17



Honorable Jacques Michel
Respondent

Dated: 6-6-17



Jeffrey T. Millman, Esq.
Phillips & Millman LLP
Attorney for Respondent

Dated: June 7, 2017



Robert H. Tembeckjian
Administrator and Counsel to the Commission
(**Mark Levine**, Of Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: RESPONDENT'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

JAMES J. PIAMPIANO,

a Justice of the Supreme Court,
Monroe County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Honorable Rolando T. Acosta
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Honorable Thomas A. Klonick
Honorable Leslie G. Leach
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of Counsel)
for the Commission

John F. Speranza for the Respondent

The respondent, James J. Piampiano, a Justice of the Supreme Court,
Monroe County, was served with a Formal Written Complaint dated November 2, 2016,
containing two charges. The Formal Written Complaint alleged that respondent made

prohibited public comments about a pending case and, in a post-trial proceeding, was discourteous to the prosecutor in denying his attempt to be heard.

On February 15, 2017, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On March 9, 2017, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Supreme Court, Monroe County, since January 1, 2016. His term expires on December 31, 2029. Respondent served previously as a Judge of the County Court, Monroe County, from January 1, 2011, to December 31, 2015, and as a Justice of the Henrietta Town Court, Monroe County, from January 1, 2008, to December 31, 2010. He was admitted to the practice of law in New York in 1978.

As to Charge I of the Formal Written Complaint:

2. As set forth below, on or about October 8, 2015, at a time when he was a candidate for election to the Supreme Court, respondent gave three separate media interviews during which he made prohibited public comments about *People v Charles J. Tan*, a pending murder case over which he was presiding in Monroe County Court.

3. In or about March 2015, respondent began presiding over *People v*

Charles J. Tan in Monroe County Court, a case in which the defendant was charged with one count of murder in the second degree (Penal Law §125.25[1]) for allegedly shooting his father at their family home in Pittsford, New York.

4. In September 2015 respondent was nominated to be a candidate for election to the New York State Supreme Court.

5. On or about October 8, 2015, after approximately eight days of jury deliberation in *People v Tan*, the following occurred:

- A. Monroe County Assistant District Attorney William T. Gargan and Mr. Tan's lead counsel, James L. Nobles, consented to a mistrial in the matter.
- B. Prior to ruling on the mistrial, respondent clarified with counsel and Mr. Tan that double jeopardy would not attach and that Mr. Tan would be subject to retrial upon the indictment.
- C. Mr. Gargan stated that it was the People's intention to retry Mr. Tan.
- D. Respondent granted the mistrial.
- E. Respondent ordered the parties to appear before him on November 5, 2015.

6. On or about October 8, 2015, after the mistrial was declared, respondent was contacted by personnel from three media outlets: WHEC-TV, Channel 10, the NBC-affiliated television station in Rochester; WHAM-TV, Channel 13, the ABC-affiliated television station in Rochester; and the *Democrat & Chronicle*, a daily newspaper in Rochester. Respondent agreed to engage in one-on-one interviews about *People v Tan* in his chambers with reporters from each of the three media outlets.

7. On or about October 8, 2015, at approximately 4:00 PM, respondent met in his chambers with a reporter from WHEC-TV, Channel 10. The resulting

interview was recorded and portions of it were broadcast on October 8, 2015, and subsequently available on the television station's website at <http://www.whec.com>.

8. During the WHEC interview, respondent made public comments about the *Tan* case, including:

RESPONDENT: And, I told this jury, historically, this may be the longest serving jury that deliberated over that period of time here in Monroe County.

* * * *

REPORTER: *Why not sequester [the jury] earlier ... or make them stay late the first week?*

RESPONDENT: It just didn't seem that along those first three, four, five, seven days, that they were in a position to perhaps reach a verdict ... if they did stay into the early evening hours. And I think by virtue of not having reached a verdict, even into the eighth day, that bore that out.

REPORTER: *Anything in hindsight that you can reflect upon that you may have done differently?*

RESPONDENT: You know each case turns on its own facts and the law that's applicable to that case. The one thing that I think that, that's important is that I had a chance to talk to the jury at the conclusion of the case. And I tried to stress that they shouldn't feel bad about not having reached a verdict because what was expected of them was to follow all the rules of the court, listen to the evidence, apply the law, and work hard to try to come to a verdict. Nothing more could be asked of this jury.

9. On or about October 8, 2015, at approximately 4:30 PM, respondent met in his chambers with a reporter from WHAM-TV, Channel 13. The resulting interview was recorded and portions of it were broadcast on October 8, 2015, and

subsequently available on the television station's website at <http://13wham.com/>.

10. During the WHAM interview, respondent made public comments about the *Tan* case, including:

RESPONDENT: They probably got close to a verdict but, in the end, it just wasn't to be.

REPORTER: *Judge Piampiano says both sides agreed to throw in the towel, and for that matter, dismiss the jury.*

RESPONDENT: But after eight days, how far do you go? Do you go another two days, a week, a month?

REPORTER: *Prosecutors already say they plan to retry Charlie Tan, but Piampiano is in "wait-and-see" mode.*

RESPONDENT: I've asked the prosecutor to think through it, advise me on the 5th, and if there's to be a retrial, it would likely be in February or March of next year, not before.

* * * *

REPORTER: *The judge says the jury worked longer than any jury he's seen, but added the evidence presented left them with more questions than answers.*

RESPONDENT: Jurors don't get the evidence they want, they get the evidence they get. And then they have to sort through that and figure it out. (Unintelligible)...

REPORTER: *This jury didn't quite figure it out, but a new jury might get that chance. And the judge is optimistic that finding one without too much bias will be easy.*

RESPONDENT: Sometimes journalists, and judges, and lawyers think that the whole world revolves around this courthouse. I've met many people in the jury selection process, who are not "news junkies," if you will, and who have only peripherally heard about this matter, or other matters.

REPORTER: *As for Charlie Tan, Piampiano did not rule out the possible impact of his supporters or his side of the story.*

RESPONDENT: I'm not sure, Cody, that I can recall, in recent times, somebody being that sympathetic a figure.

11. On or about October 8, 2015, respondent met in his chambers with a reporter from the *Democrat & Chronicle*. The resulting interview was recorded and portions of it were posted on October 8, 2015, on the newspaper's website at <http://www.democratandchronicle.com/>. The audio portion of the interview was posted at the website <https://soundcloud.com/democrat-and-chronicle/judge-james-piampiano-interview-oct-8-2015>.

12. During the *Democrat & Chronicle* interview, respondent made public comments about the *Tan* case, including:

REPORTER: *Did any of [the jury] share any concerns with you regarding the trial?*

RESPONDENT: You know, I have a practice, and I think most judges do, not to discuss the merits of the case or particular issues of the trial, and in particular, in this type of case where it is still possibly ongoing.

* * * *

REPORTER: *Hearing that, do you, do you have any second thoughts about letting [the jury] go?*

RESPONDENT: The only way a trial can conclude, if not by verdict, is for the judge to evaluate the circumstances in the judge's discretion, and it's called "manifest necessity," where the judge looks at the number of issues in the case, the time the jury has spent deliberating, perhaps the nature of the notes that have come out, any Allen charges that were read, and then the judge making a

determination that perhaps enough is enough, and this is a group that's not likely to reach a verdict unanimously. That did not occur in this case. The second alternative or way that the matter can conclude by mistrial, by law, is that the court, the defense, and the prosecution all consent that a mistrial should be granted. That was a matter that was discussed extensively with the lawyers, and I was advised, extensively with Mr. Tan as well. And there was complete agreement between the lawyers that we had reached a point that it appeared that we were now at a point of diminishing returns, and I think that evaluation was based on the notes that had come out, the time--

* * * *

REPORTER: One other question I have for you is about "accomplice liability," that charge.

RESPONDENT: Yes.

REPORTER: The prosecution has said -- I don't think I'm breaking any confidences saying this, he said this publicly -- that it was, you know, the, the one decision that the court made that he disagreed with. The accomplice liability was in his, the, the prosecution's bill of particulars, and it, but it wasn't allowed. I know why you made that decision; I was there that day. You said that the prosecution didn't provide enough evidence to suggest that there was a connection between the mother and son. Could you elaborate on your decision to, to do that, to make that decision, and, and any second thoughts on that front. Some jurors have indicated that had that been an option, there would have been a verdict.

RESPONDENT: Certainly. I, I'm not at liberty to discuss the prosecutor's remarks or this case in particular, but I can share with you that with respect to accomplice liability, for the court to charge that, in any case where it's requested, there has to be a reasonable view of the evidence that two or more people are acting in concert

to accomplish the same goal, that they're acting with the same state of mind, and that there's some conduct, behavior or otherwise, from the evidence, that suggests that they're acting together and in concert. So, in any trial where a judge is asked to charge that, what the judge is going to be doing, as I did in this trial, is reflect on the evidence that was presented. Typically, I'll review my notes, take one last look at the law, and then listen to the arguments of both sides, and then reflect on whether or not there can be such a charge based on the evidence in that particular case.

* * * *

RESPONDENT: So, that, that would give you an overview of some background about that issue.

REPORTER: *And in this case you felt that there just wasn't, the evidence wasn't there?*

RESPONDENT: Based on my ruling, I think it's fair to say, and I think I can say, that after listening to both sides, I felt that, as a matter of law, I was not permitted or entitled to charge the jury to consider that relative to their deliberations.

* * * *

RESPONDENT: So, the protocol here is that likely that trial would stay with me, and my intention on November 5th, when the parties return, is to likely reschedule that trial for some time in February or March --

* * * *

REPORTER: *So, there's a possibility, anyway, that as of November 5th, there could be a dismissal of the charges? I, I, I, I --*

RESPONDENT: -- By way of the defense application, that is the relief they are looking for. So, the answer would be yes.

As to Charge II of the Formal Written Complaint:

13. On or about November 5, 2015, while presiding over a post-trial proceeding in *People v Charles J. Tan*, during which respondent granted the defense motion for a trial order of dismissal, respondent, as set forth below, failed to be patient, dignified and courteous when he denied Monroe County Assistant District Attorney William T. Gargan's attempt to be heard and threatened to have Mr. Gargan arrested if he spoke.

14. On or about October 8, 2015, after the parties in *People v Charles J. Tan* had consented to a mistrial following approximately eight days of jury deliberation on a single count of murder in the second degree (Penal Law §125.25[1]), respondent stated that he would adjourn the case for the prosecutor to consider whether the case would be retried. When defense counsel James L. Nobles moved for a trial order of dismissal, Monroe County Assistant District Attorney William T. Gargan opposed the motion and requested that respondent deny it. Respondent stated that he would reserve decision on the motion and would consider all prior arguments, and he scheduled the next appearance in the matter for November 5, 2015. Respondent directed that counsel "[p]lease come prepared with your schedule[s]," and stated that "the Court will also address the trial order of dismissal at that time."

15. On or about November 5, 2015, Mr. Gargan confirmed that the People intended to retry Mr. Tan for murder. Respondent thereafter asked both Mr. Nobles and Mr. Gargan whether they wished to "supplement ... or offer any further ... information" as to their positions concerning the defense motion for a trial order of

dismissal. Both attorneys declined respondent's offer.

16. Respondent then spoke uninterrupted for several minutes, explaining the function of a trial order of dismissal, the legal standard of review, and when a court may grant or deny a trial order of dismissal motion. Respondent stated that there were deficiencies in the People's proof, and he said: "The Court, therefore, is bound to conclude that the proof offered upon the trial of the matter failed to establish a prima facie case."

17. When respondent commented on the jury's inability to reach a verdict when "evaluating whether the evidence demonstrated beyond a reasonable doubt that the crime had been proven," the following exchange occurred:

MR. GARGAN: Judge, may I briefly speak?

RESPONDENT: No, you may not. If you speak I'm going to put you in handcuffs and put you in jail.

18. Respondent continued to read his decision but did not order Mr. Gargan held in handcuffs, incarcerate him or hold him in contempt.

Additional Factors

19. Respondent has been cooperative with the Commission throughout its inquiry.

20. Respondent has familiarized himself with numerous Commission determinations in which judges were reprimanded for making prohibited public comments about pending or impending cases, such as *Matter of Douglas E. McKeon*, in which a Supreme Court Justice was censured for *inter alia* commenting on pending cases

in television interviews, and *Matter of Patrick J. McGrath*, in which a County Court Judge was admonished for commenting on a pending case in a television interview. Respondent now more fully appreciates his obligation to refrain from commenting publicly about any pending or impending proceeding, and he pledges to abide faithfully to this obligation in the future.

21. Respondent has familiarized himself with numerous Commission determinations in which judges were reprimanded for displays of discourtesy in the courtroom. He now more fully appreciates his obligation to be patient and courteous to all with whom he deals in an official capacity, and he pledges to abide faithfully to this obligation in the future.

22. In his nine years on the bench, respondent has not been previously disciplined for judicial misconduct. He regrets his failure to abide by the Rules in these matters and pledges to conduct himself in accordance with the Rules for the remainder of his tenure as a judge.

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) and 100.3(B)(8) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, 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, and respondent’s misconduct is established.

It is improper for a judge to make “any public comment about a pending or

impending proceeding” (Rule 100.3[B][8]). As the Commission has stated, this ethical prohibition “is clear and unequivocal,” and, consequently, “[i]t is wrong for a judge ‘to make any public comment, no matter how minor, to a newspaper reporter or to anyone else, about a case pending before him’” (*Matter of McKeon*, 1999 NYSCJC Annual Report 117, 120 [citing *Matter of Fromer*, 1985 NYSCJC Annual Report 135, 137]). Respondent’s comments during a series of press interviews about a murder case in which he had granted a mistrial were inconsistent with this standard, which “makes no exception ... for explanations of a judge’s ‘decision-making’ process” (*Matter of O’Brien*, 2000 NYSCJC Annual Report 135, 137; see also *Matter of McGrath*, 2005 NYSCJC Annual Report 181).

Although respondent’s comments indicate that he was aware of the ethical prohibition (at one point he stated, “I’m not at liberty to discuss the prosecutor’s remarks or this case in particular”) and he was also aware that there would be further proceedings in the case, including a potential re-trial, he granted three one-on-one media interviews in which he proceeded to discuss the case at length. While he often responded to the reporters’ questions about the *Tan* case with general statements about procedures and the legal system, he should have recognized that any statements he made in that context would be understood as pertaining to *Tan* and therefore were problematic. His statements, however, went well beyond general explanations of the law. He discussed legal issues in the case (including his denial of a request for an accomplice charge), and he provided a description of his interactions with the jury and his sense of the jury’s deliberations. Especially troubling is his description of the defendant as a “sympathetic”

figure. Even if viewed in the context of the reporter’s question about the “possible impact” of the defendant’s “supporters,” his comment could convey an appearance that respondent viewed the defendant sympathetically, raising doubts about his impartiality and thus undermining public confidence in the impartial administration of justice. This is especially so since the case was still before him and since, a month later, he granted the defense motion for a trial order of dismissal. The fact that respondent made these statements in media interviews at a time when he was a candidate for election to Supreme Court raises a question as to whether his public comments were motivated by political concerns. *See Matter of Dillon*, 2003 NYSCJC Annual Report 101. It is a judge’s duty to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” (Rule 100.2[A]).

It was also improper for respondent, in a post-trial proceeding a month later, to threaten to have the prosecutor placed in handcuffs and put in jail when the attorney asked to speak as respondent was announcing his decision on the defense motion to dismiss. (The record indicates that respondent had previously afforded the prosecutor an opportunity to be heard on the motion.) By asking to speak, the prosecutor was simply doing his job, and even if respondent believed that the attorney was interrupting or speaking out of turn, his response was a substantial overreaction to the attorney’s conduct. While a judge has discretion to punish “contumacious” conduct in order to preserve order and decorum, “the awesome power of summary contempt” should be imposed only in “exceptional and necessitous circumstances” (*see* 22 NYCRR §604.2[a][1], [c]; *Matter of Van Slyke*, 2007 NYSCJC Annual Report 151). The fact that

respondent did not act on his threat does not excuse his conduct since baseless threats against an attorney are inconsistent with a judge's obligation to be "patient, dignified and courteous" to lawyers and others with whom the judge deals in an official capacity (Rules, §100.3[B][3]; *Matter of Gary*, 2017 NYSCJC Annual Report 134).

In accepting the jointly recommended sanction, we note that respondent has admitted that his conduct was inconsistent with the ethical standards and has pledged to conduct himself in accordance with the Rules for the remainder of his tenure as a judge.

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

Mr. Harding, Judge Acosta, Mr. Cohen, Ms. Corngold, Mr. Emery, Judge Klonick, Judge Leach, Mr. Stoloff, Judge Weinstein and Ms. Yeboah concur.

Mr. Belluck was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: March 13, 2017



Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

GARY M. POOLE,

a Justice of the Rose Town Court, Wayne
County.

**DECISION
AND
ORDER**

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Honorable Rolando T. Acosta
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of Counsel)
for the Commission

Honorable Gary M. Poole, *pro se*

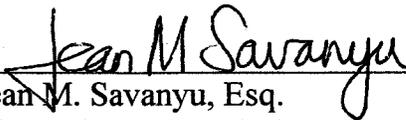
The matter having come before the Commission on June 14, 2017; and the
Commission having before it the Stipulation dated June 6, 2017; and Judge Poole having

committed in writing to vacate his judicial office as of July 1, 2017, pursuant to his letter of resignation dated April 21, 2017, and having affirmed that after vacating his judicial office he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: June 16, 2017



Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

GARY M. POOLE,

STIPULATION

a Justice of the Rose Town Court,
Wayne County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H.

Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Gary M. Poole.

1. Gary M. Poole has been a Justice of the Rose Town Court, Wayne County, since 1993. His current term expires on December 31, 2017. Judge Poole is not an attorney.
2. Judge Poole was apprised by the Commission in January 2017 that it was investigating complaints alleging that he engaged in repeated, undignified and discourteous conduct, for nine months or more, toward a woman with whom he had been involved romantically. Among other things, Judge Poole allegedly yelled demeaning and derogatory things about her and her new boyfriend in public, spuriously threatened her with prosecution, demanded the return of certain personal property he had given her and threatened to encourage her ex-husband to commence a custody battle over her children if she did not return such property.

3. Judge Poole has committed in writing to vacate judicial office as of July 1, 2017 (Exhibit A).

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

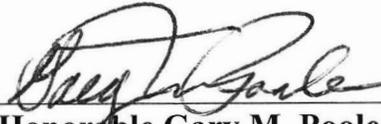
5. Judge Poole affirms that, after vacating his judicial office, he will neither seek nor accept judicial office at any time in the future.

6. Judge Poole understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the Complaints would be revived, he could be served with a Formal Written Complaint on authorization of the Commission, and the matter could proceed to a hearing before a referee.

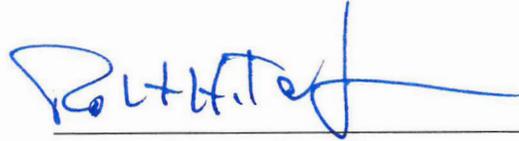
7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge Poole waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 2 June 2017


Honorable Gary M. Poole

Dated: June 6, 2017



Robert H. Tembeckjian
Administrator and Counsel to the Commission
(John J. Postel and David M. Duguay, Of Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT A: JUDGE'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

In the Matter of the Investigation of
a Complaint Pursuant to Section 44,
subdivisions 2 and 3, of the Judiciary
Law in Relation to

AMENDED
DECISION
AND
ORDER

WALTER C. PURTELL,

a Justice of the York Town Court,
Livingston County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Honorable Rolando T. Acosta
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Honorable Thomas A. Klonick
Honorable Leslie G. Leach
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of Counsel)
for the Commission

Peter K. Skivington for the Respondent

The matters having come before the Commission on March 9, 2017; and the Commission having before it the Formal Written Complaint dated November 3, 2016, and the Stipulation dated February 23, 2017; and respondent having tendered his resignation by letter dated February 21, 2017, effective March 8, 2017, and having affirmed that, upon vacating his judicial office, 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 extent that the Stipulation and the Commission's Decision and Order thereto will become public on or after March 9, 2017; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matters are concluded according to the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Mr. Belluck was not present

Dated: March 15, 2017



Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

In the Matter of the Investigation of a Complaint
Pursuant to Section 44, subdivisions 2 and 3 of the
Judiciary Law in Relation to

STIPULATION

WALTER C. PURTELL,

a Justice of the York Town Court,
Livingston County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Walter C. Purtell (“Respondent”) and his attorney, Peter K. Skivington, Esq.

1. Respondent has been a justice of the York Town Court, Livingston County, since 1998. His current term expires on December 31, 2017. Respondent is not an attorney.
2. Respondent was served with a Formal Written Complaint dated November 3, 2016, containing four charges.
3. The Formal Written Complaint is appended as Exhibit A.
4. Respondent was also apprised by the Commission in January 2017 that it was investigating a complaint regarding his conduct in handling a recent arraignment.
5. Respondent enters into this Stipulation in lieu of filing an Answer to the Formal Written Complaint.

6. Respondent has tendered his resignation as York Town Justice by letter dated February 21, 2017, addressed to the York Town Clerk and copied to the Office of the Administrative Judge, Seventh Judicial District. Respondent's resignation will become effective March 8, 2017. A copy of the resignation letter is appended as Exhibit B.

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

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

9. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the present proceeding pursuant to Judiciary Law § 44 (4) will be revived and the matter will proceed to a hearing before a referee, and the present investigation pursuant to Judiciary Law § 44 (2) and (3) will be revived.

10. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that all matters be concluded, by the terms of this Stipulation, without further proceedings.

11. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that this Stipulation and the Commission's Decision and Order regarding this Stipulation will become public on or after March 9, 2017. However, the Administrator is authorized to release this Stipulation to the public in advance of

March 9, 2017, should Respondent seek to withdraw from it at any time, or rescind his letter of resignation, or remain in office beyond March 9, 2017, or otherwise abrogate the terms of this Stipulation.

Dated: 2/21/2017



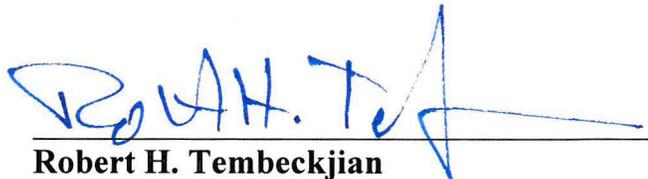
Honorable Walter C. Purtell
Respondent

Dated: 2/21/2017



Peter K. Skivington, Esq.
Attorney for Respondent

Dated: 2/23/2017



Robert H. Tembeckjian
Administrator and Counsel to the Commission
(John J. Postel and David M. Duguay, Of Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABE AT WWW.CJC.NY.GOV

EXHIBIT A: FORMAL WRITTEN COMPLAINT

EXHIBIT B: RESPONDENT'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

LETICIA M. RAMIREZ,

a Judge of the Civil Court of the City of
New York and an Acting Justice of the
Supreme Court, 1st Judicial District,
New York County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Honorable Rolando T. Acosta
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Daniel W. Davis, Of Counsel)
for the Commission

Scalise & Hamilton, LLP (by Deborah A. Scalise, Esq.) for Respondent

Respondent, Leticia M. Ramirez, a Judge of the Civil Court of the City of
New York and an Acting Justice of the Supreme Court, 1st Judicial District, New York

County, was served with a Formal Written Complaint dated January 11, 2017, containing two charges. The Formal Written Complaint alleged that respondent lent the prestige of her judicial office to advance the private interests of another by invoking her judicial title and position in a letter she wrote on behalf of her childhood babysitter to be filed in connection with a motion to vacate her conviction (Charge I) and in two affirmations she wrote on behalf of her son to be filed in the Appellate Division in connection with his criminal case (Charge II).

On April 10, 2017, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, 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 April 27, 2017, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Judge of the Civil Court of the City of New York since 2011 and an Acting Justice of the Supreme Court, 1st Judicial District, New York County, since 2015, having also served as an Acting Judge of the Family Court, Kings County, from 2011 to 2015. Her term expires on December 31, 2020. She was admitted to the practice of law in New York in 2000.

2. Prior to becoming a judge, respondent worked in the court system in various capacities. She was a court officer and attended law school while so employed.

Upon graduating from law school in 1998, she became a court assistant and a court attorney (*i.e.* law clerk) to a judge. She was never employed or engaged in the private practice of law and never represented clients, except for the one occasion addressed herein where she attempted, but was ruled ineligible, to represent her son in a criminal matter.

As to Charge I of the Formal Written Complaint:

3. As set forth below, in late May or early June 2013 respondent lent the prestige of her judicial office to advance the private interests of another by invoking her judicial title and judicial position in a letter she wrote on behalf of her childhood babysitter, L. S., to be filed in a court other than her own in connection with an application for relief that Ms. S. was making in that other court.

4. L. S. had been respondent's babysitter when respondent was a child. They remained close after respondent became an adult.

5. Ms. S. was convicted in the Criminal Court of the City of New York in 2004 on a charge of promoting gambling in the second degree, a class A misdemeanor.

6. On May 17, 2013, Ms. S.'s attorney, Lisa Napoli, Esq., asked respondent to write a letter on Ms. S.'s behalf in support of a motion to vacate the 2004 conviction.

7. On May 29, 2013, respondent drafted an undated letter on her judicial stationery on behalf of Ms. S., which is attached as Exhibit 1 to the Agreed Statement of Facts. Respondent addressed the letter to "Your Honor," did not name the

judge for whom the letter was intended, and identified herself as a judge. Respondent described her relationship with Ms. S. in the letter, noting, *inter alia*, that she considered Ms. S. to be “part of [her] family.”

8. In late May or early June 2013 respondent gave the signed letter to Ms. Napoli, who submitted it to the Criminal Court of the City of New York as an exhibit to Ms. S.’s motion to vacate her conviction.

As to Charge II of the Formal Written Complaint:

9. In the fall of 2014, as set forth below, respondent lent the prestige of her judicial office to advance the private interests of another by invoking her judicial title and judicial position in affirmations she wrote on behalf of her son, Michael Tineo, to be filed in the Appellate Division in connection with his criminal case.

10. Michael Tineo is respondent’s adult son.

11. On November 26, 2004, Mr. Tineo was arrested in Suffolk County. He was subsequently charged with serious crimes.

12. Respondent was deeply upset by the situation as a parent.

13. At the time of Mr. Tineo’s arrest, respondent was employed as a court attorney for a judge of the Civil Court of the City of New York. She telephoned the Suffolk County Police Department in Yaphank and identified herself as an attorney, with the intent of representing Mr. Tineo. At a subsequent suppression hearing in 2005 in County Court, Suffolk County, the court held that respondent was not eligible to represent Mr. Tineo because of her employment status as a court attorney.

14. In January 2006 Mr. Tineo was convicted and sentenced to a term of imprisonment.

15. In the fall of 2014 Mr. Tineo, who remained incarcerated but at the time was not represented by counsel, asked respondent to write an affirmation in support of a petition for a writ of habeas corpus that he planned to file. Respondent wrote an “Affirmation in Support Writ of Habeas Corpus” of Mr. Tineo, to be filed with the Appellate Division.

A. In the affirmation, which is attached as Exhibit 2 to the Agreed Statement of Facts, respondent *inter alia* identified herself as a judge, set forth a series of facts regarding her attempt to represent her son at the time of his arrest and asked the Court to “grant the relief sought.” Although she did not specify the “relief sought” in the body of her affirmation, it is evident from the affirmation’s title, and respondent hereby acknowledges, that by “relief sought” she meant the court should grant her son’s petition for habeas corpus.

B. Although Mr. Tineo’s case was a Second Department matter, respondent’s affirmation was mistakenly captioned “APPELLATE DIVISION FIRST DEPARTMENT.”

C. Respondent gave her affirmation to Mr. Tineo, who filed it with his *pro se* petition for a writ of habeas corpus to the Appellate Division, First Department. The First Department transferred these papers to the Appellate Division, Second Department, where they were received on February 9, 2015.

16. On or about the same date in the fall of 2014, respondent also wrote an

“Affirmation of Jurisdiction” to be filed with the Appellate Division with the “Affirmation in Support Writ of Habeas Corpus.”

A. In the affirmation, which is attached as Exhibit 3 to the Agreed Statement of Facts, respondent asked that her son’s petition not be heard in the Second Department because she was sitting in Family Court in Kings County and had cases on appeal to the Appellate Division in that Department.

B. Although Mr. Tineo’s case was a Second Department matter, respondent’s affirmation was mistakenly captioned “APPELLATE DIVISION FIRST DEPARTMENT.”

C. Respondent gave her affirmation to Mr. Tineo, who filed it with his *pro se* petition for a writ of habeas corpus to the Appellate Division, First Department. The First Department transferred these papers to the Appellate Division, Second Department, where they were received on February 9, 2015.

17. Mr. Tineo’s petition for a writ of habeas corpus was denied by the Appellate Division, Second Department, on March 9, 2015. *See Ex rel Tineo v Capra*, 2015 NY Slip Op 66326(U) (AD 2d Dept 2015).

Additional Factors

18. Respondent has been cooperative and contrite throughout the Commission’s inquiry and has had an otherwise unblemished career as a judge.

19. As to the *S.* matter, respondent testified under oath during the Commission’s investigation that she believed, in error, that it was permissible for her to write the letter on behalf of Ms. S. because the letter, *inter alia*, (i) did not request

specific relief on behalf of Ms. S., (ii) gave an accurate description as to respondent's past and present contacts with Ms. S., (iii) was typed by respondent herself, not by a member of her court staff, and (iv) provided respondent's home telephone number instead of her chambers number. Respondent now acknowledges that she should have been aware that the Rules Governing Judicial Conduct, pertinent disciplinary determinations of the Commission and applicable opinions of the Advisory Committee on Judicial Ethics prohibited her from writing to another judge on Ms. S.'s behalf. She pledges that she will refrain from such conduct in the future.

20. Respondent took no other action on behalf of Ms. S. Respondent did not appear at Ms. S.'s court hearing, nor did respondent have further communication with the judge handling Ms. S.'s case. At the time she wrote the letter, she did not know the identity of the judge who would be assigned to the matter.

21. As to the *Tineo* matter, respondent avers that she submitted the "Affirmation in Support Writ of Habeas Corpus" to provide the court with factual information about her son's case as a witness, based on her personal involvement in the matter before she took the bench.

22. Respondent avers that she submitted the "Affirmation of Jurisdiction" in an attempt to notify the court about a potential conflict in her son's petition being heard by the Appellate Division, Second Department, given that respondent was, at that time, a judge whose decisions were subject to review by that court. Although it was not her intention, she realizes now that her conduct gave rise to the appearance that she was practicing law, even though Mr. Tineo's papers made it clear that he was acting *pro se*.

23. Respondent further testified that the language in the prayer for relief in the closing paragraph of both affirmations, *i.e.* the “wherefore” clause, was adopted from papers that had come before her as an employee of the court system. Respondent avers that her lack of experience in practicing law contributed to her mistaken belief that she needed to include such language in her affirmations.

24. Respondent acknowledges and regrets that her affirmations created the appearance that she was lending the prestige of judicial office to advance the private interests of her son. She pledges to refrain from such conduct in the future.

25. Respondent has now familiarized herself with Commission determinations in which judges were publicly reprimanded for lending the prestige of judicial office to advance private interests, such as *Matter of Larry D. Martin*, in which a Supreme Court Justice was admonished for writing two letters on judicial stationery to other judges, seeking favorable sentencing dispositions on behalf of two criminal defendants who were the sons of his long-time family friends, and *Matter of Nancy E. Smith*, in which an Appellate Division Justice was admonished for writing a letter on her judicial stationery to the New York State Division of Parole, at a third party’s request, expressing support for an inmate whom the judge had never met. Respondent now more fully appreciates her obligation to refrain from lending or even appearing to lend the prestige of her judicial office, intentionally or unintentionally, to advance the private interests of herself and others, including family members. In accepting the stipulated sanction of admonition, we note that respondent pledges to abide faithfully to this obligation in the future.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B) and 100.2(C) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained, and respondent’s misconduct is established.

On two occasions respondent lent the prestige of her judicial office to advance the private interests of another by invoking her judicial title and position, first in a letter on behalf of a family friend to be filed in connection with a motion to vacate the friend’s conviction, and subsequently in two affirmations on behalf of her son to be filed in connection with his petition for a writ of habeas corpus. Such conduct is inconsistent with well-established ethical standards (Rules, §100.2[C]), even in the absence of a specific request for favorable treatment or special consideration (*Matter of Edwards*, 67 NY2d 153, 155 [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, 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). Regardless of a judge’s intent, communications of this type convey the appearance of using the prestige of judicial office to advance private interests, which is also inconsistent with a judge’s obligation to avoid even the appearance of impropriety at all times, both on and off the bench (Rules, §100.2). When a litigant is the beneficiary of influential support from a judge based on personal connections, it creates two systems of justice, one for the average person and one for those with “right” connections, and undermines public confidence in the impartial administration of justice and in the integrity of the judiciary as a whole.

Respondent’s letter on judicial stationery in support of her friend and former caregiver, which was filed in connection with the friend’s motion to vacate a nine-year old misdemeanor conviction, is a classic “character letter,” providing unqualified support for her friend bolstered by the clout of her judicial status. Describing her friend as “part of my family,” referring to her presence at family functions and in family photos, and providing details of their close relationship over several decades and their past and present contacts, respondent’s letter makes no reference to the pending motion, her friend’s conviction or the facts underlying her case, but its purpose is crystal clear: to influence the judge who would consider the motion to give it favorable consideration. When asked by the friend’s lawyer to provide such a letter, respondent should have considered that she was likely asked to write, at least in part, because the prestige of her office would give particular clout to a letter of support, and it could be inferred that she cooperated in that effort by using her judicial stationery and by making gratuitous references in the letter to her judicial status (*e.g.*, noting that her friend had been invited

to but could not attend her swearing-in ceremony). As the record indicates, respondent wrote the letter nearly two weeks after being asked to do so by her friend's lawyer, giving her ample time to consider the request, research the subject and consider the ethical implications.

As a judge for more than two years at the time and as a court attorney for more than a decade before that, respondent should have been familiar with the restrictions imposed by Rule 100.2(C) in view of her ethics training as a judge, the Commission's determination in *Matter of Martin* and other cases (*infra* at pp 13-14) and numerous opinions of the Advisory Committee on Judicial Ethics addressing the subject. Although respondent has explained that in writing the letter she typed it herself, did not use court staff and provided her home (not court) telephone number, suggesting that she made some attempt to avoid misusing her judicial position, her use of judicial stationery and overt references to her judicial status in communicating with another court on a friend's behalf cannot be condoned.¹ Using her judicial prestige to bolster support for her friend's application was an implicit request for special consideration constituting favoritism, which "is wrong, and always has been wrong" (*Matter of Byrne*, 47 NY2d [b], 420 NYS2d 70, 71 [Ct on the Jud 1979]). While a judge may respond to an official request for his or her input in connection with a pending matter, which is akin to responding to a subpoena, unsolicited communications of support are strictly prohibited.

¹ Nor did respondent's letter specify that her comments were "personal and unofficial." While that language would not have negated the impropriety (*Matter of Nesbitt*, 2003 NYSCJC Annual Report 152), it would have emphasized the personal nature of her communication.

Here, there would be no proper reason for a judge presiding on such a case to ask respondent or anyone else to submit a character reference, so it was especially improper for respondent to accede to a request by the defendant's counsel.

A year later, respondent again lent the prestige of her judicial office to advance private interests when she invoked her judicial title and position in two affirmations filed in connection with her son's petition for a writ of habeas corpus. One affirmation describes her unsuccessful attempt ten years earlier to represent her son after he was arrested; the second requests that the matter not be heard by the Appellate Division Second Department "in order to avoid an appearance of impropriety" because of respondent's position as a judge in Kings County. Both affirmations contain several references to her judicial status: both refer to her judicial position in the opening paragraph, which sets forth her qualifications to affirm under penalty of perjury, a reference that is unnecessary since her status as "an attorney admitted to practice in the courts of the state" qualifies her to affirm, with no further explanation required (*see* CPLR 2106); and, below the signature line, both affirmations use "Hon." preceding her name and repeat her judicial title.

In addition, both of respondent's affirmations end with a "wherefore" clause asking the court to "grant the relief sought herein," which not only makes an explicit request that the court act favorably in the matter but conveys the appearance that respondent was practicing law and representing her son in the matter, something that she was prohibited from doing as a full-time judge (Rules, §100.4[G]). (It is stipulated that her son's papers "made it clear that he was acting *pro se*" [Agreed Statement, par 25]).

Although respondent has suggested that she used the “wherefore” clause language without comprehending its meaning, averring “that her lack of experience in practicing law contributed to her mistaken belief that she needed to include such language in her affirmations” (*Id.* at par 26), she should have recognized that including such language would convey the appearance that a sitting judge was making the applications on her son’s behalf. Even without that clause, her affirmations, attached as exhibits to her son’s petition, unmistakably conveyed her support for the relief requested.

When asked to provide a letter or similar communication on behalf of a family member, friend or acquaintance, every judge must be mindful of the importance of adhering to the ethical standards intended to curtail the inappropriate use of the prestige of judicial office (Rules, §100.2[C]). Difficult as it may be to refuse such requests, the understandable desire to provide assistance and support must be constrained by a judge’s ethical responsibilities, including the duty to act “at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” (Rules, §100.2[A]). Strict adherence to these important principles is essential to ensure public confidence in our system of justice, which is based on equal treatment for all and decisions that are based on the merits, not the result of special influence.

Violations of Rule 100.2(C) have been found in a broad spectrum of cases, including where judges have contacted other judges, law enforcement officials or other persons in a position of authority in order to advance private interests. *See, e.g., Matter of Smith*, 2014 NYSCJC Annual Report 208 (judge sent an unsolicited letter on judicial stationery on behalf of an inmate seeking parole, whose mother was a friend of the

judge's relative)²; *Matter of Pennington*, 2004 NYSCJC Annual Report 139 (judge met with DA to object to the police investigation of his son); *Matter of Nesbitt*, 2003 NYSCJC Annual Report 152 (judge sent a letter on judicial stationery to his son's school challenging an administrative determination regarding his son and the legal sufficiency of the school's procedures); *Matter of Martin*, 2003 NYSCJC Annual Report 216 (judge sent two unsolicited letters on judicial stationery to judges in other courts on behalf of defendants, the sons of long-time friends, who were awaiting sentencing); *Matter of Wright*, 1989 NYSCJC Annual Report 147 (judge wrote two letters on judicial stationery and two affirmations to advance the private interests of a former litigant in his court). While respondent's judgment may have been clouded by a "sincere, albeit misguided, desire" to help her son and friend, that does "not justify a departure from the standards expected of the judiciary" since her communications could be perceived as backed by her judicial power and prestige (*Matter of Lonschein, supra*, 50 NY2d at 573; *Matter of Edwards, supra*, 67 NY2d at 155).

In accepting the stipulated sanction of admonition, we are mindful that respondent has acknowledged her misconduct and, it is stipulated, "now more fully appreciates her obligation to refrain from lending or even appearing to lend the prestige of her judicial office, intentionally or unintentionally, to advance the private interests of herself and others" and has pledged to abide by these standards in the future (Agreed Statement, par 28).

² The Commission's determination in *Smith* was issued about a month after respondent's letter in support of her friend, and a year before her actions in her son's case.

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

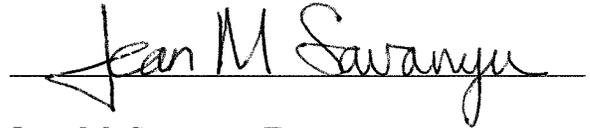
Mr. Belluck, Mr. Harding, Judge Acosta, Mr. Cohen, Ms. Corngold, Judge Falk, Judge Leach, Mr. Stoloff, Judge Weinstein and Ms. Yeboah concur.

Ms. Grays was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: May 4, 2017

A handwritten signature in black ink, reading "Jean M. Savanyu", is written over a horizontal line.

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

DANIEL P. SULLIVAN,

a Justice of the Whitestown Town Court,
Oneida County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Honorable Rolando T. Acosta
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Honorable Thomas A. Klonick
Honorable Leslie G. Leach
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Thea Hoeth and Cathleen S. Cenci, Of Counsel)
for the Commission

Robert F. Julian for the Respondent

The respondent, Daniel P. Sullivan, a Justice of the Whitestown Town Court, Oneida County, was served with a Formal Written Complaint dated February 11, 2016, containing one charge. The Formal Written Complaint alleged that respondent lent

the prestige of judicial office to advance private interests by signing his name and judicial title to a defendant's letter to a judge asking to change his plea. Respondent filed a verified Answer dated March 7, 2016.

By Order dated May 4, 2016, the Commission designated David M. Garber, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 18, 2016, in Albany. The referee filed a report dated November 8, 2016.

The parties submitted briefs with respect to the referee's report. Counsel to the Commission recommended the sanction of removal; respondent's counsel argued that if misconduct was found, removal was too harsh. On January 26, 2017, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Whitestown Town Court, Oneida County, since 2012. His current term expires in 2019. He is not an attorney or a notary public.

2. On December 24, 2014, Oxford Village Police Officer Ronald Martin issued a ticket to Elan M. Scott, then age 19, charging him with Failure to Obey a Traffic Control Device in violation of Section 1110(a) of the Vehicle and Traffic Law. The electronic ticket also contains the notations "South Canal 52-30" and "Radar," which appear to reflect a radar-measured speed of 52 miles per hour ("mph") in a 30-mph posted speed zone. The ticket was returnable on January 12, 2015 in the Oxford Village

Court, Chenango County.

3. On January 12, 2015, Mr. Scott appeared in the Oxford Village Court before Village Justice John V. Weidman and pled not guilty to the charge. Judge Weidman told Mr. Scott that the issuing officer had “cut you a break” on the ticket by charging only a two-point violation rather than Speeding¹, that Judge Weidman could not reduce a charge without the consent of the District Attorney’s office and that he intended to return Mr. Scott’s traffic ticket to the Oxford Police Department to provide the police with an opportunity to “rewrite it back” to a Speeding charge. Judge Weidman also told Mr. Scott that if he was charged with Speeding he could contact the District Attorney’s office and attempt to negotiate a plea and that the disposition would ultimately be up to the judge.

4. On the same date, the Oxford Police Department issued and mailed a new ticket to Mr. Scott, charging him with Speeding for driving 52 miles per hour in a 30-mph posted zone. The return date on the ticket is January 12, 2015.

5. Mr. Scott told his mother, Sherri LaSalle, what had occurred at his court appearance. On January 13 or 14, 2015, Ms. LaSalle encountered respondent by chance near the elevators in the Oneida County Office Building where both she and respondent worked (Ms. LaSalle in the Department of Personnel and respondent in the Office of Pistol Permit Licensing). Ms. LaSalle had known respondent for six to seven

¹ Under the point system used by the Department of Motor Vehicles, the Failure to Obey infraction is assigned two points; a charge of driving 22 mph over the posted limit is assigned six points. If a driver receives eleven points in an 18-month period, his/her driver’s license may be suspended.

years as someone who worked in the same building, and she knew that he was a town or village justice. In a brief conversation, Ms. LaSalle told respondent that a judge had changed her son's traffic ticket to charge him with a different traffic violation, and she asked if he had "ever heard of such a thing"; respondent said he had. Ms. LaSalle also told respondent that "people" had advised her to write a letter to the judge requesting that he allow her son to withdraw his not guilty plea and plead guilty to the original charge; respondent said that she "could do that but it doesn't mean that it would change anything. It's up to the judge." Respondent told Ms. LaSalle that in his court he would require a notarized statement from a defendant requesting permission to change a plea.

6. Ms. LaSalle drafted a letter for her son to the Oxford Village Court. The letter, dated January 14, 2015, began with the salutation "Dear Honorable Judge" and asked "if I could plead guilty to my first charge of disobeying a traffic control device." Mr. Scott signed the letter, and on January 15, Ms. LaSalle faxed a copy to the Oxford Village Court. Ms. LaSalle testified that after she faxed the letter, "people" told her that the letter should have been notarized.

7. On January 16, 2015, Ms. LaSalle, accompanied by her son, visited respondent's office to ask him to notarize Mr. Scott's January 14 letter. Ms. LaSalle had previously gone to another office in the building where she knew there was a notary; when that individual was not available, a woman in that office said that she thought respondent was a notary.

8. When Ms. LaSalle came to respondent's office, he was on the telephone, and she "mouthed" her request that he notarize something. When he finished

the call, she introduced her son to respondent and asked respondent if he would notarize the January 14 letter, which Mr. Scott had already signed. She directed her son to show respondent his driver's license to prove that he was the person who had signed the letter.

9. Respondent looked briefly at Mr. Scott's letter and did not ask him any questions about the purpose of the letter or its contents.

10. At the time, respondent sincerely but erroneously believed that his position as a town justice vested him with broad notarial powers and that he thus had authority to notarize Mr. Scott's letter. Based upon that belief, respondent signed his name and judicial title on the letter, directly below Mr. Scott's signature, as:

“1/16/15 Justice Sullivan
Town of Whitestown
Whitestown N.Y.”

11. Respondent did not administer an oath to Mr. Scott or include a jurat on the letter stating that he had administered an oath and that Mr. Scott had signed the letter in respondent's presence. It appears that in signing his name and affixing his judicial title below Mr. Scott's signature, respondent understood that he was verifying the identity of the signer and confirming that Mr. Scott had signed the document.

12. Later that day, Ms. LaSalle faxed a copy of Mr. Scott's January 14 letter, which now contained respondent's signature and judicial title, to the Oxford Village Court and mailed the original letter to the court.

13. Two days later, on January 18, 2015, the Oxford Village Court sent a document to Mr. Scott indicating that the first traffic ticket had been withdrawn, that his guilty plea to the charge of Failure to Obey a Traffic Control Device on the second ticket

was accepted, and that the sentence was a fine and surcharge totaling \$270.

14. In believing that he had notarial powers for the purpose of notarizing Mr. Scott's letter, respondent, in good faith, relied upon the advice of Trenton Town Justice J. Patrick VanBuskirk. Judge VanBuskirk, who has served as a town justice since 1990 and had worked with respondent in the Office of Pistol Permit Licensing for approximately 13 years until his retirement, had advised respondent in 2012, shortly after respondent became a judge, that his position as Town Justice vested him with notarial powers. Judge VanBuskirk, who is not an attorney, based his advice upon his understanding of information contained in a 1994 training manual for town and village justices which was prepared by the Office of Court Administration. In a section entitled "The Justice As a Notary," the manual states *inter alia* that a town or village justice "has limited notary powers but is not a notary" and that such a judge "may take depositions, administer oaths and take acknowledgments within the limits of the county where he or she sits when acting as a 'notary public'"; it further states that "[w]hen a justice is acting as a 'notary public' the Acknowledgment or Jurat should be signed with an official title, *i.e.*, 'Town Justice' or 'Village Justice,'" and that "[i]t is also a good practice to include the name of the municipality, the county and the state after the title." The language in this section, the referee found, is "poorly drafted" and "confusing."

15. Pursuant to Judge VanBuskirk's erroneous interpretation of this section and the advice he provided to respondent, Judge VanBuskirk and respondent had routinely notarized various documents related to their duties in the Office of Pistol Permit Licensing as well as other documents for members of the general public who asked them

to do so.

16. As stipulated at the hearing, respondent's position as a Town Justice did not vest him with notarial powers for the purpose of notarizing Mr. Scott's letter to the Oxford Village Court.

17. Respondent acknowledged at the hearing that, in hindsight, he should not have signed his name and affixed his judicial title to Mr. Scott's letter whether or not he was acting in a notarial capacity because, as he stated, "Justice courts 101 is that you do not sign a document that goes to another court." He testified that he did not connect the requested notarization with his earlier conversation with Mr. Scott's mother, that he did not realize that Mr. Scott's letter was directed to another court since he did not read it, and that it was his practice not to read the documents he notarized because he had been advised that it was improper to do so.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.2(C) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. 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 signing his name and judicial title beneath a defendant's signature on a letter to the Oxford Village Court, respondent added his judicial clout and imprimatur to

the defendant's request to change his plea, from not guilty to guilty, to the two-point traffic infraction originally filed against him. (The original charge, the record indicates, had been superseded by the issuance of a second ticket charging him with a six-point infraction.) Such conduct is prohibited by well-established ethical standards prohibiting a judge from lending the prestige of judicial office to advance private interests and requiring a judge to avoid even the appearance of impropriety (Rules, §§100.2[C], 100.2[A]). *See Matter of Lustyik*, 2015 NYSCJC Annual Report 128 (judge identified himself as "Hon." when witnessing a statement that was intended to be used in a Family Court custody proceeding); *see also Matter of Lonschein*, 50 NY2d 569 (1980) (judge asked a city official to expedite a friend's license application); *Matter of Smith*, 2014 NYSCJC Annual Report 208 (judge sent an unsolicited letter on judicial stationery to the State Division of Parole on behalf of an inmate seeking parole, whose mother was a friend of the judge's relative); *Matter of Bowers*, 2005 NYSCJC Annual Report 125 (judge sent a letter on judicial stationery to another town justice requesting special consideration for an acquaintance charged with Speeding who "needs to avoid any points").

As we have previously stated, "it is not a judge's responsibility to witness every document presented to him or her" (*Matter of Lustyik, supra*), whether by a friend, a litigant or anyone else. Placing respondent's name and judicial title on the letter presented to him for notarization necessarily implicated his judicial status, and before agreeing to do so, he should have made sufficient inquiry to ensure that his participation was consistent with the ethical rules, including his obligation to avoid even the

appearance of impropriety (Rules, §100.2). Instead, respondent signed his name and judicial title below Mr. Scott's signature without making any inquiry at all except to verify the signer's identity. He did not inquire into the nature, contents or purpose of the document or why his "notarization" was requested on what appeared to be a letter that, on its face, did not require it. Nor, according to his testimony, and despite acknowledging that "Justice courts 101 is that you do not sign a document that goes to another court," did respondent even glance at the letter sufficiently to notice that the intended recipient was a judge. Respondent's name and judicial title on a defendant's letter to another court conveyed the appearance that his judicial status was being used in support of the defendant's interests, which was inconsistent with Rule 100.2(C). At the very least, by failing to make any inquiry into the circumstances, respondent showed insensitivity to his ethical obligations.

We concur with the referee's conclusion that when respondent signed and affixed his judicial title below Mr. Scott's signature, he "sincerely, but erroneously" believed that he was exercising notarial powers that were inherent in his position as Town Justice, relying in good faith upon the erroneous advice of a long-time Town Justice and colleague that his judicial office vested him with such powers² (Report, pp 9-10). It is undisputed in the record before us that based on this mistaken belief, both judges had routinely notarized documents both in connection with their employment at a county agency and for members of the public upon request. However, although town and village

² We also note that this erroneous advice derived from a section in a training manual that the referee described as "poorly drafted" and "confusing" (Report p 10 *fn*).

justices have limited powers to administer an oath, make an acknowledgment and take a deposition (*see* Real Property Law §298; CPLR 2309[a], 3113[a][1]), such judges are not notaries simply by virtue of holding judicial office. *See Matter of Rumenapp*, 2017 NYSCJC Annual Report 192 (in the apparent, mistaken belief that her status as a town justice qualified her to act as a notary, judge authenticated signatures on a designating petition by signing her name and judicial title on a form requiring attestation by a notary public or commissioner of deeds).

Although witnessing Mr. Scott's signature on a letter to another court would have been improper regardless of whether respondent was acting as a notary, it seems clear that he agreed to do so only because he believed that as a judge he was empowered to act as a notary and was thus providing a notarial service in confirming the authenticity of the signature. Viewed in this light, it is also apparent that when respondent included his judicial title, he was not intentionally asserting his judicial status to advance the defendant's interests, but was specifying his judicial position, as he believed he was required to do, as the basis for his notarial authority (*see Matter of Rumenapp, supra*). Based on the totality of the evidence before us, we are thus persuaded that even if respondent witnessed the signature as a favor to an acquaintance, the favor was to provide a service, not to use his influence to further private interests. While this does not excuse his misconduct, it distinguishes this case from the most egregious violations of Rule 100.2(C) we have considered.

Respondent's belief that he was exercising notarial powers also explains, but does not excuse, his assertion that he did not review the contents of the letter before

witnessing the signature. While it seems almost inconceivable that he would not at least skim the letter before witnessing it, and while it is troubling that, by his own testimony, he barely gave the letter a cursory glance, respondent credibly testified that he had been advised that it was improper to read a document before notarizing it and thus it was not his practice to do so. *See Matter of Lustyik, supra* (in admonishing a judge who identified himself as “Hon.” in witnessing an unsworn statement whose disturbing contents “should have raised red flags” – a statement that was as brief as the letter in the instant case – the Commission stated that “it seems inconceivable that respondent would not have at least glanced at the contents and understood the gist of it”).

Significantly, when this incident occurred, respondent knew that he was under investigation by the Commission for misusing the prestige of his judicial office in requesting leniency in two conversations with law enforcement officers with respect to impending criminal charges against his son, an alleged ethical infraction that also involved Rule 100.2(C). While the nature of the conduct in the earlier matter is significantly different from the conduct here, the pending investigation in that case, which resulted in respondent’s censure later that year (*Matter of Sullivan*, 2016 NYSCJC Annual Report 209), should have made him especially sensitive to his ethical obligations. Unfortunately, it appears that respondent’s mistaken belief in his notarial authority blinded him to the ethical implications of affixing his judicial title to a document unrelated to his official duties.

Unlike the dissent, we concur with the conclusion of the referee that while respondent’s testimony at the hearing regarding these events was “at times, muddled,

inconsistent and even wrong,” there is insufficient proof that he was “intentionally deceptive” (Report p 14 *fn*). (Respondent testified that his memory of the actual “pen to paper moment,” and of his earlier conversation with Mr. Scott’s mother, was limited since the incidents were brief and had no particular significance to him at the time.) The referee, after carefully weighing the witnesses’ credibility and evaluating the evidence, provided a thorough, thoughtful analysis of the evidence and specifically declined to find that respondent’s testimony lacked candor (*Id.*)³, and we accord due deference to his findings and conclusions. *See, e.g., Matter of Going*, 97 NY2d 121, 124 (2001).

As noted above, respondent was previously censured, pursuant to a joint recommendation, for seeking leniency for his son from law enforcement officers (*Matter of Sullivan, supra*). Even in view of this prior discipline, we believe that the sanction of removal is unwarranted, for the reasons we have noted above. We also note that at the hearing, respondent, as the referee found, acknowledged “with commendable candor” that his conduct was improper (Report p 10). We trust that in the future respondent will comport himself in strict accordance with the high ethical standards required of every judge.

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

³ We strongly disagree with Commission counsel’s argument that the referee’s statements that he did “not credit” respondent’s testimony in several respects require the conclusion that the testimony lacked candor. We also reject counsel’s suggestion that because the referee’s refusal to find lack of candor was “relegated to a footnote,” it should be given little weight.

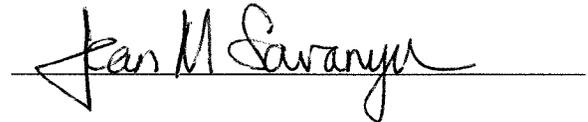
Mr. Belluck, Mr. Harding, Judge Acosta, Mr. Cohen, Ms. Corngold, Judge Leach, Mr. Stoloff, Judge Weinstein and Ms. Yeboah concur.

Mr. Emery and Judge Klonick dissent as to the sanction and vote that respondent should be removed from office. Mr. Emery files an opinion, which Judge Klonick joins.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: March 13, 2017

A handwritten signature in black ink, reading "Jean M. Savanyu", is written over a horizontal line.

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DANIEL P. SULLIVAN,

a Justice of the Whitestown Town Court,
Oneida County.

**DISSENTING OPINION
BY MR. EMERY, WHICH
JUDGE KLONICK JOINS**

Twenty months ago, the Commission censured respondent for seeking leniency for his son in two conversations with law enforcement officials. The discipline imposed in that case – censure – was based upon an Agreed Statement of Facts that contained a joint recommendation by staff and respondent as to the sanction. Now the Commission decides to again censure respondent despite the staff's strenuous assertion that removal is appropriate. The result in this case is unprecedented and unsupportable.

In respondent's first case, I dissented because I believed that in asking the police "for a very personal and very significant favor," respondent placed his personal family interests ahead of his ethical responsibility, conduct that required the sanction of removal. My opinion in that case states in part:

As I have previously stated, when a judge attempts to use the system for personal gain by wielding special influence to advance private interests in pending cases, "I consider this category of judicial misconduct to be the most serious of any that comes before the Commission." Such behavior "strikes at the heart of our justice system," invidiously perverting the fair and proper administration of

justice and eroding public confidence in the judiciary as a whole [citations omitted] ... Because this misconduct, in my view, is so inconsistent with the highest standards of honor and integrity required of every judge, it requires the most severe sanction available.... (*Matter of Sullivan*, 2016 NYSCJC Annual Report 209)

Respondent dodged a bullet on the first censure. Now that he has come before us again, having engaged in misconduct that violates the same ethical proscriptions, again he gets a strained rationale for a too-lenient result. Removal is plainly required this time.

Bolstered not only by his prior discipline for similar misconduct but also by the fact that respondent engaged in this new misconduct at a time when he knew that the Commission was investigating his earlier actions, it is difficult to see how the majority avoids this obvious result. Combined with his prior conduct, his obliviousness to ethical norms and his questionable credibility in this case, it is clear that the bench is foreign territory and should be permanently off limits.

It is undisputed that when respondent affixed his name and judicial title to Mr. Scott's letter to another court seeking to change his plea, he knew that the Commission was examining his use of his office on behalf of his son. He had already been questioned under oath about his actions in that matter. While he had not yet been served with formal charges, the nature and thrust of the pending inquiry were obvious. Nevertheless, when asked to "notarize" the letter of an acquaintance's son *that was addressed to another court*, respondent clearly failed to recognize the ethical implications and carefully wrote his name and judicial title on the document.

In my view, respondent's explanation that he did not review the letter because he understood that it was wrong to read a document before notarizing it is a

convenient obfuscation. Since respondent knew, as he testified at the hearing, that “Justice courts 101 is that you do not sign a document that goes to another court,” it is inexplicable that he would not examine Mr. Scott’s letter before signing it in order to ensure, at the very least, that putting his name and title on the document would not run afoul of that particular ethical proscription.

Respondent's story just does not hold water. Notary or not, no judge is obliged to put his or her name and judicial title on every document proffered to the judge out of court, and it is frankly absurd to suggest, as respondent does, that in any circumstances it might be reasonable to do so without, at least, a minimal review, at least to protect from obvious influence peddling. Put simply, respondent should not have placed his name and judicial title on a party’s letter addressed to another court, and cannot avoid responsibility for that act by claiming he didn’t read it. *See Matter of Sims*, 61 NY2d 349, 355 (1984) (where a judge signed an arrest warrant in a case in which her son was the complaining witness, her explanation that she did not notice her son’s name and address [which was also the judge’s address] on the attached information and that she relied on her clerk to check the propriety of documents submitted for her signature was “wholly inadequate to excuse her conduct”).

Of course, even with respondent’s explanation that he thought it would be improper to read the document he was notarizing, it is inconceivable that in the half minute or so that it might have taken him to carefully write out his name, title and town, he would not have noticed the addressee on the very short, neatly typed letter: “Dear Honorable Judge.” Significantly, the referee stated that he did “not credit Respondent’s

testimony that he did not read Mr. Scott’s letter before he signed his name and affixed his judicial title to it and that he therefore did not know that it was addressed to a judge of another court” (Report p 13). The referee also observed that “it seems inconceivable that Respondent did not at least skim Mr. Scott’s letter – which comprised only five lines of text – to determine its addressee..., contents and purpose” (Report pp 13-14). Apparently, the majority agrees with that analysis (*see* Determination p 11) – and I certainly do.

Nevertheless, in what seems to me to be a muddled contradiction, the majority also apparently accepts respondent’s “credible” explanation as to why he did not read the document and therefore did not know that it was addressed to a judge, illogically relying on the referee’s separate conclusion that “the record does not contain sufficient evidence that Respondent was intentionally deceptive” with respect to other issues in the case (Determination p 12; Report p 14 *fn*).¹

To be clear, the referee’s reluctance to make a categorical finding of lack of candor based on the staff’s request does not diminish the referee’s very pointed skepticism about respondent’s assertion that he did not know that the letter was directed to a judge. The majority’s conclusion that respondent’s conduct was simply a mistake, rather than a knowing act to help a colleague’s son, flies in the face of the evidence, the referee’s specific finding and common sense.

Viewed alongside his conduct in the earlier matter, it is clear that

¹ If the majority accepts respondent’s benign explanation for his failure to read the addressee on the letter, then his misconduct here is limited to his misunderstanding of his lack of authority to notarize. In that case a censure is too severe.

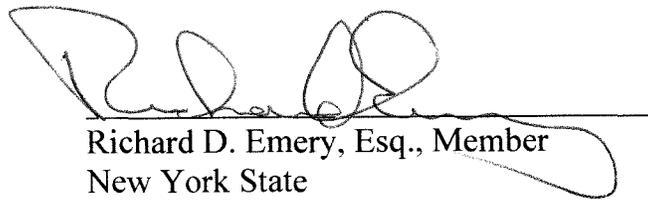
respondent, who is now being censured for the second time in his five years as a judge, at the very least too easily loses sight of his ethical responsibilities when personal circumstances intrude. Either that, or he simply does not understand the conflict between his values and instincts as a “good” parent and friend, and his duties as a judge. It is also clear to me that he never will understand this axiomatic dichotomy. Thus, in my view, the Commission fails in this case in our duty to protect the public from judges who have demonstrated “an unacceptable degree of insensitivity to the demands of judicial ethics” (*Matter of Conti*, 70 NY2d 416, 419 [1987]).

As a judge, required to “conduct his everyday affairs in a manner beyond reproach” and to observe “standards of conduct on a plane much higher than for those of society as a whole” (*Matter of Kuehnel*, 49 NY2d 465, 469 [1980]), respondent’s insensitivity to his ethical obligations even at a time when he was presumably on high alert to avoid even the slightest transgression shows that he lacks a fundamental understanding of a judge’s ethical responsibilities.

Accordingly, I dissent from the sanction imposed by the majority.

Respondent should be removed.

Dated: March 13, 2017



Richard D. Emery, Esq., Member
New York State
Commission on Judicial Conduct

APPENDIX G: STATISTICAL ANALYSIS OF COMPLAINTS

COMPLAINTS PENDING AS OF DECEMBER 31, 2016								
SUBJECT OF COMPLAINT		STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		<i>PENDING</i>	<i>DISMISSED</i>	<i>CAUTION</i>	<i>RESIGNED</i>	<i>CLOSED*</i>	<i>ACTION*</i>	
<i>INCORRECT RULING</i>								
<i>NON-JUDGES</i>								
<i>DEMEANOR</i>		16	10	10	5	1	2	44
<i>DELAYS</i>		1	3	0	0	0	0	4
<i>CONFLICT OF INTEREST</i>		2	7	3	1	0	2	15
<i>BIAS</i>		4	5	0	2	2	4	17
<i>CORRUPTION</i>		4	2	0	3	0	0	9
<i>INTOXICATION</i>		1	1	0	0	0	0	2
<i>DISABILITY/QUALIFICATIONS</i>		1	1	0	1	0	0	3
<i>POLITICAL ACTIVITY</i>		3	5	2	0	0	0	10
<i>FINANCES/RECORDS/TRAINING</i>		4	3	4	3	0	0	14
<i>TICKET-FIXING</i>		0	0	0	1	0	2	3
<i>ASSERTION OF INFLUENCE</i>		5	6	0	0	2	2	15
<i>VIOLATION OF RIGHTS</i>		18	19	3	8	1	5	54
<i>MISCELLANEOUS</i>		0	0	2	0	0	1	3
TOTALS		59	62	24	24	6	18	193

*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.

NEW COMPLAINTS CONSIDERED BY THE COMMISSION IN 2017								
SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		<i>PENDING</i>	<i>DISMISSED</i>	<i>CAUTION</i>	<i>RESIGNED</i>	<i>CLOSED*</i>	<i>ACTION*</i>	
<i>INCORRECT RULING</i>	1,308					0	0	1,308
<i>NON-JUDGES</i>	394					0	0	394
<i>DEMEANOR</i>	88	21	3	1	2	0	0	115
<i>DELAYS</i>	32	2	1	0	0	0	0	35
<i>CONFLICT OF INTEREST</i>	27	8	1	0	0	0	0	36
<i>BIAS</i>	21	2	2	0	0	0	0	25
<i>CORRUPTION</i>	35	2	0	0	0	0	0	37
<i>INTOXICATION</i>	6	1	1	0	0	0	0	8
<i>DISABILITY/QUALIFICATIONS</i>	1	2	0	0	0	0	0	3
<i>POLITICAL ACTIVITY</i>	15	18	0	1	2	0	0	36
<i>FINANCES/RECORDS/TRAINING</i>	5	11	3	4	1	0	0	24
<i>TICKET-FIXING</i>	0	1	0	0	0	0	0	1
<i>ASSERTION OF INFLUENCE</i>	2	12	0	0	1	0	0	15
<i>VIOLATION OF RIGHTS</i>	50	32	7	1	2	0	0	92
<i>MISCELLANEOUS</i>	11	2	0	0	1	0	0	14
TOTALS	1,995	114	18	7	9	0	0	2,143

*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.

ALL COMPLAINTS CONSIDERED IN 2017: 2,143 NEW & 193 PENDING FROM 2016								
SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		<i>PENDING</i>	<i>DISMISSED</i>	<i>CAUTION</i>	<i>RESIGNED</i>	<i>CLOSED*</i>	<i>ACTION*</i>	
<i>INCORRECT RULING</i>	1,308							1,308
<i>NON-JUDGES</i>	394							394
<i>DEMEANOR</i>	88	37	13	11	7	1	2	159
<i>DELAYS</i>	32	3	4	0	0	0	0	39
<i>CONFLICT OF INTEREST</i>	27	10	8	3	1	0	2	51
<i>BIAS</i>	21	6	7	0	2	2	4	42
<i>CORRUPTION</i>	35	6	2	0	3	0	0	46
<i>INTOXICATION</i>	6	2	2	0	0	0	0	10
<i>DISABILITY/QUALIFICATIONS</i>	1	3	1	0	1	0	0	6
<i>POLITICAL ACTIVITY</i>	15	21	5	3	2	0	0	46
<i>FINANCES/RECORDS/TRAINING</i>	5	15	6	8	4	0	0	38
<i>TICKET-FIXING</i>	0	1	0	0	1	0	2	4
<i>ASSERTION OF INFLUENCE</i>	2	17	6	0	1	2	2	30
<i>VIOLATION OF RIGHTS</i>	50	50	26	4	10	1	5	146
<i>MISCELLANEOUS</i>	11	2	0	2	1	0	1	17
TOTALS	1,995	173	80	31	33	6	18	2,336

*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.

ALL COMPLAINTS CONSIDERED SINCE THE COMMISSION'S INCEPTION IN 1975								
SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		<i>PENDING</i>	<i>DISMISSED</i>	<i>CAUTION</i>	<i>RESIGNED</i>	<i>CLOSED*</i>	<i>ACTION*</i>	
<i>INCORRECT RULING</i>	25,509							25,509
<i>NON-JUDGES</i>	8,054							8,054
<i>DEMEANOR</i>	4,030	37	1,358	359	145	134	267	6,330
<i>DELAYS</i>	1,668	3	203	110	39	23	32	2,078
<i>CONFLICT OF INTEREST</i>	858	10	533	177	60	33	147	1,818
<i>BIAS</i>	2,019	6	306	63	35	24	38	2,491
<i>CORRUPTION</i>	686	6	148	14	47	23	43	967
<i>INTOXICATION</i>	74	2	43	8	19	5	31	182
<i>DISABILITY/QUALIFICATIONS</i>	67	3	35	2	23	15	6	151
<i>POLITICAL ACTIVITY</i>	443	21	326	202	28	38	55	1,113
<i>FINANCES/RECORDS/TRAINING</i>	332	15	372	232	163	103	105	1,322
<i>TICKET-FIXING</i>	28	1	94	160	47	62	171	563
<i>ASSERTION OF INFLUENCE</i>	255	17	209	98	41	17	74	711
<i>VIOLATION OF RIGHTS</i>	2,615	50	633	236	119	69	112	3,834
<i>MISCELLANEOUS</i>	891	2	273	91	36	46	61	1,400
TOTALS	47,529	173	4,533	1,752	802	592	1,142	56,523

* 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.



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