NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

ANNUAL REPORT

2020

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

♦ ♦ ♦

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*Denotes staff who left in 2019

Jean M. Savanyu, who was appointed Clerk of the Commission in 2000, retired in 2019. Ms. Savanyu first joined the Commission's staff in 1977, while a student at the Fordham University School of Law, after a career as a magazine writer and editor. She served in a succession of increasingly responsible positions at the Commission until her appointment as Clerk. Her professional skill and dedication over the years to the Commission's mission was consummate. The Commission thanks her for exemplary service and wishes her the best.

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COMMISSION ON JUDICIAL CONDUCT

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March 1, 2020

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, 2019.

Respectfully submitted,

Robert H. Tembeckjian, Administrator
On Behalf of the Commission

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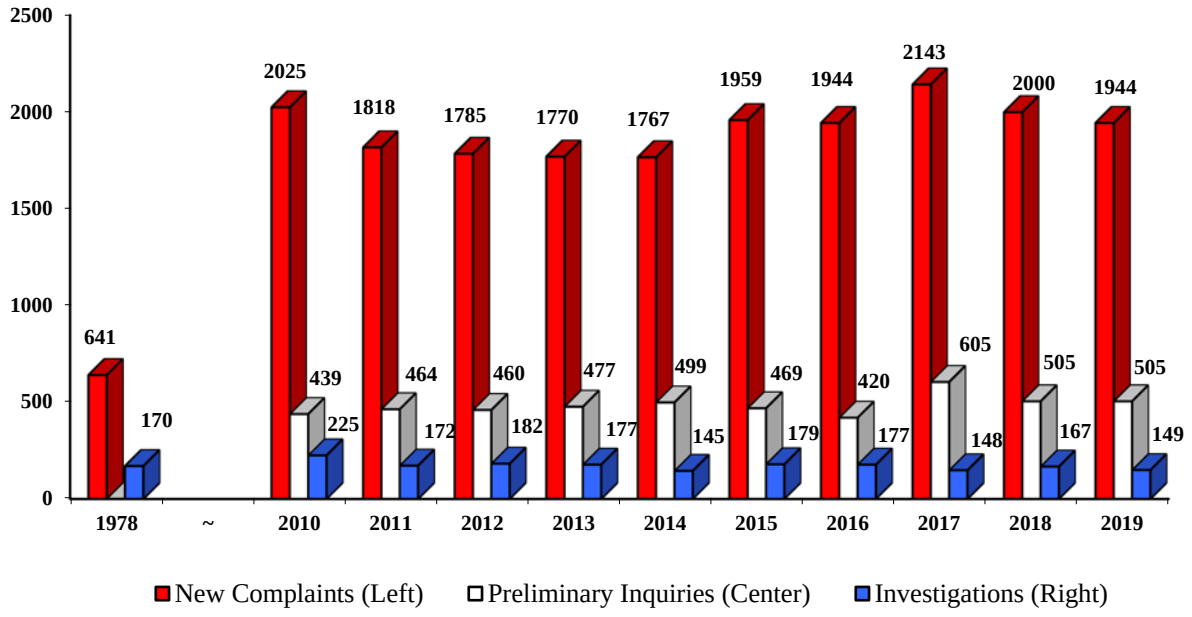
INTRODUCTION TO THE 2020 ANNUAL REPORT

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 judges serve in more than 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 2010, the Commission has averaged 1,916 new complaints per year, 484 preliminary inquiries and 172 investigations. Last year, 1,944 new complaints were received. 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 505 preliminary reviews and inquiries and 149 investigations.

This report covers Commission activity in the year 2019.



COMPLAINTS, INQUIRIES & INVESTIGATIONS IN THE LAST TEN YEARS

ACTION TAKEN IN 2019

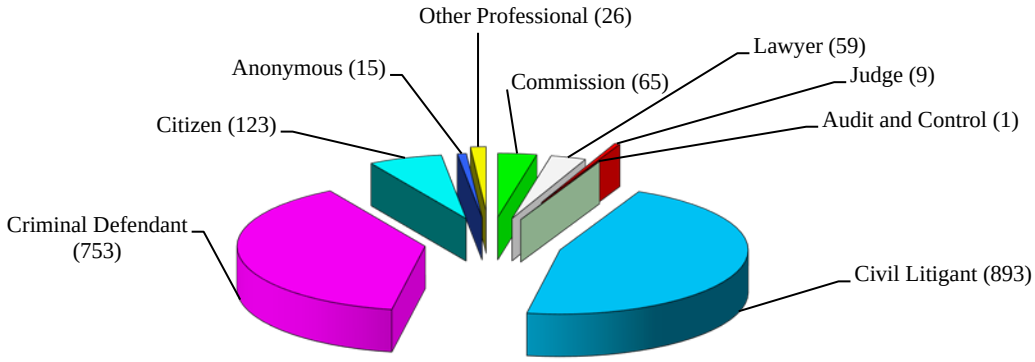
Following are summaries of the Commission's actions in 2019, including accounts of all public determinations, summaries of non-public dispositions, and various numerical breakdowns of complaints, investigations and other dispositions.

COMPLAINTS RECEIVED

The Commission received 1,944 new complaints in 2019. 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 2019 appears in the following chart.



COMPLAINT SOURCES IN 2019

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 2019, staff conducted 505 such preliminary inquiries, requiring such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts.

In 149 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 2019, in addition to the 149 new investigations, there were 181 investigations pending from the previous year. The Commission disposed of the combined total of 330 investigations as follows:

- 51 complaints were dismissed outright.
- 27 complaints involving 25 different judges were dismissed with letters of dismissal and caution.
- 11 complaints involving 6 different judges were closed upon the judge's resignation, one becoming public by stipulation and five that were not public.
- 12 complaints involving seven different judges were closed upon vacancy of office due to reasons other than resignation, such as the expiration of the judge's term.
- 28 complaints involving 20 different judges resulted in formal charges being authorized.
- 201 investigations were pending as of December 31, 2019.

FORMAL WRITTEN COMPLAINTS

As of January 1, 2019, there were pending Formal Written Complaints in 25 matters involving 13 judges. In 2019, Formal Written Complaints were authorized in 28 additional matters involving 20 judges. Of the combined total of 53 matters involving 33 different judges, the Commission acted as follows:

- Ten matters involving eight different judges resulted in formal discipline (admonition, censure or removal).
- Two matters involving one judge resulted in a letter of caution after formal disciplinary proceedings that resulted in a finding of misconduct.
- Eight matters involving six different judges were closed upon the judge's resignation from office, four becoming public by stipulation and two that were not public.
- Three matters involving two judges were closed upon the vacancy of office due to reasons other than resignation, such as the expiration of the judge's term.
- 30 matters involving 16 different judges were pending as of December 31, 2019.

SUMMARY OF ALL 2019 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 – 1,832,* ALL PART-TIME

	Lawyers	*Non-Lawyers*	*Total*
Complaints Received	130	152	282
Complaints Investigated	32	50	82
Judges Cautioned After Investigation	2	8	10
Formal Written Complaints Authorized	5	6	11
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	2	3	5
Judges Vacating Office by Public Stipulation	1	4	5
Formal Complaints Dismissed or Closed	0	0	0

NOTE: Approximately 706 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 – 347, ALL LAWYERS

	Part-Time	*Full-Time*	*Total*
Complaints Received	15	337	352
Complaints Investigated	2	24	26
Judges Cautioned After Investigation	0	6	6
Formal Written Complaints Authorized	0	1	1
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	0	2	2
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 – 94, FULL-TIME, ALL LAWYERS*

Complaints Received	235
Complaints Investigated	11
Judges Cautioned After Investigation	1
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

*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	229
Complaints Investigated	5
Judges Cautioned After Investigation	3
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	1
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 5: SURROGATES – 19, FULL-TIME, ALL LAWYERS*

Complaints Received	31
Complaints Investigated	3
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	21
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 – 50, FULL-TIME, ALL LAWYERS

Complaints Received	80
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

TABLE 8: SUPREME COURT JUSTICES – 470, FULL-TIME, ALL LAWYERS*

Complaints Received	308
Complaints Investigated	19
Judges Cautioned After Investigation	4
Formal Written Complaints Authorized	6
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	1
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	1

* 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	78
Complaints Investigated	1
Judges Cautioned After Investigation	1
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	1

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

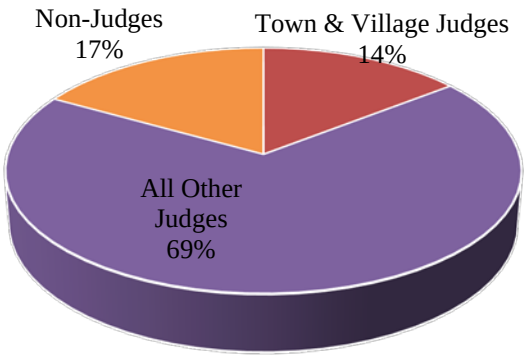
Complaints Received	328

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

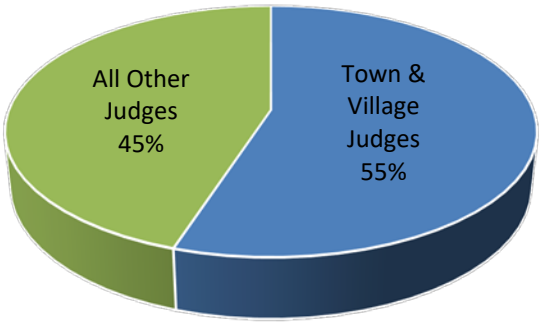
NOTE ON JURISDICTION

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.

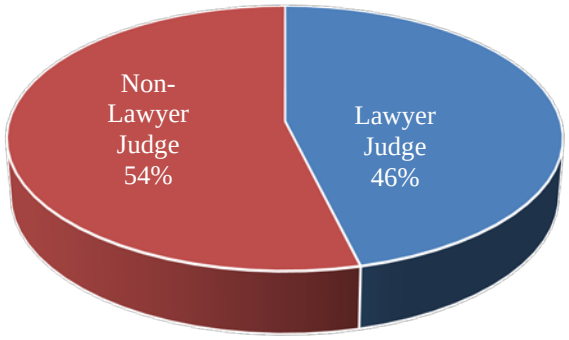
The confidentiality provision of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibits public disclosure by the Commission of the charges, hearings or related matters, absent a waiver by the judge, until the case has been concluded and a determination of admonition, censure, removal or retirement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

Following are summaries of those matters that were completed and made public during 2019. The actual texts are appended to this Report in Appendix F.

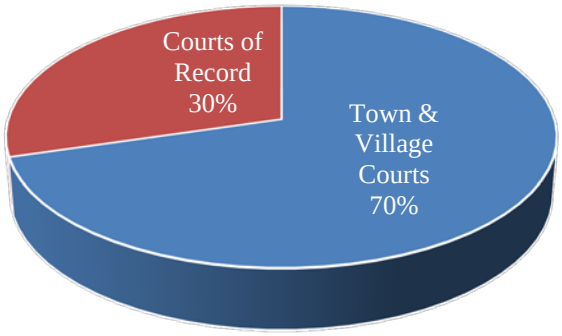
OVERVIEW OF 2019 DETERMINATIONS

The Commission rendered eight formal disciplinary determinations in 2019: one removal, five censures and two admonitions. In addition, five matters were disposed of by stipulation made public by agreement of the parties (one such stipulation was negotiated during the investigative stage, and four after a Formal Written Complaint had been served). Seven of the 13 judges were non-lawyer judges and six were lawyers. Ten of the 13 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.)



2019 DISPOSITIONS



1978-2019 DISPOSITIONS

DETERMINATION OF REMOVAL

The Commission completed one formal proceeding in 2019 that resulted in a determination of removal. The cases are summarized below and the full text can be found in Appendix F.

Matter of Paul H. Senzer

On October 9, 2019, the Commission determined that Paul H. Senzer, a part-time Justice of the Northport Village Court, Suffolk County, should be removed from office for using sexist, profane and otherwise degrading language in communications with legal clients. Between October 2014 and February 2015, while representing clients in a visitation matter in Family Court, Judge Senzer sent a total of nine emails in which he referred to: (1) their daughter several times as a "bitch" and once as an "asshole"; (2) their daughter's attorney as a "cunt on wheels" and "eyelashes"; (3) employees at their grandson's school as "assholes"; (4) their daughter and her ex-husband as "two scumbags"; and, (5) the court attorney referee in the case as an "asshole." In its determination the Commission stated that Judge Senzer "repeatedly denigrated the participants in the matter – not only the clients' adversary, but officers of the court – in profane, vulgar and sexist terms." The Commission found that the judge's statements, though off the bench, were made in the context of legal proceedings, were "manifestly improper" and "reflect[ed] adversely on the judiciary as a whole." The Commission quoted the Court of Appeals as saying "using crude language that reflects bias or otherwise diminishes respect for our system of justice, even off the bench, is inconsistent with a judge's ethical obligations." The Commission concluded that Judge Senzer's misconduct "is not simply the occasional use of vulgar or sexist language, but a pattern of statements that undermines respect for women and the legal system as a whole." Judge Senzer requested review by the Court of Appeals, and the matter is pending.

DETERMINATIONS OF CENSURE

The Commission completed five formal proceedings in 2019 that resulted in public censure. The cases are summarized below and the full text can be found in Appendix F.

Matter of William E. Abbott

On February 7, 2019, the Commission determined that William E. Abbott, a Justice of the Palmyra Town Court and an Associate Justice of the Palmyra Village Court, Wayne County, should be censured for invoking his judicial office when asking for police assistance in unlocking his personal vehicle and threatening to refuse to conduct future arraignments if they did not comply. In November 2017, after accidentally locking his keys inside his personal vehicle at a parking lot in Newark, Judge Abbott called 911 and asked a clerk to send someone to assist him. When the clerk said the Newark police did not respond to requests to unlock cars except in emergencies, the judge responded that the police had "done this before for me," identified himself as "Judge Abbott of Palmyra" and told the clerk, "I just won't do any arraignments for you anymore." Intimidated by the judge's comments, the clerk sent a sergeant to assist him. When the sergeant was unable to unlock the vehicle, a second officer was called and was able to do so. In its determination the Commission stated: "[I]dentifying himself as a judge while asking for assistance, standing alone, would have constituted an implicit request for special treatment, which is inconsistent with the

high ethical standards required of every judge." The judge compounded his misconduct when he "threatened to retaliate against the Newark police if they did not respond favorably to his request." The Commission noted that "There is no justification for a judge's refusal to perform judicial duties out of personal pique, and even threatening to do so is detrimental to public confidence not only in the integrity of the judge's court, but in the judiciary as a whole." Judge Abbott, who is not an attorney, did not request review by the Court of Appeals.

Matter of Kathy Wachtman

On February 7, 2019, the Commission determined that Kathy Wachtman, a Justice of the Huron Town Court, Wayne County, should be censured for failing to protect a defendant's due process rights by holding a preliminary hearing in his lawyer's absence. In April 2017, while presiding over a case involving drug and traffic charges, Judge Wachtman denied the defense counsel's request to adjourn the preliminary hearing, which had been rescheduled on short notice, notwithstanding that the defense counsel had an actual commitment in another court. The judge conducted the proceeding in the lawyer's absence, failed to advise the defendant of his rights and made no inquiry as to whether the defendant wished to proceed without counsel. Judge Wachtman then failed to inform the defendant of his rights to cross-examine the prosecution's witnesses, to call his own witnesses and to testify on his own behalf. Belatedly, after already finding reasonable cause to believe that the defendant had committed a felony, Judge Wachtman granted the defendant's request to question the prosecution's witnesses. In its determination the Commission stated: "[Judge Wachtman's] denial of defense counsel's request for an adjournment of the preliminary hearing, despite being advised of the attorney's actual engagement in federal court, deprived the defendant of his fundamental right at a critical state of the criminal proceedings against him." The Commission stated that the judge's denial of defense counsel's request for an adjournment of the preliminary hearing was "inexcusable" and "deprived the defendant of his right 'to have the assistance of an attorney at every state of the legal proceedings against him.'" Judge Wachtman, who is not an attorney, did not request review by the Court of Appeals.

Matter of Thomas M. DiMillo

On October 1, 2019, the Commission determined that Thomas A. DiMillo, a Judge of the Lockport City Court and an Acting Judge of the Family Court, Niagara County, should be censured for presiding as the judge of record in over 2,500 civil matters involving the Cornerstone Community Federal Credit Union (CCFCU), notwithstanding that his brother was an officer and board member of the CCFCU. The Rules Governing Judicial Conduct require a judge's disqualification in matters in which a relative within the sixth degree of relationship to the judge "is an officer, director or trustee of a party." Between November 2005 and December 2016, Judge DiMillo presided as the judge of record in 2,548 cases in which the CCFCU was the plaintiff; none of these cases proceeded to trial as all of the defendants either defaulted or otherwise did not contest the claim. In February 2017, the judge presided over a small claims hearing in which the CCFCU was the defendant. At no point during the pendency of this case, or during the 2,548 uncontested matters, did the judge offer to recuse himself or disclose his brother's affiliation with the CCFCU. In its determination the Commission stated: "Pursuant to the plain language of …the Rules, [Judge DiMillo] was required to disqualify himself from matters involving the CCFCU because his brother was an officer and board member of the CCFCU during the relevant time period." The Commission found that the judge "violated these clear requirements," "created an appearance of impropriety," and

"undermined public confidence in the impartiality of the judiciary." Judge DiMillo did not request review by the Court of Appeals.

Matter of Michael L. Tawil

On December 12, 2019, the Commission determined that Michael L. Tawil, a part-time Justice of the Ossining Town Court, Westchester County, should be censured for invoking his judicial office during a profane confrontation with store owners over a window display of tobacco products, and for making an ethnically derogatory remark as an attorney during his summation in a case and then invoking his judicial office when the trial judge upbraided him for it. In 2016, Judge Tawil entered a gift shop and publicly confronted store employees about a window display of smoking and/or drug-related paraphernalia. During this confrontation the judge used profanity and invoked his judicial office in an attempt to have the items removed from the display. In 2017, as an attorney, while delivering his summation to the jury in a personal injury case involving a car accident, Judge Tawil said the following of a Hispanic defendant whom he claimed was not paying attention to the road, "For all we know, he could be frying up some platanos in the front seat." When the trial judge said the remark was racist, Judge Tawil invoked his judicial office, stating that as "a current Part-Time Town Justice" he would never "intentionally make a racist comment." In its determination the Commission stated that when Judge Tawil invoked his judicial office in each instance he "created the appearance that he expected special treatment and deference because of his status as a judge." With respect to the judge's summation remark, the Commission found that the comment "showed an insensitivity to the special ethical obligations of judges and detracted from the dignity of judicial office." Judge Tawil did not request review by the Court of Appeals.

Matter of William Edwards

On December 20, 2019, the Commission determined that William Edwards, a full-time Judge of the Mount Vernon City Court, Westchester County, should be censured for appearing as his daughter's attorney on three occasions in an Upstate New York court and for repeatedly and gratuitously identifying himself as a judge during the proceedings. Full-time judges are prohibited from practicing law by the Rules Governing Judicial Conduct. Nevertheless, on three occasions between November 2015 and April 2016, Judge Edwards appeared and acted as his daughter's attorney in an upstate Family Court matter. During two of those appearances, Judge Edwards repeatedly made comments to the presiding judge identifying himself as a judge. In May 2016, after Judge Edwards was informed by his Supervising Judge that as a full-time judge he could not practice law, he immediately retained an attorney for his daughter. The Commission said that Judge Edwards's conduct "comes close to warranting removal," but censure was appropriate because he has "admitted that his conduct warrants public discipline" and because the Commission believes he will strictly abide by all the Rules from now on. Judge Edwards did not request review by the Court of Appeals.

DETERMINATIONS OF ADMONITION

The Commission completed two proceedings in 2019 that resulted in public admonition. The cases are summarized as follows and the full texts can be found in Appendix F.

Matter of Roger L. Forando

On March 25, 2019, the Commission determined that Roger L. Forando, a Justice of the Granville Town Court and the Granville Village Court, Washington County, should be admonished for trying to influence the outcome of a pending case in another court by communicating his interest in that case to the presiding judge, the defendant's attorney and the District Attorney's office. As a member of the Capital District Board of Women's Basketball Officials, Judge Forando assigns referees to officiate over high school women's basketball games. In January 2016, he assigned two referees to officiate over a particular game, after which there was an altercation involving the referees and a spectator. Police were called to the scene, one of the referees notified Judge Forando, and the spectator was charged with a misdemeanor and a violation. On the date of the scheduled arraignment, Judge Forando called the arraignment judge and left two voicemails, in which he identified himself and requested a return phone call. When the two judges eventually spoke, Judge Forando indicated that he and/or the referee's association was interested in the case. Judge Forando also asked assistant district attorneys and the defendant's attorney about the case when they appeared his courtroom on unrelated matters. In its determination the Commission stated that Judge Forando should have refrained from any involvement in the matter that would "telegraph that a judge was interested in the case." The Commission noted: "Instead, throughout the pendency of the criminal matter, he repeatedly interjected himself into the case in an apparent attempt to monitor its progress and, in doing so, repeatedly signaled his interest in the matter to those who were directly involved in it, including the presiding judge." Judge Forando, who is not an attorney, did not request review by the Court of Appeals.

Matter of Genine D. Edwards

On October 23, 2019, the Commission determined Genine D. Edwards, a Justice of the Supreme Court, Kings County, should be admonished for threatening to file a professional grievance against a defense attorney unless his client immediately offered to settle a case. In March 2017, Judge Edwards presided over the liability portion of a trial of an action to recover damages for injuries sustained during a car accident. During his summation to the jury, the defense attorney made a culturally-insensitive statement about his client's co-defendant. While later conducting an off-the-record conference, Judge Edwards told the attorney that his comment was offensive, and that: "What's going to happen now is your client is going to pay $25,000 to settle this case right now or I am going to report you to the Appellate Division, Second Department. That's your license counselor." The client did not settle immediately, and the judge did not report the attorney's conduct to disciplinary authorities. In its determination the Commission stated: "By specifically linking her threat to file a professional grievance against the lawyer to whether his client agreed to settle the matter, [Judge Edwards] violated her obligation to discharge her judicial duties in a fair manner and undermined public confidence in the judiciary." The Commission found her threat "coercive and improper." Judge Edwards did not request review by the Court of Appeals.

OTHER PUBLIC DISPOSITIONS

The Commission completed five other proceedings in 2019 that resulted in public dispositions. The cases are summarized below and the full text can be found in Appendix F. One of the matters was concluded during the investigative stage, and four after formal proceedings had been commenced.

Matter of Scott Stone

On May 30, 2019, pursuant to a stipulation, the Commission discontinued a proceeding involving Scott Stone, a Justice of the Butler Town Court and Wolcott Village Court, Wayne County, who resigned from office after being served with a Formal Written Complaint alleging that he made statements at a village board meeting which conveyed disdain for certain laws and aspects of the legal process, a predisposition to presume defendants' guilt and a personal annoyance with criminal defense attorneys. Judge Stone, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Jonathan D. Katz

On August 9, 2019, pursuant to a stipulation, the Commission discontinued a proceeding involving Jonathan D. Katz, a Justice of the New Paltz Town Court, Ulster County, who resigned from office after being served with a Formal Written Complaint containing two charges stemming from his taking judicial action in a criminal case against a defendant whose wife he was then representing in a related matrimonial proceeding. The judge was charged with signing an arrest warrant and a "stayaway" order of protection against the defendant/husband despite his conflict of interest, and with continuing to represent the wife in the divorce proceeding notwithstanding having acted as a judge in the related criminal case. Judge Katz agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Kyle R. Canning

On September 12, 2019, pursuant to a stipulation, the Commission discontinued a proceeding involving Kyle R. Canning, a Justice of the Altona Town Court, Clinton County, who resigned from office after being served with a Formal Written Complaint alleging that he posted an image of a noose to his Facebook account, with the annotation in white capital letters, "IF WE WANT TO MAKE AMERICA GREAT AGAIN WE WILL HAVE TO MAKE EVIL PEOPLE FEAR PUNISHMENT AGAIN." Judge Canning, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Gary Chamberlain

On December 5, 2019, pursuant to a stipulation, the Commission closed its investigation of a complaint against Gary Chamberlain, a Justice of the Freedom Town Court, Cattaraugus County, who resigned from office after the Commission apprised him that it was investigating several complaints alleging that over a two year period beginning in October 2017, he: (1) failed to enforce a town ordinance regulating storage of "junk" on residential properties; (2) failed to properly inform a defendant during an arraignment of his due process rights; and (3) sent a letter to the editor of a local paper in October 2018, in which he: made statements that were political and

partisan in nature; criticized public officials and town residents concerning a matter of local controversy; and criticized a range of executive decisions and policies of Governor Andrew Cuomo, whom he described as "corrupt," at a time when the governor was running for re-election. Judge Chamberlain, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of James R. Mann, Jr.

On December 5, 2019, pursuant to a stipulation, the Commission discontinued a proceeding involving James R. Mann, a Justice of the Nunda Town and Village Courts, Livingston County, who resigned from office after being served with a Formal Written Complaint alleging that he solicited the assistance of the chief of police to thwart the arrest of his former brother-in-law for driving while intoxicated. Judge Mann, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

COMMISSION RECOMMENDATIONS ON SUSPENSIONS BY THE COURT OF APPEALS

Section 44 (8) of the Judiciary Law provides that the Court of Appeals may suspend a judge from office "when he is charged with a crime punishable as a felony…or any other crime which involves moral turpitude." At appropriate times the Court asks the Commission to present its views as to whether the judge should be suspended and whether such suspension should be with or without pay. In 2019, there were three such matters.

People vs Robert L. Cicale[1]

Suffolk County District Court Judge Robert L. Cicale (Nassau County) was suspended with pay in 2018 following his arrest on a felony burglary charge. In September 2019, after the judge pleaded guilty to one count of Attempted Burglary in the Second Degree, a felony, the Court requested the Commission's views. The Commission recommended, given the judge's guilty plea, that his suspension should be continued without pay until such time as the Court removes him from office as a matter of law, pursuant to Article 6, Section 22(f) of the New York State Constitution and Section 44(8) of the Judiciary Law. On September 27, 2019, the Court continued the judge's suspension, without pay.

US vs Sylvia G. Ash[2]

Supreme Court Justice Sylvia G. Ash (Kings County) was suspended with pay on October 11, 2019, after she was charged with conspiracy and obstruction of justice for trying to interfere with a federal investigation into the Municipal Credit Union, whose board she used to chair. The Commission recommended that her suspension be continued, which the Court has ordered.

[1] http://cjc.ny.gov/Miscellany/Cicale.html
[2] http://cjc.ny.gov/Miscellany/Ash.html

US vs Marc A. Seedorf[3]

Lewisboro Town Justice Marc A. Seedorf (Westchester County) was suspended without pay on December 20, 2019, after pleading guilty to felony charges of tax evasion in federal court. The Commission, on invitation of the Court of Appeals, had made the recommendation.

OTHER DISMISSED OR CLOSED FORMAL WRITTEN COMPLAINTS

The Commission disposed of five Formal Written Complaints in 2019 without rendering public disposition. One complaint was disposed of with a Letter of Caution, upon a finding by the Commission that judicial misconduct was established but that public discipline was not warranted. Two complaints were closed due to the judge's resignation. Two complaints were closed upon the vacancy of the judges' office due to reasons other than resignation, such as the expiration of the judges' terms.

MATTERS CLOSED UPON RESIGNATION

In 2019, 12 judges resigned while complaints against them were pending before the Commission, and the matters pertaining to those judges were closed. Seven of those judges resigned while under formal charges by the Commission, five of those were pursuant to public stipulation. Five judges resigned while under investigation, one 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 2019, the Commission referred 27 matters to other agencies. Twenty matters were referred to the Office of Court Administration (OCA), typically dealing with relatively isolated instances of delay, poor record-keeping or other administrative issues. Five matters were referred to both OCA and to attorney grievance committees, one matter was referred to an attorney grievance committee and one matter was referred to the state Inspector General's Office.

[3] http://cjc.ny.gov/Miscellany/Seedorf.html

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 is established, but where the Commission determines that public discipline is not warranted.

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 2019, the Commission issued 25 Letters of Dismissal and Caution and one Letter of Caution. Ten town or village justices were cautioned, including two who are lawyers. Sixteen judges of higher courts – all lawyers, as required by law – were cautioned. The caution letters addressed various types of conduct as indicated below.

Assertion of Influence. One judge was cautioned for using his parking placard inappropriately.

Audit and Control. One judge was cautioned for failing to properly supervise a court clerk, which resulted in misappropriated funds.

Conflicts of Interest. All judges are required by the Rules to avoid conflicts of interest and to disqualify themselves in which their impartiality might reasonably be questioned, including where the judge is, by blood or marriage, related to a party within six degrees of relationship; two judges were cautioned for failing to so disqualify. The Rules also require that a part-time lawyer/judge shall not permit his or her partners or associates to practice law in the court in which she is a judge and shall not permit the practice of law in her court by law partners of another lawyer/judge of the same court; two part-time judges were cautioned for failing to so disqualify. One judge was cautioned for inappropriately involving himself in administrative matters in which he had a conflict.

Finances. Six judges were cautioned for failing to file a financial disclosure statement in a timely manner with the Ethics Commission for the Unified Court System. 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

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. Two judges were cautioned for raising their voices and otherwise being impatient in court. A third judge was cautioned for allowing inappropriate social media comments to be posted on his Facebook account.

Improper *Ex Parte* Communications. One judge was cautioned for engaging in two instances of an unauthorized out-of-court communication with members of the community in two cases.

Political Activity. The Rules Governing Judicial Conduct prohibit judges from participating in political activities except during a specifically-defined "window period" when they are candidates

for elective judicial office. A judge may not publicly endorse or publicly oppose (other than by running against) another candidate for public office. 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 making a public statement supporting a local legislative candidate. Another judge was cautioned for making an inappropriate Facebook post concerning a candidate for elected office. One judge was cautioned for placing campaign signs for a local legislative candidate on his properties. A fourth judge was cautioned for attending a political rally outside of the applicable window period. A fifth judge was cautioned for failing to file certain mandatory reports with the New York State Board of Elections.

Violation of Rights. The Rules require that a judge respect, comply with, be faithful to and professionally competent in the law. Sections 100.2(A), 100.3(B)(1). Three judges were cautioned for relatively isolated incidents of violating or not protecting the rights of parties appearing before them. One judge was cautioned for failing to advise a defendant of rights regarding assigned counsel. Another judge was cautioned for setting bail contrary to statute.

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).

CHALLENGES TO THE COMMISSION'S PROCEDURES

Matter of New York State Commission on Judicial Conduct v Anonymous

In a matter that is still confidential pursuant to Judiciary Law § 45, a court attorney declined to answer questions in response to a Commission subpoena on the ground that there was an attorney-client privilege between the court attorney and the judge who employed him or her.

The Commission moved in Supreme Court to compel compliance with the subpoena by Order to Show Cause dated April 25, 2018. After oral argument and submission of briefs, Supreme Court issued a sealed order on June 25, 2018, declaring that there is no attorney-client relationship between a judge and his or her court attorney and directing the court attorney to appear and give testimony under oath pursuant to CPLR 2308(b).

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.

JUDICIAL RESPONSES TO THE NEW BAIL LAW

In New York, historically, the sole purpose of setting bail on a criminal defendant has been to ensure that the defendant would return to court for scheduled proceedings. Section 510.30 of the Criminal Procedure Law required the judge to consider various factors in setting bail, including the defendant's previous record, financial resources and ties to the community.

On January 1, 2020, changes in New York's bail law went into effect. A judge may only set bail or order pretrial detention in certain cases, such as violent felonies and a small number of misdemeanors, witness tampering and intimidation, terrorism and terrorism-related charges.

In the short time since January 1st, there has been widespread public and legislative discussion about amending the new law, as strong views both for and against the reforms have been expressed in public forums, on editorial pages and elsewhere.

The Commission does not take a position on the efficacy of the law or on proposals to amend it. The Commission takes this opportunity to remind judges that, whatever their individual views of the law may be, they are obliged under the Rules Governing Judicial Conduct to respect and comply with the law, to be faithful to the law and to maintain professional competence in the law. 22 NYCRR 100.2(A), 100.3(B)(1).

In a particular case, a judge who in good faith interprets the law need not fear disciplinary consequences for what may turn out to be legal error that is reversed on appeal. However, a judge who purposefully fails to abide by the law, *e.g.* to make a political point or because s/he personally disagrees with the law, invites discipline. In *Matter of Duckman*, 92 NY2d 141 (1998), the Court of Appeals upheld the removal of a judge for *inter alia* "willfully disregard[ing] the law" by dismissing accusatory instruments for being insufficient on their face, knowing they were in fact sufficient, because he disagreed with the prosecutor for pursuing the underlying cases. As the Court said:

> *Misconduct in Connection with Case Dispositions:*
> Largely consisting of transcripts of court proceedings before petitioner, the evidence establishes that petitioner willfully disregarded the law in disposing of the criminal charges in 16 cases: 13 dismissals for facial insufficiency, one purportedly in the interests of justice, and two adjournments in contemplation of dismissal (ACDs). Cases were dismissed without notice or an opportunity for the prosecution to be heard, without allowing an opportunity to redraft charges, without requiring written motions, and in the case of ACDs, without the consent of the prosecutor. What is significant for present purposes is both that petitioner dismissed these cases in knowing disregard of requirements of the law [cites omitted], and the abusive, intemperate behavior he manifested in dismissing those cases,

> at times not permitting the attorney to make a record of an objection either to the disposition or in response to the accusations.
>
> In the overwhelming number of these cases it is clear that petitioner dismissed accusatory instruments for facial insufficiency because the prosecutor refused to agree to petitioner's requests for an ACD or to offer a plea to a violation. In others, petitioner simply believed that the cases should not be prosecuted.
>
> 92 NY2d at 146.

ALCOHOL-RELATED CONDUCT AND DRIVING OFFENSES

The Commission has publicly disciplined numerous judges over the years for having committed various alcohol-related driving offenses and, on occasion, discharging or attempting to discharge judicial duties while under the influence of alcohol. Apart from the obvious – that drinking to excess and then operating a car puts the driver and everyone in the vicinity at great risk of harm – when the wrongdoer is a judge, public confidence in the courts, where intoxication-related offenses are adjudicated, is seriously compromised.

The Commission's docket seems always to have one or more active inquiries into complaints of public alcohol-fueled misconduct by judges, and in recent years, numerous disciplinary determinations have been rendered in such matters, particularly as to instances in which judges were arrested and convicted for driving under the influence.

Driving Under the Influence of Alcohol

The Rules Governing Judicial Conduct require a judge to respect and comply with the law, and to act at all times in a manner that promotes public confidence in the integrity of the judiciary and upholds the dignity of judicial office. Those rules are violated whenever a judge is convicted of an alcohol-fueled offense, and the offending judge will surely be disciplined.

According to the National Highway Traffic Safety Administration, in 2018 there were 10,511 fatalities in motor vehicle traffic crashes nationwide in which alcohol was involved. Of those, 7,051 involved at least one driver with a blood alcohol concentration of .15% or higher, which is nearly twice the threshold of .08% for a Driving While Intoxicated (DWI) conviction in New York, and three times higher than the .05% threshold for Driving While Ability Impaired by alcohol (DWAI).

According to the New York State 2018 Highway Safety Annual Report, alcohol-impaired driving causes more than 300 fatalities and more than 5,000 injuries in New York State each year.

In view of the seriousness of driving under the influence of alcohol, judicial disciplinary commissions throughout the country, like society as a whole, have become increasing intolerant of it while also recognizing that alcoholism is a disease. Throughout most of the United States, public reprimand or its equivalent – the mildest public discipline available – is the standard disciplinary punishment for a judge's first alcohol-related driving offense where there are no

aggravating circumstances. In other words, a judge found guilty of DWI or DWAI in New York should expect at least a public admonition. Any one of a number of aggravating circumstances – such as the judge asserting his/her judicial title to avoid arrest, causing an accident, obstructing the police as they carry out their duties or committing repeated alcohol-related offenses – would likely elevate the level of discipline to censure. It is no excuse that the judge may have been too drunk to control what he or she was saying. Where the aggravating circumstances are individually or collectively egregious, removal from office would likely result. At the same time, as noted below under the subheading "Seeking Treatment for an Alcohol Problem," the Commission will consider a judge's sincere effort at confronting and treating an alcohol problem in determining the appropriate sanction.

In *Matter of Astacio*, 32 NY3d 131 (2018), a city court judge was removed from office for a series of events that began with her arrest and conviction of DWI and included her assertion of judicial office during the arrest and violations of court-ordered conditions of her sentence.

In *Matter of Quinn*, 54 NY2d 386 (1981), the Commission determined to remove from office a Supreme Court Justice who had two alcohol-related convictions and other alcohol- related incidents, was uncooperative, belligerent and abusive to the arresting officers and repeatedly referred to his judicial position. On review, the Court of Appeals reduced the removal to censure in view of the fact that the judge had retired between issuance of the Commission determination and adjudication of the review by the Court.

Other cases in which the Commission censured a judge for an alcohol-related driving offense include *Matter of Landicino*, 2016 NYSCJC Annual Report 129, a judge was censured for DWI and repeatedly asserting his judicial office during the arrest. In *Matter of Newman*, 2014 NYSCJC Annual Report 164, a judge was censured for DWAI, in the course of which he caused a minor accident and, on arrival of the police, behaved in an unruly, self-destructive and suicidal manner, *inter alia* threatening to take the arresting officer's gun. In *Matter of Apple*, 2013 NYSCJC Annual Report 95, a judge was censured for DWI and in the process causing a minor accident. The same judge thereafter left office after another DWI episode a short time later. In *Matter of Maney*, 2011 NYSCJC Annual Report 106, a judge was censured for DWAI and in the process making an illegal U-turn to avoid a sobriety checkpoint and repeatedly invoking his judicial office while asking for special "consideration" and "professional courtesy" from the police. In *Matter of Martineck,* 2011 NYSCJC Annual Report 116, a judge was censured for DWI and in the process driving erratically and hitting a mile marker post. In *Matter of Burke,* 2010 NYSCJC Annual Report 110, a judge was censured *inter alia* for DWAI and causing a minor accident. In *Matter of Stelling,* 2003 NYSCJC Annual Report 165, a judge was censured for two alcohol-related convictions. In *Matter of Barr,* 1981 NYSCJC Annual Report 139, a judge was censured for two alcohol-related convictions, asserting his judicial office with police officers and being abusive and uncooperative during his arrests, after which he made "a sincere effort to rehabilitate himself."

In January 2020, shortly after the reporting period covered in this Annual Report, two other judges in unrelated incidents were censured after pleading guilty to DWAI. In both cases, the judges had accidents causing property damage. One invoked his judicial office during arrest, and the other

was belligerent and uncooperative with the police. *Matter of Miranda* and *Matter of Petucci* are available on the Commission's website.[4]

Alcohol-Influenced Behavior on the Bench

As serious as it is for a judge to commit an alcohol-related driving offense, it can be even more troubling when a judge attempts to exercise the powers of judicial office while under the influence of alcohol. Litigants and the public can have little faith in the decisions and judgments of a judge who appears in court while under the influence of alcohol.

In *Matter of Aldrich*, 58 NY2d 279 (1983), a judge was removed from office for presiding over two sessions of court while under the influence of alcohol and, in the process, uttering racist, vulgar and otherwise grossly offensive and inappropriate comments and at one point brandishing a knife and threatening a security guard with it while uttering racial slurs.

In *Matter of Wangler*, 1985 NYSCJC Annual Report 241, a judge was removed *inter alia* for being intoxicated and belligerent in court and at a meeting with court auditors. In *Matter of Giles*, 1998 NYSCJC Annual Report 127, a judge was censured for twice presiding over off-hours arraignments while under the influence of alcohol. In *Matter of Bradigan*, 1996 NYSCJC Annual Report 71, a judge was censured *inter alia* for twice presiding while under the influence of alcohol. In *Matter of Purple*, 1998 NYSCJC Annual Report 149, a judge was censured for DWI and for presiding under the influence of alcohol on one occasion. In *Matter of Gilpatric*, 2006 NYSCJC Annual Report 160, a judge was censured for appearing in court as an attorney while under the influence of alcohol and, later that day, taking the bench while under the influence of alcohol, although court staff and a co-judge intervened and the judge left for the day without adjudicating any matters.

Fortunately, alcohol-related transgressions on the bench are rare. However, court staff, attorneys and fellow judges should be alert to the signs that it is indeed affecting a colleague in the performance of judicial duties and, where appropriate as in *Gilpatric*, be prepared to intervene and notify both the appropriate court administrators and the Commission.

Seeking Treatment for an Alcohol Problem

In several cases cited above, such as *Landicino, Newman* and *Gilpatric*, the judges in question sought assistance for their alcohol problems after being arrested for DWI or diverted from taking the bench while intoxicated. In appropriate situations, the Commission Administrator has given the judge time to complete such a program before submitting a recommendation to the Commission as to disposition of the complaint. The successful completion of such a program would not obviate public discipline, but depending on the severity of the alcohol-fueled misbehavior, it could mitigate the degree of discipline imposed.

Unfortunately, it too often takes an arrest or other serious public event for a judge to seek treatment for alcoholism or alcohol-fueled behavior. Yet there are programs available to assist those who

[4] http://cjc.ny.gov/Determinations/M/Miranda.htm; http://cjc.ny.gov/Determinations/P/Petucci.htm.

seek help even before the problem manifests itself on the bench or behind the wheel of an automobile. For example, the New York State Bar Association has a Judicial Assistance Program, a Lawyer Assistance Program and a Judicial Wellness Committee that are available to provide assistance to those willing to avail themselves of the opportunity. The New York City Bar Association has a Lawyer Assistance Program. County bar associations throughout the state also offer assistance programs. These various programs offer such services as evaluation and assessment, counseling, referrals and mentoring. Many provide services not only to the alcoholic but to members of his/her family. There are also any number of private and/or non-profit assistance programs such as Alcoholics Anonymous and Al-Anon/Alateen that are available to help.

Although the Commission does not endorse one such program over others, we do encourage all who need assistance to take advantage of the opportunities that exist, before the effects of alcoholism exhibit themselves in behavior that must be addressed in a disciplinary setting.

The Commission also encourages the Office of Court Administration (OCA) to devote sufficient resources to encourage judges and court employees to come forward and seek treatment, before they violate the law, get caught, become a public embarrassment or worse, cause serious injury to themselves or others – and face disciplinary consequences before the Commission. Training programs for new judges, and continuing education programs for veteran judges, should routinely include medical and treatment professionals presenting programs on alcohol and drug abuse-prevention for all, and facilitating treatment for those who need it. OCA should consider establishing a permanent full-time office, sufficiently staffed to coordinate presentations, give confidential advice, make referrals and otherwise provide prevention and treatment related assistance to the thousands of professionals who populate the far-flung state court system.

UNAVAILABILITY OF INTERPRETERS IN SOME CITY, TOWN, VILLAGE COURTS

The Commission recently investigated a complaint alleging that certain town and village court proceedings were held and dispositions rendered notwithstanding that certain defendants needed but did not receive the assistance of qualified foreign-language interpreters. We learned that such interpreters were not available when needed in many town and village courts, and some city courts, both because of a shortage of qualified interpreters in certain areas and because individual municipalities did not provide funding for the courts to bring in such interpreters. We learned that in some town and village courts, interpreting was done on an *ad hoc* basis by spectators or court personnel with varying degrees of familiarity with a particular defendant's language, with no guarantee that the interpretation was accurate or that the witness or defendant properly understood his/her rights or what was being said and asked. In one situation, we learned that a local prosecutor assigned to cases in a town court occasionally interpreted for Vehicle & Traffic Law (VTL) defendants attempting to negotiate pleas on speeding or other VTL charges.

The Commission is reluctant to pursue disciplinary charges against town and village justices who confront such situations and are unable to secure necessary interpreter services through no fault of their own. The Commission is also aware of the inconvenience to both the courts and individual defendants for whom it would be a burden to keep returning to court on adjourned dates to dispose of VTL matters on the possibility that an interpreter might be available. Where there is a shortage

of qualified interpreters in a given area and/or no public funds allocated for their services, it is unlikely that interpreters would ever be available on any adjourned date. At the same time, the Commission is concerned about the due process implications of pleas being negotiated or taken with the assistance of unqualified interpreters drawn *ad hoc* from the ranks of randomly present spectators, court employees or, most problematically, opposing advocates whose neutrality or impartiality would obviously be lacking.

The issues addressed herein are not necessarily confined to city, town and village courts.

The Commission draws the Legislature's attention to this matter, particularly as it relates to the need for funding. The Commission also recommends that the Office of Court Administration examine the issue and help fashion a solution.

FAILURE TO COOPERATE

Cooperation with a Commission inquiry or proceeding is mandatory, not optional. Such conduct as failing to respond to letters of inquiry, failing to produce documents, court audio recordings or other materials when requested, and failing to appear for testimony when summoned, subject a judge to disciplinary consequences without regard to the nature of the complaint that gave rise to the inquiry. A judge who refuses to cooperate risks removal from office even if the facts of the underlying complaint would not necessarily warrant such a severe result.

In March 2018, the Commission determined to remove from office a New York City Civil Court judge for the underlying conduct alleged in a complaint of persistent intemperance and for his willful failure to cooperate with the Commission's inquiry. *Matter of O'Connor*, 2019 NYSCJC Annual Report 182, *accepted*, 32 NY3d 121 (2018). In the course of the inquiry, the judge *inter alia* did not respond to written Commission inquiries, refused to take an oath to tell the truth when he appeared at the Commission for testimony during the investigation, and refused to participate in the disciplinary hearing when formal charges of misconduct were filed against him.

In upholding the Commission's removal determination, the Court of Appeals upheld the underlying demeanor charges against the judge and affirmed the principle that a judge is obliged to cooperate with the Commission. Underscoring a judge's responsibility to promote public confidence in the integrity of the judiciary, and noting the Commission's constitutional and statutory authorities, the Court declared:

> In short, willingness to cooperate with the Commission's investigations and proceedings is not only required – it is essential. Here, in addition to a sustained pattern of inappropriate behavior in the courtroom, petitioner repeatedly failed to appear before the Commission, and engaged in other conduct demonstrating his unwillingness to cooperate fully with the investigation. Under all of the relevant circumstances, and considering petitioner's conduct as a whole, we conclude that the determined sanction of removal is warranted. 32 NY3d at 129.

In doing so, the Court underscored and cited its own precedents:

> Indeed, it is well settled that, when a judge fails to cooperate with an investigation of the Commission – which is vested with the statutory authority to 'require the appearance of the judge involved before it' [statutes omitted] – that dereliction can be a significant aggravating factor in determining the appropriate sanction for misconduct (*see Matter of Mason,* 100 NY2d at 60; *see Matter of Cooley,* 53 NY2d at 66). 32 NY3d at 129.

MISUSE OF PARKING PLACARDS

At least once a year, the Commission receives and investigates a complaint alleging that a judge is misusing a perk of the office, *i.e.* an official New York State Judiciary dashboard placard identifying a car as belonging to a judge. Although such placards are intended for use only when on official business, it comes to our attention that some judges are using them to evade parking restrictions near home, while shopping or dining out, or on other occasions clearly not associated with official court business.

In May 2019, Chief Administrative Judge Lawrence K. Marks issued a statewide memorandum to all judges of the unified court system, noting that the use of such placards had again become "an issue of public concern." While he said he believed misuse of parking placards was rare, he was compelled to remind the judiciary that the "Rules and Limitations of Use" dictate that parking placards "may not be used for parking at home or when [the judge] is not performing official duties." Moreover, they are intended only for parking and should not be displayed when driving, to avoid the implied assertion of judicial office when stopped for a suspected motor vehicle infraction.[5]

The Commission underscores Judge Marks' message and takes this opportunity to remind judges that in this era of ubiquitous electronic devices, it is easy for an alert citizen to take a cellphone photo of a car in, say, a residential neighborhood, parked with a judicial placard displayed on the dashboard, on a Saturday afternoon – and send it to the Commission with a complaint that the time and place were not likely related to official court business.

Placard misuse is easy to avoid, and even if the Commission disposes of a placard-related complaint with a confidential cautionary letter, the aggravation and blemish to a judge's disciplinary record is not worth the money saved by displaying the placard rather than paying for parking.

[5] The Rules Governing Judicial Conduct require that a judge must uphold the integrity of the judiciary and prohibit a judge from lending prestige of judicial office to advance his or her own private interests (Sections 100.1 and 100.2 (C).

THE COMMISSION'S BUDGET

Although the Commission is not an Executive Branch agency reporting to the Governor, its annual budget is submitted to the Legislature in the Executive Budget, to avoid the obvious conflict of relying for its funding on the very Judicial Branch as to which it investigates and adjudicates complaints of ethical misconduct. Typically, the Executive Budget proposes a "flat" budget, *i.e.* no additional resources for the Commission, which then appeals to the Legislature directly for assistance.

Last year, the Legislature took an important first step in relieving years of fiscal stress, in which the Commission's workload increased by 25% while its staff decreased by 25%.[6] In negotiations with the Division of Budget, the Legislature increased the Commission's appropriation by $330,000, allowing the Commission to add four staff, and to start phasing back in the use of professional stenographers to transcribe the more than 12,000 pages of testimony generated every year. This relief also led to a reduction in the average disposition time of those 2,000 matters, from 115 days in 2018 to 97 days in 2019.

The Commission had asked for last year's increase as the first step in a two-year rebuilding program. It has requested the same increment of $330,000 for the fiscal year beginning April 1, 2020, to allow refilling staff positions lost to prior budgetary constraints, to meet increasing contractual obligations and to keep abreast of a steadily voluminous and demanding caseload.

SELECTED BUDGET FIGURES: 1978 TO PRESENT

Fiscal Year	Annual Budget[1]	New Complaints[2]	Prelim Inquiries	New Investigations	Pending Year End	Public Dispositions	Full-Time Staff
1978	1.6m	641	N.A.	170	324	24	63
1988	2.2m	1109	N.A.	200	141	14	41
1996	1.7m	1490	492	192	172	15	20
2006	2.8m	1500	375	267	275	14	28
2007	4.8m	1711	413	192	238	27	51
2008	5.3m	1923	354	262	208	21	49
2017	5.6m	2143	605	148	173	16	41
2018	5.7m	2000	505	167	206	19	38
2019	6.0m	1944	505	149	231	13	42
2020	6.3m[3]	~	~	~	~	~	~

[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] Proposed by the Commission; the Executive Budget recommends $6 million.

[6] In 2007, the Commission handled 1,700 matters with a staff of 51 full-time employees (FTEs). In the last four years, the Commission has averaged over 2,000 matters annually, with a staff of only 38 FTEs.

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*
JODIE CORNGOLD
HON. JOHN A. FALK
TAA GRAYS, ESQ.
HON. LESLIE G. LEACH
HON. ANGELA M. MAZZARELLI
HON. ROBERT J. MILLER
MARVIN RAY RASKIN, ESQ.
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	(Former) Assembly Minority Leader Brian M. Kolb	2006	3/31/2021
Jodie Corngold	Governor Andrew M. Cuomo	2013	3/31/2019
John A. Falk	Chief Judge Janet DiFiore	2017	3/31/2021
Taa Grays	Senate President Pro Tem Andrea Stewart-Cousins	2017	3/31/2023
Leslie G. Leach	Chief Judge Janet DiFiore	2016	3/31/2020
Angela M. Mazzarelli	Chief Judge Janet DiFiore	2017	3/31/2022
Robert J. Miller	Governor Andrew M. Cuomo	2018	3/31/2022
Marvin Ray Raskin	Assembly Speaker Carl Heastie	2018	3/31/2022
Akosua Garcia Yeboah	Governor Andrew M. Cuomo	2016	3/31/2021
Vacant	Senate Minority Leader John J. Flanagan		3/31/2020

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.

Jodie Corngold graduated from Swarthmore College. In her professional life she was responsible for all print and website communications for several nonprofit organizations, including a synagogue and a college preparatory school in Brooklyn. She currently tutors ESL and New York City public school students. Ms. Corngold 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. Ms. Grays is Vice President and Associate General Counsel of Information Governance at MetLife. She is responsible for the strategic management of MetLife's global Information Lifecycle Management Program. She leads a team that develops, implements and manages the Information Governance strategic plan. The team, in partnership with the Lines of Business and Corporate Functions, embed and drive the Program throughout MetLife. Ms. Grays started with MetLife in 2003 in the Litigation Section. As a litigator, her practice consisted of handling various federal and state lawsuits and regulatory complaints stemming from MetLife's US Business and Investment activities. Prior to MetLife, Ms. Grays was an Assistant District Attorney with the Bronx District Attorney's Office in its Rackets Bureau for five and half years. She investigated and prosecuted felony and misdemeanor crimes committed by public officials and organized crime groups from the filing of the initial complaint to indictment and trial. Ms. Grays is very active in the legal community. She has served on the New York City Bar Association's Judiciary Committee from 2005 to 2008 and the 11th Independent Judicial Election Qualification Commission from 2007 to 2009. The New York State Bar Association also recognized her for her commitment to diversity in 2003 by honoring her with its Diversity Trailblazer Award. She has also co-authored a chapter, entitled "Information Governance" in the treatise Successful Partnering Between In-House and Outside Counsel.

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 NYC 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 NYS 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. In 1985, she was elected to the Civil Court of the City of New York and was assigned to sit in the Criminal Court, where she sat until 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.

Honorable Robert J. Miller is a graduate of Brooklyn College and the Georgetown University Law Center. In 2007, he was elected to the Supreme Court, Second Judicial District, and in 2010 he was appointed to the Appellate Division, Second Department. Prior to his judicial career Justice Miller was a partner in several law firms, including Reed Smith and Parker Duryee Rosoff & Haft. Justice Miller is a frequent lecturer at a variety of Continuing Legal Education programs and has long been active in various civic and bar associations endeavors.

Marvin Ray Raskin, Esq., is a graduate of New York Law School, where he served as Editor-in-Chief of *Equitas*. He has maintained a private practice in the Bronx since 1977 and has an office in Yorktown Heights. Mr. Raskin previously served as an assistant district attorney in the Bronx. He has been a member of the Bronx County Bar Association for over 35 years, was elected president in 1994, and since 1996 has been Chair of its Criminal Courts Committee. Mr. Raskin served on the New York City Mayor's Advisory Committee on the Judiciary, 2007-2017, under two mayors. He is presently the Vice-Chair of the Central Screening Committee, Assigned Counsel Plan, for the Appellate Division, First Department. Among his professional awards are the New York County Lawyers Pro Bono Award for free legal services rendered to the Courts and the Public, and the Extraordinary Service Award by the Criminal Courts Bar Association of Bronx County. Mr. Raskin regularly lectures on criminal law and procedure and legal ethics and has been an Adjunct Assistant Professor at the Herbert H. Lehman College of the City University of New York.

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. Ms. Yeboah previously 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 MEMBER

Richard A. Stoloff, Esq., served on the Commission from 2011 to 2019. He is a graduate of 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.

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, *Principal 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, *Staff Attorney,* 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, *Former Special 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.

Stella Gilliland, *Staff Attorney*, is a graduate of Lewis and Clark College and Fordham University School of Law. She previously served as Deputy State Public Defender with the Colorado Public Defender in Alamosa, Colorado.

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, *Senior 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 2007, she was a writer for the Union for Reform Judaism. She previously served as a Staff Attorney at the Commission, as an Assistant District Attorney in New York County, and in private practice doing civil litigation. She has served as a Vice President of NYSICA, the New York State Internal Controls Association, and as a board member for the Larchmont-Mamaroneck Hunger Task Force, the Town of Mamaroneck Selection Committee and Larchmont Temple, and currently serves on the board of Child Find of America.

Jean M. Savanyu, *Former 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.

Eteena J. Tadjiogueu, *Former 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, *Former 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.

Celia A. Zahner, *Clerk of the Commission*, is a graduate of Colgate University and Harvard Law School. She previously served as Special Counsel to the Independent Investigations Officer and the Chief Investigator appointed pursuant to the Consent Order in *United States v International Brotherhood of Teamsters*. Ms. Zahner also served as a Staff Attorney in the Law Enforcement Bureau of the New York City Commission on Human Rights and as a Staff Attorney in the Criminal Defense Division of the Legal Aid Society.

APPENDIX C: REFEREES WHO SERVED IN 2019

Referee	City/Town	County
Eleanor Alter, Esq.	New York	New York
Mark S. Arisohn, Esq.	New York	New York
William I. Aronwald, Esq.	White Plains	Westchester
Robert A. Barrer, Esq.	Syracuse	Onondaga
Hon. John J. Brunetti	Baldwinsville	Onondaga
Jay C. Carlisle, Esq.	Hudson	Columbia
Frances A. Ciardullo, Esq.	Syracuse	Onondaga
Cristine Cioffi, Esq.	Schenectady	Schenectady
Linda J. Clark, Esq.	Albany	Albany
Hon. John P. Collins	New York	Bronx
William T. Easton, Esq.	Rochester	Monroe
David M. Garber, Esq.	Syracuse	Onondaga
Thomas F. Gleason, Esq.	Albany	Albany
Ronald Goldstock, Esq.	Larchmont	Westchester
Michael J. Hutter, Esq.	Albany	Albany
Hon. William F. Kocher	Victor	Ontario
C. Bruce Lawrence, Esq.	Rochester	Monroe
Gregory S. Mills, Esq.	Clifton Park	Saratoga
Malvina Nathanson, Esq.	New York	New York
Edward J. Nowak, Esq.	Penfield	Monroe
Jane W. Parver, Esq.	New York	New York
John J. Poklemba, Esq.	New York	Kings
Margaret Reston, Esq.	Rochester	Monroe
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 (2010-18)
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)
Hon. Robert J. Miller (2018-present)
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)
Marvin Ray Raskin (2018-present)
*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 (2011-19)
Hon. William C. Thompson (1990-98)
Carroll L. Wainwright, Jr. (1974-83)
Hon. David A. Weinstein (2012-18)
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, 60,467 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 51,157 were dismissed upon initial review or after a preliminary review and inquiry, and 9,310 investigations were authorized. Of the 9,310 investigations authorized, the following dispositions have been made through December 31, 2019:

- 1,164 complaints involving 871 judges resulted in disciplinary action (this does not include the 89 public stipulations in which judges agreed to vacate judicial office). (See details below and on the following page.)
- 1,803 complaints resulted in cautionary letters to the judge involved. The actual number of such letters totals 1,660, 92 of which were issued after formal charges had been sustained and determinations made that the judge had engaged in misconduct.
- 842 complaints involving 596 judges were closed upon resignation of the judge during investigation or in the course of disciplinary proceedings.
- 623 complaints were closed upon vacancy of office by the judge other than by resignation.
- 4,647 complaints were dismissed without action after investigation.
- 231 complaints are pending.

Of the 1,164 disciplinary matters against 871 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 99 decisions by the Court of Appeals, 16 of which modified a Commission determination.

- 171 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);
- 359 judges were censured publicly;
- 276 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 100 determinations filed by the present Commission. Of these 100 matters:

- The Court accepted the Commission's sanctions in 83 cases (74 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.
- One request for review is pending.

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 a more than 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, gender identity, gender expression, 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.
Amended (D) on Jun. 25, 2018

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, gender identity, gender expression, 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, gender identity, gender expression, 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, domestic partner, or unrelated household member of the town or village justice, or other relative 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 Rules of Professional Conduct (22 NYCRR Part 1200) 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. Where the judge knows the relationship to be within the second degree, (i) the judge must disqualify him/herself without the possibility of remittal if such person personally appears in the courtroom during the proceeding or is likely to do so, but (ii) may permit remittal of disqualification provided such person remains permanently absent from the courtroom.

(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) or subparagraph (1)(e)(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.

Amended (B)(9)-(11) & (E)(f) -(E)(g) Feb. 14, 2006
Amended (B)(9)-(11) & (E)(f) -(E)(g) Feb. 14, 2006
Amended (C)(3) on May 6, 2014
Added (B)(12) effective Mar. 26, 2015
Amended (B)(4) & (B)(5) on Jun. 25, 2018
Amended (E)(1)(e) & (F) on Dec. 12, 2018 effective January 1, 2019
Amended (D)(2) on May 7, 2019, effective May 6, 2019

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.

(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]
Deleted 100.5(A)(7) on May 7, 2019, effective May 6, 2019

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 2019

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

WILLIAM E. ABBOTT,

a Justice of the Palmyra Town Court and
Associate Justice of the Palmyra Village
Court, Wayne County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

James I. De Point for respondent

Respondent, William E. Abbott, a Justice of the Palmyra Town Court and an Associate Justice of the Palmyra Village Court, Wayne County, was served with a

Formal Written Complaint dated November 19, 2018, containing one charge. The Formal Written Complaint alleged that respondent lent the prestige of judicial office to advance private interests by invoking his judicial position while asking the police for assistance in unlocking his personal vehicle and threatening to refuse to do arraignments in the future.

On January 22, 2019, 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 January 31, 2019, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Palmyra Town Court and an Associate Justice of the Palmyra Village Court, Wayne County, since 1979. His current term as Palmyra Town Justice expires on December 31, 2019, and his current term as Associate Justice of the Palmyra Village Court expires on December 2, 2019. Respondent is not an attorney.

2. As set forth below, on November 28, 2017, respondent lent the prestige of his judicial office to advance his own private interest when he (i) invoked his judicial title while requesting that the Newark Police Department ("NPD") send an officer to unlock his personal motor vehicle in contravention of their established policy,

and (ii) threatened to refuse to do future arraignments for the NPD.

3. The Town of Palmyra and the Village of Newark, both located in Wayne County, adjoin one another. As the judge of a court whose jurisdiction adjoins the Village of Newark, respondent presides over the arraignments of defendants brought to Palmyra by NPD officers when the justice and associate justice of the Newark Village Court are unavailable.

4. On November 28, 2017, at approximately 3:00 PM, after accidentally locking the keys to his personal motor vehicle inside the vehicle, which was parked at the Newark-Wayne Community Hospital, respondent called 911 and thereafter spoke to Patricia Latta, an NPD clerk. Respondent asked Ms. Latta to send police personnel to unlock his personal vehicle.

5. Ms. Latta informed respondent that, pursuant to NPD policy, the police did not respond to requests to unlock cars unless it was an emergency, such as when a child is locked inside the vehicle. Ms. Latta offered to contact a local automotive garage to assist respondent.

6. Respondent replied that the police had "done this before for me," and then said in a raised voice, "I am Judge Abbott of Palmyra and I just won't do any arraignments for you anymore."

7. Ms. Latta felt intimidated by respondent, told NPD Sergeant Michael Patton about the call and asked Sergeant Patton to assist respondent with his locked vehicle.

8. Sergeant Patton left the police facility and drove to respondent's

location at the hospital. Pursuant to NPD policy to document the whereabouts of NPD officers, Ms. Latta notified the local 911 dispatcher that Sergeant Patton was responding to respondent's call for assistance with his car.

9. At the hospital parking lot, Sergeant Patton was unable to unlock respondent's car. Sergeant Patton then called a second officer, who arrived soon thereafter and unlocked the vehicle. Sergeant Patton spent approximately 20 minutes with respondent before the car was unlocked.

Additional Factors

10. Respondent recognizes that identifying himself to the police as a town justice while making a personal request for assistance with his personal vehicle was wrong.

11. Respondent recognizes that a willful refusal to conduct arraignments would be prejudicial to the administration of justice, and that his threat out of pique not to conduct arraignments was wrong and undermined public confidence in the courts, even if he did not intend to carry it out.

12. Respondent avers, and the Administrator has no evidence to the contrary, that at the time of his call to the police, respondent was experiencing physical irritation as a result of a recent medical procedure. Respondent acknowledges that notwithstanding any discomfort associated with the procedure, his actions and statements were improper.

13. Respondent was previously censured by the Commission in 1989 for soliciting an affidavit from a witness in a case pending in another court on behalf of the

defendant's counsel, who was a friend of the judge.

14. Respondent has been cooperative with the Commission throughout its inquiry and regrets his failure to abide by the Rules in this matter. He 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), 100.2(C), 100.4(A)(2) and 100.4(A)(3) 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, and respondent's misconduct is established.

The stipulated facts establish, and respondent has acknowledged, that he used his judicial prestige to advance his private interests in a successful effort to get the police to come to his immediate assistance one afternoon in November 2017 when he was locked out of his vehicle in a hospital parking lot. After calling 911 for assistance and being informed that the police do not respond to such requests except in emergencies, he identified himself as a judge and told the clerk that the police had "done this before for me." Such behavior violates well-established 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]).

In the circumstances here, identifying himself as a judge while asking for

assistance, standing alone, would have constituted an implicit request for special treatment, which is inconsistent with the high ethical standards required of every judge. *See Matter of D'Amanda*, 1990 NYSCJC Annual Report 91 (where a judge invoked his judicial position to avoid getting traffic tickets, the Commission stated: "The mere mention of his judicial office in order to obtain treatment not generally afforded to others violates the canons of judicial ethics"); *see also Matter of Werner*, 2003 NYSCJC Annual Report 198 (by showing his judicial identification to an officer during a traffic stop, judge "gratuitously interjected his judicial status into the incident, which was inappropriate … even in the absence of an explicit request for special consideration"). When respondent added that the police had "done this before for me," his request for special treatment became explicit, clearly conveying that his judicial status entitled him to deference and exempted him from policies that apply to others. Asking the police to depart from an established policy for his personal benefit was a particularly improper assertion of special influence (*see Matter of Michels*, 2019 NYSCJC Annual Report ___).

Compounding the misconduct, respondent then threatened to retaliate against the Newark police if they did not respond favorably to his request. By stating plainly that he would not provide judicial services ("I just won't do any arraignments for you anymore"), he intimidated the clerk into asking a sergeant to respond to the request and, as a result, two police officers were diverted from their official duties while they assisted him with his personal vehicle, assistance that could have been provided by an automotive garage. There is no justification for a judge's refusal to perform judicial duties out of personal pique, and even threatening to do so is detrimental to public

confidence not only in the integrity of the judge's court, but in the judiciary as a whole. *See Matter of Crosbie*, 1990 NYSCJC Annual Report 86 (judge called the police and threatened not to make himself available for arraignments in the adjoining village because he suspected the police had disclosed the arrest of his friend and political associate to the press); *Matter of Peters*, 2011 NYSCJC Annual Report 138 (judge told town board that he would not preside over cases scheduled by his former co-judge unless his salary was increased). Performing arraignments for police from an adjoining village is part of respondent's duties, and a judge is required to perform all the duties of judicial office diligently and impartially and to act "at all times in a manner that promotes public confidence in the integrity ... of the judiciary" (Rules §§100.2[A], 100.3).

As the Court of Appeals has stated, even off the bench a judge "'remain[s] cloaked figuratively, with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others'" (*Matter of Kuehnel*, 49 NY2d 465, 469 [1980]).

In considering the appropriate sanction, we note that respondent was censured in 1989 for using his judicial prestige to advance private interests by soliciting an affidavit from a witness as a favor to a lawyer-friend (*Matter of Abbott*, 1990 NYSCJC Annual Report 69); in that case, the Commission found that respondent violated Rule 100.2(C) by engaging in conduct that "conveyed the impression ... that [the judge's friend] was in a special position to influence him." While we are troubled by the misconduct depicted here, especially in light of respondent's prior discipline, we have also considered that respondent has served as a judge for 40 years, has acknowledged his

misconduct and expressed regret for his actions, and "pledges to conduct himself in accordance with the Rules for the remainder of his tenure as a judge." We are also mindful of respondent's claim that at the time of the incident he was affected by physical discomfort as a result of a recent medical procedure.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Judge Miller, Mr. Raskin and Mr. Stoloff concur.

Ms. Yeboah was not present.

CERTIFICATION

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

Dated: February 7, 2019

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

KYLE R. CANNING,

a Justice of the Altona Town Court,
Clinton County.

DECISION
AND
ORDER

- -

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Kyle R. Canning, *pro se*

The matter having come before the Commission on August 8, 2019; and the Commission having before it the Stipulation dated July 10, 2019; and respondent having been served with a Formal Written Complaint dated May 7, 2019; having tendered his

resignation from the Altona Town Court by letter dated June 27, 2019, effective June 27, 2019; and having affirmed that he will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law 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 regarding the Stipulation 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: September 12, 2019

Celia A. Zahner, 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

KYLE R. CANNING, **STIPULATION**

a Justice the Altona Town Court,
Clinton County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable Kyle R. Canning ("Respondent"), as follows:

1. Respondent has been a Justice of the Altona Town Court, Clinton County, since January 2018. His term expires December 31, 2021. Respondent is not an attorney.

2. Respondent was served with a Formal Written Complaint dated May 7, 2019, containing one charge alleging that he shared an image and statement on his Facebook account that was visible to the public and conveyed and/or appeared to convey racial and/or political bias, and thereby failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

3. The Formal Written Complaint is appended as Exhibit 1.

4. Respondent enters into this Stipulation in lieu of filing an Answer to the Formal Written Complaint.

5. By letter dated June 27, 2019, a copy of which is appended as Exhibit 2, Respondent tendered his resignation. Respondent affirms that he vacated judicial office on June 27, 2019.

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

7. Respondent affirms that, having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

8. 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.

9. 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.

10. 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:
7/11/19

Honorable **Kyle R. Canning**
Respondent

Dated: 7/10/2019

Robert H. Tembeckjian
Administrator and Counsel to the Commission
(**Cathleen S. Cenci and Eteena J. Tadjiogueu**, 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 Investigation of Complaints Pursuant to Section 44, subdivisions 1 and 2, of the Judiciary Law in Relation to

GARY CHAMBERLAIN,

a Justice of the Freedom Town Court, Cattaraugus County.

DECISION AND ORDER

- -

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

The Law Office of Gilmour & Killelea, LLP (by Daniel M. Killelea) for respondent

The matter having come before the Commission on December 5, 2019; and the Commission having before it the Stipulation dated November 14, 2019; and Judge

Chamberlain having tendered his resignation as Justice of the Freedom Town Court by letter dated November 6, 2019 effective that day; and having affirmed that having vacated 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: December 5, 2019

Celia A. Zahner, 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 CHAMBERLAIN, **STIPULATION**

a Justice of the Freedom Town Court,
Cattaraugus County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable Gary Chamberlain and his attorney, Daniel M. Killelea, Esq., of The Law Office of Gilmour & Killelea, LLP.

1. Gary Chamberlain has been a Justice the Freedom Town Court, Cattaraugus County, since January 1, 2010. His current term expires on December 31, 2021. Judge Chamberlain is not an attorney.

2. Judge Chamberlain was apprised by the Commission in March 2019 and October 2019 that it was investigating several complaints alleging that, over a two-year period beginning in October 2017, he:

A. failed to enforce a town ordinance regulating storage of "junk" on residential properties;

B. failed to properly inform a defendant during an arraignment of his due process rights, as set forth in Section 170.10 of the Criminal Procedure Law; and

C. sent a letter to the editor of a local paper in October 2018, in which he:

i. made statements that were political and partisan in nature;

ii. criticized public officials and town residents concerning a matter of local controversy; and

iii. criticized a range of executive decisions and policies of Governor Andrew Cuomo, whom he described as "corrupt," at a time when Governor Cuomo was running for re-election.

3. Judge Chamberlain has tendered his resignation by letter dated November 6, 2019, a copy of which is annexed as Exhibit 1. Judge Chamberlain affirms that he vacated judicial office as of November 6, 2019.

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

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

6. Judge Chamberlain 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 would 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 Chamberlain 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: 11-8-2019

Honorable **Gary Chamberlain**

Dated: 11-8-2019

Daniel M. Killelea, Esq.
The Law Office of Gilmour & Killelea, LLP
Attorney for **Judge Gary Chamberlain**

Dated: 11.14.2019

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

THE FOLLOWING EXHIBIT IS 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

THOMAS M. DIMILLO,

a Judge of the Lockport City Court,
Niagara County.

DETERMINATION

– –

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Joel Daniels for respondent

Respondent, Thomas M. DiMillo, a Judge of the Lockport City Court, Niagara County, was served with a Formal Written Complaint dated August 1, 2019, containing two charges. Charge I of the Formal Written Complaint alleged that from November

2005 through December 2016, respondent presided as the judge of record for more than 2,500 civil matters involving Cornerstone Community Federal Credit Union ("CCFCU"), notwithstanding that his brother was an officer and board member of CCFCU. Charge II of the Formal Written Complaint alleged that from December 2016 through May 2017, respondent presided over the small claims matter of *Salvatore Angelo DBA Angelo's Snowplowing v. Cornerstone CFCU DBA Cornerstone Community Federal Credit Union (i.e.* CCFCU), notwithstanding that his brother was at the time a member of the board and an officer of CCFCU.

On August 22, 2019, 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 September 12, 2019, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent was admitted to the practice of law in New York in 1999. In November 2005, he was appointed to serve as a part-time judge of the Lockport City Court, Niagara County; he was re-appointed in 2011. In 2017, after the position became elective rather than appointive, respondent was elected as a Lockport City Court Judge. His current term expires on December 31, 2027. By designation of the Administrative Judge of the Eighth Judicial District, respondent has served as an Acting Family Court Judge, Niagara County, since 2014.

2. Respondent's brother, A. Angelo DiMillo, is an attorney whose law office is in Lockport, New York. Since 1989, Mr. DiMillo has been a member of the Board of Directors of the Cornerstone Community Federal Credit Union, a credit union in Lockport, New York. Mr. DiMillo served as Vice President of the CCFCU Board from 1992 to June 1994, as President from June 1994 to March 1995, and as First Vice Chairman since April 1995. He also sits on the board's Executive Committee. Mr. DiMillo's positions with the CCFCU are uncompensated.

3. Upon becoming a judge, respondent advised court staff that cases involving his brother's law firm should be assigned to a judge other than himself. Respondent did not issue such an instruction regarding CCFCU cases.

4. Respondent avers that, until the Commission's inquiry in this matter, he was unaware of the rule disqualifying a judge from cases where a person he knows to be within the sixth degree of relationship to him is an officer of a party.[1]

As to Charge I of the Formal Written Complaint

5. Beginning in November 2005, respondent began handling nearly all of the civil, building-code, landlord-tenant and small claims cases, and other matters involving minor violations, that were filed in the Lockport City Court.

6. From November 2005 through December 2016, respondent was the judge of record for 2,548 cases in which CCFCU was the plaintiff, notwithstanding that, at the time, his brother was a board member and officer of the CCFCU. All of the defendants

[1] Section 100.3(E)(l)(d)(ii) of the Rules Governing Judicial Conduct.

in these cases either defaulted or otherwise did not contest the claim; consequently, there were no trials. A schedule of these cases is appended to the Agreed Statement.

7. At no time during the pendency of these cases did respondent offer to recuse himself or disclose that his brother was affiliated with CCFCU, nor had he taken measures to ensure that cases involving CCFCU be assigned to another judge.

As to Charge II of the Formal Written Complaint

8. On February 9, 2017, respondent presided over the small claims hearing in Lockport City Court in the matter of *Salvatore Angelo DBA Angelo's Snowplowing v. Cornerstone CFCU DBA Cornerstone Community Federal Credit Union*, notwithstanding that, at the time, his brother was a board member and officer of the CCFCU. Plaintiff Salvatore Angelo appeared *pro se* before respondent, seeking $5,000 on a multi-month contract that CCFCU had terminated on December 13, 2016, after his truck allegedly leaked fluid at and onto a CCFCU parking lot.

9. Mr. Angelo presented evidence at the small claims hearing concerning several factual issues. Counsel for CCFCU presented evidence of multiple alleged contract breaches by Mr. Angelo.

10. In a decision dated March 13, 2017, respondent found that CCFCU had lawfully terminated the contract. He also found that Mr. Angelo was entitled to compensation for work that he had performed for CCFCU in December 2016. Respondent ordered judgment in favor of Mr. Angelo for $200 and $20 for court costs.

11. On May 9, 2017, a satisfaction of judgment was received by the Lockport City Court, attesting that the judgment was fully paid to Mr. Angelo on March 20, 2017.

12. At no time during the pendency of the *Angelo* case did respondent offer to recuse himself or disclose that his brother was affiliated with CCFCU.

Additional Factors

13. Respondent has presided as the judge of record for approximately 65,000 cases in the Lockport City Court.

14. Respondent avers, and the Administrator has no evidence to the contrary, that prior to this matter, respondent never spoke with his brother about his voluntary and uncompensated membership on the CCFCU board.

15. Respondent has now advised court staff that he should not be assigned to or preside over any CCFCU matter. Given his brother's affiliation with CCFCU, respondent recognizes the importance of avoiding even the appearance of a conflict in being the judge of record in CCFCU cases, even where a party-defendant defaults rather than tries the case. Respondent appreciates that he should have instituted such safeguards at the outset of his tenure as a judge.

16. Respondent has been cooperative with the Commission throughout its inquiry and regrets his failure to abide by the Rules in this matter. He 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)(1) and Section 100.3(E)(l)(d)(ii) 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.

A judge's disqualification is required in matters "in which the judge's impartiality might reasonably be questioned" including where a relative within the sixth degree of relationship to the judge "is an officer, director or trustee of a party." (Rules, §100.3(E)(1)(d)(ii)) A judge must avoid the appearance of impropriety and must disqualify himself or herself in matters in which his or her "impartiality might reasonably be questioned." (Rules, §§100.2(A), 100.3(E)(1)) Pursuant to the plain language of Section 100.3(E)(1)(d)(ii) of the Rules, respondent was required to disqualify himself from matters involving the CCFCU because his brother was an officer and board member of the CCFCU during the relevant time period. By being the judge of record for over 2,548 uncontested matters in which the CCFCU was the plaintiff (as set forth in Exhibit A to the Agreed Statement) and presiding over a contested matter in which the CCFCU was the defendant, respondent violated these clear requirements.

By failing to disqualify himself in numerous matters as the Rules specifically mandated, respondent created an appearance of impropriety and acted in a manner that was inconsistent with his obligation to maintain high standards of conduct in order to promote public confidence in the integrity of the judiciary. (Rules, §§100.1, 100.2(A), 100.3(E)(1)(d)(ii)) By his conduct, respondent undermined public confidence in the impartiality of the judiciary. *See, Matter of Little*, 1988 NYSCJC Ann. Report 191, 193 ("A reasonable person might question respondent's ability to be impartial in a case in which a principal of the corporate plaintiff was also an officer of a long-standing client of respondent's law firm."); *Matter of Wait*, 67 N.Y.2d 15, 18 (1986) (in removing a judge

who presided over six matters involving family members, the Court stated, "The handling by a judge of a case to which a family member is a party creates an appearance of impropriety as well as a very obvious potential for abuse, and threatens to undermine the public's confidence in the impartiality of the judiciary.")

While 2,548 of the CCFCU matters for which respondent was the judge of record were uncontested, that has no bearing on whether respondent's failure to disqualify was improper.[2] In another matter involving a judge's failure to disqualify, the Court of Appeals held,

> The Rules Governing Judicial Conduct create no distinction between contested and uncontested/ministerial matters. The perception that these attorneys were in a position to be accorded preferential treatment is based on their relationships to the judge, not the type of proceedings.

Matter of Doyle, 23 N.Y.3d 656, 661 (2014) (citations omitted)

In addition to the 2,548 uncontested matters, respondent also presided over a contested matter in which the CCFCU was the defendant and the plaintiff was *pro se*. Respondent presided over a small claims hearing in that matter during which counsel for the CCFCU presented evidence as did the plaintiff. After the hearing, respondent issued a decision in the matter finding that the CCFCU had lawfully terminated the contract with plaintiff's company and plaintiff was entitled to compensation for work performed. A reasonable person might question respondent's ability to be impartial in such a matter in light of his brother's relationship with the CCFCU. Respondent, an

[2] That those matters were uncontested was considered in determining the appropriate sanction for respondent's misconduct.

experienced attorney, who has been a judge since 2005, should have understood that disqualification was necessary given his brother's position as an officer of the CCFCU. [3]

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent was cooperative with the Commission and there was no indication that respondent gave preferential treatment to the CCFCU. Respondent acknowledged that his conduct was improper and that he should have taken steps to ensure that he did not preside over CCFCU matters at the outset of his tenure as a judge. We also note that respondent has expressed remorse for his conduct. We trust that respondent has learned from this experience and in the future will act in accordance with his obligation to abide by the Rules Governing Judicial Conduct.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Mazzarelli, Judge Miller and Mr. Raskin concur.

Judge Leach and Ms. Yeboah were not present.

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[3] Respondent claimed that until the Commission's inquiry began, he was unaware of the subsection of the Rules requiring mandatory disqualification where a person he knows to be within the sixth degree of relationship to him is an officer of a party. It is well-settled that this is no excuse. *Matter of VonderHeide*, 72 N.Y. 2d 658, 660 (1988) ("Ignorance and lack of competence do not excuse violations of ethical standards. As a Judge, petitioner had an obligation to learn about and obey the Rules Governing Judicial Conduct." (citation omitted)); *Matter of Edwards*, 2008 NYSCJC Ann. Report 119 (2007). Moreover, it should have been apparent to respondent that, given his brother's longstanding role at the CCFCU, presiding over matters in which the CCFCU was a party created the appearance of impropriety.

CERTIFICATION

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

Dated: October 1, 2019

Celia A. Zahner, 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

GENINE D. EDWARDS,

a Justice of the Supreme Court,
Kings County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Melissa DiPalo, Of Counsel), for the Commission

Roger Bennet Adler for respondent

Respondent, Genine D. Edwards, a Justice of the Supreme Court, Kings County, was served with a Formal Written Complaint dated May 21, 2019, containing one charge. The Formal Written Complaint alleged that on March 9, 2017, while presiding over a trial

in *Carolyn Thomas v. Quest Livery Services, LLC et al.*, respondent threatened to file a professional grievance against an attorney unless his client immediately offered to settle the case for $25,000.

On July 9, 2019, 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 September 12, 2019, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Supreme Court, Kings County, since 2016, having previously served as a Judge of the New York City Civil Court, Kings County, from 2006 to 2015. Her term expires on December 31, 2029. She was admitted to the practice of law in New York in 1993.

2. As set forth below, on March 9, 2017, while presiding over *Carolyn Thomas v. Quest Livery Services, LLC et al.*, respondent threatened to file a professional grievance against a defense attorney, Michael L. Tawil, Esq., unless his client immediately offered to settle the case for $25,000.

3. On March 8 and March 9, 2017, respondent presided over the liability portion of a bifurcated trial in *Carolyn Thomas v. Quest Livery Services, LLC D/B/A Bee Bee Car Services, Pedro Roberto Batista, Nelson J. Urbina and Methuran Bahiro*, an action to recover damages for personal injuries sustained by the plaintiff in a car accident.

4. On March 8, 2017, the attorney for defendants Urbina and Bahiro, Michael L. Tawil, Esq., delivered a summation in which he made the following statement:

> On the other hand, you have Mr. Batista. He's on the phone talking to his female girlfriend or someone. He's selling cell phones to his passenger, he's listening to the radio, he said they're having a good time in the car. They're having a good time and he's paying attention to the passenger, to his girlfriend, probably to the radio. For all we know, he could be frying up some platanos in the front seat. We don't know. But he's not paying attention to the road, what's going on around him, okay.

5. The next day, March 9, 2017, before the jury was charged, respondent conducted an off-the-record conference in chambers with both Mr. Tawil and his client's insurance adjuster for the purpose of settling the case and addressing Mr. Tawil's summation remark.

6. During the off-the-record conference, respondent said that Mr. Tawil's statement during summation about platanos was "racist" and that she and her court staff were offended by his remark. Respondent then told Mr. Tawil, "What's going to happen now is your client is going to pay $25,000 to settle this case right now or I am going to report you to the Appellate Division Second Department. That's your license counselor."

7. The insurance adjuster called his supervisor and then advised respondent that his client refused to settle the case for $25,000.

8. Respondent thereafter charged the jury, and while the jury was deliberating, respondent placed on the record the substance of the conference with Mr. Tawil and the insurance adjuster, stating as follows:

> I'd like to indicate that I had a[n] off the record conversation with defendant Bahiro's counsel as well as the adjustor for defendant

> Bahiro regarding statements made by counsel during his summations which I was offended by and I thought they were totally culturally insensitive statements. And during that conversation I indicated to counsel and the adjustor that they should, to resolve this matter for $25,000. A call was made, fifteen was offered, plaintiff declined it. But, and so we went forward. And I indicated to counsel that if we couldn't resolve the matter, that I would be taking the entire transcript and making a complaint as it is my duty as not only a[n] officer of the court, but also as a duly elected Supreme Court justice, and I'm complaining to the Appellate Division regarding this statement.

9. The jury returned a verdict finding that defendants Bahiro and Batista were negligent and equally responsible for the accident. The verdict sheet from the damages portion of the trial shows that the jury awarded the plaintiff $200,000 for past pain and suffering. Before the jury finished deliberating, the plaintiff settled her claim against defendant Bahiro for $65,000.

10. Respondent did not report Mr. Tawil's conduct to disciplinary authorities.

Additional Factors

11. Respondent has been cooperative, candid and contrite throughout the Commission's inquiry.

12. Respondent acknowledges that it was improper to state that she would file a professional grievance against Mr. Tawil unless his client settled the case for a specific sum, even if she believed that Mr. Tawil committed an ethical violation. She recognizes that her words may have created the appearance that she was attempting to use Mr. Tawil's alleged misconduct as leverage to induce his client to settle the case.

13. Respondent recognizes that if she believed that Mr. Tawil had committed a "substantial violation" of ethical rules, she was obliged to report his conduct to the

attorney grievance committee regardless of whether a settlement was reached.

14. Respondent appreciates that she is obliged to discharge her judicial duties in a fair and judicious manner, and that her threat to report Mr. Tawil if his client did not settle the case undermined public confidence in the courts.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), and 100.3(B)(1) 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 1 of the Formal Written Complaint is sustained and respondent's misconduct is established.

Each judge is obligated to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." (Rules, §100.2(A)) By threatening to use the attorney disciplinary process in an attempt to coerce a settlement in a matter pending before her, respondent did not meet this high standard. Respondent's explicit threat to complain to disciplinary authorities regarding Tawil's summation comment in an effort to induce Tawil's client to settle the matter pending before her for a specific amount was coercive and improper.

The undisputed facts show that respondent threatened to report Tawil to disciplinary authorities unless his client settled the matter. Respondent admitted that during an off-the-record conference in her chambers, she told Tawil, "What's going to happen now is your client is going to pay $25,000 to settle this case right now or I am going to report you to the Appellate Division Second Department. That's your license

counselor."[1] Later the same day, respondent stated on the record, "And I indicated to counsel that if we couldn't resolve the matter, that I would be taking the entire transcript and making a complaint as it is my duty as not only a[n] officer of the court, but also as a duly elected Supreme Court justice, and I'm complaining to the Appellate Division regarding this statement."[2]

Public confidence in the integrity and impartiality of the judiciary is essential to the administration of justice. By specifically linking her threat to file a professional grievance against the lawyer to whether his client agreed to settle the matter, respondent violated her obligation to discharge her judicial duties in a fair manner and undermined public confidence in the judiciary.

Using such a threat as leverage in an apparent effort to coerce a settlement violated the high standards of conduct required of a judge. *Matter of Taylor*, 1983 NYSCJC Ann. Report 197 (judge admonished for, among other things, punishing a lawyer whose client did not wish to waive a jury trial by refusing to call her case and forcing the attorney to sit in court in an effort "to coerce the lawyer to waive a right she had repeatedly asserted.") As the Commission stated in *Taylor*, "The administrative

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1 It was stipulated that Tawil's client eventually paid more to settle the case than the $25,000 amount respondent mentioned in her threat.

2 Rules §§100.3(D)(2) and (3) provide that, "[a] judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct (22 NYCRR Part 1200) shall take appropriate action" and "[a]cts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties."

directives and pressures on a judge to try to settle cases in busy courts such as respondent's do not excuse the abuses of discretion and decorum exhibited by respondent in the matters herein." *See also*, *Matter of Recant*, 2002 NYSCJC Ann. Report 139 (judge censured because she, among other things, "misused bail in an attempt to coerce guilty pleas").

Moreover, by weaponizing her obligation to take appropriate action regarding substantial attorney misconduct, respondent demonstrated an insensitivity to her special ethical obligations as a judge. A judge's obligation to take appropriate action regarding substantial attorney misconduct is part of a judge's judicial duties. (Rules §§100.3(D)(2) and (3)) It is a serious responsibility designed to protect the integrity of the legal system. It is improper to threaten to make a report pursuant to that obligation in an attempt to force a settlement of a matter. *Matter of D'Apice*, 1980 NYSCJC Ann. Report 175 ("Grievance proceedings are to determine matters of alleged professional misconduct and are not meant to be used as leverage by one party over another in a private dispute."); *In re Mertens*, 392 N.Y.S.2d 860, 867-868 (1st Dept. 1977) (in censuring a judge for improper conduct which included threatening attorneys with filing complaints with disciplinary authorities, the Court stated, "Parties must feel that if they have a claim, the Judge will listen to it impartially. . .. And they must be able to do so without fear that the Judge . . . will probably cause them to suffer severe consequences beyond the loss of the particular case if they persist – e.g., prosecution, disciplinary proceedings. . .. This is not to say that a Judge should not refer cases of improper conduct to the appropriate authorities; . . . But he must lean over backward and err on the side of making sure that he

does not intimidate the parties from pursuing legitimate claims . . ..")

In accepting the jointly recommended sanction of admonition, we have taken into consideration that respondent's misconduct involved one case and that respondent has acknowledged that her conduct was improper. We also note that respondent has expressed remorse for her conduct. We trust that respondent has learned from this experience and in the future will act in accordance with her obligation to abide by the Rules Governing Judicial Conduct.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Mazzarelli, Judge Miller and Mr. Raskin concur.

Mr. Belluck files a concurring opinion which Mr. Raskin joins.

Judge Leach and Ms. Yeboah were not present.

CERTIFICATION

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

Dated: October 23, 2019

Celia A. Zahner, 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

GENINE D. EDWARDS,

a Justice of the Supreme Court,
Kings County.

CONCURRING OPINION BY MR. BELLUCK, WHICH MR. RASKIN JOINS

I concur in the findings of the majority and the sanction of admonition. I write separately to underscore that notwithstanding the finding of misconduct here, judges have extremely wide latitude to encourage parties to settle cases. In most cases I would not support a finding of misconduct related to a judge's efforts to settle cases. This case involves a threat to report a lawyer to the Appellate Division if the case was not settled.

While judges have broad discretion in their efforts to assist in the settlement of a lawsuit, the facts and circumstances of this case clearly demonstrate an abuse of that discretion.

Dated: October 23, 2019

Joseph W. Belluck, Esq., Chair
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

WILLIAM EDWARDS,

a Judge of the Mount Vernon City Court,
Westchester County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Brenda Correa, Of Counsel), for the Commission

The Bellantoni Law Firm, PLLC (by Amy L. Bellantoni) for respondent

Respondent, William Edwards, a Judge of the Mount Vernon City Court, Westchester County, was served with a Formal Written Complaint dated June 15, 2018, containing one charge. Respondent filed an Answer dated August 3, 2018. The Formal

Written Complaint alleged that from November 5, 2015 to April 7, 2016, notwithstanding that, as a full-time City Court judge, he was prohibited from practicing law, respondent appeared and acted as his daughter's attorney in a Family Court matter on three occasions and lent the prestige of his judicial office to advance the private interests of another by invoking his judicial title in several instances during his court appearances on November 5, 2015 and March 2, 2016.

On September 4, 2019, 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 5, 2019, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent was admitted to the practice of law in New York in 1984. He has been a Judge of the Mount Vernon City Court, Westchester County, since January 2003. Respondent's current term expires December 31, 2023.

2. At all times relevant to this proceeding, respondent was a full-time judge of the Mount Vernon City Court.

Family Court Proceeding on November 5, 2015

3. On November 5, 2015, respondent appeared in Family Court, Albany County, and acted as the attorney for his daughter, Ms. H[redacted]. E[redacted], who was the respondent in a matter before the court.

4. The petitioner, Mr. H[redacted] C[redacted], did not appear for the proceeding on November 5, 2015.

5. During his appearance in court on November 5, 2015, respondent invoked his judicial office in four instances, stating:

A. "Now I have to state that I happen to be a sitting – I'm not looking for any favoritism – I'm a [s]tate court judge. I sat in Family Court for five years, I'm thirteen years on the bench, sitting in Mount Vernon, New York."

B. "I'm very active, the City Court judge in Mount Vernon, we have a large number of cases, murders, everything else. I've been in Family Court for five years. I appreciate the experience that you go through as a Family Court judge but this is nonsensical."

C. "If not, I would suggest, and I'm imploring the Court that they dismiss these allegations and dismiss the charges, these specific charges on those dates, with prejudice so she doesn't have to come back here again and have me come back here because I'm gonna defend my kid – I can't represent people as you know as a judge, but I can represent family members. So I'll come here and defend this zealously if I have to."

D. "But again, sometimes, as you know, I've sat in Family Court for five years. I think I have a long experience in dealing with these cases, that sometimes somebody who's bringing you to court because they want to see your face or put you through whatever trauma."

6. Respondent made an oral application for dismissal and the court dismissed the petition against respondent's daughter, with prejudice.

Family Court Proceeding on March 2, 2016

7. On March 2, 2016, respondent appeared in Family Court, Albany County, and acted as the attorney for his daughter, Ms. H[redacted]. E[redacted], who was petitioning

for an Order of Protection against Mr. H[redacted]. C[redacted]. Mr. C[redacted] was not present in court.

8. During his appearance in court on March 2, 2016, respondent invoked his judicial office in two instances, stating:

A. "Now I'm her father as well as an attorney but I'm actually a judge. I can't practice law except in my own family cases."

B. "Now as a parent I learned one thing, and as a judge, when you say stay away to a young person, they often don't stay away."

9. Respondent's daughter was granted an order of protection and the matter was adjourned to April 7, 2016.

Family Court Proceeding on April 7, 2016

10. On April 7, 2016, respondent appeared in Family Court, Albany County, and acted as the attorney for his daughter, Ms. H[redacted]. E[redacted], with respect to cross-petitions seeking orders of protection which were then pending before the court.

11. After putting his appearance as attorney for Ms. E[redacted] on the record, respondent suggested that the matter might be resolved if counsel for both sides were permitted a brief recess to discuss the matter. The court granted a recess and respondent met with opposing counsel to discuss a resolution of the matter. When the case was recalled, counsel reported that they needed more time to reach an agreement, and the matter was adjourned to June 29, 2016.

12. In May 2016, Judge Sam D. Walker, Supervising Judge for the City Courts of the Ninth Judicial District, informed respondent that as a full-time judge he could not

practice law pursuant to Section 100.4(G) of the Rules. Thereafter, respondent took immediate action to retain an attorney to represent his daughter.

13. On June 29, 2016, respondent's daughter appeared in Family Court, Albany County, represented by other counsel. The matter was resolved on that court date.

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)(1) and 100.4(G) 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 and respondent's misconduct is established.

Each judge is obligated to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and must "avoid impropriety and the appearance of impropriety." (Rules, §100.2(A)) Pursuant to Section 100.4(G) of the Rules, full-time judges are prohibited from practicing law. On three separate occasions, respondent, an experienced full-time judge, ignored this specific prohibition and appeared in Family Court as the attorney for his daughter. "Such conduct is strictly prohibited . . . even if the judge accepts no fee for the legal services . . . or performs legal services for a relative." *Matter of Ramich,* 2003 NYSCJC Annual Report 154, 158 (citations omitted). In *Matter of Ramich*, a full-time judge was censured for, *inter alia*, representing two relatives and a friend in real estate transactions. In that matter, the Commission held, "Although he received no fee in these cases, respondent's activities, including reviewing legal documents, corresponding with the opposing attorneys and

appearing with his clients at the closings, flouted the prohibition against the practice of law." *Id.* at 159. Here, over the course of five months, respondent engaged in the practice of law when he represented his daughter during three appearances in Family Court. Respondent only stopped his improper practice of law when a supervising judge counseled him after respondent's third court appearance. Respondent's conduct clearly violated the Rules.

Moreover, respondent's misconduct was exacerbated when he repeatedly referenced his judicial office during two of the court appearances in an effort to further his daughter's interests. The Rules explicitly provide that "[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . .." (Rules, §100.2(C)) In *Matter of Lonschein*, 50 N.Y.2d 569 (1980), without specifically asserting his judicial office, a judge requested that an agency expedite a friend's license application knowing that his request to the agency's deputy counsel, who was aware of the judge's position, "would be accorded greater weight" than a request by a non-judge. *Id.* at 573. The Court of Appeals stated,

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

Id. at 571-572 (citations omitted).

Respondent disregarded his special ethical obligations as a judge. During his Family Court appearances in which he improperly acted as his daughter's attorney in violation of

the Rules, respondent also repeatedly improperly referenced his judicial office which violated a separate provision of the Rules. It is undisputed that during one court appearance respondent stated he had been a judge for thirteen years and further stated, "I think I have a long experience in dealing with these cases. . .." In addition, while representing his daughter in court in violation of the Rules, respondent improperly gave his judicial opinion when he stated, "I've been in Family Court for five years. I appreciate the experience that you go through as a Family Court judge but this is nonsensical." In *Matter of Ayres,* 30 N.Y.3d 59 (2017), a town justice, who was not an attorney, was removed for, *inter alia*, attending his daughter's pretrial conference with a prosecutor in connection with a traffic ticket and invoking his judicial office. With respect to one of the charges against Ayres, the Court of Appeals held,

> . . . 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.

Id. at 64-65.[1]

[1] In *Ayres*, there was an additional charge and aggravating factors that are not present in the instant matter. For example, in addition to the charge related to invoking his judicial office, Ayres was also charged with sending letters, including five *ex parte* letters, to the County Court in connection with appeals from Ayres' restitution orders. *Id.* at 62. The Court of Appeals found that in these letters, Ayres "made biased, discourteous, and undignified statements about the defendant and defense counsel." *Id.* Even after being advised in writing that his letters were inappropriate, Ayres continued to send letters "opining on the merits of the case." *Id.* As an additional aggravating factor, the Court of Appeals found that Ayres failed to recognize that he had violated his ethical obligations which suggested that his

While we believe that respondent's misconduct comes close to warranting removal, in accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has admitted that his conduct warrants public discipline. We trust that respondent has learned from this experience and in the future will act in strict accordance with his obligation to abide by all the Rules Governing Judicial Conduct.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Judge Miller, and Ms. Yeboah concur.

Mr. Raskin files an opinion concurring in part and dissenting in part.

CERTIFICATION

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

Dated: December 20, 2019

Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

misconduct would continue if he were permitted to remain on the bench. *Id.* at 66. In contrast, in the instant matter, respondent ended his improper representation of his daughter after being counseled and has acknowledged that he violated the Rules.

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- -

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

WILLIAM EDWARDS,

a Judge of the Mount Vernon City Court,
Westchester County.

- -

OPINION BY MR. RASKIN CONCURRING IN PART AND DISSENTING IN PART

I concur with the majority determination and respectfully dissent as to the sanction. The facts in this case are akin to the knowing and tactical misconduct in *Matter of Ayres*, 30 N.Y.3d 59 (2017). I find unavailing respondent's assertion that he was unaware his representation contravened established prohibitions. Respondent's conduct was neither inadvertent nor miscalculated. Rather, it was purposeful and strategic. I would recommend removal based upon the principles established in *Ayres*.

Dated: December 20, 2019

Marvin Ray Raskin, 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

ROGER L. FORANDO,

a Justice of the Granville Town Court
and the Granville Village Court,
Washington County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Robert M. Winn for respondent

Respondent, Roger L. Forando, a Justice of the Granville Town Court and the Granville Village Court, Washington County, was served with a Formal Written

Complaint dated August 21, 2017, containing one charge. The Formal Written Complaint alleged that respondent attempted to influence and/or created an appearance that he was attempting to influence the outcome of a pending case by communicating his personal interest in the case to the presiding judge, the defendant's attorney and the District Attorney's office. Respondent filed a verified Answer dated August 31, 2017.

By Order dated November 6, 2017, the Commission designated Jay C. Carlisle, II, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 23, 2018, in Albany, New York. The referee filed a report dated November 1, 2018.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Commission counsel recommended confirmation of the referee's findings and conclusions and the sanction of removal. Respondent's brief recommended disaffirming the referee's findings and conclusions and a confidential disposition. On January 31, 2019, 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 Granville Town Court, Washington County, since 1979 and a Justice of the Granville Village Court, Washington County, since 1990; his current terms expire, respectively, on December 31, 2019, and March 31, 2019. Respondent is not an attorney.

2. Respondent has been a member of the Capital District Board of Women's Basketball Officials ("referees' association") since 1972 and, in connection

with that organization, assigns referees to officiate over high school girls' basketball games; he has also been a referee himself. He assigned two referees, Dan Dineen and John Kelleher, to officiate over a junior varsity girls' basketball game at the Argyle Central School on January 29, 2016.

3. At the conclusion of that game, a spectator, D. F., was allegedly involved in an altercation with Mr. Dineen and Mr. Kelleher. Later that evening, Mr. Dineen reported the incident to respondent by email, including that police had been called to the scene. As a result of the incident, Mr. F. was charged with Unlawful Imprisonment in the Second Degree, a class A misdemeanor, and Harassment in the Second Degree, a violation, and was issued an appearance ticket directing him to appear in the Argyle Town Court on February 9, 2016.

4. Within a few days of the incident, respondent was interviewed by a newspaper reporter from *The Post Star*, and an article titled "Police: Fan attacked referee at girls basketball game" was published on February 4, 2016. The article reported that Mr. F. had been charged with two offenses and had been released pending prosecution in the Argyle Town Court, and quoted respondent, who was identified as "the region's referee assigner for girls high school basketball," as stating, "We are quite concerned with the escalation of poor sportsmanship at basketball games." It was also reported that respondent said that he "plans to check to see if the spectator who was involved will be banned from future games." The article made no reference to respondent's judicial status.

5. In the afternoon of February 9, 2016, the date of Mr. F.'s scheduled

arraignment in the Argyle Town Court, respondent telephoned the court and left two voicemail messages identifying himself, requesting a return call and leaving the phone number of the Granville Village Court.

6. Respondent has acknowledged that he called the Argyle Town Court on that date to inquire about the *D. F.* case. He testified that he had intended to speak with the court clerk in order to ascertain whether charges had been filed and, if so, the appearance date so he could relay that information to the referees' association.

7. Judge Robert Buck is the sole justice of the Argyle Town Court. At the time of these events, he had no court clerk. Respondent and Judge Buck knew one another as members of the Washington County magistrates' association; Judge Buck also knew respondent as a referee of basketball games in which Judge Buck's daughters had participated. The two judges had a cordial relationship.

8. Judge Buck arraigned Mr. F. at about 5:45 PM on February 9, 2016, entered a not guilty plea on his behalf and adjourned the matter to March 8, 2016. Judge Buck did not listen to the voicemail messages left by respondent until after the arraignment in the *D. F.* case.

9. On or about February 12, 2016, Judge Buck returned respondent's calls and spoke with respondent. Although there was conflicting testimony at the Commission hearing as to the date of their conversation, telephone company records indicate that a call lasting nearly 15 minutes was placed from the Argyle Town Court phone number to the Granville Village Court phone number on February 12, 2016. At the hearing, both respondent and Judge Buck testified that their telephone conversation

lasted about two minutes.

10. At the hearing, respondent testified that during the call he told Judge Buck that the referees' association might send someone, possibly respondent himself, to observe the proceedings in the *D. F.* case, and Judge Buck told him that Mr. F. had been arraigned on February 9th. Judge Buck's hearing testimony describing the conversation differed from respondent's in several respects.[1] While it cannot be determined precisely what was said during the call, based on the record before us, it is unnecessary to do so since respondent's admitted statements to Judge Buck conveyed the appearance that he and/or the referees' association was interested in the *D. F.* case.

11. Both Judge Buck and respondent testified that they did not discuss the *D. F.* case with each other on any other occasion.

12. Sometime in February 2016, Judge Buck advised assistant district attorney ("ADA") Sara Fischer, who was assigned to the *D. F.* case, that respondent had contacted him about the case and "would be watching what happened with the case." After reporting this information to her supervisor, Ms. Fischer disclosed it to attorney Thomas Cioffi, whom the defendant had retained to represent him. Mr. Cioffi, who regularly appeared before respondent, was aware of respondent's role as a referee and

[1] Judge Buck testified that respondent (i) stated that what had happened at the basketball game was "of great concern" to the referees' association, which "didn't want this condoned or tolerated," and (ii) asked to be informed of the outcome of the case. He acknowledged that he did not recall "the exact wording" of what was said, that he told the Commission earlier that the conversation had "nothing of real import to imprint" it in his memory, and that his initial description of the conversation did not include the "condoned or tolerated" language. In these circumstances, we cannot come to a firm conclusion as to what was said and, accordingly, our finding is based on respondent's admitted statements.

referee assigner in the referees' association.

13. On March 1, 2016, Mr. Cioffi and ADA Devin Anderson appeared before respondent in the Granville Village Court on a matter unrelated to the *D. F.* case. During breaks in court proceedings, after Mr. Cioffi mentioned that he was appearing in the Argyle Town Court the following week, respondent and the attorneys discussed the *D. F.* case. The tone of the conversations, which were recorded, was light and somewhat jocular. Among other comments, respondent asked Mr. Cioffi, "Are you representing the guy that got involved in that basketball thing?" and Mr. Cioffi answered, "The guy that's falsely accused, yes, I am"; respondent echoed, "Falsely accused." Mr. Anderson pointed out that respondent "was the guy that supervises the refs," and respondent said, "You may see me sitting in the gallery … I can't say anything but I can just observe." Respondent told the two attorneys, "Two weeks ago, referees had to throw three grandfathers out of an eighth grade basketball game." Mr. Cioffi said that he understood from his client that some players in the game had been injured; respondent said he was unaware of that, and Mr. Anderson said that a referee had a sprained finger. Near the end of the proceedings, Mr. Cioffi asked respondent if he would see him "[d]own in Argyle," referring to the next court date in the *D. F.* case, and respondent replied, "If I'm not too tired. I told Judge Buck I may show up, I may not, but the longer it goes, like everything else, who cares, but it is a problem around every place." (Respondent testified at the hearing that the "problem" he was referring to was poor sportsmanship by spectators.) Respondent asked which ADA was handling the *D. F.* case, and Mr. Anderson told him it was Sara Fischer.

14. On March 8, 2016, at approximately 4:45 PM, Judge Buck adjourned the *D. F.* case to April 12, 2016.

15. The evidence presented at the hearing, including telephone company records and Judge Buck's log of the court's telephone messages, establishes that respondent called the Argyle Town Court and left a voicemail message on March 8, 2016, and that Judge Buck returned the call to respondent and left a message three days later.[2] At the hearing before the referee, respondent testified that he has "no recollection" of calling the Argyle court on that date and denied that he did so; Judge Buck had no recollection of respondent's voicemail message or of returning respondent's call.

16. The evidence presented at the hearing, including the emails of two assistant district attorneys on March 9, 2016, establishes that respondent called the District Attorney's office on that date about the status of the *D. F.* case. ADA Anderson sent ADA Fischer an email on that date with the subject heading "Basketball Ref case in Argyle," which stated: "Can you shoot Judge Forando an emailing [*sic*] updating him on this case when you get a chance. He called today wondering the status." Later that day, Ms. Fischer sent respondent an email with the subject heading "RE: D. F. case," which stated: "Hi Judge: Devin said you wanted an update. I do not have one at this time, his

[2] Telephone records show a 77-second call from the Granville Village Court to the Argyle Town Court at 4:42 PM on March 8, 2016, and a 30-second call from the Argyle Town Court to respondent's cell phone number at 11:19 AM on March 11, 2016. Judge Buck's log indicates a voicemail message from respondent at 4:50 PM on March 8th and respondent's cell phone number, and has a check mark indicating that Judge Buck returned the call. Respondent testified that calls from any of multiple telephones at the Granville village hall and the Argyle town hall would appear to be coming from the court telephone number.

attorney adjourned the case last night. He comes back in April." A few minutes later respondent replied "Thanks" to Fischer's email and forwarded it to referee Dineen, asking, "Do you care what happens to him in the court case?" Mr. Dineen told respondent at some point that all he wanted was an apology from the defendant.

17. Mr. Anderson testified that he had no recollection of respondent's March 9th telephone call. Respondent denied calling the District Attorney's office about the *D. F.* case, although he acknowledged asking ADAs Anderson and Fischer, when they appeared in his court, if the case had been disposed of.

18. On April 12, 2016, Mr. Cioffi informed Judge Buck that he and Ms. Fischer had reached an agreement to resolve the *D. F.* case by a six-month adjournment in contemplation of dismissal with 15 hours of community service, completion of a values improvement program and a six-month non-violent order of protection. On his own initiative, Judge Buck told the attorneys that he wanted the defendant to write a letter of apology to the referees' association and to the two schools involved, and it was agreed that that condition would be included in the plea agreement. Judge Buck testified at the hearing that the condition of letters of apology was entirely his own idea, and both he and respondent testified that respondent never said anything to Judge Buck about a letter of apology.

19. Respondent did not attend any court proceedings in the *D. F.* case.

20. The charges against D. F. were ultimately dismissed.

21. Respondent is contrite and has acknowledged that his conduct was improper. He testified at the hearing that when he communicated with Judge Buck and

the attorneys about the *D. F.* case, he "let the referee hat probably supersede the judge hat," and stated that he had "no ulterior motive" in contacting Judge Buck to inquire about the case, but now recognizes that such communications by a judge concerning a pending matter may create an appearance of using the prestige of judicial office to influence the outcome of the case. He testified that he will refrain from engaging in any such communications and discussions 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(C), 100.3(B)(6) and 100.4(A)(2) 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.

By contacting the judge who was handling a case involving two referees who were allegedly accosted after a high school basketball game, respondent, a long-time member of the referees' association who had assigned the referees to the game, lent the prestige of judicial office to advance private interests in violation of established ethical standards (Rules, §100.2[C]). As the Court of Appeals has stated:

> "[N]o judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that

> public perception of the integrity of the judiciary will be preserved. There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary. Thus, any communication from a judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office." [Internal citations omitted.]

Matter of Lonschein, 50 NY2d 569, 571-72 (1980). Regardless of a judge's intent, such communications may convey an appearance of misusing the prestige of judicial office for personal advantage, and judges "must assiduously avoid those contacts which might create even the appearance of impropriety" (*Id* at 572; Rules, §100.2).

The moment that respondent learned, on the day of the incident, about the altercation involving the referees in which police had been called to the scene, he should have realized that as a judge, especially in the same county, he should refrain from any involvement in the matter that, intentionally or not, would telegraph that a judge was interested in the case. Instead, throughout the pendency of the criminal matter, he repeatedly interjected himself into the case in an apparent attempt to monitor its progress and, in doing so, repeatedly signaled his interest in the matter to those who were directly involved in it, including the presiding judge. Whether he was acting on behalf of the referees' association or on his own, his conduct was inconsistent with the high ethical standards required of him as a judge.

Respondent has acknowledged that in February 2016, on the date the defendant was scheduled to be arraigned on charges arising out of the post-game incident, respondent called the Argyle Town Court, where the case was pending, left at least one voicemail message asking for his call to be returned and subsequently discussed the case

with Judge Buck, the sole judge of the court. Although respondent insists that the purpose of his call was merely to ask about scheduling so that he could relay that information to the referees' association, any communication by a judge about a pending matter, even to ask about scheduling or procedures, is improper since it conveys the judge's interest in the case and can be interpreted as an implicit request for special treatment, in violation of Rule 100.2(C). *See, e.g., Matter of Edwards*, 67 NY2d 153, 155 (1986) (where a judge contacted the court handling his son's traffic case and inquired about the procedures to be followed in resolving the case, "[t]he absence of a specific request for favorable treatment or special consideration is irrelevant"); *Matter of Sharlow*, 2006 NYSCJC Annual Report 232 (judge's letter on court stationery to the judge handling his son's Trespass case, which entered a plea of not guilty and asked whether the son was required to appear on the scheduled date, was "an implicit request for special consideration"). Particularly in the circumstances here, where respondent and Judge Buck knew each other as fellow judges and Judge Buck was familiar with respondent's activities as a referee, respondent should have "assiduously avoid[ed]" any communication with him about the case in order to avoid even the appearance of seeking to influence his handling of the matter (*Matter of Lonschein, supra*, 50 NY2d at 572).

While there is some dispute as to the substance of their conversation, respondent has admitted that he asked about the *D. F.* case and told Judge Buck that he or someone else from the referees' association might be sent to attend the court proceedings. Those words, standing alone, conveyed unambiguously that the referees' association had an interest in the pending case and would be watching it closely and, as such, could be

perceived as an assertion of special influence, which was inconsistent with the above-cited ethical prohibitions. Although Judge Buck testified that he did not view respondent's comments as an ex parte attempt to influence the case, Judge Buck's perception of respondent's intent is irrelevant; respondent's admitted conduct, on its face, demonstrated an interest in the pending matter and therefore was improper. Certainly the attorneys involved in the matter would want to know about such a communication, and, significantly, the record reveals that Judge Buck properly informed the prosecutor that respondent had contacted him about the case and "would be watching what happened" with it; the prosecutor notified the defendant's attorney; and respondent also told the defendant's attorney of the conversation when the attorney appeared in his court. Thus, as a direct result of respondent's improper call, not only the presiding judge but all the attorneys involved in the pending case were aware of a local judge's interest in it, a fact that could taint the public's perception of the fairness of the eventual outcome.

The evidence establishes that respondent also contacted the Argyle Town Court on the next scheduled appearance date in the *D. F.* case a month later, left a message and received a return call from Judge Buck, who apparently left a brief message. Although respondent denied contacting Judge Buck after their initial conversation and Judge Buck has no recollection of getting or returning a subsequent call, telephone company records and Judge Buck's message logs indicate that the call was made, and the timing of the call suggests that respondent was likely seeking another update on the *D. F.* case.

Throughout the pendency of the case, respondent also showed poor

judgment by communicating his interest in the case to attorneys involved in the matter. The circumstantial evidence establishes that the day after the second appearance date in the *D. F.* case, before Judge Buck had returned his telephone call, respondent called the District Attorney's office seeking a status update and was informed that the case had been adjourned. Although respondent has denied making that call, he admitted asking two assistant district attorneys about the case when they appeared in his court. Regardless of whether the inquiries were made in or out of court, they were inconsistent with Rule 100.2(C) since they reminded the prosecutors of respondent's continuing interest in the pending case and could be perceived as an attempt to influence them. Respondent also discussed the *D. F.* case with the defendant's attorney and a prosecutor in his courtroom, raising the subject during a break in the proceedings. Significantly, respondent again stated that he might attend the *D. F.* proceedings and commented philosophically, "[T]he longer it goes, like everything else, who cares…." While the tone of these comments was light and somewhat jocular, they again conveyed his ongoing interest in the case and reveal his openness to discussing it, even in open court with an attorney involved in the case.

Any judge, and certainly one with four decades of judicial experience, should know that such communications should be avoided, even in the absence of any advocacy for a particular outcome, since they "reflect, whether designedly or not, upon the prestige of the judiciary" (*Matter of Lonschein*, *supra*, 50 NY2d at 572). Strict adherence to this important principle is essential to ensure public confidence in our system of justice and in decisions that not only are, but appear to be, based entirely on the

merits and not the result of special influence and ex parte, out-of-court communications. With the benefit of a significant body of case law in which the Court of Appeals and the Commission have disciplined judges for lending the prestige of judicial office to advance private interests (their own, or the interests of friends or relatives),[3] every judge in the state should be aware that such behavior is prohibited. Regrettably, respondent's years of experience and ethics training as a judge failed to alert him to the impropriety of his behavior.

We thus conclude that respondent's conduct constitutes a significant breach

[3] *See, e.g.*, *Matter of LaBombard*, 11 NY3d 294 (2008) (judge contacted the judge handling his relative's case and asked about the date of the next court appearance, told the judge that his relative was a "good kid," and made remarks that gave the impression that others were more culpable); *Matter of Dixon*, 2017 NYSCJC Annual Report 100 (judge called the chambers of the judge handling her lawsuit against an insurance company and spoke to him about her concerns regarding her case, then faxed and mailed him a letter that included details about her alleged injuries); *Matter of Horowitz*, 2006 NYSCJC Annual Report 183 (judge interceded on behalf of friends in two pending cases, including advising a judge, a court attorney and a court clerk that the litigants were her friends and were "nice people"); *Matter of DeJoseph*, 2006 NYSCJC Annual Report 127 (on behalf of a friend whose son had been arrested, judge called a judge who was on call for after-hours arraignments and applications, introduced the defendant's father and handed the phone to the father, who asked for the defendant's release); *Matter of LaClair*, 2006 NYSCJC Annual Report 199 (judge contacted the judge handling his wife's traffic case and identified himself as a judge and the defendant as his spouse, which prompted the other judge to say he would "see what he could do"; in a second case, he telephoned the judge handling the traffic case of an acquaintance and said he would appreciate anything that could be done for the defendant, who was "a nice, elderly gentleman"); *Matter of Bowers*, 2005 NYSCJC Annual Report 125 (judge wrote a letter on judicial stationery to another judge on behalf of a defendant charged with Speeding, asking for "help" in connection with the ticket, stating that the defendant "needs to avoid any points," and falsely identifying the defendant as "my relative"); *Matter of Williams*, 2003 NYSCJC Annual Report 200 (judge called a judge who had issued an order of protection against an individual charged with assaulting his wife, told the judge that the couple were his friends and asked the judge to vacate the order; when the judge replied that he could not do so without hearing from the prosecution, Williams said that he himself had vacated orders of protection without notice to the district attorney).

of judicial ethics that requires public discipline.[4] In determining the appropriate sanction, we have considered that respondent has acknowledged that his conduct was improper and has pledged that it will not be repeated, and we trust that he recognizes the valuable lessons to be learned from this episode. We are also mindful of respondent's lengthy record of public service, including 40 years as a jurist, and that he appears to be a capable, dedicated judge. (We note that the referee, at the conclusion of the hearing, told respondent, "If I had a problem, I wouldn't hesitate to let you decide it for me.") Weighing these factors, after carefully reviewing the entire record, we have determined that respondent should be admonished.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Judge Miller, Mr. Raskin and Mr. Stoloff concur.

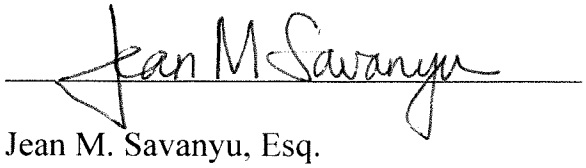
Ms. Yeboah was not present.

[4] We reject the staff's argument, based on the referee's findings, that respondent's hearing testimony reflects a lack of candor. While respondent's testimony at times was inconsistent and appeared to be at variance with other evidence, he admitted the thrust of the misconduct alleged but testified that he had no recollection of certain events (he told the Commission that it "would be against my principles to admit to things that I have no recollection of"). In that regard, it is noteworthy that other witnesses also changed their testimony at various stages and had little or no recollection of the events at issue. While we generally give deference to a referee's findings, the referee's report does not set forth any reasoning to support his lack of candor findings, and absent any understanding of the basis for that conclusion, we decline to accept it.

CERTIFICATION

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

Dated: March 25, 2019



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

JONATHAN D. KATZ,

DECISION
AND
ORDER

a Justice of the New Paltz Town Court,
Ulster County.

- -

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Timothy Murphy for respondent

The matter having come before the Commission on August 8, 2019; and the Commission having before it the Stipulation dated July 30, 2019; and respondent having been served with a Formal Written Complaint dated February 21, 2019; having filed an

Answer on March 11, 2019; having tendered his resignation from the New Paltz Town Court by letter dated July 16, 2019, effective August 8, 2019; and having affirmed that he will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law 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 regarding the Stipulation 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: August 9, 2019

Celia A. Zahner, 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

JONATHAN D. KATZ, **STIPULATION**

a Justice of the New Paltz Town Court,
Ulster County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable Jonathan D. Katz ("Respondent"), who is represented in these proceedings by Timothy Murphy, Esq., as follows:

1. Respondent has been a Justice of the New Paltz Town Court, Ulster County, since 1995. His current term expires December 31, 2021.

2. Respondent was served with a Formal Written Complaint dated February 21, 2019, containing two charges. Charge I alleged that Respondent took judicial action in a criminal case by signing an arrest warrant for the defendant ("husband") and an order of protection on behalf of the complaining witness ("wife"), notwithstanding that Respondent was representing the wife in a related divorce action against the husband. Charge II alleged that Respondent continued to represent the wife in the divorce action after he took judicial action in the related criminal case.

3. The Formal Written Complaint is appended as Exhibit 1.

4. Respondent filed an Answer dated March 11, 2019, which is appended as

Exhibit 2.

5. Respondent tendered his resignation, dated July 16, 2019, a copy of which is annexed as Exhibit 3. Respondent affirms that he will vacate judicial office as of August 8, 2019.

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

7. Respondent affirms that, having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

8. 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.

9. 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.

10. 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: 7/17/2019

Honorable Jonathan D. Katz
Respondent

Dated: 7/17/2019

Timothy Murphy, Esq.
Attorney for Respondent

Dated: 7/30/2019

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

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV:
EXHIBIT 1: FORMAL WRITTEN COMPLAINT
EXHIBIT 2: RESPONDENT'S ANSWER
EXHIBIT 3: RESPONDENT'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 R. MANN, JR.,

DECISION
AND
ORDER

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

- -

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Sessler Law PC (by Steven D. Sessler) for respondent

The matter having come before the Commission on December 5, 2019; and the Commission having before it the Stipulation dated November 25, 2019; and respondent having been served with a Formal Written Complaint dated October 10, 2019;

having filed an Answer dated November 6, 2019; having tendered his resignation from the Nunda Town Court by letter dated November 25, 2019, effective December 1, 2019; having tendered his resignation from the Nunda Village Court by letter dated November 25, 2019, effective December 1, 2019; and having affirmed that he will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law 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 regarding the Stipulation 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 5, 2019

Celia A. Zahner, 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

JAMES R. MANN, JR.

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

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable James R. Mann, Jr. ("Respondent"), who is represented in these proceedings by Steven D. Sessler, Esq. as follows:

1. Respondent has been a Justice of the Nunda Town Court and a Justice of the Nunda Village Court, Livingston County, since January 1, 2000. Respondent's current term for Justice of the Nunda Town Court expires on December 31, 2019, and his current term for Justice of the Nunda Village Court expires on March 31, 2022. Respondent is not an attorney.

2. Respondent was served with a Formal Written Complaint dated October 10, 2019, containing one charge alleging that on or about August 19, 2016, Respondent lent the prestige of his judicial office to advance the private interest of James Forrester, his former brother-in-law and a member of the Nunda Town Board, when he contacted Mt. Morris Village Police Chief Kenneth Mignemi concerning a pending traffic stop of Mr. Forrester by the police.

3. The Formal Written Complaint is appended as Exhibit A.

4. Respondent filed an Answer dated November 6, 2019, which is appended as Exhibit B.

5. Respondent tendered his resignations, dated November 25, 2019, copies of which are annexed as Exhibit C. Respondent affirms that he will vacate his judicial offices as of December 1, 2019.

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

7. Respondent affirms that, having vacated his judicial offices, he will neither seek nor accept judicial office at any time in the future.

8. 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.

9. 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.

10. 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: Nov. 25, 2019

Honorable James R. Mann, Jr.
Respondent

Dated: Nov. 25, 2019

Steven D. Sessler, Esq.
Sessler Law PC
Attorney for Respondent

Dated: November 25, 2019

Robert H. Tembeckjian
Administrator and Counsel to the Commission
(John J. Postel and M. Kathleen Martin,
Of Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV:
EXHIBIT A: FORMAL WRITTEN COMPLAINT
EXHIBIT B: RESPONDENT'S ANSWER
EXHIBIT C: RESPONDENT'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

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

DETERMINATION

- -

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Brenda Correa and Mark Levine, Of Counsel) for the Commission

Long Tuminello, LLP (by David Besso and Michelle Aulivola) for respondent

Respondent, Paul H. Senzer, a Justice of the Northport Village Court, Suffolk County, was served with a Formal Written Complaint dated October 13, 2017,

containing one charge. The Formal Written Complaint alleged that over a four-month period in 2014 and 2015 respondent used racist, sexist, profane and otherwise degrading language in communications with legal clients. Respondent filed a Verified Answer dated December 12, 2017.

On December 11, 2017, respondent's counsel filed a motion for summary determination and/or dismissal of the Formal Written Complaint. Commission counsel opposed the motion on March 1, 2018, and respondent's counsel replied on March 6, 2018. By Decision and Order dated March 16, 2018, the Commission denied respondent's motion in all respects.

By Order dated March 29, 2018, the Commission designated Honorable John P. Collins as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 6 and 7, 2018, in New York City. The referee filed a report dated January 26, 2019, in which he sustained the charge except for respondent's alleged use of a racial epithet.

The parties submitted briefs to the Commission with respect to the referee's report and the issue of sanctions. Both parties recommended that the referee's findings and conclusions be confirmed in part and disaffirmed in part. Commission counsel argued that the charge was sustained in its entirety and recommended the sanction of removal; respondent's counsel argued that respondent's language in private communications with clients did not constitute misconduct but that if misconduct is found, a confidential caution was appropriate. The Commission heard oral argument on

May 30, 2019 and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Northport Village Court, Suffolk County, since 1994. His current term expires on March 31, 2022. Since 2013 he has also served as a hearing officer for the Suffolk County Traffic and Parking Violations Agency. Respondent was admitted to the practice of law in New York in 1981.

2. As a part-time judge who is permitted to practice law, respondent has maintained a private law practice. In the course of his law practice, respondent represented Jennifer Coleman in two matters from 2013 to 2015.

3. Respondent has known Ms. Coleman for approximately 30 years. She was his house cleaner for several years and occasionally provided cat-sitting services.

4. In or about 2013, Ms. Coleman retained respondent to represent her in an employment discrimination matter based on her claim against a school district where she had been a part-time custodian. A hearing in the matter was held before an administrative law judge on November 5 and 6, 2014. Ms. Coleman's claim was dismissed.

5. Later in November 2014, Ms. Coleman and her husband Walter Coleman, a maintenance mechanic, retained respondent to represent them in a Family Court matter against their daughter in which they were seeking visitation rights to their grandchild. Prior to being retained, respondent had some discussion with the Colemans

about their problems with their daughter, with whom they had a strained relationship, though he initially declined to represent them in Family Court because he was too busy.

6. Between October 24, 2014, and February 22, 2015, respondent sent nine emails in connection with the Family Court matter to the Colemans at their shared email account in which he:

- Referred to their daughter several times as a "bitch";
- Stated that their daughter's "lawyer is a cunt on wheels (sorry for the profanity…and don't quote me), so be prepared" and, in another email, referred to the lawyer as "eyelashes";
- After cautioning the Colemans not to contact their grandchild's school, stated, "You should know by now that people who work in schools are assholes"[1];
- Stated, with respect to a scheduled court appearance, "We will appear entirely calm and reasonable…let your daughter act like the asshole she is";
- Stated in the subject line of an email, in reference to the daughter and her former husband, "THE TWO SCUMBAGS WERE SERVED"; and
- Stated in reference to the Family Court referee, around the time respondent advised the Colemans to withdraw their petition, "[Y]ou may have noticed that the 'judge' is an asshole. An 'asshole' can issue a warrant for your

[1] It seems likely this was intended as a reference to individuals involved in the events underlying Ms. Coleman's earlier lawsuit against the school district where she had been employed.

arrest."

7. In February 2015, the Colemans withdrew their petition for visitation and the matter was discontinued.

8. At the hearing before the referee, Ms. Coleman testified that after the Family Court matter ended, she contacted respondent because she thought she was owed a refund, but she did not hear from him. A few months later, after reading a news article about a lawsuit filed against respondent, she contacted the lawyer in that matter, Christopher Cassar, and gave him copies of respondent's emails. Mr. Cassar filed a complaint with the Commission. The lawsuit against respondent was dismissed.

9. The referee found that respondent showed "sincere contriteness." At the hearing, respondent testified that he has "profound and deep regret" for the words he used and that his language in the emails was "atrocious" and "reflect[s] very poorly on me as an attorney and obviously, as a judge." He stated that it did not occur to him at the time that sending the emails had any connection with his judicial role, but he has "learned the hard way that [it] certainly does." He testified that in the course of exchanging many emails with clients who were longtime acquaintances, he became "far too conversational and far too familiar" and that using such vulgar language was a "misguided" effort to "empathize with" and "be supportive of" his clients since Ms. Coleman had used similar language to describe her daughter and others. He further testified, "I suspect that what I was doing was pandering or patronizing her in trying to bring myself down to that level," although he admitted that is "not an excuse." He acknowledged that his obscene

reference to the daughter's lawyer, which he described as an attempt "to convey to the client that she was up against a very aggressive adversary who could be counted upon to be zealous," was an inexcusable sexual slur. He admitted that using the term showed insensitivity to his client particularly since in the employment matter in which he represented her, her supervisor had used the epithet towards her and other women. He stated that he recognizes that it is inappropriate for an attorney to use any language that denigrates the legal profession, and "I'm sorry to say, I fell down."

10. On February 4, 2002, respondent was previously issued a letter of dismissal and caution by the Commission for making sarcastic, disrespectful comments during a court proceeding.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.4(A)(1), 100.4(A)(2) and 100.4(A)(3) 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[2], and respondent's misconduct is established.

[2] As discussed below, paragraph 7 of the Formal Written Complaint, which alleged that respondent used a racial epithet in reference to the administrative law judge in a conversation with the Colemans during a hearing recess in the employment matter, is not sustained and therefore is dismissed.

The record establishes that in a series of emails to clients whom he was representing in a Family Court matter, respondent, a part-time judge who is permitted to practice law, repeatedly denigrated the participants in the matter – not only the clients' adversary, but officers of the court – in profane, vulgar and sexist terms. Although off the bench, respondent's statements were manifestly improper and reflect adversely on the judiciary as a whole, since judges are required "at all times" to abide by "high standards of conduct" that promote "public confidence in the integrity and impartiality of the judiciary." (Rules, §§100.1, 100.2(A)) Based on the totality of the record before us, including the nature and frequency of respondent's comments, his repeated use of such language to legal clients, and his earlier caution for making sarcastic and disrespectful comments in court, we conclude that respondent lacks fitness to serve as a judge and, accordingly, that his removal from office is warranted.

Over a period of several months, respondent's email communications with his clients, his former house cleaner and her husband whom he was representing in a grandparent visitation matter, contained crude and derogatory epithets referring to various individuals involved in their case. In the context of informing and advising them about the case, he referred to the clients' daughter and her former husband, his clients' adversaries in the matter, as "the two scumbags," and referred to the daughter as an "asshole" and a "bitch" (or "that bitch") on multiple occasions. Cautioning his clients not to contact their grandchild's school, he used the same profanity referring to the school's staff ("You should know by now that people who work in schools are assholes").

Referring to the daughter's lawyer, respondent's language was equally vulgar and sexist ("a cunt on wheels" and "eyelashes"). His profane insults extended even to the court referee ("you may have noticed that the 'judge' is an asshole. An 'asshole' can issue a warrant for your arrest").

The impropriety of such language requires little discussion. Criticism of individuals involved in his clients' case is not the issue here, nor is the use of profanity in communicating with his clients. However, as the Court of Appeals has held, using crude language that reflects bias or otherwise diminishes respect for our system of justice, even off the bench, is inconsistent with a judge's ethical obligations. In *Matter of Assini*, 94 N.Y.2d 26, 29 (1999), which involved a judge who "repeatedly disparaged his judicial colleague in vile terms" in conversations with court employees and a town board member, the Court stated that such behavior was "absolutely indefensible" and "undermined not only the dignity of a fellow Justice, but also the stature and dignity of petitioner's court and the judicial system as a whole." *See also*, *Matter of Cerbone*, 61 N.Y.2d 93, 95 (1984) (judge used "abusive and profane" language during a confrontation in a bar); Rules, §§100.1, 100.2(A), *supra*, and 100.4(A)(2) (requiring a judge to avoid extra-judicial activity that "detract[s] from the dignity of judicial office"). At a minimum, gender-based slurs, which denigrate a woman's worth and abilities and convey an appearance of gender bias, should have no place in a judge's vocabulary. Significantly, respondent's offensive words were not thoughtless slips. They were included in emails he composed to his clients, where he had an opportunity to consider

his written words before sending messages that could be preserved and shared. Nor were they isolated lapses, as the record reveals.

Like the referee, we reject respondent's argument that his language in emails with clients does not rise to the level of misconduct since the communications were private and unrelated to his role as a judge. As the Court of Appeals stated nearly 40 years ago, a judge's off-the-bench behavior must comport with high ethical standards to ensure the public's respect for the judiciary as a whole since "[w]herever he travels, a Judge carries the mantle of his esteemed office with him." *Matter of Steinberg*, 51 N.Y.2d 74, 81 (1980) Thus,

> [A] Judge may not so facilely divorce behavior off the Bench from the judicial function. Standards of conduct on a plane much higher than for those of society as a whole, must be observed by judicial officers so that the integrity and independence of the judiciary will be preserved. A Judge must conduct his everyday affairs in a manner beyond reproach. Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function. . .

Matter of Kuehnel, 49 N.Y.2d 465, 469 (1980) (internal citations omitted); *see also*, *Matter of Mazzei*, 81 N.Y.2d 568, 572 (1993) ("Judges … are held to higher standards of conduct than the public at large ... and thus what might be acceptable behavior when measured against societal norms could constitute 'truly egregious' conduct in the present context." (internal citations omitted)) Indeed, even private communications in a judge's home can constitute misconduct warranting removal. *Matter of Backal*, 87 N.Y.2d 1 (1995) In *Backal*, the Court specifically rejected the judge's argument that the

wrongfulness of her statements (advising an acquaintance about handling the proceeds from a drug transaction) was mitigated by the fact that the statements were made in her home "where she may have had an expectation of privacy." *Id.* at 13. The Court emphasized, "Judges are accountable 'at all times' for their conduct–including their conversation–both on and off the Bench . . .." *Id.* at 13 (internal citations omitted).

Moreover, in the instant matter, both the context and substance of respondent's off-the-bench statements were inextricably connected to his judicial role. As the Colemans' attorney, respondent was communicating with them as an officer of the court, providing counsel and advice while discussing their case, and as a judge himself, he personified the legal system. His crude language disparaging others involved in his clients' case, including other officers of the court, reflected poorly on himself as a representative of the legal system. By denigrating and insulting their adversary's lawyer and the court referee in obscene and vulgar terms, he conveyed disrespect and disdain for the legal process itself, which was inconsistent with his role as a judge (*see* Rule 100.4(A)). Accordingly, we reject respondent's argument that his statements to clients were private communications unrelated to his judicial role.[3]

We recognize that the attorney-client relationship can promote a level of candor, especially when, as here, clients are longtime acquaintances, and that respondent may well have "had an expectation of privacy" in his communications with the Colemans

[3] Indeed, at the hearing before the referee, respondent acknowledged the connection, stating, "It just didn't dawn on me, I'm sorry to say, that when I was sending emails to clients in connection with legal advice that that somehow had a nexus or a connection to my judicial persona but I've learned the hard way that [it] certainly does."

about their case (*see Matter of Backal*, *supra*). Nevertheless, the Colemans were members of the public in addition to being respondent's legal clients and, as is evident here, clients can become disgruntled and relationships can fray. Every judge must be mindful of the duty to avoid any conduct or statements, even off the bench, that undermine public confidence in the judiciary or respect for our system of justice as a whole and judges are held to standards of conduct "on a plane much higher" than those for others. *Matter of Kuehnel*, *supra*, 49 N.Y.2d at 469. *Compare*, *Matter of Cunningham*, 57 N.Y.2d 270, 275-76 (1982), where the Court of Appeals found that the judge's misconduct (sending letters to another judge conveying the appearance that he would always affirm the other judge's sentencing determinations) was mitigated, though not excused, by the fact that it "was limited to the eyes of one person only" and came to light "from certain bizarre circumstances which could not have been anticipated . . .."

Paragraph 7 of the Formal Written Complaint, which alleged that respondent used a racial epithet regarding the administrative law judge during a conversation with the Colemans, is not sustained and is therefore dismissed. While this allegation, standing alone, would unquestionably require removal if proved, we find no basis in the record for rejecting the conclusion of the referee, who saw and heard the witnesses, that the alleged comment was not proved by a preponderance of the evidence. The Commission may accept or reject a referee's findings, 22 NYCRR §§7000.6[f][1][iii], 7000.6[1]. When the record supports a referee's findings, the Commission accords deference to the referee's findings because he or she is in a position

to evaluate the credibility of witnesses firsthand. *See Matter of Mulroy*, 94 N.Y.2d 652, 656 (2000).

As the referee found and the evidence supports, the Colemans had become dissatisfied with respondent's representation and had unsuccessfully asked him for a refund. After reading a newspaper article which mentioned respondent in connection with a lawsuit against the Suffolk County Traffic and Parking Violations Agency, Ms. Coleman contacted the attorney who had filed the suit and provided him emails from respondent in an apparent effort to assist in that lawsuit against respondent and others. That attorney made the complaint against respondent to the Commission. While it is unclear on the record before us when the Colemans first complained about the alleged racial epithet, it appears it was sometime after the initial complaint by Mr. Cassar. In addition, as the referee found and the evidence supports, the alleged epithet "seems to have occurred out of the blue" and Ms. Coleman herself testified that she had never heard respondent make any similar remark in the many years that she had known him. Furthermore, the Colemans each testified differently about the context of the alleged epithet. On this record, we find no basis to overturn the conclusion of the referee who had the opportunity to directly evaluate the credibility of the witnesses.

Respondent's indefensible use of profane and sexist language is not mitigated in any way by his testimony that it may have been an intuitive effort to show support for his client's views by using the kind of language she used herself. While there is nothing in the record to support his claim about his client's vocabulary, even if that

were true, it would not excuse his inappropriate behavior. Indeed, in such circumstances it would be all the more imperative to set an appropriate tone by acting with dignity and decorum, instead of responding in kind. In any event, whether a judge's patently offensive language constitutes misconduct should not depend on the listener's own vocabulary or reaction to it. It must also be emphasized that the misconduct here is not simply the occasional use of vulgar and sexist language, but a pattern of statements that undermines respect for women and the legal system as a whole.

In view of the multiple, serious derelictions confirmed by the record before us as well as respondent's prior caution, we have concluded that respondent lacks fitness for judicial office and that his behavior has irredeemably damaged public confidence in his ability to continue to serve as a judge.[4] Accordingly, respondent should not be permitted to remain on the bench.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Judge Leach, Judge Mazzarelli, Mr. Raskin and Ms. Yeboah concur, except as follows.

Mr. Belluck, Mr. Harding and Judge Mazzarelli dissent as to the dismissal of paragraph 7 of the Formal Written Complaint.

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[4] Although the referee found that respondent showed "sincere contriteness" for his actions, we are also mindful that at the hearing, instead of simply expressing remorse for his words, he also attempted to rationalize them and offered excuses. In any case, as the Court of Appeals has stated, "[i]n some instances . . . no amount of [contrition] will override inexcusable conduct." *See, Matter of Bauer*, 3 N.Y.3d 158, 165 (2004).

Mr. Belluck files an opinion concurring in part and dissenting in part, which Judge Mazzarelli joins.

Ms. Grays and Judge Miller were not present.

CERTIFICATION

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

Dated: October 9, 2019

Celia A. Zahner, 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

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

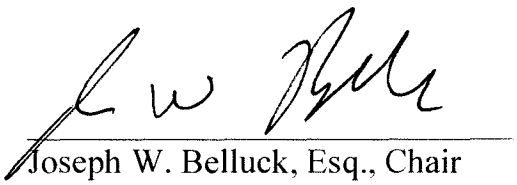
- -

OPINION BY MR. BELLUCK CONCURRING IN PART AND DISSENTING IN PART, WHICH JUDGE MAZZARELLI JOINS

I agree with the Determination to the extent it sustains that part of the Charge in the Formal Written Complaint based on respondent's repeated use of foul, intemperate and sexist language to describe his client's adversaries and a court referee and removes him from the bench. However, I disagree with the majority's decision to the extent it fails to sustain that part of the Charge that was based on respondent's use of a shocking racial epithet. The referee found that alleged comment was not proved by a preponderance of the evidence but respondent's liberal use of such profoundly crude and blatantly sexist language to describe his clients' daughter and her female lawyer makes utterly credible the allegation that he used racist language of a similarly extreme nature in reference to the administrative law judge.

Accordingly, I would sustain the entirety of the Charge and remove respondent from the bench on the basis of his use of all of the discriminatory language.

Dated: October 9, 2019



Joseph W. Belluck, Esq., Chair
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

SCOTT STONE,

DECISION
AND
ORDER

a Justice of the Butler Town Court, Wayne County, and an Associate Justice of the Wolcott Village Court, Wayne County.

– –

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Douglas Michael Jablonski for the respondent

The matter having come before the Commission on May 30, 2019; and the Commission having before it the Stipulation dated May 13, 2019; and respondent having

been served with a Formal Written Complaint dated December 7, 2017; having filed an Answer dated January 3, 2018; having tendered his resignation from the Butler Town Court by letter dated May 9, 2019, effective May 30, 2019, and his resignation from the Wolcott Village Court by letter dated May 9, 2019, effective May 30, 2019; and having affirmed that he will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law 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 regarding the Stipulation 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.

Ms. Grays and Judge Miller were not present.

Dated: May 30, 2019

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

SCOTT STONE, **STIPULATION**

a Justice of the Butler Town Court, Wayne County, and an Associate Justice of the Wolcott Village Court, Wayne County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable Scott Stone ("Respondent"), who is represented in these proceedings by Douglas Michael Jablonski, Esq., as follows:

1. Respondent has been a Justice of the Butler Town Court, Wayne County, since 2006. He has been a Justice of the Wolcott Village Court, Wayne County, since 2019; prior to that he was an Associate Justice of the Wolcott Village Court since 2015. His current terms expire, respectively, on December 31, 2021, and March 31, 2023. Respondent is not an attorney.

2. Respondent was served with a Formal Written Complaint dated December 7, 2017, containing one charge, alleging that on October 13, 2015, at a public meeting of the Wolcott Village Board at which public concerns about recent criminal activity in the village were addressed, Respondent made statements that undermined public confidence in the fair and impartial administration of justice and the integrity of the judicial process,

in that his statements conveyed disdain for certain laws and aspects of legal process, a predisposition to presume defendants guilty, and personal annoyance with lawyers who represent criminal defendants.

3. Respondent's statements at the village board meeting are recited in the Formal Written Complaint, which is appended as Exhibit A.

4. Respondent filed an Answer dated January 3, 2018, which is appended as Exhibit B.

5. Respondent tendered his resignation from the Butler Town Court by letter dated May 9, 2019, effective May 30, 2019. Respondent also tendered his resignation from the Wolcott Village Court by letter dated May 9, 2019, effective May 30, 2019. Copies of the resignation letters are appended as Exhibit C and Exhibit D, respectively.

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

7. Respondent affirms that, having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

8. 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.

9. 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.

10. 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: 5/13/19

Honorable Scott Stone
Respondent

Dated: 5/13/19

Douglas Michael Jablonski, Esq.
Attorney for Respondent

Dated: 5/13/19

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

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV:
EXHIBIT A: FORMAL WRITTEN COMPLAINT
EXHIBIT B: RESPONDENT'S ANSWER
EXHIBIT C: RESPONDENT'S LETTER OF RESIGNATION - TOWN OF BUTLER
EXHIBIT D: RESPONDENT'S LETTER OF RESIGNATION - VILLAGE OF WOLCOTT

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 L. TAWIL,

a Justice of the Ossining Town Court,
Westchester County.

DETERMINATION

- -

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Melissa DiPalo, Of Counsel), for the Commission

Scalise & Hamilton, PC (by Deborah A. Scalise) for respondent

Respondent, Michael A. Tawil, a Justice of the Ossining Town Court, Westchester County, was served with a Formal Written Complaint dated May 22, 2019, containing two charges. Charge I of the Formal Written Complaint alleged that in the summer of

2016, respondent entered a gift shop and publicly confronted store employees about a display of smoking and/or drug-related paraphernalia in the store's window display, used profanity and invoked his judicial office in an attempt to have the items removed from the window display. Charge II of the Formal Written Complaint alleged that on March 8 and March 9, 2017, while acting as a private defense attorney in *Carolyn Thomas v. Quest Livery Services, LLC D/B/A Bee Bee Car Services, Pedro Roberto Batista, Nelson J. Urbina and Methuran Bahiro*, respondent (A) made an insensitive remark about a co-defendant's ethnicity during his summation and (B) asserted his judicial office to advance his private interests when confronted about the impropriety of his summation remark.

On October 9, 2019, 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 5, 2019, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent was admitted to the practice of law in New York in 1992. He has been a part-time Justice of the Ossining Town Court, Westchester County, since 2012. Respondent's current term expires on December 31, 2019. He is also an attorney in private practice.

As to Charge I of the Formal Written Complaint

2. In the summer of 2016, respondent entered a gift shop and publicly

confronted store employees about a display of smoking and/or drug-related paraphernalia in the store's window display, used profanity and invoked his judicial office in an attempt to have the items removed from the window display.

3. Gracie's Gifts is a gift shop, located within a pharmacy, in Ossining, New York. In 2016, Gracie's Gifts displayed certain smoking and/or drug-related paraphernalia, including glass pipes and hookahs, in a store window visible to pedestrian and vehicular traffic.

4. In the summer of 2016, respondent entered Gracie's Gifts to ask the store's manager to remove the smoking and/or drug-related paraphernalia from the store's window display.

5. Respondent approached an employee of the store, Syed Rahman ("Syed"), and said, "What is this bullshit?" referring to the items in the display. Respondent directed Syed to "take this shit down," and said that stores in his town should not sell items used for illegal drugs.

6. When Syed explained to respondent that the products were "legal" and used to smoke tobacco, respondent replied, "Bullshit, I have never seen anyone smoke tobacco from a crack pipe," and repeated, "Take this shit down." Syed then suggested that respondent leave the store.

7. Respondent also spoke with Syed's father, who was working in the back of the store and whose name is also Syed Rahman ("Mr. Rahman"). Respondent pointed to items in the display and told Mr. Rahman that he lived in town, and that he did not want the drug-related items sold in his town.

8. At some point, an officer from the Ossining Police Department entered the store to conduct a safety check of the pharmacy. The police officer approached respondent and Mr. Rahman, said "Hi Judge" to respondent, and told respondent that the items in the display were legal.

9. Respondent referred to his judicial office during the encounter with the store employees.

As to Charge II of the Formal Written Complaint

10. On March 8 and March 9, 2017, respondent appeared as a private defense attorney in the liability phase of a bifurcated trial in *Carolyn Thomas v. Quest Livery Services, LLC et al.*, an action to recover damages for personal injuries sustained by the plaintiff in a car accident.

11. Respondent represented defendants Nelson J. Urbina and Methuran Bahiro. A co-defendant, Pedro Roberto Batista, is of Hispanic descent. Supreme Court Justice Genine D. Edwards presided over the trial in Supreme Court, Kings County.

12. On March 8, 2017, respondent delivered a summation in which he made the following statement:

> On the other hand, you have Mr. Batista. He's on the phone talking to his female girlfriend or someone. He's selling cell phones to his passenger, he's listening to the radio, he said they're having a good time in the car. They're having a good time and he's paying attention to the passenger, to his girlfriend, probably to the radio. For all we know, he could be frying up some platanos in the front seat [emphasis added]. We don't know. But he's not paying attention to the road, what's going on around him, okay.

13. The next day, on March 9, 2017, before the jury was charged, Judge Edwards conducted an off-the-record conference with respondent and his client's insurance adjuster in chambers. At the conference, Judge Edwards told respondent *inter alia* that his summation remark about "platanos" was "racist." Judge Edwards told respondent, "What's going to happen now is your client is going to pay $25,000 to settle this case right now or I am going to report you to the Appellate Division Second Department. That's your license counselor."

14. Respondent replied that he was "a current Part-Time Town Justice" and that he would never "intentionally make a racist comment." Respondent would testify that he was fearful of the threat and nervous when he said this.

15. Respondent subsequently sought an opinion from the Advisory Committee on Judicial Ethics ("Committee") on whether he must report Judge Edwards to the Commission because, while presiding over a case, she threatened to file a disciplinary complaint against him in an attempt to force his client to settle the case for a particular sum. The Committee advised that respondent must report Judge Edwards to the Commission and, in filing a complaint against Judge Edwards, respondent disclosed his conduct to the Commission. Upon reviewing respondent's complaint against Judge Edwards, the Commission authorized investigation of respondent's own conduct in the matter.

Additional Factors

16. Respondent has been cooperative and contrite throughout the Commission's inquiry and has had an otherwise unblemished career as a judge.

17. Respondent recognizes that it was improper both to confront the gift shop employees and to invoke his judicial office while demanding that they rearrange their storefront window display.

18. Respondent also recognizes that it was improper to invoke his judicial office when speaking to Judge Edwards about his summation in the *Thomas* case.

19. Respondent regrets his summation remark in *Thomas* about "frying up some platanos" and recognizes that the remark, which he intended to be humorous, was insensitive and injudicious.

20. Respondent recognizes that a judge's conduct – even off the bench, including when acting as an attorney – may reflect adversely on the integrity of the judiciary. Respondent apologizes to the bench, bar and public.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.4(A)(1), (2) and (3) 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 insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

Respondent acted in a manner that was inconsistent with his obligations to maintain high standards of conduct and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." (Rules, §§100.1, 100.2(A)) The Rules specifically provide that "[a] judge shall not lend the prestige of

judicial office to advance the private interests of the judge or others. . .." (Rules, §100.2(C)) Respondent acknowledged that on two occasions he inappropriately invoked his judicial office to advance his private interests. Respondent admittedly invoked his judicial office when he confronted the employees of the gift shop as part of his effort to have the store's window display changed. Compounding his misconduct during his visit to the store, respondent repeatedly used profanity when speaking with the store employees. Respondent again invoked his judicial office when the presiding judge confronted him about his remark during his summation in the *Thomas* matter. At that time, respondent improperly identified himself as a current part-time town justice in response to the presiding judge's statements.

Respondent's behavior violated the ethical rule 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) and 100.4) A judge's off-the-bench conduct must comport with high ethical standards to ensure the public's respect for the judiciary as a whole since "[w]herever he travels, a Judge carries the mantle of his esteemed office with him." *Matter of Steinberg*, 51 N.Y.2d 74, 81 (1980) In *Matter of Lonschein*, 50 N.Y.2d 569 (1980), the Court of Appeals stated,

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

Id. at 571-572 (citations omitted). In *Matter of Werner*, 2003 NYSCJC Annual Report 198, the Commission held, "[b]y producing a card identifying him as a judge and handing it to the police officer who had stopped respondent's car, respondent gratuitously interjected his judicial status into the incident, which was inappropriate . . . Respondent's conduct was improper even in the absence of an explicit request for special consideration." *Id.* at 199 (citations omitted). In *Matter of D'Amanda*, 1990 NYSCJC Ann. Rep. 91, the Commission held, "[t]he mere mention of his judicial office in order to obtain treatment not generally afforded to others violates the canons of judicial ethics." *Id.* at 94. Here, respondent referred to his judicial office while speaking with the store employees. On another occasion, he identified himself as a judge after being confronted about his summation comment. In both instances, respondent created the appearance that he expected special treatment and deference because of his status as a judge. Such conduct was improper and violated the Rules.

In addition to invoking his judicial office, respondent also made a demeaning remark during his summation in the *Thomas* case. Respondent's summation comment showed an insensitivity to the special ethical obligations of judges and detracted from the dignity of judicial office. After the presiding judge confronted him about his comment, respondent improperly invoked his judicial office. While we agree with our colleague that all attorneys (including those who are judges) have wide latitude in presenting argument to the jury, we believe that the tone of the comment and the assertion of his judicial office warrant a finding of misconduct.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent was cooperative with the Commission. He admitted that his conduct was improper and warrants public discipline. We also note that respondent has expressed remorse for his conduct.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Judge Miller, and Ms. Yeboah concur.

Mr. Raskin files an opinion concurring in part and dissenting in part.

CERTIFICATION

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

Dated: December 12, 2019

Celia A. Zahner, 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 L. TAWIL,

a Justice of the Ossining Town Court,
Westchester County.

OPINION BY MR. RASKIN CONCURRING IN PART AND DISSENTING IN PART

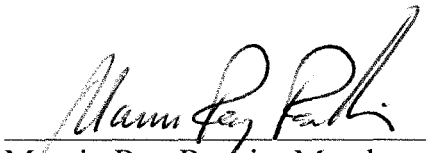
I concur with the majority determination and sanction and respectfully dissent as to the characterization of respondent's "platanos" comment referenced in Charge II as "demeaning."

This case arose out of a contentious exchange between a trial judge and respondent attorney, who is also a town justice, during a personal injury trial before a jury in Kings County. In an effort to coerce a settlement, the trial judge threatened to report respondent to the Appellate Division stating, "that's your license counselor," based on her conclusion that respondent's comment during his summation was "racist." The Commission recently issued a determination finding that the trial judge should be admonished for her conduct. In the course of reviewing respondent's complaint against the trial judge, the Commission authorized an investigation of respondent's own conduct in the matter.

My learned colleagues concluded that respondent uttered a "demeaning" remark during his summation. I cannot apprehend the impropriety or insensitivity of respondent's words in the absence of context. While the statement respondent made may well be demeaning, it may also be benign, strategic, or otherwise inoffensive when viewed in the framework of the trial and the issues before the jury. Based upon the facts presented to the Commission and lacking perspective on the trial, I cannot conclude that respondent's comment was "demeaning."

This limited analysis does not otherwise disturb my concurrence with the majority as to determination and sanction.

Dated: December 12, 2019



Marvin Ray Raskin, 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

KATHY WACHTMAN,

a Justice of the Huron Town Court,
Wayne County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Douglas M. Jablonski for respondent

Respondent, Kathy Wachtman, a Justice of the Huron Town Court, Wayne County, was served with a Formal Written Complaint dated November 28, 2018, containing one charge. The Formal Written Complaint alleged that after denying defense

counsel's request to adjourn a preliminary hearing based on his actual engagement in another court, respondent held the proceeding in the attorney's absence and failed to advise the defendant of his rights.

On January 15, 2019, 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 January 31, 2019, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Huron Town Court, Wayne County, since April 2013. Her current term expires on December 31, 2021. Respondent is not an attorney.

2. As set forth below, on April 26, 2017, while presiding over *People v Tysean Harris*, respondent denied defense counsel's request to adjourn the defendant's preliminary hearing on drug and traffic charges, notwithstanding that defense counsel had an actual engagement in another court; conducted the preliminary hearing in the absence of counsel; and failed to advise Mr. Harris of his rights as required by law. During the preliminary hearing, prior to giving Mr. Harris an opportunity to cross-examine the prosecution's witnesses, respondent found reasonable cause to believe that he had committed a felony.

3. On April 23, 2017, Tysean Harris was arrested and charged with Criminal Possession of a Controlled Substance in the 5th Degree, a class D felony, in violation of Penal Law Section 220.06(5); Operating Without Insurance, in violation of Vehicle and Traffic Law (VTL) Section 319(1); No/Inadequate Plate Lamps, in violation of VTL Section 375(2)(a)(4); and Visibility/Distorted Broken Glass (Front Windshield), in violation of VTL Section 375(22).

4. Mr. Harris appeared before respondent for arraignment on April 24, 2017, at 4:00 AM. When Mr. Harris advised that he was represented by James L. Riotto II, respondent gave him an opportunity to contact Mr. Riotto, who was unavailable. Respondent continued the matter and committed Mr. Harris to jail without bail since Mr. Harris had two prior felony convictions.

5. Mr. Harris re-appeared before respondent at 4:00 PM, represented by Daniel Masny, who was counsel to Mr. Riotto's office. Mr. Masny waived reading of the charges and entered a not guilty plea on Mr. Harris' behalf.

6. Respondent scheduled a preliminary hearing for April 28, 2017, at 10:00 AM, and faxed and mailed the notice of the preliminary hearing to Mr. Riotto and the Wayne County District Attorney's Office.

7. On April 25, 2017, respondent rescheduled the preliminary hearing to April 26, 2017, at 3:00 PM.

8. On April 26, 2017, prior to 10:00 AM, Mr. Riotto telephoned the court, spoke to a court clerk and requested an adjournment. Mr. Riotto also notified

Wayne County Assistant District Attorney (ADA) Timothy Chapman that he would request an adjournment. Mr. Riotto had made no prior requests for an adjournment.

9. ADA Chapman objected to an adjournment on the basis that the prosecution's witnesses had been subpoenaed for the hearing and the defendant's transportation had been arranged from the jail.

10. At approximately 11:20 AM on April 26, 2017, Mr. Riotto faxed a letter to respondent requesting an adjournment of the preliminary hearing and stating that he was required to appear in federal court at the same time for a sentencing proceeding.

11. At approximately 11:30 AM, respondent faxed a letter to Mr. Riotto denying his request for an adjournment on the basis that the "[t]he People" were "still planning to move forward with Mr. Harris' preliminary hearing," witnesses were prepared to appear, and Mr. Harris' transportation had been scheduled from jail. At approximately 11:40 AM, respondent faxed the letter she had sent to Mr. Riotto to ADA Chapman.

12. At approximately 12:30 PM, Mr. Riotto faxed a letter to respondent, objecting to respondent's denial of his request for an adjournment. Mr. Riotto noted that Criminal Procedure Law (CPL) Section 180.80(1) permits a preliminary hearing to be heard more than 120 hours after a defendant is held in custody if the delay is due to the defendant's request. Mr. Riotto also cited United States Supreme Court precedent holding that defendants have a constitutional right to be represented by counsel at a preliminary hearing and asked that his letter be made part of the official court record of the proceeding.

13. At approximately 3:00 PM on April 26, 2017, respondent presided over the preliminary hearing in *People v Tysean Harris.* Respondent did not place Mr. Riotto's written objection to her decision to deny his request for an adjournment on the record and did not inform Mr. Harris that his counsel would not be present.

14. Notwithstanding the provisions of CPL Sections 180.10(3) and 180.10(3)(a), respondent did not inform Mr. Harris of his right to counsel and the right to an adjournment to obtain counsel.

15. Notwithstanding the provisions of CPL Section 180.10(5), respondent did not make any inquiry as to whether Mr. Harris wished to proceed without counsel or understood the significance of proceeding without counsel.

16. During the proceeding, notwithstanding the provisions of CPL Sections 180.60(6) and 180.60(7), respondent did not inform Mr. Harris of his right to testify on his own behalf, to call witnesses and to cross-examine each of the prosecution witnesses.

17. After respondent made a finding that there was reasonable cause to believe that the defendant committed a felony, Mr. Harris asked if he could question the witnesses and respondent belatedly permitted him to do so.

18. After the preliminary hearing, respondent remanded Mr. Harris to the Wayne County Jail.

19. On May 30, 2017, Wayne County Acting District Attorney Christopher Bokelman sent a letter to the Huron Town Court, offering a plea of guilty to

a reduced charge, Criminal Possession of a Controlled Substance in the 7th Degree, on condition of time served in full satisfaction of all pending Penal Law and VTL charges.

20. On June 12, 2017, Mr. Harris pled guilty to the reduced charge of Criminal Possession of a Controlled Substance 7th Degree, a class A misdemeanor, in violation of Penal Law Section 220.03, in satisfaction of all Penal Law and VTL charges. Respondent sentenced Mr. Harris to time served, *i.e.* 50 days, and a $205 surcharge.

Additional Factors

21. Respondent has been cooperative with the Commission throughout its inquiry.

22. Respondent now recognizes and appreciates that a judge must ensure that the due process rights of defendants are accorded before decisions are rendered, including the right to have one's counsel present at all critical stages of a proceeding.

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(A), 100.3(B)(1), 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, and respondent's misconduct is established.

The Court of Appeals has stated that the right to counsel at every stage of criminal proceedings "may be the most basic of all" constitutional rights and that at a preliminary hearing, where a prosecutor must present proof of every element of the crime

charged, the right to counsel "is of constitutional dimension" (*People v Hodge*, 53 NY2d 313, 317, 320 [1981]). According a defendant the opportunity to exercise the right to counsel is one of a judge's most important responsibilities since "[t]he 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]). In *People v Harris*, respondent's denial of defense counsel's request for an adjournment of the preliminary hearing, despite being advised of the attorney's actual engagement in federal court, deprived the defendant of this fundamental right at a critical stage of the criminal proceedings against him.

In *Hodge*, where the Court reversed a defendant's conviction because the preliminary hearing was held notwithstanding his lawyer's unexplained failure to appear, the Court noted that a preliminary hearing has many important functions, but "above all, early screening of unjustifiable and unprovable charges against the innocent"; moreover, the privileges of subpoena power and the opportunity for cross-examination at a preliminary hearing may ultimately "make the difference between conviction and exoneration" (*supra,* 53 NY2d at 318, 319). Thus, the Court stated, "it is hardly surprising that the Supreme Court has ruled that a preliminary hearing is 'a "critical stage" of the State's criminal process,' thus triggering the United States Constitution's guarantee that a defendant be afforded 'the guiding hand of counsel' (*Coleman v Alabama*, 399 U.S. 1, 9)" (*Id* at 318).

In view of the defendant's "absolute right to counsel" at such a proceeding (*Id* at 317[n.]), respondent's denial of defense counsel's request for an adjournment of the

preliminary hearing in the *Harris* case is inexcusable, particularly in the circumstances presented. As the stipulated facts show, the defendant's lawyer was given only one day's notice of the rescheduled hearing date, after respondent had moved up the date by two days without explanation, and the attorney promptly requested an adjournment and informed respondent that he was required to appear at a sentencing proceeding in federal court at the same time. In denying his request – explaining that "[t]he People" were "still planning to move forward," witnesses were prepared to appear, and the defendant's transportation from jail had been arranged – respondent appears to have relied solely on the prosecutor's opposition to the application, which, on the facts presented, conveys the appearance of bias (*see* Rules, §100.3[B][4]). Even after the defendant's lawyer sent a letter to the court waiving any objection to a delay[1] and arguing that proceeding with the hearing would violate his client's constitutional right to counsel, citing a United States Supreme Court case holding that a defendant has a constitutional right to be represented by counsel at a preliminary hearing, respondent ignored the lawyer's objections and held the hearing in his absence a few hours later. By doing so, respondent deprived the defendant of his right "to have the assistance of an attorney at every stage of the legal proceedings against him" (*People v Cunningham*, 49 NY2d 203, 207 [1980]) and violated her ethical responsibility 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]). As a judge for four years at the time of these events, respondent should

[1] A defendant in custody must be released if the preliminary hearing is not held within 120 hours, unless the defendant requests or consents to the delay (CPL §180.80[1]).

have recognized the significance of her obligation to protect the defendant's fundamental rights.

Respondent also made a number of errors during the hearing that gave the appearance that she was biased against the defendant. Although she knew that he was represented by counsel, she failed to inform the defendant at the outset of the proceeding that the lawyer was unavailable and that she had denied his request for an adjournment; nor did she advise the defendant that he had a right to counsel at the proceeding and to an adjournment to obtain counsel, or that he had a right to cross-examine the prosecution witness and to testify on his own behalf. She announced her finding of probable cause immediately after the prosecution witnesses had testified, without affording the defendant an opportunity to question them; she belatedly permitted him to question the witnesses only after he asked if he could do so. After the proceeding, the defendant, having been deprived of constitutional and statutory rights, remained in custody for almost two months before pleading guilty to a reduced charge, when respondent sentenced him to time served.

It is the responsibility of every judge, whether a lawyer or non-lawyer, to be faithful to the law and maintain professional competence in it and to ensure that every defendant, especially one who is facing a loss of liberty, is afforded the full panoply of due process rights, including the right to have counsel present at every critical stage of a proceeding (Rules, §§100.2[A], 100.3[B][1]). *See Matter of Hise*, 2003 NYSCJC Annual Report 125 (judge's mishandling of a case in which he convicted a defendant without a trial or guilty plea and sentenced him to jail "shows basic ignorance of fundamental legal

principles and warrants public discipline"); *see also*, *e.g.*, *Matter of Prince*, 2014 NYSCJC Annual Report 184 (judge "violated basic tenets of fairness in the administration of justice" at an arraignment by failing advise defendant of his right to assigned counsel and by making statements that appeared to prejudge the case); *Matter of Pemrick,* 2000 NYSCJC Annual Report 131 ("Even if not intentional, a series of legal errors indicates inattention to proper procedure and neglect of judicial duty").

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent's misconduct appears to be limited to a single case and that respondent now appreciates that a judge must ensure that before decisions are rendered, defendants are accorded due process. We trust that respondent has learned from this experience and in the future will act in accordance with her obligation to follow constitutional and statutory mandates and abide by the Rules Governing Judicial Conduct.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Judge Miller, Mr. Raskin and Mr. Stoloff concur.

Ms. Yeboah was not present.

CERTIFICATION

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

Dated: February 7, 2019

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

APPENDIX G: STATISTICAL ANALYSIS OF COMPLAINTS

COMPLAINTS PENDING AS OF DECEMBER 31, 2018

SUBJECT OF COMPLAINT		STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING								
NON-JUDGES								
DEMEANOR		34	6	1	1	4	5	51
DELAYS		2	0	1	0	0	0	3
CONFLICT OF INTEREST		3	4	7	2	2	0	18
BIAS		3	1	0	1	1	0	6
CORRUPTION		5	4	0	0	0	0	9
INTOXICATION		2	0	0	0	0	0	2
DISABILITY/QUALIFICATIONS		0	0	0	0	2	0	2
POLITICAL ACTIVITY		7	6	3	2	0	0	18
FINANCES/RECORDS/TRAINING		11	6	6	3	0	0	26
TICKET-FIXING		0	0	0	1	0	0	1
ASSERTION OF INFLUENCE		8	4	3	3	1	3	22
VIOLATION OF RIGHTS		18	14	3	5	3	2	45
MISCELLANEOUS		2	1	0	0	0	0	3
TOTALS		95	46	24	18	13	10	206

*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 2019

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	1,173							1,173
NON-JUDGES	328							328
DEMEANOR	86	27	0	1	0	0	0	114
DELAYS	23	5	0	1	0	0	0	29
CONFLICT OF INTEREST	21	7	1	0	0	0	0	29
BIAS	17	3	0	0	0	0	0	20
CORRUPTION	72	4	0	0	0	0	0	76
INTOXICATION	4	1	0	0	0	0	0	5
DISABILITY/QUALIFICATIONS	2	2	0	0	0	0	0	4
POLITICAL ACTIVITY	8	14	1	1	0	0	0	24
FINANCES/RECORDS/TRAINING	9	16	0	0	0	0	0	25
TICKET-FIXING	0	2	0	0	0	0	0	2
ASSERTION OF INFLUENCE	0	12	0	1	0	0	0	13
VIOLATION OF RIGHTS	37	33	3	1	1	0	0	75
MISCELLANEOUS	15	10	0	0	0	2	0	27
TOTALS	1,795	136	5	5	1	2	0	1,944

*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 2019: 1,944 NEW & 206 PENDING FROM 2018								
SUBJECT OF COMPLAINT	**DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY**	**STATUS OF INVESTIGATED COMPLAINTS**						**TOTALS**
		PENDING	***DISMISSED***	***CAUTION***	***RESIGNED***	***CLOSED****	***ACTION****	
INCORRECT RULING	1,173	0	0	0	0	0	0	1,173
NON-JUDGES	328	0	0	0	0	0	0	328
DEMEANOR	86	61	6	2	1	4	5	165
DELAYS	23	7	0	2	0	0	0	32
CONFLICT OF INTEREST	21	10	5	7	2	2	0	47
BIAS	17	6	1	0	1	1	0	26
CORRUPTION	72	9	4	0	0	0	0	85
INTOXICATION	4	3	0	0	0	0	0	7
DISABILITY/QUALIFICATIONS	2	2	0	0	0	2	0	6
POLITICAL ACTIVITY	8	21	7	4	2	0	0	42
FINANCES/RECORDS/TRAINING	9	27	6	6	3	0	0	51
TICKET-FIXING	0	2	0	0	1	0	0	3
ASSERTION OF INFLUENCE	0	20	4	4	3	1	3	35
VIOLATION OF RIGHTS	37	51	17	4	6	3	2	120
MISCELLANEOUS	15	12	1	0	0	2	0	30
TOTALS	1,795	231	51	29	19	15	10	2,150

*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
		PENDING	*DISMISSED*	*CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	27,863	0	0	0	0	0	0	27,863
NON-JUDGES	8,767	0	0	0	0	0	0	8,767
DEMEANOR	4,204	61	1,377	364	150	140	275	6,571
DELAYS	1,721	7	208	112	40	23	32	2,143
CONFLICT OF INTEREST	896	10	542	188	62	36	147	1,881
BIAS	2,052	6	309	65	37	25	38	2,532
CORRUPTION	794	9	153	14	47	24	43	1,084
INTOXICATION	79	3	43	8	19	6	32	190
DISABILITY/QUALIFICATIONS	70	2	36	2	23	18	6	157
POLITICAL ACTIVITY	460	21	341	209	30	38	55	1,154
FINANCES/RECORDS/TRAINING	350	27	392	241	171	104	106	1,391
TICKET-FIXING	28	2	94	160	48	62	171	565
ASSERTION OF INFLUENCE	259	20	216	102	45	22	79	743
VIOLATION OF RIGHTS	2,696	51	660	247	133	76	119	3,982
MISCELLANEOUS	918	12	276	91	37	49	61	1,444
TOTALS	51,157	231	4,647	1,803	842	623	1,164	60,467

* 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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