NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

ANNUAL REPORT

2021

NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

♦ ♦ ♦

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TAA GRAYS, ESQ., *VICE CHAIR*

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HON. JOHN A. FALK

PAUL B. HARDING, ESQ.

HON. LESLIE G. LEACH (TO 12-31-20)

HON. ANGELA M. MAZZARELLI

HON. ROBERT J. MILLER

MARVIN RAY RASKIN, ESQ.

RONALD J. ROSENBERG, ESQ. (FROM 04-01-20)

AKOSUA GARCIA YEBOAH

♦ ♦ ♦

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*Denotes staff who left in 2020

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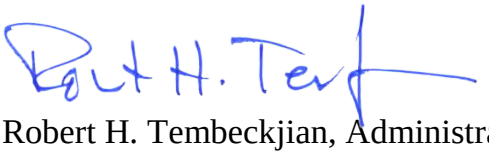
March 1, 2021

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, 2020.

Respectfully submitted,



Robert H. Tembeckjian, Administrator
On Behalf of the Commission

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FOREWORD

The coronavirus pandemic posed unprecedented challenges for the Commission on Judicial Conduct in 2020, as it did throughout state government and, indeed, the nation and world. As information became available regarding the rapid spread of the dangerous virus causing Covid-19, and after accelerated preparations in February for potential disruptions in the Commission's operations, a "virtual" administration of the agency went into effect in March.

Since then, nearly all agency business has been conducted electronically by staff operating in remote locations. Commission meetings, staff meetings, investigative interviews, depositions and disciplinary hearings have proceeded via remote video platforms. Documents have been disseminated and received by email as well as postal or courier services. Faxes transmitted to the office over telephone lines have been automatically digitized and rerouted to an electronic email in-box.

As a result of these and other adjustments to business-as-usual, the Commission was able to keep abreast of its constitutional responsibilities. For example:

- All 1,504 new complaints received during the year were processed. Many were submitted electronically through the interactive complaint portal on the Commission's website.
- 438 preliminary inquiries or full-scale investigations were authorized.
- 24 public dispositions were rendered, the most in any year since 2009: there were 2 removals from office, 9 censures, 4 admonitions and 9 permanent resignation stipulations.
- 34 confidential cautionary letters were issued to judges.
- The number of matters pending at year end dropped 23%, from 231 to 177.

Mindful of the health and safety of its staff and those with whom it engages, hopeful of success in the nation's Covid vaccination program and guided by the best available science, the Commission hopes to phase in a return to its offices in the fall of 2021. At the same time, the innovative remote/electronic/operational adaptations necessitated by the pandemic will likely remain part of the "new normal" in the post-Covid era.

The Commission continues to appreciate the cooperation extended by all who interact with the agency in these unique and challenging times.

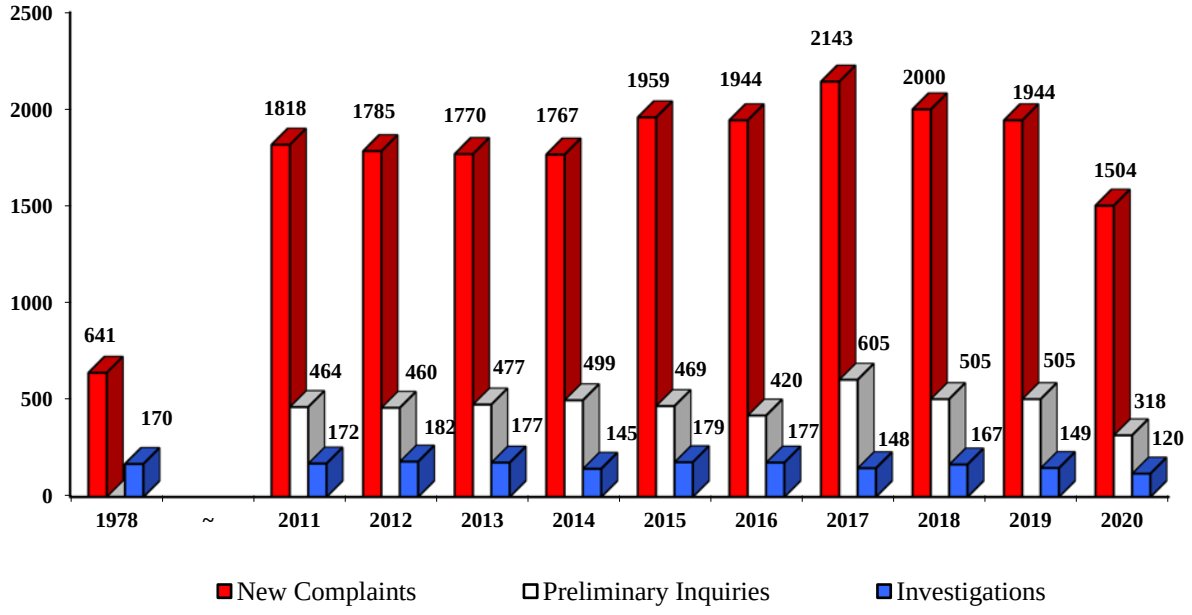
INTRODUCTION TO THE 2021 ANNUAL REPORT

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. In light of the Coronavirus pandemic, which caused the courts to close or operate in a limited manner throughout most of 2020, the number of new complaints decreased in 2020. Last year, 1,504 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 318 preliminary reviews and inquiries and 120 investigations.

This report covers Commission activity in the year 2020.



COMPLAINTS, INQUIRIES & INVESTIGATIONS IN THE LAST TEN YEARS

ACTION TAKEN IN 2020

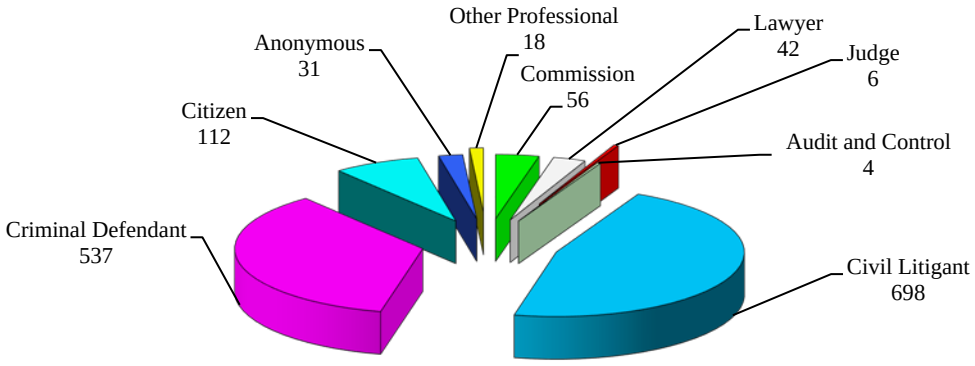
Following are summaries of the Commission's actions in 2020, including accounts of all public determinations, summaries of non-public dispositions, and various numerical breakdowns of complaints, investigations and other dispositions.

COMPLAINTS RECEIVED

The Commission received 1,504 new complaints in 2020. 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 2020 appears in the following chart.



COMPLAINT SOURCES IN 2020

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 2020, staff conducted 318 such preliminary inquiries, requiring such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts.

In 120 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 2020, in addition to the 120 new investigations, there were 201 investigations pending from the previous year. The Commission disposed of the combined total of 321 investigations as follows:

- 54 complaints were dismissed outright.
- 34 complaints involving 33 different judges were dismissed with letters of dismissal and caution.
- 32 complaints involving 12 different judges were closed upon the judge's resignation, two becoming public by stipulation and 10 that were not public.
- Eight 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 18 different judges resulted in formal charges being authorized.
- 165 investigations were pending as of December 31, 2020.

FORMAL WRITTEN COMPLAINTS

As of January 1, 2020, there were pending Formal Written Complaints in 30 matters involving 16 judges. In 2020, Formal Written Complaints were authorized in 28 additional matters involving 18 judges. Of the combined total of 58 matters involving 34 different judges, the Commission acted as follows:

- 27 matters involving 15 different judges resulted in formal discipline (admonition, censure or removal).
- In two matters involving one judge, the Formal Written Complaint was dismissed, and a letter of dismissal and caution was issued.
- 15 matters involving seven different judges were closed upon the judge's resignation from office, all becoming public by stipulation.
- Two matters involving one judge were closed upon the vacancy of office due to reasons other than resignation, such as the expiration of the judge's term.
- 12 matters involving 10 different judges were pending as of December 31, 2020.

SUMMARY OF ALL 2020 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 – 1,776,* ALL PART-TIME

	Lawyers	*Non-Lawyers*	*Total*
Complaints Received	88	111	199
Complaints Investigated	25	38	63
Judges Cautioned After Investigation	8	9	17
Formal Written Complaints Authorized	3	10	13
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	3	6	9
Judges Vacating Office by Public Stipulation	1	3	4
Formal Complaints Dismissed or Closed	1	0	1

NOTE: Approximately 700 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	10	176	186
Complaints Investigated	2	19	21
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	1	1
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	174
Complaints Investigated	6
Judges Cautioned After Investigation	1
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	1
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	213
Complaints Investigated	9
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	1
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

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

Complaints Received	45
Complaints Investigated	7
Judges Cautioned After Investigation	1
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	19
Complaints Investigated	4
Judges Cautioned After Investigation	2
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	1
Formal Complaints Dismissed or Closed	0

TABLE 7: COURT OF CLAIMS JUDGES – 50, FULL-TIME, ALL LAWYERS

Complaints Received	58
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	225
Complaints Investigated	10
Judges Cautioned After Investigation	7
Formal Written Complaints Authorized	3
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	3
Judges Vacating Office by Public Stipulation	4
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	49
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 10: NON-JUDGES AND OTHERS NOT WITHIN THE COMMISSION'S JURISDICTION*

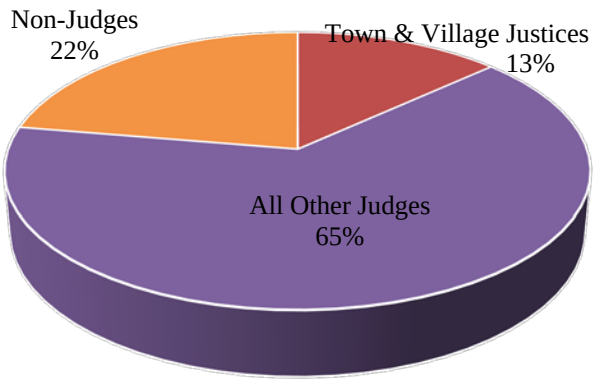
Complaints Received	336

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

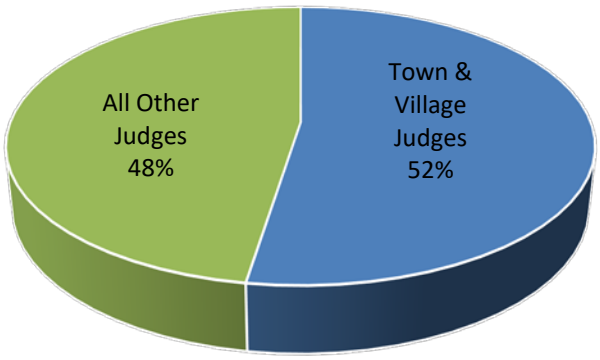
NOTE ON JURISDICTION

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.

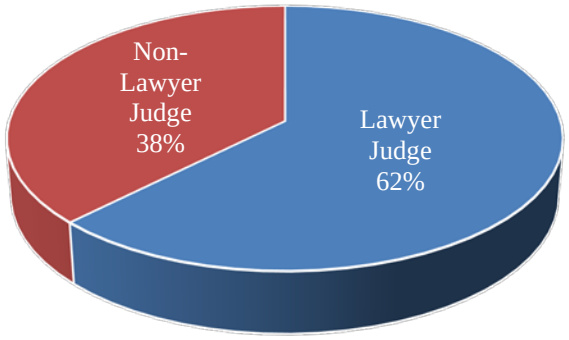
The confidentiality provision of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibits public disclosure by the Commission of the charges, hearings or related matters, absent a waiver by the judge, until the case has been concluded and a determination of admonition, censure, removal or retirement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

Following are summaries of those matters that were completed and made public during 2020. The actual texts are appended to this Report in Appendix F.

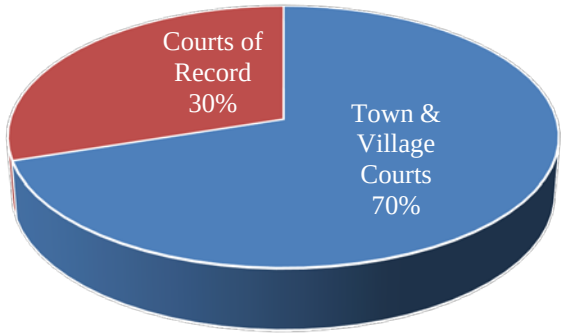
OVERVIEW OF 2020 DETERMINATIONS

The Commission rendered 15 formal disciplinary determinations in 2020: two removals, nine censures and four admonitions. In addition, nine matters were disposed of by stipulation made public by agreement of the parties (two such stipulations were negotiated during the investigative stage, and seven after a Formal Written Complaint had been served). Nine of the judges were non-lawyer judges and 15 were lawyers. Thirteen of the 24 judges were town or village justices and 11 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 56% are part-time town or village justices. About 61% of the town and village justices, *i.e.* 34% 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.)



2020 DISPOSITIONS



1978-2020 DISPOSITIONS

DETERMINATION OF REMOVAL

The Commission completed two formal proceedings in 2020 that resulted in a determination of removal. The cases are summarized below and the full text can be found in Appendix F.

Matter of Richard H. Miller, II

On February 14, 2020, the Commission determined that Richard H. Miller, II, a Judge of the Family Court, Broome County, should be removed from office for engaging in numerous acts of misconduct including (1) making sexualized comments to staff members of the Broome County Court; (2) screaming at and otherwise belittling another female court clerk and retaliating by filing a complaint against her after she complained about his having berated and demeaned her; (3) having his court secretary prepare a letter concerning his prior legal work; and, (4) failing to timely and accurately disclose income from his extra-judicial activities, as required, to the Internal Revenue Service, the New York State Department of Taxation and Finance, the Ethics Commission for the Unified Court System, and the Clerk of the Broome County Family Court. Judge Miller requested review by the Court of Appeals which upheld the Commission's determination of removal. (*See* page 20 for a summary of the Court of Appeals' decision.)

Matter of Michael F. McGuire

On March 18, 2020, the Commission determined that Michael F. McGuire, a Judge of the County and Surrogate's Courts, an Acting Judge of the Family Court and an Acting Justice of the Supreme Court, Sullivan County, should be removed from office for engaging in numerous acts of misconduct, including (1) improperly holding litigants in contempt; (2) practicing law as a full-time judge; (3) utilizing court staff in his private and unauthorized practice of law; (4) failing to disqualify in cases where he had conflicts; (5) demonstrating an inappropriate demeanor towards litigants, lawyers, staff and others; (6) improperly invoking his judicial title by using it in his personal email address which he used for personal matters; (7) requiring his court secretary to work on several Saturdays in connection with pistol permit interviews and did not see that she was compensated for the work; and, (8) lacking candor during the Commission proceeding. Judge McGuire initially requested review by the Court of Appeals but later withdrew his request. The Court removed him from office in accordance with the Commission's determination.

DETERMINATIONS OF CENSURE

The Commission completed nine formal proceedings in 2020 that resulted in public censure. The cases are summarized below and the full text can be found in Appendix F.

Matter of Michael J. Miranda

On January 30, 2020, the Commission determined that Michael J. Miranda, a Justice of the Shandaken Town Court, Ulster County, should be censured for the consequences of excessive drinking and driving, for which he was charged with Driving While Intoxicated (DWI) and pled guilty to Driving While Ability Impaired (DWAI). Judge Miranda failed three standard sobriety tests, was placed under arrest and taken to the police barracks, where his blood alcohol concentration (BAC) was tested and measured at 0.17%. That is more than twice the legal limit

for a DWI and more than three times the legal limit for a DWAI. During the arrest Judge Miranda let the responding state trooper know he was a judge and said he would "never again" conduct an arraignment for the State Police. (There was no evidence that he ever followed through on this threat.) The Commission stated that in addition to creating "a significant risk to himself and to the lives of others," Judge Miranda aggravated his "serious misconduct" by making "false statements" to the police concerning how many alcoholic drinks he consumed and by asserting his judicial office. Judge Miranda, who is an attorney, did not request review by the Court of Appeals.

Matter of Michael A. Petucci

On January 30, 2020, the Commission determined Michael A. Petucci, a Justice of the Herkimer Town Court, Herkimer County, should be censured for the consequences of excessive drinking and driving, for which he was charged with Driving While Intoxicated (DWI) and pled guilty to Driving While Ability Impaired (DWAI). In December 2018, after consuming at least five alcoholic drinks, Judge Petucci crashed his vehicle into the side of an abandoned building. He was belligerent to first responders at the scene, at one point asking a paramedic to arrest the responding officer. He refused to take field sobriety tests and a chemical test of his blood alcohol level. In addition, although Judge Petucci was licensed to carry a handgun, the Commission said he "exercised extremely poor judgment" by carrying a loaded weapon and another full magazine of ammunition while impaired by alcohol. The Commission said Judge Petucci "should have known that by driving his vehicle after consuming a large amount of alcohol in a relatively short period of time he created a significant risk to himself and others." Judge Petucci, who is not an attorney, did not request review by the Court of Appeals.

Matter of William A. Carter

On March 31, 2020, the Commission determined that William A. Carter, a Judge of the Albany County Court, should be censured for engaging in an *ex parte* communication and failing to report cases pending longer than 60 days on his required quarterly reports of pending cases. In January 2018, Judge Carter presided over a murder trial in which the defense counsel moved to preclude certain evidence pertaining to the defendant's phone conversations from jail. Without telling the District Attorney or defense counsel, Judge Carter called and spoke to a deputy sheriff at the county jail about how inmates are notified that their phone calls are being monitored. He then relied on that conversation in deciding the defense motion, again without informing either side of his *ex parte* conversation with the deputy sheriff. Also, from April 2017 to September 2019, Judge Carter failed to report on his quarterly reports that he had several cases pending decision longer than 60 days, as required. The judge amended his reports in September 2019 as a result of the Commission's inquiry. Judge Carter was publicly censured by the Commission in 2006, for among other things, coming off the bench and physically confronting a defendant appearing in his courtroom. Judge Carter was also privately cautioned by the Commission twice. While the Commission considered the judge's disciplinary history as an aggravating factor, and stated that it is "well-settled" that judges are prohibited from engaging in *ex parte* communications about a pending matter, it noted that the *ex parte* communication was limited to a single general conversation and that the judge acknowledged that his conduct warrants public discipline. Judge Carter did not request review by the Court of Appeals.

Matter of Michelle A. VanWoeart

On March 31, 2020, the Commission determined that Michelle A. VanWoeart, a Justice of the Princetown Town Court, Schenectady County, should be censured for making inappropriate statements in campaign literature and social media posts. While running for election in September 2018 against incumbent Norman Miller, Judge VanWoeart produced campaign ads and literature indicating that it was a function of the court to generate local revenue, and that revenue under Judge Miller was down compared to when she had previously served as judge. Judge VanWoeart also endorsed profane and otherwise offensive comments that her supporters posted about Judge Miller to her campaign Facebook page. The Commission stated that the judge's "advertisement and campaign literature gave the impression that revenue generation for the Town of Princetown would be a factor in her judicial decisions and that part of her responsibility as a judge 'was to raise revenue for the town…to compensate for the absence of a town tax." The Commission also found that the judge failed to meet the ethical standards required of judges "when she responded favorably to crude social media comments about her judicial opponent." Judge VanWoeart, who is not an attorney, did not request review by the Court of Appeals.

Matter of Wayne R. Pebler

On June 17, 2020, the Commission determined that Wayne R. Pebler, a Justice of the Roxbury Town Court, Delaware County, should be censured for engaging in *ex parte* communications about a defendant, publicly commenting about charges pending against the defendant and appearing biased against him. On three occasions Judge Pebler made comments about a defendant against whom charges were pending both in his and another town court. The judge (1) told a man in his courtroom that the defendant was a "convict" with two prior felony convictions and described in detail the charges pending against him; (2) told another defendant and that defendant's mother that the defendant would be going to federal prison; and (3) made comments about the defendant's alleged drug use despite the fact that the defendant had no narcotics-related charges pending in his court. In its determination, the Commission stated that the judge "undermined public confidence in the fairness and impartiality of the judiciary." The judge had previously been privately cautioned by the Commission in 2009 after he engaged in unauthorized *ex parte* communications with each party and a non-party, in a connection with a small claims matter. The Commission found that the judge's prior caution "exacerbated" his misconduct. Judge Pebler, who is not an attorney, did not request review by the Court of Appeals.

Matter of Diccia T. Pineda-Kirwan

On June 17, 2020, the Commission determined that Diccia T. Pineda-Kirwan, a Justice of the Supreme Court, Nassau County, should be censured for acting in a rude and discourteous manner to attorneys and court system staff. Judge Pineda-Kirwan acknowledged that she (1) yelled at the law clerk to Administrative Judge Jeremy Weinstein over administrative directives and case assignments; (2) repeatedly screamed, "You treat me like shit" at a courthouse facility supervisor; (3) yelled at a court employee who was attempting to retrieve an old laptop after providing the judge with a new one; and, (4) on three occasions, yelled at attorneys appearing before her. In 2006, after repeatedly behaving heavy-handedly toward the attorneys in a case before her, Judge

Pineda-Kirwan was privately cautioned by the Commission to be "patient and courteous" in the future. Judge Pineda-Kirwan did not request review by the Court of Appeals.

Matter of Matthew J. Parker

On August 13, 2020, the Commission determined that Matthew J. Parker, a Justice of the Ellenville Village Court, Ulster County, should be censured for (1) giving a defendant a ride home after arraigning him on a charge of grand larceny, not disclosing it and continuing to preside over the case; (2) failing to advise two defendants of their right to assigned counsel; and, (3) summarily removing a man from his courtroom for wearing a sleeveless t-shirt. The Commission decision said Judge Parker's giving the defendant a ride after the arraignment constituted "an extreme lapse in judgment" that he "compounded" by not disclosing it or taking himself off the case. In two other criminal matters, after being advised that the defendants were unemployed, Judge Parker failed to advise them of their right to assigned counsel. He also discourteously directed that a man be removed from his courtroom for wearing a sleeveless t-shirt, without affording him an opportunity to be heard. Judge Parker, who is not an attorney, did not request review by the Court of Appeals.

Matter of Michael E. Knopf

On September 23, 2020, the Commission determined that Michael E. Knopf, a Justice of the Rathbone Town Court, Steuben County, should be censured for improperly issuing a warrant of eviction, making a derogatory remark about the tenant, and failing to mechanically record the proceedings as required. In 2018 Judge Knopf issued a warrant of eviction against a tenant despite the fact that no notice of petition or petition had been served on the tenant as required by law. Two weeks later, the judge granted a motion to vacate the eviction because the tenant had not been served, but he referred to the tenant as a "deadbeat." The Commission found that Judge Knopf was not "faithful to the law" and did not "maintain professional competence in it" when he issued a warrant of eviction without notice to the tenant or properly reviewing the "deficient" documents filed by the landlord. The judge compounded his misconduct when he referred to the tenant as a "deadbeat," creating "at least the appearance that he was biased against the defendant." In its determination, the Commission noted that the judge admitted that his conduct warranted public discipline and had "an otherwise unblemished record during his approximately 12 years on the bench." Judge Knopf, who is not an attorney, did not request review by the Court of Appeals.

Matter of Catherine R. Nugent Panepinto

On December 9, 2020, the Commission determined that that Catherine R. Nugent Panepinto, a Justice of the Supreme Court, Eighth Judicial District, Erie County, should be censured for improperly involving herself and her judicial office on behalf of one of the parties in a pending lawsuit. From January 2018 through March 2018, Judge Panepinto publicly supported the teachers at Buffalo City Honors School ("CHS") in connection with a lawsuit brought by their union (the Buffalo Teachers Federation) against the Buffalo Board of Education. Her daughter attended the school. The judge admitted to (1) making repeated public comments about the issues and people involved in the litigation, in person, by email and on social media platforms in which she was publicly identified as a judge on one platform; (2) providing legal information and advice to parents of CHS students; (3) signing advocacy letters; (4) speaking about the pending and impending lawsuits with Board of Education members; (5) joining the Federation's lawyer in the

courthouse and outside the courtroom prior to a case conference; and, (6) executing an affidavit in support of the Federation's case, which was attached as an exhibit to court papers. The Commission found that the judge's "numerous violations of the Rules [Governing Judicial Conduct] during the relevant three-month period undermined public confidence" and that her conduct "was improper and went beyond appropriate action specifically concerning her personal interest in her daughter's education." Judge Panepinto did not request review by the Court of Appeals.

DETERMINATIONS OF ADMONITION

The Commission completed four proceedings in 2020 that resulted in public admonition. The cases are summarized as follows and the full texts can be found in Appendix F.

Matter of Howard Gerber

On June 17, 2020, the Commission determined that Howard Gerber, a Justice of the Clarkstown Town Court, Rockland County, should be admonished for making inappropriate comments and failing to disqualify from a matter in which his impartiality could reasonably be questioned. On three occasions between August 2017 and November 2017, Judge Gerber engaged in the following misconduct: (1) He presided over a matter involving the Rockland County Department of Probation despite making disparaging comments about the department, a sex offender treatment specialist and a supervisor; (2) He remarked during a case conference that a defendant's adult child was "dressing for attention" by which he meant "for men to look at her;" that the woman had worn yoga pants to court; and, referring to the female Assistant District Attorney (ADA), stated "I don't care what anybody wears…if you wear yoga pants to court, it's okay with me." When the ADA did not respond, the judge then said: "Oh, I should not have said that. Are there cameras in here?"; and (3) He asked if that same ADA and a friend "want[ed] a room" and offered to "turn off the lights," in an attempt to make an off-color joke. In its determination, the Commission noted that the judge had an "unblemished record" and that he had "acknowledged that his conduct warrants public discipline." Judge Gerber, who is an attorney, did not request review by the Court of Appeals.

Matter of David T. Corretore

On June 22, 2020, the Commission determined that David T. Corretore, a Justice of the Webster Town Court, Monroe County, should be admonished for failing to render decisions in a timely fashion. Between May 2015 and October 2018, Judge Corretore delayed rendering decisions in six small claims matters for between five and 47 months. Section 1304 of the Uniform Justice Court Act requires that in non-jury trials the court must render a judgement within 30 days. In its determination, the Commission noted that he had since instituted a case tracking system and has acknowledged that his conduct warranted public discipline. Judge Corretore, who is an attorney, did not request review by the Court of Appeals.

Matter of Ralph J. Eannace, Jr.

On September 28, 2020, the Commission determined that Ralph J. Eannace, Jr., a Judge of the Utica City Court, Oneida County, should be admonished for failing to file a mandatory financial

disclosure form in a timely fashion, without excuse, despite a prior caution for the same offense. Judge Eannace failed to file his 2018 financial disclosure statement with the Ethics Commission for the Unified Court System, which was due May 15, 2019, as required by law. The judge, who received two formal notices from the Ethics Commission after missing the deadline, eventually filed his statement nearly four months late. Judge Eannace was cautioned by the Commission in 2014 for failing to file his 2013 form in a timely fashion. The Commission found that the judge should have been "particularly attentive to his financial disclosure obligations" in light of his prior caution for the same misconduct. Judge Eannace did not request review by the Court of Appeals.

Matter of Robert H. Schmidt

On November 3, 2020, the Commission determined that Robert H. Schmidt, a Justice of the Brunswick Town Court, Rensselaer County, should be admonished for making inappropriate Facebook posts and making public comments on Facebook concerning pending proceedings. Beginning in August 2019, while he was a candidate for town court justice, a position he had previously held from 2000 through 2015, Judge Schmidt did the following on his Facebook account: (1) He posted a meme implying that former President Bill Clinton killed Jeffrey Epstein. (2) He linked to another Facebook post supporting a candidate for town council, on which he liked a comment supporting the candidate. (3) He posted a meme depicting a witch trial hanging that read, "JUST A REMINDER…SALEM, MASSACHUSETTS HAD 'RED FLAG' LAWS, TOO." (4) He posted a meme reading "WHAT DOES THE SHEEP SAY? WE NEED COMMON SENSE GUN CONTROL." (5) He posted a meme displaying a photo of a Nazi book burning with the text, "BOOK BURNINGS DON'T JUST LOOK LIKE THIS," above a second image showing a social media platform warning that posts in violation of the platform's guidelines will be removed, with the text "THEY ALSO LOOK LIKE THIS." (6) After completing his first nighttime arraignment of his new term, he posted "Feel like a judge again," to which another user asked if the defendant had been released before the judge got back to bed; Judge Schmidt responded, "of course. This is NY 2020." (7) He made posts about two different pending cases in which the defendants had been released under the new bail laws. The Commission found that Judge Schmidt "undermined public confidence" in the judiciary when he made Facebook posts which contained "undignified and disrespectful statements including regarding laws that he would be required to uphold as a judge." The Commission also noted that it is "well-settled that judges are strictly prohibited from commenting on any pending cases." Judge Schmidt, who is not an attorney, did not request review by the Court of Appeals.

OTHER PUBLIC DISPOSITIONS

The Commission completed nine other proceedings in 2020 that resulted in public dispositions. The cases are summarized below and the full text can be found in Appendix F. Two of the matters were concluded during the investigative stage, and seven after formal proceedings had been commenced.

Matter of Matthew A. Rosenbaum

On January 23, 2020, pursuant to a stipulation, the Commission closed its investigation of a complaint against Matthew A. Rosenbaum, a Justice of the Supreme Court, Monroe County, who resigned from office after the Commission advised him that he was being investigated for abusive personal demands on staff and creating a hostile workplace environment for years. The complaint

against Judge Rosenbaum alleged that, "from 2005 through 2019, he made improper and at times abusive personal demands of court staff, directly or indirectly conveying that continued employment required submitting to such demands, and creating a hostile workplace environment." Judge Rosenbaum agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Douglas E. Gardner

On March 13, 2020, pursuant to a stipulation, the Commission discontinued a proceeding involving Douglas E. Gardner, a Justice of the Manheim Town Court, Herkimer County, who resigned from office after being served with a Formal Written Complaint containing eight charges for among other things (1) mishandling court funds resulting in a deficiency of almost $1,300; (2) driving for more than eight years without a valid driver's license; and (3) failing to mechanically record court proceedings as required. Judge Gardner, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Robert Cicale

On April 2, 2020, pursuant to a stipulation, the Commission discontinued a proceeding involving Robert Cicale, a Justice of the District Court, Suffolk County. Judge Cicale had been suspended from office, without pay, following his guilty plea on November 15, 2019, to one count of Attempted Burglary in the Second Degree. He resigned from office after the Commission authorized a Formal Written Complaint arising from his felony conviction. Despite his November 2019 guilty plea, the judge had not resigned from office which prevented the court from replacing him. In agreeing to resign the judge affirmed that he would neither seek nor accept judicial office at any time in the future.

Matter of Marc A. Seedorf

On April 2, 2020, pursuant to a stipulation, the Commission discontinued a proceeding involving Marc A. Seedorf, a Justice of the Lewisboro Town Court, Westchester County. Judge Seedorf had been suspended from office, without pay, following his guilty plea on December 6, 2019, to tax evasion in federal court. He resigned from office after the Commission authorized a Formal Written Complaint arising from his felony conviction. Despite his December 2019 guilty plea, the judge had not resigned from office which prevented his community from replacing him. In agreeing to resign the judge, who is an attorney, affirmed that he would neither seek nor accept judicial office at any time in the future.

Matter of William B. Rebolini

On April 30, 2020, pursuant to a stipulation, the Commission discontinued a proceeding involving William B. Rebolini, a Justice of the Supreme Court, Suffolk County, who resigned from office after being served with a Formal Written Complaint for conduct relating to his arrest for drunken driving, including his assertion of his judicial title to avoid the consequences. Judge Rebolini agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Gladys C. Branagan

On August 6, 2020, pursuant to a stipulation, the Commission discontinued a proceeding involving Gladys C. Branagan, a Justice of the Plymouth Town Court, Chenango County, who resigned from office after being served with a Formal Written Complaint for the improper or untimely execution of various judicial duties, such as reporting and accounting for court cases and funds, and her failure to cooperate with inquiries into such matters by various government agencies. Judge Branagan, who is not an attorney, agreed that she would neither seek nor accept judicial office at any time in the future.

Matter of ShawnDya L. Simpson

On August 6, 2020, pursuant to a stipulation, the Commission discontinued a retirement proceeding involving ShawnDya L. Simpson, a Justice of the Supreme Court, Kings County. Judge Simpson was apprised in October 2019 that the Commission was investigating complaints against her alleging (1) that her demeanor toward litigants, lawyers and others had become erratic and at times intemperate; and (2) that she was frequently absent from court, arriving very late or leaving very early, or not arriving at all, despite the fact that she was scheduled to preside. In the course of its investigation, the Commission learned that Judge Simpson was suffering from Alzheimer's Disease, which had reached an advanced stage uncommon for someone of her age. Her medical records indicated that she had not been diagnosed with the disease at the time of the incidents the Commission was originally investigating. Judge Simpson was served with a Formal Written Complaint dated March 27, 2020, containing one charge: that she should be retired from judicial office for a medical disability. Judge Simpson agreed that she would neither seek nor accept judicial office at any time in the future.

Matter of Michael L. Hanuszczak

On September 17, 2020, pursuant to a stipulation, the Commission discontinued a proceeding involving Michael L. Hanuszczak, a Judge of the Family Court and an Acting Justice of the Supreme Court, Onondaga County, who resigned from office after (1) being charged by the Commission with uninvited, unwelcome kissing and otherwise inappropriate behavior toward two female court staff; and (2) a hearing officer sustained the charges. Judge Hanuszczak agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Ambrose P. Madden

On September 17, 2020, pursuant to a stipulation, the Commission closed its investigation of a complaint against Ambrose P. Madden, a Justice of the Fenton Town Court, Broome County, who resigned from office after the Commission advised him that it was investigating complaints alleging that (1) his improper demeanor toward and treatment of his court clerks caused three of four them to resign; and (2) he presided over matters involving residents of a local youth home and warned them of the consequences of misbehavior at the home, including the possibility of jail time, in the absence of counsel for the youth. Judge Madden, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

OTHER DISMISSED OR CLOSED FORMAL WRITTEN COMPLAINTS

The Commission disposed of two Formal Written Complaints in 2020 without rendering public disposition. One complaint was dismissed, and a Letter of Dismissal and Caution was issued, upon a finding by the Commission that while judicial misconduct was not established, the judge's conduct warranted a confidential suggestion and recommendation. Another complaint was closed upon the vacancy of the judge's office due to reasons other than resignation, such as the expiration of the judge's term.

MATTERS CLOSED UPON RESIGNATION

In 2020, 19 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, all pursuant to public stipulation. Twelve judges resigned while under investigation, two 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 22 matters to other agencies. Eighteen 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. Three matters were referred to OCA, the Office of the State Comptroller, and the local district attorney's office.

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(l) 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 2020, the Commission issued 34 Letters of Dismissal and Caution. Seventeen town or village justices were cautioned, including eight who are lawyers. Seventeen 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 engaging in prohibited charitable fundraising by allowing his name to be used in a flyer soliciting funds for a charity.

Audit and Control. One judge was cautioned for neglecting his administrative and adjudicative duties which delayed the remittal of $6,000 in court funds to the Village and the Justice Court Fund as required, and for making incomplete notifications to the Department of Motor Vehicles to suspend licenses as the Vehicle and Traffic Law requires.

Conflicts of Interest. All judges are required by the Rules to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned. Two judges were cautioned for various isolated or promptly redressed conflicts of interest. One judge presided over a case after identifying the litigant's role in a prior automobile accident involving the judge's spouse. Another judge, upon becoming a full-time judge, continued to serve as the executor of a non-relative's estate despite rules to the contrary.

Delay. One judge was cautioned for delay in rendering decisions on motions in criminal cases.

Finances. Seven 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. One judge was cautioned for failing to file his financial disclosure form within 20 days of announcing his candidacy for judicial office. All of these were first-time violations. The Commission notes that material omissions or repeated instances of such tardiness could subject the judge to public discipline.

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. Five judges were cautioned for being discourteous or making inappropriate statements to litigants and attorneys who appeared before them.

Improper *Ex Parte* Communications. Three judges were cautioned for engaging in isolated and relatively minor instances of unauthorized out-of-court communications. One judge had two decisions edited by an individual not on her staff or otherwise employed by the courts. Another judge initiated *ex parte* email communications with appellate judges reviewing two of her decisions. A third judge called a party to a small claims case before rendering a decision.

Political Activity. Four judges were cautioned for engaging in improper political activity. One allowed the solicitation of campaign contributions in his name via email, contrary to the Rule prohibiting a judicial candidate from personally soliciting such funds. Two judges were cautioned for making relatively minor inaccurate claims on campaign materials. A fourth judge was cautioned for failing to obtain the required approval of the Chief Administrative Judge before issuing campaign literature containing a photograph of himself in a judicial robe in the courtroom, and for endorsing another candidate.

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). Seven judges were cautioned for relatively isolated incidents of violating or not protecting the rights of parties appearing before them. One judge was cautioned for knowingly setting bail contrary to statute. Four other judges were cautioned for requiring certain Vehicle and Traffic Law defendants to post a financial undertaking akin to bail before pleading not guilty. Another judge was cautioned for imposing fines in excess of the legal maximum. A seventh judge was cautioned for setting bail and issuing a securing order without having the defendant appear or affording him the right to be heard.

Follow Up on Caution Letters. Should the conduct addressed by a cautionary letter continue or be repeated, the Commission may authorize an investigation of a new complaint, which may lead to formal charges and further disciplinary proceedings. In certain instances, the Commission will authorize a follow-up review of the judge's conduct to assure that promised remedial action was indeed taken. In 1999, the Court of Appeals, in upholding the removal of a judge who *inter alia* used the power and prestige of his office to promote a particular private defensive driver program, noted that the judge had persisted in his conduct notwithstanding a prior caution from the Commission that he desist from such conduct. *Matter of Assini v Commission on Judicial Conduct*, 94 NY2d 26 (1999).

COMMISSION DETERMINATON REVIEWED BY THE COURT OF APPEALS

Pursuant to statute, a respondent-judge has 30 days to request review of a Commission determination by the Court of Appeals, or the determination becomes final. In 2020, three respondent-judges who were disciplined by the Commission requested review by the Court of Appeals. The Court of Appeals upheld the Commission's determination of removal in two of those cases in the normal course. The respondent-judge in the third case withdrew his request, after which the Court issued an order confirming the Commission's determination to remove him.

Matter of Senzer

On October 9, 2019, the Commission determined that Northport Village Court Justice Paul H. Senzer – a part-time judge who maintained a private legal practice – should be removed from his judicial office for misconduct in which he engaged while practicing law. Judge Senzer denigrated his adversary, his adversary's clients, and officers of the court "in profane, vulgar and sexist terms" by referring to his female adversary as a "[C-word] on wheels" and "eyelashes," repeatedly calling the opposing litigant a "bitch," and referring to a court referee an "asshole." That repeated "use of vulgar and sexist language," the Commission found, represented "a pattern of statements that undermines respect for women and the legal system as a whole," which warranted his removal from judicial office even though he made those statements privately and while acting as an attorney.

On November 4, 2019, Judge Senzer requested review of the Commission's determination by the Court of Appeals. On June 23, 2020, the Court accepted the Commission's determination that Judge Senzer should be removed from office. The Court found that:

> [P]etitioner's statements were manifestly vulgar and offensive, and his repeated use of such language in written communications to insult and demean others involved in the legal process showed a pervasive disrespect for the system. . . . [H]is use of an intensely degrading and "vile" (*Matter of Assini*, 94 N.Y.2d 26, 29, 698 N.Y.S.2d 605, 720 N.E.2d 882 [1999]) gendered slur to describe a female attorney, as well as petitioner's demeaning reference to her as "eyelashes," are especially disturbing; it is critical to our judicial system that judges "conduct themselves in such a way that the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property" (*Matter of Duckman*, 92 N.Y.2d 141, 153, 677 N.Y.S.2d 248, 699 N.E.2d 872 [1998] [internal quotation marks and citation omitted]).

Matter of Miller

On February 14, 2020, the Commission determined that Broome County Family Court Judge Richard H. Miller, II, should be removed from his judicial office for making "sexist," "improper," and "deamean[ing]" comments to two female court employees, permitting his secretary to draft a

letter in another person's name to seek payment for legal work he had performed prior to becoming a full-time judge, and disregarding his duty to accurately file required financial disclosure and tax documents with state and federal authorities. The Commission rejected Judge Miller's argument that his conduct merited only a censure, noting – among other things – that he had already been censured by the Commission once before.

On March 9, 2019, Judge Miller requested review of the Commission's determination by the Court of Appeals. On October 15, 2020, the Court accepted the Commission's determination that Judge Miller should be removed from office. The Court found that:

> [Although] the[ ] proven instances of injudicious behavior [with respect to the female court employees] were not "numerous[ ]" . . . it is "the nature of the proven wrongdoing as well as the numbers that determine the appropriate sanction" (*Duckman*, 92 N.Y.2d at 154, 677 N.Y.S.2d 248, 699 N.E.2d 872 [emphasis added]), and the misconduct at issue was compounded by petitioner's retaliation against [one of the women] when she complained of his conduct.
> . . .
>
> [T]he conduct underlying [petitioner's financial reporting deficiencies] is particularly troubling to this Court. Although "careless omissions from a financial disclosure statement are not the type of 'truly egregious' conduct that warrants removal from office" (*Matter of Alessandro [State Commn. on Jud. Conduct]*, 13 N.Y.3d 238, 249, 889 N.Y.S.2d 526, 918 N.E.2d 116 [2009]), petitioner's years-long delay in filing required local financial disclosure forms, together with his failure to amend both his tax returns and 2015 [NYS Financial Disclosure Form] until he was under investigation, impedes the purpose of these disclosure forms. . . . [Petitioner's actions] point[ ] to a pattern of disregard for his ethical obligations . . . [and] suggest[ ] deliberate deceptive conduct (*see Matter of Moynihan*, 80 N.Y.2d 322, 325, 590 N.Y.S.2d 74, 604 N.E.2d 136 [1992]).

Matter of McGuire

On March 18, 2020, the Commission determined that Sullivan County and Surrogate's Courts Judge, Acting Family Court Judge, and Acting Supreme Court Justice Michael F. McGuire should be removed from his judicial office for multiple acts of misconduct that included disregarding the rule of law, abusing his summary contempt powers, failing to follow "basic due process safeguards" before depriving litigants of their liberty, "scream[ing]" and "yell[ing]" at litigants and court staff, practicing law while serving as a full-time judge, directing his court secretary to participate in his improper practice of law and to work on certain Saturdays without compensation, failing to disclose a conflict or disqualify himself from several matters in which his personal friend appeared as counsel, and using his judicial title in his personal email address and private business dealings. The Commission found Judge McGuire's "lack of candor" to be "a significant

aggravating factor," and that in the aggregate, his "truly egregious" misconducted warranted removal from office.

On March 23, 2020, the Court requested comment on whether Judge McGuire should be suspended from his judicial office. On April 15, 2020, Judge McGuire requested review of the Commission's determination by the Court of Appeals. On April 20, 2020, the Commission responded to the Court's request for comment on suspension, advising the Court, *inter alia*, of published reports that Judge McGuire was being appointed as the Sullivan County Attorney. On April 30, 2020, the Court suspended Judge McGuire.

In May 2020, after his appointment as Sullivan County Attorney took effect, Judge McGuire sought to withdraw his request for review. On August 26, 2020, the Court of Appeals issued an order accepting the withdrawal and removing Judge McGuire from office.

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.

Bias and Equal Justice in the Courts

In May 2020, Minneapolis police officer Derek Chauvin was charged with homicide in the death of George Floyd, an African American man who died in police custody. Chauvin was videotaped pressing his knee on Mr. Floyd's neck for several minutes while the victim said he could not breathe.

Mr. Floyd's death, which was one of many high-profile tragedies around the country in which Black citizens died at the hands of police officers, generated an intense, prolonged national examination of racial and cultural inequalities in our social, political and legal institutions, as well as in our daily lives.

Special Advisor on Equal Justice in the New York State Courts

In June 2020, Chief Judge DiFiore asked Jeh Johnson, former Secretary of Homeland Security, to head a study of racial and other cultural biases in the New York State court system. Secretary Johnson issued a 100-page report on October 15, 2020, noting that his team had interviewed or heard from over 300 individuals or organizations, including the Commission.

Secretary Johnson's Equal Justice Report ("Report") is available on the court system website. Among other things, it describes the history and structure of the New York court system, chronicles a history of bias with illustrative examples, and makes several recommendations, primarily aimed at raising awareness of institutional, implicit, systemic bias and cultural insensitivity, such as:

- Comprehensive mandatory bias training for judges and court employees
- Addressing implicit bias in the introductory video shown to prospective jurors
- Developing clear guidelines for court employees regarding their professional or personal use of social media, with an emphasis on avoiding racial or cultural insensitivity, which reflects poorly on the court system when espoused by people associated with the system
- Initiating "best practices" for the reporting and investigation of bias complaints in the court system
- Proposing legislation, rules or procedures that address bias
- Improving translation services
- Committing human resource professionals to improve diversity in the workforce

The Commission is substantively mentioned twice. The Report notes that our website and the OCA website do not make clear that complaints against judges or court employees may be submitted anonymously (Report p 89). The Report also suggests that the Commission and the OCA Inspector General report annually to the Court of Appeals on the number of bias complaints received each year, and their disposition (Report p 90).

Both recommendations as to the Commission have been implemented. As to anonymous complaints, our website now includes the following explanation of our policy and practice regarding. It reads as follows:

> Yes [a complaint may be submitted anonymously]. However, because we cannot contact the complainant to obtain additional details and corroborating evidence, it is often difficult to investigate anonymous complaints and the Commission is very cautious about proceeding without specific and verifiable information. A mere accusation will not suffice. An anonymous complaint should include detailed information about the alleged misconduct that may be verified, such as the names of witnesses who may have seen the misconduct, case names and the names of the parties or lawyers if the alleged misconduct occurred in connection with a court case, relevant dates and places, and as specific a description as possible of the alleged misconduct. If investigation of an anonymous complaint were authorized, the Commission's Administrator would summarize and sign it, according to statute.

As to annual statistics regarding complaints alleging bias, the Commission has always reported such numbers in its annual reports, though without breaking them down between complaints alleging bias for or against a particular litigant or attorney versus bias based on the broader basis of race, culture, religion or ethnicity. Beginning with this annual report, we offer such breakdowns in the appended statistical charts.

On its own initiative, the Commission modified the standard presentation its representatives make at training programs for new judges and refresher programs for incumbent judges, adding a unit on bias in the courts and the obligation incumbent on judges to refrain from and discourage it.

The Responsibility of Judges

While Secretary Johnson's Report identified instances of biased behavior among certain court employees that brought the court system into disrepute, it did not particularly address what role or responsibility judges might bear in this regard, or what role the Commission has played historically in identifying and disciplining judges for behavior that was biased. However, in an address to the New York State Bar Association on January 29, 2021, which was reported by the New York Law Journal, Secretary Johnson was quoted as follows: "Time and time again, we would hear stories about inhumane, degrading treatment by court officers toward litigants, litigants of color… And sometimes the answer was: The judge looks the other way or the judge doesn't want to wrestle with a difficult issue. The judge is happy with his or her court officer and doesn't want to get in a

fight with the union."[1] To be sure, representatives of various court employee organizations have taken issue with such broad characterizations of their members. And of course, the Commission's constitutional jurisdiction is limited to ethics-enforcement as to judges and does not extend to court employees.

To underscore Secretary Johnson's point, however, that judges are responsible for more than their own behavior, the Rules Governing Judicial Conduct require judges:

- to observe high standards of conduct, dignity and decorum themselves. 22 NYCRR 100.1, 100.3(B)(2);
- to avoid 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" 22 NYCRR 100.2(C);
- to be patient, dignified and courteous toward all with whom they engage in official business. 22 NYCRR 100.3(B)(2);
- to avoid words or conduct that "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" 22 NYCRR 100.3(B)(4);
- to "require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct" 22 NYCRR 100.3(B)(4); and
- to "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" 22 NYCRR 100.3(B)(5).

In its 42-year history, the Commission has disciplined a number of judges who have themselves engaged in biased or prejudicial behavior and/or have tolerated or encouraged it in others. For example:

- In *Matter of Canning (2019),* a Town Court Justice resigned and agreed never to return to the bench, as the Commission investigated him for publishing the image of a noose on social media while calling for people to fear such punishment.[2]

[1] Available online at https://www.law.com/newyorklawjournal/2021/01/29/johnson-says-judges-should-check-intolerance-hostility-in-courtrooms/?LikelyCookieIssue=true
[2] http://cjc.ny.gov/Determinations/C/Canning.htm

- In *Matter of Senzer (2019)*, a Village Court Justice was removed from office for *inter alia* referring to a participant in a judicial proceeding as a "[C word] on wheels."[3]
- In *Matter of Hallett (2018)*, a Town Court Justice resigned and agreed never to return to the bench, as the Commission investigated him for making homophobic comments to an attorney who appeared before him.[4]
- In *Matter of Ellis (2007)*, a Town Court Justice was removed from office for telling a couple in court that they should stop "jewing" other landlords, by which he meant "swindling or cheating."[5]
- In *Matter of Pennington (2005)*, a Village Court Justice was removed from office for repeated use of the "N word" and referring to Black people as "colored."[6]
- In *Matter of Assini (1999)*, a Town Court Justice was removed from office for *inter alia* referring to another judge as an "[F word][C word]."[7]
- In *Matter of Mulroy (1999)*, a County Court Judge was removed from office for *inter alia* telling the prosecutor in a murder case that the victim was just "some old [N word] bitch."[8]
- In *Matter of Romano (1998)*, a Town Court Justice was removed from office for *inter alia* making gender-biased remarks in the course of presiding over domestic assault and sexual abuse matters which, in one instance, encouraged the defense attorney to do the same.[9]
- In *Matter of Schiff (1993)*, a Village Court Justice was removed from office for saying to attorneys that it was safe for young women to walk the streets "before the Blacks and Puerto Ricans moved here."[10]
- In *Matter of Ain (1992)*, a County Court Judge was censured for saying to an attorney, "You're not an Arab, are you?" and "what the [F word] do you people want anyway?"[11]
- In *Matter of Cook (1986)*, a Town Court Justice was removed from office for referring to "those damn Puerto Ricans" and for saying, "I have a less favorable opinion toward colored people."[12]

[3] http://cjc.ny.gov/Determinations/S/Senzer.htm, aff'd, 35 NY3d 216 (2020)
[4] http://cjc.ny.gov/Determinations/H/hallett.htm
[5] http://cjc.ny.gov/Determinations/E/ellis,_jerome.htm
[6] http://cjc.ny.gov/Determinations/P/pennington_(2).htm
[7] http://cjc.ny.gov/Determinations/A/assini,_charles.htm, aff'd, 94 NY2d 26 (1999)
[8] http://cjc.ny.gov/Determinations/M/mulroy.htm, aff'd 94 NY2d 652 (2000)
[9] http://cjc.ny.gov/Determinations/R/romano.htm
[10] http://cjc.ny.gov/Determinations/S/schiff.htm, aff'd, 83 NY2d 689 (1994)
[11] http://cjc.ny.gov/Determinations/A/ain.htm
[12] http://cjc.ny.gov/Determinations/C/cook,_curtis.htm

- In *Matter of Agresta (1984)*, a Supreme Court Justice was censured shortly before he retired for referring in open court to a potential co-defendant as "another [N word] in the wood pile."[13]
- In *Matter of Fabrizio (1984)*, a Town Court Justice was removed from office for *inter alia* repeatedly referring to Blacks as the "N word" and referring to Hispanics as "spick."[14]
- In *Matter of Cerbone (1983)*, a Town Court Justice was removed from office for *inter alia* referring to three Black men in a bar with the "N word" and as "black bastards" and threatened to "hang" them if they appeared in his court.[15]
- In *Matter of Aldrich (1982)*, a County Court Judge was removed from office for uttering racial epithets to a security guard, telling youthful-offender defendants that they would be "raped" in jail by "N word" prisoners and referring to a female public official as a "C word" in the course of a case conference.[16]
- In *Matter of Bloodgood (1981)*, a Town Court Justice was removed from office for referring to a traffic defendant, in writing, with the "K word" as a slur against a person he believed to be Jewish.[17]
- In *Matter of Kuehnel (1979)*, a Town and Village Court Justice was removed from office for *inter alia* referring to a group of youths as "Black bastards" and the "N word."[18]

While the foregoing examples do not represent the judiciary as a whole, together with Secretary Johnson's report, they do underscore that biased behavior exists at all levels of our courts and society. For its part, and as its record demonstrates, the Commission takes its judicial ethics enforcement responsibilities seriously. While every case before the Commission is considered on its merits, and while racial, cultural, ethnic, religious and gender biased behavior did not always result in removal from office,[19] it should be clear now that as the body of judicial disciplinary law has developed over the years, there is little tolerance for a judge who utters such offensive language or otherwise engages in egregious misbehavior.

[13] http://cjc.ny.gov/Determinations/A/agresta.htm, aff'd, 64 NY2d 317 (1985)
[14] http://cjc.ny.gov/Determinations/F/fabrizio.htm, 65 NY2d 275 (1985)
[15] http://cjc.ny.gov/Determinations/C/cerbone,_v.htm, aff'd, 61 NY2d 93 (1984)
[16] http://cjc.ny.gov/Determinations/A/aldrich.htm, aff'd, 58 NY2d 279 (1983)
[17] http://cjc.ny.gov/Determinations/B/bloodgood.htm
[18] http://cjc.ny.gov/Determinations/K/kuehnel.htm
[19] http://cjc.ny.gov/Determinations/S/Sweetland.Edwin.R.1988.11.21.pdf

THE COMMISSION'S BUDGET

Imagination and sacrifice are required throughout government in these stressful pandemic times, as state agencies endeavor to meet their constitutional responsibilities in challenging circumstances. The Commission met that challenge in 2020, rendering 24 public disciplines – more than any other year in over a decade – despite having to shift to an agency-wide work-from-home protocol. We did so notwithstanding a full-time staff of only 39, down from the 51 staff members we had in 2007, a reality imposed by a "flat" budget of $6,026,000. Yet because of the fiscal impact of the ongoing pandemic, we requested that same dollar amount for the coming fiscal year, even though our resources are already stretched to the limit. As a small agency, our contractually mandated costs, such as rent and employee benefits, comprise a significant and annually increasing part of our budget. To meet such rising costs, we will continue to economize by deferring the replacement of departing staff or obsolete equipment. We will also strive to spend less than our full appropriation, recognizing the financial stress all of state government is facing.

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	6.0m	1504[3]	318	120	177[4]	24	39
2021	6.0m[5]	~	~	~	~	~	~

[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] The decrease in complaints from 2019 to 2020 is likely due to the fact that the courts were closed for a substantial part of the year due to the coronavirus pandemic. At the same time, the number of matters pending at year's end decreased 23%, even with staffing at its lowest level in 13 years, because there was more time to devote to such matters.
[4] See fn 3.
[5] Proposed

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*
TAA GRAYS, ESQ., *VICE CHAIR*
HON. FERNANDO M. CAMACHO
JODIE CORNGOLD
HON. JOHN A. FALK
PAUL B. HARDING, ESQ.
HON. ANGELA M. MAZZARELLI
HON. ROBERT J. MILLER
MARVIN RAY RASKIN, ESQ.
RONALD J. ROSENBERG, 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	3/31/2024
Taa Grays	Senate President Pro Tem Andrea Stewart-Cousins	2017	3/31/2023
Fernando M. Camacho	Chief Judge Janet DiFiore	2021	3/31/2024
Jodie Corngold	Governor Andrew M. Cuomo	2013	3/31/2023
John A. Falk	Chief Judge Janet DiFiore	2017	3/31/2021
Paul B. Harding	(Former) Assembly Minority Leader Brian M. Kolb	2006	3/31/2021
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
Ronald J. Rosenberg	(Former) Senate Minority Leader John J. Flanagan	2020	3/31/2024
Akosua Garcia Yeboah	Governor Andrew M. Cuomo	2016	3/31/2021

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

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

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.

Paul B. Harding, Esq., 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 previously sat 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.

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. Justice Miller is the Chair of the New York State Ethics Commission and is a member of the New York State-Federal Judicial Council.

Marvin Ray Raskin, Esq., is a graduate of New York Law School, where he served as Editor-in-Chief of the law school publication 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 40 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 Mayors Bloomberg and DiBlasio. 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, The New York Law Journal award for Attorney's Who Lead by Example, and the President's Award for Extraordinary Service Award by the Bronx County Bar Association. Mr. Raskin regularly lectures on criminal law and procedure and legal ethics in the metropolitan area and has been an Adjunct Assistant Professor at the Herbert H. Lehman College of the City University of New York.

Ronald J. Rosenberg, Esq., is a graduate of Hofstra University and St. John’s University School of Law. He is a senior partner with the Garden City firm of Rosenberg Calica & Birney LLP. His practice includes commercial, business, real estate, land use and municipal litigations and transactions and business entity formation and litigation. Mr. Rosenberg began his career as

an associate with a Manhattan law firm and later started his own firm, the Law Offices of Ronald J. Rosenberg. He previously served as Chair of the Banking Committee and as a member of the Judiciary Committee of the Nassau County Bar Association. He has been a member of the Florida Bar since 1979. He has also been appointed by various Supreme Court Justices to serve as a Special Referee, Referee, and Receiver. Mr. Rosenberg is a featured columnist in the Long Island Business News and has appeared on television as a legal commentator on various news shows including "Good Day, New York."

Akosua Garcia Yeboah received her B.A. from the State University of New York at New Paltz and holds a Master of Science degree in Urban Planning and Environmental Studies from Rensselaer Polytechnic Institute. She is a former Senior Information Technology Project Manager for the City of Albany. She previously worked for the IBM Corporation as a Systems Engineer and I.T. Consultant. Ms. Yeboah is a former member of the Attorney Grievance Committee of the Appellate Division, Third Department. She also served as a member of the Commission on Statewide Attorney Discipline. Ms. Yeboah served two terms on the Albany Citizen's Police Review Board as a Board member and as Secretary of the Board. She was also 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

Honorable Leslie G. Leach served on the Commission from 2016 to 2020. He is a graduate of Queens College, CUNY, the University of Massachusetts, with an MS in labor studies, and Columbia Law School. He previously served 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.

APPENDIX B: BIOGRAPHIES OF COMMISSION ATTORNEYS

Eric Arnone, *Senior Attorney,* is a graduate of New York University (magna cum laude) and Brooklyn Law School. Prior to joining the Commission Staff, he served for ten years as an Assistant District Attorney in Manhattan where he was assigned to the Trial Division, Homicide Investigations Unit and the Violent Criminal Enterprises Unit. After leaving the Manhattan D.A., he entered private practice with a focus on criminal defense and both state and federal civil litigation.

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, *Former 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, *Senior 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.

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.

Kathleen E. Klein, *Senior Attorney,* is a graduate of State University of New York College at Fredonia (cum laude) and Pace University School of Law where she was a Merit Scholarship recipient. Prior to joining the Commission Staff, she served as a Senior Assistant District Attorney with the Ulster County District Attorney's Office. She worked in private practice as a litigator, but began her career negotiating contracts for fractional aircraft ownership for CitationShares Sales, Inc. in Greenwich, Connecticut.

Adam B. Kahan, *Staff Attorney,* is a graduate of Duke University (summa cum laude) and University of Virginia School of Law, where he served as Articles Editor for the Virginia Journal of International Law. Prior to joining the Commission Staff, he was in private practice focusing on capital markets and private fund formation at Simpson Thacher & Bartlett in Manhattan.

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, *Former 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.

David Stromes, *Litigation Counsel,* is a graduate of Brandeis University and Brooklyn Law School. Prior to joining the Commission's staff, he served for nearly 12 years as an Assistant District Attorney in the Appeals Division of the New York County District Attorney's Office. He also has taught Appellate Advocacy as an adjunct professor at Brooklyn Law School.

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.

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 2020

Referee	City/Town	County
Mark S. Arisohn, Esq.	Tuckahoe	Westchester
Robert A. Barrer, Esq.	Syracuse	Onondaga
A. Vincent Buzard, Esq.	Pittsford	Monroe
Cristine Cioffi, Esq.	Schenectady	Schenectady
Linda J. Clark, Esq.	Albany	Albany
David M. Garber, Esq.	Syracuse	Onondaga
Thomas F. Gleason, Esq.	Albany	Albany
Ronald Goldstock, Esq.	Larchmont	Westchester
Michael J. Hutter, Esq.	Albany	Albany
Gregory S. Mills, Esq.	Clifton Park	Saratoga
Hugh H. Mo, Esq.	New York	New York
Jane W. Parver, Esq.	New York	New York
Margaret M. Reston, Esq.	Rochester	Monroe
James T. Shed, Esq.	New York	New York

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. Fernando M. Camacho (2021-present)
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 (2016-20)
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)
Ronald J. Rosenberg (2020-present)
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, 61,971 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 52,541 were dismissed upon initial review or after a preliminary review and inquiry, and 9,430 investigations were authorized. Of the 9,430 investigations authorized, the following dispositions have been made through December 31, 2020:

- 1,191 complaints involving 886 judges resulted in disciplinary action (this does not include the 97 public stipulations in which judges agreed to vacate judicial office). (See details below and on the following page.)
- 1,839 complaints resulted in cautionary letters to the judge involved. The actual number of such letters totals 1,694, 92 of which were issued after formal charges had been sustained and determinations made that the judge had engaged in misconduct.
- 889 complaints involving 615 judges were closed upon resignation of the judge during investigation or in the course of disciplinary proceedings.
- 633 complaints were closed upon vacancy of office by the judge other than by resignation.
- 4,701 complaints were dismissed without action after investigation.
- 177 complaints are pending.

Of the 1,191 disciplinary matters against 886 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 101 decisions by the Court of Appeals, 16 of which modified a Commission determination.

- 173 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);
- 368 judges were censured publicly;
- 280 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 101 determinations filed by the present Commission. Of these 101 matters:

- The Court accepted the Commission's sanctions in 85 cases (76 of which were removals, 6 were censures and 3 were admonitions);
- The Court increased the sanction from censure to removal in 2 cases;
- The Court reduced the sanction in 13 cases:
  - 9 removals were modified to censures;
  - 1 removal was modified to admonition;
  - 2 censures were modified to admonitions; and
  - 1 censure was rejected and the charges were dismissed.
- The Court remitted 1 matter to the Commission for further proceedings.

APPENDIX E: RULES GOVERNING JUDICIAL CONDUCT

22 NYCRR § 100 *et seq.*

Rules of the Chief Administrator of the Courts Governing Judicial Conduct

Preamble

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) a school, college or university that is financially supported primarily by New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for a lecture or for teaching a regular course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or (3) any private legal aid bureau or society 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 a campaign ethics education program developed or approved by the Chief Administrator or his or her designee within 30 days after the candidate makes a public announcement of candidacy, files a designating petition with the Board of Elections, receives a nomination for judicial office, or authorizes solicitation or acceptance of contributions, whichever is earliest. Written proof of compliance must be filed with the Judicial Campaign Ethics Center within 14 days of completing the training, unless the candidate is granted a waiver of this requirement for good cause shown. 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(i)(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 shall 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) on Feb. 14, 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
Deleted 100.5(A)(7) on May 7, 2019, effective May 6, 2019
Amended 100.5 (A)(4)(f) on January 13, 2020, effective January 31, 2020

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 sections 100.4(C)(1), 100.4(C)(2)(a), 100.4(C)(3)(a)(ii), 100.4(E)(1), 100.4(F), 100.4(G), and 100.4(H);

(2) shall not practice law in the court on which the judge serves, or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;

(3) shall not permit his or her partners or associates to practice law in the court in which he or she is a judge, and shall not permit the practice of law in his or her court by the law partners or associates of another judge of the same court who is permitted to practice law, but may permit the practice of law in his or her court by the partners or associates of a judge of a court in another town, village or city who is permitted to practice law;

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

(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 sections 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 on Mar. 24, 2010

APPENDIX F:

DECISIONS RENDERED BY THE COMMISSION IN 2020

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

GLADYS C. BRANAGAN,

a Justice of the Plymouth Town Court,
Chenango County.

DECISION
AND
ORDER

– –

THE COMMISSION:

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

APPEARANCES:

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

Honorable Gladys C. Branagan, pro se

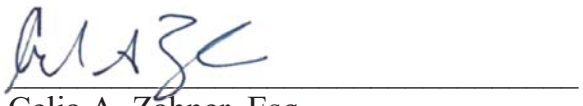
The matter having come before the Commission on August 6, 2020; and the Commission having before it the Stipulation dated July 22, 2020; and respondent having

been served with a Formal Written Complaint dated May 14, 2020; having tendered her resignation from the Plymouth Town Court by letter dated July 13, 2020, effective August 31, 2020; and having affirmed that she will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order 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 6, 2020



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

GLADYS C. BRANAGAN, **STIPULATION**

a Justice of the Plymouth Town Court,
Chenango 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 Gladys C. Branagan ("Respondent"), as follows:

1. Respondent initially served as a Justice of the Plymouth Town Court, Chenango County, from January 1, 2000, to December 31, 2007. After being out of office for over a decade, Respondent was elected to a new term as a Justice of the Plymouth Town Court, which began on January 1, 2019, and expires on December 31, 2022. Respondent is not an attorney.

2. Respondent was served with a Formal Written Complaint dated May 14, 2020, containing five charges related to her prior service as Plymouth Town Court Justice.[1] The charges included the improper or untimely execution of various judicial duties, such as reporting and accounting for court cases and funds, and her failure to

[1] The Commission was investigating the matters herein when its jurisdiction ended upon the expiration of Respondent's previous term of office as Plymouth Town Court Justice on December 31, 2007. Her return to office revived the Commission's jurisdiction. *See Matter of Bailey*, 67 NY2d 61 (1986).

cooperate with investigations or inquiries into such matters by appropriate government agencies. A copy of the Formal Written complaint is appended as Exhibit 1.

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

4. Respondent has tendered her resignation, dated July 13, 2020, and effective August 31, 2020. A copy is appended as Exhibit 2.

5. 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.

6. Respondent affirms that, upon vacating her judicial office on August 31, 2020, she will neither seek nor accept judicial office at any time in the future.

7. Respondent understands that, should she abrogate the terms of this Stipulation and hold any judicial position at any time after August 31, 2020, the present proceedings before the Commission will be revived and the matter will proceed to a hearing before a referee.

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

9. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (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: 7-13-2020

Honorable **Gladys C. Branagan**
Respondent

Dated: July 22, 2020

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 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

WILLIAM A. CARTER,

a Judge of the County Court,
Albany 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 (Cathleen S. Cenci, Of Counsel) for the Commission

Stephen F. Downs for respondent

Respondent, William A. Carter, a Judge of the County Court, Albany County, was served with a Formal Written Complaint dated December 17, 2019, containing two charges. Respondent filed an Answer dated January 17, 2020. Charge I of the Formal

Written Complaint alleged that in January 2018, respondent initiated, engaged in and considered an *ex parte* communication with an Albany County Deputy Sheriff concerning a policy and practice of the county jail that pertained to the merits of a motion then pending before him in *People v. Richard Quinn,* in which the defendant was charged with murder in the second degree. Charge I further alleged that respondent failed to disclose the communication to the defense or prosecution. Charge II of the Formal Written Complaint alleged that from approximately April 2017 to September 2019, respondent failed to diligently discharge his administrative responsibilities, in that he failed to report to his administrative judge on his quarterly reports of pending cases, as required, several cases that were pending longer than 60 days without decision.

On March 2, 2020, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On March 12, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Judge of the County Court, Albany County, since January 2017, having previously served as a Judge of the Albany City Court, Albany County, from 2002 to 2016. Respondent's current term expires on December 31, 2026. He was admitted to the practice of law in New York in 1992.

As to Charge I of the Formal Written Complaint

2. The murder trial in *People v. Richard Quinn* was scheduled to begin before respondent on Tuesday, January 16, 2018. On January 10, 2018, the defendant's attorney, Angela Kelley, made a motion *in limine* to preclude certain material from admission into evidence, including certain telephone calls the defendant made from – and that were recorded by – the Albany County Correctional Facility, where he was incarcerated pending trial. A copy of the motion papers is attached as Exhibit A to the Agreed Statement. The defense motion was based on an equal protection argument that the defendant was disadvantaged because of his incarcerated status and could not therefore speak freely with friends or relatives regarding his defense in the way an unincarcerated defendant could. Respondent's concern, however, was whether inmate-defendants were given sufficient notice by the correctional facility that their calls were being monitored, consistent with Court of Appeals precedent.

3. Respondent or his court attorney scheduled oral argument on the motion for the afternoon of Friday, January 12, 2018. A fact-finding hearing was to be held in the event the motion could not be resolved after oral argument. The prosecution intended to call Lt. Ronald M. Murray as a witness should the matter proceed to a hearing, although respondent was not informed of this.

4. On January 11, 2018, after reading the defendant's motion papers, respondent telephoned the Albany County Correctional Facility and spoke with Lt. Murray. No one else was on the telephone call. Respondent told Lt. Murray that he had some questions pertaining to a trial scheduled to start the following Tuesday. Respondent

asked Lt. Murray about how the inmate calling system operated and specifically about how inmates are notified that their phone calls are being monitored. Lt. Murray informed respondent that the Inmate Rulebook and a pre-recorded message advise inmates that their conversations are recorded prior to each phone call. Lt. Murray then played the pre-recorded message for respondent.

5. On January 11, 2018, the prosecution filed a response to the defense motion, a copy of which is annexed as Exhibit B to the Agreed Statement.

6. On January 12, 2018, the defense attorney filed a Supplemental Affirmation in support of the motion *in limine*, a copy of which is annexed as Exhibit C to the Agreed Statement.

7. On January 12, 2018, respondent held oral argument on the defense motion and denied it on the submitted papers when no party requested a hearing. The transcript of the argument is annexed as Exhibit D to the Agreed Statement.

8. Respondent considered the information provided to him by Lt. Murray in deciding the motion.

9. At the defendant's trial, respondent admitted into evidence certain of the defendant's recorded phone conversations, over the objection of the defense. The jury convicted the defendant of murder in the second degree.

10. On March 8, 2018, Ms. Kelley made a motion pursuant to Criminal Procedure Law §330.30 for an order setting aside the jury verdict, based in part on the argument that the People's receipt and use of the defendant's recorded jail telephone calls as evidence was improper. On March 13, 2018, respondent denied the motion.

11. On April 9, 2018, respondent sentenced Mr. Quinn to 25 years to life in prison.

12. Respondent never disclosed his *ex parte* communication with Lt. Murray to the prosecution or defense counsel.

As to Charge II of the Formal Written Complaint

13. Section 4.1(a) of the Rules of the Chief Judge requires that, in such form or times as required by the Chief Administrative Judge, a judge must report on matters pending undecided before him or her for 60 days after final submission. Such forms are required to be filed quarterly.

14. Respondent delegated the preparation and filing of his quarterly reports of undecided cases to his secretary and failed to review the reports prior to his secretary's submission of the reports.

15. From April 21, 2017 to September 10, 2019, respondent failed to report on his quarterly reports that for each period, he had several cases pending decision longer than 60 days. Instead, each such report erroneously stated that respondent had "no civil or criminal motions, proceedings, actions or matters of any kind pending undecided for more than 60 days after final submission."

16. On September 10, 2019, respondent amended his reports as a result of the Commission's inquiry. Copies of his amended reports are annexed as Exhibit E to the Agreed Statement.

Additional Factors

17. Respondent has been cooperative and contrite with the Commission

throughout this inquiry.

18. As to his *ex parte* telephone conversation with Lt. Murray regarding the correctional facility's practices as to inmate telephone calls, respondent avers that he called the correctional facility in preparation for the oral argument, to get a description of the procedures routinely used at the correctional facility as to inmate phone calls, and not as to defendant Quinn in particular. He and Lt. Murray did not discuss the defendant or his case. Respondent avers that at the time of his conversation, he did not consider it to be an improper *ex parte* contact, but after reading the complaint he recognized that he was wrong. Respondent further avers that while he considered the information provided to him by Lt. Murray when rendering his decision on the motion, it confirmed the same information provided to him by the prosecution and the defense attorney, both of whom had spoken to Lt. Murray before the oral argument on the motion and appeared to agree with Lt. Murray's description of the procedures at the Albany County Correctional Facility for handling inmate phone calls.

19. As to his failure to file accurate reports of pending cases, respondent had a total of 16 cases with undecided motions or appeals that should have been reported. Of the 16, four were inherited from a prior judge and were already pending when respondent began his term in County Court. The remaining 12 originated with respondent. None of the delays in rendering decision was excessive. All of the matters respondent initially failed to report were post-conviction motions or appeals, which his secretary and law clerk mistakenly believed were not reportable.

20. Respondent's disciplinary history is as follows.

a. Respondent was privately cautioned by the Commission in 2004 for failing to disqualify himself in arraignments of unrepresented defendants, notwithstanding that the complaining witness and alleged victim was his co-judge.

b. Respondent was privately cautioned again in 2012 for appearing as a guest of honor at a fundraising event for a civic organization.

c. Respondent was publicly censured by the Commission in 2006 for, *inter alia,* coming off the bench and physically confronting a defendant appearing in his courtroom.

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)(6), 100.3(C)(1) and 100.3(C)(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. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

Every 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)) Section 100.3(B)(6) of the Rules prohibits a judge from initiating or considering unauthorized *ex parte* communications regarding a pending matter. Here, after reading the defense motion papers seeking the preclusion of the defendant's recorded telephone conversations made from the Albany County Correctional Facility, respondent initiated an *ex parte* communication with a Lieutenant at that facility. Respondent stipulated that when he made this call, he sought information related to a matter pending before him. Respondent

admitted that he discussed the Inmate Rulebook with the Lieutenant and the Lieutenant played for him the recorded message that advised inmates that their telephone calls were being monitored. Respondent also acknowledged that he considered the information he obtained during his *ex parte* communication when he denied the defense motion to preclude the introduction of the defendant's recorded telephone conversations.

It is well-settled that judges are prohibited from engaging in such *ex parte* communications about a pending matter. *Matter of Lamson*, 2013 NYSCJC Annual Report 235 (judge censured for *ex parte* conversations with defense counsel and police chief regarding a defendant's sentence); *Matter of Williams*, 2008 NYSCJC Annual Report 227, 229 (in censuring judge for his *ex parte* communication with a State Trooper about a pending matter, the Commission found the judge's "conduct compromised his impartiality and is inimical to the role of a judge."); *Matter of Teresi*, 2005 NYSCJC Annual Report 215 (judge censured for an *ex parte* communication with an expert witness who was scheduled to testify in a matter pending before him later that day).

Compounding his misconduct, respondent failed to comply with his obligation to disclose his *ex parte* communication to the parties in the pending murder case even though the parties appeared before him the day after his improper *ex parte* communication. In *Matter of Curran*, 2018 NYSCJC Annual Report 145, the Commission held,

> [t]he requirement to disclose e*x parte* communications is inherent in a judge's obligation to 'accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.' (Rules §100.3[B][6]) A party who is unaware of *ex parte*

> information a judge has received is unable to address or rebut it.

Id. at 154. Even "brief and unsolicited" *ex parte* communications must be disclosed to the parties. *Matter of Marshall*, 2008 NYSCJC Annual Report 161, 165, *aff'd* 8 N.Y.3d 741 (2007).

In addition to his undisclosed *ex parte* communication, respondent also failed to properly perform his administrative responsibilities when he failed to supervise his secretary in connection with the submission of his quarterly reports of pending cases which were inaccurate. Respondent stipulated that he delegated this task to his secretary and he did not review the reports before they were submitted. By this conduct, respondent violated his obligation to "maintain professional competence in judicial administration." (Rules, §100.3(C)(1) and (C)(2))

With respect to the sanction to be imposed, respondent's disciplinary history, which included being censured in 2006 and cautioned in 2004 and 2012, is an aggravating factor. *Matter of Doyle,* 23 N.Y.3d 656, 662 (2014). Given his prior discipline, respondent should have been aware of the Rules and his obligation to comply with the Rules. *Id.*

In mitigation, we note that respondent's *ex parte* communication was limited to one general conversation and did not specifically concern the defendant's case or telephone calls. In addition, the information respondent received was confirmed by information provided to him by defense counsel and the prosecutor. It was stipulated that, before oral argument on the motion, both defense counsel and the prosecutor had

spoken with the same Lieutenant at the correctional facility with whom respondent had spoken. It was also stipulated that the parties appeared to agree with the Lieutenant's description of the procedures at the facility regarding inmate telephone calls.

We also note that with respect to respondent's failure to report certain cases pending longer than 60 days as required, this involved a total of 16 cases over a 29-month period and none of the delays in rendering a decision was excessive. We also note that respondent filed corrected reports after the Commission's inquiry.

In accepting the jointly recommended sanction of censure, we have also taken into consideration that respondent has acknowledged that his conduct warrants public discipline. We expect 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.

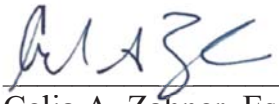
Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Judge Miller, and Mr. Raskin concur.

Ms. Yeboah did not participate.

CERTIFICATION

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

Dated: March 31, 2020



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

ROBERT CICALE,

a Judge of the District Court,
Suffolk 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.
Ronald J. Rosenberg, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Sinnreich, Kosakoff & Messina, LLP (by Vincent J. Messina, Jr.) for Judge Cicale

The matter having come before the Commission on April 2, 2020; and the Commission having before it the Stipulation dated March 31, 2020; and Judge Cicale

having affirmed that he vacated his judicial office as of March 16, 2020; 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.

Mr. Belluck was not present.

Dated: April 2, 2020

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, subdivisions 1 and 2,
of the Judiciary Law in Relation to

ROBERT CICALE, **STIPULATION**

a Judge of the District Court,
Suffolk County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable Robert Cicale and his attorney, Vincent J. Messina, of Sinnreich Kosakoff & Messina, LLP.

1. Robert Cicale has been a Judge of the District Court, Suffolk County, since 2016. His current term expires on December 31, 2020.

2. Judge Cicale was apprised by the Commission on February 14, 2020, that it would commence a removal proceeding against him because he had not resigned or otherwise vacated his judicial office after pleading guilty to a felony on November 15, 2019.

3. On March 12, 2020, the Commission authorized a Formal Written Complaint against Judge Cicale, arising from his guilty plea on November 15, 2019, to Attempted Burglary in the Second Degree in violation of Penal Law §§ 110 and 140.25.

4. On March 17, 2020, the Commission received a copy of Judge Cicale's resignation letter dated March 16, 2020, a copy of which is annexed as Exhibit 1. Judge Cicale affirms that he vacated judicial office as of March 16, 2020.

5. 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.

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

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

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

9. Judge Cicale 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: 3/31/20

Honorable Robert Cicale

Dated: 3/31/20

Vincent Messina SR
Sinnreich Kosakoff & Messina, LLP
Attorney for Robert Cicale

Dated: March 31, 2020

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

THE FOLLOWNG EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: RESPONDENT'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

– –

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

DETERMINATION

DAVID T. CORRETORE,

a Judge of the Webster Town Court,
Monroe County.

– –

THE COMMISSION:

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

APPEARANCES:

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

Honorable David T. Corretore, respondent *pro se*

Respondent, David T. Corretore, a Justice of the Webster Town Court, Monroe County, was served with a Formal Written Complaint dated May 11, 2020, containing

one charge. The Formal Written Complaint alleged that between May 2015 and October 2018, with respect to six small claims cases, respondent failed to dispose of the business of his court promptly, efficiently and fairly, in that he failed to render decisions until long after the time required by Section 1304 of the Uniform Justice Court Act ("UJCA"). The decisions in those six matters were delayed between 5 and 47 months.

On May 28, 2020, the Administrator and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On June 11, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Webster Town Court, Monroe County, since 1988. Respondent's current term expires on December 31, 2023. He was admitted to the practice of law in New York in 1983.

2. Section 1304 of the Uniform Justice Court Act requires that, where there is no jury trial, "the court must render judgment within thirty days from the time when the case is submitted for that purpose, except when further time is given by the consent of the parties."

3. In *Enzo Aquino v. Susan Muniz,* the plaintiff commenced a small claims action on March 23, 2015, seeking a judgment of $2,172.40 for damages to rental property and a personal vehicle, and an unpaid county water bill. The matter was heard by respondent and finally submitted on May 5, 2015. Respondent did not render a

decision for 47 months, until May 29, 2019.

4. In *Joseph R. Meyer v. Donald T. Weimer,* the plaintiff commenced a small claims action on January 29, 2016, seeking a judgment of $2,727.00 for damages to pets and windows. The matter was heard by respondent and finally submitted on February 29, 2016. Following the hearing, the plaintiff contacted the court multiple times seeking a decision. Respondent did not render a decision for 38 months, until May 28, 2019. After receiving the decision, the plaintiff was not able to locate the defendant to serve the judgment.

5. In *Connie Post v. Marvin Blackman,* the plaintiff commenced a small claims action on November 21, 2017, seeking a judgment of $250.00 for damages for stolen headphones. The matter was heard by respondent and finally submitted on December 18, 2017. Following the hearing, the plaintiff contacted the court seeking a decision. Respondent did not render a decision for 16 months, until May 29, 2019.

6. In *Marlene Schmitz v. Dave Hussar Renovations,* the plaintiff commenced a small claims action on September 24, 2018, seeking a judgment of $3,000.00 for damages caused by improper roof repairs. The matter was heard by respondent and finally submitted on October 22, 2018. Following the hearing, the plaintiff contacted the court seeking a decision. Respondent did not render a decision for six months, until May 16, 2019.

7. In *Domenic Kearney v. Paul Kubrich*, the plaintiff commenced a small claims action on September 24, 2018, seeking a judgment of $3,000.00 for the return of a security deposit and moving charges. The matter was heard by respondent and finally

submitted on October 22, 2018. Following the hearing, the plaintiff contacted the court multiple times seeking a decision. Respondent did not render a decision for six months, until May 28, 2019.

8. In *Paul Kolacki v. JWP Property Services, LLC,* the plaintiff commenced a small claims action on September 17, 2018, seeking a judgment of $3,000.00 for damages arising from a contract for a home renovation project. The matter was heard by respondent and finally submitted on October 22, 2018. The plaintiff and his attorney thereafter contacted the court multiple times seeking a decision. Additionally, the staff of respondent's supervising judge contacted respondent about issuing a decision. Respondent did not render a decision for five months, until April 18, 2019.

Additional Factors

9. Respondent has been cooperative and contrite with the Commission throughout the inquiry.

10. As a result of the Commission's inquiry, respondent and his court staff have instituted a case-tracking system to avoid delays in rendering decisions in future matters.

11. Respondent has an otherwise unblemished record during his approximately 32 years on the bench.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(7) and 100.3(C) (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 I of the Formal Written Complaint is sustained and respondent's misconduct is established.

The Rules require each judge to "dispose of all judicial matters promptly, efficiently and fairly." (Rules, §100.3(B)(7)) It was stipulated that respondent violated this ethical standard when he delayed rendering decisions in six small claims matters for between 5 and 47 months. In five of the six matters, the plaintiff contacted the court seeking a decision. Three plaintiffs contacted the court multiple times for this purpose.

Undue delay in rendering judgment in small claims matters undermines public confidence in the judiciary. In describing the importance of adhering to time frames set forth in the UJCA, the Commission has held that

> The "informal and simplified" procedures for small claims are intended to provide litigants with an efficient and just resolution to their legal disputes (Uniform Justice Court Act …§1804). This goal is thwarted when a simple matter that could have been resolved expeditiously is delayed for over a year through no fault of the parties.

Matter of Skinner, 2019 NYSCJC Annual Report 239, 247 (citation omitted); *Matter of Turner,* 2010 NYSCJC Annual Report 240 (judge admonished for, *inter alia*, delaying issuing a judgment or a decision on a motion in 29 cases for between 2 months and 6 years). By his conduct, respondent deprived the parties in the six matters of the opportunity to have their claims adjudicated in a timely manner. In one matter, after respondent's unwarranted 38-month delay in rendering judgment, the plaintiff was unable to locate the defendant to serve the judgment.

In accepting the jointly recommended sanction of admonition, we have taken into

consideration that respondent has admitted that his conduct warrants public discipline and that he has taken corrective action by instituting a system to track cases. We trust that respondent, who has had an otherwise unblemished record during his nearly 32 years on the bench, will diligently discharge his duties in the future.

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

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

Judge Falk and Ms. Yeboah did not participate.

CERTIFICATION

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

Dated: June 22, 2020

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

RALPH J. EANNACE, JR.,

a Judge of the Utica City Court,
Oneida County.

DETERMINATION

– –

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Kathleen E. Klein, Of Counsel) for the Commission

Law Offices of Robert F. Julian (by Robert F. Julian) for Respondent

Respondent, Ralph J. Eannace, Jr., a Judge of the Utica City Court, Oneida County, was served with a Formal Written Complaint dated June 18, 2020, containing

one charge. Charge I of the Formal Written Complaint alleged that despite being cautioned in 2014 for failing to file his 2013 financial disclosure statement in a timely manner, respondent failed to file his 2018 financial disclosure statement with the Ethics Commission for the Unified Court System ("Ethics Commission") by May 15, 2019, or to seek an extension of time to do so, contrary to the requirements of the Rules of the Chief Judge (22 NYCRR Section 40.2). The complaint alleged that respondent failed to file his disclosure statement until September 4, 2019, after he had received both a Notice to Cure and a Notice of Delinquency from the Ethics Commission.

On August 13, 2020, 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 17, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Judge of the Utica City Court, Oneida County, since 2003. Respondent's current term expires on December 31, 2023. He was admitted to the practice of law in New York in 1980.

2. Pursuant to Part 40 of the Rules of the Chief Judge (22 NYCRR Section 40.2), respondent is required to file a financial disclosure statement with the Ethics Commission by May 15 of each year with respect to his finances for the previous calendar year.

3. Respondent did not file his 2018 statement by May 15, 2019. Thereafter, the Ethics Commission sent, and respondent received, a Notice to Cure dated July 3, 2019. The Notice to Cure directed respondent to file his 2018 statement within 15 days of July 3, 2019. A copy of the Notice to Cure is appended as Exhibit 1 to the Agreed Statement of Facts.

4. Respondent did not file his 2018 statement in accordance with the Notice to Cure. Thereafter, the Ethics Commission sent, and respondent received, a Notice of Delinquency dated September 3, 2019. A Copy of the Notice of Delinquency is appended as Exhibit 2 to the Agreed Statement of Facts.

5. Respondent ultimately filed his 2018 financial disclosure statement on September 4, 2019, nearly four months after it was due.

6. By letter dated December 18, 2014, respondent had been cautioned by the Commission to adhere to the Rules Governing Judicial Conduct and the requirements of Part 40 of the Rules of the Chief Judge, after he failed to file his 2013 annual financial disclosure statement in a timely manner with the Ethics Commission, resulting in its sending him a Notice to Cure and a Notice of Delinquency. A copy of the caution letter is appended as Exhibit 3 to the Agreed Statement of Facts.

Additional Factors

7. Respondent acknowledges that the prompt and accurate filing of financial disclosure forms is not a mere formality. The information disclosed on the forms is open to public scrutiny so that, for example, a litigant or lawyer may determine whether a judge has a conflict of interest in a matter, subjecting the judge to recusal.

8. Respondent avers that his failure to file his 2018 and 2013 financial disclosure statements in a timely manner resulted from simple oversight on his part. Respondent recognizes that the Commission's cautionary letter to him in 2014 should have prompted him in subsequent years to file his statements in a timely manner, which he commits to ensure going forward.

9. Respondent has been cooperative and contrite with the Commission throughout this inquiry.

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(C)(1) and 100.4(I) 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.

Every judge must "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and must "diligently discharge the judge's administrative responsibilities." (Rules, §§100.2(A), 100.3(C)(1)) When he did not file his 2018 financial disclosure form in a timely manner, respondent failed to comply with his important financial disclosure obligations and failed to "diligently discharge" his administrative duties in violation of the Rules. In *Matter of McAndrews*, 2014 NYSCJC Annual Report 157, the Commission held that,

> [t]he Legislature and the Chief Judge have determined that financial disclosure by judges serves an important public function, . . . and one of the duties of a judge is to file these

> reports promptly. . . .
>
> Respondent's inattention to this important responsibility is inconsistent with his ethical obligation to diligently discharge his administrative duties . . ..

Id. at 161, 162 (footnote and citations omitted). Here, respondent failed to file his 2018 financial disclosure form on time and did not comply with his obligations even after receiving a Notice to Cure. It was only after he had received a Notice of Delinquency that respondent filed his 2018 financial disclosure form.

The public has an interest in the timely disclosure of a judge's financial information on the annual financial disclosure form. The Court of Appeals has held that the information provided on a judge's financial disclosure form "is available to the public and, among other things, enables lawyers and litigants to determine whether to request a judge's recusal." *Matter of Alessandro*, 13 N.Y.3d 238, 249 (2009) Accordingly, "[j]udges must complete their financial disclosure forms with diligence, making every effort to provide complete and accurate information." *Id.* In *Matter of Russell*, 2001 NYSCJC Annual Report 121, 122, the Commission held that, "financial disclosure by judges serves an important public function" and repeatedly filing untimely financial disclosure forms with the Ethics Commission constituted misconduct.

Respondent has been a judge since 2003 and accordingly "should be fully familiar with basic procedures of law as well as the ethical rules." *Matter of Edward J. Williams*, 2002 NYSCJC Annual Report 175, 177. Moreover, in 2014, the Commission issued a letter of dismissal and caution to respondent in which he was cautioned to comply with his financial disclosure obligations after he failed to file his 2013 financial disclosure

form in a timely manner. In light of this caution from the Commission, respondent should have been particularly attentive to his financial disclosure obligations and in full compliance with those obligations.

In accepting the jointly recommended sanction of admonition, we have taken into consideration that respondent has admitted that his conduct warrants public discipline and that he has committed to complying with his financial disclosure obligations in the future. We expect that respondent has learned from this experience and in the future will act in strict 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 admonition.

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

Judge Miller did not participate.

CERTIFICATION

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

Dated: September 28, 2020

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

DOUGLAS E. GARDNER,

DECISION
AND
ORDER

a Justice of the Manheim Town Court,
Herkimer 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

Douglas E. Gardner, pro se

The matter having come before the Commission on March 12, 2020; and the Commission having before it the Stipulation dated February 3, 2020; and respondent having been served with a Formal Written Complaint dated December 9, 2019; having

filed an undated Answer; having tendered his resignation from the Manheim Town Court by letter dated January 22, 2020, effective February 12, 2020; 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: March 13, 2020

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

DOUGLAS E. GARDNER, **STIPULATION**

a Justice of the Manheim Town Court,
Herkimer 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 Douglas E. Gardner ("Respondent").

1. Respondent has been a Justice of the Manheim Town Court, Herkimer County, since January 16, 2018, having previously served as a Justice of the Stratford Town Court, Fulton County, from January 1, 2011, to October 15, 2018. His current term expires on December 31, 2022. Respondent is not an attorney.

2. Respondent was served with a Formal Written Complaint dated December 9, 2019, containing eight charges, a copy of which is appended as Exhibit 1.

3. Respondent filed an undated Answer, which is appended as Exhibit 2.

4. Respondent tendered his resignation, dated January 22, 2020, a copy of which is annexed as Exhibit 3. Respondent affirms that he will vacate judicial office as of February 12, 2020.

5. 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.

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

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

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

9. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (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: 1 Sept 12/22/20

Honorable **Douglas E. Gardner**
Respondent

Dated: 2/3/2020

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 LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

– –

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

DETERMINATION

HOWARD GERBER,

a Justice of the Clarkstown Town Court,
Rockland County.

– –

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Daniel W. Davis, Of Counsel)
for the Commission

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

Respondent, Howard Gerber, a Justice of the Clarkstown Town Court, Rockland County, was served with a Formal Written Complaint dated January 30, 2020,

containing one charge. Charge I of the Formal Written Complaint alleged that on three occasions, between August 2017 and November 2017, respondent made inappropriate comments to and about lawyers and others with whom he dealt in his official capacity and failed to disqualify himself after he expressed negative views regarding the Department of Probation in connection with a probation violation matter pending before him.

On April 21, 2020, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On April 30, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Clarkstown Town Court, Rockland County, since 2007. Respondent's current term expires December 31, 2023. He was admitted to the practice of law in New York in 1983.

As to the Rockland County Departments of Probation and Health

2. From November 8, 2017 to January 3, 2018, respondent presided over *People v. M.R.*, in which the defendant was charged with a Violation of Probation ("VOP") relating to his conviction for a misdemeanor sexual offense. The VOP was filed on behalf of the Rockland County Department of Probation on a petition by Probation

Officer Page Ehrhardt ("Officer Ehrhardt").

3. On November 8, 2017, respondent presided over a conference in the *M.R.* case. The conference was held in a jury deliberation room at the Clarkstown Town Court. Respondent, Officer Ehrhardt, defense attorney Michael Collado, and Assistant District Attorney ("ADA") Joanna McKeegan were present.

4. During the conference, in the presence of the aforementioned participants, respondent looked, pointed, and/or nodded at Officer Ehrhardt and said that he had problems with "your department" because the underlying facts of the case were reminiscent of *People v. C.P.*, a VOP matter over which respondent had presided eight years earlier.

5. Referring to Supervising Probation Officer Jennifer Williams ("Officer Williams") and *People v. C.P.*, respondent said that Officer Williams was a "liar" who had "perjured herself" while appearing before him in that matter. Respondent further said that he had come "this close to putting [Officer Williams] in jail" because he believed that she had failed to inform him that C.P. had reported to the Department of Probation on the same day she filed an application that sought C.P.'s arrest and alleged that C.P.'s whereabouts were unknown to her at that time.

6. Also referring to the *C.P.* matter, and to James Foley, a Sex Offender Treatment Specialist with the Rockland County Department of Health who had testified before respondent in that matter, respondent gestured with his fingers to connote quotation marks when referring to Mr. Foley as the "sex offender treatment specialist" who had testified in the prior matter. Respondent then said that Mr. Foley had received

his training "through the mail," referencing the fact that Mr. Foley had completed certain courses online, notwithstanding that Mr. Foley has a master's degree in social work and certifications in the treatment of juvenile and adult sex abusers.

7. Although Officer Williams supervised Officer Ehrhardt at the Department of Probation, and although Officer Ehrhardt worked closely with Mr. Foley, respondent failed to disqualify himself from the *M.R.* case, notwithstanding the negative views he expressed regarding Officer Williams, Mr. Foley, and the Department of Probation.

8. The *M.R.* case was settled on January 3, 2018, by agreement of the parties under new terms that they independently worked out without any input from respondent.

As to an Assistant District Attorney and a Motor Vehicle Case Defendant

9. ADA Joanna McKeegan was assigned by her office to appear in respondent's courtroom from April 2016 to December 2017, during which time she regularly appeared four days a month to prosecute misdemeanors and other criminal matters which were unrelated to Vehicle and Traffic Law ("VTL") matters involving vehicle registration.

10. From May 2017 to September 2017, respondent presided over *People v. M.G.*, in which a ticket had been issued to a parked car, pursuant to VTL 401-1a, for lacking proper registration. At various times in connection with this matter, M.G., her son E.G., and her daughter L.G. appeared in court without counsel. At one appearance, after M.G. and/or one of her children made admissions against their interest, respondent suggested that they retain counsel. Subsequently, ADA McKeegan informed respondent that her office was interested in investigating and prosecuting the matter.

11. On August 14, 2017, ADA McKeegan appeared for a conference in the matter with respondent and defense attorney Scott Feiden. During a conversation among those present regarding L.G.'s attire at past appearances, respondent said in words or substance that L.G. was "dressing for attention," by which he meant "for men to look at her."

12. During the same conference, someone commented that L.G. had worn "yoga pants" to court.[1] Respondent thereafter commented in words or substance to ADA McKeegan: "I don't care what anybody wears, Ms. McKeegan, if you wear yoga pants to court, it's okay with me." When ADA McKeegan did not respond, respondent said in words or substance, "Oh, I should not have said that. Are there cameras in here?"

As to an Assistant District Attorney and Her Friend

13. Peter Boyle is a friend of ADA Joanna McKeegan.

14. In the summer of 2017, at a time when he was visiting from London, England, Mr. Boyle came to observe ADA McKeegan work on cases in respondent's courtroom. She introduced him to respondent and the two men spoke briefly.

15. At the end of the court session, when ADA McKeegan, Mr. Boyle, and respondent were the only people left and respondent was walking out of the courtroom, he asked if ADA McKeegan and Mr. Boyle "want[ed] a room." Respondent

[1] While there are differing recollections as to who said L.G. had been wearing yoga pants, it is agreed by the parties that regardless of who said it, respondent's rejoinder regarding Ms. McKeegan was inappropriate.

then offered in words or substance to "turn off the lights" for ADA McKeegan and Mr. Boyle, intending to make an off-color joke.

Additional Factors

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

17. Respondent appreciates that he is obliged to discharge his judicial duties in a fair and impartial manner and that disparaging remarks such as he made about Officer Williams, Mr. Foley, and the Department of Probation during *People v. M.R.* undermine public confidence in his fairness and impartiality. Respondent now recognizes that he should have disqualified himself from *People v. M.R.* after making the remarks.

18. Respondent acknowledges that his comments regarding the attire of a VTL litigant were inappropriate. He regrets his remarks and pledges to refrain from making similar comments in the future.

19. Respondent regrets his remarks to ADA McKeegan and Mr. Boyle. He recognizes that the remarks, which he intended to be humorous, were inappropriate and injudicious.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(3) and 100.3(E)(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 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.

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 to "be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. . .." (Rules, §§100.2(A) and 100.3(B)(3)) Respondent stipulated that his disparaging remarks regarding the Department of Probation, one of its employees and an employee of the Department of Health while presiding over a violation of probation matter were improper and undermined public confidence in the impartiality of the judiciary. Similarly, respondent admitted that his comment that the daughter of a litigant was "dressing for attention" was also inappropriate. Respondent compounded his misconduct when, after it was noted that the litigant's daughter wore yoga pants to court, respondent told the ADA during a case conference, "if you wear yoga pants to court, it's okay with me." When the ADA did not respond to his improper comment, respondent, who understood at the time that his remark was inappropriate, stated, "Are there cameras in here?"

It was discourteous and unacceptable for respondent to tell an attorney appearing before him that she could wear yoga pants to court. This comment was particularly inappropriate since respondent had just made a remark by which he meant that the litigant's daughter who had worn yoga pants to court did so "for men to look at her."

Respondent demeaned the ADA and detracted from the professionalism of the proceeding over which he was presiding. In addition, respondent's comments to the ADA and her friend asking whether they "want[ed] a room" and offering to "turn off the lights" were also demeaning and inappropriate for a judge to make in a courtroom. By his conduct, respondent violated his ethical responsibilities.

More than 30 years ago, the Commission made clear that it was inappropriate for a judge to make comments regarding the appearance of female attorneys even if such comments were intended to be humorous. In *Matter of Doolittle*, 1986 NYSCJC Annual Report 87, the Commission held,

> The cajoling of women about their appearance or their temperament has come to signify differential treatment on the basis of sex. A sensitized and enlightened society has come to realize that such treatment is irrational and unjust and has abandoned the teasing once tolerated and now considered demeaning and offensive. Comments such as those of respondent are no longer considered complimentary or amusing, especially in a professional setting.

Id. at 88. As an experienced attorney and an experienced jurist, respondent should have known that his comments toward the ADA were discourteous, unprofessional, and improper.

Section 100.3(E)(1) of the Rules provides: "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . .." During a violation of probation proceeding, based upon his experience in a similar matter several years earlier, respondent made disparaging comments regarding the Department of Probation, one of its employees and an employee of the Department of

Health. It is well-settled that a judge must disqualify if he or she has a bias for or against a party. *Matter of Appel*, 2008 NYSCJC Annual Report 77, 78 ("As a judge, respondent is required to set aside her personal biases and to act impartially; she must not only be, but appear to be, impartial. If she could not do so because of a personal bias, she was required to disqualify herself.") Given his disparaging statements, respondent's impartiality could reasonably be questioned.[2] Respondent acknowledged that he should have disqualified himself from the matter.

In accepting the jointly recommended sanction of admonition, we have taken into consideration that respondent has an unblemished record in his thirteen years on the bench and has acknowledged that his conduct warrants public discipline. We expect that respondent has learned from this experience, will comply with his pledge to refrain from making inappropriate comments in the future and will act in 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 admonition.

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

[2] It was stipulated that after respondent's inappropriate statements, the parties resolved the matter without respondent's involvement.

CERTIFICATION

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

Dated: June 17, 2020

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. HANUSZCZAK,

a Judge of the Family Court, and an
Acting Justice of the Supreme Court,
Onondaga County.

DECISION
AND
ORDER

– –

THE COMMISSION:

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

APPEARANCES:

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

Robert F. Julian for Respondent

The matter having come before the Commission on September 17, 2020; and the Commission having before it the Stipulation dated September 11, 2020; and

respondent having been served with a Formal Written Complaint dated March 8, 2019; having filed a Verified Answer dated May 24, 2019; and the Commission, by order dated August 6, 2019, having designated Linda J. Clark, Esq., as referee to hear and report proposed findings of fact and conclusions of law; and a hearing having been held on November 19 and 21, 2019; and the referee having filed a report dated August 10, 2020; and respondent having notified the Chief Administrative Judge by letter dated September 16, 2020 that he will be vacating his judicial office and resigning effective September 21, 2020; and having affirmed that he will neither seek nor accept New York 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 17, 2020

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. HANUSZCZAK,

STIPULATION

a Judge of the Family Court, and an
Acting Justice of the Supreme Court,
Onondaga 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 Michael L. Hanuszczak ("Respondent"), who is represented in these proceedings by Robert F. Julian, Esq., as follows:

1. Respondent has been a Judge of the Family Court, Onondaga County, since January 1, 2001, and an Acting Justice of the Supreme Court, Onondaga County, since 2004. His current term expires December 31, 2020.

2. Respondent was served with a Formal Written Complaint dated March 8, 2019, containing one charge alleging that, from in or about 2011 through on or about January 3, 2017, Respondent engaged in a pattern of improper, inappropriate and unwelcome personal interactions with female court staff.

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

4. Respondent filed an Answer dated May 24, 2019, which is appended as Exhibit B.

5. By Order dated August 6, 2019, the Commission designated Linda J. Clark, Esq., as Referee to hear and report findings of fact and conclusions of law. The hearing was held in Syracuse on November 19 and 21, 2019.

6. The Referee submitted her Report dated August 10, 2020, which is appended as Exhibit C. The Commission set a schedule for briefs and oral argument on October 29, 2020.

7. Respondent tendered his letter of resignation, dated September 16, 2020, a copy of which is appended as Exhibit D. Respondent affirms that he will vacate judicial office on September 21, 2020.

8. 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.

9. Respondent affirms that, after vacating his judicial office, he will neither seek nor accept any New York judicial office at any time in the future.

10. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time, the present proceedings will be revived and the matter will proceed before the Commission.

11. 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.

12. 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: September 11, 2020

Michael L. Hanuszczak
Honorable **Michael L. Hanuszczak**
Respondent

Dated: Sept 11, 2020

Robert F. Julian
Robert F. Julian, P.C.
Attorney for Respondent

Dated: September 11, 2020

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

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT A: FORMAL WRITTEN COMPLAINT
EXHIBIT B: RESPONDENT'S ANSWER
EXHIBIT C: REFEREE'S REPORT
EXHIBIT D: RESPONDENT'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

– –

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

MICHAEL E. KNOPF,

a Justice of the Rathbone Town Court,
Steuben County.

DETERMINATION

– –

THE COMMISSION:

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

APPEARANCES:

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

Honorable Michael E. Knopf, respondent *pro se*

Respondent, Michael E. Knopf, a Justice of the Rathbone Town Court, Steuben County, was served with a Formal Written Complaint dated August 19, 2020, containing

one charge. The Formal Written Complaint alleged that from "December 26, 2018 to January 15, 2019, in connection with *Paul Jones v. Seneca Tarby,* a summary proceeding pending before him, Respondent:

A. engaged in conduct that lacked impartiality, fundamental fairness and professional competence in the law, in that he issued a warrant of eviction against Mr. Tarby after an *ex parte* proceeding at which only Mr. Jones appeared, notwithstanding that neither Respondent nor Mr. Tarby was ever presented with a notice of petition, a petition or an affidavit of service as required by Sections 731 and 735 of the Real Property Actions and Proceedings Law (RPAPL);

B. failed to record court proceedings as required by Section 30.1 of the Rules of the Chief Judge and Administrative Order 245/08 of the Chief Administrative Judge of the Courts; and

C. failed to be patient, dignified and courteous during the proceedings, in that he made an insulting and derogatory remark about Mr. Tarby."

On September 11, 2020, the Administrator and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On September 17, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent, who is not an attorney, has been a Justice of the Rathbone

Town Court, Steuben County, since 2008. Respondent's current term expires on December 31, 2023.

2. On December 14, 2018, Mr. Jones, a landlord, went to the Rathbone Town Court to commence a summary proceeding for eviction and back rent against his tenant, Mr. Tarby.

3. Mr. Jones presented the court with a rent demand letter for four months of back rent and a lease termination notice, which purportedly had been served on Mr. Tarby on November 1, 2018. Mr. Jones's filing included an incomplete affidavit of service, signed only by him, alleging service of the lease termination notice.

4. On December 26, 2018, respondent presided over *Paul Jones v. Seneca Tarby*. Only Mr. Jones was present at this proceeding. Mr. Jones did not provide respondent with a notice of petition, a petition or an executed affidavit of service indicating that a notice of petition and petition had been served on Mr. Tarby.

5. On December 28, 2018, respondent issued a warrant of eviction against Mr. Tarby, notwithstanding that no notice of petition or petition had been served on Mr. Tarby as required by RPAPL Sections 731 and 735. A copy of the warrant of eviction, dated December 28, 2018, is annexed as Exhibit 1 to the Agreed Statement. Respondent did not grant Mr. Jones's request for a judgment for back rent.

6. On January 15, 2019, prior to the execution of the warrant, David Kagle, Mr. Tarby's attorney, filed a motion by order to show cause to vacate the warrant on the basis that Mr. Tarby was never served with a notice of petition and petition as required by RPAPL Sections 731 and 735. A copy of the order to show cause, dated January 15,

2019, is annexed as Exhibit 2 to the Agreed Statement.

7. On January 15, 2019, respondent presided over *Jones v. Tarby* and granted the motion to vacate the warrant of eviction. At the conclusion of the proceeding, respondent referred to Mr. Tarby as a "deadbeat" who did not pay his rent.

8. Respondent failed to mechanically record the proceeding on January 15, 2019, notwithstanding the requirement that he do so pursuant to Section 30.1 of the Rules of the Chief Judge and Administrative Order 245/08 of the Chief Administrative Judge of the Courts.

Additional Factors

9. Although respondent asserts that he harbored no actual bias against Mr. Tarby, he now acknowledges that his insulting and derogatory remark about Mr. Tarby created the appearance of prejudice. He further acknowledges that the "perception of impartiality is as important as actual impartiality," and that "[j]udges must conduct themselves 'in such a way that the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property.'" *Matter of Duckman,* 92 NY2d 141, 153 (1998) (quoting *Matter of Sardino,* 58 NY2d 286, 290-91 (1983)).

10. Respondent has been cooperative and contrite with the Commission throughout this inquiry.

11. Respondent has an otherwise unblemished record during his approximately 12 years on the bench.

12. Commission Counsel examined respondent's case records from January

2016 through May 2019. Respondent's only summary proceeding was *Jones v. Tarby.*

13. Respondent regrets his failure to abide by the applicable Rules and pledges henceforth to abide by them faithfully. Respondent recognizes that affording litigants the opportunity to be heard is fundamental, especially when the failure to do so may result in a litigant's eviction.

14. The Administrator notes that respondent's decision to vacate the precipitous order of eviction after 18 days, before the eviction was executed, was effectively a corrective order that mitigates as to sanction.

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

All judges are required to "be faithful to the law and maintain professional competence in it" and 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)(1) and (6)) When respondent issued the warrant of eviction without notice to the tenant, he violated this standard in a proceeding that had the potential to have a significant impact upon the tenant. "The fact that a tenant is facing the potential loss of his/her home places a special burden on a judge to make sure that the statutory requirements are met. In issuing a warrant, a judge is obliged to know the statutory requirements, review the

documents presented and make certain that they are valid." *Matter of Williams,* 2016 NYSCJC Annual Report 231, 238. In *Matter of Holmes,* 1998 NYSCJC Annual Report 139, the judge violated the Rules when she issued a warrant of eviction with no notice or opportunity to be heard in violation of the RPAPL. In that matter, the Commission held, "[b]y depriving the tenant of a fundamental right in such a one-sided and summary fashion, respondent violated the law and compromised her impartiality and integrity." *Id.* at 140 (citation omitted). Here, had respondent properly reviewed the documents the landlord filed, it would have been apparent that they were deficient under the RPAPL.

Respondent compounded his misconduct when, at the end of the proceeding during which he granted the tenant's attorney's motion to vacate the warrant of eviction, respondent referred to the tenant as a "deadbeat." Every judge is obligated to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and to "be patient, dignified and courteous to litigants . . . and others with whom the judge deals in an official capacity." (Rules §§100.2(A) and 100.3(B)(3)) Judges who are impartial and are viewed as impartial are vital to the essential role of the judiciary in society. When respondent called the defendant a "deadbeat" who did not pay his rent, respondent fell short of this high standard.

Respondent's comment created at least the appearance that he was biased against the defendant in violation of Section 100.3(B)(4) of the Rules. *Matter of Frati,* 1996 NYSCJC Annual Report at 83, 84 (judge conveyed the appearance of bias when he suggested that the plaintiff was a "negligent" farmer and that his claim was not in the "spirit" of the community's "codes of honor."); *Matter of Wylie*, 1991 NYSCJC Annual

Report 89, 92 (judge "compromised his impartiality" when he referred to defendants appearing before him as "a thief", "scum", "a bum" and "sick, sick, sick.") Respondent acknowledged that his comments improperly created the appearance that he had prejudged the defendant's case.

In addition, respondent admittedly failed to maintain competence in judicial administration when he did not record the proceeding on January 15, 2019. *Matter of Skinner*, 2019 NYSCJC Annual Report 239, 246 ("The absence of a recording in any proceeding is significant since it not only makes it more difficult to determine what transpired at the proceeding but also indicates lack of compliance with an administrative order, which is inconsistent with a judge's ethical responsibilities. . .."); *Matter of Williams,* 2016 NYSCJC Annual Report 231, 240 ("it is the responsibility of every town and village justice to ensure that court proceedings are recorded as required . . .").

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has admitted that his conduct warrants public discipline and that he has had an otherwise unblemished record during his approximately 12 years on the bench. We trust that respondent has learned from this experience and in the future will act in 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, Ms. Grays, Ms. Corngold, Judge Falk, Mr. Harding, Judge Leach, Judge Mazzarelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, and Ms. Yeboah concur.

CERTIFICATION

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

Dated: September 23, 2020

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

AMBROSE P. MADDEN,

a Justice of the Fenton Town Court,
Broome County.

DECISION
AND
ORDER

– –

THE COMMISSION:

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

APPEARANCES:

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

Scalise & Hamilton (Deborah A. Scalise) for Judge Madden

The matter having come before the Commission on September 18, 2020; and the Commission having before it the Stipulation dated September 17, 2020; and Judge Ambrose having affirmed that he vacated his judicial office as of August 16, 2020;

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: September 21, 2020

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

AMBROSE P. MADDEN, **STIPULATION**

a Justice of the Fenton Town Court,
Broome County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable Ambrose P. Madden and his attorney, Deborah A. Scalise, of Scalise & Hamilton, P.C.

1. Judge Ambrose P. Madden has been a Justice of the Fenton Town Court, Broome County, since January 2010. His current term expires on December 31, 2021. Judge Madden is not an attorney.

2. Judge Madden was apprised by the Commission in July 2020 that it was investigating complaints alleging (A) that his improper demeanor toward and treatment of his court clerks caused three or four of them to resign, and (B) that he presided over matters involving residents of a local youth home and warned them of the consequences of misbehavior at the home, including the possibility of jail time, in the absence of counsel for the youth.

3. The Commission reviewed documents and interviewed witnesses as to both complaints, including the court clerks, and sent Judge Madden an inquiry letter dated July

22, 2020. Judge Madden enters into this Stipulation in lieu of responding to the inquiry letter. Therefore, the Commission has neither evaluated nor rendered substantive determinations as to the complaints.

4. Judge Madden has tendered his resignation by letter dated August 16, 2020, a copy of which is annexed as Exhibit 1. Judge Madden affirms that he vacated judicial office as of August 16, 2020.

5. 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.

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

7. Judge Madden 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.

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

9. Judge Madden 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: 9-9-2020

Ambrose P. Madden
Honorable Ambrose P. Madden

Dated: 9-14-2020

Deborah A. Scalise
Deborah A. Scalise
Scalise & Hamilton
Attorney for Judge Madden

Dated: September 17, 2020

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

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: JUDGE'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

– –

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

MICHAEL F. MCGUIRE,

A Judge of the County and Surrogate's Courts,
an Acting Judge of the Family Court and an
Acting Justice of the Supreme Court,
Sullivan 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, Of Counsel) for the Commission

O'Connell and Aronowitz (by Stephen R. Coffey) for respondent

Respondent, Michael F. McGuire, a Judge of the County and Surrogate's Courts, an Acting Judge of the Family Court and an Acting Justice of the Supreme Court, Sullivan County, was served with a Formal Written Complaint dated August 27, 2018,

containing thirteen charges. Charges I to VI of the Formal Written Complaint alleged that in 2012, 2013 and 2014, respondent improperly and without cause ordered litigants, some of whom were not represented by counsel, to be taken into custody in handcuffs on six occasions. Charge VII alleged that respondent threatened to order litigants into custody on three other occasions. Charge VIII alleged that respondent was discourteous to court personnel. Charge IX alleged that respondent failed to be courteous toward litigants in a child custody matter. Charge X alleged that respondent practiced law while a full-time judge. Charge XI alleged that respondent presided over matters in which his impartiality could reasonably be questioned. Charge XII alleged that respondent conducted gun permit interviews at inappropriate locations and required his court secretary to work on certain Saturdays without compensation. Charge XIII alleged that respondent used his judicial title in his personal email. Respondent filed a Verified Answer dated October 11, 2018.

By Order dated November 15, 2018, the Commission designated Mark S. Arisohn, Esq. as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on May 6-9, 13-17 and 20-22, 2019 in New York City. The referee filed a report dated November 5, 2019 in which he sustained all thirteen charges except for a portion of Charge VIII.

Counsel for the Commission submitted a brief to the Commission with respect to the referee's report and the issue of sanctions. Counsel for the Commission recommended that the referee's findings and conclusions be confirmed and the sanction of removal. Respondent's counsel relied on briefs submitted to the referee and argued

that a censure would be the appropriate sanction. The Commission heard oral argument on January 23, 2020 and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Judge of the County and Surrogate's Courts and an Acting Judge of the Family Court, Sullivan County, since 2011. Since January 2013, he has been an Acting Justice of the Supreme Court, Sullivan County. Respondent's current term expires on December 31, 2020. He was admitted to practice law in New York in 2002.

2. Respondent served as an Assistant District Attorney in Sullivan County and then was in private practice with an office in Ferndale, New York from 2004 through 2010.

As to Charge I of the Formal Written Complaint

3. On December 18, 2013, respondent presided in Family Court over *R.R.R. v. I.C.O.*, a child custody and visitation matter. Mr. R was incarcerated on a criminal matter at the time of his appearance and was not represented by counsel. Respondent dismissed Mr. R's petition for visitation without prejudice.

4. At the conclusion of the proceeding, Mr. R stated, "I know your son, so can you recuse yourself from my case, please, and assign me another judge?" Respondent asked that Mr. R be brought "back here" and yelled: "You got 30 days judicial contempt … [t]acked on top of whatever you got."

5. When respondent asked Mr. R if he was "making a threat against my son," Mr. R responded, "I just asked you to recuse –" When respondent asked again if Mr. R

was threatening his son, Mr. R responded, "No, I'm not." Respondent then said, "Officer, this gentleman just threatened my son" and Mr. R responded, "I just asked him to recuse himself (unintelligible) I need a record."

6. The audio recording of the interaction between respondent and Mr. R reflected that respondent yelled at Mr. R. Two witnesses testified that respondent was red faced and stood up when he yelled at Mr. R.

7. Respondent did not warn Mr. R that his behavior was contemptuous, nor did he give him an opportunity to be heard or an opportunity to purge the contempt before sentencing him to 30 days in jail. Respondent did not find an attorney to represent Mr. R and did not prepare any document memorializing the particular circumstances of the offense.

8. Respondent testified at the hearing before the referee that he interpreted Mr. R's comment about knowing his son as a threat and that Mr. R, whom respondent described as a gang member, "could get to my son."

9. After the *R.R.R.* proceeding ended, Lieutenant Kevin McCabe was told that respondent felt that Mr. R had made a threat. After listening to the audio recording of the proceeding and speaking with respondent, Lieutenant McCabe concluded that Mr. R had asked respondent to recuse himself and had not made a threat.

10. On December 24, 2013, respondent signed an Order sentencing Mr. R "to an additional thirty (30) days incarceration in the Sullivan County Jail to be added on to the term he is currently serving." The Order did not state the facts that allegedly constituted the offense.

11. Respondent admitted that he "improperly issued a contempt finding against Mr. R."

As to Charge II of the Formal Written Complaint

12. On August 28, 2013, respondent presided in County Court over *People v. N.G.* Ms. G, who had been charged with, *inter alia,* a felony, had entered into a plea agreement pursuant to which she agreed to participate in a drug program with the understanding that if she completed the program she would be sentenced for a misdemeanor and a three-year term of probation. If she failed the program, she agreed to be sentenced to a state prison term of one and one-third to four years. Ms. G failed to complete the program and appeared before respondent on August 28, 2013 for sentencing.

13. During the sentencing proceeding, respondent repeatedly spoke disparagingly about Ms. G's parenting. The following colloquy occurred:

> THE COURT: Think how your children feel, if they even know who you are.
>
> THE DEFENDANT: They absolutely do. I was a good mother to my daughter.
>
> THE COURT: What's that?
>
> THE DEFENDANT: My children know who I am.
>
> THE COURT: Really?
>
> THE DEFENDANT: Absolutely.
>
> THE COURT: Do they know what a mother is?
>
> THE DEFENDANT: Absolutely.

THE COURT: How do they know that, from your mother?

THE DEFENDANT: 'Cause I was a good mom until I relapsed.

THE COURT: When were you clean?

THE DEFENDANT: When I gave birth to my daughter.

THE COURT: The one that was born with marijuana in her system or was that your son?

THE DEFENDANT: That was my son.

THE COURT: So you were not a good mother to your son. (The defendant shakes head negatively).

14. Ms. G's attorney testified that respondent was "very condescending" to Ms. G and she teared up and became red in the face.

15. Respondent made the following comments to Ms. G:

> You know, this may be one of the saddest cases there are -- not for you, 'cause you've chosen to throw your life away, that's your decision to do. Frankly it would be my desire to sentence you to life without parole because you really have demonstrated you have no desire or intention to ever be a productive member of society, to ever be a parent, to ever be anything that resembles a mother. You merely gave birth to the children but then you -- you have emotionally abandoned them.

16. Respondent further criticized Ms. G's parenting skills stating, "This is a conscious decision on your part to abandon your children to be totally self absorbed in your own world." Ms. G asked respondent to stop criticizing her and to sentence her to the term set by her plea agreement. The following colloquy occurred:

> THE DEFENDANT: . . . Can we just get this over with? I'm not going to sit here and listen to this man shoot me down. I do this to myself every day and I don't need you –
>
> THE COURT: Yes, you are.
>
> THE DEFENDANT: -- to tell me anything but sentence me so I can get out of this fucking courtroom.
>
> DEFENSE COUNSEL: Don't do that.
>
> THE DEFENDANT: I don't care. He's not going to sit here and tell me nothing. My kids –
>
> THE COURT: I tell you what I'm going to do. I'm going to sentence you to 30 days for judicial contempt and we'll come back here in about three weeks and we'll continue with sentencing. Okay. 30 days judicial contempt. Take her. Let's get another date for sentencing.

17. Respondent did not warn Ms. G that her behavior was contemptuous and he did not give her or her attorney an opportunity to be heard or an opportunity to purge the contempt before directing that she be sentenced to 30 days. He did not prepare a document memorializing the particular circumstances of the offense.

18. Ms. G was incarcerated from August 28, 2013 to September 24, 2013 on the summary contempt. When sentencing took place on September 24, 2013, respondent sentenced her to one and one-third to four years in prison pursuant to the plea agreement.

19. Respondent admitted that his conduct toward Ms. G was inappropriate and testified that he would "do it differently today."

As to Charge III of the Formal Written Complaint

20. On October 3, 2012, respondent presided in Family Court over *R.L.Z. v.*

T.M.F., a child custody and visitation matter. Neither of the litigants was represented by counsel.

21. During the proceeding, respondent adjusted visitation to permit the father to spend more time with the child. Ms. F, the child's mother, had concerns about the ruling and the following colloquy occurred:

> MS. F: If my daughter does not want to go with her father, I am not sending her. That's all I have to say.
>
> ….
>
> JUDGE MCGUIRE: All right. Here's the deal, Ms. F, if I learn that your daughter is not –
>
> MS. F: He's going to go to the school, or pick her up, and she's going to hear, "R Z here to"—
>
> JUDGE MCGUIRE: Take her into custody.
>
> MS. F: -- "Is here to pick up E Z" –
>
> JUDGE MCGUIRE: Take her into custody. Take her into custody.
>
> MS. F: Okay. I'm sorry. I'll try –
>
> JUDGE MCGUIRE: Judicial contempt.
>
> MS. F: I'm sorry. I –
>
> JUDGE MCGUIRE: Judicial contempt. Take her into custody. You 're disrupting the proceedings repeatedly.
>
> (SOUND OF HANDCUFFS)

22. While the audio recording of the proceeding reflected that Ms. F interrupted respondent, she told respondent that she was sorry twice after he ordered that she be taken into custody. Nonetheless, without warning Ms. F that her behavior was

contemptuous, or giving her an opportunity to be heard or an opportunity to purge the contempt, respondent loudly directed that she be taken into custody. At no time did respondent find an attorney to represent Ms. F.

23. Ms. F was placed in handcuffs, removed from the courtroom and detained in the courthouse for nearly two hours.

24. When Ms. F was returned to the courtroom, the following exchange took place:

> JUDGE MCGUIRE: All right, Ms. F, how's handcuffs feeling?
>
> MS. F: They hurt my wrist. I'm sorry.
>
> JUDGE MCGUIRE: You're not going to come into this courtroom or any other courtroom in this county and behave like this.
>
> MS. F: I know. I apologize.
>
> JUDGE MCGUIRE: This is not The Jerry Springer Show.
>
> MS. F: I know. I'm sorry.

25. Respondent did not prepare a mandate of commitment or any other document memorializing that Ms. F had been held in custody, the particular circumstances of the offense or the specific punishment imposed.

26. Respondent admitted that his conduct towards Ms. F was improper.

As to Charge IV of the Formal Written Complaint

27. On June 14, 2013, respondent presided in Family Court over *T.L. v. G.C. and H.B.*, a child custody and visitation matter. Ms. L, the child's mother, was not represented by counsel during the proceeding.

28. Respondent asked whether Ms. L had obtained a math tutor for her child and why the mother had participated in a school meeting by telephone. The following is reflected in the transcript:

> JUDGE MCGUIRE: Was there a transportation issue that prevented you from being present at the IEP meeting?
>
> MS. L: Yes, there is. I do not have a vehicle.
>
> JUDGE MCGUIRE: Did you speak to Mr. Jones about that?
>
> MS. L: We set up a conference meeting with the school, so I could have the conference phone.
>
> JUDGE MCGUIRE: Mr. Jones did?
>
> MS. L: Mr. Jones, myself, the school district.
>
> JUDGE MCGUIRE: Did you speak to Mr. Jones about assisting you with transportation to get you to that meeting?
>
> MS. L: I don't believe transportation was available at that time to go to that meeting.
>
> JUDGE MCGUIRE: Did you speak to Mr.—
>
> MS. L: I do not remember, sir.
>
> JUDGE MCGUIRE: You know what? Take her into custody.
>
> COURT OFFICER: Stand up, place your hands behind your back, please.
>
> JUDGE MCGUIRE: Second call.
>
> (SOUND OF HANDCUFFS)
>
> JUDGE MCGUIRE: Second call. Get these people out of my courtroom.

29. The audio recording of the proceeding reflected that Ms. L's tone was disrespectful when she stated, "I do not remember sir."

30. Respondent did not warn Ms. L that her behavior was contemptuous, nor did he give her an opportunity to be heard or an opportunity to purge the contempt before directing that she be taken into custody. Respondent did not find an attorney to represent Ms. L.

31. Ms. L was placed in handcuffs, removed from the courtroom and detained in the courthouse for over an hour. While she was in custody, she complained of chest pain and shortness of breath. Paramedics were called to the courthouse. After receiving assistance, Ms. L declined to be transferred to a hospital.

32. When Ms. L was returned to the courtroom over an hour later, respondent stated the following to her:

> Men and women spill blood every day for the freedoms that we enjoy in this court. There are countries in this world where people don't have that opportunity and they don't have an opportunity to go before a judge. They just take your children away and you disappear in some countries in the world…. So, I don't need to be draconian, there's no reason to put you into the Sullivan County Jail for 30 days, but you need to think carefully before you address the court with disrespect.

33. Respondent did not prepare a mandate of commitment or any other documentation memorializing that Ms. L had been held in custody, the particular circumstances of the offense or the specific punishment imposed.

34. Respondent admitted that he "failed to provide Ms. L with a proper warning and improperly directed that she be detained."

<u>As to Charge V of the Formal Written Complaint</u>

35. On January 17, 2014, respondent presided in Family Court over *L.W.G. v.*

C.C., a child visitation and custody matter. Both parties were represented by counsel.

36. During the proceeding, respondent questioned whether Ms. C could provide appropriate sleeping arrangements for the child if she were to be granted overnight visitation. She had previously purchased a "Pack 'n Play" portable crib that was then in the father's possession. Ms. C became upset when respondent stated that a condition for overnight visitation was that she purchase or obtain another portable crib or the equivalent. The following colloquy then occurred:

> JUDGE MCGUIRE: Okay. You're way ahead of the game. All right, so, here's your option, Ms. C. You can have a 24-hour period with your daughter, which will require that you buy or obtain a Pack 'n Play --
>
> MS. C: That's --
>
> JUDGE MCGUIRE: -- or a crib or someplace appropriate for her to sleep, or you can continue to have day visits.
>
> MS. C: -- That's a crock of shit to me, honestly.
>
> JUDGE MCGUIRE: I'll tell you what, take her into custody now.
>
> COURT OFFICER: Miss, stand up, please.
>
> JUDGE MCGUIRE: I told you this was not going well for you.
>
> COURT OFFICER: Miss, Miss, stand up.
>
> MS. C: Well, this isn't fair, you know what I'm saying? All -- her stroller, everything is mine, I paid for all that stuff, so why should I have to go out and shovel --
>
> JUDGE MCGUIRE: -- You need to put your hands behind your back.
>
> MS. C: Oh my God, this is so crazy right now.

(SOUND OF HANDCUFFS)

….

MS. C: This is bullshit. You know, I'm having another baby …. And I have to sit here and fight for this shit. Like, this is crazy, real fucking crazy.

….

JUDGE MCGUIRE: Yeah, we'll let her cool – calm down a little bit.

37. The audio recording of the proceedings showed that Ms. C spoke over respondent when he was addressing her and that respondent raised his voice and used an angry tone when he ordered that she be taken into custody,

38. Respondent did not warn Ms. C that her behavior was contemptuous, nor did he give her or her attorney an opportunity to be heard or an opportunity to purge the contempt before directing that she be taken into custody.

39. Ms. C was handcuffed behind her back in the courtroom and then brought to a locked conference room in the courthouse.

40. Ms. C's attorney went to the locked conference room where she was being held. He testified that she was crying and "extremely upset."

41. Ms. C was brought back to the courtroom in handcuffs approximately 15-20 minutes later. Her attorney made a statement on her behalf explaining her difficult circumstances and advised respondent that she was two months pregnant.

42. Respondent then addressed Ms. C and made the following statements to her:

The court didn't bring the child into the world, you did, and now you're going to bring another child into the world. And that's your decision to do that at a time where you don't have

> a home, don't have any money, don't have a job, but that's your decision --

Ms. C cried while respondent addressed her. Respondent admitted that his comments were not respectful to Ms. C.

43. Respondent did not prepare a mandate of commitment or any other document memorializing that Ms. C had been held in custody, the particular circumstances of the offense or the specific punishment imposed.

44. Respondent acknowledged that he "failed to provide Ms. C with adequate notice concerning her conduct and improperly directed that she be removed from the court."

As to Charge VI of the Formal Written Complaint

45. On December 2, 2014, respondent presided in Family Court over *A.S.C.F v. J.C.K. and N.K.*, a child custody and visitation matter. Mr. F is the child's father and Mr. K and Mrs. K are the child's maternal grandparents. The grandparents were not represented during the proceeding.

46. The child had been living with the grandparents for the prior year and the grandfather transported the child to the father. At the end of the proceeding, the grandfather asked if there was any way that he did not have to bring the child to the father "or am I forced?" Respondent then ordered that the child be immediately turned over to the father.

47. The following colloquy occurred:

> JUDGE MCGUIRE: See you January 15th. Turn the child over to the father right now.

MR. K: How are you going to turn the baby over to him right now, sir? Look at the paperwork.

JUDGE MCGUIRE: Turn the child over to the father right now.

MR. K: Oh, my God.

MRS. K: If anything happens to my son -- my grandson, Your Honor, I will sue the county, and I will sue you.

MR. K: That's for sure.

JUDGE MCGUIRE: Take her into custody. You want to threaten the judge? Take her into custody.

MRS. K: I'm just -- I'm not threatening you.

JUDGE MCGUIRE: Take her into custody. You want to threaten the judge? Take her into custody.

MR. K: Sir, is there anything you can do with this, about the -- the threats that he did to her?

MRS. K: Take a look, the abuse, what he did. He kicked her --

JUDGE MCGUIRE: Get her out of here.

MRS. K: -- He kicked --

JUDGE MCGUIRE: Get her out of here.

MR. K: Ma'am, Ma'am?

MRS. K: Pray God, pray God, my grandson's life.

(SOUND OF HANDCUFFS)

48. The audio recording of the proceeding reflected that respondent addressed

the parties in an angry, loud voice when he ordered the court officers to "get her out of here."

49. Respondent did not warn Mrs. K that her behavior was contemptuous, nor did he give her an opportunity to be heard or an opportunity to purge the contempt before directing that she be taken into custody. Respondent did not provide an attorney for Mrs. K prior to ordering that she be placed in custody.

50. Mrs. K was placed in handcuffs in the courtroom and detained for more than an hour in the courthouse.

51. In his testimony during Commission's investigation, respondent testified that Mrs. K "was disrespectful to the court" and that he took her statement about suing him "as a statement of a threat … to the authority of the Court…." Subsequently, respondent admitted that he was discourteous to Mrs. K and that he "improperly directed the removal of Ms. K from the court."

52. When Mrs. K was brought back into the courtroom over an hour later, there was a discussion about an attorney she wanted to represent her. Respondent stated, ". . . but this is a -- this is a judicial contempt proceeding. It's called a summary proceeding. If I say that you disrupted the proceedings, I can put you in jail for 30 days and that's it."

53. Mr. K pleaded with respondent not to put his wife in jail for 30 days stating, "Please don't do that, sir. I'm sorry." Respondent then stated, "You want me to put you in for 30 days?" Mr. K replied, "No. I'm sorry."

54. Mrs. K then stated, "I'm sorry, Your Honor. That baby is my life."

Respondent stated, ". . . I'm going to release you this time. I'm not going to pursue judicial contempt against you, I'm not going to put you in jail, all right?"

55. Respondent did not prepare a mandate of commitment or any other documentation memorializing that Mrs. K had been held in custody for over an hour, the particular circumstances of the offense or the specific punishment imposed.

56. Respondent acknowledged that he did not follow the provision in Section 755 of the Judiciary Law which requires that in summary contempt matters the judge issue an order stating the facts of the offense.

As to Charge VII of the Formal Written Complaint

(a) M.A.P. v. S.R. and S.Ro.

57. On January 28, 2013, respondent presided in Family Court over *M.A.P. v. S.R. and S.Ro.,* a child custody and visitation matter. Mr. P is the child's father. Ms. Ro is the child's maternal grandmother. The child, who was approximately eleven years old at the time, was present in court and was represented by counsel.

58. Respondent issued a temporary order granting Mr. P visitation every other weekend which Ms. Ro, the grandmother, opposed. Respondent then adjourned the proceeding.

59. After the case was concluded and while the parties and child were still in the courtroom, Ms. Ro said something to her granddaughter. Both the father's attorney and the attorney for the grandmother testified that respondent got angry and was "yelling" and "screaming" at Ms. Ro. The grandmother's attorney testified that respondent said something about putting his client in handcuffs and that, "the judge was

screaming at her, and she was having trouble breathing and she was very upset. She was shaking." After respondent yelled at her, the grandmother cried.

60. Ms. Ro complained of having difficulty breathing and was in "great distress." Paramedics were called. She was treated at the courthouse.

61. Respondent admitted that his "warning to Ms. Ro was improper and was discourteous."

(b) Department of Family Services v. T.E. and A.F.

62. On November 7, 2014, respondent presided in Family Court over *Department of Family Services v. T.E and A.F.,* a child custody and visitation matter.

63. While a witness was testifying, respondent yelled, "Ms. E, you are about three seconds from getting yourself put in handcuffs and taken out of here."

64. Prior to making this statement, respondent did not indicate what behavior he found to be inappropriate. Nothing in transcript of this proceeding indicated that Ms. E had done anything to disrupt the proceeding or otherwise engaged in any inappropriate conduct.

65. Respondent admitted that he "failed to make an appropriate record of the actions of the litigants and failed to adequately explain in a courteous manner the actions which he found improper."

(c) Curtis R. Varner v. Amanda N. Glass

66. On August 21, 2014, respondent presided in Family Court over *Curtis R. Varner v. Amanda N. Glass,* a child custody and visitation matter. In 2013, the parties agreed to move to California with the understanding that Ms. Glass would move with the

children and Mr. Varner would follow later. Before Mr. Varner moved to California, there was a relationship breakdown and Mr. Varner filed a custody petition which was before respondent.

67. Without any evidentiary basis, respondent made comments regarding Ms. Glass having a boyfriend in California. Respondent stated, "I mean, you're sure her boyfriend isn't here to testify?" Respondent also stated, "Clearly, the mother went out there [California] because she wanted out of this marriage. Clearly, she want—she's out there and she gets involved in another relationship, and clearly, that's her interest."

68. Ms. Glass' attorney testified that there was no testimony or discussion about Ms. Glass having a boyfriend. Respondent acknowledged there was no such testimony.

69. In addition, without indicating what she had done, respondent loudly stated to Ms. Glass' mother who was sitting in the back of the courtroom:

> I'm going to throw you out and put you in handcuffs in about 30 seconds, all right? So you can either walk out or get thrown out if I have to look at another outrageous expression from you. Clear? Because if I have to tell you again, I'm just going to ask the officer to put you in handcuffs, and then you'll – you'll experience the Sullivan County Jail.

70. After hearing only Ms. Glass' direct testimony, respondent granted full custody to Mr. Varner and made no provision for Ms. Glass to have any contact with the children.

71. In its July 2015 decision in *Varner v. Glass,* 130 A.D.3d 1215 (3d Dept.

2015), the Appellate Division reversed respondent finding that "[t]he record evidence here was patently insufficient" to support respondent's decision. In its decision, the Court found that respondent "treated the mother with apparent disdain, such that we cannot be assured that further proceedings will be conducted in an impartial manner" and ordered that further proceedings be before a different judge. *Id.* at 1217.

72. During the hearing before the referee, respondent admitted that he treated Ms. Glass with disdain.

As to Charge VIII of the Formal Written Complaint

(a) Wendy Weiner

73. Wendy Weiner was respondent's confidential secretary from January 2011 until March 2015. She subsequently became the Deputy Chief Clerk of the Sullivan County Surrogate's Court.

74. On January 14, 2015, around 7:50 a.m., respondent told Ms. Weiner that there was a problem with his computer. Respondent was "very upset and agitated" and shouted that he needed access to his notes and someone to fix the problem.

75. When Ms. Weiner told respondent that no one was available in the IT Department at that hour, respondent became even more agitated. Respondent took a computer jump drive and threw it across the desk toward Ms. Weiner. Respondent shouted and Ms. Weiner was scared.

76. Respondent also took the files that Ms. Weiner had brought into his office and threw them across the desk and onto the floor. Ms. Weiner was "shaking," "scared," and "very upset."

77. That morning, a court officer, a sergeant and respondent's law secretary observed that Ms. Weiner was visibly upset.

78. In March 2015, Ms. Weiner was transferred to work in the Sullivan County law library.

79. Respondent became aware that Ms. Weiner made a complaint about his conduct to the Inspector General of the Office of Court Administration and he was interviewed by the Inspector General's office on April 5, 2015.

(b) Court Officer Miguel Diaz

80. Court officer Miguel Diaz, a court officer since approximately 2004, was assigned to respondent's court part on June 29, 2012, when *Department of Family Services v. T.N.* was on the calendar. After most of the parties had entered the courtroom, Officer Diaz received a radio transmission that someone else for that matter was walking to the courtroom. Officer Diaz then opened the door in anticipation of the individual arriving.

81. The audio recording of the proceeding established that respondent angrily shouted at Officer Diaz: "Keep 'em out. Keep 'em out. Close the door." When Officer Diaz tried to tell the lieutenant what was happening, respondent yelled, "They're—they're staying out. Close the door. Jesus" and "Get off the radio."

(c) Sergeant Guillermo Olivieri

82. Sergeant Guillermo Olivieri, who was assigned to Sullivan County Family Court in 2009, was in respondent's court part on February 25, 2013, when the *H. v. E.* matter was on the calendar.

83. When all the parties for the *E* matter were not ready to come into the courtroom, respondent in a somewhat loud and angry tone, said: "Miguel, please get cases lined up on the door." He then directed Officer Diaz to tell Sergeant Olivieri to meet him in his chambers.

84. On February 25, 2013, Officer Diaz told Sergeant Olivieri that respondent wanted to see him in his chambers. Sergeant Olivieri testified that as he approached respondent's chambers, the door to the courtroom opened and respondent, who was still in his judicial robe, came "towards me in a very aggressive manner, red in the face and he was pointing in my direction." Respondent's court assistant and secretary at the time testified that respondent walked rapidly and aggressively toward Sergeant Olivieri.

85. Respondent approached him yelling, "I want another officer now, now, I want another officer now" and that he "need[ed] to move a calendar." In response, Sergeant Olivieri, who was "in shock", got into a "bladed stance" because he was unsure what was going to happen. Sergeant Olivieri explained that he was trained that when you are "having an encounter with" someone, you should angle your body so your firearm is furthest away from the person.

86. The sergeant told respondent that he would assign another officer to the courtroom and that he should not talk to him "in that tone."

(d) Court Officer Brenda Downs

87. Court officer Brenda Downs became a court officer in approximately 2006. She was assigned to the Sullivan County Family Court.

88. In or about 2014, Officer Downs was assigned to respondent's courtroom.

At the conclusion of a proceeding, respondent called a short recess and went into chambers to work on a decision. Officer Downs, a court assistant and respondent's secretary, were outside of respondent's chambers talking. Respondent was in his office with the door open. He then walked to the door and, without saying anything, slammed the door closed. At that time, Officer Downs was standing four or five inches away from the door.

As to Charge IX of the Formal Written Complaint

89. On March 10, 2014, respondent presided in Family Court over *M.A.M. v. R.R.H.,* a child custody and visitation matter. The parties appeared for court approval of an informal custody and visitation agreement. Neither party was represented by counsel.

90. During the proceeding, respondent stated that the parties should use "good judgment" before they introduced their daughter to someone whom they were dating. Respondent stated that if the parties' daughter "has to endure anyone that Mr. H dates is a drug addict, a slut, whatever, or anyone that Ms. M dates is a drug addict, a slut, a child abuser, whatever, then she is going to have a very difficult time of this." There was no evidence or allegation that either party had a history of dating such individuals, had introduced their child to such individuals, or was dating at all.

91. Respondent admitted that his comments were inappropriate and undignified.

As to Charge X of the Formal Written Complaint

92. Prior to assuming judicial office in January 2011, respondent had a private

law practice with an office in Ferndale, New York. He had law office letterhead, maintained a telephone and answering machine for law office business purposes and used a facsimile machine with the heading "McGuire Law."[1]

93. For a few years after becoming a full-time judge, respondent occasionally utilized the same letterhead, facsimile machine and telephone number that he had used while practicing law prior to January 2011.

94. Respondent admitted that a full-time judge's name cannot be linked to a law firm. He further admitted that he violated the Rules when he used his former law office letterhead and facsimile machine after he became a full-time judge.

95. After closing his law office, respondent had his mail forwarded to PO Box [redacted], Ferndale, New York.

96. Respondent had a close personal relationship with Sullivan County attorney Zachary D. Kelson ("Kelson"). Respondent acknowledged that Mr. Kelson was a "good friend." They have had lunch together. Respondent attended Mr. Kelson's son's Bar Mitzvah in 2015. Mr. Kelson also made a monetary contribution to respondent's judicial campaign in 2010.

(a) People v. W.M.

97. On or about September 20, 2012, respondent's son was arrested in Oneonta, New York for Unlawful Possession of Marihuana.

[1] The answering machine message for the telephone number indicated, "You've reached the office of Michael McGuire, there's no one available to take your call right now . . ."

98. Respondent told his friend attorney Kelson about the arrest and Mr. Kelson offered to contact the District Attorney's office to determine if an Adjournment in Contemplation of Dismissal ("ACD") would be offered. Mr. Kelson spoke with the District Attorney's office and informed respondent that an ACD would not be offered.

99. On December 2, 2012, using letterhead from his former law office, respondent sent two letters on behalf of his son to the Chief Clerk of the Oneonta City Court. In one December 2nd letter, respondent enclosed his Notice of Appearance stating that he "appears as counsel for the defendant." Respondent included an Affirmation of Actual Engagement for December 5, 2012, the date of his son's next court appearance. In this Affirmation, which was made under penalty of perjury, respondent identified three County Court and three Family Court cases in which he would be engaged on December 5, 2012. All the cases respondent identified were cases in which he was presiding as the judge.

100. Respondent identified himself on both December 2nd letters, the Notice of Appearance and the Affirmation of Actual Engagement, as "MICHAEL F. McGUIRE, ESQ." The letters were sent by facsimile and contained a facsimile stamp reading "MCGUIRE LAW."

101. On February 26, 2013, respondent appeared in court to represent his son and conferenced the case with the prosecutor and the judge.

102. On April 8, 2013, respondent sent a letter on his former law office letterhead enclosing a motion seeking various relief which he signed as "Michael F. McGuire, Esq."

103. On August 6, 2013, the judge issued a decision in respondent's son's case which decision identified respondent as the attorney for the defendant. The charges were dismissed in the interest of justice.

104. Respondent admitted that he "absolutely" knew in 2013 that he was prohibited from representing his son but did so anyway. Respondent admitted this was improper.

(b) People v. Corinne McGuire

105. On May 17, 2010, respondent's wife, Corinne G. McGuire, received a speeding ticket in Wawarsing, New York. Respondent, who was not a judge at that time, represented his wife in that matter. Respondent believed the matter was resolved in 2010.

106. On July 22, 2011, the Wawarsing Town Court sent a letter advising that respondent's wife's license would be suspended if she failed to respond.

107. On July 25, 2011, respondent, then a judge, sent a letter on his former law office letterhead on behalf of his wife to the Wawarsing Town Court Justice. Respondent's letter included a statement that he was now a County Court Judge and was "not permitted to represent this or any other client." He asked the court to "accept the previously submitted plea" that he had discussed with the prosecutor. After respondent sent the letter, the ticket was dismissed.

108. Respondent admitted that he "improperly communicated with the Court" and that it was improper to use his former law office letterhead.

(c) George Matisko

109. Prior to becoming a full-time judge, respondent represented George

Matisko in connection with a personal injury matter.

110. On January 20, 2011, after respondent became a full-time judge, a representative for Progressive Casualty Insurance Company ("Progressive") requested a signed medical information release form for Mr. Matisko. The same day, by letter on respondent's former law office letterhead, Mary Ann Schares, respondent's sister who had worked in his former law office, sent Progressive the form. The letter was signed "Michael F. McGuire/mas."

111. Between January and October 2011, Progressive sent three letters to respondent at the address of his former law practice regarding Mr. Matisko's claim.

112. Respondent's confidential secretary, Ms. Weiner, had previously worked at a personal injury law firm. Respondent asked her to call Progressive and negotiate a settlement for Mr. Matisko.

113. On October 31, 2011, Ms. Weiner received an offer from Progressive to settle the matter for $1,000 which respondent told her to accept and to draft a release. Ms. Weiner drafted a release and sent it to Progressive from her office email account on November 30, 2011.

114. Mr. Matisko came to respondent's chambers during business hours on December 23, 2011 and signed the release. Ms. Weiner notarized it. Respondent was present when Mr. Matisko came to chambers.

115. On "Michael F. McGuire, Esq." letterhead with respondent's PO Box number, Ms. Weiner prepared and signed a December 23, 2011 letter forwarding the signed release to the adjuster. She used the PO Box address because it was the address

used "for most of the stuff that was personal coming through our office as opposed to official court business."

116. In January 2012, respondent asked Ms. Weiner to arrange for Progressive to issue a new check. On January 25, 2012, Ms. Weiner prepared a letter on "Michael F. McGuire, Esq." letterhead with the PO Box address requesting a replacement check. She electronically signed the letter "Michael F. McGuire" over the typed line "Michael F. McGuire, Esq." Respondent knew that Ms. Weiner was sending the letter.

117. On January 26, 2012, Progressive issued a $1,000 check payable to "GEORGE MATISKO ADULT MALE & MICHAEL MCGUIRE, ESQS., AS ATTORNEY." The check was sent to the PO Box in Ferndale, New York which respondent used after he closed his law office. Respondent and Mr. Matisko endorsed the check.

118. Respondent claimed Ms. Weiner acted on her own regarding the *Matisko* matter and that she was "masquerading as Judge McGuire without his knowledge." The referee found that his claim was not credible.

(d) Ellen and Phillip Moore

119. Respondent was a friend of Christopher DePew and his wife Heather. In 2014, Heather's parents, Eileen and Phillip Moore, were selling their house and Heather was interested in a foreclosure property as a replacement house for her parents. Edward Jeffrey Dolfinger was the listing broker for the house for the foreclosure company.

120. The Moores knew respondent and told him that they wanted to purchase the

foreclosure property without using an attorney. Respondent told them that they needed to have the home inspected, get a survey and have a title company do a search of the property. He also suggested that the Moores have an attorney look at the contract because it was a foreclosure.

121. Respondent's brother, Ken McGuire, is also an attorney. While respondent and the Moores discussed Ken McGuire's involvement in the transaction, the Moores each testified that they never met or spoke to Ken McGuire.

122. On July 28, 2014, Mary Ann Schultz, a paralegal with the law firm representing the foreclosure company, sent an email to obieinky@[redacted], an email address used by respondent's wife. The email was addressed "Good Morning Mr. McGuire" and stated, "[k]indly copy and have your client sign four (4) copies of the contract and return" them with a check or money order.

123. Respondent subsequently went to the Moore home with the contract for the purchase of the property. Eileen and Phillip Moore each testified that, while at their home, respondent explained the contract to them and showed them where to sign it. On the contract, Ken McGuire's name was listed as the attorney for the purchasers and respondent's cellular telephone number and business PO Box were listed as contact information. The Moores signed the contract in respondent's presence and he took the documents with him.

124. On August 12, 2014, Ms. Schultz sent two emails to respondent's wife's "obieinky" email. The emails were addressed to "Mr. McGuire" and attached to one was the "the fully executed contract" and attached to the other was a closing extension.

125. On August 25, 2014 at 2:19 p.m., Ms. Schultz, the paralegal, sent an email to the broker, copying the "obieinky" email address. In this email, the paralegal attached an extension addendum and asked the broker if the "obieinky" email address was the correct email for the buyer's attorney.

126. Later that day, at 8:09 p.m., an email was sent from "Mr MICHAEL MCGUIRE <judgemcguire@[redacted]>" to Ms. Shultz regarding addendums and the home inspection. The email was signed "Ken McGuire, Esq" but gave a contact number of [redacted]-8568. This telephone number is respondent's cellular telephone number.

127. On August 26, 2014 at 5:16 a.m. an email was sent from the "judgemcguire" email address to Ms. Schultz and signed "Ken McGuire." This email again provided respondent's cellular telephone number as the contact telephone number.

128. On August 26, 2014 at 8:48 a.m. an email was sent to Ms. Schultz from the "judgemcguire" email address signed by "Ken" which indicated that a telephone conversation had taken place between them. The email stated: "To clear up the confusion I am handling this matter but Mike is my brother, also an attorney but not practicing full time right now, and so you may from time to time speak with him as well. Sorry for the confusion."

129. On August 25 and 26, 2014, there were several emails between Mr. Dolfinger, the broker for the property, and respondent's email address. Some of the emails from the "judgemcguire" email address were signed "Ken" or "Ken McGuire." One of the August 26 emails from the "judgemcguire" email address was sent at 3:47

a.m. and did not have a signature. Respondent testified that he began his work day between 3:00 and 3:30 a.m.

130. On August 25, 2014 at 8:55 p.m., an email regarding a home inspection was sent to the broker from the "judgemcguire" email address and was signed "Ken McGuire." Mr. Dolfinger had never received an email from this email address before; all other correspondence had been with the "obieinky" email address. When he received the email, the broker was not sure who he was dealing with since the email address said Michael McGuire, but it was signed Ken McGuire.

131. Respondent testified that it was not him but his brother Ken who represented the Moores in connection with the real estate transaction and that it was Ken who used respondent's "judgemcguire" email address to communicate about the Moore real estate transaction. The referee found this testimony not credible.

132. The broker never received an email with an email address identified as one belonging to Ken McGuire nor did he ever speak to Ken McGuire.

133. On September 3, 2014, Ms. Schultz received an email from the "judgemcguire" email address regarding the home inspection and closing. The email was signed "Ken McGuire" and stated, "I am on vacation from September 16–24."
A September 9, 2014 email from the "judgemcguire" email, signed Ken McGuire, stated "I am out of town from the 15th (Monday) through the 24th."

134. Although respondent denied that he was on vacation during that period, an

August 5, 2014 email from respondent's court secretary to other court personnel indicated that respondent would be away from September 16 through September 23, 2014.

135. An email to the real estate paralegal on September 17, 2014 from the "judgemcguire" email address and signed "Ken," stated, "I am down in Florida."

136. On January 7, 2015, Eileen Moore called respondent's chambers and spoke with Ms. Weiner. In an email, Ms. Weiner asked respondent to call Ms. Moore and stated, "[t]here is concern on a bill where penalties are accruing as a check has never been received." Respondent admitted that he received this email and that he probably called the Moore's daughter or son-in-law back in response.

(e) Ricky Pagan

137. In 2010, before he became a judge, respondent represented Ricky Pagan in connection with his purchase of property in foreclosure. Mr. Pagan had paid $5,000 in back taxes on the property but had no agreement with the property owner. In order to protect Mr. Pagan's interest, in 2010 respondent prepared and filed a mortgage.

138. After respondent became a full-time judge, he received a call from the owner of the property and he returned the call. The owner indicated that she had received another foreclosure notice. Respondent then told Mr. Pagan to go to the treasurer's office because the property was going to be foreclosed.

139. In 2013, Mr. Pagan spoke to respondent about "how to go about finishing the deal" and respondent helped him finish the purchase of the property. Mr. Pagan brought respondent a check for the balance of the purchase price and respondent sent it to

the seller along with relevant documents. Respondent asked the seller to return the documents to him.

140. On November 14, 2013, the deed transferring the property to Mr. Pagan was filed with the Sullivan County clerk's office. The clerk's Recording Page stated that the deed was received from "MCGUIRE" and the last page of the deed directed that it should be returned to Michael F. McGuire at the PO Box where respondent was receiving his business mail after he became a full-time judge.

(f) Christopher Lockwood

141. Before becoming a judge, respondent represented Christopher Lockwood regarding a June 6, 2010 speeding ticket issued in Liberty, New York.

142. After respondent became a full-time judge, the Liberty Town Court sent a letter dated January 4, 2011 to respondent at the address of his former law office, informing him of an appearance date in the *Lockwood* matter.

143. When the parties did not appear on the return date, the Liberty Town Court clerk called respondent's chambers and left a message for him to call her about the *Lockwood* matter. Respondent returned the call and informed her that his brother, Ken McGuire, would be handling the matter.

144. On February 1, 2011, a letter on respondent's former law office letterhead and signed "Kenneth J. McGuire, Esq." was sent to the Liberty prosecutor enclosing a completed application to amend a traffic infraction and Mr. Lockwood's driving record abstract. During this time, respondent was aware that letters were being sent using his former law office letterhead.

145. Respondent showed Ms. Weiner the Lockwood traffic ticket and application and told her to fill in the missing information on the application. Ms. Weiner told respondent that she did not know how to fill out the application and that she needed his help.

146. On August 5, 2011, after respondent completed the application, Ms. Weiner drafted and sent a letter to the Liberty Town Court which included a "properly executed" application. The letter was signed using respondent's computer-generated signature and the letterhead had his PO Box which he used after becoming a full-time judge. Respondent knew that Ms. Weiner sent the letter and application to the Liberty Town Court.

147. On September 12, 2011, the Liberty Court sent a letter to respondent and Mr. Lockwood informing them that the "court has accepted your guilty plea for the charge(s)." The letter was sent to respondent at his former law firm address.

148. The Liberty Town Court clerk never received Ken McGuire's contact information, she never spoke to Ken McGuire and he never appeared in court on the matter.

As to Charge XI of the Formal Written Complaint [2]

[2] The first paragraph of Charge XI in the Formal Written Complaint referenced the period from "January 2011 through in or about 2014" but the specifications in the complaint alleged that the conduct occurred from January 2011 through 2016. The evidence at the hearing established that the conduct in this charge continued through 2016. The Commission asked the referee to deem the complaint amended to conform to the specifications and the proof at the hearing. The referee found that respondent did not oppose the request and recommended that the request be granted. The request to amend the first paragraph of Charge XI in the complaint is granted.

Matters Involving Attorney Zachary Kelson

149. During the time that respondent was a judge, respondent's friend, Sullivan County attorney Kelson, assisted respondent in connection with respondent's son's arrest for possession of marihuana. While respondent was a judge, at respondent's request, Mr. Kelson also represented individuals respondent knew, sometimes for no fee. While Mr. Kelson was providing this representation and subsequently, respondent presided over matters in which his friend, Mr. Kelson, appeared as counsel.

a. *People v. W.M.*

150. As described above, ¶98, Mr. Kelson contacted the prosecutor regarding a possible ACD for respondent's son and informed respondent in an email that an ACD would not be offered. Respondent and Mr. Kelson also exchanged emails about legal issues in the case.

151. On November 20, 2012, Mr. Kelson sent the Oneonta prosecutor an email, which he blind copied to respondent. Respondent replied to Mr. Kelson, "Thank you let me know if you hear anything back . . ." and opined on the merits of the case against his son.

152. Further emails between Mr. Kelson and the prosecutor and Mr. Kelson and respondent between November 21, 2012 and December 3, 2012 established Mr. Kelson's continued involvement with the Oneonta prosecutor on behalf of respondent's son. Respondent thanked Mr. Kelson for his efforts.

153. After Mr. Kelson advised respondent that his efforts to obtain an ACD or

dismissal had failed, respondent emailed him on December 3, 2012 at 3:53 a.m. and again thanked him for helping with his son's case.

154. Mr. Kelson replied thanking respondent for his "kind words" and stated, *inter alia*, "I just feel as if I failed you because I couldn't get the case resolved without involving you or your brother." Later that day, respondent replied, "[D]on't worry you did not fail me at all, we will handle it you are great and a wonderful friend. Missed you at Brother Bruno's today." Brother Bruno's is a restaurant where Mr. Kelson and respondent have had lunch together.

b. *People v. Tina McTighe*

155. From approximately July 2012 through November 2012, Mr. Kelson represented Tina McTighe, a close friend of respondent's wife, in connection with a speeding ticket. Respondent told Mr. Kelson that Ms. McTighe had received a speeding ticket. Mr. Kelson represented McTighe for no fee.

156. Emails between Mr. Kelson and respondent established that Mr. Kelson kept respondent informed regarding his representation of Ms. McTighe and discussed an appropriate disposition.

157. When the matter was resolved and the payment of a fine was required, Mr. Kelson sent respondent a copy of the court document and asked respondent to arrange for Ms. McTighe to pay the fine. Respondent replied to Mr. Kelson's email, "Absolutely, I will take care of that thank you Mike."

c. *County of Sullivan v. Estate of Lydia Fernandez*

158. According to respondent, Jerry Fernandez is "probably my closest friend."

Respondent asked Mr. Kelson to represent Mr. Fernandez in *County of Sullivan v. Estate of Lydia Fernandez,* a case involving Mr. Fernandez's deceased mother's debts. Mr. Kelson had previously represented Mr. Fernandez. Respondent forwarded documents regarding the case, including the summons, to Mr. Kelson and Mr. Kelson represented Mr. Fernandez.

159. On April 19, 2012, Mr. Kelson emailed respondent a copy of the settlement in that matter together with a copy of his letter to Mr. Fernandez in which he explained the terms and advised "[t]here is no charge for my services rendered." Respondent replied, "Thank you very much, I cannot tell you how much I appreciate your friendship, our lunch breaks are great therapy for me. Mike."

160. When Mr. Fernandez failed to make payments in compliance with the settlement, Mr. Kelson emailed respondent. Respondent replied to a January 21, 2014 email from Mr. Kelson stating that he would contact Mr. Fernandez and stated, "Thanks for staying on top of that for me. Mike."

d. *Eye Physicians of Orange County, PC v. Gerardo Fernandez*

161. Respondent also asked Mr. Kelson to represent Mr. Fernandez in *Eye Physicians of Orange County, PC v. Gerardo Fernandez* which related to a debt Mr. Fernandez owed. On October 27, 2014, respondent emailed Mr. Kelson a copy of the summons in that matter which was returnable the next day, October 28, 2014.

162. The next day, on October 28, 2014, Mr. Kelson sent a letter to the judge presiding over the *Fernandez* matter and requested an adjournment because "I will be actually engaged before the Hon. Michael F. McGuire, Sullivan County Family Court

Judge, in the Sullivan County Family Court this afternoon in a proceeding entitled "In the Matter of Sullivan County DFS vs. 'C.'" Mr. Kelson sent a copy of this letter to respondent.

163. Respondent did not disclose this to the parties in that matter and he did not recuse himself.

164. Mr. Kelson informed respondent by email when he settled the *Fernandez* matter and asked respondent to "let Jerry know it's settled." Respondent and Mr. Kelson discussed having dinner at Mr. Fernandez's restaurant so respondent could thank Mr. Kelson for his work on the *Fernandez* matter. The dinner did not happen.

165. Respondent admitted that it was improper for him to have tried to arrange such a dinner while Mr. Kelson was appearing before him.

e. *People v. Lindsay Amoroso*

166. On July 26, 2011, Lindsay Amoroso received a speeding ticket in the Town of Plattekill. While respondent and attorney Kelson were having lunch, respondent asked him if he knew an attorney who could represent Ms. Amoroso in Plattekill. Respondent told Mr. Kelson that Ms. Amoroso was a close friend of one of his sons.

167. Mr. Kelson told respondent that he would handle the case and respondent gave him a copy of the speeding ticket. Respondent told Mr. Kelson that he could do whatever he wanted regarding a fee. Mr. Kelson decided to charge no fee.

168. Emails between Mr. Kelson and respondent established that Mr. Kelson kept respondent informed on the progress of the case. Respondent provided a signed waiver form for use in connection with the case. When Mr. Kelson informed respondent

via email that the case was resolved, respondent replied, "Great thank you very much. Mike."

f. *People v. Willie Williams*

169. In 2013, respondent asked Mr. Kelson to represent Willie Williams in connection with two speeding tickets. Respondent told Mr. Kelson that he knew Mr. Williams from when respondent had worked at Sullivan County Community College. Mr. Kelson did not charge Mr. Williams a fee for his legal services.

170. After Mr. Kelson resolved the matters for Mr. Williams, he forwarded a copy of his communication with Mr. Williams to respondent. Respondent thanked Mr. Kelson for his work on behalf of Mr. Williams.

g. *Lori Shepish*

171. In 2015, Mr. Kelson represented Lori Shepish, whom respondent referred to him, in connection with a real estate closing. Ms. Shepish was respondent's wife's hairdresser. Mr. Kelson received a fee of $750 from Ms. Shepish for his legal services.

172. On March 12, 2015, Mr. Kelson blind copied respondent on an email he sent to Ms. Shepish about his fee and requesting certain information related to the closing.

173. On May 28, 2015, Mr. Kelson sent an email to respondent thanking him for referring Ms. Shepish to him.

174. During the same period that attorney Kelson represented the various individuals connected to respondent referred to above, he regularly appeared before respondent in Family Court where he was law guardian for the child. Respondent did

not disclose his relationship with Mr. Kelson in any of the cases in which Mr. Kelson appeared and did not recuse himself on such matters until 2019.

175. Mr. Kelson also appeared before respondent in Supreme Court on various matters during this same time period. Respondent admitted that he never made a record of his relationship with Mr. Kelson or disqualified himself in any of the cases in which Mr. Kelson appeared before him.

176. During the period in which Mr. Kelson represented litigants connected to respondent, attorney Kelson, who was also respondent's friend, appeared as counsel in the following matters before respondent:

a. *Rochelle Massey v. Sullivan County Board of Elections* in Supreme Court (January 2014);

b. *FIA Cards Services v. Sandra Fishbain* in Supreme Court (April 2014 to August 2016);

c. *Jeffrey H. Miller v. Town of Liberty Assessor* in Supreme Court (July 2013 to September 2013 and July 2014 to December 2016);

d. *Two Sullivan Street Trust v. Town of Liberty Assessor* in Supreme Court (July 2013 to September 2013);

e. *Sam's Towing & Recovery, Inc. v. Town of Liberty Assessor* in Supreme Court (July 2013 to September 2013);

f. *Matter of P* in Family Court (December 2013 to May 2016); and

g. *Matter of C* in Family Court (April 2013 to October 2015).

177. Respondent admitted that in connection with these matters he did not

disclose his relationship with Mr. Kelson nor did he disqualify himself.

178. Respondent acknowledged that it was inappropriate for him to have failed to disclose his relationship with Mr. Kelson in these matters.

179. As of May 1, 2019, shortly before the hearing before the referee began, respondent disqualified himself from all cases in which Mr. Kelson appears.

Dean v. Boyes Matter

180. In or about January 2013, respondent was assigned to preside in Supreme Court over *Michael and Joann Dean v. Sean and Dawn Boyes,* which involved the partition of property jointly owned by the parties.

181. In 2007, when respondent was in private practice, he represented Sean Boyes' mother in the transfer of the same property at issue in the pending litigation.

182. On January 24, 2013, the attorney for the Deans wrote a letter to the chief clerk stating that respondent had previously represented one of the parties and "would probably recuse himself." A copy of the deed respondent had prepared was included with this letter. On February 5, 2013, the attorney for the Deans wrote another letter to the chief clerk which indicated that "Judge McGuire may be conflicted out of this case by my prior correspondence to you."

183. Respondent testified that he did not know that he had represented Sean Boyes' mother regarding the same property at issue in the matter pending before him. He admitted that he did not make any effort to determine if it was the same property.

184. On February 13, 2013, respondent presided over the case and stated the following on the record:

> There was an application, a letter that was sent by Mr. Shawn asking the Court to consider recusing themselves on this matter because there had been a prior relationship with Mr. Boyes. I searched the records of my firm and learned that I had been involved in a real estate transaction representing Mr. Boyes' mother, not Mr. Boyes. It was a unique real estate transaction in that they came to the office, and it was a conveyance of her to her and him. They came to the office, they said what they wanted to do, and came back a couple hours later, a deed was prepared, a TP and an RP were prepared, and that was the extent of the relationship that went on. There were no discussions beyond that, and I don't see where that causes the Court to be disqualified at all.

185. Sean Boyes, one of the defendants in the matter, had a construction company, Boyes & Torrens. According to respondent, approximately a year before the February 13, 2013 court appearance, Boyes & Torrens had done work at the home of his law clerk, Mary Grace Conneely.

186. During the February 13, 2013 appearance in the *Dean v. Boyes* matter, respondent made the following statement:

> There is also an issue potentially, but I want to get the record out so we can be completely up front, that Mr. Boyes, I guess he has a construction company and he has done some work for my law clerk in her home. We, again, don't see that as -- we live in a small community where those things happen. She paid him what he was asking for. There was no issue with us having the case. This is work that was done more than a year ago. Ms. Conneely doesn't recall the exact dates, but I imagine a bid or estimate was given, the work was done. It took longer than she expected, which anyone who has done construction in their homes knows that does happen, and presumptively the construction company was paid what they were asked. There was certainly nothing untoward in that relationship, because we obviously at that time weren't even handling Supreme Court matters. And this matter was filed in 2009, so at that time it was in front of either Judge Ledina or

> Judge Melkonian, and the work was done in 2011, maybe 2012, and Judge Melkonian had it at that time.

Respondent stated that if any of the parties, "feels very strongly the Court should reconsider our position on that, we can deal with that, but I want to get on to the matters at hand. If anyone needs to make a record, make a record now." The attorneys did not object.

187. After the February 13, 2013 appearance, respondent's law clerk, Ms. Conneely, and her husband hired Boyes & Torrens to do work on their home. Ms. Conneely issued a check dated April 29, 2013 to Boyes & Torrens.

188. While respondent was presiding over *Dean v. Boyes*, Boyes & Torrens provided two proposals, dated July 13, 2013 and August 20, 2013, for work on Ms. Conneely's home. Between April 29, 2013 and June 25, 2014, while the *Dean v. Boyes* case was pending before respondent, Ms. Conneely and her husband issued six checks to Boyes & Torrens totaling approximately $50,000 for work on their home.

189. When asked if she told respondent about the work being done at her home, Ms. Conneely testified, "Yes. And in fact, I brought in material that I was using for my kitchen and I had it out in my office at that time and we were commenting on how good the tile looked with the stone I was picking for my countertop."

190. Respondent testified that he knew that Boyes & Torrens was "doing some touch-up work, replacing a cabinet door" at Ms. Conneely's home which he believed related to an old contract with Boyes & Torrens. Respondent did not disclose

this work to the parties. He testified that he did not know about a new contract Ms. Conneely had with Boyes & Torrens.

191. Ms. Conneely told respondent that she believed that the work performed at her home was "something that should be addressed to them" and respondent told her that he would disclose the information to the parties. Respondent told her that he had advised the parties that Boyes & Torrens were working on her home during the pendency of the case.

192. Respondent did not inform the parties after the February 13, 2013 appearance that Mr. Boyes's construction firm continued to work on Ms. Conneely's home.

193. Respondent and Ms. Conneely asked a floating law clerk to draft the decision in the case so "there would be no hint of impropriety." Respondent issued the decision on April 24, 2014.

194. After the April 24, 2014 decision, the attorney for the Deans called Ms. Conneely and stated that he had learned that Boyes & Torrens was working at her house. Ms. Conneely told the attorney that respondent "is sitting right here and the judge was aware of the work situation and my relationship -- my work relationship with them doing construction." Ms. Conneely believed that she put the call on speaker. Ms. Conneely testified that during the conversation respondent nodded as if to agree that he had told the parties about the work at her home.

195. In August 2014, the attorney for the Deans filed a motion seeking leave to

reargue/ renew and/or vacate the April 24, 2014 decision and either disqualify respondent or have him recused based on the appearance of impropriety. The disqualification and recusal part of the motion was based on Ms. Conneely's business relationship with Mr. Boyes.

196. On October 23, 2014, respondent issued a decision denying the motion in its entirety. Ms. Conneely drafted the decision.

As to Charge XII of the Formal Written Complaint

197. On nine occasions in 2013 and six occasions in 2014, respondent conducted interviews with applicants for gun permits on various Saturdays at the Monticello Elks Lodge. At the start of his term, pistol permit interviews were conducted in the library in the Family Court complex. In 2013, respondent decided to hold interviews at the Elks Lodge on Saturdays. Respondent introduced Ms. Weiner to a representative of the Elks Lodge who could be contacted for scheduling.

198. Respondent required Ms. Weiner to help with the Saturday interviews. On the day of the Saturday interviews, Ms. Weiner went to chambers to retrieve the pistol permit files and brought them to the Elks Lodge. She was present during the interview process. After the interviews were completed, Ms. Weiner transported the files back to chambers.

199. Ms. Weiner did not receive any financial or time compensation for her Saturday work. When Ms. Weiner attended the interviews on Saturdays she also worked her regular Monday to Friday schedule. Ms. Weiner complained to Ms. Conneely about having to work on Saturdays in connection with the pistol permit interviews.

200. On Saturday, September 7, 2013, respondent held pistol permit interviews at the Villa Roma Resort in Callicoon, New York. Respondent told Ms. Weiner that "he had an idea" about conducting the interviews on the same day and location as the Sullivan County Friends of the NRA dinner which was occurring that night. Respondent told her that "people might enjoy coming to the dinner and supporting the dinner, since they were getting pistol permits."

201. Respondent instructed Ms. Weiner that when scheduling the interviews she should inform the applicants that "the reason we were holding [the interviews] out there was because of the [Friends of the NRA] dinner and that they were more than welcome to partake if they were interested."

202. Respondent required Ms. Weiner to work on the day the interviews were being conducted at the Villa Roma. The interviews were held before the dinner in the bar area of the resort. While the interviews were being held, patrons of the resort walked through the bar area.

203. Ms. Weiner did not receive any financial or time compensation for the time she worked at the Villa Roma. Ms. Weiner worked her regular Monday to Friday schedule the week before and after the Villa Roma event.

204. When asked whether Ms. Weiner's time sheets would show that she took time off in connection with the Saturday work as he alleged, respondent, who approved Ms. Weiner's time sheets, replied, "probably not."

205. In 2015, the Administrative Judge for the Third Judicial District spoke

with respondent and told him that the pistol permit interviews should be conducted in the courthouse during regular business hours. Respondent testified that he complied.

As to Charge XIII of the Formal Written Complaint

206. After respondent was elected a judge, his wife changed his email address from "mike-law@[redacted]" to judgemcguire@[redacted]. She informed him about the new email and he used it until 2015.

207. On February 22, 2011, respondent's wife sent the following email to Ms. Weiner:

> if anyone calls for mikes [sic] personal email or old clients looking for him or old acquaintances, or attorneys, please let them know his new email is: judgemcguire@[redacted] (the mike-law@[redacted] is no longer working)

208. Respondent used the "judgemcguire" email address for his personal correspondence, to respond to clients who tried to contact him, to contact attorney Kelson regarding his son as well as Mr. Kelson's representation of respondent's acquaintances. He also used the "judgemcguire" email address to correspond with the paralegal representing the seller and with the broker in connection with the Moore real estate transaction.

209. Respondent admitted that it was improper for him to use his judicial title in his personal email address.

Respondent's Lack of Candor

210. The evidence supported the referee's finding that respondent lacked

candor and testified falsely at the hearing before the referee. The referee found that respondent "falsely testified" at the hearing that he did not send an email from his "judgemcguire" email on August 26, 2014 at 3:47 a.m. to the real estate broker in the *Moore* matter. Respondent's 3:47 a.m. email, which replied to an email the broker sent on August 25, 2014 at 10:18 p.m. to the "judgemcguire" email, included the statement, "It is quite simple, get the house ready for an inspection and stay out of the legal end of this transaction that will be accomplished by the attorneys, I am directing that you cease and desist from making any of your crude comments to my clients . . .."

211. During the Commission's investigation, when asked about this email, respondent testified, ". . . but I'll take responsibility for that because, given the time – and I probably had seen the other email come in."

212. During the hearing before the referee, respondent denied sending the 3:47 a.m. email. When he was shown his prior testimony in which he took responsibility for that email, respondent testified, "I have learned, since then, that I was incorrect two years ago."

213. When he appeared before us, respondent, who stated that his work day began at 3:30 a.m., acknowledged that ". . . as I was presented with evidence, it was clear that I had drafted one or two or more of those emails to the realtor dealing with getting the home de-winterized so that the home inspection can happen. I was wrong."

214. The evidence also supported the referee's finding that respondent

lacked candor when he testified that his only involvement in the Moore purchase was advising them to hire an attorney and providing them the name of a home inspector. Contrary to respondent's testimony, the referee found that the evidence established that:

(a) At least twelve emails were sent to the seller's paralegal and/or the real estate broker from respondent's "judgemcguire" email address;

(b) In two of the emails from the "judgemcguire" email address, respondent's cellular telephone number was provided as the only contact number if any questions should arise; and

(c) Eileen and Phillip Moore both testified that when respondent visited them at their home, he brought them the Contract of Sale, explained its terms and instructed them where to sign the document.

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)(1), (2), (3) and (6), 100.3(C)(1) and (2), 100.3(E)(1), 100.4(A)(2) and 100.4(G) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I through XIII of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

The evidence established that in six cases respondent disregarded the rule of law, abused his summary contempt powers and failed to follow basic due process safeguards before he deprived six litigants of their liberty.[3] In two matters, *R.R.R.* and *N.G.*,

[3] In *Pronti v. Allen,* 13 A.D.3d 1034, 1035 (3d Dept. 2004), the Court described the procedures to be followed in summary contempt matters as follows:

respondent sentenced the individuals to 30 days in jail without complying with mandatory procedural safeguards. In four other matters, *T.M.F., T.L, C.C. and J.C.K.*, respondent ordered Family Court litigants to be placed in handcuffs and detained at the courthouse for between 15 minutes and nearly two hours. Respondent admitted that in none of these cases did he give the individual a warning that his or her conduct could result in a contempt finding. Nor did he give any of the individuals the opportunity to stop the conduct or to make a statement on their behalf before he ordered them taken into custody. Furthermore, respondent acknowledged that in these matters he did not issue an order "stating the facts which constitute the offense and which bring the case within the provisions of this section" as Judiciary Law §755 required before ordering the individuals into custody.[4] In each of these six matters, respondent failed to "be faithful to the law",

> The proper protocol that courts should follow when a person's conduct is contemptuous in the presence of the court is to first warn the person that if the proscribed conduct continues, the court will find the person in contempt; when the conduct continues, offer the person an opportunity to explain his or her conduct before entering a finding of contempt; if no explanation is offered or the explanation is insufficient, enter a finding of contempt; if appropriate under the circumstances, offer the person an opportunity to purge the contempt by apologizing for the conduct or performing the act required; if purging is inappropriate or not acceptable, impose a punishment for contempt; and finally, prepare an order known as a mandate of commitment. These steps must be reflected in the mandate of commitment, as they constitute the "particular circumstances of [the] offense" leading to the contempt finding (*Judiciary Law § 752*), as well as the "facts which constitute the offense and which bring the case within the provisions" for summary contempt (*Judiciary Law § 755*)…

[4] Judiciary Law §755 requires the following in order to summarily punish contempt when "the offense is committed in the immediate view and presence of the court":

> an order must be made by the court, judge, or referee, stating the facts which constitute the offense and which bring the case within the

failed to be "patient, dignified and courteous to litigants", and failed to "accord to every person who has a legal interest in a proceeding . . . the right to be heard according to law." Rules, §§100.3(B)(1), (3) and (6).

It is well-settled that the abuse of summary contempt power is serious judicial misconduct. In *Matter of Feeder,* 2013 NYSCJC Annual Report 124, the judge was removed for, *inter alia*, holding four defendants in contempt without warning them, offering them the opportunity to apologize or to make a statement on their behalf. The Commission held,

> The exercise of the enormous power of summary contempt requires strict compliance with mandated safeguards, including giving the accused a warning that the conduct can result in contempt and providing an opportunity to desist from the contumacious conduct and to make a statement before a contempt adjudication.

Id. at 141 (citations omitted). In *Matter of Recant*, 2002 NYSCJC Annual Report 139, the judge "temporarily remanded" two defendants including ordering that one "sit on the bench inside of the well to 'teach [him] a little lesson for showing 'disrespect' to the court.'" *Id.* at 142. The Commission held,

> While a judge has broad discretion in the exercise of the contempt power (see Judiciary Law §§750, 751), such power must be exercised in accordance with proper legal procedure, which generally requires giving the individual a warning and an opportunity to desist from the contumacious conduct as well as "a reasonable opportunity to make a statement in his defense or in extenuation of his conduct" (see Sections

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provisions of this section, and plainly and specifically prescribing the punishment to be inflicted therefor.

> 604.2[c] and 604.2[a][3] of the Special Rules Concerning Court Decorum).

Id. at 144.[5] Similarly, in *Matter of Popeo*, 2016 NYSCJC Annual Report 160, the judge was censured for, *inter alia*, holding a defendant in contempt five separate times in one court appearance and imposing five consecutive 30 day sentences without warning the defendant, giving him an opportunity to be heard or to apologize. The Commission found,

> The exercise of the contempt power requires compliance with procedural safeguards, including giving the accused an appropriate warning and opportunity to desist from the contumacious conduct. . . . Implicit in the law is that strict adherence to these procedures is necessary to ensure that summary contempt be imposed only in "exceptional and necessitous circumstances . . .

Id. at 170 (citations omitted).

Here, without complying with any of the required safeguards, respondent summarily sentenced two litigants to 30 days incarceration. In four additional matters,

[5] 22 NYCRR §604.2(a)(1) (Special Rules Concerning Court Decorum) provides that summary contempt power is to be used "only in exceptional and necessitous circumstances." Section 604.2(c) provides the following:

> Except in the case of the most flagrant and offensive misbehavior which in the court's discretion requires an immediate adjudication of contempt to preserve order and decorum, the court should warn and admonish the person engaged in alleged contumacious conduct that his conduct is deemed contumacious and give the person an opportunity to desist before adjudicating him in contempt. Where a person so warned desists from further offensive conduct, there is ordinarily no occasion for an adjudication of contempt.

Section 604.2(a)(3) provides: "Before summary adjudication of contempt the accused shall be given a reasonable opportunity to make a statement in his defense or in extenuation of his conduct."

respondent ordered that three mothers and a grandmother, who were appearing in child custody and visitation matters in Family Court, be held in custody without any basis in law. They were each handcuffed and held at the courthouse for varying amounts of time. In each of these six matters, respondent violated the Rules and abused his authority in an especially egregious way when he deprived the individuals of their liberty.

In the *R.R.R.* and *N.G.* matters, respondent sentenced the individuals to 30 days in the Sullivan County Jail without following any of the required safeguards. The evidence established that Mr. R asked respondent to recuse himself. In response, respondent had a startling outburst in which he sentenced Mr. R to 30 days incarceration. In the *N.G.* matter, while the record reflected that Ms. G used a curse word after respondent berated her, respondent did not follow any of the procedures required for summary contempt. As the Commission has held, "Even if provoked by a perceived lack of respect for the court, respondent's conduct cannot be excused. As the Court of Appeals stated, 'respect for the judiciary is better fostered by temperate conduct [than] by hot headed reactions to goading remarks.'" *Matter of Wiater*, 2007 NYSCJC Annual Report 155, 158 (citation omitted). Similarly, in *Matter of Griffin*, 2009 NYSCJC Annual Report 90, the Commission held that,

> Regardless of whether the parties' initial behavior provided sufficient basis for a contempt holding, it was respondent's obligation to warn them explicitly that the conduct could result in a summary citation for criminal contempt resulting in incarceration and to give an opportunity to desist from the conduct. . . .
>
> While the litigants in these cases may have been contentious to varying degrees, it is clear that respondent abused the

> contempt power by failing to observe these mandated procedures, which resulted in the litigants' incarceration.

Id. at 96.

In the *C.C.* matter, without any due process, respondent ordered a mother handcuffed and held in a locked conference room at the courthouse after she objected to having to purchase another Pack 'n Play crib for her infant daughter. After Ms. C was brought back to the courtroom in handcuffs crying, respondent, after being made aware that she was pregnant, proceeded to inappropriately criticize her for having another child.

In the *T.M.F.* matter, respondent ordered that Ms. F, who was not represented by counsel and was appearing in Family Court regarding the emotionally charged issue of the custody and visitation of her daughter, be placed in handcuffs and detained. Without following any of the required procedures, respondent directed that Ms. F be held in custody for nearly two hours. Before he ordered that she be placed in custody, Ms. F had apologized to respondent twice regarding her conduct which involved objecting to her daughter's visitation with the father. Given the overall circumstances, particularly Ms. F's two apologies, there were no apparent exceptional circumstances which warranted summary contempt. *Pronti v. Allen*, *supra*, 13 A.D.3d at 1035. Nevertheless, without complying with any required safeguards, respondent ordered that Ms. F be detained. Respondent did not prepare any order setting forth the grounds for such detention at the courthouse. Moreover, respondent was later discourteous when, after he had Ms. F returned to the courtroom two hours later, he asked her "How's handcuffs feeling?"

In addition to depriving six Family Court litigants of their liberty, respondent also threatened two additional Family Court litigants and the mother of a litigant with putting them in handcuffs and detaining them. In the *S.Ro.* matter, two attorneys present testified before the referee that respondent screamed and yelled at the child's grandmother after she made a comment to her granddaughter when the proceeding was over.

Demonstrating the terrifying impact respondent's serious misconduct and angry outbursts had on Family Court litigants, in two matters, *T.L.* and *S.Ro.,* paramedics had to be called to the courthouse. The mother and grandmother in those matters had each appeared in court for a sensitive custody and visitation proceeding involving a child in her family. As a result of respondent's misconduct, which in Ms. L's case caused her to be handcuffed and detained for more than an hour at the courthouse, each litigant became so distraught that she required medical attention.

Pursuant to Section 100.4(G) of the Rules, full-time judges are prohibited from practicing law. On six separate occasions, respondent, an experienced full-time judge, ignored this clear prohibition and represented his son, his wife, his friend's in-laws and three clients of his former law practice. "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. In *Matter of Edwards,* a full-time judge was censured for representing his daughter during three appearances in Family Court and invoking his judicial office.[6]

During the time he represented his son in Oneonta City Court between December 2012 and August 2013, respondent "absolutely" knew that, as a full-time judge, he was prohibited from representing anyone, including family members. Nevertheless, he purposefully ignored his ethical obligations under the Rules and represented his son. He filed a notice of appearance, sent letters using the letterhead from his former law office, filed motions and appeared in court as his son's attorney to conference the case with the judge and prosecutor. Respondent also filed a notice of actual engagement in which he averred that on a particular date he would be engaged in several matters over which he was presiding as a judge. Respondent's conduct was strictly prohibited and he knew it was inappropriate.

The evidence further established that respondent improperly practiced law when he represented the Moores, who were the in-laws of his friend, in connection with their real estate transaction. Although respondent denied practicing law in connection with that real estate purchase, both Eileen and Philip Moore testified that respondent came to their home with the purchase contract and explained the contract to them.

[6] http://cjc.ny.gov/Determinations/E/Edwards.William.2019.12.20.DET.pdf

Respondent's claim that his brother, Ken McGuire, who was also an attorney, handled the real estate transaction for the Moores was belied by the evidence.[7] The Moores never met or spoke with Ken McGuire regarding the purchase of the house. The emails relating to the real estate transaction with the paralegal for the seller and with the broker for the property, which were signed "Ken" or "Ken McGuire", were sent from respondent's personal "judgemcguire" email address. Furthermore, two of those emails included respondent's personal cellular telephone number as a contact. No other telephone contact was provided.

Although respondent claimed it was not him, but his brother Ken, using the "judgemcguire" email address to communicate about the Moore real estate transaction, respondent failed to call his brother as a witness. Based on respondent's testimony, Ken McGuire had knowledge of a material issue, was available to respondent, would be expected to give favorable testimony to respondent, and such testimony would have been non-cumulative.[8] Accordingly, an adverse inference that Ken McGuire did not perform legal work for the Moores and that he did not send the emails from the "judgemcguire" email address that were signed "Ken" or "Ken McGuire" is appropriate.

[7] The evidence supported the referee's finding that respondent lacked candor when he testified about Moore matter.

[8] A negative inference may be drawn against a party when (1) the uncalled witness has knowledge about a material issue; (2) the witness is available to the non-calling party to testify; (3) the witness is under the "control" of the non-calling party, such that the witness would be expected to give testimony favorable to that party; and (4) the witness is expected to give noncumulative testimony. *People v. Savinon*, 100 N.Y.2d 192, 197 (2003); *People v. Gonzalez*, 68 N.Y.2d 424, 427 (1986).

Respondent also engaged in the prohibited practice of law when he sent a letter on his former law office letterhead to the Wawarsing Town Court on behalf of his wife. In this letter, respondent referenced his judicial office stating that he was a full-time judge and could not represent any client. He then asked that a prior plea discussed with the prosecutor be accepted. In addition to showing that respondent improperly practiced law while a full-time judge, the letter also demonstrated that respondent referenced his judicial office in an apparent effort to further his personal interests. This was also inappropriate and violated Section 100.2(C) of the Rules which provides, "[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . .."

Furthermore, respondent ignored his ethical obligations when he had his court secretary speak to an insurance company on behalf of respondent's client, Mr. Matisko, and prepare documents in connection with his claim. Respondent's client came to chambers to sign a release and the settlement check was issued to Mr. Matisko and respondent. Respondent endorsed this check. In addition to improperly practicing law while a full-time judge, respondent also improperly lent the prestige of his office to advance his private interests when he had his court secretary prepare documents and speak with the insurance company during work hours. In addition, respondent improperly asked his court secretary to prepare a letter to the court for his client in the *Lockwood* matter. *See*, *Matter of Ruhlmann,* 2010 NYSCJC Annual Report 213, 220 ("Routinely using court staff for extra-judicial purposes is improper regardless of whether the employee consents or performs such tasks without protest."); *See*, *Matter of Brigantti-*

Hughes, 2014 NYSCJC Annual Report 78, 88 ("Tasks of a personal nature remain a judge's personal responsibilities and should not be discharged using public resources.").

In addition to his other serious misconduct, respondent failed to disqualify himself in several matters where his impartiality could reasonably be questioned in violation of Section 100.3(E)(1) of the Rules. Respondent presided over matters in both Family Court and Supreme Court in which his friend appeared as counsel. Respondent and Mr. Kelson had a close relationship which was apparent when Mr. Kelson assisted respondent after respondent's son was arrested in Oneonta. In addition, Mr. Kelson represented other individuals at respondent's request. Respondent also socialized with Mr. Kelson. Nevertheless, when Mr. Kelson appeared before him, respondent did not disclose his relationship with Mr. Kelson nor did he disqualify himself from such matters. On May 1, 2019, shortly before the hearing before the referee began, respondent disqualified himself from matters in which Mr. Kelson appeared.

Respondent breached his ethical obligations and undermined confidence in the judiciary when he failed to notify the parties and recuse himself from matters in which his friend appeared. In *Matter of Thwaits*, 2003 NYSCJC Annual Report 171, the Commission censured a Town Justice who presided over matters involving relatives and an acquaintance. The Commission held,

> Disqualification is also required when the judge's impartiality can reasonably be questioned . . .
>
> We recognize that, in small communities, local justices may frequently be presented with matters in which they have some personal relationship with the parties. Although disqualification may occasion some inconvenience and delay,

> every judge must be mindful of the importance of adhering to the ethical standards so that public confidence in the impartiality of the judiciary may be preserved.

Id. at 173-174 (citations omitted); *Matter of Young,* 2012 NYSCJC Annual Report 206, 219 *aff'd,* 19 N.Y.3d 621 (2012) ("There can be no substitute for making full disclosure on the record in order to ensure that the parties are fully aware of the pertinent facts and have an opportunity to consider whether to seek the judge's recusal."); *Matter of Robert*, 1997 NYSCJC Annual Report 127, 130 ("Judges have been sanctioned for presiding in cases involving friends or others with close associations, even when there is no evidence of favoritism." (citations omitted)).

Respondent also undermined confidence in the integrity and impartiality of the judiciary when he did not disclose that a construction company affiliated with one of the parties in the *Dean v. Boyes* matter was performing work at respondent's law secretary's home while the matter was pending before respondent. In *Matter of Gumo*, 2015 NYSCJC Annual Report 98, the Commission held,

> Disclosure permits the parties to address the issue and bring to a judge's attention information or concerns that might influence the judge's decision on disqualification. In a small town, where, as the prosecutor stated, "there was an assumption everybody knew everybody", it was especially important to bring the issue into the open by addressing it in court, in order to dispel any appearance of impropriety and reaffirm the integrity and impartiality of the court.

Id. at 115.

Furthermore, the evidence established that respondent was repeatedly discourteous and impatient toward court personnel as well as litigants. This conduct violated the Rules

which require all judges to "act at all times in a manner that promotes public confidence in the judiciary" and to be "patient, dignified and courteous to litigants . . . and others with whom the judge deals in an official capacity." (Rules §§100.2(A) and 100.3(B)(3)) The evidence established that respondent yelled at Ms. Weiner when there was a problem with his computer. After respondent's outburst toward her, Ms. Weiner was frightened and cried at her desk. The audio recording of the June 29, 2012 proceeding established that respondent screamed at Officer Diaz to close the courtroom door. In another incident, respondent angrily and aggressively approached Sergeant Olivieri and yelled at him. Respondent slammed a door inches away from where Officer Downs was standing. Respondent's pattern of intemperate and abusive behavior was improper and brought reproach upon the judiciary.

In addition to being impatient and discourteous toward court personnel, respondent was also repeatedly discourteous toward litigants. In the *R.R.R.* matter, respondent screamed at Mr. R after he requested that respondent recuse himself. In *Varner v. Glass*, in overturning respondent's decision, the Third Department found that respondent had treated the mother in that proceeding with "disdain" and ordered that on remand the matter be heard by a different judge. *Varner v. Glass,* 130 A.D.3d 1215, 1217 (3d Dept. 2015). In the *M.A.M. v. R.R.H.* matter, without any evidentiary basis, respondent admonished the parties not to date "a drug addict, a slut." Respondent acknowledged that his comments in that matter and several others were improper.

Such repeated discourteous behavior severely undermines confidence in the judiciary. In *Matter of Mertens,* 56 A.D.2d 456 (1st Dept. 1977), the judge was

disciplined for, *inter alia*, being discourteous to litigants and attorneys.[9] The Court found that, "respondent suddenly exploded in angry shouting sometimes described as yelling and screaming at lawyers and witnesses." *Id.* at 468. The Court held that:

> Self-evidently, breaches of judicial temperament are of the utmost gravity.
>
> As a matter of humanity and democratic government, the seriousness of a Judge, in his position of power and authority, being rude and abusive to persons under his authority--litigants, witnesses, lawyers--needs no elaboration.
>
> It impairs the public's image of the dignity and impartiality of courts, which is essential to their fulfilling the court's role in society.

Id. at 470. In *Matter of Uplinger,* 2007 NYSCJC Annual Report 145, the judge was censured for, *inter alia*, being rude and demeaning to two witnesses, including threatening to hold the witnesses in contempt when they took a lunch break after the prosecutor told them they could. The Commission found that the judge improperly "threatened to hold the witnesses in contempt, ordered the witnesses to be confined in a witness room until they testified, and forbade them from using the bathroom facilities without her permission." *Id.* at 149 In *Matter of Pines*, 2009 NYSCJC Annual Report 154, the Commission held,

> A judge must also act at all times in such a manner that 'the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property' . . . Respondent's conduct in Family Court, 'where matters of the utmost sensitivity are often litigated by those who are unrepresented and unaware of their rights' . . . did not comport with these standards.

[9] This judicial disciplinary matter was initiated prior to the creation of the Commission.

Id. at 158 (citations omitted). Respondent repeatedly failed to meet these high standards for judicial conduct.

The evidence also established that respondent, a full-time judge, improperly used his judicial title in his personal email address which he used for personal matters. He used this email when he communicated with the seller's paralegal and the broker in connection with the Moore real estate transaction. He admitted that it was improper to use his judicial title in his personal email address for personal matters. By using the email address in this way, respondent gave the appearance of invoking his judicial status for his personal benefit. Such conduct violated Section 100.2(C) of the Rules.

In addition, respondent required his court secretary to work on several Saturdays in connection with pistol permit interviews and she was not given financial compensation or other time off to compensate for that work. On the date of the pistol permit interviews at the Villa Roma, the Sullivan County Friends of the NRA dinner was being held at the same location. When he told his court secretary to inform pistol permit interviewees about that dinner, respondent lent the prestige of judicial office in an attempt to support that organization in violation of Section 100.2(C) of the Rules. In addition, by requiring his court secretary to work on Saturdays without any time or financial compensation, respondent failed to "maintain professional competence in judicial administration" in violation of Section 100.3(C)(1) of the Rules.

The Commission accords deference to the referee's credibility findings because he or she is in the best position to evaluate witnesses firsthand. *See, Matter of Mulroy*, 94

N.Y.2d 652, 656 (2000). Here, the evidence fully supported the experienced referee's detailed findings that respondent lacked candor in several respects.

Although respondent argued that his conduct has changed since the events that are the subject of the thirteen charges against him, the record reflected that respondent's behavior seems to have changed only after he became aware of an investigation into his conduct. Respondent learned that his court secretary had complained about his abusive conduct when he was interviewed by the Inspector General's office in April 2015. Moreover, although in August 2018 respondent received the Commission complaint which contained a charge that he presided over matters involving his friend, respondent did not put Mr. Kelson on his recusal list until May 2019 shortly before the hearing before the referee began. Furthermore, respondent's pattern of various types of serious misconduct, together with his lack of candor when appearing before the referee, indicate that a severe sanction is warranted.

It is most troubling that respondent, who lectured litigants about freedoms available in the United States, violated those very freedoms when he ordered six litigants to be detained without any basic due process let alone strict compliance with the mandatory procedural safeguards in summary contempt matters. Furthermore, although respondent purported to be concerned with decorum in his courtroom and respect toward his judicial office, the record is replete with instances of respondent's angry outbursts toward both litigants and court personnel. In *Matter of Restaino*, 2008 NYSCJC Annual Report 191, which also involved summarily committing individuals into custody with no basis, the Commission held,

> It is sad and ironic that even as respondent was scolding the defendants for their behavior, in a court where trust and personal accountability were of paramount importance, respondent's own irresponsible behavior provided a poor example of such attributes. His conduct was injurious not only to the defendants themselves, but to the public as a whole, who expect every judge to act in a manner that reflects respect for the law the judge is duty-bound to administer.

Id. at 197. Here, respondent repeatedly engaged in misconduct when he improperly detained individuals who came to Family Court to address emotionally fraught matters involving child custody and visitation.

Respondent's lack of candor is a significant aggravating factor. *Matter of Calderon*, 2011 NYSCJC Annual Report 86, 91 ("This record of evasiveness . . . is an aggravating factor that elevates the required sanction."); *Matter of Conti*, 1988 NYSCJC Annual Report 145, 149 ("Respondent compounded his misconduct by testifying falsely in this proceeding. . .."); *Matter of Mason*, 2003 NYSCJC Annual Report 227, 248 ("Respondent further exacerbated his misconduct by his repeated lack of candor throughout this proceeding. . . . Such deception is antithetical to the role of a judge, who is sworn to uphold the law and seek the truth. . . . The giving of false testimony is inexcusable and destructive of a judge's usefulness on the bench." (citations omitted))

Given the seriousness and breadth of respondent's misconduct as well as his lack of candor, we believe that respondent should be removed from the bench. Respondent's misconduct, particularly his repeated abuse of the summary contempt power and his representation of his son and others while a full-time judge, meets the standard of "truly

egregious" conduct for which his removal is warranted. *Matter of Mazzei*, 81 N.Y.2d 568, 572 (1993) (citations omitted)

The Court of Appeals has held that, "the purpose of judicial disciplinary proceedings is 'not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents'." *Matter of Reeves,* 63 N.Y.2d 105, 111 (1984) (citations omitted) Respondent's pattern of serious misconduct and disregard for his ethical responsibilities demonstrate that he is unfit for judicial office.

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

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

Mr. Belluck was not present.

CERTIFICATION

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

Dated: March 18, 2020

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

DETERMINATION

RICHARD H. MILLER, II,

a Judge of the Family Court,
Broome 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 Cenci and S. Peter Pedrotty, Of Counsel), for the Commission

DerOhannesian and DerOhannesian (by Paul DerOhannesian, II) and Scalise & Hamilton, PC (by Deborah A. Scalise) for respondent

Respondent, Richard H. Miller, II, a Judge of the Family Court, Broome County,

was served with a Formal Written Complaint dated July 9, 2018, containing four charges. Charge I of the Formal Written Complaint alleged that respondent engaged in a pattern of inappropriate behavior toward certain staff members of the Broome County Family Court including unwelcome comments of a sexual nature. Charge II alleged that respondent lent the prestige of judicial office to advance his private interests and failed to conduct his extra-judicial activities so as to minimize the risk of conflict with his judicial obligations in that he asked his court secretary and court attorney to perform services unrelated to their official duties. Charge III alleged that while a full-time judge respondent improperly engaged in the practice of law. Charge IV alleged that respondent failed to file timely and accurate disclosure reports of his income from his extra-judicial activities to the Ethics Commission for the Unified Court System ("UCS"), the Internal Revenue Service, the New York State Department of Taxation and Finance and the clerk of the Broome County Family Court as required. Respondent filed a Verified Answer dated August 8, 2018.

By Order dated September 18, 2018, the Commission designated Robert A. Barrer, Esq. as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 7-11, 2019 in Binghamton, New York and on February 12, 2019 in Albany, New York. The referee filed a report dated June 20, 2019 in which he sustained portions of Charges I and II, found Charge III not proved and sustained Charge IV of the Formal Written Complaint.

The parties submitted briefs to the Commission with respect to the referee's report and the issue of sanctions. The Commission recommended that the referee's findings and conclusions be confirmed in part and disaffirmed in part. Respondent recommended that the referee's findings and conclusions be confirmed. Commission counsel recommended the sanction of removal; respondent's counsel argued that a sanction no greater than censure be imposed. The Commission heard oral argument on October 17, 2019 and thereafter considered the record of the proceedings and made the following findings of fact.

1. Respondent has been a Judge of the Family Court, Broome County since January 1, 2015. His current term expires on December 31, 2024. He served as a Justice of the Union Town Court, Broome County from 1996 to 2014 and as a Justice of the Johnson City Village Court, Broome County from 2002 to 2014. Respondent was admitted to the practice of law in New York in 1994.

As to Charge I of the Formal Written Complaint:

2. In August 2016, Rebecca Vroman became a court assistant in Broome County Family Court assigned to respondent's courtroom. Ms. Vroman's responsibilities included assisting respondent with emergency petitions.

3. Debbi Singer was the chief clerk of the Broome County Family Court until she retired in June 2018. Chief clerk Singer was Ms. Vroman's supervisor.

4. On February 6, 2017, respondent was assigned as emergency intake judge. Ms. Vroman assisted him in the courtroom that day.

5. On February 6, 2017, several emergency petitions came in during the afternoon court session. Respondent testified that he had a physical therapy appointment that day.

6. Ms. Vroman testified that on February 6, 2017 respondent, "started telling me to go faster, that I was going too slow. He had some place he needed to be at 4:00, so we needed to get out of there, and he just – you know, it just kept going on and on and on."

7. Ms. Vroman testified that respondent, "yelled at me and told me I was going too slow and that I needed to move faster and he just was being very rude and disrespectful and condescending and demeaning and just very belligerent to me."

8. Ms. Vroman, who was very upset about respondent's behavior toward her, immediately reported the incident to the deputy chief clerk. Chief clerk Singer testified that Ms. Vroman also complained to her that respondent "had berated her in the courtroom, screaming and yelling at her . . . she felt very demeaned by it and she wrote a letter about it." Ms. Vroman detailed respondent's conduct in writing to Ms. Singer on February 8, 2017.

9. After respondent learned that Ms. Vroman had complained about his discourteous and demeaning behavior, on March 1, 2017 respondent made a written complaint about Ms. Vroman to chief clerk Singer.

10. Ms. Singer replied to respondent by letter dated March 10, 2017. She investigated respondent's complaints about Ms. Vroman and determined that they were largely unfounded. Ms. Singer considered respondent's complaint against Ms. Vroman to

be retaliatory because of the timing of his letter and because a majority of respondent's complaints regarding Ms. Vroman had no merit.

11. During the hearing before the referee, respondent read a statement in which he stated that he was "troubled and sorry that Ms. Vroman is still upset" about the incident.

12. Ms. Vroman testified that respondent never apologized to her for his conduct.

13. In May 2017 and again in June 2017, respondent made inappropriate comments to Ms. Singer, then the chief clerk of the Broome County Family Court.

14. Ms. Singer described a comment respondent made to her after a court luncheon in May 2017 where employees brought dishes to share as follows:

> After the luncheon, the judge stopped in my office to say he really liked the dish that I made and he said, "If I knew you could also cook, I would have gone for the widow." I happen to be a widow.

When respondent made this unwelcome remark to her, Ms. Singer was "surprised, shocked, and disgusted." She testified that she "diverted by talking about the recipe that I had made." Ms. Singer did not find respondent's comment humorous.

15. In early June, respondent was in Ms. Singer's office and she began to use a fan because she was having a hot flash. Ms. Singer testified that, as she usually did when someone was in her office and she had a hot flash, she apologized to respondent and explained that she was having a hot flash. After Ms. Singer mentioned the hot flash to respondent, he replied, "It's nice to know I still have that effect on you."

16. Also in June 2017, respondent made another inappropriate remark to Ms. Singer, this time about her appearance. Ms. Singer described respondent's comment as follows:

> I was standing in the middle of my office doing something, my door was open, he walked by, he-- Judge Miller walked by, he stopped--he stepped in and said to me, "You look really hot in that outfit. You should always wear that outfit."

Ms. Singer was again "shocked and disgusted" by respondent's unwelcome comments.

17. In July 2017, respondent was transferred out of the Broome County Family Court.

18. When asked during the hearing before the referee whether he made these comments to Ms. Singer, respondent initially denied making them. Later in the hearing, respondent read a statement in which he stated,

> I am troubled that Ms. Singer believes that I made demeaning comments to her. I do not have any specific memory of the comments. All she or Ms. Vroman or anyone for that matter had to say was, "Judge, I'm uncomfortable with your manner or the statement you made." I can assure you that I would have apologized and changed my behavior. It does me no good to have my co-workers dislike me.

As to Charge II of the Formal Written Complaint:

19. When respondent became a Family Court judge, he appointed Rachelle Gallagher, who had worked for him since 2005, as his court secretary.

20. Respondent admitted that on November 6, 2015, while in her office at the Broome County Family Court, Ms. Gallagher typed a letter for him to Thomas Hayes, the executor of an estate that respondent had worked on prior to becoming a full-time judge.

According to respondent, at lunch on November 6, 2015, he had picked up mail that included checks for work performed on *Estate of Roger L. Funk.* Respondent testified that at the end of that day he noticed that the checks were unsigned.

21. Respondent knew that his former law office secretary, Donna Filip, was out of town on November 6, 2015 when he realized that the checks issued by Mr. Hayes were unsigned. According to respondent, after he stated that the checks were unsigned and needed to go back to the executor for signature, Ms. Gallagher offered to type a letter.

22. The letter Ms. Gallagher prepared was written as if it were from Ms. Filip, respondent's former law office secretary. The letter indicated that checks 102 through 104 were received but were unsigned. The letter Ms. Gallagher prepared requested that the enclosed checks be signed and returned to Ms. Filip. Respondent testified that after Ms. Gallagher typed the letter at the courthouse, he took the letter back to his former law office. According to respondent, a letter to Mr. Hayes was sent from that office.

23. Respondent admitted that it was improper for Ms. Gallagher to have prepared the November 6, 2015 letter to Mr. Hayes.

As to Charge III of the Formal Written Complaint:

The charge is not sustained and is therefore dismissed.

As to Charge IV of the Formal Written Complaint:

24. In 2015, respondent received a total of $27,388 for legal work he had performed prior to becoming a full-time judge. This amount included $16,203.48

respondent was paid in connection with his work on *Estate of Deborah Brigham* and $11,184.60 respondent was paid for work on *Estate of Roger L. Funk.*[1]

25. Respondent had an interest in two properties, one on North Street and the other on Oakdale Road, and received rental income from both properties. The tenant for the North Street property issued a $500 rent check each month payable to respondent. Respondent cashed the checks. For the Oakdale Road property, respondent received $800 per month.

26. In 2015, respondent received a total of $7,400 in rental income from the two properties. In 2016 and again in 2017, each year respondent received a total of $15,600 in rental income from the two properties.

27. In 2015, respondent's total extra-judicial income was $34,788 from rent and legal fees from his prior law practice. In 2016 and again in 2017, respondent's total extra-judicial income each year was $15,600 in rental income.

Annual Reports to Clerk of the Broome County Family Court

28. Respondent acknowledged that he did not file any report with the Broome County Family Court clerk disclosing extra-judicial income for the years 2015, 2016 and 2017. Such reports are required pursuant to Section 100.4(H)(2) of the Rules Governing Judicial Conduct ("Rules"). Respondent testified he was unaware of the requirement in the Rules.

[1] Two of the three checks for work on *Estate of Deborah Brigham* were dated November 24, 2015. The checks related to respondent's work on *Estate of Roger L. Funk* were dated December 1, 2015.

29. By email dated April 13, 2016, all judges in the 6th Judicial District were reminded of the filing requirements in the Rule. Respondent testified that he did not see this email at the time.

30. Former chief clerk Singer testified that Broome County Family Court judges were required to file an annual report of extra-judicial income with her. From January 2015, when respondent became a Family Court judge, through Ms. Singer's retirement in June 2018, she did not receive any such reports from respondent. She did receive reports of extra-judicial income from the other Broome County Family Court judges.

31. During his investigative appearance on November 28, 2017, respondent testified that he was unaware of the provision in the Rules which required that he file an annual report of extra-judicial income with the clerk of the court.

32. On May 7, 2018, the Commission sent respondent an inquiry letter in which he was asked about his financial disclosures. This letter quoted Section 100.4(H)(2) of the Rules which requires judges to file an annual report with the clerk of the court reporting extra-judicial income.

33. On May 30, 2018, respondent's attorney sent a letter in response to the Commission's May 7 inquiry letter which stated that respondent became aware of the filing requirement with the Broome County Family court clerk "in the course of this investigation." On May 30, 2018, respondent indicated that he read and adopted the contents of this letter.

34. Eight months later, on January 31, 2019, after the first five days of the hearing before the referee in this matter, respondent filed a report of his extra-judicial

income for the years 2015 through 2018 with the Broome County Family Court clerk. His report included income from the practice of law and rental income. Respondent introduced a copy of this report on the last day of the hearing before the referee on February 12, 2019. Respondent testified that this filing was made after a fellow judge sent a reminder to all 6th Judicial District Family Court judges on January 11, 2019 about the requirement to file such an annual statement.

2015 and 2016 Federal and New York State Tax Returns

35. Respondent did not accurately disclose all his income on his 2015 and 2016 federal and New York state income tax returns. For 2015, respondent failed to include on his federal and state tax returns $27,388 in income he received from the practice of law, which he had earned before becoming a full-time judge.

36. In addition, for both 2015 and 2016, respondent failed to include the rental income from the two properties on his tax returns. With respect to the Oakdale Road property, on his original tax returns, respondent claimed expenses for the property but no income. He did not include any reference to the North Street property on his original returns.

37. Respondent amended his 2015 and 2016 federal and New York state income tax returns. He filed the amended returns on or about August 2, 2017.

38. Respondent included as income the $27,388 that he received for his prior legal work on his amended 2015 tax returns. As a result, respondent owed additional federal and state taxes for that year.

39. Respondent included his rental income on his amended 2015 and 2016 tax returns. According to respondent's accountant, respondent's failure to include his rental income on his 2015 and 2016 returns did not increase his tax liability because there were off-setting expenses associated with respondent's rental properties.

2015 UCS Ethics Commission Financial Disclosure Form

40. Respondent, who was a part-time judge in 2014, included income from the practice of law on his 2014 UCS Ethics Commission Financial Disclosure Form ("FDF") which was filed in May 2015.

41. On his 2015 FDF, respondent failed to include his income from legal work. Respondent's 2015 FDF was filed on May 13, 2016. He did not include the $27,388 in legal fees he received for work he performed prior to becoming a full-time judge.

42. On or about November 16, 2017, shortly before his investigative appearance, respondent filed an amended 2015 FDF which included the income he had received from his former law practice.

43. During his November 28, 2017 investigative appearance, when questioned about whether he reported as income on his FDF the compensation he had received for work on *Estate of Roger L. Funk*, respondent testified, "I listed the bank accounts and they were deposited into a bank account." He made a similar statement when asked about the income he received for work on *Estate of Deborah Brigham* when he testified, "I disclosed it as being in the bank accounts, but I didn't specifically insert a line as to income. . .."

44. During his investigative appearance, respondent testified that he had amended his 2015 FDF to include the payments from work on both estates as income.

45. At the hearing before the referee, respondent testified that when he filed his 2015 FDF, he thought that he had cashed the *Estate of Roger L. Funk* and *Estate of Deborah Brigham* checks in 2016 which would have made them reportable on his 2016 FDF.

46. Respondent did not include the income from his prior law practice on his 2016 FDF which was filed on May 10, 2017.

47. Respondent was previously censured by the Commission. In 2002, an eight-day hearing was held before a referee on four charges against respondent. Shortly after the referee issued a report, the Administrator and respondent entered into a Stipulation agreeing that the Commission should issue its decision based upon the referee's findings and jointly recommending that respondent be censured. The Commission's determination found that each of the four charges, which were based on respondent's misconduct involving thirteen cases, were proved. On December 30, 2002, the Commission issued a determination finding that respondent should be censured.

48. On November 16, 2015, the Commission issued a letter of dismissal and caution to respondent based upon his use of misleading campaign materials.

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)(3), 100.3(C)(1), 100.4(I), and 100.4(H)(2) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I, II and IV of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

All judges are required to act in a manner to preserve the integrity of the judiciary. (Rules §100.1) The Rules require judges to "be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. . .." (Rules §100.3(B)(3)) In his interactions with two female court employees at the courthouse, respondent failed to meet this high standard. After a courthouse luncheon in May 2017, respondent stopped in the chief clerk's office, told Ms. Singer that he liked the dish she had prepared and stated, "If I knew you could also cook, I would have gone for the widow." Ms. Singer is a widow. The following month, when Ms. Singer apologized for using a fan while having a hot flash, respondent stated, "It's nice to know I still have that effect on you." That same month, respondent again stepped into Ms. Singer's office and made the extremely inappropriate and sexist remarks: "You look really hot in that outfit. You should always wear that outfit." Such sexist comments by a judge to a court employee are shocking and unacceptable. Indeed, Ms. Singer testified that she was "disgusted" by respondent's offensive commentary about her appearance and by his statement that he would have "gone for" her if he had known that she was a good cook. In addition to his highly inappropriate comments to the chief clerk, respondent also berated and demeaned a female court assistant. Respondent's conduct was improper and violated his ethical responsibilities.

Compounding his misconduct, respondent appears to be under the misapprehension that the women he denigrated and to whom he made the sexist

comments had an obligation to tell him that they did not approve of his comments.[2] To the contrary, it was incumbent upon respondent to not make sexist comments to a court employee. Similarly, it was also his responsibility to avoid behaving discourteously toward court employees. Twenty years ago, the Commission held that, "[r]emarks of a personal and sexual nature to a subordinate are especially egregious, even if the woman does not protest and even if the judge makes no explicit threats concerning job security." *Matter of Dye*, 1999 NYSCJC Annual Report 93, 94 (citation omitted). In 1985, the Commission held that,

> The cajoling of women about their appearance or their temperament has come to signify differential treatment on the basis of sex. A sensitized and enlightened society has come to realize that such treatment is irrational and unjust and has abandoned the teasing once tolerated and now considered demeaning and offensive. Comments such as those of respondent are no longer considered complimentary or amusing, especially in a professional setting.

Matter of Doolittle, 1986 NYSCJC Annual Report 87, 88.

As an experienced lawyer as well as an experienced jurist, respondent should have been cognizant that stepping into Ms. Singer's office to declare his opinions that she looked "really hot" and "should always wear that outfit" was improper and that such sexually charged remarks have no place in a courthouse. It should also have been clear to respondent that such observations by a judge to a court employee were especially

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[2] Respondent testified during the hearing before the referee, "All [Ms. Singer] or Ms. Vroman or anyone for that matter had to say was, 'Judge I'm uncomfortable with your manner or the statement you made.' I can assure you that I would have apologized and changed my behavior." In addition to minimizing his responsibility for his own conduct, respondent's testimony was also inaccurate since after Ms. Vroman complained about his behavior, respondent's response was not to apologize, but to file a complaint against Ms. Vroman.

inappropriate given the imbalance of power in their respective positions.

Section 100.2(C) of the Rules provides, "[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . .." When he allowed his court secretary to prepare a letter regarding unsigned checks for his prior legal work, respondent violated this Rule. The letter Ms. Gallagher prepared was part of respondent's effort to obtain payment for legal work that he had performed prior to becoming a full-time judge.[3] The letter related to respondent's former private practice of law and had nothing to do with the work of the Family Court. As such, it was inappropriate for respondent to allow Ms. Gallagher to prepare this letter. *See*, *Matter of Ruhlmann,* 2010 NYSCJC Annual Report 213, 220 ("Routinely using court staff for extra-judicial purposes is improper regardless of whether the employee consents or performs such tasks without protest."); *See*, *Matter of Brigantti-Hughes,* 2014 NYSCJC Annual Report 78, 88 ("Tasks of a personal nature remain a judge's personal responsibilities and should not be discharged using public resources.").

Section 100.3(C)(1) of the Rules provides: "[a] judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration . . .." Section 100.4(H)(2) of the Rules provides:

> 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. . . . The judge's report shall be made at least annually and shall be filed as a public document

[3] This letter was written as if it were from respondent's former law firm secretary, not respondent, which may have been designed to conceal respondent's involvement.

> in the office of the clerk of the court on which the judge serves or other office designated by law.

Respondent failed to properly report his income from his extra-judicial activities thereby violating the Rules.

For the years 2015, 2016 and 2017, respondent failed to file an annual report of his extra-judicial income with the Broome County Family Court clerk as Section 100.4(H)(2) of the Rules required. Respondent claimed that he was unaware that the Rules required him to report his extra-judicial income to the clerk. It is well-settled that any such ignorance is no excuse. "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." *Matter of VonderHeide*, 72 N.Y. 2d 658, 660 (1988) (citation omitted); *Matter of Edwards*, 2008 NYSCJC Annual Report 119, 121 (citations omitted) (". . . every judge has an obligation to learn and abide by the Rules Governing Judicial Conduct") Since respondent had been previously censured for violating the Rules, he should have been fully familiar with the Rules and should have taken the utmost care to abide by the Rules.

Moreover, respondent admitted that he learned of the annual filing requirement with the clerk's office during the Commission's investigation. In November 2017, respondent was questioned about his failure to make annual filings with the clerk's office. By May 2018, he admitted in writing that he had learned of the filing requirement. Nevertheless, respondent chose not to make any filing with the clerk's office until eight

months later after the hearing before the referee had commenced. Such conduct was emblematic of respondent's overall inattention to his ethical responsibilities.

With respect to his 2015 FDF, although respondent had included income from legal fees on his 2014 FDF, respondent failed to report approximately $27,000 in legal fees on his 2015 FDF. When asked about the omission, respondent gave varying implausible reasons. Initially, respondent claimed that he had reported on the 2015 FDF the bank accounts into which the checks for his legal fees were deposited. This claim was nonsensical since the income was not specifically reported on the FDF as required. Respondent testified at the hearing before the referee that when he filed his 2015 FDF in May 2016, he thought that he had cashed the legal fee checks in 2016 which would have made them reportable on his 2016 FDF. Demonstrating that this claim was also baseless, when respondent filed his 2016 FDF in May 2017, he again did not report the legal fees.[4]

The public has an interest in the timely disclosure of a judge's extra-judicial income on both the annual report with the clerk's office and the FDF. As the Court of Appeals has held, the information provided on a judge's financial disclosure form "is available to the public and, among other things, enables lawyers and litigants to determine whether to request a judge's recusal." *Matter of Alessandro*, 13 N.Y.3d 238, 249 (2009) Accordingly, "[j]udges must complete their financial disclosure forms with diligence, making every effort to provide complete and accurate information." *Id. Matter of Dier,* 1996 NYSCJC Annual Report 79 (failure to disclose income on a UCS Ethics

[4] Shortly before his investigative appearance, in November 2017 respondent filed an amended 2015 FDF which disclosed the legal fees.

Commission financial disclosure statement was misconduct); *Matter of Russell*, 2001 NYSCJC Annual Report 121, 122 ("financial disclosure by judges serves an important public function" and repeatedly filing untimely FDFs with the UCS Ethics Commission constituted misconduct); *Matter of McAndrews*, 2014 NYSCJC Annual Report 157, 162 (respondent's failure to file timely FDFs with the UCS Ethics Commission "is inconsistent with his ethical obligation to diligently discharge his administrative duties.").

It is also undisputed that respondent failed to disclose his income from the practice of law and rental income from two properties on his federal and state income tax returns.[5] Respondent's failure to include his income from the practice of law on his 2015 income tax returns diminished his taxable income for that year. Such conduct is improper and violated the Rules. *Matter of Ramich*, 2003 NYSCJC Annual Report 154, 159 (failure to include income on tax return and failure to report such income to the chief court clerk was misconduct).

Respondent, who took the bench in 1996, is an experienced judge who should be fully familiar with the Rules. The Commission's 2002 determination censuring respondent found that he had violated several Rules in his conduct involving thirteen different cases. *Matter of Miller*, 2003 NYSCJC Annual Report 140. For example, the Commission found that respondent presided "over one case in which he had an attorney-client relationship with the defendant and another case in which the defendant was the spouse of a client. . . ." *Id.* at 141. The Commission also found that in one matter,

[5] In August 2017, respondent filed amended tax returns which included the income from the practice of law and the rental income.

"[r]espondent's conduct . . . was especially egregious: by vacating a default judgment against his client's spouse based solely on his client's *ex parte*, unsworn communication, respondent created an appearance of partiality and favoritism." *Id.* In 2002, the Commission found, "[i]n its totality, respondent's conduct showed insensitivity and inattention to his ethical responsibilities and, in particular, to the special ethical obligations of judges who are permitted to practice law." *Id.* at 142. Based upon respondent's misconduct, in 2002 the Commission imposed a censure, the strongest available discipline short of removal. In 2015, respondent received a letter of Dismissal and Caution in which the Commission cautioned him to adhere to the Rules.

Given his prior experiences with the Commission, respondent should have been particularly attentive to his ethical responsibilities. Instead, the evidence here demonstrated that respondent again disregarded his ethical obligations and engaged in three separate types of misconduct. The most serious was respondent's pattern of sexual comments to a court employee including telling her that she looked "really hot" and "should always wear that outfit." Earlier, respondent told the same court employee, a widow, that if he had known she could cook he "would have gone for the widow." He also commented that, "It's nice to know I still have that effect on you" after she apologized for using a fan while having a hot flash. No woman should be treated in that manner, especially in a courthouse by a judge. Understandably, the court employee was shocked and disgusted by respondent's sexual comments to her. In a further example of respondent's discourteous behavior, he berated and demeaned another female court employee. In addition, respondent violated the Rules when he acted to further his

personal interests by having his court secretary write a personal letter as if it were from his former law firm secretary.

Respondent engaged in a third category of misconduct when he failed to disclose his extra-judicial income in several ways. He failed to file annual disclosures with the clerk of the Broome County Family Court as Section 100.4(H)(2) of the Rules required. He failed to disclose extra-judicial income on his 2015 Financial Disclosure Form filed with the UCS Ethics Commission even though he had included such income on the FDF he had filed the previous year. In addition, he failed to properly report his income on his federal and state income tax returns which reduced his taxable income for 2015. Respondent engaged in a pattern of placing his personal interests before his ethical obligations to comply with the Rules and his responsibilities as a judge.

In addition to the several ways in which respondent violated his ethical obligations, the evidence also showed that respondent has not taken responsibility for his actions. As noted above, when he became aware of Ms. Vroman's complaint about his discourteous behavior, respondent's response was to file a written complaint against her. The Broome County Family Court chief clerk, to whom respondent's complaint about Ms. Vroman was made, viewed respondent's complaint as retaliatory. Furthermore, once respondent indisputably knew of the Rule which mandated that he file an annual report of extra-judicial income with the court clerk, he did not immediately file his reports for the years in question. Instead, he waited eight months and only filed the reports after the hearing before the referee had begun. In addition, when questioned regarding why he

failed to include his income from legal fees on his 2015 FDF, respondent gave shifting and implausible reasons for his failure.

While there was some indication in the record that respondent is an effective judge, our mandate is to protect the integrity of the courts. It is not to evaluate the effectiveness of a judge. In addition to other serious misconduct, respondent made highly inappropriate sexist comments to a female court employee. Under these circumstances, if respondent were to be censured again and allowed to remain on the bench, we believe public confidence in the courts and the judicial disciplinary process would be undermined. This is particularly true of the litigants and attorneys who would appear before respondent in Broome County Family Court "where matters of the utmost sensitivity are often litigated. . .." *See*, *Matter of Esworthy*, 77 N.Y.2d 280, 283 (1991).

Given respondent's three categories of current misconduct, his apparent failure to learn from his previous discipline, his failure to take responsibility for his actions and the unfortunate message another censure would send to the public, we believe that respondent should be removed from the bench to protect the integrity of the courts. We are mindful that "removal, the ultimate sanction, should not be imposed for misconduct that amounts simply to poor judgment or even extremely poor judgment, but should be reserved for truly egregious circumstances." *Matter of Mazzei*, 81 N.Y.2d 568, 572 (1993) (citations omitted) Here, through his pattern of conduct, respondent violated the Rules in numerous ways which exhibited his continued disregard for the Rules and his obligations as a judge. Most troubling were respondent's unwanted sexual comments to a female court employee. Respondent's inappropriate sexual comments shocked and

disgusted the court employee. He also berated and demeaned another female court employee. He had his court secretary prepare a letter in order to serve his personal interests. He failed to publicly disclose income from his legal work and rental income on the financial reports he was required to complete as a judge which deprived the public of information to which it was entitled. He also failed to report income on his federal and state income tax returns. Respondent's current inattention to his ethical obligations coupled with his prior censure for violating the Rules, has compelled us to conclude that removal from the bench is the appropriate sanction for his misconduct.

Our colleagues dissent on the issue of sanction in part because they seem to credit the referee's finding that respondent may have intended the comments to the chief clerk to be humorous. We find it implausible that respondent – a longtime judge with prior run-ins with this Commission, a family man by his own account, a coach and volunteer – would think telling his chief clerk that she was "really hot" and "should always wear that outfit" was humorous. Nor is it appropriate to state "It's nice to know I still have that effect on you" when one is explaining the use of a fan in response to a momentary flash. Indeed, we voted to remove respondent not only for the reasons previously stated, but also because when he appeared before us respondent still seemed to not fully accept responsibility for these comments. Obviously not every comment made about a clerk's appearance would be misconduct and even if misconduct, a removable offense. But these are particular statements using particular words that have particular meanings – and in our view, warrant removal given the additional misconduct described above and respondent's prior censure.

The Court of Appeals has held that, "the purpose of judicial disciplinary proceedings is 'not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents'." *Matter of Reeves,* 63 N.Y.2d 105, 111 (1984) (citations omitted) Respondent's actions demonstrated his disregard for his ethical responsibilities and he is unfit for judicial office.

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

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

Mr. Harding and Judge Miller dissent as to the sanction.

Judge Miller files an opinion concurring in part and dissenting in part which Mr. Harding joins.

Mr. Raskin was not present.

CERTIFICATION

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

Dated: February 14, 2020

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

RICHARD H. MILLER, II,

a Judge of the Family Court,
Broome County.

OPINION BY JUDGE ROBERT J. MILLER CONCURRING IN PART AND DISSENTING IN PART, WHICH MR. HARDING JOINS

I concur with the majority determination as to misconduct, but I must respectfully dissent as to the sanction. Given the nature of respondent's misconduct, the sanction of removal is contrary to the findings of the referee and contrary to long-established precedent of the Commission. I believe censure is the appropriate sanction.

The primary focus of the charges against respondent, and the hearing before the referee, relate to very serious allegations made by respondent's Court Attorney and Court Secretary.[1] In support of those allegations, the Commission called the Court Attorney, the Court Secretary, and two additional witnesses. Respondent testified on his own behalf and called witnesses to testify about the allegations made against him. After conducting a six-day hearing, the referee issued a report in which he found that both the

[1] The allegations made by the Court Attorney and Court Secretary were found in portions of Charges I, II and III of the complaint. These allegations included that respondent sexually harassed the Court Secretary, threatened the Court Attorney and Court Secretary with physical harm, and asked them to perform work unrelated to their official duties including prohibited political activity. The Court Attorney also alleged during the hearing that respondent required him to attend the Donald Trump inauguration in 2017.

Court Attorney and the Court Secretary lacked credibility. He also concluded that they each had a motive for lying about these matters due to a pending lawsuit they had brought against the Unified Court System. The referee further found that their troubling allegations against respondent were not proved. In the presentation before the Commission, counsel for the Commission did not seek to overturn the referee's credibility findings regarding the Court Attorney and Court Secretary, or the finding that their allegations were not established. I believe that the serious allegations these individuals made which were not proved cast a pall over the entire proceeding against respondent. Accordingly, in my view, it is critical to focus solely on those acts of misconduct that were established by the evidence. The appropriate sanction for the proven misconduct is censure.

I concur with the majority's finding that respondent engaged in three categories of misconduct. The first involved one instance of respondent asking his Court Secretary to write a single page letter in a matter unrelated to the business of the Family Court. Such misconduct would normally result in a private letter of caution or admonition.

The second category of misconduct included respondent's crude and vulgar remarks to the Chief Clerk and one instance of respondent being discourteous to a court assistant. The referee found that, while respondent's statements to the Chief Clerk were improper, "I accept and credit Respondent's testimony that he had no intent to harm anyone with comments that may well have been intended to be humorous . . .." The record supports the referee's conclusion that respondent's inappropriate statements to the Chief Clerk constituted an extremely poor attempt at humor. Although such remarks

must not be condoned or tolerated, Commission precedent demonstrates that censure or admonition have been held to be appropriate punishments for significantly worse conduct. *See, e.g. Matter of Caplicki, Jr.*, 2008 NYSCJC Annual Report 103 (after a prior censure, judge was censured for repeating statements a defendant made about his attorney's appearance including that she was "cute" and had a "nice butt", asking other defendants whether they agreed with the remarks and recounting the statements to other attorneys); *Matter of Dye*, 1999 NYSCJC Annual Report 93 (judge censured for numerous inappropriate comments to his secretary including, "that she had attractive legs; . . . that her clothes inspired his sexual feelings; . . . that he had a strong interest in sex and that he wanted to have sex with her"); *Matter of Doolittle*, 1986 NYSCJC Annual Report 87 (judge admonished for making "numerous improper comments to female attorneys, referring to their appearance and physical attributes.")

The third category of respondent's misconduct was his failure to file annual financial disclosure reports with the clerk's office, and his failure to properly report certain income on his Financial Disclosure Form ("FDF") filed with the Ethics Commission for the Unified Court System and on his federal and state income tax returns. Respondent, who admitted that he did not file the annual reports with the clerk's office, filed them before the conclusion of the hearing before the referee. He filed amended federal and state tax returns and an amended FDF prior to the date of his investigative appearance and the issuance of the complaint in this matter. The referee found the timing of respondent's amendments to be a mitigating factor.

Although this is not the respondent's first matter before this Commission, his prior censure occurred 18 years ago in 2002. The misconduct found in that case was unrelated to the type of conduct at issue here. In 2015, respondent received a letter of dismissal and caution related to an issue with his campaign advertising. If respondent's current misconduct had been similar, then removal might be an appropriate punishment as it would reveal a continuing course of conduct. However, neither of his prior matters with the Commission indicate that removal is appropriate for respondent's current wrongdoing.

Respondent, who has been a judge since 1996, was elected to the Family Court in 2014 for a term ending in 2024. The evidence before the Commission supports the conclusion that he is a hardworking judge. In addition, witnesses testified at the hearing before the referee that respondent treated all who appeared before him, both men and women, with respect. The referee's finding regarding respondent's intent is significant, and casts further doubt on the majority's decision to depart from this Commission's past precedent.

Based upon the foregoing, I believe that the draconian sanction of removal of an elected judge is not warranted in this case. I believe censure is appropriate for the established misconduct.

February 14, 2020

The Honorable Robert J. Miller, Member
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

MICHAEL J. MIRANDA,

a Justice of the Shandaken 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

Mainetti & Mainetti (by Alfred B. Mainetti for respondent)

Respondent, Michael J. Miranda, a Justice of the Shandaken Town Court, Ulster County, was served with a Formal Written Complaint dated February 14, 2019, containing two charges. Charge I of the Formal Written Complaint alleged that on March

19, 2018, in the Town of Shandaken, New York, respondent operated his motor vehicle while under the influence of alcohol. Charge II of the Formal Written Complaint alleged that on March 19, 2018, respondent asserted and/or attempted to assert his judicial office to advance his private interests in connection with his arrest for Driving While Intoxicated. Respondent filed an Answer dated March 21, 2019. On June 19, 2019, the Commission designated David M. Garber, Esq. as referee to hear and report proposed findings of fact and conclusions of law. A hearing was scheduled to commence on September 16, 2019.

On September 5, 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 October 17, 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 1975. He has been a Justice of the Shandaken Town Court, Ulster County, since 2006. His current term expires on December 31, 2021.

As to Charge I of the Formal Written Complaint

2. On March 19, 2018, in the Town of Shandaken, New York, respondent operated his motor vehicle while under the influence of alcohol.

3. On the evening of March 18, 2018, while in Orlando, Florida, respondent

consumed alcoholic beverages, and he was still feeling the effects of the alcohol the following morning.

4. On March 19, 2018, at the airport in Orlando, respondent consumed at least four or five glasses of vodka and seltzer from approximately 9:00 a.m. to 11:00 a.m., prior to boarding a flight to Albany, New York, that departed at approximately 11:00 a.m.

5. During the flight from Orlando to Albany, which lasted approximately three hours, respondent consumed at least another four alcoholic drinks containing vodka. Respondent also consumed two small bags of peanuts but had nothing else to eat.

6. After arriving at the Albany airport in the afternoon on March 19, 2018, respondent went to the airport parking lot where his personal car, a 2013 Subaru Outback, was parked. Respondent's vehicle bore "SMA" license plates, which identified it as belonging to a judge. "SMA" stands for the State Magistrates Association, which is composed of town and village court justices throughout New York State.

7. Respondent entered his vehicle in the parking lot and, still under the influence of alcohol, began to drive to his home in Shandaken, New York, a distance of approximately 70 miles, requiring a travel time of approximately 90 minutes to two hours. His route included a stretch of the New York State Thruway.

8. While on the Thruway, respondent stopped at the New Baltimore service area in Hannacroix, New York, drank from a bottle of vodka that was in his car, then resumed his drive toward Shandaken – a remaining distance of approximately 47 miles, or about one hour of travel time.

9. At approximately 5:30 p.m. on March 19, 2018, at the intersection of New York State Route 212 (a/k/a "Plank Road"), Wittenberg Road and Mount Tremper-Phoenicia Road in Shandaken, respondent lost control of his vehicle and crashed, causing damage to the front of his vehicle and property damage to two stop signs and two benches. Photographs of the damage to respondent's vehicle, which subsequently cost $6,784 to repair, are appended to the Agreed Statement of Facts.

10. Shandaken Police Officer Kyle Hassett and Woodstock Police Officer Christopher Benson separately arrived at the scene of the accident at approximately 5:35 p.m. In conversing with respondent, both officers smelled an odor of alcohol emanating from respondent and observed that he had glassy/watery eyes and impaired motor coordination.

11. Officer Hassett asked whether respondent had consumed any alcoholic beverages, to which respondent replied that he had consumed only two alcoholic drinks on his flight or at an airport.

12. Because respondent is a Shandaken Town Justice and the local police appear in cases before him, Officer Hassett called the Shandaken police chief with a request that the New York State Police take over the investigation of this matter. Shortly thereafter, New York State Police Troopers James Adams and Cameron Manley separately arrived at the scene of the accident.

13. Trooper Adams interviewed respondent at the scene, smelled an odor of alcohol emanating from respondent's breath and observed that respondent had slurred speech, glassy/watery eyes, difficulty standing and impaired motor coordination.

14. Trooper Adams asked whether respondent had consumed any alcoholic beverages, to which respondent replied that he had drunk "two beers" at the Orlando airport.

15. Respondent failed three standard field sobriety tests administered at the scene by Trooper Adams: the "horizontal gaze nystagmus," the "walk-and-turn" and the "one-leg-stand" tests. Respondent then refused Trooper Adams's request that he submit to a portable breath test, but he consented to submit to a chemical breath test at the State Police barracks.

16. Trooper Adams placed respondent under arrest, put him in his police vehicle and transported him to the local State Police barracks.

17. At the State Police barracks, respondent was cooperative and agreed to submit to a chemical breath test. The test, which was administered by Trooper Adams at approximately 7:14 p.m., indicated that respondent's blood alcohol concentration ("BAC") at that time was 0.17%. In New York State, a BAC of .05% is evidence of driving while impaired, a BAC of .08% or higher is evidence of driving while intoxicated, and a BAC of .18% or more is evidence of aggravated driving while intoxicated.

18. On March 19, 2018, respondent was charged with five Vehicle and Traffic Law (VTL) offenses: a misdemeanor for Driving While Intoxicated Per Se, in violation of VTL Section 1192(2); a misdemeanor for Driving While Intoxicated, in violation of VTL Section 1192(3); a traffic infraction for Refusal to Take Breath Test, in violation of VTL Section 1194(1)(B); a traffic infraction for Failure to Stop at Stop Sign, in violation

of VTL Section 1172(A); and a traffic infraction for Speed Not Reasonable and Prudent, in violation of VTL Section 1180(A).

19. The charges were returnable in the Shandaken Town Court but, on March 22, 2018, both respondent and respondent's co-judge recused themselves. By order dated May 7, 2018, then Acting Ulster County Court Judge Terry J. Wilhelm transferred the charges to the Saugerties Town Court.

20. On August 22, 2018, respondent appeared before Saugerties Town Justice Claudia Andreassen and pled guilty to a traffic infraction of Driving While Ability Impaired, in violation of VTL Section 1192(1), in full satisfaction of all the charges. Judge Andreassen sentenced respondent to a $300 fine and a $260 surcharge, which respondent paid immediately.

21. Respondent's auto insurance carrier paid New York State the sum of $1,138 for costs to replace the two stop signs that respondent destroyed when he crashed his car. It is not known who owned the two benches that respondent damaged beyond repair but neither he nor his insurance company has received any request for payment.

As to Charge II of the Formal Written Complaint

22. On March 19, 2018, respondent asserted and/or attempted to assert his judicial office to advance his private interests in connection with his arrest for Driving While Intoxicated.

23. On March 19, 2018, respondent operated his 2013 Subaru Outback while under the influence of alcohol and lost control of it, causing it to crash at the intersections of New York State Route 212 (a/k/a "Plank Road"), Wittenberg Road and Mount

Tremper-Phoenicia Road in Shandaken, New York. Soon thereafter, New York State Police Troopers James Adams and Cameron Manley arrived at the scene and approached respondent by his damaged and disabled vehicle.

24. At a hearing before the referee in the disciplinary matter herein, Troopers Adams and Manley would testify that, when Trooper Adams requested respondent's license and registration, respondent asked if Trooper Adams knew who he was, which the troopers understood to be a reference to respondent's judicial office. When Trooper Adams replied, "Yes, I do" and/or that he did not care who he was, respondent said that he would never again come out to conduct an arraignment for the State Police.

25. At a hearing before the referee in the disciplinary matter herein, respondent would testify that, although he has no recollection of making such statements, he does not dispute the recollections of the troopers.

Additional Factors

26. Although respondent does not recall telling the troopers that he would never again come out to conduct an arraignment for the State Police, he attributes the comment to his diminished capacity and judgment due to his consumption of alcohol. Respondent understands that it is wrong to reference his judicial office under these circumstances, regrets doing so and avers that he would not have done so but for his diminished capacity. It is not alleged that respondent made a direct request for special consideration because of his judicial office to either trooper.

27. New York State Police Captain (now Major) James Michael met with respondent while he was in custody at the barracks. During his interactions with Captain

Michael, respondent was cooperative and apologetic and did not invoke his judicial office or ask for any special consideration from the captain.

28. Respondent acknowledges that he suffers from an "Alcohol Use Disorder" and has been suffering from the disorder for approximately 12 years prior to his arrest. Respondent states that the circumstances surrounding his arrest were a trigger for him to obtain the help that he needed to treat his condition.

29. On June 1, 2018, respondent voluntarily admitted himself into a three-day alcohol detoxification program at a hospital. On June 4, 2018, respondent voluntarily admitted himself into a two-weeks-long inpatient alcohol rehabilitation program. During the inpatient program, a Credentialed Alcoholism and Substance Abuse Counselor and National Certified Addiction Counselor diagnosed respondent as suffering from "Severe Alcohol Use Disorder."

30. Respondent remained in and successfully completed the two-weeks-long inpatient alcohol rehabilitation program. Near the conclusion of the program, respondent signed a Discharge Instructions and Continuing Care Plan in which, among other things, he agreed as part of a "self-identified Plan to address Relapse Issues" to "Attend AA meetings" and "gain a sponsor and a home group." Although respondent has not followed through on this part of his continuing care plan, his counselor has advised the Commission that respondent is uncomfortable in group sessions but responds well in individual therapy.

31. Since October 4, 2018, respondent has been attending individual counseling sessions twice a month with a licensed drug and alcohol abuse counselor for treatment of

his Alcohol Use Disorder. According to respondent's counselor, respondent has requested to meet more often than twice a month, *i.e.* once a week for a total of four times a month, but the counselor has been unavailable for more than two meetings a month.

32. Respondent avers that he has not consumed an alcoholic drink since June 1, 2018, and the Administrator has no information to the contrary. Respondent also avers that he is committed to continuing his treatment and to sobriety.

33. Respondent acknowledges that he should have sought treatment *before* this incident occurred.

34. Respondent has been contrite and cooperative with the Commission throughout this inquiry and has expressed embarrassment and remorse for his behavior and any diminution of respect for the judiciary it may have caused.

35. Respondent recognizes that his conduct had the potential to put innocent lives at risk of death and serious injury.

36. Respondent is a Vietnam Veteran, was a prosecutor in the Ulster County District Attorney's Office for nearly twenty years and has an otherwise unblemished record during his approximately 14 years on the bench.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C) and 100.4(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. Charges I and II of the Formal Written Complaint are sustained

and respondent's misconduct is established.

It is the responsibility of every judge to act at all times in a manner that promotes public confidence in the integrity of the judiciary and to avoid conduct that detracts from the dignity of judicial office. Respondent violated his ethical obligation to respect and comply with the law by driving his vehicle while his ability was impaired by alcohol which caused him to lose control of his car and crash into two stop signs and two benches. At the scene of the accident, respondent's breath smelled of alcohol. He had difficulty standing, his speech was slurred and he failed three field sobriety tests. In addition, at the scene of the crash, respondent twice falsely told law enforcement personnel that he had only had two alcoholic drinks prior to the accident. Respondent subsequently pled guilty to Driving While Ability Impaired in violation of VTL Section 1192(1). His unlawful and reckless conduct endangered public safety and brought the judiciary into disrepute.

By violating the law which he is called upon to administer in his court, respondent engaged in conduct that undermines his effectiveness as a judge and undermines public confidence in the judiciary. This is especially true given respondent's role in adjudicating civil and criminal cases involving impaired driving. As a judge entrusted with the responsibility of exercising judgment over the conduct of others and applying the law in his court, respondent is "obligated to conduct [himself] at all times in a manner that reflected [his] own personal respect for the letter and spirit of the law." *Matter of Backal,* 87 N.Y.2d 1, 7 (1995). Any departure from this exacting standard of personal conduct undermines his effectiveness as a judge and impairs the public's

respect for the judiciary as a whole.

In prior cases involving alcohol-related driving offenses, in determining the appropriate disposition, the Commission has considered various mitigating and aggravating factors including: the degree of intoxication, whether the judge caused an accident or injury, whether the conduct was an isolated incident or part of a pattern, whether the judge was cooperative during arrest, whether the judge asserted his or her judicial office and sought preferential treatment, whether the judge accepted responsibility for the offense and the need and willingness of the judge to seek treatment. *See, e.g., Matter of Astacio*, 2019 NYSCJC Annual Report 71, *aff'd*, 32 N.Y.3d 131 (2018) [removal] (DWI conviction; judge was uncooperative during arrest and asserted her judicial office; judge also engaged in additional misconduct related to her judicial duties); *Matter of Landicino*, 2016 NYSCJC Annual Report 129 [censure] (DWI conviction; judge repeatedly asserted his judicial office during arrest; subsequently he made extensive efforts to rehabilitate himself); *Matter of Newman*, 2014 NYSCJC Annual Report 164 [censure] (DWAI conviction after rear-ending a car at a traffic light; judge was uncooperative during arrest); *Matter of Apple*, 2013 NYSCJC Annual Report 95 [censure] (DWI conviction based on a blood alcohol concentration of .21%); *Matter of Maney*, 2011 NYSCJC Annual Report 106 [censure] (DWAI conviction; judge made illegal U-turn to avoid sobriety checkpoint, repeatedly identified himself as a judge and asked for "professional courtesy"); *Matter of Martineck*, 2011 NYSCJC Annual Report 116 [censure] (DWI conviction after driving erratically and hitting a mile marker); *Matter of Burke*, 2010 NYSCJC Annual Report 110 [censure] (DWAI conviction after causing

an accident; additional misconduct included presiding over two cases without disclosure of her relationship with a complaining witness); *Matter of Mills*, 2006 NYSCJC Annual Report 218 [censure] (although judge was acquitted of DWI, she admitted driving after consuming alcoholic beverages and making offensive statements to the arresting officers).

Respondent admitted that on March 19, 2018 he had a total of at least eight drinks containing vodka while at the Orlando Airport and on the flight to Albany. Instead of calling for a ride or staying at an airport hotel, he got in his car bearing SMA plates and started to drive to his home 70 miles away. During the drive, he stopped at a service area on the Thruway and drank from a bottle of vodka that he had in his car. Subsequently, respondent lost control of his car and crashed causing damage to public property. He failed three field sobriety tests at the scene of the accident. Respondent was under the influence of alcohol and his judgment was impaired. When measured later at the State Police barracks, his blood alcohol concentration was .17%, just below the level which would be evidence of aggravated driving while intoxicated.

Respondent should have recognized at the time that operating his motor vehicle after consuming such a large quantity of alcohol created a significant risk to himself and to the lives of others. 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 fatalities, 7,051 involved at least one driver with a blood alcohol concentration of .15% or higher.

Respondent's misconduct was aggravated when he made false statements at the

scene of the crash to law enforcement personnel regarding his alcohol consumption. He told one officer that he had had two alcoholic drinks on the flight or at an airport. He then told a trooper that he had "two beers" at the Orlando airport. These false statements were inconsistent with a judge's obligation to maintain high standards of conduct at all times, both on and off the bench, in order to promote public confidence in the integrity of the judiciary. (Rules §§100.1 and 100.2(A))

Further aggravating respondent's serious misconduct, he invoked his judicial office at the scene of the accident. In response to the trooper's request for his license and registration, respondent asked the trooper if he knew who he was. When the trooper responded in the affirmative, respondent stated that he would never come out to conduct an arraignment for the State Police again. *See*, *Matter of Edwards*, 67 N.Y.2d 153, 155 (1986) (it is "irrelevant" whether a judge overtly requests "favorable treatment or special consideration.") As the Commission has stated,

> Respondent's conduct was improper even in the absence of an explicit request for special consideration. . . . Judges must be particularly careful to avoid any conduct that may create the appearance of seeking special consideration simply because of their judicial status. Public confidence in the fair and proper administration of justice requires that judges, who are sworn to uphold the law, neither request nor receive special treatment when the laws are applied to them personally.

Matter of Werner, 2003 NYSCJC Ann. Rep. 198, 199 (citation omitted). Respondent's diminished capacity as a result of his drinking is no excuse for this behavior.

Alcoholism is a disease and the Office of Court Administration should treat it as such by encouraging judges to come forward and seek treatment. Getting into a car and

driving while under the influence is a choice. Respondent has recognized that his conduct put lives in jeopardy and that he should have sought treatment for his Alcohol Use Disorder prior to the accident. Given the numerous aggravating factors present, this case comes very close to removal.

In determining the appropriate sanction, we must consider whether this single incident has irreparably damaged respondent's effectiveness as a judge and whether the public interest is served by permitting him to remain on the bench in light of his serious misconduct. As we have stated in other matters involving alcohol-related driving offenses with significant aggravating factors, *Matter of Landicino* and *Matter of Maney*, were the sanction of suspension from judicial office without pay available to us, we would have imposed it in those cases and would impose it here based upon the seriousness of such behavior. However, while we view respondent's misconduct as extremely serious, in accepting the jointly recommended sanction of censure, we have taken into consideration that respondent's misconduct involved one incident. In addition, respondent acknowledged his misconduct and recognized that a severe sanction is appropriate. We note that respondent has averred that he is committed to continuing his treatment for his Alcohol Use Disorder and to abstaining from alcohol.

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

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

Mr. Raskin was not present.

CERTIFICATION

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

Dated: January 30, 2020

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

DETERMINATION

CATHERINE R. NUGENT PANEPINTO,

a Justice of the Supreme Court,
Eighth Judicial District, Erie County.

– –

THE COMMISSION:

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

APPEARANCES:

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

Connors LLP (by Terrence M. Connors) for respondent

Respondent, Catherine R. Nugent Panepinto, a Justice of the Supreme Court, Eighth Judicial District, Erie County, was served with a Formal Written Complaint dated

January 28, 2020, containing one charge. The Formal Written Complaint alleged that from in or about January 2018 through in or about March 2018, respondent publicly supported the teachers at Buffalo City Honors School ("CHS") in connection with pending and impending litigation by the Buffalo Teachers Federation ("BTF") against the Buffalo Board of Education ("BBOE") in the court in which respondent serves, in that:

A. Respondent made repeated public comments about issues and individuals involved in the litigation, in person, by email, and on social media platforms in which she was publicly identified as a judge;

B. Respondent assisted in providing legal information and advice to parents of students at CHS;

C. Respondent signed advocacy letters;

D. Respondent spoke about the pending and impending cases with members of BBOE;

E. Respondent joined BTF counsel in the courthouse and outside the courtroom prior to a case conference; and

F. Respondent executed an affidavit that was filed in litigation in Erie County Supreme Court.

On November 18, 2020, 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 3, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent was admitted to the practice of law in New York in 1998. She has been a Justice of the Supreme Court, Eighth Judicial District, Erie County, since 2011. Respondent's term expires on December 31, 2024.

2. On or about September 5, 2017, BTF filed a contempt motion in Erie County Supreme Court in *Board of Education of the City School District of Buffalo ("Board") v. BTF*. BTF alleged that the Board was not complying with an order and judgment issued on March 9, 2017, by Supreme Court Justice John F. O'Donnell (Erie County), confirming an arbitration award that, *inter alia*, directed the school district to immediately discontinue the practice of assigning supervisory, non-instructional duties to teachers at CHS.

3. On or about February 13, 2018, while that contempt proceeding was pending, BTF filed a separate petition in *BTF v. Board of Education of the City School District of the City of Buffalo and City School District of the City of Buffalo* ("*Board et al.*"), seeking an injunction to prevent the transfer of 5.5 teachers from CHS and employment of 16 teachers' aides to perform non-instructional duties.

4. Respondent's daughter attended CHS during the 2017-2018 school year.

Public participation in social media platforms

5. In or about January 2018, respondent joined a Facebook group comprised of CHS parents who publicly supported the CHS teachers' opposition to the transfer of teachers from CHS. Respondent also communicated with CHS parents in support of the teachers using email and Twitter.

6. In or about January 2018 or February 2018, respondent posted on Facebook, "We can go to Court appearance. I will find out when it is."

Legal information and advice

7. In or about January 2018 or February 2018, using email and social media platforms, respondent provided legal information and advice to CHS parents who were sending letters to BBOE and BTF opposing the transfer of the teachers, as follows:

A. On Facebook, respondent posted, "FYI if letter hast [*sic*] gone yet – include phrase 'irreparable harm' and/or send seperate [*sic*] letters as that is legal standard to stop teachers transfers at least in short term."

B. Using email, respondent posted, "Has the letter been sent yet? It needs to state there will be irreparable harm to justify Court ordering stay of lay offs set for February 27. If already sent we can do second one and/or individual ones describing irreparable harm."

C. On Twitter, respondent posted, "Write short letters stating the 'irreparable harm' cutting teachers at CHS will cause to your children. Students should write as well. Post on Twitter & send to BPS & BTF!"

Personalized comments and invective

8. Respondent publicly criticized CHS principal William Kresse on Facebook, posting, "Let's not kid ourselves our beloved IB school hired these aids [*sic*] To punish teachers who won at arbitration & in Court. If Dr. Kresse didn't hire these aids [*sic*], not a single teacher would be transferred. 100% Kresse decision. Ask him Why?"

9. Respondent publicly criticized the proposed transfer of teachers on Facebook, characterizing the intended conduct as "pure retaliation."

10. Respondent publicly commented on CHS aides on Facebook stating, "We don't need aides … napping in hallway."

Advocacy letters

11. Respondent allowed her name to be listed as a signatory along with other CHS parents on a letter, dated February 8, 2018, to BBOE members, teachers, BTF, the Buffalo School Superintendent, and the CHS principal. The letter objected that BBOE's proposed action, *inter alia*, would have "profound and potentially irreparable implications." The letter was attached as an exhibit to BTF's motion for injunctive relief that was filed in Supreme Court, Erie County, on or about February 13, 2018.

12. Respondent allowed her name to be listed as a signatory along with other CHS parents on a letter published in a local newspaper, *The Daily Public*, on or about March 14, 2018. The letter, *inter alia*, "urg[ed] the District to immediately stop the mid-year transfers of 5.5 teachers, and for all the parties to engage in mediation to resolve this protracted contractual issue." It further opined that "[t]he District and the Board of Education have chosen to disrupt the education of the children they purport to uphold."

Use of judicial title in public comment

13. On or about February 1, 2018, in response to a Buffalo News editorial concerning the CHS situation, respondent posted a Facebook comment that identified her as "Catherine Nugent Panepinto - Works at Elected New York Supreme Court Judge Nov, 2010." Respondent avers that she did not know that Facebook settings would automatically identify her by her judicial title. Respondent concedes that she should have familiarized herself with such Facebook protocols prior to posting the comments at issue.

Comments at public events

14. On or about February 14, 2018, respondent spoke to a group of more than 100 people at a BBOE meeting at Buffalo City Hall, where she criticized CHS's plans to transfer teachers. Respondent did not identify herself by her judicial title, but respondent's appearance and comments were reported in the *Buffalo News*, which identified her as "a state Supreme Court justice."

15. On or about February 15, 2018, respondent spoke to a group of dozens of CHS parents at a meeting at Asbury Hall in downtown Buffalo, where she commented on the status of the teacher transfer issue.

Communication with BBOE members

16. Respondent spoke directly with several members of BBOE about issues pertinent to the BTF litigation. Respondent posted on Facebook, "FYI I met with Paulette Woods today. She is the Central representative on School Board whose district includes City Honors … I also had a similar positive conversation with [BBOE representatives] Hope Jay & Sharon Cottman & plan to talk w [BBOE representative] Jennifer M[ecozzi] tomorrow. I think we're making great progress & looking forward to meeting tomorrow."

Presence with BTF counsel in courthouse hallway outside courtroom

17. On or about February 15, 2018, at the Supreme Court facility in Buffalo, respondent stood with BTF counsel and two CHS parents in a hallway outside the courtroom of the justice presiding over the BTF cases, where she was photographed. Immediately thereafter, BTF counsel attended the case conference with the judge presiding. Respondent avers that the photograph was taken without her knowledge.

Providing affidavit filed with BTF motion

18. On or about February 14, 2018, respondent executed an affidavit in support of BTF's case, which was attached as an exhibit to an order to show cause filed in Supreme Court, Erie County, by BTF counsel in *BTF v. Board et al*. Respondent's affidavit stated:

A. "The scheduled transfer of teachers from CHS will cause my daughter and the entire school irreparable harm."

B. "To make matters worse, [my daughter] walks the halls to see aides sitting in chairs napping or on their phones."

C. "The students have been left in the dark; only knowing they will be in some other bigger class with a teacher who doesn't know what they've been working on."

D. "It is respectfully requested that the Buffalo City School District not be permitted to transfer these teachers."

Additional Factors

19. Respondent avers, and the Commission Administrator has no evidence to the contrary, that respondent's conduct in this matter was guided solely by her desire to affect the best interests of her child. Respondent acknowledges that, notwithstanding this intention, the scope of her conduct exceeded ethical limitations placed upon her as a member of the judiciary.

20. Respondent has been cooperative with the Commission throughout its inquiry and regrets her failure to abide by the Rules in this matter. She pledges to conduct herself in accordance with the Rules for the remainder of her 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), 100.3(B)(8), 100.4(A)(1)

and (2) 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 insofar as it is consistent with the above findings and conclusions 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 observe high standards of conduct "so that the integrity and independence of the judiciary will be preserved." (Rules, §§100.1 and 100.2(A)) Section 100.3(B)(8) of the Rules strictly prohibits a judge from commenting on a pending or impending case in any court in the United States unless "the judge is a litigant in a personal capacity" in the proceeding. The Commission has held that, "[a]s the language of the rule makes clear, the prohibition is not limited to comments about cases in the judge's own court." *Matter of Whitmarsh*, 2017 NYSCJC Annual Report 266, 272 (citation omitted). *See*, *Matter of McKeon*, 1999 NYSCJC Annual Report 117, 120 ("[i]t was also improper for respondent to make public comments on cases pending before his and other courts"); *Matter of Fiechter,* 2003 NYSCJC Annual Report 110, 113 ("[j]udges are held to higher standards of conduct than the public at large" and it was improper for the judge to make extensive public comments on a lawsuit filed by another judge).

Respondent, who was not a litigant in either case the union for the teachers filed, violated the Rules when she commented about those cases. For example, respondent posted on Facebook, "We can go to Court appearance. I will find out when it is." In

addition, respondent spoke to Board of Education representatives about issues regarding the litigation and then made a public statement about her meetings. Particularly troubling was respondent's decision to stand with counsel for the union and two CHS parents in the Buffalo Supreme Court facility where respondent presides. Respondent stood with them in a hallway outside the courtroom of the judge presiding over the union's case immediately before a case conference was held. By standing with union counsel in the courthouse where she serves, respondent, who spoke repeatedly and publicly in favor of the CHS teachers, undermined confidence in the impartiality of the judiciary.

"Every judge must understand that a judge's right to speak publicly is limited because of the important responsibilities a judge has in dispensing justice, maintaining impartiality and acting at all times in a manner that promotes public confidence in the judge's integrity." *Matter of Fisher*, 2019 NYSCJC Annual Report 126, 135. In *Matter of Barringer*, 2006 NYSCJC Annual Report 97, the Commission held,

> [u]pon assuming the bench, a judge surrenders certain rights and must refrain from certain conduct that may be permissible for others. Even otherwise laudable conduct must be avoided if it creates the appearance that a judge is lending the prestige of judicial office to advance private interests or impairs public confidence in judicial impartiality and independence.

Id. at 100-101. As respondent acknowledged, her extra-judicial conduct violated the Rules. Rather than being circumspect and focusing narrowly on her direct personal interest in her daughter's education, respondent generally advocated for and supported the CHS teachers. She attended meetings and spoke critically of the school's plan to transfer teachers. In addition, respondent was publicly critical of the CHS principal and

described the transfer of teachers as "pure retaliation" which detracted from the dignity of her judicial office.

Furthermore, respondent admittedly violated the Rule which prohibits a full-time judge from practicing law. (Rules, §100.4(G)) In that regard, respondent improperly and repeatedly advised other CHS parents as to the specific language to include in letters in order to meet the legal standard for injunctive relief.

In addition, it was stipulated that respondent invoked the prestige of her office in violation of Section 100.2(C) of the Rules when her Facebook comment in response to an editorial regarding CHS identified her as a Supreme Court judge. As respondent acknowledged, before making this comment, she should have known that, based on the settings for her account, she would be identified as a judge. As the Court of Appeals has held, "[m]embers of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved." *Matter of Lonschein*, 50 N.Y.2d 569, 572 (1980) (citation omitted).

Respondent's numerous violations of the Rules during the relevant three-month period undermined public confidence in the integrity and impartiality of the judiciary. The totality of evidence demonstrated that respondent's extra-judicial conduct was improper and went beyond appropriate action specifically concerning her personal interest in her daughter's education.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has admitted that her conduct warrants public discipline

and that she has averred that her sole motivation was to protect the interests of her daughter. We trust that respondent has learned from this experience and in the future will act in strict accordance with her obligation to abide by all the Rules Governing Judicial Conduct.

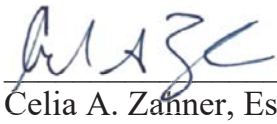
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

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

CERTIFICATION

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

Dated: December 9, 2020



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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

MATTHEW J. PARKER,

a Justice of the Ellenville Village Court,
Ulster County.

– –

THE COMMISSION:

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

APPEARANCES:

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

Honorable Matthew J. Parker, Respondent *pro se*

Respondent, Matthew J. Parker, a Justice of the Ellenville Village Court, Ulster

County, was served with a Formal Written Complaint dated May 14, 2020, containing three charges. He filed an undated Answer on June 2, 2020. Charge I of the Formal Written Complaint alleged that on April 11, 2017, after presiding over the arraignment of E B in the Ellenville Village Court, respondent offered to give, and then gave, Mr. B a ride to Mr. B' residence.[1] Charge I further alleged that on April 18, 2017, respondent presided over and disposed of Mr. B' case, without disclosing to the prosecution that he had given Mr. B a ride home after the arraignment and without offering to recuse himself. Charge II of the Formal Written Complaint alleged that in October and November 2018, in *People v. Laquisha Brown* and *People v. Aljenia Douglas*, respondent failed to advise the unrepresented defendants of the right to have counsel assigned by the court and otherwise failed to comply with requirements of the Criminal Procedure Law in connection with those matters. Charge III of the Formal Written Complaint alleged that on August 7, 2018, respondent summarily directed that a man be removed from the courtroom based on the man's attire without giving him the opportunity to be heard.

On July 1, 2020, the Administrator and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

[1] The allegation in the Formal Written Complaint that respondent failed to mechanically record Mr. B' arraignment as required was withdrawn. Subsequent to service of the Formal Written Complaint, Commission Counsel discovered evidence that the arraignment was, in fact, recorded.

On August 6, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Ellenville Village Court, Ulster County, since January 1, 2000, having previously served as an Acting Village Justice of the Ellenville Village Court from 1993 to December 31, 1999. His current term expires on December 31, 2022. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

2. On April 11, 2017, at the Ellenville Village Court, respondent presided over the arraignment of E[redacted] B[redacted], who was charged with Grand Larceny in the fourth degree, a felony. Mr. B[redacted], who is not an attorney, appeared without counsel, and no one from the District Attorney's Office was present. During the arraignment, Mr. B[redacted] *inter alia* told respondent that he was a professional musician. Respondent released Mr. B[redacted] on his own recognizance.

3. After the arraignment, while still at the court, respondent engaged Mr. B[redacted] in a conversation about music and the musicians with whom Mr. B[redacted] had performed. Respondent then offered to give Mr. B[redacted] a ride to his residence, which Mr. B[redacted] accepted. Respondent drove Mr. B[redacted] to his residence in the Village of Wurtsboro, Sullivan County, which was on respondent's way to Middletown in Orange County, where he planned to go shopping. Respondent and Mr. B[redacted] continued to converse throughout the car ride, which lasted approximately 15 minutes.

4. During the Commission's investigation, Mr. B[redacted] stated that he and respondent did not discuss the pending case against him during the car ride, but that he

could not otherwise recall what they discussed. In his sworn testimony during the investigation, respondent averred that he and Mr. B[redacted] only discussed music and did not discuss Mr. B[redacted]' case.

5. On April 18, 2017, Mr. B[redacted] appeared without counsel before respondent in the Ellenville Village Court. At the recommendation of the prosecutor, the charge against Mr. B[redacted] was reduced, and respondent disposed of the case by granting an adjournment in contemplation of dismissal. Respondent neither disclosed to the prosecutor that he had given Mr. B[redacted] a ride home after his arraignment nor offered to recuse himself from the case.

As to Charge II of the Formal Written Complaint

6. On October 16, 2018, at the Ellenville Village Court, respondent presided over the arraignment of Aljenia Douglas, who was charged with harassment in the second degree, a violation, stemming from an incident involving Laquisha Brown. Ms. Douglas appeared without an attorney. A transcript of the proceeding in *People v. Aljenia Douglas* is annexed as Exhibit A to the Agreed Statement.

7. In response to a question by respondent, Ms. Douglas informed respondent that she was unemployed.

8. Respondent advised Ms. Douglas of the charge against her and informed her that she had the right to the aid of counsel at each stage of the proceedings, to request an adjournment to obtain counsel, and to make a phone call for the purpose of obtaining a lawyer. Respondent then asked Ms. Douglas if she wanted a lawyer, and she replied that she did not. After advising Ms. Douglas that she was charged with a violation for which

she could be sentenced up to 15 days in jail if found guilty, respondent confirmed that she still wished to waive her right to a lawyer.

9. Without advising Ms. Douglas that she had the right to have counsel assigned by the court or taking any affirmative action to effectuate that right, respondent asked how Ms. Douglas pled to the charge. Ms. Douglas pled guilty.

10. Respondent accepted Ms. Douglas' guilty plea and, based on the recommendation of the prosecutor, sentenced her to a conditional discharge and issued an order of protection directing her to stay away from Ms. Brown. Respondent accepted Ms. Douglas' guilty plea without making a searching inquiry into the defendant's understanding of her plea.

11. On October 16, 2018, immediately after presiding over the arraignment of Ms. Douglas, respondent presided over the arraignment of Ms. Brown, who was charged with harassment in the second degree, a violation, stemming from an incident involving Ms. Douglas. A transcript of the proceedings in *People v. Laquisha Brown* is annexed as Exhibit B to the Agreed Statement.

12. In response to a question by respondent, Ms. Brown informed respondent that she was unemployed.

13. Respondent advised Ms. Brown of the charge against her and informed her that she had the right to the aid of counsel at each stage of the proceedings, to request an adjournment to obtain counsel, and to make a phone call for the purpose of obtaining a lawyer. Respondent then asked Ms. Brown if she wanted a lawyer, and she replied that she did not.

14. Without advising Ms. Brown that she had the right to have counsel assigned by the court or taking any affirmative action to effectuate that right, respondent asked how Ms. Brown pled to the charge. Ms. Brown pled not guilty.

15. After advising Ms. Brown that she was charged with a violation for which she could be sentenced up to 15 days in jail if found guilty, respondent confirmed that she still wished to waive her right to a lawyer.

16. Respondent informed Ms. Brown that the prosecutor was offering her a conditional discharge and an order of protection in favor of Ms. Douglas if Ms. Brown pled guilty to the charge. Ms. Brown asserted, in sum or substance, that Ms. Douglas had come to Ms. Brown's child's school to fight Ms. Brown. Respondent scheduled a non-jury trial for November 14, 2018. Although respondent told Ms. Brown to have her attorney contact the court if she chose to retain one, he again failed to advise her of her right to have counsel assigned by the court and took no affirmative action to effectuate that right.

17. On November 14, 2018, Ms. Brown appeared without an attorney for her non-jury trial. At the outset, respondent confirmed with Ms. Brown that she still wanted to proceed without counsel, but again failed to advise her of her right to have counsel assigned by the court and took no affirmative action to effectuate that right.

18. During the non-jury trial, Ms. Douglas testified on behalf of the prosecution, and Ms. Brown testified in her own defense. During Ms. Brown's testimony, respondent sustained an objection by the prosecutor and admonished Ms. Brown, "one of the reasons why we get lawyers is because there are rules of evidence that are . . . part of any court

proceeding." Nevertheless, respondent did not adjourn the trial to assign counsel to represent Ms. Brown.

19. At the end of the non-jury trial, respondent found Ms. Brown guilty, sentenced her to a conditional discharge, and issued an order of protection directing her to stay away from Ms. Douglas.

As to Charge III of the Formal Written Complaint

20. On August 7, 2018, while presiding over court proceedings at the Ellenville Village Court, respondent summarily directed the removal of a man from the courtroom for wearing a sleeveless t-shirt, without giving the man an opportunity to be heard as to his attire or ascertaining his purpose for attending court, and notwithstanding Section 4 of the Judiciary Law, which provides that the "sittings of every court within this state shall be public, and every citizen may freely attend the same."

21. The man's attire was not interfering with court proceedings.

22. The incident was captured on the court's recording of the day's proceedings. The man ejected from the courtroom is not named on the recording, and neither respondent nor Commission Counsel knows his identity or his purpose for attending court.

Additional Factors

23. Respondent has been cooperative and contrite with the Commission throughout this inquiry.

24. Respondent acknowledges that by offering to give, and giving, Mr. B[redacted] a ride home after conducting his arraignment, he demonstrated extremely

poor judgment and created an appearance of impropriety that required his recusal from Mr. B[redacted]' case, even absent any discussion of the *B*[redacted] case during the car ride. *See, Matter of Burke*, 2015 NYSCJC Annual Report 78, 86.

25. Respondent has expressed remorse for his failure to advise defendants Douglas and Brown of their right to have counsel assigned by the court and to take affirmative action to effectuate that right. Respondent understands that he was not excused from effectuating that right simply because the prosecutor had indicated she was not seeking jail time for either defendant, or that the sentences he imposed (conditional discharges) were lenient.

26. Respondent asserts that his failures to advise defendants Douglas and Brown of their right to assigned counsel were isolated incidents and were not deliberate. Respondent avers, and Commission Counsel confirms upon listening to various recordings of court proceedings, that it is respondent's regular practice to fully advise defendants of their rights. Respondent avers that, because of this inquiry, he now assigns a public defender to all unrepresented defendants at their initial appearances and, for those defendants who state they wish to proceed *pro se*, reads an extensive "waiver of counsel" colloquy to ensure they understand the consequences of proceeding without an attorney, before permitting them to proceed *pro se*.

27. Respondent was cautioned by the Commission in 2015 for conduct that was factually dissimilar to the matter herein, but that involved *inter alia* a similar failure to abide by Section 100.3(B)(6) of the Rules. There, as here, respondent failed to accord all those legally interested in a proceeding the right to be heard according to

law.

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), (3) and (6), 100.3(E)(1), and 100.4(A)(1) and (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. Charges I, II and III of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

Every judge must avoid the appearance of impropriety in all his or her activities and must ensure that his or her extra-judicial conduct does not "cast reasonable doubt on the judge's capacity to act impartially as a judge" or "detract from the dignity of judicial office." (Rules, §§100.2(A), 100.4(A)(1) and (2)) Respondent had an extreme lapse in judgment when he offered and then gave a defendant a ride home after conducting the defendant's arraignment in the absence of a prosecutor and releasing him on his own recognizance. Such extra-judicial conduct involving a defendant whose case is pending in respondent's court is highly improper. *See*, *Matter of Burke*, 2015 NYSCJC Annual Report 78 (judge censured for, *inter alia*, riding in police car with defendant, having an *ex parte* conversation about the pending matter and recommending defendant hire an attorney who had a business relationship with the judge); *See*, *Matter of Friess*, 1982 NYSCJC Annual Report 109 (judge censured for, *inter alia*, providing overnight lodging for a defendant whose arraignment the judge had conducted).

Moreover, a judge's disqualification is required in matters "in which the judge's

impartiality might reasonably be questioned." (Rules, §100.3(E)(1)) A reasonable person might conclude that giving the defendant a ride home indicated that respondent could not be impartial when it came to adjudicating the defendant's case. Nevertheless, a week after giving the defendant a ride home, respondent compounded his misconduct by disposing of the defendant's case. Respondent acknowledged that as a result of the ride he provided the defendant, he should have recused himself from the matter.

"Public confidence in the integrity and impartiality of the judiciary is indispensable to the fair and proper administration of justice. A judge's conduct must be and appear to be beyond reproach if respect for the court is to be maintained." *Matter of Friess*, 1982 NYSCJC Annual Report 109, 111. By failing to disqualify himself in the matter after giving the defendant a ride home and failing to even disclose the ride to the prosecutor, 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)) *See, Matter of Porter*, 2019 NYSCJC Annual Report 215 (judge should have recused in matters involving a boundary dispute which involved his neighbor's daughter after discussing the dispute with his neighbor). By his improper conduct, respondent brought reproach upon the judiciary and undermined public confidence in the impartiality of the judiciary.

Section 100.3(B)(1) of the Rules requires all judges to "be faithful to the law and maintain professional competence in it." It was stipulated that respondent violated these provisions when he failed to comply with the Criminal Procedure Law in two matters and

failed to comply with Section 4 of the Judiciary Law when he summarily removed a man from the courtroom.

In the two criminal matters, during arraignment each defendant told respondent that she was unemployed. Nevertheless, respondent admitted that he failed to advise the defendants of their right to have counsel appointed for them and failed to take steps to effectuate that right. In addition, respondent failed to ensure that the defendants fully understood the consequences of the decision to proceed without counsel. By his conduct, respondent failed to perform one of the critical roles of a judge during arraignment. The Commission has held:

> As the Court of Appeals has stated: "The right to counsel, in practical respects, remains absolutely fundamental to the protection of a defendant's other substantive rights" (*Matter of Bauer*, 3 NY3d 158, 164 [2004] . . . . Informing defendants of the right to counsel is one of judge's most important responsibilities at an arraignment, and the failure to do so cannot be excused even in isolated instances and even if the ultimate outcome of the case might be viewed as favorable.

Matter of Kline, 2018 NYSCJC Annual Report 161, 183; *Matter of Prince,* 2014 NYSCJC Annual Report 184, 189-190 ("The right to counsel is a fundamental constitutional and statutory right . . . At arraignment, a judge is required, *inter alia,* to advise a defendant of the right to assigned counsel . . . By ignoring this important responsibility, respondent violated his ethical obligation to be faithful to the law . . .")

In addition, it was stipulated that respondent failed to comply with Section 4 of the Judiciary Law and was discourteous to the man in his courtroom when respondent summarily directed that he be removed based on his attire without determining the man's

purpose for being present in court that day or giving him the opportunity to be heard. The Commission has held that the right to public proceedings found in the Section 4 of the Judiciary Law, "belongs not only to a defendant, but to the public and press as well." *Matter of Edward J. Williams,* 2002 NYSCJC Annual Report 175, 177 (judge, *inter alia*, refused to allow a victim's attorney to attend a trial as an observer); *See, Matter of Shannon,* 2002 NYSCJC Annual Report 161 (judge admonished for, *inter alia*, precluding the public from observing a hearing and closing the courtroom and preventing the public from observing matters that should have been open to the public under Section 4 of the Judiciary Law).

Respondent has been a judge since 1993 and accordingly "should be fully familiar with basic procedures of law as well as the ethical rules." *Matter of Edward J. Williams*, 2002 NYSCJC Annual Report 175, 177. In addition, in 2015, the Commission issued a letter of dismissal and caution to respondent in which he was cautioned to comply with his obligation to be faithful to the law and to maintain professional competence in the law. Given his long judicial tenure and the Commission's 2015 letter, respondent should have been particularly attentive to his obligations under the Rules and the law.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has admitted that his conduct warrants public discipline, that his failures to comply with the Criminal Procedure Law appear to have been isolated incidents and that he has taken corrective action by appointing a public defender for unrepresented defendants at arraignment and by taking steps to ensure that defendants understand the consequences of proceeding without counsel. We trust that respondent

has learned from this experience and in the future will act in accordance with his obligation to follow constitutional and statutory mandates and abide by the Rules Governing Judicial Conduct.

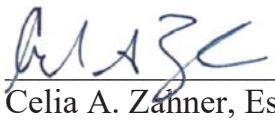
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

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

CERTIFICATION

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

Dated: August 13, 2020



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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

WAYNE R. PEBLER,

a Justice of the Roxbury Town Court,
Delaware County.

DETERMINATION

– –

THE COMMISSION:

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

APPEARANCES:

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

Young/Sommer LLC (by Kristin Laviolette Pratt) for respondent

Respondent, Wayne R. Pebler, a Justice of the Roxbury Town Court, Delaware County, was served with a Formal Written Complaint dated March 27, 2020, containing

one charge. Respondent filed an Answer dated May 6, 2020. The Formal Written Complaint alleged that on June 13, 2018, August 1, 2018, and August 15, 2018, respondent (A) engaged in improper *ex parte* communications and publicly commented about charges pending against the defendant in *People v. Chad M. Ostrander* in the Roxbury Town Court and in the Delhi Town Court; and (B) made comments that created an appearance that respondent was biased against defendant Ostrander. The Formal Written Complaint further alleged that respondent engaged in the foregoing improper *ex parte* communications about the *Ostrander* cases notwithstanding that on June 29, 2009, the Commission sent respondent a Letter of Dismissal and Caution for, *inter alia*, engaging in improper *ex parte* communications with the parties and a non-party about a pending small claims matter.

On June 1, 2020, 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 June 11, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent, who is not an attorney, has been a Justice of the Roxbury Town Court, Delaware County, since January 2, 2002. His current term expires on December 31, 2021.

2. On June 8, 2018, Chad M. Ostrander was charged in the Roxbury Town Court with Reckless Endangerment in the first degree, a felony; Fleeing an Officer in a Motor Vehicle in the third degree, a misdemeanor; Reckless Driving, a misdemeanor; Aggravated Unlicensed Operation in the third degree, a misdemeanor; and 12 traffic infractions.

3. On June 13, 2018, Mr. Ostrander was charged in the Delhi Town Court with Promoting Prison Contraband in the first degree, a felony; Criminal Possession of a Controlled Substance in the fifth degree, a felony; and Criminal Sale of a Controlled Substance in the fourth degree, a felony.

4. On June 13, 2018, at the Roxbury Town Court, while Mr. Ostrander, defense counsel and the prosecutor were not present, respondent told a man in the courtroom that Mr. Ostrander was a "convict" with two prior felony convictions. He then described in detail the circumstances that led to the charges against Mr. Ostrander in the Roxbury Town Court, including that Mr. Ostrander had allegedly, without a driver's license, sped past a flagman and "tried to run [a] cop over doing 92 miles an hour," which respondent referred to as "asinine." The conversation was captured by the court's audio recording system. A transcript is annexed as Exhibit A to the Agreed Statement.

5. On June 13, 2018, at the Roxbury Town Court, while Mr. Ostrander, defense counsel and the prosecutor were not present, respondent initiated a conversation about Mr. Ostrander with another defendant and that defendant's mother. Respondent told them that Mr. Ostrander had "16 tickets before this court" and that

"[h]e's going to federal pen eventually … over this, whatever he did." Respondent also recounted that he had told Mr. Ostrander he was not entitled to assigned counsel because child support could not be considered as "part of [his] poverty level," while complaining that Mr. Ostrander had children whom he could not afford to support. The conversation was captured by the court's audio recording system. A transcript is annexed as Exhibit A to the Agreed Statement.

6. On August 1, 2018, at the Roxbury Town Court, while Mr. Ostrander, defense counsel and the prosecutor were not present, respondent told a woman in the courtroom details about a plea agreement that had been reached in Mr. Ostrander's pending case in the Delhi Town Court. Respondent said Mr. Ostrander was "dealing drugs and they don't seem to care," and said "I'm sorry. If this is what's happening, I mean, why would he have it up his back end if he's not dealing?" The conversation was captured by the court's audio recording system. A transcript is annexed as Exhibit B to the Agreed Statement.

7. On August 1, 2018, and August 15, 2018, at the Roxbury Town Court, while Mr. Ostrander and his attorney were not present, respondent made comments to the prosecutor and/or his court clerk, implying that he believed Mr. Ostrander to be a drug user and drug dealer, notwithstanding that at the time, Mr. Ostrander had no narcotics-related charges pending in the Roxbury Town Court. Respondent stated, *inter alia*, that:

a. Mr. Ostrander had "drugs up his backside and good old mom lost her supplier."

b. "We've got to get the drugs back to mom."

c. "If he's not using the illicit drugs, then what is he transporting them up his backside for?"

d. "He's running around us dealing more drugs."

The August 1 and August 15 conversations were captured by the court's audio recording system. Transcripts are annexed as Exhibit B and Exhibit C, respectively to the Agreed Statement.

8. By Letter of Dismissal and Caution dated June 29, 2009, a copy of which is annexed as Exhibit D to the Agreed Statement, respondent was cautioned by the Commission to abide by Section 100.3(B)(6) of the Rules after he engaged in unauthorized *ex parte* communications with each party and a non-party, in connection with *Joseph Giangiobbe v. Kathleen Paige*, a small claims matter over which he was presiding. Respondent accepted the Letter of Dismissal and Caution without requesting a formal disciplinary hearing.

Additional Factors

9. On August 22, 2018, after the felony charge against Mr. Ostrander had been reduced to a misdemeanor, Mr. Ostrander pled guilty, with the assistance of counsel and in satisfaction of all the charges he faced in Roxbury Town Court, to Reckless Endangerment in the second degree, Fleeing an Officer in the third degree and Reckless Driving, all misdemeanors. Respondent sentenced Mr. Ostrander to one year in jail.

10. Respondent has been cooperative and contrite with the Commission throughout this inquiry. Respondent now recognizes that it was improper for him to

speak with members of the public about the merits of pending cases and pledges to refrain from such conduct in the future.

11. Respondent was acquainted with Mr. Ostrander prior to June 2018. From 1996 to 1998, respondent was employed as a study hall and substitute shop teacher at a middle school where Mr. Ostrander was a student. Respondent also knew Mr. Ostrander from having presided over other criminal cases in which Mr. Ostrander was a defendant. Additionally, respondent was aware of Mr. Ostrander's criminal history from reviewing his criminal history report.

12. Although respondent asserts that he harbored no actual bias against Mr. Ostrander, he now understands that his public comments about Mr. Ostrander created the appearance of prejudice and prejudgment. He further recognizes that the "perception of impartiality is as important as actual impartiality: Judges must conduct themselves 'in such a way that the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property.'" *Matter of Duckman*, 92 N.Y.2d 141, 153 (1998) (quoting *Matter of Sardino*, 58 N.Y.2d 286, 290-91 (1983)).

13. After nearly twenty years on the bench, respondent does not intend to run for reelection in 2021.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(4), 100.3(B)(6) and 100.3(B)(8) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause pursuant to Article 6, Section 22, subdivision (a) of the 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)) The Rules specifically prohibit a judge from commenting on a pending case and from initiating *ex parte* communications about a pending matter. (Rules, §§100.3(B)(6) and (8)) Furthermore, the Rules require that a judge "shall not, by words or conduct, manifest bias. . .." (Rules, §100.3(B)(4)) On three different dates, outside the presence of the defendant and his attorney, respondent publicly commented about criminal charges pending against the defendant in the Roxbury Town Court and in the Delhi Town Court. Respondent made multiple disparaging comments about the defendant to individuals in respondent's courtroom, including to another defendant and that defendant's mother, the prosecutor and the court clerk. In one instance, referring to the defendant's conduct as alleged in the criminal charges pending before respondent, respondent described the defendant's conduct as "asinine." Respondent, while at the Roxbury Town Court, also publicly stated with respect to the defendant that, "he's going to federal pen eventually . . .." Furthermore, respondent improperly stated multiple times that the defendant had drugs "up his backside" and was "dealing drugs."

It is well settled that judges are strictly prohibited from commenting on pending cases. (Rules, §100.3(B)(8)) The Commission has held "this ethical prohibition 'is clear and unequivocal,' and, consequently, "[i]t is wrong for a judge 'to make any public

comment, no matter how minor, to a newspaper reporter or to anyone else, about a case pending before him." *Matter of Piampiano*, 2018 NYSCJC Annual Report 208, 219 (citations omitted); *Matter of Whitmarsh*, 2017 NYSCJC Annual Report 266. Respondent's multiple comments regarding the criminal matters pending in the Roxbury Town Court and in the Delhi Town Court violated this strict prohibition.

Moreover, respondent's series of comments regarding the defendant created at least the appearance that he was biased against the defendant in violation of Section 100.3(B)(4) of the Rules. *Matter of Frati,* 1996 NYSCJC Annual Report at 83, 84 (judge conveyed the appearance of bias when he suggested that the plaintiff was a "negligent" farmer and that his claim was not in the "spirit" of the community's "codes of honor."); *Matter of Wylie*, 1991 NYSCJC Annual Report 89, 92 (judge "compromised his impartiality" when he referred to defendants appearing before him as "a thief", "scum", "a bum" and "sick, sick, sick.") Respondent acknowledged that his comments created the appearance that he had prejudged the defendant's case. In addition, when respondent made the disparaging comments in a conversation with another defendant and his mother as well as to others in his courtroom, respondent undermined public confidence in the fairness and impartiality of the judiciary.

Furthermore, respondent's statements regarding the defendant and the charges pending against him were made outside the presence of the defendant and his counsel. Accordingly, respondent also violated the ethical rule which prohibits a judge from initiating *ex parte* communications regarding a pending matter. (Rules, §100.3(B)(6))

Respondent's misconduct was exacerbated by the fact that he had previously been

cautioned by the Commission to not engage in *ex parte* communications. *Matter of Lamson*, 2013 NYSCJC Annual Report 235, 244 (in light of a prior caution regarding *ex parte* communications, "respondent should have been particularly sensitive to the impropriety of engaging in any *ex parte* communications.")

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

Ms. Yeboah did not participate.

CERTIFICATION

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

Dated: June 17, 2020

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

DETERMINATION

MICHAEL A. PETUCCI,

a Justice of the Herkimer Town Court,
Herkimer 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, Of Counsel)
for the Commission

Gerstenzang, Sills, Cohn & Gerstenzang (by Peter Gerstenzang)
for respondent

Respondent, Michael A. Petucci, a Justice of the Herkimer Town Court, Herkimer County, was served with a Formal Written Complaint dated June 11, 2019, containing

one charge. The Formal Written Complaint alleged that on December 12, 2018, in the Village of Herkimer, New York, respondent operated a motor vehicle while his ability to do so was impaired by alcohol. Respondent filed a Verified Answer dated June 20, 2019.

On July 16, 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 October 17, 2019, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Herkimer Town Court, Herkimer County, since 2008, having previously served as a Justice of the Herkimer Village Court, Herkimer County, from 2010 to 2015, and as an Acting Justice of the Ilion Village Court, Herkimer County, from 2008 to 2012. His current term expires on December 31, 2023. Respondent is not an attorney.

2. At all times pertinent to the facts herein, respondent was Director of the IT Department at the Slocum-Dickson Medical Group in New Hartford, New York.

3. Respondent was sworn in as President of the New York State Magistrates Association (SMA) on September 25, 2018, for a term ending on September 17, 2019. The SMA *inter alia* offers education and training programs to town and village court justices on adherence to the Rules Governing Judicial Conduct and judicial ethics.

4. On December 12, 2018, respondent left his place of employment at the Slocum-Dickson Medical Group shortly after 6:00 p.m. and drove his vehicle to Stoney's Tavern on South Main Street in Herkimer, New York. Respondent consumed at least two alcoholic beverages between 6:40 p.m. and 7:10 p.m., when he left Stoney's.

5. Respondent then drove approximately half a mile to the Elks Lodge on Mary Street in Herkimer, where he consumed at least two more alcoholic beverages between 7:15 p.m. and 8:20 p.m., when he left the lodge.

6. Respondent then drove again to Stoney's Tavern, where he consumed more alcohol until sometime after 9:00 p.m., when he again left Stoney's.

7. Respondent then drove to South Washington Street in Herkimer, which is less than half a mile from Stoney's. At approximately 9:28 p.m., as a result of his impairment by alcohol, respondent lost control of his vehicle and crashed into the side of a former Kmart building on South Washington Street. The impact of the crash caused damage to both the building and respondent's vehicle such that, *inter alia,* the left front wheel of respondent's vehicle flew off and the airbags deployed.

8. At the time of the crash, respondent was carrying a loaded handgun and had another full magazine of ammunition in one of his pockets. Respondent was licensed to carry a firearm.

9. On December 12, 2018, after emergency responders and Herkimer police arrived at the scene of the crash, respondent told Paramedic Joseph Durr that he was coming from Stoney's and had consumed alcohol. Respondent, whose breath smelled strongly of alcohol, was yelling obscenities and was otherwise belligerent to Mr. Durr

and to Herkimer Police Sgt. John Scholl. At one point, respondent asked Mr. Durr to arrest Sgt. Scholl.

10. Respondent repeatedly refused Sgt. Scholl's request to undergo field sobriety tests or a chemical test of his blood alcohol content, despite three separate warnings by Sgt. Scholl about the consequences of such refusals, including that his driver's license would be suspended. In response to one of Sgt. Scholl's requests to submit to a roadside breath test, respondent said, "No, fuck you."

11. Respondent did not invoke his judicial position at the scene. Sgt. Scholl was aware that respondent was a judge because he had appeared in respondent's court in the course of his duties as a police officer. In addition, the license plate on respondent's car was "1 SMA2019" and bore the insignia of the SMA. The New York State license plate "1 SMA" is traditionally reserved for the SMA President.

12. Respondent was transported to St. Elizabeth's Hospital in Utica.

13. Late in the evening on December 12, 2018, respondent was charged with Driving While Intoxicated, in violation of Vehicle and Traffic Law (VTL) Section 1192.3, and Refusal To Take Breath Test, in violation of VTL Section 1194.1(b).

14. The charges were returnable in the Herkimer Village Court and were subsequently transferred to the Little Falls City Court after the Herkimer village justices recused themselves.

15. The Herkimer County District Attorney's office, which prosecutes cases in respondent's court, moved to be relieved in respondent's case, whereupon the Herkimer County Court appointed the Oneida County District Attorney as special prosecutor.

16. On January 8, 2019, respondent pled guilty in the Little Falls City Court to Driving While Ability Impaired by Alcohol, in violation of VTL Section 1192.1, in satisfaction of both charges against him. He was sentenced to pay a fine of $500 and a $255 surcharge, attend a victim impact panel and undergo a comprehensive clinical assessment. Respondent's driving privileges were suspended for 90 days. Respondent later received a conditional license.

17. By Order dated December 13, 2018, Herkimer County Court Judge John H. Crandall ordered that respondent's pistol permit be suspended pending a hearing. The status of respondent's pistol permit was pending as of the date of the Agreed Statement of Facts.

18. By administrative order of Deputy Chief Administrative Judge Michael C. Coccoma dated December 17, 2018, respondent was suspended from performing his judicial duties. Respondent remained suspended from performing judicial duties as of the date of the Agreed Statement of Facts.

Additional Factors

19. Respondent avers that he has no recollection of the events on December 12, 2018, after he left the Elks Lodge. Respondent specifically avers that he does not recall being belligerent to the arresting officers and first responders. However, based on his review of the Herkimer Police Department report and the credibility of the officers involved, respondent believes those allegations to be true and does not dispute his conduct as described above. Respondent has since apologized to Sgt. Scholl for his behavior.

20. On December 28, 2018, respondent was evaluated by a Credentialed Alcoholism and Substance Abuse Counselor ("CASAC") and multidisciplinary team, which determined that no treatment was recommended. Notwithstanding this finding, in January 2019, respondent voluntarily entered outpatient treatment with a licensed social worker/CASAC. Respondent avers that he has refrained from the use of alcohol since the date of the incident on December 12, 2018.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.4(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. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

It is the responsibility of every judge to act at all times in a manner that promotes public confidence in the integrity of the judiciary and to avoid conduct that detracts from the dignity of judicial office. Respondent violated his ethical obligation to respect and comply with the law by driving his vehicle while his ability was impaired by alcohol which caused him to lose control of his car and crash into a building. As a result of the accident which he could not recall, he caused damage to both his vehicle and the building. At the scene, respondent, whose breath smelled strongly of alcohol, admitted to the responding paramedic that he was coming from a tavern and had been drinking. Respondent subsequently pled guilty to Driving While Ability Impaired by Alcohol in violation of VTL Section 1192.1. His unlawful and reckless conduct endangered public

safety and brought the judiciary into disrepute.

According to the New York State 2018 Highway Safety Annual Report, there are thousands of arrests for alcohol-related driving offenses every year. That report indicated that alcohol-impaired driving causes over 300 fatalities and 5,000 injuries in New York state each year. Respondent should have known that by driving his vehicle after consuming a large amount of alcohol in a relatively short period of time he created a significant risk to himself and others.

Given respondent's role in adjudicating civil and criminal cases involving impaired driving, respondent's misconduct undermines his effectiveness as a judge and undermines public confidence in the judiciary. As a judge entrusted with the responsibility of exercising judgment over the conduct of others and applying the law in his court, respondent is "obligated to conduct [himself] at all times in a manner that reflected [his] own personal respect for the letter and spirit of the law." *Matter of Backal,* 87 N.Y.2d 1, 7 (1995). Any departure from this exacting standard of personal conduct undermines his effectiveness as a judge and impairs the public's respect for the judiciary as a whole.

In prior cases involving alcohol-related driving offenses, in determining the appropriate disposition, the Commission has considered various mitigating and aggravating factors including: the degree of intoxication, whether the judge caused an accident or injury, whether the conduct was an isolated incident or part of a pattern, whether the judge was cooperative during arrest, whether the judge asserted his or her judicial office and sought preferential treatment, whether the judge accepted

responsibility for the offense and the need and willingness of the judge to seek treatment. *See, e.g., Matter of Astacio*, 2019 NYSCJC Annual Report 71, *aff'd,* 32 N.Y.3d 131 (2018) [removal] (DWI conviction; judge was uncooperative during arrest and asserted her judicial office; judge also engaged in additional misconduct related to her judicial duties); *Matter of Landicino*, 2016 NYSCJC Annual Report 129 [censure] (DWI conviction; judge repeatedly asserted his judicial office during arrest; subsequently he made extensive efforts to rehabilitate himself); *Matter of Newman*, 2014 NYSCJC Annual Report 164 [censure] (DWAI conviction after rear-ending a car at a traffic light; judge was uncooperative during arrest); *Matter of Apple*, 2013 NYSCJC Annual Report 95 [censure] (DWI conviction based on a blood alcohol concentration of .21%); *Matter of Maney*, 2011 NYSCJC Annual Report 106 [censure] (DWAI conviction; judge made illegal U-turn to avoid sobriety checkpoint, repeatedly identified himself as a judge and asked for "professional courtesy"); *Matter of Martineck*, 2011 NYSCJC Annual Report 116 [censure] (DWI conviction after driving erratically and hitting a mile marker); *Matter of Burke*, 2010 NYSCJC Annual Report 110 [censure] (DWAI conviction after causing an accident; additional misconduct included presiding over two cases without disclosure of her relationship with a complaining witness); *Matter of Mills*, 2006 NYSCJC Annual Report 218 [censure] (although judge was acquitted of DWI, she admitted driving after consuming alcoholic beverages and making offensive statements to the arresting officers).

In this case, respondent consumed several alcoholic drinks and drove his vehicle bearing SMA license plates into the side of a building with sufficient force to

severely damage his vehicle. Respondent, who refused field sobriety and breath tests at the scene of the crash, was under the influence of alcohol and his judgment was impaired which caused the crash and damage to both the building and his vehicle.

Respondent's misconduct was aggravated when he was uncooperative and belligerent during his arrest. Respondent yelled obscenities at the paramedic and police personnel who responded to the scene of his car crash. He asked the paramedic to arrest the police sergeant. He repeatedly refused to take field sobriety tests and a chemical test of his blood alcohol level. In response to one of the police sergeant's requests that he take a breath test, respondent stated, "No, fuck you." This conduct is inconsistent with a judge's obligation to maintain high standards of conduct at all times, both on and off the bench, in order to promote public confidence in the integrity of the judiciary. (Rules §§100.1 and 100.2(A))

Further aggravating respondent's misconduct, he carried a loaded handgun and another full magazine of ammunition while impaired by alcohol. Although respondent was licensed to carry a firearm, he exercised extremely poor judgment in carrying a loaded firearm in these circumstances.

In mitigation, shortly after the accident, respondent was evaluated by a Credentialed Alcoholism and Substance Abuse Counselor and a multidisciplinary team. They determined that no treatment was recommended for respondent. Nevertheless, respondent has voluntarily participated in counseling with a Credentialed Alcoholism and Substance Abuse Counselor.

In accepting the jointly recommended sanction of censure, we have taken into

consideration that respondent's misconduct involved one incident and that he recognizes a severe sanction is appropriate. We also note that respondent was suspended from performing his judicial duties shortly after the incident. We trust that respondent has learned from this experience and in the future will act in strict 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, Ms. Grays, Judge Falk, Judge Leach, Judge Mazzarelli, Judge Miller, and Ms. Yeboah concur.

Mr. Raskin was not present.

CERTIFICATION

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

Dated: January 30, 2020

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

DICCIA T. PINEDA-KIRWAN,

a Justice of the Supreme Court,
11th Judicial District, Queens County.[1]

– –

THE COMMISSION:

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

APPEARANCES:

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

Bracewell, LLP (by Paul Shechtman) for respondent

Respondent, Diccia T. Pineda-Kirwan, currently a Justice of the Supreme Court,

[1] Although respondent is presently sitting in the 10th Judicial District (Nassau County), she was sitting in the 11th Judicial District (Queens County) when this proceeding commenced.

Nassau County, was served with a Formal Written Complaint dated August 8, 2019, containing three charges. Charge I of the Formal Written Complaint alleged that from in or about 2010 through March 2017, respondent acted in a rude, impatient, undignified and discourteous manner when she repeatedly and without basis shouted, yelled or otherwise raised her voice at staff members of the Queens County Supreme Court and at attorneys appearing before her. Charge II of the Formal Written Complaint alleged that respondent engaged in the conduct described in Charge I despite having received a confidential Letter of Dismissal and Caution dated February 14, 2006 in which the Commission cautioned her to be patient, dignified and courteous to those with whom she dealt in an official capacity, and for threatening to adjourn a discovery motion repeatedly unless the attorneys reached a stipulation on the motion. Charge III of the Formal Written Complaint alleged that from approximately October 2012 to June 2016, respondent filed quarterly reports pursuant to Section 4.1 of the Rules of the Chief Judge that omitted certain matters that were pending decision more than 60 days after final submission.

On July 20, 2020, 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 August 6, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Supreme Court, 10th Judicial District**,** Nassau County, since January 2019, having previously served as Justice of the Supreme Court, 11th Judicial District, Queens County, from 2010 to 2018, and Judge of the New York City Civil Court, Queens County from 2003 to 2009. Respondent's current term expires December 31, 2024. She was admitted to the practice of law in New York in 1988.

As to Charge I of the Formal Written Complaint

2. At all times pertinent to the matters herein, Jeremy Weinstein was the Administrative Judge of Supreme Court, Civil Term, Queens County.

Maria Bradley, Principal Law Clerk to Administrative Judge Jeremy Weinstein

3. On September 21, 2010, Administrative Judge Jeremy Weinstein sent an email to the Supreme Court justices who were sitting in Queens County, Civil Term, advising them that uncontested divorce matters should not be dismissed for minor technical defects and that, when possible, the judges should attempt to have the defects remedied without dismissal.

4. In February 2011, Maria Bradley began working as Principal Law Clerk to Administrative Judge Weinstein.

5. In February 2011, upon receiving a letter from an attorney complaining that respondent had dismissed an uncontested divorce petition in *Christine Telesco v. Michele Weinfeld* for, *inter alia,* the parties' failure to submit certain papers, Administrative Judge Weinstein directed Ms. Bradley to speak to respondent's law clerk at the time about the matter.

6. On March 2, 2011, Ms. Bradley sent an email to respondent's law clerk requesting that respondent clarify her position on uncontested matrimonial matters in view of Judge Weinstein's 2010 email message advising that uncontested matrimonial cases should not be dismissed for minor technical reasons.

7. On March 3, 2011, respondent called and spoke to Ms. Bradley via the speakerphone in respondent's chambers in the presence of her law clerk. Respondent yelled at Ms. Bradley and vehemently stated (A) that she would not do a clerk's job, (B) that no one, including Judge Weinstein, could tell her how to decide a case, (C) that it would violate her oath and (D) that Ms. Bradley should not be giving her or her staff directives from Judge Weinstein. Ms. Bradley was shaken by the conversation and felt demeaned by respondent.

8. On April 20, 2016, respondent was assigned to hear a motion to reargue a summary judgment motion in *Morgan Goulet v. James P. Anastacio, et al.* The case had previously been assigned to Supreme Court Justice Valerie Brathwaite Nelson, who had denied the original motion for summary judgment and thereafter was appointed to the Appellate Division, Second Department.

9. On April 22, 2016, respondent referred the motion to reargue in *Goulet* to Judge Brathwaite Nelson, notwithstanding that the latter had been elevated to the Appellate Division and was no longer hearing lower-court matters. After learning that respondent had done so, Ms. Bradley conferred with Administrative Judge Weinstein and then told respondent's law clerk at the time that the motion could not be returned to Judge Brathwaite Nelson and that respondent should decide it. Ms. Bradley returned the motion

papers to respondent with a note reiterating that the motion could not be decided by Judge Brathwaite Nelson.

10. On May 10, 2016, respondent and her law clerk called and spoke to Ms. Bradley via the speakerphone in respondent's chambers. Respondent was irate and told Ms. Bradley that she would not decide the motion in *Goulet* and insisted that it should be decided by Judge Brathwaite Nelson. When Ms. Bradley explained that all of Judge Brathwaite Nelson's pending motions had been randomly reassigned to other judges, respondent stated, in words or substance, "I'm not any other justice. I'm Diccia Pineda-Kirwan, Supreme Court Justice."

11. During the May 10th telephone call, respondent raised her voice, accused Ms. Bradley of asking her to do something "illegal" by deciding a motion to reargue another judge's decision, and told Ms. Bradley not to speak to her until she did her research and learned the law. When Ms. Bradley explained that she was acting at Administrative Judge Weinstein's direction, respondent demanded a written directive from Judge Weinstein to decide the motion. Respondent then told Ms. Bradley in an angry voice that she had changed her mind and that she planned to raise the issue with the Counsel to the Advisory Committee on Judicial Ethics, because she felt she was being asked to do something unethical.

Mark Finkelstein, Facility Supervisor of the Long Island City Courthouse

12. In 2015, Mark Finkelstein was the Facility Supervisor at the Long Island City courthouse of the Supreme Court, Queens County.

13. On March 30, 2015, respondent became angry when Mr. Finkelstein asked her to return a folding table that he had loaned her for her courtroom. The table was Mr. Finkelstein's personal property. When Mr. Finkelstein told respondent that he had promised the table to a new judge, respondent said, in words or substance, "How can you do that? I have more seniority than he does." Respondent became visibly upset and repeatedly screamed at Mr. Finkelstein, "You treat me like shit."

Tamara Kersh, Chief Clerk, Queens County Supreme Court, Civil Term

14. In 2014, Tamara Kersh was the Acting Chief Clerk of Supreme Court, Civil Term, Queens County.

15. On January 26, 2014, after noticing that furniture and/or office equipment was missing from the former chambers and courtroom of retired Supreme Court Justice James Golia, Mr. Finkelstein viewed security video that showed members of respondent's court staff removing furniture and/or equipment from Judge Golia's courtroom and chambers.

16. On January 27, 2014, Mr. Finkelstein confronted members of respondent's court staff, who admitted taking the missing items.

17. On January 27, 2014, respondent called Acting Chief Clerk Kersh and demanded a copy of any report in which Mr. Finkelstein accused her staff of stealing. When Ms. Kersh stated that no report had been filed, respondent became upset and said in a raised voice, "I'm a senior judge. I should have what I want." Respondent then rejected Ms. Kersh's suggestion that she speak to Judge Weinstein about obtaining new office equipment, stating that Judge Weinstein did not care for her and treated her

unfairly.

Sharon Davidson, Respondent's Former Confidential Secretary

18. Sharon Davidson served as respondent's confidential secretary from January 2010 through December 2010.

19. In 2010, on multiple occasions, respondent chastised Ms. Davidson, yelled at her, spoke to her in a condescending tone and threatened to terminate her employment.

20. In 2010, respondent required Ms. Davidson to call her at home each work day at 9:00 AM and frequently yelled at Ms. Davidson if she called after 9:00 AM. Respondent also yelled at Ms. Davidson frequently for not calling her at home to report on certain events that occurred in court in respondent's absence, about which respondent learned after the fact.

21. In 2010, on at least one occasion, when Ms. Davidson told respondent not to speak to her in a discourteous manner, respondent stated, in words or substance, "I'll talk to you the way I want. If you weren't so incompetent I wouldn't talk to you like that."

Michael Cheung, Technical Manager of the Queens County Supreme Court

22. In 2017, Michael Cheung was the Technical Manager for the Queens County Supreme Court.

23. In February 2017, Mr. Cheung requisitioned a new laptop computer for respondent.

24. On February 17, 2017, respondent accepted delivery of the new laptop but refused to relinquish her old laptop.

25. On February 18, 2017, Mr. Cheung sent respondent an email (A) explaining that it was the policy of the Office of Court Administration ("OCA") to require judges to return their old laptops upon receiving new laptops and (B) requesting to schedule a pickup of her old laptop. Respondent did not respond to Mr. Cheung's email.

26. In late February 2017 or early March 2017, Mr. Cheung and his colleague Kevin Young called and spoke to respondent via the speakerphone in Mr. Cheung's office, to arrange to pick up respondent's old laptop on March 3, 2017. Respondent yelled at Mr. Cheung and Mr. Young, said that she did not want to return the old laptop and said she had been told she could keep it, although she did not tell Mr. Cheung or Mr. Young who told her that.

27. On March 2, 2017, at the direction of his supervisor, Mr. Cheung sent respondent an email asking her to return the old laptop, reiterating OCA's policy concerning the return of old laptops and stating that failure to return the old laptop could be considered "unauthorized use of court computer equipment."

28. After Mr. Cheung sent the email, respondent telephoned him and left a voicemail message accusing him of threatening her and stating that she was a "Supreme Court Justice" and that he should not speak that way to someone of authority. Respondent also told Mr. Cheung that she had drafted a letter in response to his email and that she would save and send it "if necessary" to Lawrence Marks, Chief Administrative

Judge of the Unified Court System. Respondent ended the message by stating that if Mr. Cheung threatened her again she would call the police.

Lauren Quondamatteo, Administrative Aide to Judge Weinstein

29. In 2016, Lauren Quondamatteo was the Administrative Aide to Administrative Judge Jeremy Weinstein.

30. In the summer of 2016, at Judge Weinstein's direction, Ms. Quondamatteo called respondent to discuss errors in her quarterly report of pending matters for the period of April-June 2016. Respondent became angry and was "ranting and raving" at Ms. Quondamatteo. Respondent put the call on speakerphone and, in a condescending tone, yelled that she was "not a clerk," that her chambers were "not a clerk's office" and that she should not have to "keep track of these things." Respondent told Ms. Quondamatteo that she would not file a corrected report.

Counsel in Juan Maria Solorzano v. Skanska USA Building. Inc.

31. On January 30, 2014, respondent ordered the parties in *Juan Maria Solorzano v. Skanska USA Building, Inc.,* to appear at 10:00 AM on March 20, 2014, for a settlement conference and final disposition of a motion to reargue respondent's order denying the defendant's motion for an extension of time to file a summary judgment motion.

32. On March 20, 2014, attorneys Dennis Pak and James Neville appeared, respectively, for the defendant and plaintiff.

33. In a conference with respondent's law clerk, Mr. Pak requested an adjournment and advised that he could not settle the case because his client's insurance

adjuster was unavailable. The clerk told the attorneys that they needed to stipulate to "something."

34. The two attorneys then appeared before respondent. When Mr. Pak repeated his request for an adjournment of the settlement conference, respondent stated that there were no adjournments in her part and that the case would be conferenced.

35. Before the lunch break, respondent conducted an off-the-record conference with the two attorneys during which she suggested that they stipulate to give the defendant an extension of time to file a summary judgment motion. When the attorneys could not stipulate, respondent told them to return that afternoon.

36. After a recess, at around 2:00 PM, attorney Charles Wisell appeared for the plaintiff because Mr. Neville had another engagement. At two separate conferences, each of respondent's law clerks asked Mr. Pak and Mr. Wisell to stipulate to extend the defendant's time to make a summary judgment motion. Mr. Wisell informed each clerk he did not have permission from his client to stipulate and that his client wanted a "decision on the merits."

37. At around 4:00 PM, respondent approached Mr. Wisell and Mr. Pak, who were sitting at a table in the well of the courtroom and stated, in words or substance, that they should "Work out a stip." When Mr. Wisell responded that there was nothing to which he could stipulate, respondent replied, "Well, stipulate to something." Mr. Wisell reiterated that he could not stipulate, and respondent became angry and yelled, "Get out of my courtroom. Get out. Get out."

38. Respondent continued to yell at Mr. Wisell as he gathered his belongings and left the courtroom.

Counsel in Beverly Leslie v. Audrey H. Anderson

39. On December 6, 2013, respondent ordered the parties in *Beverly Leslie v. Audrey H. Anderson* to appear at 10:00 AM on January 23, 2014, for a settlement conference and for final disposition of the defendant's motion for summary judgment.

40. On January 23, 2014, attorneys Alexander Blishteyn and Gene Stith appeared, respectively, for the defendant and the plaintiff.

41. Although the case was on for final disposition of the summary judgment motion, Mr. Stith handed up opposition papers. Mr. Blishteyn objected to the late filing of such papers. When respondent indicated she would accept Mr. Stith's papers and said Mr. Blishteyn could file responsive papers later that day, Mr. Blishteyn asked for more time. During the course of their discussion, respondent yelled at Mr. Blishteyn.

42. At one point during the discussion, respondent stated, "Off the record. It's over." When Mr. Blishteyn asked to "keep the record on," respondent angrily said, "No. Call security. Okay. That's enough." Mr. Blishteyn then asked respondent to recuse herself from the matter, after which she said, "I want security here and I want to . . . make a record of this now that he doesn't want to just step away from the bench."

Counsel in Carol Ann Giancola v. Reny R. Johny

43. In July 2013, the plaintiff in *Carol Ann Giancola v. Reny R. Johny,* filed a motion for summary judgment on the issue of the defendant's liability for a motor vehicle

accident in which the defendant rear-ended the plaintiff's stopped vehicle. The defendant's attorney, Gregory Newman, did not oppose the motion.

44. On September 11, 2013, respondent ordered the parties to appear at 10:00 AM on October 24, 2013, for a settlement conference and for final disposition of the plaintiff's summary judgment motion.

45. On October 24, 2013, the plaintiff's attorney, the defendant's insurance adjuster and a *per diem* attorney hired by Mr. Newman appeared in respondent's part at around 10:00 AM. Mr. Newman arrived at court at approximately 11:00 AM.

46. Before the lunch recess, respondent's two law clerks conducted separate conferences with the attorneys and encouraged them to settle. At each conference, Mr. Newman acknowledged that his client had no defense to the summary judgment motion on the issue of liability. He advised the clerks, however, that the defendant's insurer would not make a monetary offer to settle because there was an issue of fact as to whether the plaintiff met the "serious injury" threshold under New York's "No-Fault" Insurance Law. The parties were directed to return to the courtroom after lunch.

47. Thereafter, from about 2:00 PM to about 4:00 PM, the parties waited in the courtroom, but the case was not conferenced.

48. At around 4:15 PM, respondent entered the courtroom and yelled at Mr. Newman and the other attorneys in the courtroom, stating, in words or substance, that they were wasting her time and that the court was very busy. They were then told to leave.

As to Charge II of the Formal Written Complaint

49. Respondent engaged in the conduct set forth regarding Charge I above, notwithstanding having been issued a confidential Letter of Dismissal and Caution dated February 14, 2006, in which the Commission cautioned her to be patient, dignified and courteous to those with whom she dealt in an official capacity, and for threatening to adjourn a discovery motion repeatedly unless the attorneys reached a stipulation on the motion. The caution letter also advised respondent that she had created the appearance that she was "denying the attorneys the right to have their motion promptly heard and adjudicated by the court." A copy of the letter is attached as Exhibit A to the Agreed Statement.

As to Charge III of the Formal Written Complaint

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

Additional Factors

51. Respondent has cooperated with the Commission during its inquiry into this matter.

52. Respondent regrets and apologizes for her impatient and otherwise discourteous behavior toward attorneys, court staff and colleagues, and she has endeavored to avoid such conduct in the future.

53. In January 2019, respondent was transferred to Supreme Court, Nassau County. The Commission has not been directly or indirectly apprised of any complaints about her demeanor since her transfer.

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

that respondent violated Sections 100.1, 100.2(A), 100.3(B)(3) and 100.3(C)(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. 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.

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 to "be patient, dignified and courteous to . . . lawyers and others with whom the judge deals in an official capacity." (Rules §§100.2(A) and 100.3(B)(3)) Respondent acknowledged that on more than ten separate occasions she was discourteous to court personnel and to attorneys who appeared before her.

Respondent admitted that she repeatedly yelled at court personnel. She demeaned court employees including her confidential secretary, a principal law clerk and an administrative aide. In one instance, she repeatedly screamed at a courthouse facility supervisor, "You treat me like shit." Respondent admitted that she frequently yelled at her former confidential secretary and treated her in a condescending and discourteous manner.

Respondent also failed to "cooperate with other judges and court officials in the administration of court business" as §100.3(C)(1) of the Rules required. In contravention of OCA policy, she refused to return her old laptop after receiving a new one and yelled at the court's technical manager who tried to arrange for the return of the

old laptop. In another instance, after a motion that she had inappropriately referred to another judge was returned to her, respondent insisted to the administrative judge's law clerk in a raised voice that she would not decide the motion.

In addition to her inappropriate conduct toward court personnel, respondent also admitted that on three occasions she yelled at counsel who were appearing before her. In one instance, respondent told the parties to enter into a stipulation and when one attorney indicated that there was nothing to which he could stipulate, she yelled at him, "Get out of my courtroom. Get out. Get out." Respondent acknowledged that she continued to yell at the attorney while he gathered his things and left the courtroom. Such conduct was unbecoming a judge.

Respondent's pattern of intemperate and abusive behavior was improper and severely undermined confidence in the judiciary. In *Matter of Mertens,* 56 A.D.2d 456 (1st Dept. 1977), the judge was disciplined for, *inter alia*, being discourteous to litigants and attorneys.[2] In that matter, "respondent suddenly exploded in angry shouting sometimes described as yelling and screaming at lawyers and witnesses." *Id.* at 468. The Court held that:

> Self-evidently, breaches of judicial temperament are of the utmost gravity.
>
> As a matter of humanity and democratic government, the seriousness of a Judge, in his position of power and authority, being rude and abusive to persons under his authority--litigants, witnesses, lawyers--needs no elaboration.
>
> It impairs the public's image of the dignity and impartiality of

[2] This judicial disciplinary matter was initiated prior to the creation of the Commission.

> courts, which is essential to their fulfilling the court's role in society.

Id. at 470. In *Matter of Tavormina,* 1990 NYSCJC Annual Report 164, the judge was admonished for being discourteous in four matters including yelling at an attorney in a public hallway and loudly telling a law school graduate permitted to practice law that, "You're nothing" and describing her as "a new attorney who didn't know what she was doing." *Id.* at 165-166.

Respondent's current misconduct is troubling since in 2006 the Commission cautioned her for threatening to adjourn a motion repeatedly unless the parties reached a stipulation which created the appearance that she was "denying the attorneys the right to have their motion promptly heard and adjudicated by the court." The Commission's 2006 letter specifically cautioned respondent to be patient and courteous. Despite this caution, respondent continued to act in a discourteous manner to several court employees and to attorneys in three different matters.

Respondent's prior caution is an aggravating factor in determining the appropriate sanction. *Matter of Assini*, 94 N.Y.2d 26, 30-31 (1999) (judge found to have "deliberately evaded and violated his ethical responsibilities" when "[r]ather than scrupulously following the letter and spirit of the Commission's caution", the judge continued the conduct for which he had been cautioned). As a result of her 2006 letter of dismissal and caution, respondent should have been fully aware of the Rules and her obligation to be patient and courteous to those she dealt with in her official capacity.

In accepting the jointly recommended sanction of censure, we have taken into

consideration that respondent has admitted that her conduct warrants public discipline. We expect that respondent has learned from this experience and in the future will act in strict accordance with her 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, Ms. Grays, Ms. Corngold, Judge Falk, Mr. Harding, Judge Leach, Judge Mazzarelli, Judge Miller, Mr. Raskin, Mr. Rosenberg and Ms. Yeboah concur.

CERTIFICATION

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

Dated: August 12, 2020

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

WILLIAM B. REBOLINI,

DECISION
AND
ORDER

a Justice of the Supreme Court,
10th Judicial District, Suffolk 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.
Ronald J. Goldberg, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Stella Gilliland, Of Counsel) for the Commission

Long Tuminello, LLP (by David H. Besso) for the Respondent

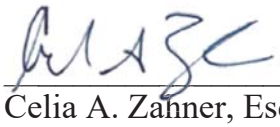
The matter having come before the Commission on April 30, 2020; and the Commission having before it the Stipulation dated March 16, 2020; and respondent

having been served with a Formal Written Complaint dated January 27, 2020; having tendered his resignation as a Justice of the Supreme Court, 10th Judicial District, Suffolk County dated March 12, 2020 effective May 28, 2020; having affirmed that 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 regarding this 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: April 30, 2020



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

WILLIAM B. REBOLINI, **STIPULATION**

a Justice of the Supreme Court,
10th Judicial District, Suffolk 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 William B. Rebolini ("Respondent"), who is represented in these proceedings by David H. Besso, Esq., as follows:

1. Respondent was admitted to the practice of law in New York in 1984. He has been a Justice of the Supreme Court, 10th Judicial District, Suffolk County, since 2004, having previously served as a Judge of the District Court, Suffolk County, from 1993 to 2003. Respondent's current term expires on December 31, 2027.

2. Respondent was served with a Formal Written Complaint dated January 27, 2020, containing two charges. Charge I alleged that on September 30, 2018, Respondent operated his motor vehicle while under the influence of alcohol in Riverhead, New York. Charge II alleged that, in connection with his arrest for Driving While Intoxicated and

related charges on September 30, 2018, Respondent asserted his judicial office with the police officer at the scene, in an attempt to avoid arrest or other adverse consequences.[1]

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

4. Respondent tendered his resignation, dated March 12, 2020, a copy of which is annexed as Exhibit 1. Respondent affirms that he will vacate judicial office as of May 28, 2020.

5. 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.

6. Respondent affirms that, after vacating his judicial office, he will neither seek nor accept judicial office at any time in the future.

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

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

[1] On January 29, 2019, Respondent appeared in the Riverhead Town Court and pleaded guilty to Driving While Ability Impaired by Alcohol, a violation under Vehicle and Traffic Law Section 1192(1), in full satisfaction of the charges arising from his arrest on September 30, 2018. He was sentenced to a 1-year Conditional Discharge, 40 hours of community service, a $500 fine and a $260 surcharge.

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

Dated: March 12, 2020

Honorable William B. Rebolini
Respondent

Dated: March 12, 2020

David H. Besso, Esq.
Long Tuminello, LLP
Attorney for Respondent

Dated: March 16, 2020

Robert H. Tembeckjian
Administrator and Counsel to the Commission
(**Mark Levine** and **Stella Gilliland**, Of Counsel)

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- -

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

MATTHEW A. ROSENBAUM,

a Justice of the Supreme Court,
Monroe 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, Of Counsel) for the Commission

Robert F. Julian for Judge Rosenbaum

The matter having come before the Commission on January 23, 2020; and the Commission having before it the Stipulation dated January 13, 2020; and Judge Rosenbaum having affirmed that he vacated his judicial office as of December 31, 2019;

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.

Judge Falk did not participate.

Mr. Belluck was not present.

Dated: January 23, 2020

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

MATTHEW A. ROSENBAUM, **STIPULATION**

a Justice of the Supreme Court,
Monroe County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable Matthew A. Rosenbaum and his attorney, Robert F. Julian.

1. Judge Rosenbaum served as a Justice of the Supreme Court, Monroe County, from 2005 through 2019. In November 2019, he was reelected for a new term of office to commence on January 1, 2020.

2. Judge Rosenbaum was apprised by the Commission in January 2020 that it was investigating a complaint alleging that, from 2005 through 2019, he made improper and at times abusive personal demands of court staff, directly or indirectly conveying that continued employment required submitting to such demands, and creating a hostile workplace environment.

3. Judge Rosenbaum affirms that he vacated judicial office as of December 31, 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 Rosenbaum affirms that, having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

6. Judge Rosenbaum 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 complaint 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.

Judge Rosenbaum 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: 1/13/20

Honorable **Matthew A. Rosenbaum**

Dated: 1/13/20

Robert F. Julian
Attorney for Judge Rosenbaum

Dated: 1/13/2020

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

– –

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

ROBERT H. SCHMIDT,

a Justice of the Brunswick Town Court,
Rensselaer County.

DETERMINATION

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THE COMMISSION:

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

APPEARANCES:

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

Honorable Robert H. Schmidt *pro se*

Respondent, Robert H. Schmidt, a Justice of the Brunswick Town Court,

Rensselaer County, was served with a Formal Written Complaint dated August 24, 2020, containing two charges. Respondent filed an Answer dated September 25, 2020. Charge I of the Formal Written Complaint alleged that beginning on August 10, 2019, and during the "Window Period"[1] of his 2019 campaign for election to the Brunswick Town Court, respondent failed to maintain the dignity appropriate to judicial office, failed to act in a manner consistent with the impartiality, integrity and independence of the judiciary and engaged in inappropriate political activity, in that he posted items to his personal Facebook page, which were visible to the public, that: made disrespectful and undignified comments about laws he would be sworn to uphold as a sitting judge, propounded conspiracy theories, and endorsed a candidate for the Brunswick Town Council. Charge II of the Formal Written Complaint alleged that from January 4, 2020 to April 23, 2020, while a sitting judge, respondent posted items to his personal Facebook page, which were visible to the public, that constituted prohibited public comments about pending or impending proceedings in his court and other courts within the United States and cast doubt on his ability to act impartially.

On October 20, 2020, the Administrator and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating

[1] "Window Period," as defined by the Rules of the Chief Administrator of the Courts at 22 NYCRR 100.0(Q), "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."

that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On October 29, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent initially served as a Justice of the Brunswick Town Court, Rensselaer County, from January 1, 2000 to December 31, 2015. On January 1, 2020, after being out of office for several years, respondent began a new term as a Justice of the Brunswick Town Court. His current term expires on December 31, 2023. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

2. Facebook is an internet social networking website and platform that *inter alia* allows users to post and share content on their own Facebook pages as well as on the Facebook pages of other users and on Facebook groups. Facebook users are responsible for managing the privacy settings associated with their accounts. At the option of the account holder, the content of one's Facebook account may be viewable online by the public or restricted to one's Facebook "Friends."

3. At all times relevant to this Charge, respondent maintained a Facebook account under the name "Bob Schmidt."

4. In March 2019, respondent announced his candidacy for election to the Brunswick Town Court. On April 1, 2019, respondent secured the nomination of the Republican Party.

5. On August 10, 2019, respondent posted to his Facebook page a meme that implied that former President Bill Clinton had killed Jeffrey Epstein. Copies of screenshots of this post are appended as Exhibit A to the Agreed Statement of Facts.

6. On August 16, 2019, respondent posted to his Facebook page a link to the Facebook page for the campaign of Brunswick Town Council candidate Mark Cipperly. Respondent "liked" a comment to the post by another Facebook user that read, "Cip is a good man." Copies of screenshots of this post are appended as Exhibit B to the Agreed Statement of Facts.

7. On August 27, 2019, respondent posted to his Facebook page a meme depicting a witch trial hanging that read, "JUST A REMINDER…SALEM, MASSACHUSETTS HAD 'RED FLAG' LAWS, TOO." A copy of a screenshot of this post is appended as Exhibit C to the Agreed Statement of Facts.

8. On August 31, 2019, respondent posted to his Facebook page a meme that read, in part, "WHAT DOES THE SHEEP SAY? WE NEED COMMON SENSE GUN CONTROL." Copies of screenshots of this post are appended as Exhibit D to the Agreed Statement of Facts.

9. On August 31, 2019, respondent posted to his Facebook page a meme that displayed a photograph of a Nazi book burning with the text, "BOOK BURNINGS DON'T JUST LOOK LIKE THIS," above a second image showing a social media platform warning that posts in violation of the platforms' guidelines will be removed, with the text, "THEY ALSO LOOK LIKE THIS." Copies of screenshots of this post are appended as Exhibit E to the Agreed Statement of Facts.

10. All of the above-described posts were viewable by the public and remained viewable until April 23, 2020, when respondent removed the posts after receiving a letter from the Commission regarding their propriety.

As to Charge II of the Formal Written Complaint

11. At all times relevant to this Charge, respondent maintained a Facebook account under the name "Bob Schmidt." The biographical information on respondent's Facebook page listed one of his occupations as "Judge – March 15, 1999 to Present – Brunswick, New York" and "Local Criminal Court Judge." A copy of a screenshot of respondent's Facebook page identifying him as a judge is appended as Exhibit F to the Agreed Statement of Facts.

12. Respondent was elected to the position of Brunswick Town Justice in the November 2019 election and took office on January 1, 2020.

13. On January 4, 2020, respondent posted to his Facebook page a statement in which he announced he had performed the first nighttime arraignment of his new judicial term and wrote, "Feel like a judge again." Another Facebook user commented on respondent's post and asked if the defendant had been released before the judge got "back in bed," to which respondent replied, "of course. This is NY 2020." Copies of screenshots of this post are appended as Exhibit G to the Agreed Statement of Facts.

14. On January 30, 2020, respondent posted to his Facebook page a link to a *New York Post* article entitled, "Fatal DWI suspect bragged about bail reform: 'I'll be out tomorrow.'" Respondent wrote above the post, "Sign of the time," and another Facebook user commented, "I predict vigilante mentality will soon return." The article reported on

the pending Suffolk County Court case of *People v. Jordan Randolph*, in which the defendant had been indicted for vehicular manslaughter and other charges. A copy of a screenshot of this post and a copy of the article are appended as Exhibit H to the Agreed Statement of Facts.

15. On February 2, 2020, respondent posted to his Facebook page a link to a *New York Post* article entitled, "Suspect in brutal mugging of elderly woman caught on video released under new bail law." The linked article reported on the pending case of *People v. Dana White*, in which the defendant had been charged with robbery. Another Facebook user commented on respondent's post, "Is this true?, [*sic*] disgusting!" A copy of a screenshot of this post and a copy of the article are appended as Exhibit I to the Agreed Statement of Facts.

16. All of the above-described posts were viewable by the public and remained viewable until April 23, 2020, when respondent removed the posts after receiving a letter from the Commission regarding their propriety.

Additional Factors

17. Respondent has been cooperative and contrite with the Commission throughout this inquiry. In addition to promptly removing all Facebook posts after receiving the Commission's letter regarding their propriety, respondent expressed remorse for his actions in both his initial response to the Commission's inquiry and in his Answer to the Formal Written Complaint. In the latter, respondent wrote, "I cringe as I review the [posts] presented and have no explanation as to why I felt that it would be appropriate to put them on my Facebook page as a candidate for judicial office."

Respondent further acknowledged that, though the posts were not reflective of him as a town justice, his conduct was nevertheless "beneath anyone who is privileged to wear a robe and is trusted with representing our judicial system to the public."

18. Respondent commits to being more circumspect in his use of social media in the future and to ensure that none of his postings convey the appearance of impropriety, comment upon pending or impending proceedings, propound conspiracy theories, endorse other candidates for public office or detract from the dignity and impartiality of the judiciary.

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)(8), 100.5(A)(1)(c), 100.5(A)(1)(e), and 100.5(A)(4)(a) 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.

Every 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)) Section 100.5(A)(4)(a) of the Rules provides that judicial candidates "shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary. . ." *See*, *Matter of Michels*, 2012 NYSCJC Annual Report 130, 136 ("Judicial candidates are held to higher standards of conduct than candidates for non-judicial office, and the campaign activities of judicial candidates are significantly circumscribed in order to maintain public confidence in the integrity and

impartiality of the judicial system.") Candidates for judicial office are also required to refrain from engaging in political activity (other than in connection with his or her own campaign) including "engaging in any partisan political activity" and "publicly endorsing or publicly opposing (other than by running against) another candidate for public office." Sections 100.5(A)(1)(c) and (e) of the Rules; *Matter of Rumenapp*, 2017 NYSCJC Annual Report 192; *Matter of King, Sr.*, 2008 NYSCJC Annual Report 145.

Respondent acknowledged that, while a candidate for judicial office, he violated these Rules when he made Facebook posts and links which contained various undignified and disrespectful statements including regarding laws that he would be required to uphold as a judge. Respondent also improperly endorsed a candidate for Brunswick Town Council. By his conduct, respondent undermined public confidence in the integrity and impartiality of the judiciary.

It is well-settled that judges are strictly prohibited from commenting on any pending cases. Section 100.3(B)(8) of the Rules provides that "[a] judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories." As the Rule makes clear, this prohibition is not limited to cases in the judge's own court. The Commission has held "this ethical prohibition 'is clear and unequivocal,' and, consequently, '[i]t is wrong for a judge 'to make any public comment, no matter how minor, to a newspaper reporter or to anyone else, about a case pending before him.'" *Matter of Piampiano*, 2018 NYSCJC Annual Report 208, 219 (citations omitted). Respondent admittedly violated this Rule and undermined confidence in the impartiality and independence of the judiciary when he commented on

Facebook regarding an arraignment he had conducted and the release of the defendant in that matter and when he provided links to articles which were critical of bail decisions in other cases and commented on one of those cases.

In the past, including in its 2019 Annual Report, the Commission has cautioned that judges must be particularly circumspect in the use of social media. In *Matter of Whitmarsh*, 2017 NYSCJC Annual Report 266, 274-275, the Commission wrote,

> We also take this opportunity to remind judges that the Rules Governing Judicial Conduct apply in cyberspace as well as to more traditional forms of communications and that in using technology, every judge must consider how such activity may impact the judge's ethical responsibilities. . . .
>
> The Advisory Committee on Judicial Ethics has cautioned judges about the public nature and potential perils of social networks and has advised that judges who use such forums must exercise "an appropriate level of prudence, discretion and decorum" so as to ensure that their conduct is consistent with their ethical responsibilities (Adv Op 08-176).

In accepting the jointly recommended sanction of admonition, we have taken into consideration that respondent has no prior discipline, he has admitted that his conduct warrants public discipline, and that he has committed to being more circumspect in his use of social media. We expect that respondent has learned from this experience and in the future will act in full compliance with all the Rules Governing Judicial Conduct.

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

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

CERTIFICATION

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

Dated: November 3, 2020

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

MARC A. SEEDORF,

DECISION
AND
ORDER

a Justice of the Lewisboro Town Court,
Westchester County.

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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.
Ronald J. Rosenberg, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Stewart Orden for Justice Seedorf

The matter having come before the Commission on April 2, 2020; and the Commission having before it the Stipulation dated April 1, 2020; and Justice Seedorf

having affirmed that he vacated his judicial office as of March 12, 2020; 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.

Mr. Raskin did not participate.

Mr. Belluck was not present.

Dated: April 2, 2020

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, subdivisions 1 and 2,
of the Judiciary Law in Relation to

MARC A. SEEDORF, **STIPULATION**

a Justice of the Lewisboro Town Court,
Westchester 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 Marc A. Seedorf, who is represented in these proceedings by Stewart Orden, as follows:

1. Marc A. Seedorf has been a Justice of the Lewisboro Town Court, Westchester County, since 1997. His current term expires on December 31, 2021.

2. Judge Seedorf was apprised by the Commission on February 14, 2020, that it would commence a removal proceeding against him because he had not resigned or otherwise vacated his judicial office after pleading guilty to a felony on December 6, 2019.

3. On March 12, 2020, the Commission authorized a Formal Written Complaint against Judge Seedorf, arising from his guilty plea to Tax Evasion in violation of Title 26, United States Code, §7201.

4. Judge Seedorf submitted a letter of resignation dated March 12, 2020, a copy of which is annexed as Exhibit 1. Judge Seedorf affirms that he resigned from judicial office, effective March 12, 2020.

5. 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.

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

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

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

9. Judge Seedorf 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:

Hon. Marc A. Seedorf

Honorable Marc A. Seedorf

Dated:

Stewart L. Orden

Stewart Orden, Esq.
Attorney for Marc A. Seedorf

Dated: April 1, 2020

Robert H. Tembeckjian

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

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

SHAWNDYA L. SIMPSON,

DECISION
AND
ORDER

a Justice of the Supreme Court,
2nd Judicial District, Kings County.

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THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Daniel Davis, Of Counsel) for the Commission

Michael S. Ross and Deborah A. Scalise for Respondent

The matter having come before the Commission on August 6, 2020; and the Commission having before it the Stipulation dated July 31, 2020; and respondent having

been served with a Formal Written Complaint dated March 27, 2020; having notified the Chief Administrative Judge by letter dated July 31, 2020 that she will be vacating her judicial office and retiring effective October 31, 2020; and having affirmed that she will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order 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 6, 2020

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

SHAWNDYA L. SIMPSON,

a Justice of the Supreme Court,
2nd Judicial District, Kings County.

STIPULATION

THE FOLLOWING IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable ShawnDya L. Simpson ("Respondent"), and her attorneys Michael S. Ross and Deborah A. Scalise.

1. Respondent has been a Justice of the Supreme Court, 2nd Judicial District, Kings County, since 2017. She previously served as a Judge of the New York City Civil Court, Kings County, from 2004 through 2016. Her current term expires on December 31, 2030. Most recently, she had been assigned to serve in Bronx County.

2. On October 16, 2019, and on dates thereafter, the Commission apprised Respondent in writing that it was investigating complaints against her, *inter alia*, alleging that her demeanor toward litigants, lawyers, and others had become erratic and at times intemperate, and that she was frequently absent from court, arriving very late and/or leaving very early, or not arriving at all, notwithstanding that litigants and lawyers were waiting for the commencement of proceedings over which she was scheduled to preside. The Commission's investigation, which had commenced months earlier, involved

interviews with numerous witnesses and the examination of voluminous court records and other documents.

3. In the course of its investigation, the Commission learned that Respondent has been on medical leave for an undisclosed condition since August 2019.

4. On December 6, 2019, the Commission apprised Respondent in writing that it was also investigating a complaint alleging that she was suffering from a physical or mental disability that prevented her from properly performing her judicial duties.

5. On February 27, 2020, after extensive communication between Commission counsel and Respondent's attorneys, her attorneys provided the Commission with medical records revealing that Respondent, who is in her mid-fifties, is suffering from Alzheimer's Disease, which had progressed to an advanced level uncommon to a person of her age. The medical records indicate that her condition had been undiagnosed at the time of the alleged misconduct for which she was originally being investigated.

6. Respondent was served with a Formal Written Complaint dated March 27, 2020, containing one charge: that Respondent should be retired from judicial office, pursuant to Article 6, Section 22, subdivision (a) of the Constitution and Section 44, subdivision 1 of the Judiciary Law, in that Respondent has a mental or physical disability that prevents the proper performance of her judicial duties.

7. Alzheimer's Disease attacks the memory and thinking centers of the brain. There is no known cure. Its effects are irreversible, and its progression is unstoppable. Its characteristics include memory loss, volatile mood swings, difficulty with language, loss of focus and/or comprehension, apathy, and confusion.

8. Respondent alternates at various times of day between apparent cognition and unawareness of her circumstances.

9. In view of the catastrophic and cognitively debilitating nature of Alzheimer's Disease, and in furtherance of the public interest in a judiciary that is both independent and fit to serve, Respondent, her family, her attorneys, and the Commission's Administrator agree that her resignation or early retirement from judicial office, based on disability, is more appropriate than further proceedings. As such, Respondent has notified the Chief Administrative Judge that she is vacating judicial office as of October 31, 2020, and she has filed her retirement papers accordingly. A copy of her letter to the Chief Administrative Judge, dated July 31, 2020, is appended.

10. 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.

11. Respondent affirms that, after vacating her judicial office, she will neither seek nor accept judicial office at any time in the future.

12. Respondent understands that, should she abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigations of the complaints would be revived, she would be served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

13. 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.

14. 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.

15. Both the Administrator and the attorneys for Respondent appreciate the enormous emotional impact a diagnosis of Alzheimer's Disease can have on an individual, a family, and a community of personal friends and professional colleagues, especially where, as here, the disease has already reached an advanced stage in the life of a relatively young and highly accomplished individual. The signatories hope that Respondent and her family will share years of enjoyment in her retirement, that further progression of the disease will be slowed by application of the best available science, and that her legacy will be burnished by her fortitude in revealing her condition and the degree to which this action might de-stigmatize Alzheimer's Disease and inspire others to learn more about how to recognize and cope with it.

Dated: 7/31/20

Honorable **ShawnDya L. Simpson**

Dated: 7/31/20

Michael S. Ross
Attorney for Respondent

Dated: 7/31/20

Deborah A. Scalise
Attorney for Respondent

Dated: July 31, 2020

Robert H. Tembeckjian
Administrator and Counsel to the Commission
(**Mark Levine and Daniel Davis**, Of Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: RESPONDENT'S LETTER OF RETIREMENT

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

MICHELLE A. VANWOEART,

a Justice of the Princetown Town Court,
Schenectady 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

Law Offices of John R. Seebold, PLLC (by John R. Seebold, Esq.) for respondent

Respondent, Michelle A. VanWoeart, a Justice of the Princetown Town Court, Schenectady County was served with a Formal Written Complaint dated October 10,

2019, containing one charge. Respondent filed an Answer dated November 7, 2019. The Formal Written Complaint alleged that during her 2018 campaign for election to the Princetown Town Court, respondent failed to maintain the dignity appropriate to judicial office and failed to act in a manner consistent with the impartiality, integrity and independence of the judiciary in that her campaign literature, *inter alia*, created an appearance that, if elected, respondent would consider revenue implications when disposing of cases and, on her campaign's public Facebook page, respondent "liked" or replied to crude posts and comments about her election opponent.

On January 14, 2020, 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 23, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent initially served as a Justice of the Princetown Town Court, Schenectady County, from January 1, 1997 to December 31, 2013. After being out of office for several years, respondent was elected to a new term as a Justice of the Princetown Town Court, beginning on January 1, 2019 and expiring on December 31, 2022. Respondent is not an attorney.

2. In 2018, respondent ran for election to the Princetown Town Court. Her

election opponent in both the primary and general elections was the incumbent Princetown Town Justice, Norm Miller.

3. On September 13, 2018, the date of the primary election, *The Daily Gazette* published a political advertisement that was produced and paid for by respondent and/or her campaign committee, operating under her supervision. A copy of the advertisement is appended as Exhibit 1 to the Agreed Statement.

4. The September 13, 2018 advertisement included a pie chart comparing the amount of revenue from court proceedings generated for the Town of Princetown by respondent versus then-Judge Miller, during an unidentified four-year term. Surrounding the pie chart were the statements: "PRINCETOWN does not have a TOWN TAX. It does get revenue from the court. Compare Miller/VanWoeart revenue (4-year term). PRINCETOWN CAN'T AFFORD ANOTHER 4 YEARS OF NORM MILLER!"

5. During respondent's 2018 campaign, respondent and/or her campaign committee, operating under her supervision, produced and distributed a tri-fold campaign brochure that included a pie chart and a bar graph making comparisons between the amount of revenue generated for the Town of Princetown by respondent versus then-Judge Miller during an unidentified four-year term. Below the chart and graph, the brochure included the statement: "Revenues are down 65% since Norm has been Judge!" A copy of the campaign brochure is appended as Exhibit 2 to the Agreed Statement.

6. During respondent's 2018 general election campaign, respondent and/or her

campaign committee, operating under her supervision, produced and distributed campaign leaflets with slots allowing it to be hung on doors, that included the statements: "Norm Miller's projected revenues from traffic tickets for 2017 was $50,000. He failed to reach that by over $13,500 and he overspent his court budget by over $10,000. Can Princetown afford to keep Norm Miller as Judge?" A copy of the leaflet is appended as Exhibit 3 to the Agreed Statement.

7. Respondent's campaign brochure and leaflet requested supporters to visit the Facebook group page named "Friends To Elect Michelle VanWoeart."

8. Facebook is an internet social networking website that *inter alia* allows users to post and share content on their own Facebook accounts as well as on the Facebook accounts of other users and on Facebook groups.

9. A Facebook account holder can use his or her personal account to create a "Facebook group," which other Facebook account holders can join. The creator of a Facebook group is typically a group "admin." An admin manages the group account and *inter alia* has the authority to update the group name and cover photo, select the group's privacy settings, approve or deny membership requests, remove posts and comments to posts by other members, and remove and block people from the group. At the option of an admin, the content of a Facebook group may be set to "Public," so that anyone with access to the internet may see what members post, comment and share on the group page, as well as endorse by clicking "Like" to posts on the group page. Any member of the group may post to the group and comment on posts to the group.

10. In September 2018 through November 2018, respondent maintained a Facebook account under the name "Michelle VanWoeart."

11. In September 2018 through November 2018, respondent was the admin of a Facebook group that she created and named "Friends to Elect Michelle VanWoeart Judge for the Town of Princetown." As admin, respondent set the group's privacy settings to "Public."

12. On September 13, 2018, respondent clicked the "Like" button on a post to the Friends to Elect Michelle VanWoeart group page by another member, stating, "Michelle VanWoeart you won??? YESSSSSSSS congratulations!!!!!! Time to take out the trash!! #amen #outwiththetrash #sorrynotsorry," which was a reference to then-Judge Miller. Copies of screenshots of this post are appended as Exhibit 4 to the Agreed Statement.

13. On September 14, 2018, respondent published a post on the Friends to Elect Michelle VanWoeart group page about her campaign plans following her victory in the primary election. Respondent replied "Thank you" to a comment to her post by another member stating, "Great job, Princetown!! BUT, Dirt Bag Norm will try to find some obscure line to keep going ….. don't let your guard down on this SH*T HE*D." Copies of screenshots of this post are appended as Exhibit 5 to the Agreed Statement.

14. On November 2, 2018, respondent published a post on the Friends to Elect Michelle VanWoeart group page stating, "Yup. Millers [*sic*] flyers sent out packed full of lies." Respondent clicked the "Like" button on a comment to her post by

another member stating, "I'd like to shove the flyers up Norm's butt!" Copies of screenshots of this post are appended as Exhibit 6 to the Agreed Statement.

15. On November 6, 2018, the date of the general election, respondent clicked the "Like" button on a post to the Friends to Elect Michelle VanWoeart group page by another member containing a "gif" image of man throwing a bag of trash down a driveway and into a trash can, with the statement, "I knew you had this! Congratulations!! The trash has been taken out!" A copy of a screenshot of this post is appended as Exhibit 7 to the Agreed Statement.

Additional Factors

16. Respondent has been cooperative and contrite with the Commission throughout this inquiry. Following her testimony at the Commission during its investigation of the matters herein, respondent promptly removed the group page and, with it, all the inappropriate comments by other members.

17. Respondent has now studied the Court of Appeals censure decision in *Matter of Watson*, 100 N.Y.2d 290 (2003), and the Commission's censure determination in *Matter of Kulkin,* 2007 NYSCJC Annual Report 115, both of which involved campaign literature by the disciplined judges that unfairly characterized and/or besmirched the conduct of their incumbent opponents, and both of which imposed censure for violations of the same Rules charged against respondent. As a result, respondent appreciates that her campaign material created the clear and erroneous impression that if elected, rather than decide each case fairly and impartially on its own merits, (A) her role as a judge was to raise revenue for the town, (B) the court's role was to compensate for the absence of a

town tax and (C) she was committed to finding more people guilty than her incumbent opponent had, and/or fining them in amounts higher than he had, inasmuch as those were the primary ways she could increase court-generated revenues. Respondent further appreciates that such conduct and considerations are inimical to the role of a judge and the role of the court. *See Matter of Herrmann,* 2010 NYSCJC Annual Report 172, and *Matter of Tauscher,* 2008 NYSCJC Annual Report 217.

18. The Administrator notes that, had this matter proceeded to a hearing before a referee, memoranda as to sanction and oral argument before the Commission, he would have cited respondent's prior censure for consideration by the Commission when it decided the appropriate discipline here, pursuant to Commission Policy 3.8,[1] noting that the Court of Appeals has held that a prior censure is "noteworthy regardless of whether it was related to the instant misconduct." *Matter of Doyle*, 23 N.Y.3d 656, 662 (2014).

19. Respondent and the Administrator agree that it cannot be determined whether respondent's campaign literature and social media posts influenced enough voters to have affected the outcome of the primary and general elections. The following are the results of those elections:

A. In the primaries, respondent defeated Judge Miller by 98 votes to 93 on the Republican Party line, 80 votes to 70 on the Democratic Party line, 15 votes to 9 on the Conservative Party line and 15 votes to 10 on the Independence Party line.

B. In the general election, respondent aggregated 646 votes on the Republican, Democratic, Conservative and Independence lines, while Judge Miller received 366 votes on the Green Party line.

[1] Available at http://cjc.ny.gov/Legal.Authorities/NYSCJC.PolicyManual.Dec2017.pdf.

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

Every 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)) By publishing a campaign advertisement and distributing campaign materials which gave the impression that revenue generation for the Town of Princetown would be a consideration in her judicial decisions and by liking or replying to crude comments by her supporters about her election opponent, respondent failed to meet the high ethical standards of a judicial candidate. "Judicial candidates are held to higher standards of conduct than candidates for non-judicial office, and the campaign activities of judicial candidates are significantly circumscribed in order to maintain public confidence in the integrity and impartiality of the judicial system." *Matter of Michels*, 2012 NYSCJC Annual Report 130, 136.

Section 100.5(A)(4)(d)(i) of the Rules provides that: "A judge or a non-judge who is a candidate for public election to judicial office: . . 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." Respondent stipulated that she violated this provision of the Rules in connection with an advertisement her campaign published and with

campaign literature that she and her campaign created and distributed. This material included graphics which showed revenue generated by respondent when she was a judge compared to that of the incumbent judge. One of respondent's campaign brochures included a pie chart and a graph comparing revenue under respondent's prior term with the incumbent. The brochure stated, "Revenues are down 65% since Norm has been Judge!" Respondent's campaign ran an advertisement in a local newspaper which stated, "PRINCETOWN does not have a TOWN TAX It does get revenue from the court." Respondent's advertisement compared revenue generated for the town by respondent and by the incumbent judge. This advertisement urged readers to "Compare Miller/VanWoeart revenue (4-year term). . . . PRINCETOWN CAN'T AFFORD ANOTHER 4 YEARS OF NORM MILLER!" Such statements cast doubt on respondent's impartiality and conveyed the impression that she viewed her role as judge to include generating revenue for Princetown.

The Commission has disciplined judges for campaign literature that conveyed the impression that their impartiality was compromised. In *Matter of Chan*, 2010 NYSCJC Annual Report 124, the judge was admonished for, *inter alia*, distributing campaign literature advertising a planned lecture which stated, "Margaret Chan and Veteran Tenant Attorney Steven DeCastro will show you how to stick up for your rights, beat your landlord, … and win in court!" *Id.* at 126. The Commission held,

> Respondent's campaign literature was clearly inconsistent with these ethical requirements. . . . Respondent has acknowledged that her literature may have given prospective voters the impression that she would favor tenants over

> landlords in housing matters, which are often the subject of Civil Court proceedings. By distributing such literature, which appeared to commit herself with respect to issues likely to come before her court, she compromised her impartiality.

Id. at 127 (citations omitted). Similarly, in *Matter of Birnbaum*, 1998 NYSCJC Annual Report 73, the judge was censured for distributing campaign material which identified him as a tenant and included testimonials from tenants who had appeared before him. The Commission held, "Respondent's campaign literature gave the unmistakable impression that he would favor tenants over landlords in housing matters . . .. In doing so, he compromised his impartiality and failed to maintain the dignity expected of a judicial officer." *Id.* at 74.

Respondent, who is not an attorney, stipulated that she has studied the decision in *Matter of Watson,* 100 N.Y.2d 290 (2003). In that case, the judge was censured for making campaign statements which indicated that he would "work with the police" and that "the city must establish a reputation for zero tolerance" and "deter criminals before they come into the city." *Id.* at 296-297. The Court found, "petitioner's campaign effectively promised that, if elected, he would aid law enforcement rather than apply the law neutrally and impartially in criminal cases." *Id.* at 299.

Judges have also been disciplined for conveying that revenue generation was part of their judicial function. In *Matter of Herrmann*, 2010 NYSCJC Annual Report 172, the judge was censured for, *inter alia*, stating that he wanted a defendant to plead to a certain charge because a fine for that charge would be paid to the village and stating, "someone has to generate money for the Village to support the expensive police department." *Id.* at

174. The Commission found that, "respondent misused his judicial discretion and impaired the independence of his court, conveying the impression that its primary function is to generate revenue rather than 'to apply the law in each case in a fair and impartial manner.'" *Id.* at 177 (citation omitted)

Here, respondent's advertisement and campaign literature gave the impression that revenue generation for the Town of Princetown would be a factor in her judicial decisions and that part of her responsibility as a judge "was to raise revenue for the town. . . to compensate for the absence of a town tax." By creating and distributing the campaign material and the advertisement that repeatedly conveyed this impression, respondent breached her ethical obligations and violated the Rules.

Respondent also stipulated that she violated Section 100.5(A)(4)(a) of the Rules which provides that: "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. . ." Respondent acknowledged it was inappropriate to reply "thank you" to a comment on her campaign Facebook page which described her opponent in the election, the incumbent town justice, as "Dirt Bag Norm" and "this SH*T HE*D". In addition, respondent admitted that she failed to maintain the dignity appropriate to judicial office when she "liked" a comment on her campaign Facebook page that stated, "I'd like to shove the flyers up Norm's butt!" Respondent's conduct was improper and violated the Rules. *See, Matter of Decker*, 1995 NYSCJC Annual Report 111, 112 ("Respondent's political advertisements, suggesting that his opponent would be biased as a judge and was not

respected in his profession and comparing him to comic characters, lacked the dignity required of judicial candidates."); *See, Matter of Polito*, 1999 NYSCJC Annual Report 129, 130 ("Respondent's graphic and sensational advertisements lacked the dignity appropriate to judicial office and portrayed him as a judge who is biased against criminal defendants."); *See, Matter of Hafner, Jr.*, 2001 NYSCJC Annual Report 113, 114 ("the mean-spirited attack on his opponent for decisions to dismiss charges in specific cases (the facts of which were described in sensational terms) was unseemly and highly inappropriate. . . . Every judicial candidate should be mindful of the importance of adhering to the ethical standards so that public confidence in the integrity and impartiality of the judiciary may be preserved.")

As the Commission held in *Matter of Chan,* 2010 NYSCJC Annual Report 124, 128, "Every candidate for judicial office has the obligation to be familiar with the relevant ethical standards and to ensure that his or her campaign literature and practices are consistent with these standards." Respondent failed to meet this high standard when she responded favorably to crude social media comments about her judicial opponent. By her conduct, respondent undermined the dignity and integrity of the judiciary.

Respondent's prior censure is an aggravating factor in determining the appropriate sanction for her misconduct. In 2012, the Commission censured respondent because she did not "expeditiously transfer" appearance tickets issued to her and her sons for an animal control violation. *Matter of VanWoeart*, 2013 NYSCJC Annual Report 316, 327. In addition, after she recused herself from the appearance tickets, respondent had *ex parte* communications with the transferee judge. *Id.* at 321-322, 327.

Respondent violated her ethical obligations through her pattern of inappropriate campaign advertising and literature as well as her pattern of favorably commenting in a public way on crude social media posts regarding the incumbent town justice who was her opponent in the election. Given respondent's prior service as a judge and her prior discipline, she should have been fully familiar with the Rules regarding the ethical responsibilities of judicial candidates.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has admitted that her conduct warrants public discipline. We trust that respondent has learned from this experience and in the future will act in strict accordance with her 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. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Judge Miller, Mr. Raskin, and Ms. Yeboah concur.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: March 31, 2020

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

APPENDIX G: STATISTICAL ANALYSIS OF COMPLAINTS

COMPLAINTS PENDING AS OF DECEMBER 31, 2019

SUBJECT OF COMPLAINT		STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING								
NON-JUDGES								
DEMEANOR		24	7	5	14	2	9	61
DELAYS		2	1	1	1	0	2	7
CONFLICT OF INTEREST		4	0	3	2	0	1	10
BIAS		0	3	2	0	0	1	6
CORRUPTION		2	2	0	3	0	2	9
INTOXICATION		1	0	0	0	0	2	3
DISABILITY/QUALIFICATIONS		0	0	0	2	0	0	2
POLITICAL ACTIVITY		12	3	4	1	0	1	21
FINANCES/RECORDS/TRAINING		4	4	7	7	1	4	27
TICKET-FIXING		2	0	0	0	0	0	2
ASSERTION OF INFLUENCE		8	6	1	3	1	1	20
VIOLATION OF RIGHTS		11	16	7	9	5	3	51
MISCELLANEOUS		6	3	1	2	0	0	12
TOTALS		76	45	31	44	9	26	231

*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 2020

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	840							840
NON-JUDGES	328							328
DEMEANOR	71	21	3	1	1	0	0	97
DELAYS	23	3	0	0	0	0	0	26
CONFLICT OF INTEREST	15	9	1	0	0	0	0	25
*BIAS**	11	2	0	0	0	0	0	13
CORRUPTION	57	2	0	0	1	0	0	60
INTOXICATION	0	0	0	0	0	0	0	0
DISABILITY/QUALIFICATIONS	1	0	0	0	0	0	0	1
POLITICAL ACTIVITY	5	17	3	1	0	0	1	27
FINANCES/RECORDS/TRAINING	1	8	1	1	0	0	0	11
TICKET-FIXING	0	0	0	0	0	0	0	0
ASSERTION OF INFLUENCE	0	8	1	1	0	0	0	10
VIOLATION OF RIGHTS	21	29	0	1	0	0	0	51
MISCELLANEOUS	11	2	0	0	1	1	0	15
TOTALS	1,384	101	9	5	3	1	1	1,504

*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.

* Of the 13 bias complaints received in 2020, 10 were classified as bias against an individual, all of which were dismissed upon initial review. Three were classified as bias based on a broader basis of race, culture, religion, gender or ethnicity, one of which was dismissed upon initial review. The remaining two complaints are being investigated.

ALL COMPLAINTS CONSIDERED IN 2020: 1,504 NEW & 231 PENDING FROM 2019								
SUBJECT OF COMPLAINT	**DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY**	**STATUS OF INVESTIGATED COMPLAINTS**						**TOTALS**
		PENDING	***DISMISSED***	***CAUTION***	***RESIGNED***	***CLOSED****	***ACTION****	
INCORRECT RULING	840							840
NON-JUDGES	328							328
DEMEANOR	71	45	10	6	15	2	9	158
DELAYS	23	5	1	1	1	0	2	33
CONFLICT OF INTEREST	15	13	1	3	2	0	1	35
BIAS	11	2	3	2	0	0	1	19
CORRUPTION	57	4	2	0	4	0	2	69
INTOXICATION	0	1	0		0	0	2	3
DISABILITY/QUALIFICATIONS	1	0	0	0	2	0	0	3
POLITICAL ACTIVITY	5	29	6	5	1	0	2	48
FINANCES/RECORDS/TRAINING	1	12	5	8	7	1	4	38
TICKET-FIXING	0	2	0	0	0	0	0	2
ASSERTION OF INFLUENCE	0	16	7	2	3	1	1	30
VIOLATION OF RIGHTS	21	40	16	8	9	5	3	102
MISCELLANEOUS	11	8	3	1	3	1	0	27
TOTALS	1,384	177	54	36	47	10	27	1,735

*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	28,703	0	0	0	0	0	0	28,703
NON-JUDGES	9,095	0	0	0	0	0	0	9,095
DEMEANOR	4,275	45	1,387	370	165	142	284	6,668
DELAYS	1,744	5	209	113	41	23	34	2,169
CONFLICT OF INTEREST	911	13	543	191	64	36	148	1,906
BIAS	2,063	2	312	67	37	25	39	2,545
CORRUPTION	851	4	155	14	51	24	45	1,144
INTOXICATION	79	1	43	8	19	6	34	190
DISABILITY/QUALIFICATIONS	71	0	36	2	25	18	6	158
POLITICAL ACTIVITY	465	29	347	214	31	38	57	1,181
FINANCES/RECORDS/TRAINING	351	12	397	249	178	105	110	1,402
TICKET-FIXING	28	2	94	160	48	62	171	565
ASSERTION OF INFLUENCE	259	16	223	104	48	23	80	753
VIOLATION OF RIGHTS	2,717	40	676	255	142	81	122	4,033
MISCELLANEOUS	929	8	279	92	40	50	61	1,459
TOTALS	52,541	177	4,701	1,839	889	633	1,191	61,971

* 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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