NEW YORK STATE

COMMISSION ON JUDICIAL CONDUCT

ANNUAL REPORT

2015

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

♦ ♦ ♦

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March 1, 2015

To Governor Andrew M. Cuomo,
Chief Judge Jonathan Lippman, 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, 2014.

Respectfully submitted,

Robert H. Tembeckjian, Administrator
On Behalf of the Commission

TABLE OF CONTENTS

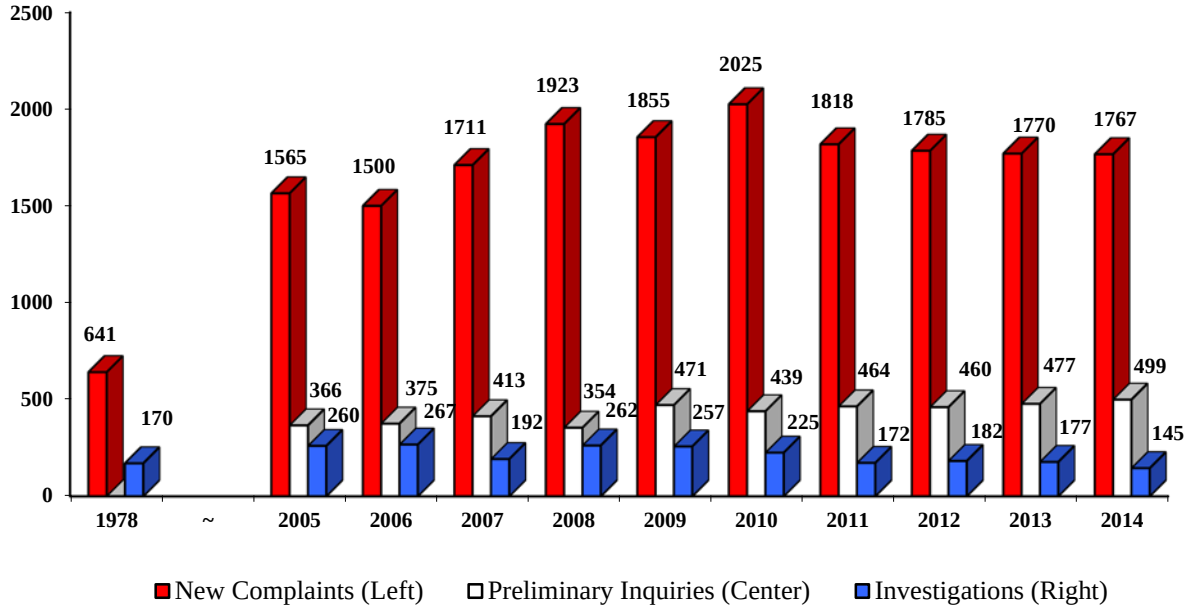
INTRODUCTION TO THE 2015 ANNUAL REPORT

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 3,300 judges and justices in the system.

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 two decades of the Commission's existence. Since 2005, the Commission has averaged 1,770 new complaints per year, 430 preliminary inquiries and 215 investigations. Last year, 1,767 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 499 preliminary reviews and inquiries and 145 investigations.

This report covers Commission activity in the year 2014.



COMPLAINTS, INQUIRIES & INVESTIGATIONS IN THE LAST TEN YEARS

TABLE OF CONTENTS

ACTION TAKEN IN 2014

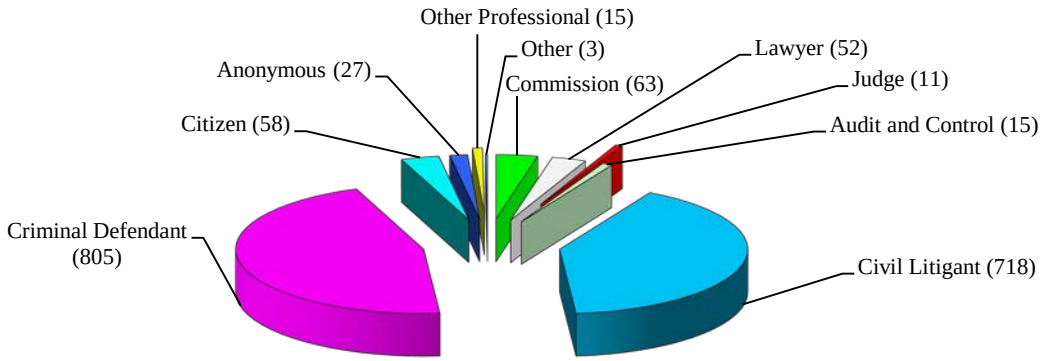
Following are summaries of the Commission's actions in 2014, including accounts of all public determinations, summaries of non-public decisions, and various numerical breakdowns of complaints, investigations and other dispositions.

COMPLAINTS RECEIVED

The Commission received 1,767 new complaints in 2014. 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 2014 appears in the following chart.



COMPLAINT SOURCES IN 2014

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 2014, staff conducted 499 such preliminary inquiries, requiring such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts.

In 145 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 2014, in addition to the 145 new investigations, there were 185 investigations pending from the previous year. The Commission disposed of the combined total of 330 investigations as follows:

- 101 complaints were dismissed outright.
- 28 complaints involving 23 different judges were dismissed with letters of dismissal and caution.
- 18 complaints involving 14 different judges were closed upon the judge's resignation, four becoming public by stipulation and 10 that were not public.
- 11 complaints involving 9 different judges were closed upon vacancy of office due to reasons other than resignation, such as the expiration of the judge's term.
- 34 complaints involving 18 different judges resulted in formal charges being authorized.
- 138 investigations were pending as of December 31, 2014.

FORMAL WRITTEN COMPLAINTS

As of January 1, 2014, there were pending Formal Written Complaints in 16 matters involving 10 judges. In 2014, Formal Written Complaints were authorized in 34 additional matters involving 18 judges (as to one of whom a Formal Written Complaint was already pending). Of the combined total of 50 matters involving 27 different judges, the Commission acted as follows:

- Seven matters involving five different judges resulted in formal discipline (admonition or censure).
- Nine matters involving five different judges were closed upon the judge's resignation from office, three becoming public by stipulation and two that were not public.
- One matter involving one judge was closed due to the expiration of the judge's term.
- 33 matters involving 16 different judges were pending as of December 31, 2014.

SUMMARY OF ALL 2014 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 – 2,074,* ALL PART-TIME

	Lawyers	*Non-Lawyers*	*Total*
Complaints Received	110	141	251
Complaints Investigated	32	68	100
Judges Cautioned After Investigation	5	5	10
Formal Written Complaints Authorized	6	5	11
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	3	1	4
Judges Vacating Office by Public Stipulation	2	4	6
Formal Complaints Dismissed or Closed	1	2	3

NOTE: Approximately 765 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 – 387, ALL LAWYERS

	Part-Time	*Full-Time*	*Total*
Complaints Received	35	265	300
Complaints Investigated	4	7	11
Judges Cautioned After Investigation	0	3	3
Formal Written Complaints Authorized	0	4	4
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 – 125, FULL-TIME, ALL LAWYERS*

Complaints Received	255
Complaints Investigated	7
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

* Includes six who also serve as Surrogates, five who also serve as Family Court Judges, and 38 who also serve as both Surrogates and Family Court Judges.

TABLE 4: FAMILY COURT JUDGES – 139, FULL-TIME, ALL LAWYERS

Complaints Received	156
Complaints Investigated	3
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 5: SURROGATES – 69, FULL-TIME, ALL LAWYERS

Complaints Received	46
Complaints Investigated	4
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

TABLE 6: DISTRICT COURT JUDGES – 48, FULL-TIME, ALL LAWYERS

Complaints Received	30
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 7: COURT OF CLAIMS JUDGES – 73, FULL-TIME, ALL LAWYERS

Complaints Received	62
Complaints Investigated	1
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 8: SUPREME COURT JUSTICES – 270, FULL-TIME, ALL LAWYERS*

Complaints Received	311
Complaints Investigated	18
Judges Cautioned After Investigation	9
Formal Written Complaints Authorized	2
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	1
Formal Complaints Dismissed or Closed	0

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

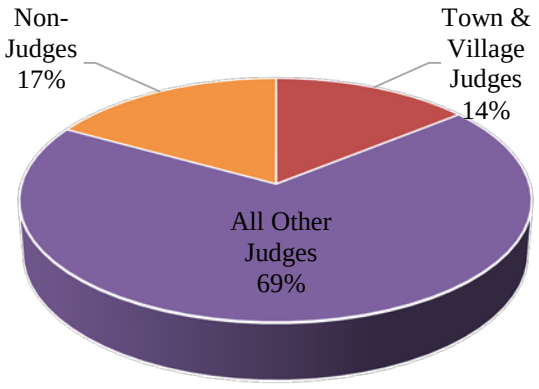
TABLE 9: COURT OF APPEALS JUDGES – 7, FULL-TIME, ALL LAWYERS; APPELLATE DIVISION JUSTICES – 54, FULL-TIME, ALL LAWYERS

Complaints Received	56
Complaints Investigated	1
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

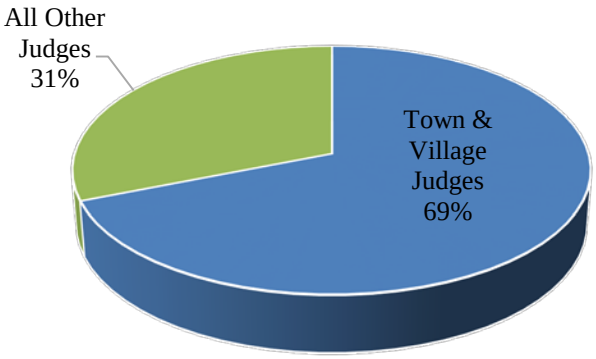
TABLE 10: NON-JUDGES AND OTHERS NOT WITHIN THE COMMISSION'S JURISDICTION*

Complaints Received	300

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



COMPLAINTS RECEIVED BY JUDGE TYPE



INVESTIGATIONS AUTHORIZED TOWN & VILLAGE JUDGES v. ALL OTHER JUDGES

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.

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.

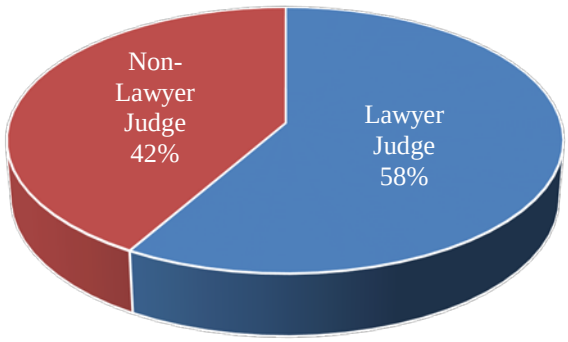
The confidentiality provision of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibits public disclosure by the Commission of the charges, hearings or related matters, absent a waiver by the judge, until the case has been concluded and a determination of admonition, censure, removal or retirement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

Following are summaries of those matters that were completed and made public during 2014. The actual texts are appended to this Report in Appendix F.

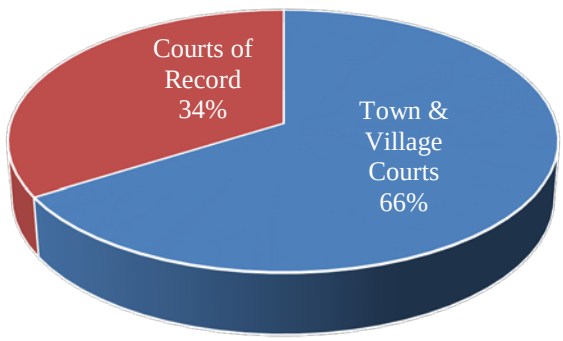
OVERVIEW OF 2014 DETERMINATIONS

The Commission rendered five formal disciplinary determinations in 2014: two censures and three admonitions. In addition, seven matters were disposed of by stipulation made public by agreement of the parties (four such stipulations were negotiated during the investigative stage, and three after a Formal Written Complaint had been authorized). Five of the twelve respondents were non-lawyer trained judges and seven were lawyers. Ten of the respondents were town or village justices and two were judges of higher courts.

To put these numbers and percentages in some context, it should be noted that, of the roughly 3,300 judges in the state unified court system, approximately 64% are part-time town or village justices. About 63% of the town and village justices, *i.e.* 40% 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.)



2014 DETERMINATIONS



1987-2014 DETERMINATIONS

TABLE OF CONTENTS

DETERMINATIONS OF CENSURE

The Commission completed two formal proceedings in 2014 that resulted in public censure. The cases are summarized below and the full texts can be found in Appendix F.

Matter of Edward D. Burke, Sr.

On April 21, 2014, the Commission determined that Edward D. Burke, Sr., a Justice of the Southampton Town Court, Suffolk County, should be censured for four acts of misconduct, including: (1) riding in a police car with a defendant after arraigning him on a charge of Driving While Intoxicated, recommending that the defendant hire an attorney who was the judge's business partner and then presiding over the case; (2) using his judicial title to promote his law firm; (3) imposing fines that exceeded the maximum authorized by law; and (4) making improper political contributions. With respect to the matter involving the defendant with whom he rode in the police car, the Commission stated: "Viewed objectively, the totality of his conduct…breached the appropriate boundaries between a judge and a litigant and thereby created 'a very public appearance of impropriety,' which adversely affects public confidence in the judiciary as a whole." Judge Burke, who is an attorney, did not request review by the Court of Appeals.

Matter of Andrew N. Piraino

On July 30, 2014, the Commission determined that Andrew N. Piraino, a Justice of the Salina Town Court, Onondaga County, should be censured for routinely imposing fines and/or surcharges that did not comply with the law. Between 2006 and 2008 Judge Piraino imposed fines and/or surcharges in 941 instances that either exceeded the maximum amounts authorized by law or were below the minimum amounts required by law. In its determination the Commission wrote that although the errors "were not intentional or purposeful" and mostly involved small amounts, the "pattern of repeated sentencing errors is inconsistent with a judge's ethical obligation to 'comply with law' and to 'maintain professional competence' in the law, and therefore subject to discipline." Judge Piraino, who is an attorney, did not request review by the Court of Appeals.

DETERMINATIONS OF ADMONITION

The Commission completed three proceedings in 2014 that resulted in public admonition. The cases are summarized as follows and the full texts can be found in Appendix F.

Matter of Donald G. Lustyik

On March 25, 2014, the Commission determined that Donald G. Lustyik, a Justice of the Norfolk Town Court, St. Lawrence County, should be admonished for lending the prestige of his judicial office to advance the private interests of a town resident by witnessing a statement connected to a dispute involving allegations of molestation. In its determination the Commission stated that witnessing such a statement put Judge Lustyik "in the middle of a serious situation" in which he "allowed his judicial status to be used to advance private interests as a favor to an acquaintance in a matter where, as he should have recognized, the potential for serious impropriety and

significant legal consequences was considerable." Judge Lustyik, who is not an attorney, did not request review by the Court of Appeals.

Matter of Robert P. Merino

On October 2, 2014, the Commission determined that Robert P. Merino, a Judge of the Niagara Falls City Court, Niagara County, should be admonished for failing to protect a Spanish-speaking tenant's rights by failing to appoint an interpreter during a summary eviction proceeding. In its determination the Commission stated: "Access to interpreting services when needed is a critical element of access to justice." Judge Merino did not request review by the Court of Appeals.

Matter of Richard L. Gumo

On December 30, 2014, the Commission determined that Richard L. Gumo, a Justice of the Delhi Town Court and an Acting Justice of the Walton Village Court, Delaware County should be admonished for failing to disclose that a key witness in a case was the daughter of the court clerk, permitting the court clerk to perform clerical duties in connection with the case and to be in the courtroom during the trial, and sending an inappropriate letter to the County Court Judge hearing the appeal. In its determination the Commission stated that the judge engaged in "impermissible advocacy" by advising the County Court Judge of facts outside the record and making legal arguments when the defendant appealed his decision. The Commission noted that while it was not necessary for the judge to disqualify, Judge Gumo "should have disclosed the court clerk's relationship to a potential witness in order to give the parties the opportunity to be heard on the issue before proceeding." Such disclosure, the Commission stated, was necessary "in order to dispel any appearance of impropriety and reaffirm the integrity and impartiality of the judiciary." Judge Gumo, who is an attorney, requested review by the Court of Appeals, but the request was dismissed after the judge did not file the required papers.

OTHER PUBLIC DISPOSITIONS

The Commission completed seven other proceedings in 2014 that resulted in public dispositions. The cases are summarized below and the full text can be found in Appendix F. Four of the matters were concluded during the investigative stage, and three after a formal proceeding had been commenced.

Matter of Philip A. Crandall

On March 6, 2014, pursuant to a stipulation, the Commission discontinued a proceeding involving Philip A. Crandall, a Justice of the Coeymans Town Court and an Acting Justice of the Ravena Village Court, Albany County, who resigned from office after being charged with (1) improperly intervening and granting a lenient disposition in a traffic case involving the son of a former member of the Coeymans Town Board; (2) failing to disqualify himself from, and granting a lenient disposition in, a matter involving the judge's brother-in-law; (3) failing to disqualify himself from a traffic case involving a Coeymans Town Board member who participates in setting the judge's salary; and (4) improperly intervening and invoking his judicial office in a dispute between the local police and his daughter and son-in-law. Judge Crandall, who

is not an attorney, affirmed that he would neither seek nor accept judicial office at any time in the future.

Matter of Richard H. Ackerson

On May 29, 2014, pursuant to a stipulation, the Commission closed its investigation of complaints against Richard H. Ackerson, a Justice of the Suffern Village Court, Rockland County, who agreed to vacate his judicial office upon the expiration of his current term. Judge Ackerson was apprised by the Commission in August 2013 that it was investigating complaints that he was suffering from a medical condition that interfered with his ability to perform the duties associated with his judicial office. In March 2014, the Chief Administrative Judge of the New York State Court System issued an order reassigning all cases pending before Judge Ackerson to another village justice and directed that no further matters be assigned to the judge. Judge Ackerson, who is an attorney, affirmed that he would neither seek nor accept judicial office at any time in the future and that he would not challenge the Chief Administrative Judge's order.

Matter of Arlene M. Brown

On July 18, 2014, pursuant to a stipulation, the Commission closed its investigation of complaints against Arlene M. Brown, a Justice of the Bennington Town Court, Wyoming County, who resigned from judicial office after being apprised by the Commission that it was investigating complaints based on allegations that she failed to disqualify herself in certain proceedings when required, failed to exercise her judicial duties impartially and otherwise failed to perform her judicial duties properly. Judge Brown, who is not an attorney, affirmed that she would neither seek nor accept judicial office at any time in the future.

Matter of Robert J. Blain

On July 18, 2014, pursuant to a stipulation, the Commission closed its investigation of complaints against Robert J. Blain, a Justice of the Prattsville Town Court, Greene County, who resigned from office after being apprised by the Commission that it had opened an investigation after an audit by the Office of the New York State Comptroller found multiple financial irregularities in the court accounts and insufficient oversight by the judge over his court clerks. Judge Blain, who is not an attorney, agreed that he would neither seek nor accept judicial office in the future.

Matter of Domenick J. Porco

On September 18, 2014, pursuant to a stipulation, the Commission discontinued a proceeding involving Domenick J. Porco, a Justice of the Eastchester Town Court, Westchester County, who resigned from office after being served with a Formal Written Complaint alleging that (1) from 2009 through August 2012, he did not sufficiently oversee and approve dispositions of a significant number of Vehicle and Traffic Law (VTL) cases in his court and (2) in or about June 2012, certain records of VTL cases that were reviewed by the judge, photocopied and produced in response to a request from the Commission, were deficient and raised questions as to whether

and when he had approved the dispositions. Judge Porco, who is an attorney, affirmed that he would neither seek nor accept judicial office in the future.

Matter of William E. Montgomery

On September 18, 2014, pursuant to a stipulation, the Commission discontinued a proceeding involving William E. Montgomery, a Justice of the Colden Town Court, Erie County, who resigned from office after being charged with (1) facilitating the filing of a falsely notarized designating petition for his candidacy for judicial office, and thereafter neither refusing the nomination nor withdrawing his candidacy, and (2) driving a defendant home following her arraignment on alcohol related and other vehicle and traffic charges, and thereafter presiding over the case. Judge Montgomery, who is not an attorney, affirmed that he would neither seek nor accept judicial office in the future.

Matter of Barry Kamins

On September 22, 2014, pursuant to a stipulation, the Commission closed its investigation of a complaint against Barry Kamins, a Justice of the Supreme Court, Kings County, who agreed to vacate his judicial office after the Commission had opened an investigation in May 2014, based on information from a report of the New York City Department of Investigation alleging that he had engaged in misconduct. Judge Kamins affirmed that he would relinquish his position on December 1, 2014, and that he would neither seek nor accept judicial office in the future.

OTHER DISMISSED OR CLOSED FORMAL WRITTEN COMPLAINTS

The Commission disposed of three Formal Written Complaints in 2014 without rendering a public disposition: One complaint was closed due to the expiration of the judge's term and two were closed upon the judge's resignation.

MATTERS CLOSED UPON RESIGNATION

In 2014 nineteen judges resigned while complaints against them were pending before the Commission, and the matters pertaining to those judges were closed. Five of those judges resigned while under formal charges by the Commission, three of these pursuant to public stipulation. Fourteen judges resigned while under investigation, four of these 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 2014, the Commission referred 33 matters to other agencies. Twenty-five matters were referred to the Office of Court Administration, typically dealing with relatively isolated instances of delay, poor record-keeping or other administrative issues. Five matters were referred to attorney grievance committees. One matter was referred to both the Office of Court Administration and the Administrative Judge of the Courts. Another matter was referred to the Deputy Chief Administrative Judge of the Courts and one matter was referred to the New York State Court of Appeals.

LETTERS OF DISMISSAL AND CAUTION

A Letter of Dismissal and Caution contains confidential suggestions and recommendations to a judge upon conclusion of an investigation, in lieu of commencing formal disciplinary proceedings. A Letter of Caution is a similar communication to a judge upon conclusion of a formal disciplinary proceeding with a finding that the judge's misconduct, albeit minor, is established.

Cautionary letters are authorized by the Commission's Rules, 22 NYCRR 7000.1(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 2014, the Commission issued 23 Letters of Dismissal and Caution. Ten town or village justices were cautioned, including five who are lawyers. Thirteen 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. Five judges were cautioned for lending the prestige of judicial office to advance private interests. Two judges utilized their judicial title to promote their private law practice. Two judges improperly utilized parking placards. Another judge served as chair of a charitable organization whose primary function was fund-raising.

Political Activity. The Rules Governing Judicial Conduct prohibit judges from attending political gatherings, endorsing other candidates, making political contributions or otherwise participating in political activities except during a specifically-defined "window period" when they are candidates for elective judicial office. One judge was cautioned for isolated and relatively minor violations of the applicable rules, including attending a political fund-raiser outside the "window period" of his own candidacy for judicial office.

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. Four judges were cautioned for various isolated or promptly corrected conflicts of interest. One judge failed to institute procedures to avoid conflicts involving his former law firm. Another judge failed to disqualify himself from a case involving his landlord. One judge improperly presided over a matter involving the Town Supervisor who set her salary, and one judge signed an order notwithstanding that the judge's spouse was an attorney in the matter.

Inappropriate Demeanor. The Rules require every judge to be patient, dignified and courteous to litigants, attorneys and others with whom the judge deals in an official capacity. One judge was cautioned for being discourteous to a defendant appearing before her. Another judge was cautioned for inappropriate comments to an attorney in his courtroom. A third judge was cautioned for making public comments about a case that was pending appeal.

Finances. Three 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.

Delay. Two judges were cautioned for delay in rendering decisions in a small number of isolated matters. Section 100.3(B)(7) of the Rules Governing Judicial Conduct requires a judge to dispose of all judicial matters promptly, efficiently and fairly.

Violation of Rights. Three judges were cautioned for relatively isolated incidents of violating or not protecting the rights of parties appearing before them. One judge, for example, failed to return a bail payment until the defendant had paid all court imposed fines and surcharges.

Miscellaneous. One part-time judge who practices law was cautioned for refusing for over a year to honor an arbitration decision regarding a fee dispute with a former client.

Follow Up on Caution Letters. Should the conduct addressed by a cautionary letter continue or be repeated, the Commission may authorize an investigation on 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 DETERMINATIONS 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 2014, the Court of Appeals upheld the Commission's determination of removal in one case.

Matter of Cathryn M. Doyle

On November 8, 2013, the Commission determined that Cathryn M. Doyle, a Judge of the Surrogate's Court, Albany County, should be removed from office for presiding over matters involving her close friend, her personal attorney, and a lawyer who had acted as her campaign manager. Judge Doyle had previously been censured by the Commission.

Judge Doyle filed a request for review with the Court of Appeals, asking the Court to reject the Commission's determination that she be removed from office. In a decision dated June 26, 2014, the Court of Appeals accepted the determined sanction, rejecting the judge's argument that her disqualification was not required because of the special nature of proceedings in Surrogate's Court and finding that "a judge's obligation to disqualify herself based on the appearance of impropriety has long been in place and has not been dependent on the nature of the proceeding." *Matter of Doyle*, 23 NY3d 656, 660 (2014). Noting the judge's prior discipline, the Court stated:

> Without question, a heightened awareness of and sensitivity to any and all ethical obligations would be expected of any judge after receiving a public censure. Petitioner's failure to exercise that vigilance within just a year of her prior discipline is persuasive evidence that she lacks the judgment necessary to her position. Under the circumstances, the 2007 censure constitutes a "significant aggravating factor" (*see Matter of George* [State Commn. on Jud. Conduct], 22 NY3d 323, 329 [2013]) and the sanction of removal is appropriate.

23 NY3d at 662. One judge dissented on the issue of sanction and would have censured.

CHALLENGES TO THE COMMISSION'S PROCEDURES

In the Matter of Releasing Records to the NYS Commission on Judicial Conduct, People v Seth Rubenstein

On May 17, 2012, Seth Rubenstein brought an Order to Show Cause seeking to vacate a May 2010 unsealing order signed by Administrative Judge Fern Fisher and to restrain Commission staff from using any "records … or information" obtained pursuant to that order "in any pending investigation." Judge Fisher's order unsealed records in *People v Nora Anderson and Seth Rubenstein,* a criminal case in which Rubenstein and Manhattan Surrogate Nora Anderson were acquitted of two counts of filing a false instrument with the Board of Elections. Rubenstein argued that the Commission was not entitled to an unsealing order because it did not fall within any of the provisions of CPL 160.50.

In June 2011, the Commission authorized service of a Formal Written Complaint upon Judge Anderson alleging acts of misconduct related to the conduct for which she was indicted. Judge Anderson's hearing before Commission Referee Hon. Richard D. Simons was scheduled to begin in July 2012. In early April 2012, Rubenstein was served with a subpoena to testify at Judge Anderson's hearing as a Commission witness, prompting his motion to vacate the unsealing order.

On May 17, 2012, Acting Supreme Court Justice Larry Stephen signed Rubenstein's proposed Order to Show Cause, including the temporary restraining order staying Commission staff from "using" any documents from the criminal trial. The matter was made returnable before Judge Fisher on May 24, 2012.

Oral argument was held in Judge Fisher's chambers on May 24th. On May 25, 2012, Judge Fisher issued an order denying Rubenstein's application in its entirety on the grounds that: (1) Rubenstein's application to overturn an "administrative order" by order to show cause was procedurally improper, (2) Rubenstein had failed to establish any of the grounds for vacatur set forth in CPLR 5015, and (3) the Commission was authorized to receive the criminal records by Judiciary Law § 42(3) and the public interest in the Commission's effective performance could "not be stymied by the statutory constraints of CPL 160.50."

Rubenstein filed a Notice of Appeal on June 11, 2012. On August 28, 2012, the Appellate Division issued an order denying Rubenstein's application for a preliminary injunction.

Oral argument was held on October 3, 2012. On October 10th, the Attorney General's office notified the court that the Commission had released a determination in *Matter of Nora S. Anderson,* 2013 NYSCJC Annual Report 75 (October 1, 2012), and that as a result, Rubenstein's appeal was moot.

On November 21, 2012, the Attorney General made a formal motion to have the appeal dismissed. On February 5, 2013, the Appellate Division granted the motion, finding that "the matter has been rendered moot." *NYS Commission on Judicial Conduct v Rubenstein,* 103 AD3d 409 (1st Dept 2013).

On May 7, 2013, the Court of Appeals granted Rubenstein's motion for leave to appeal.

On June 10, 2014, the Court unanimously reversed, holding that the matter was not moot and that the Commission has broad authority under Judiciary Law § 42(3) to request and receive sealed court records. The Court held that:

> Given the Commission's broad powers under the Judiciary Law, specifically its authority under Judiciary Law § 42(3) to request and receive a wide range of records and data, and its constitutional duties and obligations to ensure the integrity of the judicial system by investigating and sanctioning judicial misconduct, we conclude that the Commission may obtain documents sealed pursuant to CPL 160.50. Continued public confidence in the judiciary is of singular importance, and can be furthered only by permitting the Commission access to information that allows it to quickly identify and respond to judicial misconduct, including criminal behavior, abuse of power, corruption, and other actions in violation of laws applicable to judges.

NYS Commission on Judicial Conduct v Rubenstein, 23 NY3d 570, 581-82 (2014).

OBSERVATIONS AND RECOMMENDATIONS

The Commission traditionally devotes a section of its Annual Report to a discussion of various topics of special note or interest that have come to 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.

PUBLIC DISCIPLINARY PROCEEDINGS

All Commission investigations and formal hearings are confidential by law. Commission activity is only made public at the end of the disciplinary process – when a determination of admonition, censure, removal or retirement from office is rendered and filed with the Chief Judge pursuant to statute – or when the accused judge waives confidentiality.[1]

The subject of public disciplinary proceedings, for lawyers as well as judges, has been vigorously debated in recent years by bar associations and civic groups, and supported in newspaper editorials around the state. The Commission itself has long advocated that post investigation formal proceedings should be made public, as they were in New York State until 1978, and as they are now in 35 other states.

As the Commission has consistently advocated since 1978 and commented upon in several Annual Reports, we restate the argument here for a change in the law regarding confidentiality.

It has been a fundamental premise of the American system of justice, since the founding of the republic, that the rights of citizens are protected by conducting the business of the courts in public. Not only does the public have a right to know when formal charges have been preferred by a prosecuting authority against a public official, but the prosecuting entity is more likely to exercise its power wisely if it is subject to public scrutiny. A judge as to whom charges are eventually dismissed may feel his or her reputation has been damaged by the trial having been public. Yet the historical presumption in favor of openness is so well established that criminal trials, where not only reputations but liberty are at stake, have been public since the adoption of the Constitution.

There are practical as well as philosophical considerations in making formal judicial disciplinary proceedings public. The process of evaluating a complaint, conducting a comprehensive investigation, conducting formal disciplinary proceedings and making a final determination subject to review by the Court of Appeals takes considerable time. The process is lengthy in significant part because the Commission painstakingly endeavors to render a determination that is fair and comports with due process. If the charges and hearing portion of a Commission matter were open, the public would have a better understanding of the entire disciplinary process. The very fact that charges had been served and a hearing scheduled would no longer be secret.

[1] The Commission has conducted over 800 formal disciplinary proceedings since 1978. Twelve judges have waived confidentiality in the course of those proceedings. Two others waived confidentiality as to investigations.

As it is, maintaining confidentiality is often beyond the Commission's control. For example, in any formal disciplinary proceeding, subpoenas are issued and witnesses are interviewed and prepared to testify, by both the Commission staff and the respondent-judge. It is not unusual for word to spread around the courthouse, particularly as the hearing date approaches. Respondent-judges themselves often consult with judicial colleagues, staff and others, revealing the details of the charges against them and seeking advice. As more "insiders" learn of the proceedings, the chances for "leaks" to the press increase, often resulting in published misinformation and suspicious accusations as to the source of the "leaks." In such situations, both confidentiality and confidence in the integrity of the disciplinary system suffer.

It should be noted that even if Commission disciplinary proceedings were made public, the vast majority of Commission business would remain confidential. In 2014, for example, out of 1,767 new complaints received, 499 preliminary inquiries conducted and 145 investigations commenced, 18 Formal Written Complaints were authorized. Ten were carried over from 2013. Those 28 combined, as to which confidential investigations found reasonable cause to commence formal disciplinary proceedings, would have been the only pending matters made public last year.

On several occasions in recent years, the Legislature has considered bills to open the Commission's proceedings to the public at the point when formal disciplinary charges are filed against a judge. Such legislation has had support in either the Assembly or the Senate at various times, although never in both houses during the same legislative session. The Commission continues to advocate and work with the Legislature, the Governor and the Chief Judge toward enactment of a public proceedings law.

RAISING FUNDS FOR CIVIC, CHARITABLE OR OTHER ORGANIZATIONS

While incidents of improper charitable fund-raising by judges have ebbed and flowed over the years, they continue to occur. Therefore, from time to time, the Commission finds it necessary to remind judges of the strict limitations on their participation in fund-raising activities for civic, charitable or other worthy organizations. See Section 100.4(C)(3)(b) of the Rules Governing Judicial Conduct.

For example, a judge "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." Also, the judge "shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation…."

With limited exceptions, a judge may attend an organization's fund-raising events but "may not be a speaker or the guest of honor" at such events. The exceptions are that a judge may be a speaker or guest of honor at a function held by a bar association, law school or court employee organization. A judge may also accept "at another organization's fund-raising event an unadvertised award ancillary to such event."

Notwithstanding the fact that a judge may attend a law school or bar association fund-raising event, the judge is still prohibited from personally participating in the solicitation of funds or other fund-raising activities associated with the event. Some judges appear unaware of this limitation or the fact that there is no exception in the Rules permitting one judge to solicit other judges, regardless of whether the soliciting or solicited judges are of equal rank. Indeed, the Advisory Committee on Judicial Ethics has specifically stated that the Rules prohibit a judge from soliciting other judges for contributions to charitable causes, and prohibit a judge from personally participating in the solicitation of funds or other fund-raising activities, even in connection with a bar association event at which the judge may accept an award and speak. Advisory Opinions 96-83 and 98-38.

With regard to events held by other civic or charitable organizations, the Commission has often come across situations in which an organization mails a solicitation that lists a judge as a "host" or a "sponsor" without having checked first with the judge, who may be a member of the organization or who may have made a permissible contribution without intending it to be used as a solicitation on a future fund-raising appeal. The leaders of a charitable organization are not likely to know the judicial ethics rules or be acquainted with the particular constraints on the use of a judge's name in fund-raising. While an unauthorized use of the judge's name in that regard would not likely result in discipline without aggravating circumstances, the Commission informally advises judges in such situations to remind the organization's leaders of the applicable rules. The Commission takes this opportunity to suggest that all judges who join a charitable organization advise its leaders upon joining that they not use the judge's name in fund-raising appeals.

The Commission has also come across situations in which the judge who accepts a speaking invitation claims later not to have realized the event was a fund-raiser. The Commission has advised such judges, usually in letters of dismissal and caution, that they are obliged to make inquiries about the nature of the event before accepting an invitation to speak. A simple question or two may be all that is necessary to determine whether the event is a fund-raiser. For example, the judge should inquire about the price of tickets to the event, though further inquiry may be necessary. An organization may, for example, break even on the ticket price but raise money through ads in a souvenir journal, a raffle, a silent auction or other means.

The Commission has also reminded judges that the prohibition on being a speaker at a fund-raising event is not limited to giving a keynote or featured speech. A judge may not be the emcee or introduce the keynote speaker or similarly perform another ancillary speaking role, such as introducing other judges in the audience.

Where there is any doubt about the propriety of participating, the judge should consult with the Advisory Committee on Judicial Ethics, either by researching its published opinions or requesting a new one specific to the situation: http://www.nycourts.gov/ip/acje/.

MISLEADING ADVERTISEMENTS IN JUDICIAL CAMPAIGNS

Political activity by judicial candidates, including incumbent judges seeking elective judicial office, is strictly limited by the Rules Governing Judicial Conduct to a "window period"

beginning nine months before the nomination date and ending six months after the nomination or general election date. Sections 100.0(Q) and 100.5. Even within that window period, the Rules proscribe certain political activity and impose various obligations on all judicial candidates, whether incumbent or challenger.

Section 100.5(A)(4)(d)(iii) of the Rules states that a judge or judicial candidate "shall not … knowingly make any false statement or misrepresent the identity, qualifications, current position or other fact concerning the candidate or an opponent."

In *Matter of Shanley*, 98 NY2d 310 (2002), a non-lawyer town justice was admonished for misrepresenting her credentials in campaign literature, in that she appeared to say she was a graduate of three institutions of higher education when in fact she had attended clerk's training programs that were held at those institutions. In *Matter of Mullin*, 2001 NYSCJC Annual Report 117, a full-time lower court judge was admonished for *inter alia* distributing literature and mounting public signs that implied he was already a Supreme Court Justice and for misstating the name of his campaign committee so as to appear he was running for re-election to the Supreme Court. The Commission has also confidentially cautioned a number of judges for misrepresenting their current position in similar fashion, where there were no other violations of the Rules.

Despite having rendered some public disciplines and commenting on this subject previously in our Annual Reports, the Commission continues to see judicial campaign signs and literature phrased in such a way as to appear that a challenger already holds the particular office for which he or she is running. For example, the Commission has seen handbills, fliers, campaign posters or other literature that read such as follows –

John Doe
Family Court Judge[2]
Election Day – November 3rd

– even though candidate "Doe" may actually be a judge of another (typically lower) court or may not be a judge at all.

All judicial candidates should take steps to make certain that all of the literature, signs and ads that call for their election do not state or imply that they are incumbents of any office that they do not presently hold. While candidates for non-judicial office may well do such things, judges and judicial candidates have a higher obligation under the Rules. Public confidence in the courts depends on confidence in the integrity of its judges. The integrity of a candidate who runs misleading campaign ads is compromised even before he or she takes the oath of office.

The Commission intends to make honest advertising a better known and appreciated ethical obligation. Judges and judicial candidates have fair warning that violations in the future may result in public discipline more readily than before.

[2] Use of "Family Court" in this example is for illustrative purposes only.

THE COMMISSION'S BUDGET

In 2007, for the first time in more than a generation, the Legislature significantly increased the Commission's budget, commensurate with its constitutional mandate and caseload. From 2007 to 2014 the annual complaint load increased by 22% (more than 330 a year), to an annual average of 1,832 complaints. The number of preliminary inquiries reached an all-time high of 499 in 2014. However, the percentage of new complaints processed in the same year as received dropped from a high of 97% in 2007-08 to 89% in 2014. The number of matters pending more than a year rose 20%, from 50 in 2007-08 to 62 in 2014. This is attributable to the steady diminution of resources caused by years of "flat" budgeting.

Since 2008, the Commission's budget has remained constant at around $5.4 million. Legislative help in 2014 put the actual budget at $5.484 million. To meet annual increases in mandated costs such as rent, while keeping up with a steady caseload, sharp economies have been made, the most significant of which has been the reduction in authorized full-time employees from 55 to 50, of which only 45 are filled. That represents a 18% reduction in workforce. In order to keep current and prevent even further cuts and delays in the disposition of matters, the Commission has requested a modest increase of $273,300 for the fiscal year beginning April 1, 2015.

A comparative analysis of the Commission's budget and staff over the years appears below.

SELECTED BUDGET FIGURES: 1978 TO PRESENT

Fiscal Year	Annual Budget[1]	New Complaints[2]	Prelim Inquiries	New Investig'ns	Pending Year End	Public Dispositions	Attorneys on Staff[3]	Investig'rs ft/pt	Total Staff
1978	1.6m	641	N.A.	170	324	24	21	18	63
1988	2.2m	1109	N.A.	200	141	14	9	12/2	41
1996	1.7m	1490	492	192	172	15	8	2/2	20
2000	1.9m	1288	451	215	177	13	9	6/1	27
2006	2.8m	1500	375	267	275	14	10	7	28½
2007	4.8m	1711	413	192	238	27	17	10	51
2008	5.3m	1923	354	262	208	21	19	10	49
2009	5.3m	1855	471	257	243	24	18	10	48
2010	5.4m	2025	439	225	226	15	18	10	48
2011	5.4m	1818	464	172	216	14	17	9	49
2012	5.4m	1785	460	182	206	20	19	9	49
2013	5.4m	1770	477	177	201	17	19	9	50
2014	5.5m	1767	499	145	171	12	18	7	45
2015	5.7m[4]	~	~	~	~	~	19	7	46

[1] Budget figures are rounded off; budget figures are fiscal year (Apr 1 – Mar 31)
[2] Complaint figures are calendar year (Jan 1 – Dec 31)
[3] Number includes Clerk of the Commission, who does not investigate or litigate cases
[4] Proposed

TABLE OF CONTENTS

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,

HON. THOMAS A. KLONICK, *CHAIR*
HON. TERRY JANE RUDERMAN, *VICE CHAIR*
HON. ROLANDO T. ACOSTA
JOSEPH W. BELLUCK, ESQ.
JOEL COHEN, ESQ.
JODIE CORNGOLD
RICHARD D. EMERY, ESQ.
PAUL B. HARDING, ESQ.
RICHARD A. STOLOFF, ESQ.
HON. DAVID A. WEINSTEIN

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
Thomas A. Klonick	Chief Judge Jonathan Lippman	2005	3/31/2017
Terry Jane Ruderman	Chief Judge Jonathan Lippman	1999	3/31/2016
Rolando T. Acosta	Chief Judge Jonathan Lippman	2010	3/31/2018
Joseph W. Belluck	Governor Andrew M. Cuomo	2008	3/31/2016
Joel Cohen	(Former) Assembly Speaker Sheldon Silver	2010	3/31/2018
Jodie Corngold	Governor Andrew M. Cuomo	2013	3/31/2015
Richard D. Emery	(Former) Senate Minority Leader John L. Sampson	2004	3/31/2016
Paul B. Harding	Assembly Minority Leader Brian M. Kolb	2006	3/31/2017
Richard A. Stoloff	Senate President Pro Tem Dean Skelos	2011	3/31/2015
David A. Weinstein	Governor Andrew M. Cuomo	2012	3/31/2018
Vacant	Governor		3/31/2017

Honorable Thomas A. Klonick, *Chair of the Commission*, is a graduate of Lehigh University and the Detroit College of Law, where he was a member of the Law Review. He maintains a law practice in Fairport, New York, with a concentration in the areas of commercial and residential real estate, corporate and business law, criminal law and personal injury. He was a Monroe County Assistant Public Defender from 1980 to 1983. Since 1995 he has served as Town Justice for the Town of Perinton, New York, and has also served as an Acting Rochester City Court Judge, a Fairport Village Court Justice and as a Hearing Examiner for the City of Rochester. From 1985 to 1987 he served as a Town Justice for the Town of Macedon, New York. He has also been active in the Monroe County Bar Association as a member of the Ethics Committee. Judge Klonick is the former Chairman of the Prosecuting Committee for the Presbytery of Genesee Valley and is an Elder of the First Presbyterian Church, Pittsford, New York. He has also served as legal counsel to the New York State Council on Problem Gambling, and on the boards of St. John's Home and Main West Attorneys, a provider of legal services for the working poor. He is a member of the New York State Magistrates Association, the New York State Bar Association and the Monroe County Bar Association. Judge Klonick is a former lecturer for the Office of Court Administration's continuing Judicial Education Programs for Town and Village Justices.

Honorable Terry Jane Ruderman, *Vice Chair of the Commission*, graduated *cum laude* from Pace University School of Law, holds a Ph. D. in History from the Graduate Center of the City University of New York and Masters Degrees from City College and Cornell University. In 1995, Judge Ruderman was appointed to the Court of Claims and is assigned to the White Plains district. At the time she was the Principal Law Clerk to a Justice of the Supreme Court. Previously, she served as an Assistant District Attorney and a Deputy County Attorney in Westchester County, and later she was in the private practice of law. Judge Ruderman is a member of the New York State Committee on Women in the Courts and Chair of the Gender Fairness Committee for the Ninth Judicial District. She has served as President of the New York State Association of Women Judges, the Presiding Member of the New York State Bar Association Judicial Section, as a Delegate to the House of Delegates of the New York State Bar Association and on the Ninth Judicial District Task Force on Reducing Civil Litigation Cost and Delay. Judge Ruderman is also a board member and former Vice President of the Westchester Women's Bar Association, was President of the White Plains Bar Association and was a State Director of the Women's Bar Association of the State of New York. She also sits on the Cornell University President's Council of Cornell Women.

Honorable Rolando T. Acosta is a graduate of Columbia College and the Columbia University School of Law. He served as a Judge of the New York City Civil Court from 1997 to 2002, as an Acting Justice of the Supreme Court from 2001 to 2002, and as an elected Justice of the Supreme Court from 2003 to present. He presently serves as an Associate Justice of the Appellate Division, First Department, having been appointed in January 2008. Prior to his judicial career, Judge Acosta served in various capacities with the Legal Aid Society, including Director of Government Practice and Attorney in Charge of the civil branch of the Brooklyn office. He also served as Deputy Commissioner and First Deputy Commissioner of the New York City Commission on Human Rights.

Joseph W. Belluck, Esq., 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 was an adjunct lecturer on mass torts. He is a partner in the Manhattan law firm of Belluck & Fox, LLP, which focuses on asbestos, consumer, environmental and defective product 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 and consumer lobbyist 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 product liability, tort law and tobacco control policy. He is an active member of several bar associations is a recipient of the New York State Bar Association's Legal Ethics Award.

Joel Cohen, Esq., is a graduate of Brooklyn College and New York University Law School, where he earned a J.D. and an LL.M. He is Of Counsel at Stroock & Stroock & Lavan LLP in Manhattan, which he joined in 1985. Mr. Cohen previously served as a prosecutor for ten years, first with the New York State Special Prosecutor's Office and then as Assistant Attorney-in-Charge with the US Justice Department's Organized Crime & Racketeering Section in the Eastern District of New York. He is a member of the Federal Bar Council and is an Adjunct Professor of Law teaching Professional Responsibility at Fordham Law School, having previously done so at Brooklyn Law School. He widely lectures on Professional Responsibility. Mr. Cohen is the author of three books dealing with religion -- *Moses: A Memoir* (Paulist Press 2003), *Moses and Jesus: A Conversation* (Dorrance Publishing 2006) and *David and Bathsheba: Through Nathan's Eyes* (Paulist Press 2007). He also authored *Truth Be Veiled: A Justin Steele Murder Case* (Coffeetown Press, 2010), a novel on legal ethics and truth. Mr. Cohen has authored over 200 articles in legal periodicals, including a bimonthly column on "Ethics and Criminal Practice" for the New York Law Journal, and columns for Law.com and Huffington Post.

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

Richard D. Emery, Esq., is a graduate of Brown University and Columbia Law School (*cum laude)*, where he was a Harlan Fiske Stone Scholar. He is a founding partner of Emery Celli Brinckerhoff & Abady LLP. His practice focuses on commercial litigation, civil rights, election law and litigation challenging governmental actions. Mr. Emery enjoys a national reputation as a litigator, trying and handling cases at all levels, from the U.S. Supreme Court to federal and state appellate and trial courts in New York, Washington, D.C., California, Washington state, and others. While a partner at Lankenau Kovner & Bickford, he successfully challenged the structure of the New York City Board of Estimate under the one-person, one-vote doctrine, resulting in the U.S. Supreme Court's unanimous invalidation of the Board on constitutional grounds. Before then, he was a staff attorney at the New York Civil Liberties Union and director of the Institutional Legal Services Project in Washington state, which represented persons held in

juvenile, prison, and mental health facilities. He was also a law clerk for the Honorable Gus J. Solomon of the U.S. District Court for the district of Washington. He has taught as an adjunct at the New York University and University of Washington schools of law. Mr. Emery was a member of Governor Cuomo's Commission on Integrity in Government and sat on Governor Eliot Spitzer's Transition Committee for Government Reform Issues. He was appointed to the New York State Commissions on Judicial Conduct and Public Integrity and was appointed chair of the New York City Civilian Complaint Review Board. He is a founding member of the City Club, which addresses New York City preservation issues. He also is a founder and president of the West End Preservation Society, which has achieved the landmarked West End-Riverside Historic District. His honors include Landmark West's 2013 Unsung Heroes Award for his preservation work; the 2008 Children's Rights Champion Award for his civil rights work and support of children's rights; the Common Cause/NY, October 2000, "I Love an Ethical New York" Award for recognition of successful challenges to New York's unconstitutionally burdensome ballot access laws and overall work to promote a more open democracy; the Park River Democrats Public Service Award, June 1989; and the David S. Michaels Memorial Award, January 1987, for Courageous Effort in Promotion of Integrity in the Criminal Justice System from the Criminal Justice Section of the New York State Bar Association.

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 is currently on the Steering Committee for the Legal Project, which was established by the Capital District Women's Bar Association to provide a variety of free and low cost legal services to the working poor, victims of domestic violence and other underserved individuals in the Capital District of New York State.

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

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

APPENDIX B: BIOGRAPHIES OF COMMISSION ATTORNEYS

Robert H. Tembeckjian, *Administrator and Counsel*, is a graduate of Syracuse University, the Fordham University School of Law and Harvard University's Kennedy School of Government, where he earned a Masters in Public Administration. He was a Fulbright Scholar to Armenia in 1994, teaching graduate courses and lecturing on constitutional law and ethics at the American University of Armenia and Yerevan State University. Mr. Tembeckjian 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.

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.

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 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.

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.

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.

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

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

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.

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

Jill S. Polk, *Senior Attorney*, is a graduate of the State University of New York at Buffalo and the Albany Law School. Prior to joining the Commission staff, she was Senior Assistant Public Defender in Schenectady County. Ms. Polk has also been in private practice, served as Senior Court Attorney to two judges, and was an attorney with the Legal Aid Society of Northeastern New York.

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.

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

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

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 serves on the Executive Committee of the Monroe County Bar Association Board of Trustees, and 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.

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 a Superior Court Judge in New Jersey.

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

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

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.

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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.

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Karen Kozac, *Chief Administrative Officer*, is a graduate of the University of Pennsylvania and Brooklyn Law School. Prior to re-joining the Commission staff in June 2007, she was an administrator in the nonprofit sector. She previously served as a Staff Attorney at the Commission, as an Assistant District Attorney in New York County, and in private practice as a litigator.

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Jean M. Savanyu, *Clerk of the Commission*, is a graduate of Smith College and the Fordham University School of Law (*cum laude*). She joined the Commission's staff in 1977 and served as Senior Attorney until being appointed Clerk of the Commission in 2000. Ms. Savanyu teaches in the legal studies program at Hunter College and previously taught legal research and writing at Marymount Manhattan College. Prior to joining the Commission staff, she was a travel writer and editor.

APPENDIX C: REFEREES WHO SERVED IN 2014

Referee	City	County
Roger Bennet Adler, Esq.	New York	New York
Eleanor B. Alter, Esq.	New York	New York
Mark S. Arisohn, Esq.	New York	New York
Robert A. Barrer, Esq.	Syracuse	Onondaga
G. Michael Bellinger, Esq.	New York	New York
Peter Bienstock, Esq.	New York	New York
Jay C. Carlisle, Esq.	White Plains	Westchester
Linda J. Clark, Esq.	Albany	Albany
Bruno Colapietro, Esq.	Binghamton	Broome
William T. Easton, Esq.	Rochester	Monroe
Paul Feigenbaum, Esq.	Albany	Albany
Edward B. Flink, Esq.	Albany	Albany
David Garber, Esq.	Syracuse	Onondaga
Ronald Goldstock, Esq.	Larchmont	Westchester
Victor J. Hershdorfer, Esq.	Syracuse	Onondaga
Nancy Kramer, Esq.	New York	New York
Roger Juan Maldonado, Esq.	New York	New York
Margaret Reston, Esq.	Rochester	Monroe
Gregory S. Mills, Esq.	Clifton Park	Saratoga
Hugh H. Mo, Esq.	New York	New York
Gary Muldoon, Esq.	Rochester	Monroe
Malvina Nathanson, Esq.	New York	New York
Steven E. North, Esq.	New York	New York
Edward J. Nowak, Esq.	Penfield	Monroe
Lucille M. Rignanese, Esq.	Syracuse	Onondaga
Hon. Felice K. Shea	New York	New York
Robert H. Straus, Esq.	New York	New York
Michael Whiteman, Esq.	Albany	Albany

APPENDIX D: THE COMMISSION'S POWERS, DUTIES AND HISTORY

Creation of the New York State Commission on Judicial Conduct

For decades prior to the creation of the Commission on Judicial Conduct, judges in New York State were subject to professional discipline by a patchwork of courts and procedures. The system, which relied on judges to discipline fellow judges, was ineffective. In the 100 years prior to the creation of the Commission, only 23 judges were disciplined by the patchwork system of *ad hoc* judicial disciplinary bodies. For example, an *ad hoc* Court on the Judiciary was convened only six times prior to 1974. There was no staff or even an office to receive and investigate complaints against judges.

Starting in 1974, the Legislature changed the judicial disciplinary system, creating a temporary commission with a full-time professional staff to investigate and prosecute cases of judicial misconduct. In 1976 and again in 1977, the electorate overwhelmingly endorsed and strengthened the new commission, making it permanent and expanding its powers by amending the State Constitution.

The Commission's Powers, Duties, Operations and History

The State Commission on Judicial Conduct is the disciplinary agency constitutionally designated to review complaints of judicial misconduct in New York State. The Commission's objective is to enforce the obligation of judges to observe high standards of conduct while safeguarding their right to decide cases independently. The Commission does not act as an appellate court. It does not review judicial decisions or alleged errors of law, nor does it issue advisory opinions, give legal advice or represent litigants. When appropriate, it refers complaints to other agencies

By offering a forum for citizens with conduct-related complaints, and by disciplining those judges who transgress ethical constraints, the Commission seeks to insure compliance with established standards of ethical judicial behavior, thereby promoting public confidence in the integrity and honor of the judiciary.

All 50 states and the District of Columbia have adopted a commission system to meet these goals.

In New York, a temporary commission created by the Legislature in 1974 began operations in January 1975. It was made permanent in September 1976 by a constitutional amendment. A second constitutional amendment, effective on April 1, 1978, created the present Commission with expanded membership and jurisdiction. (For clarity, the Commission, which operated from September 1976 through March 1978, will be referred to as the "former" Commission.)

Membership and Staff

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

one be an attorney, and at least two be lay persons. The Commission elects one of its members to be chairperson and appoints an Administrator and a Clerk. The Administrator is responsible for hiring staff and supervising staff activities subject to the Commission's direction and policies. The Commission's principal office is in New York City. Offices are also maintained in Albany and Rochester.

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

Hon. Rolando T. Acosta (2010-present)
Hon. Fritz W. Alexander, II (1979-85)
Hon. Myriam J. Altman (1988-93)
Helaine M. Barnett (1990-96)
Herbert L. Bellamy, Sr. (1990-94)
Joseph W. Belluck (2008-present)
*Henry T. Berger (1988-2004)
*John J. Bower (1982-90)
Hon. Evelyn L. Braun (1994-95)
David Bromberg (1975-88)
Jeremy Ann Brown (1997-2001)
Hon. Richard J. Cardamone (1978-81)
Hon. Frances A. Ciardullo (2001-05)
Hon. Carmen Beauchamp Ciparick (1985-93)
E. Garrett Cleary (1981-96)
Stephen R. Coffey (1995-2011)
Joel Cohen (2010-present)
Jodie Corngold (2013-present)
Howard Coughlin (1974-76)
Mary Ann Crotty (1994-98)
Dolores DelBello (1976-94)
Colleen C. DiPirro (2004-08)
Richard D. Emery (2004-present)
Hon. Herbert B. Evans (1978-79)
*Raoul Lionel Felder (2003-08)
*William Fitzpatrick (1974-75)
*Lawrence S. Goldman (1990-2006)
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-present)

Hon. Jill Konviser (2006-10)
*Victor A. Kovner (1975-90)
William B. Lawless (1974-75)
Hon. Daniel F. Luciano (1995-2006)
William V. Maggipinto (1974-81)
Hon. Frederick M. Marshall (1996-2002)
Hon. Ann T. Mikoll (1974-78)
Mary Holt Moore (2002-03)
Nina M. Moore (2009-13)
Hon. Juanita Bing Newton (1994-99)
Hon. William J. Ostrowski (1982-89)
Hon. Karen K. Peters (2000-12)
*Alan J. Pope (1997-2006)
*Lillemor T. Robb (1974-88)
Hon. Isaac Rubin (1979-90)
Hon. Terry Jane Ruderman (1999-present)
*Hon. Eugene W. Salisbury (1989-2001)
Barry C. Sample (1994-97)
Hon. Felice K. Shea (1978-88)
John J. Sheehy (1983-95)
Hon. Morton B. Silberman (1978)
Richard A. Stoloff (2011-present)
Hon. William C. Thompson (1990-98)
Carroll L. Wainwright, Jr. (1974-83)
Hon. David A. Weinstein (2012-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, 50,477 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 41,987 were dismissed upon initial review or after a preliminary review and inquiry, and 8,490 investigations were authorized. Of the 8,490 investigations authorized, the following dispositions have been made through December 31, 2014:

- 1,095 complaints involving 831 judges resulted in disciplinary action (this does not include the 51 public stipulations in which judges agreed to vacate judicial office). (See details below and on the following page.)
- 1,667 complaints resulted in cautionary letters to the judge involved. The actual number of such letters totals 1,539, 89 of which were issued after formal charges had been sustained and determinations made that the judge had engaged in misconduct.
- 726 complaints involving 512 judges were closed upon resignation of the judge during investigation or in the course of disciplinary proceedings.
- 549 complaints were closed upon vacancy of office by the judge other than by resignation.
- 4,282 complaints were dismissed without action after investigation.
- 171 complaints are pending.

Of the 1,095 disciplinary matters against 831 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 95 decisions by the Court of Appeals, 16 of which modified a Commission determination.

- 166 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);
- 342 judges were censured publicly;
- 258 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 95 determinations filed by the present Commission. Of these 95 matters:

- The Court accepted the Commission's sanctions in 79 cases (70 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, statues, other court rules and decisional law and in the context of all relevant circumstances. The rules are to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

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

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

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

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

Section 100.0 Terminology.

The following terms used in this Part are defined as follows:

(A) A "candidate" is a person seeking selection for or retention in public office by election. A person becomes a candidate for public office as soon as he or she makes a public announcement of candidacy, or authorizes solicitation or acceptance of contributions.

(B) "Court personnel" does not include the lawyers in a proceeding before a judge.

(C) The "degree of relationship" is calculated according to the civil law system. That is, where the judge and the party are in the same line of descent, degree is ascertained by ascending or descending from the judge to the party, counting a degree for each person, including the party but excluding the judge. Where the judge and the party are in different lines of descent, degree is ascertained by ascending from the judge to the common ancestor, and descending to the party, counting a degree for each person in both lines, including the common ancestor and the party but excluding the judge. The following persons are relatives within the fourth degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, first cousin, child, grandchild, great-grandchild, nephew or niece. The sixth degree of relationship includes second cousins.

(D) "Economic interest" denotes ownership of more than a *de minimis* legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(2) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, cultural, fraternal or civic organization, or service by a judge's spouse or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit

union, or a similar proprietary interest, is not an economic interest in the organization, unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities

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

(E) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

(F) "Knowingly", "knowledge", "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(G) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

(H) "Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

(I) "Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship.

(J) "Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(K) "Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports.

(L) A "part-time judge", including an acting part-time judge, is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment.

(M) "Political organization" denotes a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

(N) "Public election" includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections.

(O) "Require". The rules prescribing that a judge "require" certain conduct of others, like all of the rules in this Part, are rules of reason. The use of the term "require" in that context means a

judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(P) "Rules"; citation. Unless otherwise made clear by the citation in the text, references to individual components of the rules are cited as follows:

"Part"-refers to Part 100.

"Section"-refers to a provision consisting of 100 followed by a decimal (100.1).

"Subdivision"-refers to a provision designated by a capital letter (A).

"Paragraph"-refers to a provision designated by an Arabic numeral (1)

"Subparagraph"-refers to a provision designated by a lower-case letter (a).

(Q) "Window Period" denotes a period beginning nine months before a primary election, judicial nominating convention, party caucus or other party meeting for nominating candidates for the elective judicial office for which a judge or non-judge is an announced candidate, or for which a committee or other organization has publicly solicited or supported the judge's or non-judge's candidacy, and ending, if the judge or non-judge is a candidate in the general election for that office, six months after the general election, or if he or she is not a candidate in the general election, six months after the date of the primary election, convention, caucus or meeting.

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

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

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

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

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

Historical Note
Sec. filed Feb. 1, 1996 eff. Jan. 1, 1996.
Amended (D) and (D)(5) on Sept. 9, 2004.
Added (R) - (V) on Feb. 14, 2006

TABLE OF CONTENTS

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

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Part 100 are to be construed and applied to further that objective.

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

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

(A) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

(D) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of age, race, creed, color, sex, sexual orientation, religion, national origin, disability or marital status. This provision does not prohibit a judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.

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

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

(A) Judicial duties in general. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

(B) Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(2) A judge shall require order and decorum in proceedings before the judge.

(3) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, against parties, witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, or other similar factors are issues in the proceeding.

(6) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding, except:

(a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and the judge, insofar as practical and appropriate, makes provision for prompt notification of other parties or their lawyers of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge, with the consent of the parties, may confer separately with the parties and their lawyers on agreed-upon matters.

(e) A judge may initiate or consider any ex parte communications when authorized by law to do so.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This paragraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

(9) A judge shall not:
(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;
(b) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

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

(C) Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered. A judge shall not appoint or vote for the appointment of any person as a member of the judge's staff or that of the court of which the judge is a member, or as an appointee in a judicial proceeding, who is a relative within the fourth degree of relationship of either the judge or the judge's spouse or the spouse of such a person. A judge shall refrain from recommending a relative within the fourth degree of relationship of either the judge or the judge's spouse or the spouse of such person for appointment or employment to another judge serving in the same

court. A judge also shall comply with the requirements of Part 8 of the Rules of the Chief Judge (22 NYCRR Part 8) relating to the Appointment of relatives of judges. Nothing in this paragraph shall prohibit appointment of the spouse of the town or village justice, or other member of such justice's household, as clerk of the town or village court in which such justice sits, provided that the justice obtains the prior approval of the Chief Administrator of the Courts, which may be given upon a showing of good cause.

(D) Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.

(3) Acts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties.

(E) Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the judge has a personal bias or prejudice concerning a party or (ii) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge knows that (i) the judge served as a lawyer in the matter in controversy, or (ii) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or (iii) the judge has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other interest that could be substantially affected by the proceeding;

(d) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding;
(ii) is an officer, director or trustee of a party;
(iii) has an interest that could be substantially affected by the proceeding;

(e) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding or is likely to be a material witness in the proceeding.

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

(g) notwithstanding the provisions of subparagraphs (c) and (d) above, if a judge would be disqualified because of the appearance or discovery, after the matter was assigned to the judge, that the judge individually or as fiduciary, the judge's spouse, or a minor child residing in his or her household has an economic interest in a party to the proceeding, disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(F) Remittal of Disqualification. A judge disqualified by the terms of subdivision (E), except subparagraph (1)(a)(i), subparagraph (1)(b)(i) or (iii) or subparagraph (1)(d)(i) of this section, may disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Historical Note
Sec. filed Aug.1, 1972; amd. Filed Nov. 26, 1976; renum. 111.3, new added by renum. and amd. 33.3, filed Feb. 2, 1982; amds. filed: Nov. 15, 1984; July 14, 1986; June 21, 1988; July 13, 1989; Oct. 27, 1989; replaced, new filed Feb. 1, 1996 eff. Jan. 1, 1996.
Amended 100.3 (B)(9)-(11) & (E)(1)(f) - (g) Feb. 14, 2006
Amended 100.3(C)(3) and 100.3(E)(1)(d) & (e) Feb. 28, 2006

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

(A) Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra- judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) detract from the dignity of judicial office; or

(3) interfere with the proper performance of judicial duties and are not incompatible with judicial office.

(B) Avocational Activities. A judge may speak, write, lecture, teach and participate in extra-judicial activities subject to the requirements of this Part.

(C) Governmental, Civic, or Charitable Activities.

(1) A full-time judge shall not appear at a public hearing before an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(2)

(a) A full-time judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy in matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(b) A judge shall not accept appointment or employment as a peace officer or police officer as those terms are defined in section 1.20 of the Criminal Procedure Law.

(3) A judge may be a member or serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Part.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that ordinarily would come before the judge, or
(ii) if the judge is a full-time judge, will be engaged regularly in adversary proceedings in any court.

(b) A judge as an officer, director, trustee or non-legal advisor, or a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities;

(ii) may not be a speaker or the guest of honor at an organization's fund-raising events, but the judge may attend such events. Nothing in this subparagraph shall prohibit a judge from being a

speaker or guest of honor at a court employee organization, bar association or law school function or from accepting at another organization's fund-raising event an unadvertised award ancillary to such event;

(iii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice; and

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, but may be listed as an officer, director or trustee of such an organization. Use of an organization's regular letterhead for fund-raising or membership solicitation does not violate this provision, provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.

(D) Financial activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position;

(b) involve the judge with any business, organization or activity that ordinarily will come before the judge; or

(c) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge, subject to the requirements of this Part, may hold and manage investments of the judge and members of the judge's family, including real estate.

(3) A full-time judge shall not serve as an officer, director, manager, general partner, advisor, employee or other active participant of any business entity, except that:

(a) the foregoing restriction shall not be applicable to a judge who assumed judicial office prior to July 1, 1965, and maintained such position or activity continuously since that date; and

(b) a judge, subject to the requirements of this Part, may manage and participate in a business entity engaged solely in investment of the financial resources of the judge or members of the judge's family; and

(c) any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from this paragraph during the period of such interim or temporary appointment.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except:

(a) a "gift" incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under section 100.3(E);

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and if its value exceeds $150.00, the judge reports it in the same manner as the judge reports compensation in Section 100.4(H).

(E) Fiduciary Activities.

(1) A full-time judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, designated by an instrument executed after January 1, 1974, except for the estate, trust or person of a member of the judge's family, or, with the approval of the Chief Administrator of the Courts, a person not a member of the judge's family with whom the judge has maintained a longstanding personal relationship of trust and

confidence, and then only if such services will not interfere with the proper performance of judicial duties.

(2) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

(3) Any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from paragraphs (1) and (2) during the period of such interim or temporary appointment.

(F) Service as Arbitrator or Mediator. A full-time judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

(G) Practice of Law. A full-time judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to a member of the judge's family.

(H) Compensation, Reimbursement and Reporting.

(1) Compensation and reimbursement. A full-time judge may receive compensation and reimbursement of expenses for the extra- judicial activities permitted by this Part, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(c) No full-time judge shall solicit or receive compensation for extra- judicial activities performed for or on behalf of: (1) New York State, its political subdivisions or any office or agency thereof; (2) school, college or university that is financially supported primarily by New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for a lecture or for teaching a regular course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or (3) any private legal aid bureau or society designated to represent indigents in accordance with article 18-B of the County Law.

(2) Public Reports. A full-time judge shall report the date, place and nature of any activity for which the judge received compensation in excess of $150, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge.

The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law.

(I) Financial Disclosure. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this section and in section 100.3(F), or as required by Part 40 of the Rules of the Chief Judge (22 NYCRR Part 40), or as otherwise required by law.

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

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

(A) Incumbent judges and others running for public election to judicial office.

(1) Neither a sitting judge nor a candidate for public election to judicial office shall directly or indirectly engage in any political activity except (i) as otherwise authorized by this section or by law, (ii) to vote and to identify himself or herself as a member of a political party, and (iii) on behalf of measures to improve the law, the legal system or the administration of justice. Prohibited political activity shall include:

(a) acting as a leader or holding an office in a political organization;

(b) except as provided in Section 100.5(A)(3), being a member of a political organization other than enrollment and membership in a political party;

(c) engaging in any partisan political activity, provided that nothing in this section shall prohibit a judge or candidate from participating in his or her own campaign for elective judicial office or shall restrict a non- judge holder of public office in the exercise of the functions of that office;

(d) participating in any political campaign for any office or permitting his or her name to be used in connection with any activity of a political organization;

(e) publicly endorsing or publicly opposing (other than by running against) another candidate for public office;

(f) making speeches on behalf of a political organization or another candidate;

(g) attending political gatherings;

(h) soliciting funds for, paying an assessment to, or making a contribution to a political organization or candidate; or

(i) purchasing tickets for politically sponsored dinners or other functions, including any such function for a non-political purpose.

(2) A judge or non-judge who is a candidate for public election to judicial office may participate in his or her own campaign for judicial office as provided in this section and may contribute to his or her own campaign as permitted under the Election Law. During the Window Period as defined in Subdivision (Q) of section 100.0 of this Part, a judge or non-judge who is a candidate for public election to judicial office, except as prohibited by law, may:

(i) attend and speak to gatherings on his or her own behalf, provided that the candidate does not personally solicit contributions;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy, and distribute pamphlets and other promotional campaign literature supporting his or her candidacy;

(iii) appear at gatherings, and in newspaper, television and other media advertisements with the candidates who make up the slate of which the judge or candidate is a part;

(iv) permit the candidate's name to be listed on election materials along with the names of other candidates for elective public office;

(v) purchase two tickets to, and attend, politically sponsored dinners and other functions, provided that the cost of the ticket to such dinner or other function shall not exceed the proportionate cost of the dinner or function. The cost of the ticket shall be deemed to constitute the proportionate cost of the dinner or function if the cost of the ticket is $250 or less. A candidate may not pay more than $250 for a ticket unless he or she obtains a statement from the sponsor of the dinner or function that the amount paid represents the proportionate cost of the dinner or function.

(3) A non-judge who is a candidate for public election to judicial office may also be a member of a political organization and continue to pay ordinary assessments and ordinary contributions to such organization.

(4) A judge or a non-judge who is a candidate for public election to judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under this Part;

(c) except to the extent permitted by Section 100.5(A)(5), shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Part;

(d) shall not:

(i) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;
(ii) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office;
(iii) knowingly make any false statement or misrepresent the identity, qualifications, current position or other fact concerning the candidate or an opponent; but

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate subparagraphs 100.5(A)(4)(a) and (d).

(f) shall complete an education program, either in person or by videotape or by internet correspondence course, developed or approved by the Chief Administrator or his or her designee within 30 days after receiving the nomination or 90 days prior to receiving the nomination for judicial office. The date of nomination for candidates running in a primary election shall be the date upon which the candidate files a designating petition with the Board of Elections. This provision shall apply to all candidates for elective judicial office in the Unified Court System except for town and village justices.

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

(5) A judge or candidate for public election to judicial office shall not personally solicit or accept campaign contributions, but may establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions and support from the public, including lawyers, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees may solicit and accept such contributions and support only

during the window period. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

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

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

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

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

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

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

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

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

Historical Note
Sec. filed Aug. 1, 1972; renum. 111.5, new added by renum. and amd. 33.5, filed Feb. 2, 1982; amds. filed: Dec. 21, 1983; May 8, 1985; March 2, 1989; April 11, 1989; Oct. 30, 1989; Oct. 31, 1990; repealed, new filed; amd. filed March 25, 1996 eff. March 21, 1996. Amended (A)(2)(v).

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

Section 100.6 Application of the rules of judicial conduct.

(A) General application. All judges in the unified court system and all other persons to whom by their terms these rules apply, e.g., candidates for elective judicial office, shall comply with these rules of judicial conduct, except as provided below. All other persons, including judicial hearing officers, who perform judicial functions within the judicial system shall comply with such rules in the performance of their judicial functions and otherwise shall so far as practical and appropriate use such rules as guides to their conduct.

(B) Part-time judge. A part-time judge:

(1) is not required to comply with section 100.4(C)(1), 100.4(C)(2)(a), 100.4(C)(3)(a)(ii), 100.4(E)(1), 100.4(F), 100.4(G), and 100.4(H);

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

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

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

(5) Nothing in this rule shall further limit the practice of law by the partners or associates of a part-time judge in any court to which such part-time judge is temporarily assigned to serve pursuant to section 106(2) of the Uniform Justice Court Act or Section 107 of the Uniform City Court Act in front of another judge serving in that court before whom the partners or associates are permitted to appear absent such temporary assignment.

(C) Administrative law judges. The provisions of this Part are not applicable to administrative law judges unless adopted by the rules of the employing agency.

(D) Time for compliance. A person to whom these rules become applicable shall comply immediately with all provisions of this Part, except that, with respect to section 100.4(D)(3) and 100.4(E), such person may make application to the Chief Administrator for additional time to comply, in no event to exceed one year, which the Chief Administrator may grant for good cause shown.

(E) Relationship to Code of Judicial Conduct. To the extent that any provision of the Code of Judicial Conduct as adopted by the New York State Bar Association is inconsistent with any of these rules, these rules shall prevail.

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

Amended 100.6(E) Feb. 14, 2006

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

APPENDIX F:

DETERMINATIONS RENDERED BY THE COMMISSION IN 2014

TABLE OF CONTENTS

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

– –

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

RICHARD H. ACKERSON,

a Justice of the Suffern Village Court,
Rockland County.

DECISION
AND
ORDER

– –

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Pamela Tishman, Of Counsel) for the Commission

Ferrick Lynch MacCartney PLLC (by Brian D. Nugent) for Judge Ackerson

The matter having come before the Commission on May 29, 2014; and the Commission having before it the Stipulation dated May 20, 2014; and Judge Ackerson having affirmed that he will vacate his judicial office when his current term expires on

December 1, 2014, and that he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law §45 to the limited extent that the Stipulation will become public upon being accepted by the Commission; now, therefore, it is

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

SO ORDERED.

Dated: May 29, 2014

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

TABLE OF CONTENTS

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

RICHARD H. ACKERSON,

a Justice of the Suffern Village Court, Rockland County.

STIPULATION

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Richard H. Ackerson and his attorney Brian Nugent of Ferrick Lynch MacCartney.

1. Richard H. Ackerson served as an appointed Justice of the Suffern Village Court, Rockland County, for various times periods between 1974 and 2010. He was elected as a Justice of the Suffern Village Court in November 2010 and commenced his term on December 6, 2010. His current term expires on December 1, 2014. His annual salary is $27,892.

2. Judge Ackerson was apprised by the Commission in August 2013 that it was investigating complaints that he was suffering from a medical condition that interfered with his ability to perform the duties associated with his judicial office.

3. On March 25, 2014, the Chief Administrative Judge of the New York State Unified Court System, A. Gail Prudenti, issued an administrative order reassigning all cases pending before Judge Ackerson to another Village Justice, and directing that no further matters be assigned to him.

4. Judge Ackerson affirms that he will not challenge the Chief Administrative Judge's order.

5. Judge Ackerson affirms that he will vacate his judicial office when his current term expires on December 1, 2014, and that he will neither seek nor accept judicial office at any time in the future.

6. Judge Ackerson understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time upon expiration of his current term of his office, the present proceedings before the Commission 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 recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. The terms of this Stipulation shall not be effective unless and until the Commission approves this Stipulation and accepts the Administrator's recommendation that the matter be concluded, by the terms of the Stipulation, without further proceedings.

9. Judge Ackerson waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that this Stipulation will become public upon being approved by the Commission.

Dated: 5/15/14

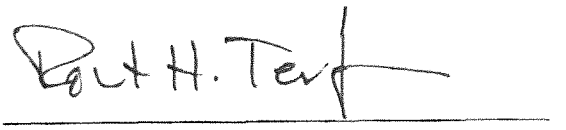
Honorable Richard H. Ackerson

Dated: 5/15/14

Brian Nugent
Ferrick Lynch MacCartney
Attorney for Judge Ackerson

TABLE OF CONTENTS

Dated: May 20, 2014



Robert H. Tembeckjian
Administrator and Counsel to the Commission
(Pamela Tishman, Of Counsel)

TABLE OF CONTENTS

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- -

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

ROBERT J. BLAIN,

a Justice of the Prattsville Town Court,
Greene County.

DECISION
AND
ORDER

- -

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Jill S. Polk, Of Counsel) for the Commission

Corrigan, McCoy and Bush, PLLC (by Scott W. Bush) for Judge Blain

The matter having come before the Commission on July 17, 2014; and the Commission having before it the Stipulation dated July 9, 2014; and Judge Blain having tendered his resignation by letter dated June 13, 2014, effective immediately, and having

TABLE OF CONTENTS

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 §45 to the limited extent that the Stipulation will become public upon being signed by the parties 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 according to the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Mr. Stoloff was not present.

Dated: July 18, 2014

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

TABLE OF CONTENTS

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

ROBERT J. BLAIN,

STIPULATION

A Justice of the Prattsville Town Court,
Greene County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Robert J. Blain and his attorney, Scott W. Bush, of Corrigan, McCoy and Bush, PLLC.

1. Robert J. Blain was appointed Justice of the Prattsville Town Court, Greene County, in August 1987, and served until December 31, 1987. He was elected Justice of the Prattsville Town Court in November 1987, commenced that term on January 1, 1988, and has been a Justice of the Prattsville Town Court, Greene County, since that time. His current term expires on December 31, 2017. He is not an attorney.

2. Judge Blain was apprised by the Commission in August 2013 that it was investigating a complaint that an audit of the Prattsville Town Court by the Office of the New York State Comptroller found multiple financial irregularities in the court accounts and insufficient oversight by Judge Blain over his court clerk.

3. Judge Blain has tendered his resignation by letter dated June 13, 2014, a copy of which is annexed as Exhibit 1. He vacated his judicial office on June 13, 2014.

4. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days

TABLE OF CONTENTS

from the date of a judge's resignation to complete proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.

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

6. Judge Blain 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, 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 recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge Blain 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: 07/07/14

Honorable Robert J. Blain

Dated: 7/11/2014

Scott W. Bush
Corrigan, McCoy and Bush, PLLC
Attorney for Judge Blain

TABLE OF CONTENTS

Dated: July 9, 2014

Robert H. Tembeckjian
Administrator and Counsel to the Commission
(Jill S. Polk, Of Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV

EXHIBIT 1: LETTER OF RESIGNATION

TABLE OF CONTENTS

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- -

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

ARLENE M. BROWN,

a Justice of the Bennington Town Court,
Wyoming County.

DECISION
AND
ORDER

- -

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (David M. Duguay, Of Counsel) for the Commission

Honorable Arlene M. Brown, *pro se*

The matter having come before the Commission on July 17, 2014; and the Commission having before it the Stipulation dated June 19, 2014; and Judge Brown having tendered her resignation by letter dated May 29, 2014, effective immediately, and

TABLE OF CONTENTS

having affirmed that she will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law §45 to the limited extent that the Stipulation will be made public upon being signed by the parties 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 according to the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Mr. Stoloff was not present.

Dated: July 18, 2014

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

TABLE OF CONTENTS

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

ARLENE M. BROWN, **STIPULATION**

a Justice of the Bennington Town Court,
Wyoming 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 Arlene M. Brown, as follows:

1. Judge Brown served as Bennington Town Justice from January 1, 2008 to May 29, 2014. She is not an attorney.

2. In 2013 and 2014, the Commission opened investigations of complaints containing allegations that Judge Brown engaged in misconduct in violation of the Rules Governing Judicial Conduct. In particular, it was alleged that she (1) failed to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; (2) failed to avoid impropriety and the appearance of impropriety, in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; (3) failed to perform the duties of judicial office impartially and diligently, in that she failed to be faithful to the law and maintain professional competence in it, in violation of Section

100.3(B)(1) of the Rules, and (4) failed to perform the duties of judicial office impartially and diligently, in that she failed to accord every person who has a legal interest in a proceeding the right to be heard according to law, in violation of Section 100.3(B)(6) of the Rules; and (5) failed to disqualify herself in proceedings in which her impartiality might reasonably be questioned, in violation of Section 100.3(E)(1)(d)(i) of the Rules.

3. Judge Brown submitted her resignation as Bennington Town Justice by letter dated May 29, 2014, addressed to a supervising judge, Town of Bennington officials, and the Wyoming County Board of Elections. Judge Brown's resignation became effective on the date of the letter. A copy of the resignation letter is appended as Exhibit 1.

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

5. Judge Brown affirms that she will neither seek nor accept judicial office at any time in the future.

6. Judge Brown understands that should she hold any judicial position at any time, the Commission's investigation of the complaint against her will be revived and the matter will proceed.

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

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

Dated:

Honorable Arlene M. Brown

Dated: 6/19/2014

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

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV

EXHIBIT 1: LETTER OF RESIGNATION

TABLE OF CONTENTS

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

EDWARD D. BURKE, SR.,

a Justice of the Southampton Town Court,
Suffolk County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Pamela Tishman, Of Counsel) for the Commission

Zuckerman Spaeder LLP (by Paul Shechtman) for the Respondent

The respondent, Edward D. Burke, Sr., a Justice of the Southampton Town Court, Suffolk County, was served with a Formal Written Complaint dated January 22,

TABLE OF CONTENTS

2013, containing four charges. The Formal Written Complaint alleged that respondent: (i) rode in a police car with a defendant after arraigning him, recommended that he hire an attorney who was the judge's business partner, gave the defendant legal advice and thereafter presided over his case (Charge I); (ii) used his judicial title to promote his law firm and business (Charge II); (iii) imposed fines that exceeded the maximum authorized by law (Charge III); and (iv) made improper political contributions (Charge IV). Respondent filed an answer dated February 27, 2013.

By Order dated March 5, 2013, the Commission designated Peter Bienstock, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 18 and 19, 2013, in New York City. The referee filed a report dated December 3, 2013.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Commission counsel recommended the sanction of removal, and respondent argued that a sanction greater than censure was unwarranted.

On March 6, 2014, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Southampton Town Court, Suffolk County, since 2008, and previously served in that position from 1994 until July 2000. His current term expires on December 31, 2015. From 2000 to 2007 he was a Judge of the Court of Claims and an Acting Supreme Court Justice. He was admitted to practice law in the State of New York in 1970.

TABLE OF CONTENTS

As to Charge I of the Formal Written Complaint:

2. On Saturday, March 14, 2009, at 2:07 AM Michael Matus was charged with Driving While Intoxicated in Sag Harbor. At 9:00 AM on that date, respondent arraigned Mr. Matus in the Southampton Town Court, suspended his driver's license and released him on his own recognizance. During the arraignment, respondent told Mr. Matus on the record that he could apply to the court for a hardship driver's license.

3. Following the arraignment, respondent, who had left his vehicle at a service station, asked the police for a ride home and was driven to his home in the police car transporting Mr. Matus back to Sag Harbor. Respondent sat in the front seat with a police officer, and Mr. Matus was in the back seat. During the ride, respondent told Mr. Matus that he could no longer hear Mr. Matus' case because he was riding in the police car with him. Mr. Matus told respondent that the suspension of his driver's license would cause extreme hardship since he had to drive his wife to New York City for cancer treatments. Respondent again told Mr. Matus that he could apply for a hardship license.

4. Mr. Matus, who lived in Amagansett, told respondent that he did not know any attorneys. Respondent suggested at least one Amagansett attorney, Tina K. Piette. At that time, respondent and Ms. Piette were co-owners of two investment real estate properties.

5. Mr. Matus met with and retained Ms. Piette the next day. At the hearing, Mr. Matus testified that respondent's recommendation influenced his decision to hire Ms. Piette "to a minor extent" and that he discussed the subject with friends before

TABLE OF CONTENTS

deciding to hire Ms. Piette.

6. Upon learning that respondent was sitting on March 17th in the part that would hear Mr. Matus' application for a hardship license, Ms. Piette told Mr. Matus that she could not appear before respondent but could assist Mr. Matus in preparing the application. Ms. Piette authored a letter, signed by Mr. Matus, asking that the application be heard on March 17th and filled in a portion of the application, which requested a hardship license so that Mr. Matus could drive his wife to and from a medical facility in New York City. The papers were filed in the Southampton Town Court on March 16, 2009.

7. On March 17, 2009, Ms. Piette drove Mr. Matus to the Southampton courthouse and waited outside of the court while Mr. Matus appeared before respondent. Respondent granted the application for a hardship license so that Mr. Matus could drive his wife to and from medical appointments and could also drive to appointments for alcohol evaluation and therapy. Respondent did not preside over any subsequent proceedings in the *Matus* case.

8. At the hearing before the referee, respondent testified that he did not disqualify himself from Mr. Matus' application for a hardship license since he considered it to be "administrative," but respondent conceded that granting the application was an exercise of discretion. Respondent acknowledged that it was improper to ride in the police car with Mr. Matus, to speak *ex parte* with him during the ride, and to recommend Ms. Piette as a lawyer.

As to Charge II of the Formal Written Complaint:

9. Respondent is a partner in the law firm of Burke & Sullivan, PLLC, and has held a majority ownership interest in the firm since January 1, 2008. In March 2010 the law firm's website contained the following statement in the section that provided information about the firm's attorneys:

> "The Hon. Edward D. Burke, Sr., is an outstanding and respected jurist, serving as a Southampton Town Justice (1994-2000 & 2008 to present)... having been elected in 1993, 1995, 1999 and 2007. In August of 2000, he was appointed as New York State Court of Claims Judge and assigned to the Supreme Court Bench in Riverhead, where he earned the respect and trust of his colleagues and the public through his fair and wise administration of justice."

10. Respondent testified that he had nothing to do with the contents of the website, did not review the website and did not know how to access it. He acknowledged that he did not instruct his law office staff regarding the limitations on using his judicial position to promote his law practice.

11. The language describing respondent as "an outstanding and respected jurist" was deleted on the website after the Commission questioned respondent about it during its investigation.

As to Charge III of the Formal Written Complaint:

12. On more than 200 occasions between late 2008 and January 2011, respondent imposed fines in excess of the maximum amount authorized by law, most often $200 instead of $150, in cases involving defendants who pled guilty to violations of section 1202(a) of the Vehicle and Traffic Law ("VTL") (stopping, standing or parking in

TABLE OF CONTENTS

prohibited places), reduced from a charge of Speeding or other moving violation.[1]

13. In the fall of 2008, the chief clerk of the Southampton Town Court attended a State Magistrates Association training conference, where she learned that the maximum fine for a violation of VTL §1202(a) was $150. In late 2008 or early 2009, the clerk told the judges of the Southampton Town Court that she had learned that the maximum fine for such violations was $150.

14. Despite such notice from the clerk, respondent took no action to determine whether the clerk's information was correct and continued until approximately January 2011 to impose fines greater than $150 for violations of VTL §1202(a).

15. At the hearing before the referee, respondent testified that after the clerk spoke to him about the fine amount, he began to ask defendants to waive the maximum fine amount in exchange for the plea bargain (a reduction of the original charge and no "points" on their driver's license), to which the defendants consented.

16. Respondent testified that it had been the court's practice to impose a $200 fine in such matters and that after the clerk spoke to him, he still believed that a $200 fine was permissible, in part because the district attorney recommended that amount on occasion. He also testified that while some judges imposed a $150 fine plus community service, he did not believe that community service was an appropriate or authorized sentence in such matters, and he believed that a higher fine amount was

[1] There is evidence that some of the 285 cases listed on Schedule A of the Formal Written Complaint involved multiple tickets, for which the cumulative fine might exceed $150, and in a few instances the district attorney recommended a $200 fine. The maximum fine for a first offense for VTL §1202(a) is $150; the maximum for a second offense is $300; and the maximum for a third offense is $450 (V&T §1800[b][1]).

TABLE OF CONTENTS

appropriate, especially in cases where the alleged speed was very high. He testified that he stopped imposing fines higher than $150 for such violations when the court clerk continued to object.

As to Charge IV of the Formal Written Complaint:

17. Respondent is a name partner in the law firm of Burke & Sullivan, PLLC, and has held a majority ownership interest in the firm since 2008. From May 2008 through June 2010, respondent's law firm made approximately 30 contributions to political organizations or candidates in amounts ranging from $75 to $500, totaling approximately $6,500. One check was signed by respondent, and most of the others were signed by a secretary and authorized by respondent's daughter, Denise Burke O'Brien, an attorney with the firm who was politically active. Most of the contributions were for tickets to attend politically sponsored events.

18. Respondent is the owner of Edward D. Burke Realty Co., Inc. ("Burke Realty") and was the owner from 2004 through 2009. In 2004 and 2006, while respondent was a Judge of the Court of Claims, and in 2009, while he was a town justice, Burke Realty made a total of five contributions, totaling $1,000, to political organizations or candidates. Respondent signed one check, a $500 contribution in 2004, which he testified was for a golf outing sponsored by a political organization. Four checks were signed by the company's property manager.

19. All of the above contributions were made when respondent was not a candidate for judicial office and were outside of the window period for judicial

TABLE OF CONTENTS

candidates as defined by Section 100.0(Q) of the Rules Governing Judicial Conduct.[2]

20. Respondent testified that, except for the checks he signed, he was unaware of the political contributions by his law firm and business. He acknowledged that the contributions were improper and that he failed to take appropriate steps to ensure that his law firm and his business adhered to the limitations on making political contributions while he was 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)(1), 100.3(B)(6), 100.3(E)(1) and 100.5(A)(1)(h) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I through 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.

The record before us demonstrates that respondent engaged in behavior, both on and off the bench, that was inconsistent with well-established ethical standards prohibiting judges from lending the prestige of judicial office to advance private interests and requiring every judge, *inter alia*, to maintain professional competence in the law and to avoid even the appearance of impropriety (Rules, §§100.2, 100.2[C], 100.3[B][1]).

[2] During a window period (from nine months before the selection of candidates to six months after the primary, convention, caucus or general election), a judicial candidate may purchase two tickets to attend politically sponsored dinners or other functions (22 NYCRR §§100.0[Q], 100.5[A][2][v]).

Respondent's misconduct, which is essentially undisputed, showed poor judgment in several respects and insensitivity to his ethical obligations.

In the *Matus* matter, the most serious of the charges, it is undisputed that respondent rode in a police car with the defendant after arraigning him on a charge of Driving While Intoxicated, had *ex parte* communications with him in the police car, and recommended that he hire an attorney who was respondent's business associate. Getting into the police car with the defendant, in itself, showed poor judgment since it created an appearance of impropriety that would necessarily require his recusal in the defendant's case. Compounding the impropriety, respondent violated the prohibition against *ex parte* communications (Rules, §100.3[B][6]) by engaging the defendant in discussion about his case, not only encouraging him to apply for a hardship driver's license but also recommending that he hire a particular attorney. Regardless of whether respondent recommended three local attorneys (as he testified) or only Ms. Piette (as Mr. Matus recalled), it was highly improper for respondent even to suggest that the defendant hire an attorney with whom respondent had a business relationship. Such a recommendation, cloaked with the prestige of judicial office, advanced the private interests of Ms. Piette (whom the defendant retained shortly thereafter), in violation of Section 100.2(C) of the Rules. Notwithstanding Mr. Matus' testimony that he did not rely on respondent's recommendation but only hired Ms. Piette after discussing the matter with friends, the appearance created by such a recommendation was improper and implicitly coercive.

Finally, two days after respondent had informed the defendant in the police car that he could no longer handle his case because of their ride together, respondent

failed to disqualify himself from Mr. Matus' hardship license application – the very subject they had discussed *ex parte* in the police car – and granted the application when Mr. Matus appeared before him. Since his impartiality could reasonably be questioned in the matter, respondent's disqualification (or, at least, disclosure of the *ex parte* conversation that had taken place) was required by the ethical rules (Rules, §100.3[E][1]), even if the application seemed routine or ministerial. Respondent's assertion that he viewed the application as an "administrative" matter that did not require his recusal is unpersuasive since, as he ultimately conceded, granting such an application necessarily involves the exercise of judicial discretion (VTL §1193[2][e][7][e]). As the Court of Appeals recently stated, "A judge's perception of the nature or seriousness of the subject matter of the litigation has no bearing on the duty to recuse…" (*Matter of George*, 22 NY3d 323, 328 [2013]).

In sum, respondent's handling of the *Matus* case was inconsistent with numerous fundamental ethical principles. Viewed objectively, the totality of his conduct – chatting with a defendant about his case during a ride in a police car, recommending that the defendant retain a lawyer with whom the judge had a business relationship, and granting the relief requested by the defendant even after respondent had indicated he could not handle the case – breached the appropriate boundaries between a judge and a litigant and thereby created "a very public appearance of impropriety" (Referee's report 13), which adversely affects public confidence in the judiciary as a whole.

In addition, in more than 200 cases involving plea reductions from moving violations to a parking offense (VTL §1202[a]), respondent imposed a fine that exceeded

the $150 maximum amount authorized by statute for a first-time conviction for the parking offense. Significantly, he continued to impose such excessive fines for many months even after the chief court clerk advised him that, as she had learned at a training conference, the maximum fine was $150. Even if respondent was not required to accept the clerk's advice at face value, her comments put him on notice of an important issue and should have prompted him to make sure he was acting in compliance with the law. Instead, as he has acknowledged, he took no action to determine whether the clerk's information was correct, but simply began to ask defendants to waive the maximum fine amount in exchange for the plea bargain (a reduction of the original charge and no "points" on their driver's license).

Respondent testified that at the time, notwithstanding his clerk's advice, he still believed that a $200 fine was permissible and appropriate, especially in cases where the alleged speed was very high. Every judge is required to maintain professional competence in the law (Rules, §100.3[B][1]), and it is inconsistent with the Rules that, having been put on notice that he was regularly imposing fines that were contrary to law, respondent took no action to ensure that the fines he imposed were in accordance with the statute. Nor is it any excuse that the district attorney recommended that fine amount on occasion, or that other judges may have been imposing similar, unlawful sentences. *See Matter of Sardino*, 58 NY2d 286, 291 (1983) (holding that it was irrelevant to the charged misconduct that other judges may have engaged in similar practices). To be sure, not every mistake of law, or even repeated errors, will rise to the level of judicial misconduct. *Compare*, *Matter of Bauer*, 3 NY3d 158 (2004) (judge was removed for

systematic disregard of legal requirements, including persistent violation of defendants' constitutional rights resulting in illegal incarcerations); *Matter of Tyler*, 75 NY2d 525 (1990) (town justice's legal error in failing to recognize her lack of authority to order child support was insufficient to sustain a charge of misconduct). However, where, as here, respondent persisted in the conduct for many months even after he was on notice that he was transgressing the limits of the law, such error constitutes misconduct.

It is also undisputed that over a six-year period respondent's law firm and realty business made more than 30 contributions, totaling approximately $7,500, to political organizations and candidates. Section 100.5(A)(i)(h) of the Rules prohibits a judge from making such contributions, and since judges "cannot do indirectly that which is forbidden explicitly," contributions by a judge's law firm are also improper (Advisory Op 96-29; *see* Rules, §100.5[A]; *Matter of DeVaul*, 1986 NYSCJC Annual Report 83). Although respondent testified that these contributions were made without his knowledge, except for the two checks he signed, and it appears that most of the law firm's contributions were authorized by his daughter, an attorney with the firm who was politically active, this does not excuse the impropriety. At the very least, there was an appearance that respondent, who owned the realty business that bore his name and who was a name partner and held a majority interest in his law firm, was responsible for or endorsed the contributions by those entities. As the referee stated, such "blatant and direct" political contributions, which are prohibited by clear ethical rules, "must not be countenanced" (Referee's report 28). Respondent, with years of experience as a judge, was familiar with the relevant rules and clearly should have been more sensitive to his

TABLE OF CONTENTS

obligation to ensure that his law firm and business adhered to the strict limitations on political contributions. The onus was on respondent to ensure that his law firm and business were in compliance with the ethical rules (*see Matter of Kelly*, 2012 NYSCJC Annual Report 113).

Finally, we find that the descriptive language on respondent's law firm website as to both his current and former judicial positions was improper. While the website of a judge's law firm may contain a "simple, direct statement" of his or her judicial position (*see* Advisory Ops 09-59/09-86), it was inconsistent with the prescribed standards for the firm's website to refer to respondent as "an outstanding and respected jurist" who, in his former judicial position, "earned the respect and trust of his colleagues and the public through his fair and wise administration of justice." We reject respondent's suggestion that laudatory references to his prior judicial position are permissible because similar language is used by some former judges in connection with post-judicial activities. The Rules Governing Judicial Conduct apply to judges of the state unified court system, not former judges (unless, like judicial hearing officers, they perform judicial functions within the judicial system [*see* Rules, §100.6[A]). By promoting his law firm through laudatory descriptions of his ability and reputation as a judge, respondent lent the prestige of judicial office to advance his private interests, in violation of section 100.2(C) of the Rules.

In considering the appropriate sanction, we have considered the totality of the circumstances presented here. In particular, as to the *Matus* case, while respondent showed extremely poor judgment by getting into the police car with the defendant,

TABLE OF CONTENTS

recommending an attorney and presiding over the defendant's hardship license application, it appears that he was motivated by a sincere desire to help the defendant find an attorney near his home and obtain a hardship license so that he could drive his wife to medical treatments, and it was the defendant's perception that the judge was "compassionate." Nor do we find any improper motive in respondent's imposition of excessive fines; as he indicated, he could properly have imposed the same or higher amount had the charge been reduced to another section of the same statute. We further note that several factors, including the fact that the district attorney had recommended the improper fine amount, appear to have bolstered respondent's belief that the fine was permissible, and that he eventually stopped the practice after his clerk continued to raise the issue. Finally, we are mindful that respondent has acknowledged his misconduct as to each of the charges and has an otherwise unblemished record in 20 years of service as a judge. In view of these factors, we believe that the sanction of censure is appropriate.

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

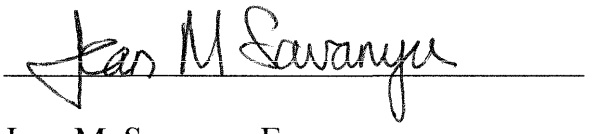
Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

Mr. Belluck did not participate.

CERTIFICATION

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

Dated: April 21, 2014



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

TABLE OF CONTENTS

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

PHILIP A. CRANDALL,

a Justice of the Coeymans Town Court
and an Acting Justice of the Ravena
Village Court, Albany County.

DECISION
AND
ORDER

- -

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

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

Corrigan, McCoy & Bush, PLLC (by Scott W. Bush) for the Respondent

The matter having come before the Commission on March 6, 2014; and the Commission having before it the Stipulation dated February 25, 2014, with the appended

TABLE OF CONTENTS

exhibits; and respondent having tendered his resignation from judicial office by letters dated February 17 and 20, 2014, effective February 28, 2014, and having affirmed that he will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law §45 to the limited extent that the Stipulation and the Commission's Decision and Order thereto will be made public; now, therefore, it is

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

SO ORDERED.

Dated: March 6, 2014

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

TABLE OF CONTENTS

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

PHILIP A. CRANDALL,

a Justice of the Coeymans Town Court and
an Acting Justice of Ravena Village Court,
Albany County.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, and the Honorable Philip A. Crandall ("Respondent"), who is represented in these proceedings by Scott W. Bush, Esq., as follows:

1. Respondent has been an Acting Justice of the Ravena Village Court, Albany County, since 2008, and a Justice of the Coeymans Town Court, Albany County, since 2012. Respondent's current term as Acting Ravena Village Justice expires on May 31, 2014. His term as Coeymans Town Justice expires on December 31, 2015. Respondent is not an attorney.

2. Respondent was served with a Formal Written Complaint dated October 30, 2013, containing four charges.

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

4. Respondent filed an Answer dated November 18, 2013, which is appended as Exhibit 2.

5. A hearing before a referee designated by the Commission has been scheduled to commence on March 10, 2014.

6. Respondent tendered his resignations, dated February 17 and 20, 2014, copies of which are annexed as Exhibit 3 and Exhibit 4, effective February 28, 2014. Respondent affirms that he will vacate both judicial offices as of close of business on February 28, 2014.

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

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

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

10. 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.

11. 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: 2/25/2014

Honorable **Philip A. Crandall**
Respondent

Dated: 2/25/2014

Scott W. Bush, Esq.
Corrigan, McCoy & Bush, PLLC
Attorney for Respondent

Dated: February 25, 2014

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

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV

EXHIBIT 1: FORMAL WRITTEN COMPLAINT
EXHIBIT 2: ANSWER
EXHIBITS 3 AND 4:RESPONDENT'S LETTERS OF RESIGNATION

TABLE OF CONTENTS

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 L. GUMO,

a Justice of the Delhi Town Court and
an Acting Justice of the Walton Village
Court, Delaware County.

DETERMINATION

– –

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Edward Lindner and Thea Hoeth, Of Counsel)
for the Commission

Honorable Richard L. Gumo, *pro se*

The respondent, Richard L. Gumo, a Justice of the Delhi Town Court and an Acting Justice of the Walton Village Court, Delaware County, was served with a Formal Written Complaint dated August 28, 2013, containing one charge. The Formal

TABLE OF CONTENTS

Written Complaint alleged that respondent: (i) presided over a Disorderly Conduct case without disqualifying himself or disclosing that a key prosecution witness was the daughter of the court clerk; (ii) permitted the court clerk to perform clerical duties in connection with the case and to be in the courtroom during the trial; and (iii) after convicting and sentencing the defendant, sent a letter to the County Court Judge hearing the appeal that contained legal arguments and facts outside the record. Respondent filed a verified answer dated September 9, 2013.

By Order dated November 1, 2013, the Commission designated David M. Garber, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on February 12, 2014, in Albany. The referee filed a report dated June 23, 2014, and a supplemental report dated June 30, 2014.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Commission counsel recommended the sanction of admonition, and respondent recommended dismissal of the charge.

On September 18, 2014, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Delhi Town Court, Delaware County, since 2007 and has served as Acting Justice of the Walton Village Court since 2009. Respondent is an attorney and was admitted to the practice of law in New York in 1967.

TABLE OF CONTENTS

2. On July 22, 2010, Walton Village Justice Paul Laauser issued a summons charging Jeanie Groat with Disorderly Conduct, a violation under Penal Law Section 240.20. The summons was based on an Information executed by Jeannette Moser-Orr, with a supporting deposition by Diana Parulski, alleging that on July 17, 2010, Ms. Groat, "with the intent to cause public inconvenience, annoyance or alarm, … did use abusive or obscene language" at the Delaware County Fairgrounds by shouting, among other things, that she would "come after [Ms. Moser-Orr's] fucking job." The alleged incident occurred after Ms. Moser-Orr, who was in charge of a horse show, had refused to permit Ms. Groat's daughter to re-run the course after she was disqualified. After arraigning the defendant on August 5, 2010, Judge Laauser recused himself because of his son's employment in the Village police department, and the case was assigned to respondent.

3. Assistant District Attorney ("ADA") Marybeth Dumont obtained additional supporting depositions from several witnesses, including Colleen Beers. Ms. Beers' deposition dated October 21, 2010, states that Ms. Groat approached Ms. Moser-Orr, used profanities and said that she would have Ms. Moser-Orr fired.

4. Colleen Beers, who was 14 years old at that time, is the daughter of Kristin Beers, the sole clerk of the Walton Village Court. Respondent and Kristin Beers work together three to four hours each week, share an office and have a professional, friendly relationship.

5. On November 17, 2010, ADA Dumont offered to resolve the Disorderly Conduct charge with an Adjournment in Contemplation of Dismissal

("ACD"). The defendant rejected the offer. On December 9, 2010, respondent denied the defendant's motion to dismiss the Information for facial insufficiency.

6. Before presiding over the *Groat* case, respondent reviewed the file, including Colleen Beers' supporting deposition, and thus had reason to know prior to trial that Colleen was a potential witness. Respondent did not disclose, either before or during the trial, that Colleen was the daughter of the court clerk; nor did respondent disqualify himself or inquire of the defendant, her attorney or the prosecutor whether they objected to respondent's presiding in the matter.

7. Respondent testified that at the time he handled the *Groat* case, he believed that since his disqualification was not mandated by Judiciary Law Section 14[1] he was not required either to disqualify himself or to disclose that a witness was the daughter of the court clerk. He also believed that the principal witnesses were Ms. Moser-Orr and Diana Parulski.

8. Prior to the trial, neither the defendant nor her attorney, David P. Lapinel, Esq., was aware that Colleen Beers was the daughter of the Walton Village Court clerk. ADA Dumont knew of the relationship and believed that Mr. Lapinel also was aware of it because, as she later told the County Court, "there was an assumption everybody knew everybody." Respondent did not know whether Mr. Lapinel or ADA

[1] Judiciary Law Section14 ("Disqualification of judge by reason of interest or consanguinity") provides in pertinent part: "A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree."

Dumont was aware of the relationship since the issue was never mentioned in his presence until the sentencing proceeding in October 2011.

9. At the bench trial on February 10, 2011, five witnesses testified for the prosecution. Kim Sanford, the announcer for the horse show, testified that prior to the competition, Ms. Groat appeared to be annoyed with Ms. Moser-Orr. Roger Parulski, the horse show judge, testified that after he disqualified Ms. Groat's daughter and told her she could talk to Ms. Moser-Orr, he heard "raised voice[s]" and "screaming" from the secretary's stand, a work area for the show's staff. Diana Parulski testified that, while sitting in her car about 30 feet away, she saw two women (who she subsequently learned were Ms. Groat and Ms. Moser-Orr) in the area; Ms. Groat was "in a rage" and told Ms. Moser-Orr several times in a loud voice that drew the attention of several people in the vicinity that she would "call her boss" and would "have her lose her job"; she testified that Ms. Groat had "a very aggressive stance" that "was beyond anger to where I was fearful for the other person."

10. Colleen Beers testified that while handing out ribbons near the secretary's stand, she saw and heard the incident from about 15 feet away. She testified that after Ms. Moser-Orr refused to permit Ms. Groat's daughter to re-run the course, Ms. Groat yelled at Ms. Moser-Orr that "she was going to take her job," using the words "frickin'" and "fucking" multiple times.

11. Ms. Moser-Orr testified that when she denied Ms. Groat's request to permit her daughter to re-run the course, Ms. Groat became angry and shouted, "I'm coming after you. I'm coming after your fuckin' job. I'm going to ruin you. I'm calling

your boss"; she testified that Ms. Groat clenched her fist and was so angry and agitated that she (Ms. Moser-Orr) thought Ms. Groat was about to hit her.

12. The defendant acknowledged that during the incident she was angry and loud. She testified that she told Ms. Moser-Orr that she would "take it to [her] boss" and "was going to go over her head to the State and to the County and talk to them about what had happened." She testified that she did not remember using profanity and stated, "I didn't know freaking was a swear." At the conclusion of the trial, respondent reserved decision and scheduled written closing statements.

13. Despite knowing that the court clerk's daughter was a likely witness in the case, respondent did not insulate the court clerk from the case and permitted her to perform her customary clerical and administrative duties in connection with the matter. These duties included making notations in court records (including the date of receipt on documents and the chronology of events on the docket) and sending a scheduling notice on which she signed respondent's name. When the court received her daughter's deposition, she noted the receipt in the file, placed a copy in the file and distributed copies to the attorneys.

14. Although the court clerk typically stayed in her office during trials, she entered the courtroom for her daughter's testimony, sat in the back of the courtroom and remained for the rest of the trial. At the Commission hearing, respondent testified that he did not see the court clerk in the courtroom, but he acknowledged that he did not instruct her not to be there.

15. Shortly after the trial, Ms. Groat told her attorney that a friend had

TABLE OF CONTENTS

informed her that Colleen Beers was the court clerk's daughter. Mr. Lapinel did not raise the issue in his written summation submitted on March 17, 2011, although he was then aware of the relationship.

16. On March 16, 2011, Mr. Lapinel sent respondent a letter stating that during a break in the trial the defendant had observed a possible communication between Ms. Moser-Orr, who had not yet testified, and her husband, who had been in the courtroom, which would have violated respondent's order excluding prospective witnesses from the courtroom. Respondent held a post-trial hearing on April 20, 2011, and determined that there was no proof of an improper communication between the Orrs. At the hearing, Mr. Lapinel did not raise the issue of Colleen Beers' relationship to the court clerk. Mr. Lapinel testified at the Commission hearing that he did not raise the issue because he expected his client to be acquitted.

17. On April 25, 2011, respondent issued a decision convicting the defendant of Disorderly Conduct. Respondent's decision referred (though not by name) to Colleen's testimony that she saw and heard the confrontation and that, while shouting with "rais[ed]…hands in the air," the defendant "used foul language and used the 'F' word on multiple occasions." Respondent found that the defendant's conduct "reached the point of a potential and immediate public problem."

18. On June 9, 2011, the defendant appeared before respondent for sentencing. The prosecutor recommended a conditional discharge. Respondent indicated that he believed that the defendant had lied during the trial and shown a "flagrant disregard for the truth," and he announced his intention to sentence her to jail.

TABLE OF CONTENTS

Respondent granted Mr. Lapinel's request for an adjournment in order to provide character references.

19. At the sentencing proceeding on October 26, 2011, Mr. Lapinel argued that the defendant had no criminal history and a jail sentence would be inappropriate. For the first time, Mr. Lapinel argued that respondent should have disclosed the relationship between Colleen Beers and the court clerk. He stated that he intended to make a motion to vacate the conviction and to raise the issue on appeal.

20. Respondent sentenced the defendant to 15 days in jail, a $250 fine and mandatory surcharges of $125, the maximum sentence for Disorderly Conduct. He stayed execution of the sentence for one day to allow Mr. Lapinel to apply for a stay.

21. Later that day, in County Court, Mr. Lapinel filed papers for an Order to Show Cause staying the sentence pending a post-conviction motion and appeal. Mr. Lapinel's papers cited respondent's failure to disclose the relationship between Colleen Beers and the court clerk. The Order was granted, returnable before County Court Judge Carl F. Becker. On October 31, 2011, Judge Becker held a hearing on the application and granted an oral stay pending the appeal. Judge Becker stated:

> "I'm particularly troubled by this allegation that one of the prosecution's witnesses was a daughter of the clerk…Had that been known, that would have been a no-brainer for a change of venue…Under the circumstances, I've got to stay this pending appeal, so the motion's granted for the stay pending appeal… [M]y reason for that is that if these facts had been apparent on the record and were known to counsel prior to trial, a motion for a change in venue would have been granted, so I'll stay this pending appeal."

22. Respondent learned of Judge Becker's stay and comments from

TABLE OF CONTENTS

newspaper articles. He was offended and embarrassed by Judge Becker's "no-brainer" comment, which he thought made him "look like a complete dunce" and "impugned the integrity" of his court.

23. On or about November 25, 2011, Mr. Lapinel made a motion to vacate the conviction and sentence pursuant to Criminal Procedure Law Section 440.10, citing among various grounds respondent's failure to disclose the relationship between Colleen Beers and the court clerk. On January 7, 2012, respondent dismissed the motion on the ground that Mr. Lapinel had failed to furnish the prosecutor with the trial transcript, thereby precluding her from responding to the motion. On March 26, 2012, Judge Becker denied the defendant's motion for leave to appeal the dismissal of the motion.

24. On April 27, 2012, respondent issued an order directing the defendant to surrender on May 7, 2012, for execution of the sentence. In two letters faxed to the court on May 3, 2012, Mr. Lapinel advised respondent that he had submitted a proposed order to Judge Becker embodying his oral order granting a stay and that the October 26, 2011, stay order remained in effect pending the determination of the appeal. By letter dated May 3, 2012, respondent told Mr. Lapinel that the stay order had lapsed since the appeal had not been perfected within 120 days and that the defendant must appear for sentence as ordered. On the same date, Judge Becker executed an order staying execution of the sentence "until the determination of any motions or appellate review of the proceedings is exhausted."

25. On May 7, 2012, respondent mailed, faxed and hand delivered a

TABLE OF CONTENTS

two-page letter to Judge Becker concerning *People v. Groat*. Respondent's letter contained legal argument and facts not in the record that pertained to the disqualification issue or were otherwise grounds for affirming the conviction and sentence, as follows:

(A) Respondent's letter stated that the County Court had not been provided with certain information, including that the ADA had provided Mr. Lapinel with a list of witnesses and their supporting depositions "*several* months before the actual trial"; that the court clerk's daughter "was one of *several* witnesses who testified," had competed with the defendant's daughter "in many 4H competitions," and both were from the Village of Walton and had attended the same school; that the defendant "**NEVER RAISED**" the issue of the relationship between the court clerk and a witness until after the conviction; that the court clerk was not a witness and was not present "when the alleged criminal activity occurred"; that the defendant had rejected the offer of an ACD and "insisted on going to trial"; that the defendant had presented "not one scintilla of evidence" at the post-trial hearing to prove her "alleged claims of wrong doing"; and that the defendant to date had not provided a transcript of the post-trial hearing. (Emphasis in original.)

(B) Respondent's letter stated that the defendant's appeal "was time barred" by Criminal Procedure Law Section 460.50(4) since the appeal was not argued or submitted within 120 days of the original stay, and respondent did "not know of any good cause Defendant presented" to extend the time to perfect the appeal.

(C) Respondent's letter also addressed Judge Becker's "no-brainer" comment, stating:

> "I understand your ruling to mean that *anytime* a Village employee or relative thereof, is a witness in a criminal proceeding, (i.e., Village Police officer, Village dog warden, Village Code enforcement officer and their relatives) is an eye witness to a criminal proceeding and will testify at trial, the Village/Town Court is obligated *on it's* [sic] *own motion, must* automatically request you to transfer jurisdiction based upon such employment relationship." (Emphasis in original.)

26. Respondent testified that he sent the May 7th letter to Judge Becker, who was also his administrative judge, pursuant to his judicial responsibility to have the defendant surrender for sentence and his ethical obligation to take "appropriate action" with respect to misconduct by a lawyer (*see* 22 NYCRR §100.3[D][2]). Respondent, who maintains that the defendant's attorney had "intentionally misled" the County Court and had "lied" in denying that he knew of the witness' relationship to the court clerk, did not file a complaint against the attorney with the Committee on Professional Standards. At the oral argument, respondent indicated that he believed that his letter was appropriate, "if not expressed in the greatest of terms," but he acknowledged that he should not have advised the County Court Judge that the defendant had rejected a plea offer.

27. On May 11, 2012, Judge Becker sent respondent's letter to the Commission. Thereafter, he disqualified himself in *People v. Groat*.

28. On April 9, 2013, Acting County Court Judge John F. Lambert dismissed the appeal in *People v. Groat*. In his decision, Judge Lambert rejected the defendant's argument that since a witness' mother was the court clerk, "the Court should have changed the venue *sua sponte*." Citing *People v. Moreno*, 70 NY2d 403 (1987), the

TABLE OF CONTENTS

decision stated that since there was no legal disqualification under Judiciary Law Section 14, "a trial judge is the sole arbiter of recusal" whose recusal decision "may not be overturned unless it was an abuse of discretion." On September 28, 2013, the Court of Appeals denied the defendant's motion for leave to appeal.

29. Ms. Groat served nine days of her 15-day jail sentence in the Delaware County Correctional Facility.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(A) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions, and respondent's misconduct is established.

Respondent showed insensitivity to his ethical obligations by failing to disclose that a material witness in a case over which he presided was the daughter of the court clerk, by failing to insulate the court clerk from the case, and by sending an inappropriate letter about the case after the conviction to the County Court Judge before whom the matter was then pending. In so doing, respondent did not act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, as required by the ethical standards (Rules, §100.2[A]).

Most troubling, in our view, is respondent's unauthorized letter to the

County Court Judge who had issued a stay of the sentence and who, respondent believed, would hear the post-conviction motions and appeal in *People v. Groat*. In apparent chagrin that the defendant's attorney had raised the disqualification issue and that the County Court Judge had stayed the sentence and extended the time to perfect the appeal, respondent mailed, faxed *and* hand delivered the letter to the County Court, underscoring his insistence to be heard on those issues. Instead of allowing the attorneys to address the merits of those matters, respondent – at a time when his proper role in the case had concluded – abandoned his role as a neutral arbiter and became an advocate. Advising the County Court Judge of numerous facts relating to the disqualification issue that the defendant's attorney had "not provided" (and that respondent has admitted were outside the record) was impermissible advocacy before the court that would consider the matter. Respondent's argument that the appeal was "time barred" and that he knew of no "good cause" for extending the defendant's time to perfect the appeal was also that of an advocate. Such conduct is inconsistent with well-established ethical principles. *See Matter of Van Woeart*, 2013 NYSCJC Annual Report 316 (improper for a recused judge to write to the transferee court expressing her biased opinion as to the matter and advising the court of jurisdictional defects in the transferred cases and facts not contained in the court files); *see also* Opinion 98-77 of the Advisory Committee on Judicial Ethics ("Advisory Committee") (improper for judge to write to the Appellate Division advancing arguments on behalf of a party whose interests were adversely affected by an appellate decision reversing the judge's ruling, since "a judge should not adopt the role of an advocate").

TABLE OF CONTENTS

Notwithstanding that respondent's letter was copied to the attorneys in the case, the letter was ethically and procedurally improper. We reject respondent's argument that the letter was consistent with a judge's professional responsibilities. The tenor of his letter, which ranges from self-serving advocacy to sarcasm (in addressing the County Court Judge's "no-brainer" comment"), strongly suggests that respondent acted in a fit of pique, not in a principled exercise of his ethical and judicial duties. If respondent believed that the defendant's attorney had engaged in misconduct, filing a complaint with the disciplinary committee would have been far more appropriate than writing to the court with jurisdiction over the case, citing facts outside the record and addressing pending legal issues.

With respect to the remaining allegations, we do not find that in the circumstances presented, respondent's disqualification in *People v. Groat* was mandated by Section 100.3(E)(1) of the Rules, but we conclude that respondent should have disclosed the court clerk's relationship to a potential witness in order to give the parties the opportunity to be heard on the issue before proceeding.

The ethical standards provide that a judge must disqualify "in a proceeding in which the judge's impartiality might reasonably be questioned" (Rules, §100.3[E][1]). Having reviewed the court file and supporting depositions prior to presiding in *People v. Groat*, respondent knew that the daughter of the court clerk was a potential witness, as an eyewitness to the events underlying the charge. Even if he could not be certain before the trial that she would be called as a witness or of the relative value of her testimony, respondent was on notice that she was a potential significant witness and thus had an

TABLE OF CONTENTS

opportunity to consider whether his disqualification or at least disclosure of the witness' relationship to the court clerk was required.

In many situations, the decision whether to disqualify is solely within the personal conscience and sound discretion of a judge, guided by the ethical considerations as interpreted by the decisions of the Court of Appeals and the Commission and the opinions of the Advisory Committee. Although we recognize that respondent and the clerk of the court where he serves as Acting Justice have regular contact and a professional, friendly relationship, in our view the particular facts presented here did not require the judge's disqualification. While the court clerk's daughter was a witness (one of several) to the underlying events at issue, the record before us does not suggest that either the court clerk or her daughter had any particular relationship to, or any bias towards or against, the defendant or complaining witness, or any personal interest in the outcome of the matter. *Compare*, *e.g.*, *Matter of George*, 22 NY3d 323 (2013) (involving a Seat Belt charge against a defendant who was the judge's long-time friend and former employer); *Matter of Intemann*, 73 NY2d 580 (1989) (involving numerous matters brought by an attorney who was the judge's friend, business associate and personal attorney); *see also Matter of Merkel*, 1989 NYSCJC Annual Report 111 (in a case involving a Bad Check charge where the court clerk was the complaining witness, the ethical standards required disclosure but not recusal). In those attenuated circumstances, since respondent believed that he could be fair and impartial in weighing the witness' testimony, the relationship of the witness to the court clerk was not, in our view, a reasonable basis to require the judge's disqualification.

TABLE OF CONTENTS

While finding no misconduct in this respect, we reject respondent's argument that since his judgment was affirmed by the County Court, his decision not to disqualify himself cannot constitute misconduct. The County Court, citing *People v. Moreno*, 70 NY2d 403, 405 (1987), had held that absent a mandatory legal disqualification under Judiciary Law Section 14 "a trial judge is the sole arbiter of recusal" whose recusal decision may not be overturned unless it was an abuse of discretion. The "abuse of discretion" standard for reversing a judge's decision is different from the standard for finding an ethical violation. *See People v. Saunders*, 301 AD2d 869, 872 (3d Dept 2003) ("While it may be argued that [the judge] should have recused himself to avoid any appearance of partiality [*see* 22 NYCRR 100.3(E)(1)(b)(iii)], such an error, if indeed there was one, does not warrant reversal and a new trial under the circumstances of this case"); *People v Reiman*, 144 AD2d 100, 111-12 (3d Dept 1988) ("Although ethical standards require avoidance of even the appearance of impropriety [*see*, Code of Judicial Conduct Canons 2[A]; 3[C][1][a]; 22 NYCRR 100.2[a]; 100.3[c][1][i]; *see also, Corradino v Corradino*, 48 NY2d 894, 895], an ethical violation, if indeed there was one, does not necessarily warrant reversal and a new trial [*Matter of Martello*, 77 AD2d 722] and certainly does not in this case"); *In re Martello*, 77 AD2d 722 (3d Dept 1980) ("while the Trial Judge may have been guilty of an impropriety in not disqualifying himself, we do not feel that it is of sufficient consequence to warrant reversal and a new trial"). As we recently stated in finding misconduct where a judge presided over matters involving a lawyer who was her close friend and her personal attorney, another who was her former attorney, and a lawyer who

TABLE OF CONTENTS

was or had been her campaign manager (relationships that did not require recusal under the statute):

> "Notwithstanding the dictum in *Moreno* that a judge 'is the sole arbiter of recusal' absent a legal disqualification mandated by Judiciary Law §14 (id. at 405), the Court of Appeals, in numerous disciplinary cases in the 26 years since *Moreno*, has found misconduct for failing to disqualify under the general ethical standard in Rule 100.3(E)(1) ('impartiality might reasonably be questioned') and/or Rule 100.2(A) (the appearance of impropriety) notwithstanding that the judge believed he or she could be impartial. When a judge's failure to disqualify is inconsistent with clear standards established by case law and ethical guidelines interpreting Rule 100.3(E)(1), a finding of misconduct is appropriate."

Matter of Doyle, 2014 NYSCJC Annual Report 92, 112 (footnote with citations to disciplinary cases omitted), *removal accepted*, 23 NY3d 656 (2014).

Nevertheless, although we have concluded that the circumstances presented here did not require respondent's disqualification, we conclude that respondent engaged in misconduct by failing to disclose the relationship of the witness to the court clerk in order to provide an opportunity for the parties to be heard on the issue. *See Matter of Merkel*, *supra*. By failing to do so, he created an appearance of impropriety and acted in a manner that was inconsistent with his obligation to maintain high standards of conduct so as to promote public confidence in the integrity of the judiciary (Rules, §§100.1, 100.2[A]).

While there is no specific disclosure requirement in the ethical rules (except for remittal of disqualification), the Court of Appeals has inferred a disclosure requirement in certain situations based on the obligation to avoid an appearance of impropriety. *See Matter of Roberts*, 91 NY2d 93, 96 (1997) (stating, as to a judge who

TABLE OF CONTENTS

sat on his dentist's case, "we note particularly the serious failure to inform a litigant of a potential basis for recusal…which evokes an impermissible appearance of impropriety"); *see also, e.g., Matter of Young*, 19 NY3d 621, 626 (2012) ("petitioner neither disqualified himself nor disclosed his relationship to the defendant or complaining witness"); *Matter of LaBombard*, 11 NY3d 294, 298 (2008) ("petitioner neither disqualified himself nor disclosed his relationship with defendant's mother to all interested parties"); *Matter of Assini*, 94 NY2d 26, 28 (1999) (judge permitted an attorney with whom he shared office space to appear before him "without ever disclosing their ongoing relationship in the record or inviting objections to his presiding"; *see also Matter of Doyle*, *supra*, 23 NY3d at 662 (even though remittal was not available, "there is no indication that petitioner made any attempt whatsoever at disclosure here").

Even if, as respondent asserts, he believed that the parties knew of the witness' relationship to the court clerk and even if the attorneys would not have raised an objection, it was his ethical duty to disclose the relationship on the record. 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.

Finally, we also believe that the court clerk's presence in the courtroom during her daughter's testimony and for the remainder of the trial, and the fact that the

TABLE OF CONTENTS

clerk performed clerical duties in connection with the *Groat* case, compounded the appearance of impropriety (Rules, §100.2). "The purpose of such insulation is to avoid the conveyance of any impression that any person is 'in a special position to influence the judge.' 22 NYCRR 100.2(C)" (Advisory Committee Opinion 99-72 [requiring insulation in cases involving a court clerk's spouse who was a State Trooper]). Instead of ensuring that the clerk maintained a strict separation from the case, respondent took no steps to insulate her from the matter while it was pending. Even if such insulation may have presented an administrative burden since Ms. Beers was the sole clerk of the court, it is of paramount importance in every court proceeding to avoid even the appearance of impropriety. Indeed, the Advisory Committee has advised that if insulation of the court clerk is required but would be "impossible," the "only feasible course" is disqualification and transferring the case to another court (*Id.*). Had respondent disclosed the relationship as required and insulated the clerk from performing any duties in connection with the case, her presence in the courtroom would have been of lesser concern.

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur, except as follows.

Mr. Belluck, Mr. Cohen, Mr. Stoloff and Judge Weinstein dissent only as to finding misconduct with respect to failing to insulate the court clerk from the case and

TABLE OF CONTENTS

permitting her to be in the courtroom during the trial. Mr. Stoloff files an opinion, which Mr. Belluck, Mr. Cohen and Judge Weinstein join.

CERTIFICATION

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

Dated: December 30, 2014

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

TABLE OF CONTENTS

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

– –X

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

RICHARD L. GUMO,

a Justice of the Delhi Town Court and
Acting Justice of the Walton Village
Court, Delaware County.

DISSENTING OPINION
BY MR. STOLOFF,
IN WHICH MR. BELLUCK,
MR. COHEN AND JUDGE
WEINSTEIN JOIN

– X

The Rules of Judicial Conduct do not require perfection but are rules of reason.[1]

I dissent with respect to a finding of misconduct with respect to Charge I, paragraph 6B, in which it is alleged that Acting Village Justice Richard L. Gumo failed to act in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary in permitting the court clerk to be present in the courtroom

[1] As set forth in the Preamble to Part 100 of the Rules of the Chief Administrator of the Courts governing judicial conduct:

> "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.....
>
> * * * *
>
> 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 transaction, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system."

TABLE OF CONTENTS

during the trial in *People v. Groat*, including during her daughter's testimony, and to perform certain clerical duties in connection with this case. I agree that Judge Gumo should have disclosed the clerk's relationship to the witness, since the failure to do so deprived the parties of the opportunity to argue as to the proper measures the Court should have taken in light of that information.

I cannot conclude, however, that the clerk's performance of her normal clerical duties in the case and her presence in the courtroom during part of the trial violated the ethical canons under the particular circumstances here.

Court Clerk Kristin Beers was the sole clerk of the Walton Village Court. Had she been completely insulated from the *Groat* case, the judge himself would have been required to handle mail, perform scheduling and make routine notations in the court records, such as noting dates that papers were received or sent, that would have otherwise been made by the court clerk. I cannot conclude that a reasonable application of the ethical rules requires such a result under the circumstances here or that the judge's failure to do so compounds his misconduct.

Kristin Beers was not a court attorney or the judge's law clerk.

Advisory Opinion 10-150 provides that a judge need not disqualify himself when the court clerk appears as a witness pursuant to a subpoena to testify about a defendant providing proof of compliance with a condition of the sentence; the opinion does not address the issue of insulating the clerk from the case. Advisory Opinion 08-126 advises that where the spouse of a judge's law clerk or law secretary appears in the judge's court *as an attorney*, the judge need not disqualify but must insulate the law clerk

from the case (*see also* Adv Op 13-26, an opinion issued two years after the trial in *Groat*, extending that requirement to the spouse of a judge's secretary). Advisory Opinion 99-72, cited by the majority in support of requiring insulation (or disqualification if insulation is not feasible) involves a conflict where, on the facts presented, it appears the court clerk's spouse would be both the prosecutor and the principal prosecution witness (clerk's spouse is a State Trooper who appears in traffic cases in the judge's court). None of these Advisory Opinions would provide clear guidance to the judge under these circumstances, nor do any of the opinions indicate that the "insulated" staff member cannot sit with the spectators in the courtroom. *Matter of Merkel*, the only reported Commission case involving a conflict with court staff, makes no mention of an "insulation" requirement, and the Commission's Annual Reports have not addressed the subject.

We are thus presented here with a question of first impression. At the request of law enforcement, Colleen Beers (the daughter of Kristin Beers) signed a supporting deposition in connection with a Disorderly Conduct charge involving Jeanie Groat. Colleen Beers was one of five witnesses called to testify by the prosecutor. She was not the attorney (the situation addressed by the Advisory Opinions) or the complaining witness, and neither she nor the court clerk had any apparent personal relationship to the parties or attorneys.

I also note that Judge Gumo's contacts with the Walton Village Court Clerk were limited to a few hours a week as an Acting Village Justice of that court, whose primary judicial responsibilities were as the Town Justice of the Town of Delhi Town

TABLE OF CONTENTS

Court, some 16 miles away.

It is undisputed that it was the general practice of the court clerk to remain in her office during trials. While Judge Gumo did not instruct her to remain in her office during the *Groat* trial, neither did he know or assume that she would not follow her usual practice and would enter the courtroom during her daughter's testimony, where she remained for the rest of the trial. He testified that his attention was focused on the witnesses who were testifying, not on the audience, and that he was unaware of the clerk's presence in the back of the courtroom. This fact is undisputed. A review of the transcript of the trial indicates that Judge Gumo did not interfere with the cross-examination by defense counsel of the witness Colleen Beers. He sustained objections made by both the prosecutor and defense counsel.

There is no evidence in the record before us that this is anything but an isolated incident. When Judge Gumo appeared for the oral argument, he confirmed that under similar circumstances in the future he would take steps to ensure the transgression complained of would not occur again.

Applying the rule of reason, it is my opinion that under these circumstances Charge I, paragraph 6B, does not rise to the level of misconduct. While hindsight may be 20/20 and Judge Gumo might have considered that the court clerk might depart from her normal practice to be in the courtroom for her daughter's testimony, in the circumstances presented here I cannot conclude that her presence in the courtroom was an ethical violation on his part. Recognizing the lack of prior decisional law or opinion by the Committee on Judicial Ethics addressing these issues, it is my opinion that the charge that

TABLE OF CONTENTS

Judge Gumo failed to act in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary by permitting the court clerk to be present in the courtroom during the proceedings has not been substantiated.

Furthermore, recognizing that it was a small Village Court with only one court clerk, where Judge Gumo was the Acting Village Justice, it is also my opinion that one could not expect that, in addition to performing his other court duties, he would be required to undertake all the normal duties of the court clerk in connection with the *Groat* case because the clerk's daughter might be, and later was, a witness in the case. If the witness' mother had been his law assistant, I would agree that she should be separated from the case because a law assistant's analysis of the case could shape the opinion of the judge, which could affect the decision. As court clerk, her duties would not have the same effect on the judge's reasoning or decision, and prohibiting her from doing clerical work on the case or the records would serve no purpose. As Judge Gumo indicated, the court clerk had no involvement in drafting or even typing his written decisions after the trial.

For the foregoing reasons, I dissent from this portion of the majority's determination.

Dated: December 30, 2014

Richard A. Stoloff

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

TABLE OF CONTENTS

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

BARRY KAMINS,

a Justice of the Supreme Court,
2nd Judicial District, Queens County.

DECISION
AND
ORDER

– –

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Mary Farrington, Of Counsel) for the Commission

Zuckerman Spaeder, LLP (by Paul Shechtman) for Judge Kamins

The matter having come before the Commission on September 18, 2014; and the Commission having before it the Stipulation dated September 9, 2014; and Judge

Kamins having averred that on October 1, 2014, he will submit the appropriate papers to the Office of Court Administration and the New York State and Local Retirement System stating that he will relinquish his judicial position on December 1, 2014, and having affirmed that, upon vacating his office, he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law §45 to the extent that the Stipulation will become public on October 1, 2014, and that the Commission's Decision and Order with respect thereto will become public on or after that date; now, therefore, it is

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

SO ORDERED.

Mr. Belluck and Mr. Cohen did not participate.

Dated: September 29, 2014

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

TABLE OF CONTENTS

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

BARRY KAMINS,

A Justice of the Supreme Court, 2nd Judicial District (Queens County).

STIPULATION

THE FOLLOWING IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Barry Kamins and his attorney, Paul Shechtman of Zuckerman Spaeder, LLP, as follows:

1. Barry Kamins has been a judge since 2008, when he was appointed to the New York City Criminal Court by Mayor Michael R. Bloomberg.

A. In 2009, he was appointed Administrative Judge for the Criminal Courts in Kings County.

B. In 2012, he was appointed Administrative Judge for the Criminal Courts of New York City.

C. In November 2012, Judge Kamins was elected to the Supreme Court (Kings County). A year later, upon reaching the retirement age of 70, he was certificated to serve two years, through December 2015. He would be eligible for two additional two-year certifications, which would permit him to serve through 2019, the year he turns 76, beyond which certifications are not permitted under the Constitution.

D. In 2013, Judge Kamins was named Chief of Policy and Planning for the New York State Courts.

2. On May 29, 2014, the Commission received a report of the New York City Department of Investigations (DOI), alleging *inter alia* that Judge Kamins had engaged in misconduct. A copy of the report is appended as Exhibit 1.

3. On May 30, 2014, the Commission, on its own motion, authorized an investigation of Judge Kamins's alleged misconduct, based upon the DOI report. A copy of the Administrator's Complaint, executed in furtherance of the Commission's action and dated May 30, 2014, is appended as Exhibit 2. The Commission interviewed witnesses, reviewed documents and heard from Judge Kamins.

4. On June 2, 2014, Chief Administrative Judge A. Gail Prudenti announced that Judge Kamins had been relieved of his duties as an administrative judge and as Chief of Policy and Planning. He was subsequently assigned to hear matters in Supreme Court, Civil Term, Queens County.

5. Judge Kamins avers that on October 1, 2014, he will submit the appropriate papers to the Office of Court Administration and the New York State and Local Retirement System, stating that he will relinquish his judicial position on December 1, 2014.

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

7. Judge Kamins affirms that, upon vacating his office pursuant to this Stipulation, he will neither seek nor accept judicial office at any time in the future.

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,

TABLE OF CONTENTS

by the terms of this Stipulation, without further proceedings, pending verification that Judge Kamins filed the appropriate papers on October 1, 2014.

9. Judge Kamins understands that, should he abrogate the terms of this Stipulation by, for example, failing to submit the appropriate papers on October 1, 2014, or holding any judicial position at any time after December 1, 2014, the Commission's investigation of the complaint against him 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.

10. Judge Kamins waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public on October 1, 2014, and (2) the Commission's Decision and Order regarding this Stipulation will become public on or after October 1, 2014.

Dated: September 9, 2014

Honorable **Barry Kamins**

Dated: September 9, 2014

Paul Shechtman
Zuckerman Spaeder, LLP
Attorney for Judge Kamins

Dated: September 9, 2014

Robert H. Tembeckjian
Administrator and Counsel to the Commission
(**Mark Levine** and **Mary Farrington**,
Of Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: NEW YORK CITY DEPARTMENT OF INVESTIGATION REPORT
EXHIBIT 2: ADMINISTRATOR'S COMPLAINT

TABLE OF CONTENTS

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

DONALD G. LUSTYIK,

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

- -

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Thea Hoeth, Of Counsel) for the Commission

Pease and Gustafson, LLP (by Eric J. Gustafson) for the Respondent

The respondent, Donald G. Lustyik, a Justice of the Norfolk Town Court, St. Lawrence County, was served with a Formal Written Complaint dated July 1, 2013, containing one charge. The Formal Written Complaint alleged that respondent lent the

prestige of his office to advance private interests by witnessing a written statement using his judicial title in a matter unrelated to any matter pending in his court. Respondent filed a verified answer dated July 22, 2013.

On October 17, 2013, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On October 31, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Norfolk Town Court, St. Lawrence County, since January 1, 1986. His current term expires on December 31, 2017. He is not an attorney.

2. At all times pertinent to this matter, Jane Doe was the stepdaughter and adopted daughter of John Doe.

3. On February 17, 2011, during a criminal investigation in which John Doe's son was ultimately charged with murder, Jane Doe gave a sworn statement to state police, saying *inter alia* that she had been sexually abused by John Doe. There is no evidence that respondent was aware of Ms. Doe's statement to state police.

4. In the spring of 2011, John Doe was engaged in a Family Court proceeding for custody of his granddaughter, whose father is Mr. X. There is no evidence

that respondent was aware that John Doe was engaged in such proceeding.

5. On or before April 19, 2011, John Doe asked respondent to witness a statement, and respondent agreed to do so.

6. On April 19, 2011, respondent met John Doe and Jane Doe on the main floor of the Norfolk Town Hall, where the courtroom and respondent's chambers were located. Respondent had not previously met or otherwise been acquainted with Ms. Doe.

7. In a room at the town hall in the presence of respondent and Mr. Doe, Jane Doe signed a two-sentence statement that (A) indicated her intention not to "sign any statements saying that my Step-Father [John Doe] had touched me, or molested me at any point in my life" and (B) noted her assertion that Mr. X. had "mistaken" her words.

8. Jane Doe wrote the statement at the behest of her stepfather, John Doe.

9. Respondent signed the statement, "Wit: Hon Donald G Lustyik," directly below Jane Doe's name. Although respondent had not previously met or otherwise been acquainted with Ms. Doe, he did not ask her for any form of identification to establish her identity. Respondent made no inquiry into the meaning or purpose of the statement, whether it would be used in any judicial proceeding or police investigation, or the fact that it referred to molestation, a possible crime. Respondent did not inquire of Ms. Doe whether she was making the statement willingly.

TABLE OF CONTENTS

10. At the time she wrote and respondent witnessed the statement, Jane Doe was involved in a Family Court proceeding for custody of her own child. There is no evidence that respondent was aware that Ms. Doe was engaged in such proceeding. Ms. Doe's proceeding was unrelated to the custody matter in which John Doe was engaged.

11. Although John Doe's sister, who is also his secretary, made certain financial payments to Jane Doe after Ms. Doe executed and respondent witnessed her statement, there is no evidence that respondent was aware of the financial arrangements between John Doe and Jane Doe.

12. After the statement was signed, respondent gave the original to John Doe.

13. There was no proceeding or matter pending before respondent's court that was related to the statement signed by Jane Doe and witnessed by respondent.

14. While respondent, John Doe and Jane Doe were at the town hall, respondent asked Mr. Doe what he intended to do about numerous tickets that were long pending in his court and said he could not hold onto them much longer. At the time, there were five tickets for Vehicle and Traffic Law violations and one for an Environmental Conservation Law violation pending against Mr. Doe in respondent's court. Subsequently, the six tickets were disposed of with either a guilty plea or reduction or dismissal or civil compromise on consent of the prosecution. Fines and surcharges were assessed and paid.

TABLE OF CONTENTS

Additional Factors

15. Respondent recognizes in hindsight that he lent the prestige of his judicial office for the private benefit of another when he used the facility in which his courtroom and chambers are located to do a favor for an acquaintance. Respondent also recognizes in hindsight that he implicitly invoked his judicial office by identifying himself in writing as "Hon." when witnessing Jane Doe's statement, that a third party might be more inclined to credit such statement because it was witnessed by a judge, and that such statement might be used in connection with proceedings in other courts, given that both John Doe and Jane Doe were at that time engaged in separate and unrelated Family Court custody proceedings.

16. Respondent recognizes in hindsight that he should not have witnessed the statement without verifying Jane Doe's identity or making an inquiry into the reason for the statement and its intended use.

17. Respondent has been cooperative with the Commission.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.2(C) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

TABLE OF CONTENTS

By witnessing and affixing his judicial title to a woman's written statement promising not to accuse her stepfather of molesting her, respondent allowed his judicial status to be used to advance private interests as a favor to an acquaintance in a matter where, as he should have recognized, the potential for serious impropriety and significant legal consequences was considerable.

Well-established ethical standards prohibit a judge from lending the prestige of judicial office to advance private interests (Rules, §100.2[C]). While there is no *per se* ethical bar to witnessing an unsworn statement unrelated to a court matter, or indeed from notarizing such a document (*see* Advisory Ops 90-161, 94-78), it is not a judge's responsibility to witness every document presented to him or her by an acquaintance or litigant. Such conduct necessarily implicates the prestige of judicial office, and before signing and affixing his judicial title to the statement presented to him, which was unrelated to his judicial duties or any matter in his court, respondent should have made sufficient inquiry to ensure that his participation was consistent with the ethical rules, including his obligation to avoid even the appearance of impropriety (Rules, §100.2).

Witnessing a document means not just verifying the signer's identity, but feeling assured that the signer understands what he or she is doing and is proceeding willingly and without duress or coercion. Given the brevity of Jane Doe's two-sentence statement, it seems inconceivable that respondent would not have at least glanced at the contents and understood the gist of it: that she was promising not to accuse her stepfather

TABLE OF CONTENTS

John Doe (who had asked respondent to witness the statement) of molesting her. On its face, the statement should have raised red flags. Witnessing the statement put respondent in the middle of a serious situation in which he would play a part in protecting an acquaintance from accusations of sexual abuse. Respondent, who had been a judge for 25 years, should have recognized that his judicial status was being used in that effort and that his conduct would convey that appearance. While the Doe statement was not a legal document that required a witness, a third party might be more inclined to credit such a statement because it was witnessed by a judge.

It is stipulated that prior to witnessing the statement, respondent made no inquiry into whether Ms. Doe was making it willingly; nor did he inquire into the meaning or purpose of the statement; nor is there any evidence that he was aware of the underlying facts, including that Ms. Doe had previously given a sworn statement to police accusing her stepfather of molesting her, that she would receive money from Mr. Doe's secretary (his sister) after signing the statement, and that both she and Mr. Doe were involved in pending, unrelated custody proceedings. Even if respondent did not know all the facts – which, in their totality, paint a disturbing picture – he showed insensitivity to his ethical obligations by failing to make any inquiry into the circumstances, for which he bears responsibility. His misconduct in lending his judicial imprimatur to the statement without even questioning the circumstances is exacerbated by the fact that he acted as "a favor" to Mr. Doe, conveying the impression that respondent's judgment may have been clouded and that Mr. Doe was in a special position to influence him (Rules, §100.2[C]).

TABLE OF CONTENTS

The fact that Mr. Doe had numerous tickets that had long been pending in respondent's court, which respondent would have to adjudicate, adds to the appearance of impropriety.

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

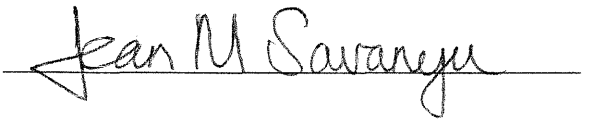
Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen, Ms. Corngold, Mr. Harding, Mr. Stoloff and Judge Weinstein concur. Judge Weinstein concurs in an opinion, which Judge Acosta and Mr. Cohen join.

Mr. Emery dissents in an opinion on the basis that the Agreed Statement of Facts should be rejected because the facts as presented are insufficient for the Commission to make a determination and the matter should be referred to a referee for a hearing.

CERTIFICATION

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

Dated: March 25, 2014



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

TABLE OF CONTENTS

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

DONALD G. LUSTYIK,

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

CONCURRING OPINION BY JUDGE WEINSTEIN, WHICH JUDGE ACOSTA AND MR. COHEN JOIN

I agree that an admonition is the proper response to the misconduct alleged in this case. I write separately to note respectfully my disagreements with my dissenting colleague, and to explain why I believe that a hearing is unwarranted before we may accept the Agreed Statement of Facts and approve the recommended sanction.

The Dissent contends that we should hold a hearing to address those matters "left unanswered" by the Agreed Statement, set forth in a list of no less than thirty-four separate inquiries (Dissent at 10-11). My colleague views the answers to these questions – many of which involve matters not referenced in the charges made against respondent in the Commission's complaint – as potentially revealing some alternative construction of the facts in this matter. I am not clear as to what exactly my colleague expects to discover, but it apparently involves some nefarious conduct by respondent, including knowledge of or participation in a "bribery or extortion scheme that suppressed a material witness' testimony" (Dissent at 1-2).

The Dissent's speculation is based on the presumption that his theories are

TABLE OF CONTENTS

not addressed in the Agreed Statement because they were not fully explored during the staff investigation. I would suggest an alternative and (to my mind) far more plausible conclusion, one supported by the Agreed Statement itself: the investigation simply revealed no evidence to support the factual scenarios my colleague would concoct.

Were one to learn about this case only from reading the Dissent, it would appear we are rushing to judgment before any accounting of the facts. That is just not so. Here, the staff carried out an investigation in which it had the power to "examin[e] witnesses under oath or affirmation, requir[e] the production of books, records, documents or other evidence that the commission or its staff may deem relevant or material to an investigation, and . . .. examin[e] under oath or affirmation of the judge involved" (22 NYCRR § 7000.1[j]). On the basis of its investigation, the Commission approved a formal written complaint, and the staff entered into the Agreed Statement, which recounts, among other things, that "[t]here is no evidence that Respondent was aware" of the Family Court proceedings in which John Doe and Jane Doe were engaged (ASOF ¶ 5, 11); there is no evidence the judge "was aware of Ms. Doe's statement to the State Police" (*Id.* ¶ 4); and the judge had not "previously met or otherwise been acquainted with Ms. Doe" (*Id.* ¶ 7). In short, the statement addresses many of the issues the Dissent raises, and states that they were without support in the investigative record.

My colleague nonetheless presumes that the investigation was inadequate, the staff "adopt[ed] the most innocent version of events," and the majority has rubber stamped a narrative based solely on "pragmatic reasons and the sake of expediency," because a hearing might "prove messy" or "unpredictable" (Dissent at 2, 6). It is hard

TABLE OF CONTENTS

for me to understand the basis for these conclusions, but as best as I can gather, the Dissent appears to believe that the factual averments before us in this case are inherently implausible, since the only reason respondent could possibly have witnessed the "remarkable statement" at issue, under "suspicious circumstances," is that he was somehow part of a broader illegal scheme (Dissent at 7). But *witnessing* a statement entails verifying the authenticity of the attesting party's signature, not the statement's contents. As a general rule, this is something that part-time judges are allowed to do (Advisory Op 12-10; *see also* Advisory Op 94-78 ["there is no ethical objection to a part-time judge continuing to act as a Notary Public"]). The Advisory Committee on Judicial Ethics has found that when a judge acts in this capacity, he or she is "merely attesting to facts within his/her personal knowledge and observation" (Advisory Op 12-10) – that the document has been signed by the individual who purports to be its signatory. The act of witnessing a statement is, in short, "clerical and ministerial" (*see Bernal v Fainter*, 467 US 216, 225 [1984] [discussing the role of a notary public]). I find nothing remotely implausible about the finding, set forth in the Agreed Statement, that respondent restricted himself to that role.

That said, I believe the judge's actions here were improper, for reasons set forth at length in the majority opinion. But the fact that respondent acted wrongly does not mean we must imagine his participation in far-flung cabals and secret plots for which, the Agreed Statement tells us, the investigation has revealed no evidence.

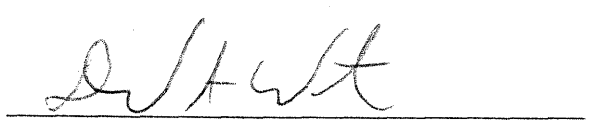
Any consensual resolution to a charge of misconduct entails a compromise. On the one hand, it spares the Commission and the respondent-judge the expense of a

TABLE OF CONTENTS

hearing, argument and (potentially) subsequent appellate challenge, and ensures that wrongdoing will receive sanction. On the other hand, it means the Commission must rely on the fact-finding achieved via staff investigation. Like a plea bargain in a criminal case, an agreed statement thus reflects "tactical decisions" by both sides to which the Commission should pay some respect, even as it carefully considers its merits (*see Matter of Ridsdale*, 2012 Annual Report 148, 159 [concurring opinion of Acosta, J.]). This balancing is made difficult by the fact that the Commission must make its decision without direct communication with the staff, which has full access to the entire investigative record. But that is due to the division of functions in the Commission between the members' adjudicatory responsibility and the staff's prosecutorial role (*see id.* at 160). That structure requires that we exercise some level of deference to the staff, and not make unfounded assumptions that there are endless untrodden investigatory paths that it has simply neglected to pursue.

For these reasons, I remain convinced that acceptance of the Agreed Statement, and admonition of respondent, is the best course for the Commission to take in this case, and one fully justified by the record before us.

Dated: March 25, 2014



Honorable David A. Weinstein, Member
New York State
Commission on Judicial Conduct

TABLE OF CONTENTS

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

DONALD G. LUSTYIK,

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

DISSENTING OPINION
BY MR. EMERY

- -

The majority's determination, agreeing to accept the stipulated facts and the sanction of admonition, raises more questions than it dispels. I cannot read it and conclude, with any degree of confidence, that we have fulfilled our constitutional obligation to protect the public from judges who endanger those over whom they have power. In this case, maybe we have, or maybe we have not. I do not think the majority's confidence in the outcome in this case is warranted and it is certainly not supported by the Agreed Statement they have accepted in this case. Because of the majority's decision I believe we may not be protecting the public as we should.

What is clear is that the record is not sufficiently developed to conclude whether Judge Lustyik was an unwitting dupe doing a "favor" for someone he knew to be a litigant in his court, whether he was simply oblivious or grossly negligent in inexplicably ignoring the red flags that were waving all around him, or whether, or to what degree, the judge was cooperating in or privy to either a bribery or extortion scheme

TABLE OF CONTENTS

that suppressed a material witness' testimony. The stipulated facts leave unanswered the critical questions necessary for me to determine the degree of misconduct and the appropriate sanction. The facts as accepted shed no light on the judge's degree of culpability for his incontrovertible misconduct.

By accepting the Agreed Statement, the majority chooses to ignore the clear possibility of very serious misconduct by deferring to the Staff's adoption – without satisfactory justification – of the most innocent version of events, rather than allow a referee the opportunity to determine the answers to some unresolved critical issues. I would like to believe the Staff's conclusions about what likely occurred are right. But, in good conscience, on this barren record, I cannot do so. Since it is we – the Commission – that are responsible under our constitutional and statutory duty to see that the record is properly developed, I have no choice but to dissent.

Let me say a few words about that duty and then describe why, in this case, we have failed to fulfill it.

Unlike the traditional adversary system to which we are all regularly exposed, where prosecutors have sole discretion to investigate and level charges and judges independently preside over their resolution, either by plea or trial, the Commission on Judicial Conduct is governed by special provisions of the State Constitution and the Judiciary Law. Apropos to the point at issue here, they read as follows:

- "The commission on judicial conduct 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, in the manner provided by law; and, in accordance with subdivision d of this section, may determine that a

TABLE OF CONTENTS

judge or justice be admonished, censured or removed from office for cause,…" (NY Const art 6, §22[a]; *see also* Jud Law §44[1]);

- "Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint on its face lacks merit" (Jud Law §44[1]);
- "If in the course of an investigation, the commission determines that a hearing is warranted it shall direct that a formal written complaint signed and verified by the administrator be drawn and served upon the judge involved…" (Jud Law §44[4]);
- "After a hearing, the commission may determine that a judge be admonished, censured, removed or retired" (Jud Law §44[7]).

The essence of these provisions is that our role is quite different from that which exists between prosecutor and judge where, in my view, deference to a prosecutor's assertion that she does not have the evidence to proceed, or that she believes that a recommended plea bargain is fair, forecloses virtually all review of the prosecutor's decision. By contrast, the Commission is entirely responsible for each and every *investigation and charge* against a judge. We are required to evaluate the information presented to us not just once, but at three stages of the proceedings against judges: in deciding whether to investigate a complaint, deciding whether to authorize formal charges, and determining whether misconduct occurred and the appropriate sanction, if any, to be imposed.

Certainly, we rely on the information the Staff presents to us and consider the Staff's recommendations at each stage of the process. But as we have vibrantly shown over the ten years I have sat on this Commission, we are not potted palms, and clearly our governing constitutional provision, statute and rules do not contemplate that we should defer to the Staff's recommendations at any stage of the process. Indeed, we

TABLE OF CONTENTS

often differ with Staff's recommendations at every stage, rejecting proposed investigations, authorizing investigations when Staff recommends that complaints be dismissed, rejecting charges recommended by Staff and directing that charges be served when Staff recommends otherwise.

This is, as I see it, very healthy and probably to be expected when a full-time, zealous professional staff may appropriately at times want to lead prosecutions into undeveloped areas of the law, or, at other times, decide not to push forward for strategic, practical reasons. The point is that our system of adjudicating complaints against judges is qualitatively different from a criminal adjudication process and should never be confused with a pure adversary system.

Proposed Agreed Statements, where Staff counsel and the judge's attorney make a joint recommendation to the Commission, are always intensely reviewed, and they are frequently rejected, either because the recommended sanction seems too harsh or too lenient to us on the facts presented, or because more information is needed – either in the Statement itself or in a fact hearing to determine whether misconduct has occurred and, if so, what sanction is appropriate. Therefore, especially in the instances where we review proposed Agreed Statements, the relationship between Staff and the Commission, unlike the relationship between prosecutor and judge, is one in which the Constitution and Judiciary Law require the Commission to take full responsibility for the outcome of what is only in part an adversarial process.

As the Court of Appeals has repeatedly said, the Commission's mission and responsibility in conducting judicial disciplinary proceedings is for "the imposition

TABLE OF CONTENTS

of sanctions where necessary to safeguard the Bench from unfit incumbents" (*see, e.g., Matter of Restaino*, 10 NY3d 577, 589 [2008]; *Matter of Duckman*, 92 NY2d 141, 152 [1998]; and *Matter of Esworthy*, 77 NY2d 280, 283 [1991] [internal quotation marks and citation omitted]). We do not, and never have, delegated our authority over such decisions to Staff.

In this case, I believe the majority has lost sight of this core value and our constitutional and statutory responsibility by acceding to a flawed joint recommendation. The Commission authorized an investigation and, based on the investigative findings reported to us, voted to charge misconduct alleging that "respondent lent the prestige of his office to advance private interests…." Generally, we have viewed this category of violation as among the most serious violations, akin to bribery and ticket fixing. *See, e.g., Matter of Schilling*, 2013 NYSCJC Annual Report 286 (judge intervened in the disposition of a Speeding ticket issued to a judge's wife, and accepted special consideration with respect to her own Speeding ticket) (removal); *Matter of Maney*, 2011 NYSCJC Annual Report 106 (judge repeatedly asserted his judicial office in connection with his arrest for Driving While Intoxicated) (censure); and dozens of other cases.

Here, based on the Staff's apparent view that the proof it could present at a fact hearing might be inconclusive or uncertain, we have been asked to accept an Agreed Statement with a stipulated sanction – without a fact hearing – which adopts an interpretation of the facts that warrants only the lowest level of public discipline. But those same facts – at the time we authorized the charges, after the investigation was complete – appeared to constitute a basis serious enough to proceed to full development

TABLE OF CONTENTS

at a fact hearing that could support public discipline and perhaps the far more serious sanction of removal. Indeed, a rationale for authorizing formal charges in most instances, and certainly in this case, was that the unresolved factual issues at the conclusion of the investigation required full development at a hearing.

In dissenting, I am not presuming that the Staff's investigation was "inadequate" or suggesting that the hearing would be a fishing expedition to explore "untrodden investigatory paths that [the Staff] has simply neglected to pursue" (Concurrence at 2, 4). Rather, I view a hearing as the appropriate mandated means under our statutory framework to uncover the truth and determine the judge's degree of culpability for admitted misconduct by requiring all the participants to give sworn testimony, subject to cross-examination, so that we can be confident that our findings and conclusions and determination as to sanction are supported by a fully developed record.

As an inadequate alternative, having authorized formal charges, we are now presented with a sparse, conclusory version of the facts, which resolves none of the unanswered questions that a hearing was supposed to explore. While I fully understand why both sides, for pragmatic reasons and the sake of expediency, would prefer this result to a hearing, which might prove messy and whose outcome is unpredictable, as a Commission member I cannot accept such a result.

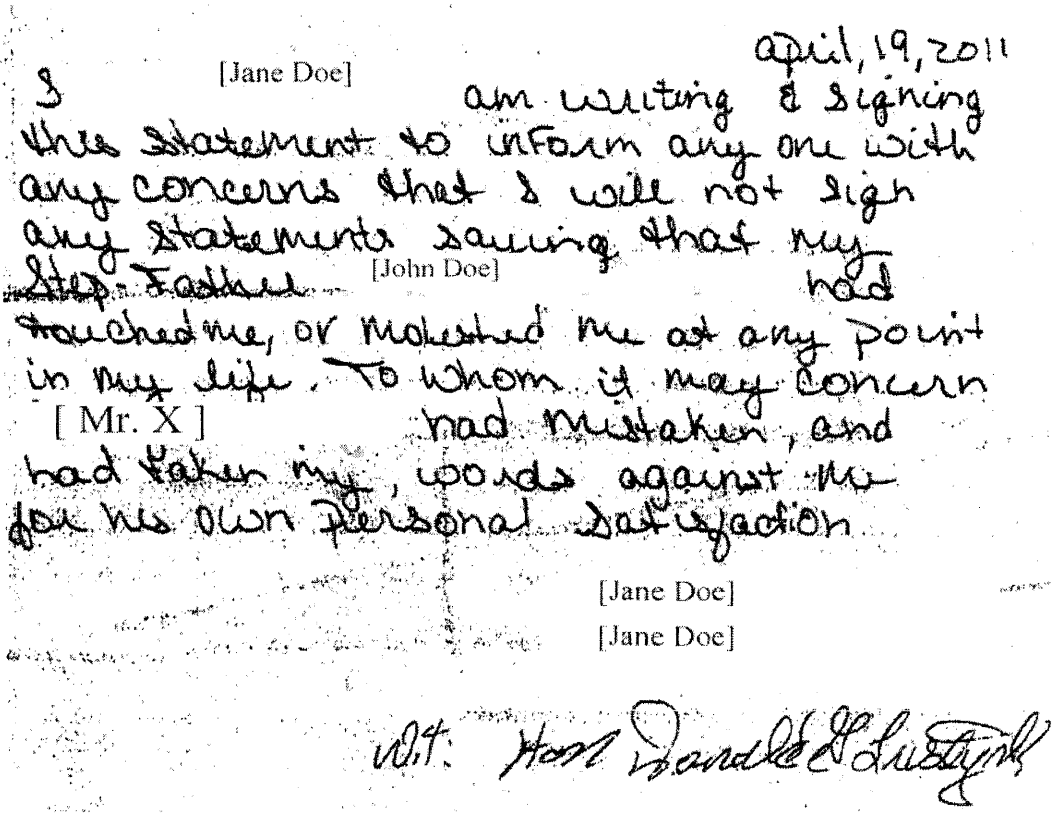
In the abstract, certain cases may warrant this approach when an investigation the Commission has authorized results in a judgment that serious misconduct cannot be proved or that, whatever misconduct is found, a lenient outcome is appropriate. In such cases we often enter into Agreed Statements, the *sine qua non* of

TABLE OF CONTENTS

which is a written determination which fully explains the facts supporting the finding of misconduct and, more importantly, the sanction that has been accepted by the judge.

But here the situation is quite different. This Agreed Statement fails to resolve questions central to this case. Here is why.

Ms. Doe's statement in her handwriting reads:



April, 19, 2011

I [Jane Doe] am writing & signing this statement to inform any one with any concerns that I will not sign any statements saying that my Step-Father [John Doe] had touched me, or molested me at any point in my life. To whom it may concern [Mr. X] had mistaken, and had taken my words against me for his own personal satisfaction.

[Jane Doe]

[Jane Doe]

W.T. Hon Donald G. Lustyik

Instead of explaining how this remarkable statement and the suspicious circumstances that resulted in respondent witnessing it lead to the conclusion that the judge innocently witnessed it, the Commission's Determination and the underlying Agreed Statement simply accept the judge's claim that he did not know or inquire about its contents – that he simply innocently agreed to witness the statement "as a favor" to John Doe. This is an unexplained leap of faith. Instead of requiring the respondent to

TABLE OF CONTENTS

explain what was going through his mind in order to determine his degree of culpability – and instead of determining exactly what was said and known by each of the individuals present when respondent witnessed Ms. Doe's execution of the statement – the Commission opts to assume – without a hearing to assess his credibility under oath – that respondent is telling the truth when he protests that he saw, heard and spoke no evil.[1]

According to the Determination, respondent did not know and did not ask why he was being asked to sign this statement or what the statement would be used for. He did not ask Jane Doe whether she was making the statement willingly or why she was, in this document, stating that she "will not sign any statements" accusing her stepfather of sexual abuse and that Mr. X. "had taken my words against me." But the record reveals that John Doe was paying Ms. Doe for the statement and that John Doe and Mr. X. were adversaries in a custody dispute. Was this a bribe? Or was Jane Doe extorting her stepfather since she needed money to pay her lawyer in an unrelated matter?

The Agreed Statement says that "there is no evidence" (¶ 4,5,11,12) that respondent was aware of the troubling underlying facts, including: (i) that Ms. Doe had previously accused her stepfather of sexually molesting her (though her written statement would seem on its face to make that clear), (ii) that her stepfather was involved in a pending custody dispute with Mr. X., his grandchild's father (who is maligned in Ms. Doe's statement), or (iii) that, as blandly described in the Determination (¶ 11), the Does

[1] Parenthetically I do not necessarily agree with the view, implicit in the Determination, that if respondent acted out of ignorance of his role as a judge, his conduct is less egregious than if he did it with the knowledge that John Doe was trying to short-circuit a criminal investigation. Perhaps we are overlooking – or ignoring – that respondent might be too incompetent to serve as a judge. At this stage, without more information, I cannot say.

TABLE OF CONTENTS

had made "financial arrangements" in that after the statement was executed, John Doe's secretary made "certain financial payments" to Jane Doe.[2]

Presumably respondent has denied knowing those facts. But that cannot end our inquiry in the face of the plain words of the statement that respondent witnessed. If he was not aware of those troublesome issues, then he ignored the red flags in the statement and chose not to inquire further. But his protestations of ignorance should not, without more proof, be accepted or mitigate his responsibility. His failure to ask the questions that any reasonable person would ask – let alone a judge with 25 years of experience whose integrity is on the line – is totally unexplained in the record before us. Nor is there any explanation whatsoever for why the judge believed that it was appropriate to witness such a bizarre statement as a "favor" for a litigant.[3]

At a minimum, the circumstances from which one (we, the Commission) could reasonably conclude that his professed ignorance makes sense should be explored under oath at a hearing and tested by cross-examination. At a minimum, a neutral

[2] The Formal Written Complaint (¶ 13) alleges that after signing the statement, Jane Doe received $5,500 from her stepfather's secretary (his sister) that same day and $3,000 a few weeks later. The charge also declares that Ms. Doe, who was involved in an unrelated custody dispute, immediately gave these payments to her lawyer in the custody matter.

[3] I am unpersuaded by Judge Weinstein's reliance on Advisory Opinion 12-10, advising that it was permissible for a judge to witness a signature since the judge was "merely attesting to facts within his/her personal knowledge and observation," *i.e.*, that the document was signed by the individual who purports to be its signatory (Concurrence at 3). That opinion addressed a particular situation in which a judge inquired if it was appropriate to witness a relative's signature on a foreign pension document that expressly required a witness who was either an embassy official, a municipal or regional official or a judge (and not a notary public) and that expressly stated that the witness was simply authenticating the signature. That is a far cry from respondent's unauthorized, gratuitous witnessing, for unclear purposes, of a bizarre, do-it-yourself document recanting allegations of sexual abuse.

TABLE OF CONTENTS

hearing examiner should make a credibility finding. Instead, the version of the facts in the Agreed Statement requires us to conclude, counterintuitively, that respondent did not even have, what I consider to be, plain common sense.[4]

[4] This is what hearings are for:. to find out whether the judge is a danger to the public and is fit to hold his exalted office. Left unanswered by the Determination are, at least, the following questions:

1. Did respondent read the two-sentence statement before he signed it? Is it plausible that a judge would sign a document presented to him by an "acquaintance" without even glancing at it?
2. How does respondent explain his failure to inquire about the reference to "molest[ation]," which jumps off the page, or about the oblique reference to Jane Doe's earlier statements that she now disavows? Did he consider that Ms. Doe might have complained about those acts to the police or DA? Was he suspicious of why she was making the statement, or whether she was doing so willingly? Did it enter his mind that she might be paid for her statement?
3. Did respondent wonder about the purpose of the statement? Did John Doe tell him *anything* about the purpose of the statement? Did respondent consider that there might be pending litigation in which the statement with his signature affixed might be offered, or that his involvement might be advancing Mr. Doe's personal agenda or that he might be interfering in a private dispute and placing himself in the middle of a matter with significant legal consequences?
4. What was respondent's relationship with Mr. Doe, who is described as "an acquaintance"? What does it mean that he witnessed the statement "as a favor" to Mr. Doe (a fact that is in the stipulated facts [¶ 16])? Had he and Mr. Doe previously done favors for each other? Did he lend his judicial imprimatur to the statement because he owed Mr. Doe a favor? Would he have done the same thing – witnessing such a document without questioning it – for a stranger? Did the fact that he was doing a favor for Mr. Doe influence his decision not to inquire into the details? How can we possibly accept the justification for respondent's conduct that he did it as a "favor" for Mr. Doe without understanding more about why he felt obliged to do Mr. Doe a "favor"?
5. What went through respondent's mind in deciding to engage in this highly unorthodox action? Why did he think that witnessing a statement related to a private dispute, and unrelated to any proceeding in his court, was part of his role as a judge? Had he ever done anything similar in his 25 years as a judge? Would he agree to witness any statement under any circumstances? Why did he think it was appropriate to note his judicial office (by signing as "Hon.") on the statement? Did he consider contacting the Advisory Committee on Judicial Ethics or the City, Town and Village Resource Center to ask for advice during the unspecified time period between Mr. Doe's initial request and Ms. Doe's execution of the statement?
6. What was the nature of the custody proceeding that Mr. Doe was involved in? Was Ms. Doe's statement ever used in that proceeding, or in any other manner?
7. What did the police do when Ms. Doe previously accused her stepfather of molesting

TABLE OF CONTENTS

Unfortunately, these questions, and more, remain unanswered. To my fellow Commissioners, I simply ask: if we do not know the answers to these questions, how can we possibly avoid holding a hearing? Why should we not, consistent with our constitutional and statutory obligations, direct that a hearing be held so that we can make our decision on the fullest possible record?

Perhaps some of the questions I have posed cannot be answered. But we are duty bound not to accept an Agreed Statement that does not, at least, describe why these questions cannot be answered, and provide a justification for adopting the judge's version of events that casts his misconduct in the most innocent light. This Agreed Statement does not do that. In particular it wholly fails to explain or convince how the judge could possibly ignore the obvious red flags when an apparent scofflaw in his court – John Doe – asked him to witness a statement by Mr. Doe's stepdaughter that included recantations of his sexual abuse of her.

Consequently, the central question for the Commission remains unanswered: what was respondent's culpability for what we all agree was misconduct? How severe should our sanction be? There is no question that respondent's misconduct

her? Was that matter still pending? Did the police get the statement that respondent witnessed? Did it influence the police to end their investigation? Are prosecuting authorities aware of the payments she received after she signed the statement? If an allegation of serious criminal conduct was withdrawn because the victim was paid off, does the matter warrant referral?

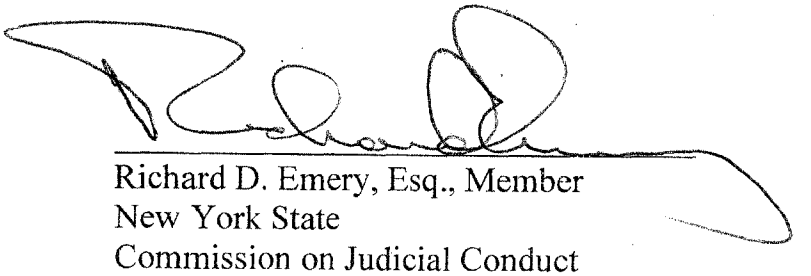
8. What is the significance – if any – of the fact that Mr. Doe had six tickets that had been "long pending" in respondent's court and that the tickets were subsequently disposed of, in some cases, by a reduction of the charge (Agreed Statement, ¶ 15)? How long had the tickets been pending? Should the traffic tickets have been "scofflawed" under the Vehicle and Traffic Law (§§514.3[a], 510.4-a)? Should we infer that there was an appearance of favoritism in respondent's handling of the tickets? Was this another "favor" respondent did for Mr. Doe?

TABLE OF CONTENTS

as set forth in the Agreed Statement of Facts is improper and warrants public discipline, but I do not believe that we are now in a position to determine an appropriate sanction. If the Commission had the answers to my questions in the record, we would be in a far better position to determine whether an admonition is too lenient.

This case cries out for a hearing and cross-examination of the judge to assess his state of mind. For me, swallowing the pre-digested result of this case, as presented to us in the Agreed Statement, triggers a gag reflex. Obviously, my fellow commissioners have stronger stomachs for such fare than I do. The Agreed Statement should be rejected and a hearing to develop a full record scheduled forthwith.[5]

Dated: March 25, 2014



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

[5] Judge Weinstein, in his concurrence, rightly concedes that respondent's "actions were improper, for reasons set forth at length in the majority opinion" (Concurrence at 3). In this regard he and I agree. Our disagreement is whether we need to know *why* respondent did not further inquire. It appears that Judge Weinstein does not think any further exploration into that issue is relevant or appropriate since it is "not referenced in the charges" (*Id.* at p 1). This is an obvious distortion of our mandated function. The judge's intent or state of mind when the misconduct occurred is *always* relevant in determining the appropriate sanction, and it is the central issue here. Every question I have asked relates to exploring that more fully and is thus at the center of properly disposing of the charge. The Commission's determinations – whether based on stipulated facts or the record developed at a hearing – are rarely limited to the bare facts recited in a Formal Written Complaint, but generally include additional information, reasonably related to the allegations, that gives context to the events at issue and enables us to determine the degree of culpability for the misconduct. This is the core responsibility of our Commission; it should not be lightly delegated to the staff. It is why we are the appointed constitutional authority to protect the public from judges who engage in misconduct. Judge Weinstein would acquiesce to the Agreed Statement's counterfactual and counterintuitive conclusions. Though plainly in good faith, I believe that nullifies the Commission's primary function.

TABLE OF CONTENTS

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

ROBERT P. MERINO,

a Judge of the Niagara Falls City Court,
Niagara County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (David M. Duguay, Of Counsel) for the Commission

Connors & Vilardo, LLP (by Terrence M. Connors) for the Respondent

The respondent, Robert P. Merino, a Judge of the Niagara Falls City Court, Niagara County, was served with a Formal Written Complaint dated March 3, 2014, containing one charge. The Formal Written Complaint alleged that respondent compromised a Spanish-speaking tenant's right to be heard in a summary eviction

TABLE OF CONTENTS

proceeding by failing to appoint an interpreter. Respondent filed a verified Answer dated March 27, 2014.

On September 5, 2014, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On September 18, 2014, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Judge of the Niagara Falls City Court, Niagara County, since January 1, 2008. His current term expires on December 31, 2017. Respondent was admitted to the practice of law in New York in 1973.

2. On January 2, 2013, respondent presided over the summary eviction proceeding of *9234 Niemel Drive Holdings L.L.C. v Edwin Santana and All Occupants* (*"Niemel Drive v Santana"*).

3. The petition in *Niemel Drive v Santana*, filed in Niagara Falls City Court on or about December 26, 2012, alleged that in or about March 2012, Mr. Santana entered into a lease agreement providing for "equal monthly installments" of $450. The petition further alleged that on November 1, 2012, there was due from Mr. Santana, "under said agreement," $565 as monthly rent for November 2012. The petition sought, *inter alia*, a judgment of eviction against Mr. Santana and all occupants, unpaid rent for

TABLE OF CONTENTS

November and December 2012 in the amount of $1,130, a $50 late fee, and any additional unpaid rent up to the date of the judgment of eviction.

4. The lease agreement itself was not annexed to the petition, presented as evidence, or otherwise included in the court record.

5. Attorney Robert T. Koryl appeared at the January 2nd court proceeding on behalf of the petitioner, 9234 Niemel Drive Holdings LLC. Mark DeLorenzo, who signed the petition as the landlord, was also present.

6. Mr. Santana and his wife, Gladiana Vasquez, who resided in the apartment with their daughter, appeared without counsel.

7. Mr. Santana, a Spanish-speaking native of Puerto Rico with an eighth-grade education, was not proficient in English. Ms. Vasquez, who also speaks Spanish, is somewhat more proficient in English than Mr. Santana.

8. At the outset of the proceeding, Mr. Santana and Ms. Vasquez requested that respondent provide them with an interpreter.

9. When Mr. Koryl indicated that his client (Mr. DeLorenzo) had spoken to Mr. Santana and Ms. Vasquez, respondent administered an oath to Mr. DeLorenzo. Mr. DeLorenzo told the court that Ms. Vasquez spoke "broken English" and that Mr. Santana had used an interpreter to communicate with him in the past.

10. Respondent stated that he was going to order an interpreter and adjourn the matter because Mr. Santana was the party and that "he has to understand." Respondent repeated that he was going to adjourn the matter and twice repeated that he would "bring in an interpreter."

TABLE OF CONTENTS

11. Respondent asked Mr. Santana if he could come back at two o'clock in the afternoon "for an interpreter." Mr. Santana indicated that he could.

12. Respondent asked Mr. Santana some basic informational questions about, *inter alia*, his employment, family and birthplace. Mr. Santana gave the name of his employer, but then said something in Spanish and indicated he could not understand respondent's inquiry regarding the nature of his work. When respondent asked, "Where were you born?" Mr. Santana asked, "Como es?" Ms. Vasquez said, "Pardon me?" Respondent repeated the question, and Ms. Vasquez answered, "Puerto Rico." Mr. Santana then stated, "Puerto Rico, yeah."

13. Respondent thereupon stated:

> Okay. Go ahead, Mr. Koryl. I think he understands English. The last time I heard, I think Puerto Rico was bilingual.

14. Respondent did not inform Mr. Santana and Ms. Vasquez that no interpreter would be appointed and that the proceeding would not be adjourned.

15. Following factual assertions by Mr. Koryl concerning the failure to pay rent for November and December 2012, respondent asked Ms. Vasquez, "Do you want to interpret and tell your husband? Or does he – ask him if he understood what was just said." Ms. Vasquez indicated that she was neither competent nor willing to act as an interpreter:

> Ms. Vasquez: I no can interpreter.
> Judge Merino: Pardon me?
> Ms. Vasquez: I no can make interpreter.
> Judge Merino: You can't tell your husband what was--
> Ms. Vasquez: --No--

TABLE OF CONTENTS

16. Ms. Vasquez later attempted to explain that they had refused to pay a higher rent because of the condition of the apartment and that they never signed a "new lease." She tried to show respondent a photograph depicting the condition of the apartment.

17. Without looking at the proffered picture or requesting a copy of the lease agreement, respondent announced his decision:

> Warrant of Eviction is granted. Judgment for the amount requested. Have a good day.

18. After respondent announced his decision, Mr. Santana asked three times if, as respondent had repeatedly indicated earlier, an interpreter was coming and if they were to return to court:

> Is coming today? ... Is coming today, or what? ... Is coming today? Me, am coming back?

19. Respondent stated, "No… Go talk to the clerk downstairs. They'll explain what happens."

20. Respondent did not explain or attempt to clarify to Mr. Santana or Ms. Vasquez that he had conducted the proceeding in the absence of an interpreter and had granted a judgment for the landlord for all of the rent requested in the petition, an additional $565 in rent for January 2013, $45 for filing costs, and a warrant of eviction without a stay, by which Mr. Santana and his family could be physically removed from their apartment within 72 hours of service.

Additional Factors

21. Respondent has been cooperative with the Commission throughout

its inquiry.

22. Since this incident, respondent has attended a seminar regarding interpretive services provided by the 8th Judicial District and now better understands how to properly conduct matters involving parties with English language proficiency issues.

23. In his six years on the bench, respondent has not been previously disciplined for judicial misconduct. He regrets his failure to abide by the Rules in this instance and pledges to conform himself in accordance with the Rules for the remainder of his term as a judge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(3) and 100.3(B)(6) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

"Access to justice is not attainable for those who are not proficient in English unless they also have access to language services that will enable them to understand and be understood."[1]

[1] ABA, *Standards for Language Access in Courts* at VIII (Feb. 2012), cited in *People v. Lee*, 21 NY3d 176, 184 (2013) (Rivera, J., dissenting), available at: http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf.

TABLE OF CONTENTS

When a litigant in a summary eviction proceeding requested an interpreter at the outset of the proceeding, it was the judge's responsibility to make a fair and informed determination as to whether the party was "unable to understand and communicate in English to the extent that he or she cannot meaningfully participate in the court proceedings" (22 NYCRR §217.1[a]). A party's right to be heard according to law (Rules, §100.3[B][6]) and to participate in court proceedings is meaningless when, because of the party's limited proficiency in English, the proceeding is incomprehensible to him.

Although respondent initially declared several times that he would adjourn the matter so that an interpreter could be provided, the transcript suggests that he changed his mind after Mr. Santana gave rudimentary responses to some simple questions about his family, schooling and employment. As respondent should have recognized, Mr. Santana's minimal responses demonstrated his limited English proficiency, not the ability to understand and meaningfully participate in a court proceeding where his family was facing eviction from their home. This is particularly so since Mr. Santana clearly indicated that he did not understand some questions at all. When asked, "What do you have to say about this?", he responded, "No speaking English." When asked, "What type of work do you do in the warehouse?", he responded, "I don't understand that. I'm sorry." Nor did he understand, "Where were you born?" Even the landlord acknowledged under oath that when he had previously spoken to Mr. Santana, someone had interpreted for him. It is obviously unacceptable if a party with limited knowledge of English understands only some of what is being said in a court proceeding while the rest

TABLE OF CONTENTS

remains incomprehensible.

Mr. Santana was in an especially vulnerable position since he was unrepresented by counsel and was facing an adversary with an attorney. With no lawyer to protect his rights, the fact that he could barely communicate in English compounded his vulnerability and left him virtually defenseless.

Respondent's comment about bilingualism ("The last time I heard, I think Puerto Rico was bilingual") was irrelevant and, in context, snide.

As the proceeding continued, respondent, who never made clear that the case would not be adjourned, continued to ignore red flags indicating Mr. Santana's limited proficiency in English. The litigant responded to some questions in Spanish, or told his wife to respond, or did not respond at all as his wife answered for him. While his wife attempted to present defenses for non-payment of rent, Mr. Santana barely participated in the proceeding. In this context, when respondent asked Mr. Santana several times if he understood what was said, his halting affirmative responses hardly seem convincing. Even after respondent announced that the warrant of eviction was granted, Mr. Santana asked if an interpreter was coming and if they had to return to court, suggesting he did not realize he had just been evicted. Despite Mr. Santana's evident confusion about what had transpired, respondent simply told him to "talk to the clerk downstairs" who would "explain what happens next."

The consequences of this case were significant: a family was summarily evicted. Even if the result might have been the same had Mr. Santana had the assistance of an interpreter, Mr. Santana's rights to be heard according to law and to meaningfully

TABLE OF CONTENTS

participate in the proceeding were compromised.

Access to interpreting services when needed is a critical element of access to justice. It is an issue that the Unified Court System has addressed in a public report and has emphasized in judicial training.[2] Every judge must be sensitive to this important issue and respond appropriately when the issue is raised.

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

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

CERTIFICATION

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

Dated: October 2, 2014

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

[2] *Court Interpreting in New York, A Plan of Action: Moving Forward* (June 2011) (available at http://www.nycourts.gov/publications/pdfs/ActionPlanCourtInterpretingUpdate-2011.pdf). The report describes a two-page "Benchcard" distributed to judges, which states in part: "A judge may presume a need for an interpreter when an attorney or self-represented party advises the Court that a party or witness has difficulty communicating or understanding English…" (available at http://www.nycourts.gov/courtinterpreter/PDFs/JudBenchcard08.pdf).

TABLE OF CONTENTS

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

WILLIAM E. MONTGOMERY,

a Justice of the Colden Town Court,
Erie County.

DECISION
AND
ORDER

– –

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (David M. Duguay, Of Counsel) for the Commission

Taheri & Todoro, PC (by Michael S. Taheri) for the Respondent

The matter having come before the Commission on September 18, 2014; and the Commission having before it the Stipulation dated August 28, 2014, with the appended exhibits; and respondent having tendered his resignation from judicial office by

TABLE OF CONTENTS

letter dated June 5, 2014, effective August 31, 2014, and having affirmed that he will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law §45 to the limited extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order thereto will become public; now, therefore, it is

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

SO ORDERED.

Dated: September 22, 2014

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

TABLE OF CONTENTS

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

WILLIAM E. MONTGOMERY, **STIPULATION**

a Justice of the Colden Town Court,
Erie County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable William E. Montgomery ("Respondent"), who is represented in these proceedings by Michael S. Taheri, of Taheri & Todoro, PC, as follows:

1. Respondent has been a Justice of the Colden Town Court, Erie County, since January 1, 1983. His current term expires on December 31, 2015. Respondent is not an attorney.

2. Respondent was served with a Formal Written Complaint dated March 4, 2014, containing two charges. The first charge alleges that Respondent facilitated the filing of a designating petition for his candidacy for elective judicial office that was falsely notarized and thereafter neither refused the nomination nor withdrew his candidacy. The second charge alleges that Respondent arraigned a defendant on alcohol-related and other vehicle and traffic charges, drove the defendant home in the early morning hours following her arraignment, and thereafter presided over the case through the imposition of sentence.

TABLE OF CONTENTS

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

4. Respondent filed an Answer dated April 16, 2014, which is appended as Exhibit 2.

5. Respondent tendered his resignation, dated June 5, 2014, a copy of which is annexed as Exhibit 3. Respondent affirms that he will vacate judicial office as of August 31, 2014.

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

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

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

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

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

TABLE OF CONTENTS

Dated:

Honorable William E. Montgomery
Respondent

Dated:

Michael S. Taheri, Esq.
Taheri & Todoro, PC

Dated: August 28, 2014

Robert H. Tembeckjian, Esq.
Administrator and Counsel to the Commission
(David M. Duguay, Of Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV

EXHIBIT 1: FORMAL WRITTEN COMPLAINT

EXHIBIT 2: ANSWER

EXHIBIT 3: RESPONDENT'S LETTER OF RESIGNATION

TABLE OF CONTENTS

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

ANDREW NORMAN PIRAINO,

a Justice of the Salina Town Court,
Onondaga County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

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

Zimmerman Law Office (by Aaron Mark Zimmerman) for the Respondent

The respondent, Andrew Norman Piraino, a Justice of the Salina Town Court, Onondaga County, was served with a Formal Written Complaint dated May 24, 2010, containing four charges. The Formal Written Complaint alleged that in numerous

TABLE OF CONTENTS

cases respondent imposed fines and/or surcharges that exceeded the maximum amounts authorized by law (Charges I and II) or were below the minimum amounts required by law (Charges III and IV), and that, in some of these cases, he did so as a result of his failure to properly supervise his court clerks (Charges II and IV). Respondent filed a verified answer dated June 24, 2010.

On June 24, 2010, respondent filed a motion to dismiss the Formal Written Complaint. Commission counsel opposed the motion by affirmation and memorandum dated August 19, 2010, and respondent replied by affirmation dated August 26, 2010. By order dated September 29, 2010, the Commission denied respondent's motion in all respects.

By Order dated October 21, 2010, the Commission designated Edward J. Nowak, Esq., as referee to hear and report to the Commission with respect to the charges. A hearing was held on May 8, 9, 22 and 23, June 26 and July 31, 2013, in Syracuse.[1] The referee filed a report dated February 20, 2014.

On March 19, 2014, respondent filed a motion (i) to preclude certain individuals on the Commission's staff from involvement in preparing briefs and presenting oral argument with respect to the referee's report and the issue of sanctions, and (ii) to strike from the record a memorandum filed by Commission counsel.

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[1] The Commission's proceedings were stayed after respondent commenced an Article 78 proceeding in January 2011 in Supreme Court, Onondaga County, seeking a writ of prohibition. Supreme Court initially dismissed the petition, then reversed after granting leave to renew and reargue. On November 9, 2012, the Appellate Division, 4th Department, reversed and reinstated the judgment dismissing the petition. *Doe v New York State Comm'n on Judicial Conduct*, 100 AD3d 1346 (4th Dept 2012). On February 12, 2013, leave to appeal was denied. *Doe v New York State Comm'n on Judicial Conduct*, 20 NY3d 1030 (2013).

Commission counsel opposed the motion by affirmation dated March 25, 2014, and memorandum dated March 27, 2014, and respondent replied by memorandum dated April 1, 2014. By order dated April 10, 2014, the Commission denied respondent's motion in all respects.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Commission counsel recommended the sanction of censure. Respondent's counsel argued that respondent's actions were not unethical but that if misconduct was found, a confidential letter of caution should be issued.

On May 29, 2014, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Salina Town Court, Onondaga County, since 1994. His current term expires on December 31, 2017. He was admitted to practice law in New York State in 1983 and has been engaged in the private practice of law since that time.

2. Respondent has regularly attended all required judicial training and education sessions. He regularly received information from the Office of Court Administration concerning changes or updates in the law, and received information and updates concerning changes in fines and surcharges from the Office of the State Comptroller and the State Legislature. He is familiar with and keeps various legal resources in his chambers including McKinney's Consolidated Laws of New York and Magill's Vehicle and Traffic Law Manual for Local Courts, which contains detailed

charts of authorized sentences and surcharges for traffic offenses. The Salina Town Court also has a handbook from the Office of the State Comptroller that provides information and instruction to town and village justices and their court clerks.

3. The Salina Town Court, which has two justices, is responsible for handling both civil and criminal matters. The majority of cases handled by the court are traffic related offenses. Because the town is situated near two major highways, the court handles a high volume of cases. As shown by his reports of cases to the Justice Court Fund showing the fines, fees and surcharges processed by the Salina Town Court, respondent disposed of approximately 22,000 cases from January 2006 through May 2008, an average of 760 cases per month.

4. From January 2006 through May 2008, the Salina Town Court employed two full-time court clerks and two part-time court clerks. Eleanor Mazzye, who had been a clerk for respondent's predecessor as Salina Town Justice, was hired as head court clerk in 1994 and served in that capacity until her retirement in August 2008.

5. Upon hiring Ms. Mazzye as head court clerk, respondent directed her to continue using the same administrative system that respondent's predecessor had used. Respondent provided no training to Ms. Mazzye regarding her duties and responsibilities because, he testified, "[s]he knew more than I did at that time." Respondent did not train any of the other court clerks and relied on Ms. Mazzye to train them. Respondent provided no written court policies or procedures to the court clerks until June 2013.

6. It was the practice in the Salina Town Court that traffic tickets

TABLE OF CONTENTS

returnable in the court were submitted to the court clerks, who would open a "file" for each ticket, consisting of a cover sheet attached to the ticket. The cover sheet form contains designated spaces for names, addresses, return dates, adjourned dates and any plea entry information. Generally, when the court received a guilty plea from a defendant through the mail, a clerk would place the file on respondent's desk in order for him to impose the fine and surcharge.

7. Respondent would then write the fine and surcharge amounts, the date on which he imposed the fine, and the Vehicle and Traffic Law section for the conviction upon which he was imposing the sentence. He would then place the file in a designated area of his desk for the clerks to retrieve.

8. The court clerks would then take these files to their work area and enter the fine and surcharge amounts into the court computer system, which would generate a fine notice for each case. The court clerks would send the fine notices to defendants.

9. When the court received fine and surcharge payments, a court clerk would enter the amount received, the date on which the payment was received and the receipt number on the cover sheet.

10. The court files of hundreds of cases from January 2006 through May 2008 contain no handwritten entries by respondent on the file. In these instances, according to respondent, the court clerks imposed the fines and surcharges without his knowledge or authorization.

11. Ms. Mazzye, as head clerk, generated the reports required to be filed

TABLE OF CONTENTS

on a monthly basis with the Justice Court Fund, a division of the Office of the State Comptroller. Respondent reviewed the Justice Court Fund reports each month and certified that each report was "a true and complete record of the activity of the court for the period." Respondent never noticed any inaccurate information or any improper fines or surcharges.

12. After the Commission received a complaint alleging that respondent had imposed an excessive fine in two seat belt cases, the Commission authorized an investigation. During the investigation, the Commission's staff reviewed the Justice Court Fund reports filed by the Salina Town Court and prepared a schedule listing approximately 1,300 cases in which respondent had reported fines and/or surcharges that potentially either exceeded the maximum amount authorized by law or were below the minimum amount required by law. The Commission's staff provided the schedule to respondent. After reviewing the court files, respondent returned the schedule to the Commission with his notations and comments as to each case indicating which sentences he believed were unlawful and, as to those, attributing fault either to himself or to his court clerks.

13. As set forth in Schedules A through H of the Formal Written Complaint, in 941 instances from January 2006 through May 2008 respondent imposed fines and surcharges that either exceeded the statutory maximum or were below the statutory minimum, and in 362 of these instances, he did so as a result of his failure to properly supervise his clerks, as follows:

(a) In 369 cases respondent imposed fines that exceeded the maximum

TABLE OF CONTENTS

amount authorized by law by a total of $8,745, as shown in Schedule A, and in 93 cases respondent imposed surcharges that exceeded the maximum amount authorized by law by a total of $2,386, as shown in Schedule B;

(b) In 307 additional cases, as shown in Schedule C, respondent imposed fines that exceeded the maximum amount authorized by law by a total of $1,710, and in 22 additional cases, as shown in Schedule D, respondent imposed surcharges that exceeded the maximum amount authorized by law by a total of $610, which respondent attributed to clerk errors;

(c) In 79 cases respondent imposed fines that were below the minimum amount required by law by a total of $3,804, as shown in Schedule E, and in 38 cases respondent imposed surcharges that were below the minimum amount required by law by a total of $1,675, as shown in Schedule F; and

(d) In 13 additional cases, as shown in Schedule G, respondent imposed fines that were below the minimum required by law by a total of $275, and in 20 additional cases, as shown in Schedule H, respondent imposed surcharges that were below the minimum amount required by law by a total of $650, which respondent attributed to clerk errors.

(e) In summary, as shown in Schedules A through D, respondent imposed excessive fines and/or surcharges in 791 instances, 329 of which he attributed to his court clerks. The excess fines and surcharges, totaling $13,451, represent about 1% of the monies reported by respondent over the period covered by the charges. As shown in Schedules E through H, in 150 instances, 33 of which he attributed to his court clerks,

TABLE OF CONTENTS

respondent imposed fines and/or surcharges that were a total of $6,404 less than the minimum amount required by law.

(f) The cases shown in Schedules A through H include more than 400 instances of improper fines and/or surcharges for a seat belt violation (VTL §1229[c][3]) (44% of the total) and 300 instances of improper fines and/or surcharges for an unlicensed driver violation (VTL §509) (32% of the total). In most of the seat belt cases listed on the schedules, the excess fines were $5 or $10 above the statutory maximum of $50. The fines authorized by law for such violations did not change during this period.

(g) Eleven cases involve convictions for Driving While Ability Impaired in which respondent imposed a fine of $750, notwithstanding that the maximum fine for a first such offense is $500. In several of these cases, court records indicate that the District Attorney's office recommended the fine amount as part of a plea bargain.

14. Respondent testified that he was "shocked" when he learned of the sentencing errors. He imposed the fines and surcharges from memory instead of relying on the resources available to him. He acknowledged that "too many mistakes" were made and attributed his errors to "oversight," "mental lapse," "not paying attention," "mis-memoriz[ing] the law," "being overloaded" and "judicial error." He believed that he devoted sufficient time to his judicial duties (about 20 hours a week), but testified that even if he had worked longer hours, "I probably still would have made some mistakes"; he stated, "It's impossible not to make a mistake." He noted that for several months during this 29-month period, he was also doing the work of his co-judge who was unavailable.

TABLE OF CONTENTS

15. Respondent denied that he ever authorized his clerks to set fines. The former head clerk, Ms. Mazzye, testified that respondent authorized her to set a fine of $55 for a straight guilty plea to a seat belt charge (the authorized fine is zero to $50). The referee did not determine whether respondent had authorized his clerks to set fines since, the referee noted, that allegation was not charged and, as a judge, respondent is responsible for the conduct of his court clerks.

16. As found by the referee, respondent did "little to nothing" to supervise his court clerks. Respondent admitted that he "didn't supervise [his] clerks too well." He testified that he relied on his head clerk to train the other clerks and to handle administrative matters, and he testified that he "had no reason to" question his clerks' handling of cases; he stated, "I thought the system was working. Obviously, it wasn't." Respondent acknowledged that he never checked any fine notices prepared by the court clerks and that he is responsible for the actions of his court clerks.

17. All of the fines and surcharges imposed by respondent's court were remitted to the Office of the State Comptroller and were accurately reported.

18. Respondent testified that upon learning during the Commission's investigation of the sentencing errors, he met individually with each of the court clerks (by that time, Ms. Mazzye had retired) to discuss procedures, and that he instituted new procedures in order to avoid such problems in the future. The procedures are embodied in a two-page "Policy Statement" dated June 21, 2013, signed by respondent and the court clerks. Among other things, the "Policy Statement" states that in every case the judge assesses the fine and thereafter gets the fine notice with the case file, before the

TABLE OF CONTENTS

notice is sent, "to verify the amount of the fine."

19. Since learning of the sentencing errors, respondent has taken no steps to reimburse any individuals who had paid fines and/or surcharges in amounts that exceeded the maximum authorized by 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), 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 New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is the responsibility of every judge to "respect and comply with the law" and to "be faithful to the law and maintain professional competence in it" (Rules, §§100.2[A], 100.3[B][1]). Notwithstanding these requirements, in over 900 Vehicle and Traffic Law cases over a 29-month period respondent imposed fines and/or surcharges that either exceeded the maximum amount authorized by law or were below the minimum amount required by law. Respondent attributes approximately 40% of these unlawful sentences to his court clerks, who, he maintains, imposed fines and surcharges without his knowledge or authorization. Since every judge is obligated to require the judge's staff to "observe the standards of fidelity and diligence that apply to the judge" (Rules, §100.3[C][2]), respondent, who acknowledged that he "didn't supervise [his]

TABLE OF CONTENTS

clerks too well," bears responsibility not only for the unlawful sentences he imposed directly, but for those imposed by his court staff. As found by the referee, "[w]hile respondent's actions were not intentional or purposeful," his failure to consult the legal authorities that were available to him and "his inattention to the process and procedures of his court and his clerical staff" resulted in hundreds of illegal sentences being imposed (Report, p 9).

These unlawful dispositions, which respondent cannot and does not dispute, are conclusively established by court records and respondent's monthly reports of cases to the Office of the State Comptroller. In 579 instances respondent directly imposed fines and/or surcharges that either exceeded the maximum amount permitted by law or were less than the minimum amount required by law, and in 362 additional instances, according to respondent, fines and/or surcharges that were too high or too low were imposed by respondent's court clerks. Such a pattern of repeated sentencing errors is inconsistent with a judge's ethical obligation to "comply with the law" and to "maintain professional competence" in the law (Rules, §§100.2[A], 100.3[B][1]) and therefore is subject to discipline. *See*, *e.g.*, *Matter of Banks*, 2010 NYSCJC Annual Report 100 (judge imposed over $11,000 in excessive fines in 209 cases over six months, and conceded that court records would show excessive fines in the same proportion over 18 additional months); *Matter of Pisaturo*, 2006 NYSCJC Annual Report 228 (judge based fines on the original charges, rather than the lesser charges that defendants pled guilty to, resulting in excessive fines in 703 cases over a 32-month period and in 230 additional cases over the preceding two years, totaling approximately $170,000 in overcharges).

TABLE OF CONTENTS

We reject respondent's argument that such sentencing errors are properly addressed by an appellate court, not in a disciplinary setting. Since most of the overpayments in this case involved relatively small amounts, it is unrealistic to expect that the defendants would expend the resources necessary to pursue an appellate remedy. In disciplinary cases, as the Court of Appeals has repeatedly held, errors of law and judicial misconduct are not mutually exclusive. *E.g.*, *Matter of Reeves*, 63 NY2d 105, 109-10 (1984) (pattern of failing to advise litigants of constitutional and statutory rights "is serious misconduct"); *Matter of Jung*, 11 NY3d 365, 373 (2008); *Matter of Feinberg*, 5 NY3d 206, 215 (2005) (judge repeatedly "disregarded the clear statutory mandates of his office" in awarding counsel fees without the statutorily required affidavits). In this case, respondent's repeated errors and negligent supervision of his court clerks, resulting in more than 900 illegal sentences being imposed, involve one of the most fundamental responsibilities of a judge, the imposition of a sentence upon conviction.

While respondent attributes many of these unlawful dispositions to the unauthorized actions of his staff, as a judge he bears full responsibility for his clerks' conduct. This is especially so where, as the referee found, the record shows that during this period respondent did "little to nothing" to supervise his clerks, such as reviewing fine notices before they were sent or providing internal controls or written policies or procedures relating to the processing of cases (Report, p 5). Indeed, not until June 2013 – three years after being served with formal charges addressing the sentencing errors he attributed to his clerks – did respondent prepare a written "Policy Statement" for his staff, describing the court's procedures for handling traffic cases and making it clear that the

TABLE OF CONTENTS

judge imposes all fines. In view of his ethical obligation to ensure that those subject to his direction and control follow the law and "adhere to the standards of fidelity and diligence that apply to the judge" (Rules, §100.3[C][2]), respondent is responsible for the sentences imposed by his court staff.

As the record conclusively demonstrates, respondent's sentencing errors cannot be attributed to lack of experience, insufficient training and education, or insufficient resources to assist him in performing his duties. As a practicing attorney and experienced judge, respondent had more than 20 years of legal experience and had been on the bench for more than a decade at the time the unlawful sentences were imposed. He regularly attended all required judicial training and education sessions; he had access to and was familiar with the pertinent statutes; and at the hearing, he acknowledged that all of the resources needed to determine the appropriate sentences were readily available to him. It should be emphasized that this is not an area of law that involves complicated legal issues. Simply consulting the sentencing provisions in the Vehicle and Traffic Law or the sentencing charts available to him would have been sufficient to make sure that a fine or surcharge for a particular charge was within the authorized range.

Respondent's proffered explanations for his errors, including "inattention" or "oversight," do not excuse his misconduct (*see Matter of Feinberg*, *supra*, 5 NY3d at 214; *see also Matter of VonderHeide*, 72 NY2d 658, 660 [1988]), nor does the fact that the Salina Town Court is among the busiest courts in upstate New York. While isolated, inadvertent sentencing errors might be excused in a court that, like respondent's, handles thousands of cases each year, the pervasive, repeated errors depicted in this record are

TABLE OF CONTENTS

plainly unacceptable. It is inexcusable, for example, that a judge who each year handles hundreds of cases involving seat belt and unlicensed driver charges – violations that represent more than 70% of the improper dispositions in this record – would not make certain that he or she knew the authorized fine range for those kinds of cases. Notwithstanding that most of the cases in this record involve relatively minor infractions, it is a judge's obligation to impose a legally proper sentence in every case, regardless of the severity of the offense. Public confidence in the proper administration of justice and in the judiciary as a whole is diminished when a judge repeatedly makes sentencing errors even in simple, straightforward cases.

We have carefully considered each of respondent's defenses and find them without merit. The referee correctly rejected respondent's contention that any administrative failures on his part warranted only administrative correction and that misconduct could not be found since he cooperated with administrative authorities. Respondent's reliance on *Matter of Gilpatric*, 13 NY3d 586 (2009) and *Matter of Greenfield*, 76 NY2d 293 (1990) is misplaced, since those cases specifically address the parameters of finding misconduct for delays in rendering court decisions, not for the imposition of illegal sentences. A judge's administrative responsibilities are addressed in the ethical rules (§100.3[C]), and the Commission has repeatedly found that the failure to properly supervise court staff is misconduct. *E.g.*, *Matter of Ridgeway*, 2010 NYSCJC Annual Report 205, 209 ("a judge is required to exercise supervisory vigilance over court staff to ensure the proper performance of [their] responsibilities"); *Matter of Burin,* 2008 NYSCJC Annual Report 97 (judge failed to provide adequate supervision or training to

TABLE OF CONTENTS

his staff to ensure the prompt depositing, reporting and remitting of monies); *Matter of Cavotta,* 2008 NYSCJC Annual Report 107 (judge failed to adequately supervise court staff resulting in a deficiency in the court account); *Matter of Jarosz,* 2004 NYSCJC Annual Report 116 (judge was negligent in the supervision of court clerk who made false entries in court records); *Matter of Restino,* 2002 NYSCJC Annual Report 145 (judge failed to adequately supervise court clerk who failed to maintain proper records and make timely deposits of funds).

We also reject respondent's argument that for a judge to be disciplined, a "vile, improper or impure" motive must be charged and proved. Misconduct has been found for behavior that was negligent (*e.g.*, *Matter of Francis M. Alessandro*, 13 NY3d 238, 249 [2009] [judge's omission of certain assets and liabilities on loan applications and financial disclosure forms was "careless," not intentional]), or even when the judge's motive was laudable (*e.g.*, *Matter of Blackburne*, 7 NY3d 213, 219 [2007] [judge was "motivated by a desire to protect the integrity of the Treatment Court" in attempting to prevent the arrest of a suspected felon in her courtroom]; *Matter of LaBelle*, 79 NY2d 350, 362 [judge held defendants in custody without setting bail as required because he believed that homeless defendants were more comfortable and better cared for in jail than on the streets]).

In weighing the appropriate sanction, it is of some concern to us that respondent has taken no affirmative steps to ameliorate the financial harm he caused to 791 defendants, whose overpayments in fines and surcharges totaled $13,451. Although respondent's counsel indicated at the oral argument that he had advised his client that

TABLE OF CONTENTS

there was no available avenue for reimbursing the defendants (Oral argument, pp 34-36), we note that a significant mitigating factor in *Banks* and *Pisaturo* was that those judges took extensive measures to initiate and process refunds to defendants who had paid fines in excessive amounts. (We also note that in those two cases, both the total overpayments and average overpayment were significantly greater than in this matter, where a majority of the overpayments were $5 or $10 and the average overpayment was less than $20.)

We are mindful that there is no evidence that respondent's unlawful sentences were the result of bias or other improper motive, such as a desire to financially benefit his town (*compare*, *Matter of Banks*, *supra* [judge's excessive fines "create[d] at least an appearance that he was imposing excessive amounts in order to increase the town's revenues"); indeed, many of the unlawful dispositions in this record involve fines or surcharges that were less than the minimum amount required. Further, there is no indication that respondent's misconduct continued after the sentencing errors were brought to his attention (*compare*, *Matter of Burke*, 2015 NYSCJC Annual Report ___ [judge continued to impose excessive fines in certain cases after his court clerk had advised him that the fines exceeded the maximum amount authorized by law]). As respondent testified, after learning of the errors, he instituted new procedures in order to avoid such problems in the future, including personally reviewing all fine notices and comparing them with the court files. We believe that these actions manifest a sincere desire to improve the operations of his court and we trust that such errors will not recur. Finally, as the referee noted, respondent was cooperative with the Commission during its investigation, during which he conducted an extensive review of court files and provided

TABLE OF CONTENTS

information to the Commission's staff. We thus conclude that despite the extent of respondent's derelictions, public confidence in the fair and proper administration of justice in respondent's court and in the judiciary as a whole has not been "irredeemably damaged" (*Matter of Watson*, 100 NY2d 290, 304 [2003]) and, accordingly, that the sanction of censure is appropriate.

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

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

CERTIFICATION

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

Dated: July 30, 2014

Jean M Savanyu

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

TABLE OF CONTENTS

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

DOMENICK J. PORCO,

DECISION
AND
ORDER

a Justice of the Eastchester Town Court,
Westchester County.

- -

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Erica K. Sparkler, Of Counsel) for the Commission

Richard M. Maltz, PLLC (by Richard M. Maltz) for the Respondent

The matter having come before the Commission on September 18, 2014; and the Commission having before it the Stipulation dated September 10, 2014; and respondent having tendered his resignation from judicial office by letter dated September

TABLE OF CONTENTS

10, 2014, effective September 30, 2014, and having affirmed that he will neither seek nor accept judicial office at any time in the future; and respondent having waived confidentiality as provided by Judiciary Law §45 to the limited extent that the Stipulation will become public upon being signed by the signatories and the Commission's Decision and Order thereto will become public; now, therefore, it is

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

SO ORDERED.

Dated: September 18, 2014

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

TABLE OF CONTENTS

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

DOMENICK J. PORCO, **STIPULATION**

a Justice of the Eastchester Town Court, Westchester County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Domenick J. Porco ("Respondent"), who is represented in these proceedings by Richard M. Maltz, Esq., as follows:

1. Respondent has been a Justice of the Eastchester Town Court, Westchester County, since 1992. His current term expires December 31, 2015.

2. Respondent was served with a Formal Written Complaint dated April 2, 2014, containing two charges, which alleged, *inter alia*, that:

A. From in or about 2009 through in or about August 2012, Respondent did not sufficiently oversee and approve dispositions of a significant number of Vehicle and Traffic Law ("VTL") cases in Eastchester Town Court; and

B. In or about June 2012, certain records of VTL cases in the Eastchester Town Court that were reviewed by Respondent, photocopied, and produced in response to a request from the

TABLE OF CONTENTS

Commission, were deficient and raised questions as to whether and when Respondent had approved dispositions in such cases.

3. Respondent filed an Answer dated June 25, 2014.

4. Respondent submitted his resignation by letter dated September 10, 2014, a copy of which is annexed as Exhibit 1. Respondent's resignation becomes effective on September 30, 2014, and Respondent affirms that he will vacate judicial office as of September 30, 2014.

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

6. Respondent affirms that, having vacated 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 (1) this Stipulation will become public upon being signed by the

TABLE OF CONTENTS

signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 9/8/14

Honorable Domenick J. Porco
Respondent

Dated: 9/8/14

Richard M. Maltz
Richard M. Maltz, PLLC
Attorney for Respondent

Dated: September 10, 2014

Robert H. Tembeckjian
Administrator and Counsel to the Commission
(**Erica K. Sparkler**, Of Counsel)

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

TABLE OF CONTENTS

APPENDIX G: STATISTICAL ANALYSIS OF COMPLAINTS

COMPLAINTS PENDING AS OF DECEMBER 31, 2013

SUBJECT OF COMPLAINT		STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING								
NON-JUDGES								
DEMEANOR		15	23	1	1	0	0	40
DELAYS		3	3	4	0	1	0	11
CONFLICT OF INTEREST		2	7	4	0	1	1	15
BIAS		4	3	1	0	0	0	8
CORRUPTION		4	0	0	1	0	1	6
INTOXICATION		1	0	0	0	0	0	1
DISABILITY/QUALIFICATIONS		0	0	0	1	0	0	1
POLITICAL ACTIVITY		3	7	1	1	1	1	14
FINANCES/RECORDS/TRAINING		6	3	1	6	3	0	19
TICKET-FIXING		0	1	0	1	0	0	2
ASSERTION OF INFLUENCE		4	5	5	5	2	2	23
VIOLATION OF RIGHTS		19	24	2	5	4	2	56
MISCELLANEOUS		1	3	1	0	0	0	5
TOTALS		62	79	20	21	12	7	201

*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.

TABLE OF CONTENTS

NEW COMPLAINTS CONSIDERED BY THE COMMISSION IN 2014

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	1,056							1,056
NON-JUDGES	300							300
DEMEANOR	118	17	4	2	0	0	0	141
DELAYS	29	5	0	0	0	0	0	34
CONFLICT OF INTEREST	25	5	0	1	1	0	0	32
BIAS	25	4	0	0	0	0	0	29
CORRUPTION	20	5	1	0	0	0	0	26
INTOXICATION	2	2	0	0	1	0	0	5
DISABILITY/QUALIFICATIONS	0	1	0	0	0	0	0	1
POLITICAL ACTIVITY	11	7	2	0	0	0	0	20
FINANCES/RECORDS/TRAINING	6	15	6	2	0	0	0	29
TICKET-FIXING	1	0	0	0	1	0	0	2
ASSERTION OF INFLUENCE	4	10	1	1	0	0	0	16
VIOLATION OF RIGHTS	11	33	4	0	2	0	0	50
MISCELLANEOUS	14	5	4	2	1	0	0	26
TOTALS	1,622	109	22	8	6	0	0	1,767

*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.

TABLE OF CONTENTS

ALL COMPLAINTS CONSIDERED IN 2014: 1767 NEW & 201 PENDING FROM 2013

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	1,056							1,056
NON-JUDGES	300							300
DEMEANOR	118	32	27	3	1	0	0	181
DELAYS	29	8	3	4	0	1	0	45
CONFLICT OF INTEREST	25	7	7	5	1	1	1	47
BIAS	25	8	3	1	0	0	0	37
CORRUPTION	20	9	1	0	1	0	1	32
INTOXICATION	2	3	0	0	1	0	0	6
DISABILITY/QUALIFICATIONS	0	1	0	0	1	0	0	2
POLITICAL ACTIVITY	11	10	9	1	1	1	1	34
FINANCES/RECORDS/TRAINING	6	21	9	3	6	3	0	48
TICKET-FIXING	1	0	1	0	2	0	0	4
ASSERTION OF INFLUENCE	4	14	6	6	5	2	2	39
VIOLATION OF RIGHTS	11	52	28	2	7	4	2	106
MISCELLANEOUS	14	6	7	3	1	0	0	31
TOTALS	1,622	171	101	28	27	12	7	1,968

*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.

TABLE OF CONTENTS

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	21,927							21,927
NON-JUDGES	6,976							6,976
DEMEANOR	3,769	32	1,318	338	130	123	257	5,967
DELAYS	1,558	8	190	101	36	23	31	1,947
CONFLICT OF INTEREST	780	7	509	168	59	31	145	1,699
BIAS	1,955	8	292	58	31	21	34	2,399
CORRUPTION	562	9	138	14	43	23	42	831
INTOXICATION	61	3	41	8	17	4	30	164
DISABILITY/QUALIFICATIONS	64	1	34	2	19	14	6	140
POLITICAL ACTIVITY	387	10	302	195	25	35	52	1,006
FINANCES/RECORDS/TRAINING	311	21	341	213	147	100	104	1,237
TICKET-FIXING	28	0	91	160	46	62	169	556
ASSERTION OF INFLUENCE	246	14	191	96	36	13	66	662
VIOLATION OF RIGHTS	2,514	52	567	225	103	57	99	3,617
MISCELLANEOUS	849	6	268	89	34	43	60	1,349
TOTALS	41,987	171	4,282	1,667	726	549	1,095	50,477

* 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.

TABLE OF CONTENTS

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