STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

RICHARD N. ALLMAN,

a Judge of the Criminal Court of the City
of New York, Kings County.

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THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Honorable Frances A. Ciardullo, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Raoul Lionel Felder, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Vickie Ma, Of Counsel)

Andrea G. Hirsch for Respondent

The respondent, Richard N. Allman, a Judge of the Criminal Court of the City of New York, Kings County, was served with a Formal Written Complaint dated July 1, 2004, containing one charge. Respondent filed an answer dated July 14, 2004.

On November 17, 2004, the administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts. The Commission approved the agreed statement on December 10, 2004. Each side submitted memoranda as to sanction.

On February 7, 2005, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following determination.

1. Respondent received interim appointments to the Civil Court of the City of New York in July 1999, December 1999, December 2000 and December 2001, during which time he was assigned to the Criminal Court of the City of New York. In December 2002, respondent was appointed a Judge of the Criminal Court of the City of New York, for a term that expires in December 2007.

2. On June 8, 2004, respondent presided over a combined calendar with a domestic violence part and two all purpose parts. On that date, respondent presided over *People v. Winston Roach*, a Vehicle and Traffic matter. Legal Aid attorney Steven Terry appeared with Mr. Roach. Mr. Roach, who owed a balance on an outstanding fine, had voluntarily returned on the fourth warrant issued in his case.

3. Respondent noted that previous warrants had been issued for Mr. Roach's arrest in the case and asked Mr. Roach directly whether he could think of a way to insure his future appearances in court.

4. Mr. Roach offered excuses for his absences, citing a new job and a recent illness. Respondent replied that Mr. Roach's answer was non-responsive and again asked him whether he could think of a way to insure his future appearances in court.

5. Mr. Terry attempted several times to object, to note his presence on his client's behalf and to state that it was improper for respondent to address his client directly, but was repeatedly interrupted by respondent. When Mr. Terry attempted to object a third time, respondent screamed at Mr. Terry that he did not want Mr. Terry to speak and that he did not need Mr. Terry's interference. The transcript states:

> MR. TERRY: Judge, I don't think –
>
> RESPONDENT: I have a question for him. I want to know from him.
>
> MR. TERRY: I am recommending to him --
>
> RESPONDENT: If you want to advise him on answering the question, but don't speak for him. I am not addressing you Mr. Terry.
>
> MR. TERRY: I would not speak for him, but I point out --
>
> RESPONDENT: I don't want you to speak, then. I don't want you to speak. I really don't need your interference.
>
> MR. TERRY: I am here as an advocate. If you consider me interfering -- I am advocating on his behalf. You are questioning him improperly.
>
> I understand that you have your position. I have a position, also, with regard to whether he knows of his responsibilities. It is my opinion that he has upheld his responsibilities.

6. Respondent then stood up angrily, leaned over the bench, and made the following demeaning comment to Mr. Terry in a loud voice: "Did you go to law school, Mr. Terry? Did you go to law school, yes or no?" Before Mr. Terry could respond, respondent interrupted him and announced that the case would be recalled later that day.

7. While still angry at Mr. Terry, respondent left the bench during the ensuing break in the proceedings. Respondent approached Mr. Terry, who was standing at counsel's table inside the well area of the courtroom, and grabbed Mr. Terry firmly, placing his left hand on Mr. Terry's right arm, a few inches above Mr. Terry's right elbow, and placing his right hand on Mr. Terry's left arm a few inches above Mr. Terry's left elbow. Now standing face-to-face with Mr. Terry, respondent stated in a raised voice, "All I want you to do is listen to me." When Mr. Terry rightly protested that respondent was touching him, respondent removed his hands from Mr. Terry and yelled, "This is my courtroom! You will do what I want you to do in my courtroom! Do you understand?" Respondent then resumed the bench and directed Mr. Terry to leave the courtroom, whereupon Mr. Terry left.

8. The transcript (Exhibit 1 to the Agreed Statement of Facts) reveals the sole basis for respondent's actions. Respondent concedes, and has conceded throughout this matter and before he heard from the Commission, that his conduct was highly improper and not warranted by anything that Mr. Terry did.

9. The incident was observed by court staff, several attorneys and several defendants.

10. Immediately after the incident, respondent, recognizing that his conduct was profoundly wrong, sought to rectify the situation. Without any prompting from anyone, respondent immediately telephoned both Mr. Terry and Dawn C. Ryan, Attorney-in-Charge of the Legal Aid Society's Criminal Defense Division in Brooklyn, and apologized without hesitation or reservation. Respondent separately and unequivocally apologized to everyone else in court: the court officers, court staff, the prosecutors and the court reporter. Respondent apologized again on the following day, June 9th, on the record in open court before an audience that included Legal Aid attorneys and a Legal Aid supervisor.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(2), 100.3(B)(3) and 100.3(B)(6) of the Rules Governing Judicial Conduct and Sections 700.5(a) and 700.5(e) of the Rules of the Supreme Court, Appellate Division, Second Department, 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.

After berating an attorney from the bench and abruptly calling a recess, respondent left the bench, walked into the well of the courtroom and firmly grabbed the lawyer by both arms while continuing to yell at him. As respondent has frankly conceded, such injudicious conduct is highly improper and utterly inexcusable.

A physical confrontation, initiated by the judge, has no place in a

courtroom, where every judge is obliged to maintain dignity and decorum and to preside over disputes in a lawful, orderly manner. *See Matter of Richter*, 42 NY2d (aa), 409 NYS2d 1013 (Ct. on the Judiciary 1977); Rules Governing Judicial Conduct §100.3(B)(3); Rules of the Supreme Court, Appellate Division, Second Department §§700.5(a) and 700.5(e). Intemperate language or impatient, undignified demeanor, standing alone, may subject a judge to discipline, but crossing the line from verbal to physical confrontation is not just improper, but fundamentally inimical to the role of a judge.

Here, the confrontation began when respondent angrily admonished Steven Terry, a Legal Aid attorney, for interfering with respondent's efforts to speak directly to Mr. Terry's client, a defendant in a Vehicle and Traffic case who was appearing on a fourth warrant. When Mr. Terry, asserting his role as the defendant's advocate, said that the defendant had acted responsibly and that it was improper for respondent to question the defendant, respondent asked Mr. Terry whether he had gone to law school, a demeaning comment that was entirely inappropriate. Respondent then called a recess and, instead of composing himself and defusing the situation, angrily left the bench, walked over to Mr. Terry and firmly grabbed him, placing both hands on Mr. Terry's upper arms. In a raised voice, respondent said, "All I want you to do is listen to me." When Mr. Terry protested that respondent was "touching" him, respondent removed his hands while continuing to yell at the attorney. Respondent should not have needed a reminder from Mr. Terry that it was improper to have placed his hands, in anger, on an attorney.

The seriousness of respondent's misconduct requires little elaboration. Self-control is an essential element of judicial temperament. In confronting the attorney during a court recess, respondent should have been mindful that his judicial robes conferred upon him a superior status that required him to exercise particular restraint.

As previous decisions have stated, "[T]he purpose of judicial disciplinary proceedings is 'not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents.'" *Matter of Waltemade*, 37 NY2d (a), (lll) (Ct. on the Judiciary 1975); *Matter of Reeves*, 63 NY2d 105, 111 (1984). While respondent's misconduct is extremely serious, we have concluded that it does not establish that he is "unfit to remain in office." *Matter of Reeves*, supra, 63 NY2d at 111. We reach this conclusion upon consideration of several factors.

First, the record indicates that, within minutes of the incident, respondent recognized his misconduct and telephoned Mr. Terry and his supervisor to apologize; he also apologized personally to everyone he remembered being present in court, and apologized in open court the next day. Respondent's immediate and unprompted contrition is a significant mitigating factor. *See, e.g., Matter of Watson*, 100 NY2d 290, 303 (2003); *Matter of LaBelle*, 79 NY2d 350, 363 (1992); *Matter of Feinman*, 2000 Annual Report 105 (Comm. on Judicial Conduct).

Second, respondent is a capable, hard-working judge, and the record reflects that he has served as a judge for six years with diligence and dedication. His misconduct appears to have been an isolated lapse in an otherwise unblemished record. *See, e.g., Matter of Edwards*, 67 NY2d 153, 155 (1986) (judge's misconduct was a

"single incident" which was "an aberration").

Third, respondent has been forthright and cooperative throughout this proceeding. In this regard, we note respondent's frank recognition that his misconduct warrants a strong public rebuke and his pledge that it will not be repeated.

We conclude that, under the circumstances, this single incident, while constituting a serious breach of judicial decorum, does not irretrievably damage respondent's effectiveness on the bench and that he should be censured rather than removed from office. We are of the opinion that respondent recognizes the valuable lessons to be learned from this episode and thus can continue to serve as a respected member of the judicial community.

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

Mr. Goldman, Judge Ciardullo, Ms. DiPirro, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Luciano, Judge Peters and Judge Ruderman concur.

Mr. Coffey and Mr. Pope dissent only as to the sanction and vote that respondent be admonished.

CERTIFICATION

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

Dated: March 23, 2005

Lawrence S. Goldman, Esq., Chair
New York State
Commission on Judicial Conduct

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DISSENTING OPINION
BY MR. COFFEY
AND MR. POPE

We appreciate the concerns expressed in the majority opinion. Nonetheless, we believe that respondent's misconduct should be viewed in light of several substantial mitigating factors, not the least of which was his almost immediate recognition that he had grossly overreacted during a court recess by placing his hands on an attorney while urging the attorney to listen to him. In fact, there is no dispute that when the attorney advised the judge that he was "touching" the attorney's arms, respondent immediately removed his hands.

Undeniably, the frustration respondent felt in dealing with a defendant who had not paid a fine in 18 months and whose failure to appear in court four times caused the issuance of four bench warrants did not justify respondent's conduct, as respondent himself has frankly acknowledged. Nor was respondent's conduct justified by his anger at the attorney's expressed belief that his client had acted responsibly. But respondent freely admits his improper behavior, and did so immediately after the incident, which we

believe is a compelling factor in determining an appropriate sanction for his behavior. Moreover, we would be remiss not to acknowledge respondent's strong work ethic and one of the strongest mitigation defenses in our collective memory.

Respondent has never been disciplined before and, as Commission Counsel has conceded, is a capable and hardworking judge who has shown sincere contrition and apologized to everyone who was in court on the date of the incident. Furthermore, since it is apparent from the record before us that the misconduct was an aberration that lasted just a few seconds, this case calls for compassion in arriving at a suitable disciplinary sanction. As the Court of Appeals has noted, the purpose of a disciplinary sanction "is not punishment" (*Matter of Watson*, 100 NY2d 290, 304 [2003]), and we therefore fail to see what is gained by an unduly-severe penalty when respondent has already excoriated himself and has demonstrated that he understands that what he did was improper. Accordingly, we vote that respondent be admonished.

An admonition would not suggest to the judiciary that we take lightly physical confrontations, challenges or assaults (*see, Matter of Richter*, 42 NY2d [aa], 409 NYS2d 1013 [Ct. on the Judiciary 1977] and *Matter of Tyler*, 75 NY2d 525 [1990]). Nor would it stand as a precedent for a case where a judge engages in conduct described in those decisions. Rather, in view of the fact that there is every indication in this record that respondent has learned from this experience and is an intelligent, capable and

hardworking judge, we believe that admonition, hardly an insignificant punishment, would be the appropriate penalty.

Dated: March 23, 2005

Stephen R. Coffey, Esq., Member
New York State
Commission on Judicial Conduct

Alan J. Pope, Esq., Member
New York State
Commission on Judicial Conduct