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 T. DI STEFANO,

a Justice of the Colonie Town Court,
Albany County.

DETERMINATION

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

Honorable Richard T. Di Stefano, *pro se*

The respondent, Richard T. Di Stefano, a justice of the Colonie Town Court, Albany County, was served with a Formal Written Complaint dated May 6, 2004,

containing one charge. Respondent filed a verified response dated June 7, 2004.

By motion dated July 7, 2004, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's operating procedures and rules (22 NYCRR 7000.6[c]). By letter dated July 27, 2004, respondent advised the Commission that he did not oppose the motion. By decision and order dated August 9, 2004, the Commission granted the administrator's motion and determined that the factual allegations were sustained and that respondent's misconduct was established.

The parties filed briefs with respect to the issue of sanctions. On September 23, 2004, the Commission heard oral argument, at which respondent appeared. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Colonie Town Court, Albany County since January 2002.

2. At all times relevant to these proceedings, respondent was an attorney in the practice of law as a partner with JoAnne W. DiStefano, Esq., in a firm by the name of DiStefano & DiStefano, located in the Town of Colonie, Albany County.

3. In July 2000, Robert and Donald Suhocki retained respondent to defend them in an action in Supreme Court, Saratoga County, commenced by their sister regarding their mother's finances. By verified complaint dated June 22, 2000, the Suhockis were alleged to have abused their authority as attorney in fact in converting

funds belonging to their mother. Respondent failed to appear, and plaintiff Gloria Devoe, as attorney in fact for Sophie Suhocki, filed a motion for a default judgment dated November 2, 2000. Respondent did not oppose the motion, and the court entered a default judgment on December 22, 2000. In so doing, respondent neglected civil matters handled on behalf of his clients, in violation of Disciplinary Rule 6-101(A)(3) of the Code of Professional Responsibility [22 NYCRR 1200.30].

4. By letter dated November 28, 2001, the Committee on Professional Standards (hereinafter "Committee") requested respondent to provide information with respect to the inquiry of Robert J. Suhocki. He failed to do so, and by letter dated January 4, 2002, respondent was directed to respond within ten days or an application would be made for a subpoena directing his appearance to be examined under oath. Respondent submitted an untimely response received by the Committee on January 22, 2002. In so doing, respondent failed to cooperate with the Committee in its investigation of client complaints, in violation of Disciplinary Rule 1-102(A)(5) of the Code of Professional Responsibility [22 NYCRR 1200.3].

5. Robert and Donald Suhocki telephoned respondent and sent him faxes upon their receipt of notice of the default judgment entered on December 22, 2000. Respondent failed to respond. In so doing, respondent failed to communicate with his clients, in violation of Disciplinary Rule 1-102(A)(5) of the Code of Professional Responsibility [22 NYCRR 1200.3].

6. In January 2000, prior to their marriage, Michelle M. Rigney and her fiancé (now husband) retained respondent for Mr. Rigney's adoption of Ms. Rigney's two daughters. Respondent failed to timely proceed with the matters despite receipt of a Letter of Caution dated October 26, 2001, from the Committee for neglecting the same adoptions and failing to communicate with Mr. or Ms. Rigney. In so doing, respondent neglected civil matters handled on behalf of his clients, in violation of Disciplinary Rule 6-101(A)(3) of the Code of Professional Responsibility [22 NYCRR 1200.30].

7. More than two years after being retained in the Rigney matters, respondent advised the Committee, by letter dated May 3, 2002, that "Since October 2001, the [adoption] papers were filed. They were returned in November, and since that time, I have been waiting for documentation from the Office of Court Administration, and we have re-filed the green card filing with the Office of Court Administration to obtain their approval to proceed with this matter." Respondent further advised that he "had left several messages, both on [Ms. Rigney's] home answering machine and at her work in an attempt to update her, but did not hear from her." These statements were not true. In so doing, respondent attempted to mislead and deceive the Committee, in violation of Disciplinary Rule 1-102(A)(4)(5) and (7) of the Code of Professional Responsibility [22 NYCRR 1200.3].

8. By letter dated June 6, 2002, respondent advised the Committee that the Rigney adoption papers "were filed in Albany County Family Court in September of

2001 and were returned to my office for changes to be made in October. They were then returned again in late November for additional changes to be made." Respondent reiterated statements made in his May 3, 2002, letter as to awaiting documentation from the Office of Court Administration and leaving phone messages with Ms. Rigney. These statements were not true. In so doing, respondent attempted to mislead and deceive the Committee, in violation of Disciplinary Rule 1-102(A)(4)(5) and (7) of the Code of Professional Responsibility [22 NYCRR 1200.3].

9. By letter dated August 23, 2002, respondent advised the Committee in the Rigney matters that Albany County Family Court failed to notify him of a July 2, 2001, return date. This statement was not true. In so doing, respondent attempted to mislead and deceive the Committee, in violation of Disciplinary Rule 1-102(A)(4)(5) and (7) of the Code of Professional Responsibility [22 NYCRR 1200.3].

10. Respondent advised the Committee by letter dated May 3, 2002, that "Since October 2000 the [adoption] papers were filed. They were returned in November, and since that time, I have been waiting for documentation from the Office of Court Administration, and we have re-filed the green card filing with the Office of Court Administration to obtain their approval to proceed with this matter." These statements were not true. Respondent sent a copy of this letter to Ms. Rigney in an effort to mislead and deceive her. In so doing, respondent attempted to mislead and deceive his clients, in violation of Disciplinary Rule 1-102(A)(4)(5) and (7) of the Code of Professional

Responsibility [22 NYCRR 1200.3].

11. Respondent advised the Committee by letter dated June 6, 2002, that the Rigney adoption papers "were filed in Albany County Family Court in September of 2001 and were returned to my office for changes to be made in October. They were then returned again in late November for additional changes to be made." Respondent reiterated statements made in his May 3, 2002, letter as to awaiting documentation from the Office of Court Administration. These statements were not true. Respondent sent a copy of this letter to Ms. Rigney in an effort to mislead and deceive her. In so doing, respondent attempted to mislead and deceive his clients, in violation of Disciplinary Rule 1-102(A)(4)(5) and (7) of the Code of Professional Responsibility [22 NYCRR 1200.3].

12. By letter dated March 29, 2002, the Committee forwarded to respondent correspondence from Ms. Rigney and requested him to submit a reply within 20 days. He failed to do so, and by letter dated April 26, 2002, respondent was directed by the Committee to respond within ten days or an application would be made for a subpoena directing his appearance to be examined under oath. Respondent submitted an untimely response received by the Committee on May 7, 2002. In so doing, respondent failed to cooperate with the Committee in its investigation of client complaints, in violation of Disciplinary Rule 1-102(A)(5) of the Code of Professional Responsibility [22 NYCRR 1200.3].

13. By letter dated May 13, 2002, from the Committee, respondent was

requested within seven days to set forth the dates he filed the Rigneys' adoption papers. He failed to do so, and by letter dated June 4, 2002, the Committee directed respondent to respond within ten days or an application would be made for a subpoena directing his appearance to be examined under oath. Respondent responded by letter dated June 6, 2002, received by the Committee on June 12, 2002. In so doing, respondent failed to cooperate with the Committee in its investigation of client complaints, in violation of Disciplinary Rule 1-102(A)(5) of the Code of Professional Responsibility [22 NYCRR 1200.3].

14. By letter dated July 22, 2002, from the Committee, respondent was requested to provide, within two weeks, documentation relating to the Rigneys' adoptions. He failed to do so, and by letter dated August 12, 2002, the Committee directed respondent to respond within ten days or an application would be made for a subpoena directing his appearance to be examined under oath. Respondent submitted an untimely response received by the Committee on August 27, 2002. In so doing, respondent failed to cooperate with the Committee in its investigation of client complaints, in violation of Disciplinary Rule 1-102(A)(5) of the Code of Professional Responsibility [22 NYCRR 1200.3].

15. From January 2000 through October 2002, respondent failed to return telephone calls from Michelle M. Rigney. In so doing, respondent failed to communicate with his clients, in violation of Disciplinary Rule 1-102(A)(5) of the Code of Professional

Responsibility [22 NYCRR 1200.3].

16. By letter dated October 3, 2002, respondent was directed by the Committee to provide Stephen Nohai with fee arbitration notice and information and to copy the Committee in providing same. He failed to do so, and by letter dated October 29, 2002, respondent was directed by the Committee to comply within seven days. Respondent failed to comply. In so doing, respondent failed to cooperate with the Committee in its investigation of client complaints, in violation of Disciplinary Rule 1-102(A)(5) of the Code of Professional Responsibility [22 NYCRR 1200.3].

17. As a result of respondent's conduct as set forth above, and following formal disciplinary proceedings, respondent was censured for his professional misconduct by Opinion and Order of the Appellate Division, Third Department, dated October 28, 2003. The Appellate Division found *inter alia* that respondent "attempted to mislead and deceive" the Committee and "failed to cooperate with [its] investigation."

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 and should be disciplined for cause pursuant to Article 6, Section 22, subdivision a, of the Constitution of the State of New York and Section 44, subdivision 4, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

By neglecting client matters and by failing to cooperate with the attorney disciplinary committee investigating his conduct, respondent engaged in misconduct as an attorney that resulted in his censure by the Appellate Division, Third Department. Relying upon the findings of the Appellate Division (*see, Matter of Embser v. Comm. on Judicial Conduct*, 90 NY2d 711 [1997]), we conclude that respondent's misconduct is established. Respondent's misbehavior as an attorney, which occurred both before and after he became a judge, also violates the ethical rules for judges, who are required to respect and comply with the law and to maintain high standards of conduct both on and off the bench (Rules Governing Judicial Conduct, §§100.1 and 100.2[A]). A judge may be disciplined for such transgressions, including misconduct that predates the judge's ascension to judicial office (*Matter of Tamsen v Comm. on Judicial Conduct*, 100 NY2d 19 [2003]), "notwithstanding that all of the wrongdoings related to conduct outside his judicial office" (*Matter of Boulanger v Comm. on Judicial Conduct*, 61 NY2d 89, 92 [1984]).

As a lawyer and a judge, respondent is required to cooperate with investigating authorities. *See*, Code of Professional Responsibility, DR1-103; *Matter of Mason v Comm. on Judicial Conduct*, 100 NY2d 56 (2003). Respondent's lack of cooperation with the disciplinary committee -- including his failure to submit timely responses to its inquiries and his misleading statements with respect to the status of two matters -- reflects upon his ability to perform as a judge, who is "sworn to uphold the law

and seek the truth" (*Matter of Myers v Comm. on Judicial Conduct*, 67 NY2d 550, 554 [1986]; *Matter of Mason, supra*).

With respect to the issue of sanctions, we have concluded that respondent's misdeeds as an attorney, while warranting strong rebuke, do not require his removal as a judge. We reach this conclusion upon consideration of several factors.

First, we are mindful that the Appellate Division, Third Department, based upon a hearing, a referee's report and consideration of the entire record, determined that a public censure, rather than disbarment or suspension, was appropriate. In this regard, we further note that, since respondent has been publicly disciplined as an attorney, "there is no reason to fear that the public will perceive that [respondent] is going unpunished or that the matter is being suppressed," if he is not removed (*Matter of Kelso v. Comm. on Judicial Conduct,* 61 NY2d 82, 87-88 [1984]; *Matter of Barlaam*, 1995 Annual Report 105 [Comm. on Judicial Conduct]). In *Barlaam*, a case strikingly similar to this matter, a lawyer-judge who had been censured as an attorney for neglecting an estate matter and for giving misleading testimony to the Grievance Committee was censured pursuant to a joint recommendation by Commission counsel and the judge.

Second, respondent's misdeeds as an attorney did not involve venality, misappropriation of client monies, or other conduct that would irrevocably damage public confidence in his integrity or ability to serve as a judge. *Compare, Matter of Tamsen, supra*; *Matter of Embser, supra*; *Matter of Boulanger, supra.*

Third, we have considered in mitigation that respondent has acknowledged his misconduct and has been contrite, forthright and cooperative throughout this proceeding. *See, Matter of Barlaam, supra.*

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

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

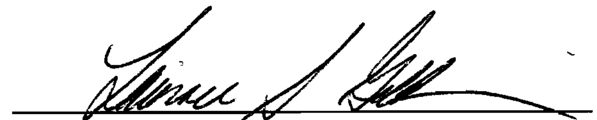
Judge Peters did not participate.

Ms. Hernandez and Mr. Pope were not present.

CERTIFICATION

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

Dated: November 12, 2005



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