

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

MAIJA C. DIXON,

a Judge of the Rochester City Court,
Monroe County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Honorable Rolando T. Acosta
Honorable Sylvia G. Ash
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Honorable Thomas A. Klonick
Honorable Terry Jane Ruderman¹
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

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

Herzfeld & Rubin, P.C. (by Lawton W. Squires) for the Respondent

¹ Judge Ruderman's term as a member of the Commission expired on March 31, 2016. The vote in this matter was taken on March 10, 2016.

The respondent, Maija C. Dixon, a Judge of the Rochester City Court, Monroe County, was served with a Formal Written Complaint dated October 9, 2014, containing one charge. The Formal Written Complaint alleged that in connection with a pending tort action in which respondent was the plaintiff and was represented by counsel, respondent telephoned the chambers of the judge who was handling her case, spoke to the judge about the matter over his repeated objections, and thereafter faxed and mailed the judge a letter containing details about her claim. Respondent filed a verified Answer dated November 5, 2014.

On November 5, 2014, respondent filed a motion for summary determination and/or dismissal of the Formal Written Complaint. Commission counsel opposed the motion on November 24, 2014, and respondent's counsel replied on December 1, 2014. By Decision and Order dated December 11, 2014, the Commission denied respondent's motion in all respects. The Commission rejected an Agreed Statement of Facts.

By Order dated December 16, 2014, the Commission designated Robert A. Barrer, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 24 and 25 and July 6, 2015, in Rochester. The referee filed a report dated December 16, 2015.

The parties submitted briefs with respect to the referee's report. Counsel to the Commission recommended the sanction of removal, and respondent's counsel recommended dismissal or, if misconduct was found, a sanction less than removal. On March 10, 2016, 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 Judge of the Rochester City Court, Monroe County, since 2007. Her term expires on December 31, 2016.

2. Respondent was admitted to the practice of law in New York in 1996. Prior to assuming judicial office, respondent worked at several private law firms, a private corporation and the City of Rochester Law Department. In private practice, respondent's work experience was in the areas of corporate law, employment law, personal injury defense and general defense work.

3. On June 23, 2006, respondent was involved in a motor vehicle accident when her parked car was struck by another vehicle. Respondent retained a former law school classmate, an associate at a personal injury law firm, to represent her, and in November 2008 she accepted a \$25,000 settlement from the no-fault carrier for her claim against the driver of the other vehicle. After her classmate left the firm in 2010, that firm, now called Gelber & O'Connell, LLC, continued to handle respondent's case. On September 13, 2010, the firm commenced an action on respondent's behalf entitled *Maija Dixon v. GEICO General Insurance Company* ("Dixon v. GEICO") in Monroe County Supreme Court, seeking additional damages from her insurance carrier under her supplemental uninsured/underinsured motorist ("SUM") policy, which provided for maximum coverage of \$100,000.

4. As a plaintiff in a personal injury action, respondent would be required during discovery to submit to a deposition and to disclose otherwise personal

information about the injuries that she claimed to have suffered. During the course of the litigation, respondent, who was aware of the pending litigation, does not appear to have been responsive to numerous communications from her attorneys attempting to assist in or confirm the scheduling of her deposition, and she did not appear for a deposition on several occasions. At the hearing, respondent testified that she never attempted to avoid being deposed, was frustrated about the lack of progress on her SUM claim and had wanted her claim to be resolved through arbitration.

5. The record establishes that respondent's counsel was diligently trying to move the case forward. Respondent testified that she did not believe this to be the case and was concerned whether her attorney was being truthful and proceeding in good faith.

6. *Dixon v. GEICO* was transferred to Supreme Court Justice J. Scott Odorisi on May 3, 2013.

7. Respondent knew Judge Odorisi personally and professionally and they were on a first-name basis; their chambers were located in the same building. Prior to his election to Supreme Court in 2012, Judge Odorisi, as a town justice, had occasionally substituted for respondent in the Rochester City Court. Respondent testified at the hearing that when Judge Odorisi was a candidate for Supreme Court, respondent, at his request, had provided a recommendation on his behalf to the County Bar Association.

8. After a conference on August 29, 2013, Judge Odorisi issued a scheduling order setting September 30, 2013, as the date by which respondent's deposition must be completed and requiring that the trial note of issue and certificate of

readiness be filed by December 13, 2013.

9. Respondent advised her attorney, Kristopher SchwarzmueLLer, that she wanted to settle the claim. Mr. SchwarzmueLLer informed her that GEICO had made a \$20,000 settlement offer, and on September 23, 2013, the Gelber firm sent respondent a release document for her signature. At the hearing, respondent testified that she believed that her attorney was pressuring her to settle her claim for less than the fair value and that she was dissatisfied with the settlement offer, which she felt was “nuisance value” and inadequate.

10. Respondent testified that Mr. SchwarzmueLLer told her that Judge Odorisi had threatened to dismiss the action if the settlement offer was not accepted; Mr. SchwarzmueLLer denied communicating that her case would be dismissed unless she settled. The referee found that both respondent and her attorney testified credibly as to this issue and that respondent may have misunderstood her attorney’s communication that if she did not appear for a deposition or settle the case, the defendant could make a motion to preclude and obtain a conditional dismissal order.

11. On October 1, 2013, at approximately 2:00 PM, after looking up Judge Odorisi’s telephone number in the building’s directory, respondent telephoned Judge Odorisi’s chambers, where his secretary, Maureen Ware, answered the phone. Respondent identified herself as “Judge Dixon” and asked to speak with Judge Odorisi, and her call was promptly transferred to him.

12. At the hearing, respondent testified that before calling Judge Odorisi, she specifically considered what she was going to say to him, that she was aware of the

prohibition against *ex parte* communications, and that while she was preparing to make the call, it occurred to her that it was improper for one judge to call another judge about a personal matter pending before the second judge. Prior to placing the call, respondent did not inform her attorney or opposing counsel that she intended to communicate directly with Judge Odorisi concerning her case.

13. Upon reaching Judge Odorisi, respondent told him, in sum and substance, “I need to talk to you,” and he responded, “Well, it can’t be, it’s not about this, your case, is it?” Respondent replied, “Well, actually, it is.” Judge Odorisi immediately told respondent that he could not talk to her about her case.

14. Over Judge Odorisi’s repeated objections and his efforts to terminate the conversation, respondent communicated to Judge Odorisi that she was unhappy with her attorney, that she wanted to avoid publicity, that she wanted to have the case transferred out of Rochester, and that she wanted a conference at which she, the attorneys and the insurance adjuster would be present.

15. Ms. Ware, who had left her desk after transferring the call, was in Judge Odorisi’s office during the conversation. She heard Judge Odorisi tell the caller several times that they could not discuss the case. According to Ms. Ware, the phone call lasted approximately two to three minutes.

16. At the hearing, respondent testified that she terminated the call as soon as Judge Odorisi stated that he could not discuss the case and that the phone call lasted “twelve seconds. Fifteen at the most.” She testified that the purpose of her call was solely to request a conference and denied that she was concerned about publicity or

wanted the case adjudicated outside of Rochester.²

17. Judge Odorisi testified that he was “very upset” by respondent’s call and “very upset that I was being put in this position.” Among other concerns, he perceived that he was being “set up” and that respondent’s call was intended to result in his recusal.

18. Immediately after respondent’s telephone call, Judge Odorisi initiated a conference call with all counsel in which he disclosed his communication with respondent, offered to disqualify himself if requested to do so, and directed Mr. Schwarzmüller to advise respondent not to contact him directly again. That same day, Judge Odorisi also wrote a letter to counsel confirming the substance of what had occurred and again asking Mr. Schwarzmüller to direct his client not to personally contact Judge Odorisi’s chambers while her case was pending.

19. On October 1, 2013, Mr. Schwarzmüller called respondent’s cell phone and left a voicemail message detailing the conference call that had been held. The next day, he sent respondent a letter that, *inter alia*, confirmed that he had left her a message regarding her telephone call to Judge Odorisi; advised her that Judge Odorisi considered her call to be inappropriate and had instructed counsel to advise her not to call him directly again; addressed the deadline of October 7 for accepting the settlement offer

² A few years earlier respondent was the complaining witness in a criminal case that resulted, according to her hearing testimony, in publicity “in every newspaper across the nation.” The referee found that respondent’s experience in that case, in which her testimony “concerned matters of an intimate nature,” “was at least a part of the reason why she appears to have been anxious to have her SUM claim resolved in the most expeditious fashion possible” (Rep 6-7).

and the need to be deposed if she wished to continue with the litigation; and offered to “do whatever it is you want me to do with regard to settling your case or moving forward with your case.” Mr. SchwarzmueLLer’s letter also cautioned respondent about the ethical issues raised by her contacting Judge Odorisi, stating:

“As an aside, based upon Judge Odorisi’s comments about your phone call to him, I would implore you to look at the big picture. You are a sitting Judge contacting another sitting Judge attempting to discuss your personal injury lawsuit to which he has been assigned. While I do not have citations to Judiciary Law at hand to cite to or the Code of Ethics, it is probable that said phone call was a violation of one or both. Your case is not the type of case that you should be risking your professional career for.”

After sending this letter on October 2, 2013, Mr. SchwarzmueLLer spoke to respondent later that day. Pursuant to his conversation with respondent, Mr. SchwarzmueLLer wrote to Judge Odorisi on October 3, 2013, and requested a conference.

20. On October 7, 2013, respondent sent Mr. SchwarzmueLLer an undated, two-page letter in response to his October 2, 2013 letter. Respondent copied Judge Odorisi on her letter and sent copies to him by both facsimile and regular mail. Respondent did not copy GEICO’s counsel on the letter, and prior to faxing and mailing it to Judge Odorisi, she did not inform her attorney or opposing counsel that she intended to communicate directly with Judge Odorisi.

21. Respondent’s undated letter, which was copied to Judge Odorisi, stated that she felt she had “no alternative” but to accept the settlement offer, and enclosed a signed release for her SUM claim in the amount of \$20,000. Her letter also included information discussing:

- the cause and extent of the damages respondent sustained as a result of the accident as they related to her claim;
- the medications she required as a result of the accident;
- her out-of-pocket medical expenses since the accident and her analysis of the monetary value of her case; and
- her objection to being challenged “with respect to my judicial career and a potential violation of judiciary law for contacting Judge Odorisi regarding this case”; and
- her reluctance to accept the proposed settlement.

22. When respondent’s letter arrived in Judge Odorisi’s chambers, his secretary gave it to the judge, who did not read the faxed letter or open the letter sent by mail. By letter dated October 9, 2013, Judge Odorisi sent respondent’s letter to her attorney and opposing counsel.

23. *Dixon v. GEICO* was settled for \$20,000 and the action was dismissed on November 6, 2013.

24. Respondent testified at the hearing that she made a “bad decision” by communicating with Judge Odorisi and that by doing so, she “clearly put my colleague in a very bad place. And for that, I am sorry.” She testified that she made the call to Judge Odorisi because she was “upset” with her attorney, who she felt was acting in bad faith and “refusing to act on my behalf.”

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.

On two occasions, respondent violated fundamental ethical principles by privately communicating with the Supreme Court Justice who was presiding over her pending lawsuit against her insurance company. First, in a telephone call to his chambers that she initiated, respondent asked the judge to schedule a conference in the matter and conveyed other concerns about her case. Several days later, after both Judge Odorisi and her lawyer had advised her that such communications were ethically impermissible, respondent ignored those warnings and sent the judge an *ex parte* letter that contained substantive information about her alleged injuries and medical treatment. By engaging in such conduct, respondent conveyed the appearance not only that she was seeking special consideration because of her judicial status, but that she was attempting to influence the judge handling her case through prohibited, unauthorized *ex parte* communications. Even absent a specific request for special consideration, such conduct is inimical to the role of a judge, who is required to observe the highest standards of conduct on and off the bench and is prohibited from asserting judicial influence to advance private interests (Rules, §§100.2[A], 100.2[C]; *Matter of Edwards*, 67 NY2d 153, 155 [1986]).

Having been a judge for nearly seven years at the time, respondent certainly knew that it is improper for a litigant who is represented by counsel to communicate directly with the judge hearing his or her case; that it is improper for any litigant to

contact the judge *ex parte*, with no notice to the litigant's adversary; and that a judge who receives such communications could not properly consider or act on them. Respondent also should have recognized that the receipt of such communications would place the judge handling her case in a compromising position, requiring him to promptly disclose the communications and offer to disqualify himself (which is what occurred here). As a litigant attempting to advance her personal interests, respondent disregarded these basic precepts, which are fundamental to ensuring the fairness and integrity of judicial proceedings.

Initially, when respondent telephoned Judge Odorisi's chambers and asked to speak to him, she identified herself as "Judge Dixon" to his secretary and, by doing so, was able to obtain immediate access to the judge. In itself, this was an improper assertion of her judicial position to advance her private interests, in violation of Rule 100.2(C). Although respondent maintained that her use of her judicial title had no significance, she certainly would have known that without her title, the likelihood that she would be able to bypass the judge's secretary without having to explain the purpose of her call would be greatly diminished. In these circumstances, there was at least the appearance that she used her judicial position to further her personal interests, with the immediate goal of speaking directly with the judge handling her case in order to convey her concerns about the matter.

Thereafter, when she spoke to Judge Odorisi for several minutes, over his repeated objections and attempts to terminate the call, she requested that he schedule a conference in her case and indicated that she wanted to avoid publicity and have her case

heard outside of the Rochester area. Since respondent was represented by counsel, those requests and concerns should have been conveyed by her attorney in an appropriate manner, on notice to her adversary, and it was plainly unnecessary for her to contact the judge directly.³ It can only be surmised that she did so in order to make a personal, private plea for favorable treatment, an implicit request for special consideration based on her judicial status. It should not inure to respondent's benefit that Judge Odorisi was unswayed by her personal plea and responded appropriately to her breach of judicial ethics – indeed, by doing the only thing a judge in his position could ethically do: attempting to terminate respondent's call, promptly disclosing the call to counsel, and offering to disqualify himself.

Although respondent asserts that her sole purpose in contacting Judge Odorisi was to request a conference and that she ended the call after a few seconds, as soon as Judge Odorisi indicated that he could not discuss her case, the record establishes that she raised multiple issues and continued to talk about her case over Judge Odorisi's objections. Judge Odorisi, who was on good terms with respondent, had no motive to overstate the extent of her communications. Judge Odorisi was clearly correct that respondent was unhappy with her attorney, and at that point he would not have been aware of that issue, or any other of respondent's concerns, unless she had raised them. While respondent denied at the hearing that she wanted her claim heard outside of

³ Respondent's conduct is not excused or mitigated by her claim that she did not trust her attorney to communicate her concerns. There is no indication in the record before us that she lacked competent counsel. If she was dissatisfied with her counsel, a personal injury firm that had represented her for several years, she had ample opportunity to replace them.

Rochester, the referee specifically found that she addressed that issue when she spoke to Judge Odorisi; while she insisted that she had no concern about publicity, her testimony reveals that the subject was clearly a sensitive one. Plainly, all these issues could not have been raised in the very brief communication that respondent described. The testimony of Judge Odorisi's secretary supports both the length of the conversation and Judge Odorisi's repeated attempts to terminate it. In sum, the record establishes convincingly that Judge Odorisi testified credibly concerning the substance of their conversation.

After Judge Odorisi's subsequent conference call with the attorneys about respondent's communication, respondent's lawyer informed her by voicemail message and by letter that Judge Odorisi had directed that she not contact him directly again. Undeterred by these warnings and by Judge Odorisi's own statements to her, a few days later respondent initiated another improper *ex parte* communication with him by faxing and mailing to his chambers a letter that contained details about her alleged injuries and medical treatment.

The purpose of respondent's letter, which states that she has accepted the settlement offer and encloses the signed release, is unclear. Notwithstanding her agreement to settle the case, her criticism of her attorney's handling of her claim, her statement that she feels she has "no alternative" but to accept the settlement offer, and her detailed description of her injuries and medical treatment could be viewed as an effort to undermine the settlement and influence the judge in her favor. Regardless of her intent, her conduct was improper. As a judge herself, respondent certainly knew that a judge

who receives such a letter could not consider it and must disclose it. Further, we reject the referee's conclusion that respondent's letter did not violate Rule 100.2(C) since Judge Odorisi did not read it. Her misconduct was complete when she sent the letter and was not ameliorated by Judge Odorisi's appropriate response.

It is especially troubling that respondent sent such a letter even after both Judge Odorisi and her own attorney had warned her of the impropriety of her earlier communication and conveyed that she was not to call the judge again. Only a hyper-technical interpretation of that advice would conclude that it pertained only to another *ex parte* telephone call, not an *ex parte* letter. No judge should require such warnings in the first place, and sending the letter under these circumstances suggests that respondent lacked an essential understanding of why her conduct was so improper.

When a litigant seeks to privately impart favorable information about her case to the judge presiding over the matter, the entire system of justice is subverted. When the litigant who does so is a judge, in an attempt to advance her personal interests in her own case, respect for the judiciary as a whole is diminished. Such conduct not only raises questions about respondent's judgment and behavior in her own court, but does a grave injustice to our judicial system. It suggests that there are "two systems of justice, one for the average citizen and another for people with influence," and that those who have the right "connections" can manipulate the system for their personal benefit by privately communicating with the judge handling their case (*see* NYSCJC, "Ticket-Fixing: Interim Report," 6/20/77, p 16). If parties in court proceedings and the public are to have faith in the integrity and fairness of judicial decisions, they must have confidence

that *ex parte* communications of the kind respondent initiated are unacceptable and will be subject to discipline.

In determining the appropriate sanction, we are mindful of several factors.

First, we note respondent's testimony that in contacting Judge Odorisi to request a conference with counsel and the insurance adjuster, she only wanted an opportunity to be heard as to the amount of the settlement offer. Although we emphasize that her private communications with Judge Odorisi were inexcusable, we are not persuaded that she acted with a venal intent to influence him.

Second, we note that her letter to her attorney, which she copied and sent to Judge Odorisi, indicated that she had accepted the settlement offer and, indeed, enclosed a signed release. Although sending this communication to Judge Odorisi was improper in that it addressed details of her case while the matter was still pending, the fact that she had accepted the settlement offer meant, as a practical matter, that the case would not come before Judge Odorisi for adjudication and was about to be concluded.

Third, while the Court of Appeals has stated in dictum that "[t]icket-fixing is misconduct of such gravity as to warrant removal" even for a single transgression (*Matter of Reedy*, 64 NY2d 299, 302 [1985]) and that "as a general rule, intervention in a proceeding in another court should result in removal" (*Matter of Edwards, supra*), the results in those two cases do not mandate removal here. In *Reedy*, the judge had previously been censured for similar misconduct, and there were additional aggravating circumstances that warranted the sanction of removal. In *Edwards*, involving a judge who made an implicit request for special consideration in his son's traffic case by

contacting the judge handling the matter, the Court emphasized that the *Reedy* dictum did not “establish[] a per se rule of removal in all cases” and reduced the sanction to censure in view of mitigating factors presented (*Id.*). In numerous other cases, the Court and the Commission have censured or admonished judges for asserting judicial influence to advance the private interests of the judge or others. *See, e.g., Matter of Lonschein*, 50 NY2d 569 (1980) (judge used prestige of office by contacting a city official on behalf of a friend who had applied for a license [admonition]); *Matter of Calderon*, 2011 NYSCJC Annual Report 86 (judge asserted his judicial office in asking prison officials to confiscate materials related to the judge’s lawsuit against an inmate [censure]); *Matter of Horowitz*, 2006 NYSCJC Annual Report 183 (judge intervened on behalf of friends in two pending matters in her own court [censure]); *Matter of Magill*, 2005 NYSCJC Annual Report 177 (judge asserted his judicial prestige by personally delivering the file of a case involving his spouse to the transferee court and leaving his judicial ID [admonition]); *Matter of D’Amanda*, 1990 NYSCJC Annual Report 91 (judge used his judicial position to avoid receiving three traffic tickets [censure]).

Finally, we note respondent’s testimony and her statements during the oral argument that she acted out of an “emotional” reaction and that she now recognizes the impropriety of her conduct and understands that her actions in contacting the judge handling her case placed that judge “in a very bad place.” We also note her assurance that she has learned valuable lessons from these events and is committed to ensuring that her conduct in the future will comport with the high standards of conduct required of every judge.

Based on the foregoing, we have concluded that a public censure reflects the seriousness with which we view the misconduct here. In imposing this sanction, we emphasize that such misconduct cannot be tolerated.

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

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

Mr. Emery files a concurring opinion.

Mr. Cohen files a concurring opinion, which Judge Weinstein joins.

Judge Klonick and Judge Ruderman dissent as to the sanction and vote that respondent should be removed from office. Judge Klonick files an opinion, which Judge Ruderman joins.

Judge Ash was not a member of the Commission when the vote was taken in this matter.

CERTIFICATION

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

Dated: May 26, 2016

A handwritten signature in black ink, reading "Jean M. Savanyu", is written over a horizontal line.

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

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Pursuant to Section 44, subdivision 4,
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CONCURRING OPINION
BY MR. EMERY

If ever there were a case where removal appears to be warranted, this is it.
But appearances can be misleading and, certainly, deceiving.

In order to get more money in a settlement for her personal injury, Judge Dixon personally contacted the judge who was handling her case. Dissatisfied with the final settlement offer and facing imminent dismissal of her claim, she called the judge's chambers, spoke to her judicial colleague and asked for his help to get a better deal; instead, he, quite properly, rebuffed her call and notified counsel. Several days later, after her lawyer told her she was risking her judicial career by trying to influence the judge improperly, she sent an *ex parte* letter to the same judge describing the details of her injuries and suffering and criticizing her attorney's efforts on her behalf. It is hard to conjure a more conscious and calculated campaign by a judge to use her judicial influence for personal gain.

I have written several times that, in my view, the use of judicial office for

personal gain is “the most serious of any [category of] misconduct that comes before the Commission” (*Matter of Cook*, 2006 NYSCJC Annual Report 119 [Emery Dissent] and *Matter of LaClair*, 2006 NYSCJC Annual Report 199 [Emery Dissent]; *see also Matter of Sullivan*, 2016 NYSCJC Annual Report 209 [Emery Dissent]; *Matter of Menard*, 2011 NYSCJC Annual Report 126 [Emery Dissent]; *Matter of Lew*, 2009 NYSCJC Annual Report 130 [Emery Dissent]; *and see Matter of Maney*, 2011 NYSCJC Annual Report 106 [Belluck Dissent]). Such behavior “strikes at the heart of our justice system,” invidiously perverting the fair and proper administration of justice and eroding public confidence in the judiciary as a whole (*Matter of Cook et al., supra*). In this case, a judge attempted to wield her personal influence, as a judge, over the judicial system in which she presides to get more money for herself. There is no dispute that she was trying to get a judicial colleague to use his power to get her more money.

So this case, and, secondarily, my prior dissenting opinions, beg the question of why the Commission censures, rather than removes, Judge Dixon, and why I concur. The short answer is that the judge’s appearance before the Commission and her contrition and explanation of her conduct, and for me, her personal story, compel a more lenient sanction than removal. The misconduct here cannot be and is not excused; however, the sanction must fit the person and the particular circumstances of the case as well as the offense.

Judge Dixon is an individual who, through her faith, character, force of will and personality, got her education, became a lawyer and then a judge. She appears to have overcome numerous obstacles in her life to have attained her judicial position.

When asked at our proceeding about her background, she self-effacingly described it as follows:

“I am from Rochester and I returned to Rochester after law school. I started law school, wow, I started law school at the time with a one-year old. I don’t know if that’s quite how I’m supposed to answer this. Both of my children are outside of this room with me. That one-year old is now 25 and I have a 15-year old. So he was about five at the time that I ran for office. But they are both here. My background is I am a domestic violence survivor and I don’t know that I have ever told that story, so. But I started law school with that and my one-year old in tow with me and returned back to Rochester to go back home and my parents, who are great supporters, both are, of whom have a business in Rochester. My father is in the ministry there and my mother is in ministry with him and they also work together in the funeral home, of which my mother has been in business doing that since I was two. And, so I wasn’t expecting actually to be in office but I started out with the city law department and moved forward in private practice and until I went from Underberg & Kessler to run for office and was a single parent, so single parent of the two boys so I am very proud of them. My son lives here in New York and he is hoping to join the Fire Department and my other son is moving forward. He’s in 9th grade. I am still with him and we are proud of our city residents and I am still a city resident in the 19th Ward. So, we work very hard to support our citizens in the city of Rochester and to support people who are very much young people. And so my boys are part of that community and to bring them up, so, as I said to have access to justice is very important to me. I am very passionate about it, maybe a little more than I should be for our community which I represent.

As you may know City Court is largely populated by people of color and our community is largely populated by people of color in the city of Rochester. Running for office, I was nominated by the party to run and supported and elected by one of the largest percentages for our city and hopefully, as I am up for reelection, this is, the timing of this is very difficult. But I am hopeful that you will see that I am truly sincere and that I am truly remorseful. I don’t say that just for

these proceedings. But if you find that I am worthy of remaining on the bench, I will not make this mistake or any other mistake like this ever again.” (Oral argument, pp 52-54)

The events that led to her misconduct were quite ordinary – an accident when her parked car (in which she and her child were sitting) was struck by another vehicle, and her personal injury lawsuit. Like many litigants, she became very upset with her lawyers and the insurance company. She misguidedly believed that she was being denied justice by being offered what she thought was an unfair settlement. Her outrage, in my view, rather than greed, animated her misconduct. And, as a consequence, she utterly distorted her proper role as a judge in the system of justice which she had sworn to uphold. She twisted her ideals into a distorted picture of what was happening to her in her case. She lost perspective and did not listen to good advice and even clear warnings. This was inexcusable, especially for a judge. And we are not excusing it.

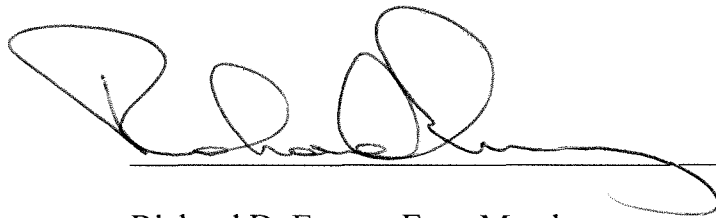
What we are doing, in my view, is calibrating our response. It is clear that she will never again behave in this self-justifying way. No doubt she blindly believed that she was a victim rather than a judge exerting her office. To the extent she rationalized at all, it was to believe that all she was doing was correcting an injustice. It is seriously disturbing that this rationalization was to benefit herself rather than some other victim of our flawed system. But I have no doubt that she subjectively believed she was doing the “right” thing. I also have no doubt that she has learned her lesson and that nothing remotely like this will ever happen again.

Moreover, it is important that, other than our system of law itself, there was no victim here. The judge whom she contacted responded appropriately, notified counsel

of her *ex parte* contacts, did not read her letter, and offered to recuse. Judge Dixon got no more money than was offered and no one responded to her improper efforts. No ticket was fixed. No merchant gave her goods. No crime went unpunished or improperly imposed. No one, other than Judge Dixon, suffered the ignominy or injury of her lost bearings.

Therefore, under what I consider to be unique circumstances, somewhat analogous to those in *Matter of Landicino*, a case we recently decided (2016 NYSCJC Annual Report 129 [judge repeatedly asserted his judicial position during his arrest for DWI, but demonstrated a compelling record of rehabilitation]), I think justice commands the disposition of censure.¹

Dated: May 26, 2016

A handwritten signature in dark ink, appearing to read 'Richard D. Emery', written over a horizontal line.

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

¹My colleagues' (Cohen and Weinstein) concurrence requires a rejoinder. Put simply, pretending, as I believe they do, that we assess mitigation "irrespective" of a forthright assessment, at least, of the person and her story as that relates to the likelihood of future misconduct is ignoring the obvious. Their blinkered paradigm for sanctions that would have us ignore salient evidence on the crucial issue of future misconduct does not serve our mission to protect the public and "safeguard the Bench from unfit incumbents" (*Matter of Reeves*, 63 NY2d 105, 111 [1984]). This is something that I think we do regularly. We certainly did it in *Landicino* (and see, e.g., *Matter of Martin*, 2003 NYSCJC Annual Report 216 [noting in detail judge's record of community service]). I am not willing to assess mitigation in a case of this sort of extreme misconduct without honestly confronting the reasons for doing so. Neither their concurrence nor the majority accomplishes this in my view. I hope my concurrence does.

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

MAIJA C. DIXON,

a Judge of the Rochester City Court,
Monroe County.

CONCURRING OPINION
BY MR. COHEN, WHICH
JUDGE WEINSTEIN
JOINS

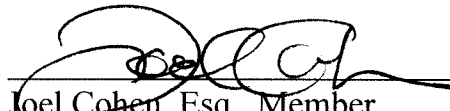
I concur in the result, but write separately to address some of the comments made in Commissioner Emery's concurring opinion.

While Commissioner Emery's concurrence correctly argues that a sanction "must fit the person and the particular circumstances of the case as well as the offense," I do not believe that the Commission would – or should – make its decisions based on the idiosyncratic backgrounds of those respondents who come before it, as is suggested by his concurrence. Judges should be disciplined or not – and the appropriate discipline should be determined – based on many factors, including what they have done wrong and how they react to their conduct when they are confronted with it. In this context, a judge's efforts at rehabilitation following an alcohol-related incident are relevant, while a judge's upbringing and personal history are not. I like to believe – and do believe – that we decide individual cases irrespective of the respondents' ethnic, marital or financial backgrounds, or the personal journeys that led them to the bench. If we start going down

another road, we risk treating judges who require discipline differently based on their backgrounds; meaning, we risk giving some judges a “break” because of factors that should not enter into the calculus of whether they acted improperly.

I think that such an approach is not only unwise, but entirely unnecessary. As the majority notes, the imposition of censure in this case is fully consistent with the sanctions we have imposed for comparable misconduct in the past (*see* cases cited in the majority opinion at p. 16). As to the equities of the case, Judge Dixon’s stated remorse in the context of her improper conduct – which, in my view, she addressed with utter candor – is the key factor weighing against her removal, not her “personal story.”

Dated: May 26, 2016


Joel Cohen, Esq., Member
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

MAIJA C. DIXON,

a Judge of the Rochester City Court,
Monroe County.

DISSENTING OPINION
BY JUDGE KLONICK,
WHICH JUDGE
RUDERMAN JOINS

I respectfully dissent from the sanction of censure because I believe that respondent's serious misconduct in abusing her judicial position for personal gain demonstrates her lack of fitness to serve as a judge and therefore warrants the most severe sanction available to this Commission. This is especially so in view of the numerous, significant aggravating factors present and the absence of any mitigation in the record before us.¹

¹ The Court of Appeals has stated that the severity of the sanction imposed for various types of misconduct "depends upon the presence or absence of mitigating and aggravating circumstances" (*Matter of Rater*, 69 NY2d 208, 209 [1987] ["in the absence of any mitigating factors, [such conduct] might very well lead to removal ... On the other hand, if a judge can demonstrate that mitigating circumstances accounted for such failings, such a severe sanction may be unwarranted"]). See also *Matter of Edwards*, 67 NY2d 153, 155 [1986] ["as a general rule, intervention in a proceeding in another court should result in removal," but this does not "preclud[e] consideration of mitigating factors"]; *Matter of Kiley*, 74 NY2d 364, 370 [1989] [in lending the prestige of judicial office to advance defendants' interests in two cases, judge's conduct in one case was mitigated by his motivation to help his friends through "an emotional trauma," without benefit to himself, and "[w]hile no similar mitigating factors inhere in ... the [other] case, there likewise are no aggravating factors and thus a sufficient basis for removal is lacking").

Standing alone, respondent's initial communication with the judge who was presiding over her lawsuit against her insurance company warrants a severe sanction.

Dissatisfied with the defendant's settlement offer and facing dismissal of her claim unless her deposition was scheduled, respondent used her judicial status to obtain special access to Judge Odorisi in order to speak with him privately about her case², then spoke to him for several minutes about the matter over his repeated objections. But this was not her only transgression. Six days later, respondent initiated a second *ex parte* communication with the judge by sending him a letter containing details about her alleged injuries. Respondent's behavior showed a shocking insensitivity to her ethical obligations, including the duty to avoid using the prestige of judicial office to advance her personal interests (Rules, §100.2[C]).

The particulars of respondent's telephone call and letter to Judge Odorisi are especially troubling and present numerous aggravating factors.

The record demonstrates that respondent's call to the judge was not an impulsive act. Respondent testified that before placing the call, she had to look up his phone number in the court directory, which gave her an opportunity to reflect upon the call she was about to make. She acknowledged that before placing the call, she thought

² The record reveals that respondent was acquainted with Judge Odorisi who, as a town justice, had occasionally substituted for her in City Court prior to his election to Supreme Court in 2012. The record also reveals that during his campaign for Supreme Court, a year before the events in this case, respondent, at Judge Odorisi's request, had provided a recommendation on his behalf to the County Bar Association. These circumstances support the appearance that when respondent contacted him in connection with her case, she was seeking favorable treatment not as an ordinary litigant, but as a fellow judge who had previously done a favor for him.

about what she was going to say, which suggests that her words were carefully chosen and purposeful. She also admitted that she recognized beforehand that it was wrong to make the call, but that realization did not stop her from doing so.

Further aggravating her misconduct, respondent persisted in her efforts to assert her personal interests *ex parte* even after she had received several specific admonitions that her conduct was improper. To be sure, as an experienced attorney and a full-time judge for more than seven years, respondent did not need Judge Odorisi or her own attorney to tell her that such communications are wrong; there should not be a single judge who does not know that such conduct is contrary to the ethical rules. The fact that she was undeterred even by multiple warnings about her behavior and repeated the misconduct is inexcusable.

First, as the record shows, Judge Odorisi told her at the outset of their conversation that they could not discuss her case, and he repeated that admonition several times, yet she persisted in conveying her concerns about her case before he was able to terminate the call. Shortly thereafter, her attorney left her a voicemail message detailing the telephone conference that her improper phone call had precipitated. Finally, her attorney's letter dated October 2, 2013, contained an explicit warning in the strongest possible terms about the impropriety of contacting the judge handling her case and the ethical consequences of such conduct:

“As an aside, based upon Judge Odorisi's comments about your phone call to him, I would implore you to look at the big picture. You are a sitting Judge contacting another sitting Judge attempting to discuss your personal injury lawsuit to which he has been assigned. While I do not have citations to Judiciary Law at hand to

cite to or the Code of Ethics, it is probable that said phone call was a violation of one or both. Your case is not the type of case that you should be risking your professional career for.”

Yet, even after Judge Odorisi’s admonitions and even after her own attorney advised her that her call was likely an ethical breach and warned her against engaging in conduct that could jeopardize her judicial career, a few days later respondent again communicated privately with Judge Odorisi by sending him, both by fax and mail, an *ex parte* letter about her case.

In addition, respondent’s hearing testimony raises serious questions about her credibility and forthrightness as well as her appreciation of the gravity of her misconduct. The record establishes that respondent repeatedly attempted to minimize the purpose, substance and duration of her phone call. While respondent insisted that she ended the call in a matter of seconds when Judge Odorisi said they could not discuss her case, the evidence establishes that he repeated that admonition several times over the next two to three minutes in an effort to terminate the call. Respondent maintains that she only asked for a conference, yet Judge Odorisi’s credible testimony establishes that she addressed several other issues during the conversation, including dissatisfaction with her attorney, concern about publicity and wanting the case heard outside of Rochester. As the majority notes, Judge Odorisi was on good terms with respondent and had no motive to overstate the extent of her wrongdoing. Plainly, the issues she raised were more than could have been addressed in the very brief exchange that respondent described.

Even by itself, a request for a conference would have been improper in these circumstances. Since respondent was represented by counsel, any such request

should properly have been made by her attorney. If, as respondent asserts, she did not trust her lawyer, she could have communicated with Judge Odorisi's law clerk, who was also listed in the court directory. Contacting the judge who was handling her case in order to speak to him privately strongly suggests that her intent was not simply to ask for a conference, but to use her personal influence in an *ex parte* conversation in order to obtain the desired conference and a more favorable result.

A careful examination of respondent's letter to her attorney supports this conclusion:

"I contacted Judge Odorisi and indicated to him that I was the plaintiff in a suit before him and that I felt my attorney was acting in bad faith with respect to settlement. To address that concern, I requested a ***settlement*** conference before the court with my attorney, defense counsel and the adjuster." (Emphasis added.)

If respondent's intention was to address her displeasure with her attorney's representation, there was no need for the adjuster to be present. Further, if she was displeased with her counsel, she could have discharged him and retained new counsel. She did not need a settlement conference to do so.

Events immediately preceding her call to Judge Odorisi buttress the interpretation and conclusion that she was seeking the court's intervention to engage in settlement discussions to, hopefully, increase the offer. Under a scheduling order issued by Judge Odorisi in late August 2013, respondent's case was subject to possible dismissal if she did not submit to a deposition by September 30, 2013. Two days prior to her deposition scheduled for September 25, 2013, respondent indicated to her attorney that she had reluctantly decided to accept the settlement, but did not return a signed release.

Thereafter, she called Judge Odorisi and then sent him a letter. If respondent intended to accept the offer and settle the case, there would have been no need for the conference she sought. Her undated letter to her attorney sent on October 7th and copied to Judge Odorisi, which enclosed the signed release, is equivocal regarding settlement and conveys an inconsistent message about her position. By contacting the judge, respondent attempted to orchestrate two possible scenarios: (1) obtaining a conference with the judge through which the offer might be increased, or (2) forcing the judge to recuse with the likely assignment of her case to an out-of-county judge as she desired, where public attention was less likely. Both scenarios had the potential to personally benefit her.

Moreover, respondent's statements throughout this proceeding demonstrate that she still believes that her *ex parte* communications with Judge Odorisi were justified because of her perception that she was being treated unfairly. She repeatedly denied that she intended to seek any special treatment as a litigant and maintains that she contacted the judge only because "something was wrong" in what her attorney was telling her. When asked at the hearing whether she knew it was wrong to call the judge to ask for some activity on her behalf, she responded, "I did [but] I wasn't asking for personal activity. I was asking for a conference" (Tr 236). While she was never asked specifically how she would feel if she were contacted directly by a litigant, respondent addressed that issue when she was asked during the investigation whether she had reflected after her call on the appropriateness of contacting the judge. Significantly, according to testimony that was introduced at the hearing, she responded:

"I reflected on hoping that Judge Odorisi would call the attorneys

and schedule a court appearance. Because if I was contacted by a litigant on a case that said that their attorneys were acting in bad faith, the first thing I would do is notify the attorneys, I've been contacted by your client, attorneys, and I'd get them both on the phone, the attorneys on both sides, I've been notified by the client in this particular case, I want a conference in this case with everyone. Because I want to know what's going on. I would like to -- **something clearly is not correct if the client feels the need to reach out to me.**" (Emphasis added.) (Tr 251-52)

When questioned at the hearing about her prior testimony, respondent did not disagree with it (Tr 252).

Further, during her appearance before the Commission at the oral argument, respondent stated that at the time of these events she was serving on a court committee about access to justice, and therefore felt particularly "frustrated" and "a "sense of injustice" because, in her own case, in her words, "it seemed like here is a circumstance where I am experiencing what people complain about. I don't have access" (Oral argument, pp 47-48). Of course, any suggestion that her conduct was about obtaining "access to justice" is completely misplaced. By using her judicial position to have a private conversation with the judge handling her case to advance her personal interests, she sought and obtained special access that would be unavailable to an ordinary litigant, including the defendant on the other side of her lawsuit. Such statements indicate that she fails to recognize the fundamental concept that unauthorized, private communications between a judge and a litigant cannot be tolerated because they erode public confidence in the fairness and impartiality of the judiciary.

The Commission and the Court of Appeals have found that exploiting the judicial position for personal gain, or even conveying the appearance of doing so, is

egregious misconduct that may warrant the most severe penalty (*see Matter of Cohen*, 74 NY2d 272 [1989] [judge received favorable loan treatment from a credit union while using his judicial office to benefit the company, which created an appearance of impropriety]). Using judicial prestige to advance private interests in connection with a pending or impending matter is of particular gravity since it “strikes at the heart of the justice system which is based on equal justice and the impartiality of the judiciary” (*Matter of Horowitz*, 2006 NYSCJC Annual Report 183; *see also Matter of Schilling*, 2013 NYSCJC Annual Report 286).

The Court of Appeals has also stated that “as a general rule, [a judge’s] intervention in a proceeding in another court should result in removal,” even for a single transgression, although this does not preclude consideration of mitigating factors (*Matter of Edwards, supra*; *Matter of Reedy*, 64 NY2d 299, 302 [1985] [judge removed for a single incident of ticket-fixing]). While I recognize that in some instances judges who abused their judicial position have been censured or admonished, the aggravating factors noted above, in my view, make this case one of the most serious the Commission has ever encountered for this type of conduct. This is particularly so since in this case – unlike, for example, the assertion of judicial influence in traffic cases or in administrative matters with no adverse party – respondent’s abuse of her judicial position to advance her own interests would be detrimental to the opposing party who lacks access to special influence. While Mr. Emery’s concurrence argues for leniency because there was “no victim here,” that was only because respondent’s intervention was unsuccessful, which in no way should inure to her benefit; equally important, whenever such conduct occurs,

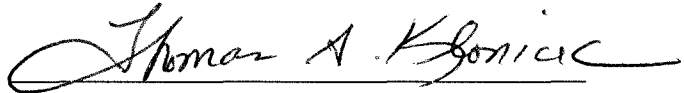
there *is* harm to public confidence in our system of justice. As Mr. Emery’s concurrence concedes, it is hard to imagine a worse course of conduct than a judge wielding personal influence over the judicial system in which she presides to get more money for herself.

This case is also distinguishable from previous Commission cases in that here there are no mitigating factors present. For example, in some cases mitigation was found in the fact that the judge was motivated by a desire to help a family member or close friend in difficult circumstances (*e.g.*, *Matter of Edwards, supra*, 67 NY2d at 155 [sanction reduced from removal to censure for a town justice who intervened in another court concerning his son’s case, in part because the judge’s “judgment was somewhat clouded by his son’s involvement”]; *Matter of Lonschein*, 50 NY2d 569, 573 [1980] [judge had no “malevolent or venal motive,” but acted under “a sincere, albeit misguided desire” to “remedy a perceived injustice” by expediting the license application of “a dear friend”]); such mitigation is absent here, where respondent was trying to get a judicial colleague to use his power in an effort to get her more money and to minimize publicity of her litigation in the county in which she presides. Nor was respondent a new judge who may have been unfamiliar with judicial ethics; indeed, her background should have given her additional insight into how such matters are properly handled and why *ex parte* communications of the kind she initiated are so damaging to our system of justice. Moreover, although respondent has conceded – as she must – that her conduct was wrong, genuine contrition is lacking, given her persistent efforts to rationalize and minimize her behavior. Finally, as the majority notes, it is not mitigating that Judge Odorisi, who was mindful of the ethical concerns, did not open the letter she sent him and

was not influenced by her intervention.

Accordingly, I vote that respondent should be removed from judicial office.

Dated: May 26, 2016

A handwritten signature in black ink, reading "Thomas A. Klonick". The signature is fluid and cursive, with a large initial 'T' and a long, sweeping underline.

Honorable Thomas A. Klonick, Member
New York State
Commission on Judicial Conduct