

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

GLEN R. GEORGE,

a Justice of the Middletown Town Court,  
Delaware County.

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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.  
Nina M. Moore<sup>1</sup>  
Richard A. Stoloff, Esq.  
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (S. Peter Pedrotty, Of Counsel) for the Commission  
Thomas K. Petro for the Respondent

The respondent, Glen R. George, a Justice of the Middletown Town Court,  
Delaware County, was served with a Formal Written Complaint dated January 5, 2012,

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<sup>1</sup> Ms. Moore's term expired on March 31, 2013. The vote in this matter was taken on March 14, 2013.

containing two charges. Charge I alleged that respondent: (i) failed to disqualify himself from a No Seat Belt charge against an individual with whose family he had a professional and social relationship notwithstanding that he had previously been cautioned for failing to disqualify himself from cases of another member of that family; (ii) had *ex parte* communications with the defendant; and (iii) dismissed the charge without notice to the prosecution. Charge II alleged that respondent engaged in *ex parte* communications with a prospective litigant in a small claims matter. Respondent filed a verified answer dated March 9, 2012.

By Order dated April 4, 2012, the Commission designated Linda J. Clark, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 19, 2012, in Albany. The referee filed a report dated December 4, 2012.

The parties submitted briefs and replies with respect to the referee's report and the issue of sanctions. Counsel to the Commission recommended the sanction of removal, and respondent's counsel recommended a less severe sanction or dismissal of the charges. On March 14, 2013, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Middletown Town Court, Delaware County, and has served in that position since 1985. His current term expires on December 31, 2013. He is not an attorney.

2. Lynn Johnson started Titan Drilling Corp. ("Titan Drilling") in 1965.

For more than 30 years, Mr. Johnson was Titan Drilling's owner and president. Titan Drilling employs approximately 20 employees, and many members of the Johnson family have worked for the company.

3. In 1982, when respondent was retiring from the State Police, Mr. Johnson offered him a position at Titan Drilling, which he accepted. Respondent was employed at Titan Drilling from 1983 until 1990, when he was laid off due to a slowdown in the business. Respondent remained on amicable terms with Mr. Johnson and, in 1999, spoke to Mr. Johnson about obtaining a part-time position at Titan Drilling. Mr. Johnson had sold Titan Drilling in 1997 to his sons but continued to work for the business as a consultant. Respondent was hired to work in the collections and accounts receivable departments, which, like his prior position in sales, required him to deal with the public. Respondent testified that he was grateful to be "gainfully employed again." He continued to work for Titan Drilling until May 31, 2009.

4. Respondent has described his relationship with Mr. Johnson as "very good friends, very good business associates." Respondent and Mr. Johnson have known each other since childhood. In addition to their professional relationship, they have had numerous social contacts. Respondent attended Mr. Johnson's 50<sup>th</sup> birthday celebration and a Chamber of Commerce ceremony honoring Mr. Johnson. In 1986 Mr. Johnson visited respondent's home while respondent was recuperating from surgery. Respondent and his wife were guests at the weddings of three of Mr. Johnson's children, and respondent performed the marriage ceremony for another of Johnson's children.

Respondent also socialized with Johnson family members at Titan Drilling's annual Christmas parties. On one occasion, when respondent was at the courthouse in Delhi, Mr. Johnson's wife invited respondent to attend and sit beside her at a Family Court custody proceeding involving the Johnsons' daughter, and respondent did so.

5. On May 21, 2009, State Trooper Mathew Burkert issued a ticket to Lynn Johnson for No Seat Belt in violation of Section 1229-c (3) of the Vehicle and Traffic Law. The ticket was returnable in Middletown Town Court on June 1, 2009; it states on its face that the matter "is scheduled to be handled" on that date and that "failure to respond" could result in a default judgment.

6. Trooper Burkert indicated on the ticket and in his supporting deposition that the vehicle driven by Mr. Johnson was a red Mercedes Benz, model year 2000, bearing license plate number 3106190. Trooper Burkert signed both documents and affirmed them under penalty of perjury.

7. On June 1, 2009, Lynn Johnson appeared before respondent in the Middletown Town Court with respect to the ticket. That date was not one of the two nights per month on which the prosecutor was regularly scheduled to appear in respondent's court. Neither Trooper Burkert nor the prosecutor, Assistant District Attorney John Hubbard, was present.

8. At that appearance, respondent failed to disclose his relationship with Lynn Johnson and members of the Johnson family, including that, until the previous day, respondent had been employed by the Johnson family business.

9. Mr. Johnson showed respondent a copy of a certificate of title to a model year 1976 Mercedes Benz and told respondent that he had been driving that vehicle when he was issued the ticket and that the information on the ticket was incorrect.

10. Respondent asked Mr. Johnson whether the license plate listed on the ticket was a transporter plate, and Mr. Johnson confirmed that it was. From his relationship with Mr. Johnson, respondent knew that Mr. Johnson dealt with restored vehicles and possessed a transporter plate. Respondent also knew that such a plate could be placed on any vehicle, which could be driven even if the driver did not own the vehicle or have a registration for it.

11. Based solely upon the information provided by Lynn Johnson, respondent *sua sponte* dismissed the charge, stating, “The title here shows it’s a 1976 and the Information says it’s a 2000. I believe it.”

12. Respondent testified that he dismissed the charge because Mr. Johnson had presented him with a title for the vehicle “that showed the simplified traffic information to have erroneous information in comparison to the title of the vehicle Mr. Johnson stated he was driving.” The court file contains a certificate of title to a 1976 Mercedes Benz and a handwritten note dated June 1, 2009, stating, “DISMISSED VEH IS 1976 NOT 2000 SEE TITLE.” No other reason for the dismissal of the charge is indicated in the file or was mentioned in the proceeding.

13. In or about 1997 and 1998, respondent presided over and disposed of a series of cases in which the defendant was Joan Johnson, who was then Lynn Johnson’s

daughter-in-law. Respondent had officiated at the defendant's marriage to Lynn Johnson's son. Though Ms. Johnson never worked for Titan Drilling, she lived with her husband next door to the business and visited him during work hours, and respondent saw her there on a weekly basis during his first period of employment with the business.

14. In the first of the *Joan Johnson* cases, in which the defendant was charged with, *inter alia*, Driving While Intoxicated, respondent disposed of the charge by accepting a plea to a reduced charge of Aggravated Unlicensed Operation in the Second Degree and sentencing her to three years' probation and a \$500 fine.

15. Subsequently, respondent presided over and disposed of three cases in which Ms. Johnson was charged with violating probation. During one such case, respondent took Ms. Johnson into a conference room and spoke to her privately, telling her that, because of their "friendship," he wanted to help her with her alcohol-abuse problems. He gave her his home and court phone numbers and told her to call him whenever she wanted and that he would assist her in any way he could.

16. The Commission issued respondent a Letter of Dismissal and Caution dated April 6, 2000, with respect to his handling of the *Joan Johnson* matters, advising him that:

"Because of your long relationship with the Johnson family, you should have considered whether presiding over [Joan Johnson's] cases gave the appearance that you could not be impartial. You should have at least disclosed the relationship on the record and entertained objections to your presiding. It was especially important to do so after you had offered to personally counsel Ms. Johnson."

Noting that respondent had presided over Joan Johnson's cases notwithstanding that he "had worked for members of the Johnson family from 1982 to 1990 and had socialized with them on occasion," the Commission cautioned respondent to adhere to the ethical rules requiring a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might be reasonably questioned and "to avoid even the appearance of impropriety."

17. Respondent testified that in presiding over Lynn Johnson's case, he considered that it had been ten years since Johnson had been his employer and thus he believed the appearance of impropriety had abated. He testified: "I felt-- I still feel that a ten-plus year separation from employer-employee relation was more than sufficient to avoid the appearance of any impropriety."

As to Charge II of the Formal Written Complaint:

18. In or around February 2010, Michael Guidice went to the Middletown Town Court and spoke to the court clerk, Cindy Waters, about filing a small claims action against his neighbor, Ron Jenkins.<sup>2</sup> Mr. Guidice claimed that Mr. Jenkins had been diverting water onto and causing damage to Mr. Guidice's property. Mr. Guidice, a Long Island resident, had purchased the property in or about 2007, intending to build a summer home.

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<sup>2</sup> On February 1, 2010, Mr. Guidice filed a complaint against respondent with the Commission concerning respondent's decisions in three small claims actions in which Mr. Guidice was a litigant. The record does not indicate when respondent learned of Mr. Guidice's complaint.

19. Mr. Jenkins has lived his entire life in the Middletown area.

Respondent has known Mr. Jenkins all his life.

20. Overhearing Mr. Guidice's conversation with the court clerk, respondent interjected that Mr. Jenkins could legally divert water onto Mr. Guidice's property because Mr. Jenkins was the "senior property holder" and the property deeds provided for it. He added that this was regulated by the Department of Environmental Conservation.

21. Because of respondent's statements, Mr. Guidice believed that filing his claim against Mr. Jenkins would be futile since respondent had pre-determined his claim and would side with his neighbor.

22. On January 3, 2011, Mr. Guidice called the Middletown Town Court about filing a small claims action against Mr. Jenkins. Respondent answered the telephone since the court clerk was busy. Without attempting to stop Mr. Guidice from speaking about his claim, respondent listened to Mr. Guidice, who repeated that he wanted to file a small claims action against Mr. Jenkins for diverting water onto his property.

23. Respondent acknowledged that he questioned Mr. Guidice about his claim, asking, "What was the senior parcel in that sale?" Respondent testified that he listened to Mr. Guidice in order to get "some substance of what he was gearing for in the small claims action" and "[t]o substantiate the claim when it came into small claims." He also testified that when he spoke to Mr. Guidice about the claim, he "[knew] full well...I



was not going to handle it anyway.”

24. As he had done in their earlier conversation, respondent told Mr. Guidice that Mr. Jenkins was allowed to divert water onto Mr. Guidice’s property because Mr. Jenkins was the “senior...property holder” and their deeds provided for it.

25. Feeling again discouraged by respondent’s statements regarding the dispute, Mr. Guidice did not file his claim at that time.

26. In May 2011 Mr. Guidice again called the Middletown Town Court about his dispute with Mr. Jenkins. When respondent answered the court’s phone, Mr. Guidice told respondent that he wanted to file a small claims action against Mr. Jenkins and that he did not want respondent to preside over it. Respondent told Mr. Guidice, “Not a problem. You can come in and file on Thursday morning before Judge Rosa [respondent’s co-judge].”

27. On or about May 26, 2011, Mr. Guidice filed his claim in the Middletown court. Both respondent and Judge Rosa disqualified themselves, and the County Court Judge assigned it to the Roxbury Town Court.

28. Approximately a week after Mr. Guidice filed his claim, the court clerk told him that respondent had disqualified himself from the matter because he knew that Mr. Guidice had filed a complaint against him with the Commission.

29. Mr. Guidice did not pursue the claim after it was transferred. He testified that after he told Mr. Jenkins that the matter would not be heard by respondent, Mr. Jenkins stopped diverting water onto his property.

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(B), 100.2(C), 100.3(B)(1), 100.3(B)(6) and 100.3(E)(1) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II are sustained insofar as they are consistent with the above findings and conclusions, and respondent’s misconduct is established.

Respondent engaged in serious misconduct by dismissing a ticket issued to his former employer and long-time friend, contrary to fundamental ethical precepts and procedural rules. Such behavior “demonstrate[s] an unacceptable degree of insensitivity to the demands of judicial ethics” (*Matter of Conti*, 70 NY2d 416, 419 [1987]).

Respondent’s handling of Lynn Johnson’s ticket was inconsistent with well-established procedural and ethical mandates, conveying an appearance of favoritism. It is a fundamental precept of judicial ethics that a judge may not preside over a case in which the judge’s impartiality “might reasonably be questioned” (Rules, §100.3[E][1]). Moreover, judges must assiduously avoid even the appearance of impropriety (Rules, §100.2). In view of respondent’s “long and deep history of personal involvement” with Lynn Johnson and his family, both professionally and personally (Referee’s Report, p. 3), respondent should have recognized that his disqualification was required in Johnson’s case, even if he believed he could be impartial, in order to avoid even the appearance of

impropriety. *See, e.g., Matter of Robert*, 89 NY2d 745 (1997) (judge presided over numerous cases involving his close friends); *Matter of Fabrizio*, 65 NY2d 275, 276-77 (1985) (misconduct included “sitting on a small claims case in which the defendant was his dentist for 10 years without disclosing the relationship or offering to disqualify himself”).

The record establishes that respondent’s relationship to Johnson and his family reflects nearly three decades of professional and social connections. Lynn Johnson, the family patriarch, initially hired respondent for his family business in the 1980s, after respondent had retired as a State trooper. In 1999, after the business was sold to Johnson’s sons, respondent was re-hired in a part-time position after discussing the position with Johnson; he was “grateful” to be hired; and he held that position until the day before Johnson’s court appearance before him in 2009. These professional contacts, coupled with numerous social contacts as described in the above findings, establish a relationship that went significantly beyond the casual connections that might be expected in any small community. In view of respondent’s acknowledged close ties to the Johnson family and his admission that he and Johnson were “very good friends,” his rationalization that he felt there was no appearance of impropriety because Johnson had not been his employer for ten years is unpersuasive.

At the least, respondent should have disclosed the relationship and adjourned the matter in order to afford the prosecutor an opportunity to be heard on the issue of whether respondent could preside. *See Matter of Fabrizio, supra; see also*

*Matter of Menard*, 2011 Annual Report 126; *Matter of Valcich*, 2008 Annual Report 221.

(The fact that no prosecutor was present to hear the disclosure should have further underscored the need to adjourn the case to a date when the prosecutor would be present.)

This is particularly so in view of respondent's having been cautioned by the Commission in 2000 for presiding over the cases of another member of the Johnson family without disclosing his relationship to the family. Respondent's disregard of "the letter and spirit" of the Commission's caution exacerbates his misconduct in this regard. *Matter of Assini*, 94 NY2d 26, 30 (1999); *see also*, *Matter of Robert*, *supra*, 89 NY2d at 747.

The lenient disposition respondent afforded to Mr. Johnson, in the absence of the prosecutor and based solely on information the defendant provided, compounds the appearance of favoritism. The record indicates that respondent dismissed the ticket because of an apparent discrepancy between the sworn information contained on the ticket and supporting deposition as to the model year of the vehicle, and the information provided to respondent by Johnson at his court appearance. Regardless of whether such a "defect" warranted dismissal, it is well-established that the prosecutor must be afforded reasonable notice and an opportunity to be heard before a charge is dismissed (CPL §§210.45, 170.45; Rules, §100.3[B][6]). Providing such notice is not merely a technical requirement, but a fundamental principle of law. By disposing of Johnson's ticket on the return date, which was not a date on which the prosecutor was regularly scheduled to be in his court to prosecute tickets, respondent deprived the prosecutor of an opportunity to be heard or to cure the purported "defect." The return date of the ticket was not a date on

which the ticket was scheduled to be adjudicated; by law, a defendant who enters a not guilty plea by mail on or before the return date must be advised of a subsequent appearance date (*see* VTL §1806). No matter how minor the charge, the moment the defendant raised a factual claim in support of an application to dismiss, respondent should have recognized the importance of having the prosecutor respond or at least be afforded an opportunity to respond. It is surprising that respondent, who has served as a judge for more than two decades, would fail to recognize the impropriety of dismissing a charge under these circumstances. While the record before us is somewhat unclear as to whether respondent has dismissed other tickets with similar errors in the absence of the prosecutor, any such practice would clearly be inconsistent with the fair and proper administration of justice.

It was also improper for respondent to speak *ex parte* with a prospective litigant about the substance of a small claims action he wished to commence. Respondent has acknowledged that when Michael Guidice telephoned the court in January 2011 and told him of his intent to file a claim against his neighbor, Ron Jenkins, respondent not only listened to Mr. Guidice describe the dispute but asked him questions about it.<sup>3</sup> While respondent claims that his intent was to learn the “substance” of the claim to ensure that it was within the court’s jurisdiction, the record establishes that respondent’s questions addressed the merits of the prospective claim and, further, that he also offered

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<sup>3</sup> Charge II of the Formal Written Complaint alleges that this incident occurred in January 2011. The record indicates that respondent and Mr. Guidice also had a similar *ex parte* conversation about the same matter in or around February 2010.

his gratuitous opinion about the merits of the claim, declaring that the property deeds permitted the conduct that was the basis of Mr. Guidice's claim. Respondent's questions and comments conveyed the appearance that he had pre-judged the claim, and, not surprisingly, Mr. Guidice felt discouraged from commencing his claim at that time. Even if respondent had determined that he was not going to handle Mr. Guidice's claim, as he has testified, his conduct conveyed the appearance of bias against Mr. Guidice and favoritism in favor of Mr. Jenkins, a long-time local resident with whom respondent was friendly.

It is a judge's role to adjudicate matters in court proceedings, not to screen cases or otherwise pre-judge them out of court or based on *ex parte* communications. *See Matter of Merrill*, 2008 Annual Report 181. Respondent's conduct violated both the letter and spirit of Sections 100.2 and 100.3(B)(6) of the Rules.

In considering the appropriate sanction, we reject the dissent's suggestion that the misconduct presented here can be attributed to the judge's "informality," his status as a non-lawyer, or "the realities of the State's town courts" (Dissent, p. 1). The Court of Appeals has underscored that "to encourage respect for the operation of the judicial process at all levels of the system" (*Matter of Roberts*, 91 NY2d 93, 97 [1997]), the ethical rules apply equally to all judges, lawyer and non-lawyer alike (*Matter of Fabrizio*, 65 NY2d 275, 277 [1985]; *Matter of VonderHeide*, 72 NY2d 658, 660 [1988]). In rejecting the judge's contention that his "status as a non-lawyer and his lack of training" provided a basis for dismissing the charges, the Court stated in *VonderHeide*:

“Ignorance and lack of competence do not excuse violations of ethical standards. As a Judge, petitioner had an obligation to learn about and obey the Rules Governing Judicial Conduct” (*Id.*).

The Court of Appeals has declared that “[t]icket-fixing is misconduct of such gravity as to warrant removal, even if this matter were [the judge’s] only transgression” (*Matter of Reedy*, 64 NY2d 299, 302 [1985]). In this case, respondent’s favorable treatment of his friend’s ticket and his handling of Mr. Guidice’s prospective claim both bear the unmistakable taint of favoritism, which damages public confidence in his integrity and impartiality and in the judiciary as a whole (*Matter of Young*, 19 NY3d 621, 626 [2012]). As a judge for more than 20 years, respondent should have recognized that his actions were inconsistent with fundamental ethical principles. Coupled with his failure to heed the Commission’s previous caution, these factors demonstrate that respondent “is not fit for judicial office” and thus the sanction of removal is warranted (*Matter of Robert*, *supra*, 89 NY2d at 747).

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

Judge Klonick, Judge Ruderman, Judge Acosta, Ms. Corngold, Mr. Emery, Mr. Harding, Ms. Moore and Mr. Stolloff concur.

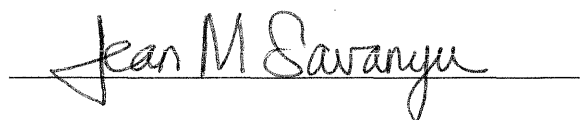
Mr. Cohen and Judge Weinstein dissent as to the sanction and vote that respondent be censured. Mr. Cohen files an opinion, which Judge Weinstein joins.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: May 1, 2013

A handwritten signature in cursive script, 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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COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding  
Pursuant to Section 44, subdivision 4,  
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GLEN R. GEORGE,

a Justice of the Middletown Town Court,  
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OPINION BY MR. COHEN,  
WHICH JUDGE WEINSTEIN  
JOINS, CONCURRING  
IN PART AND DISSENTING  
IN PART

While I concur that respondent engaged in misconduct, I respectfully dissent as to the sanction and vote for censure. Respondent's handling of his friend Lynn Johnson's case, while undeniably creating an appearance of impropriety and deserving of a severe rebuke, falls well short of the standard set by the Court of Appeals for imposing the extreme sanction of removal for office "only in the event of truly egregious circumstances" (*Matter of Cunningham*, 57 NY2d 270, 275 [1982]). In my view, removing this judge under these circumstances lowers the bar for removal too much and sets a troubling precedent for the future.

In some respects, this case presents the realities of the State's town courts, in microcosm. Respondent, 74 years old, is not trained as a lawyer, although he has been a Town Justice for 28 years. And this particular judge appears to treat litigants before him with a degree of informality that, even if well-intentioned, can all too easily undermine his role as a neutral magistrate. In particular, in the record before us, he has accorded such treatment to members of the Johnson family, with which he has had a

strong, longstanding relationship, having been a longtime employee of the Johnson-owned business. Fifteen years ago, while presiding over the case of one Johnson family member, he met privately with the defendant and offered to assist her with her alcohol-abuse problems, gave her his home phone number and told her to call him anytime so he could counsel her. That conduct led to the Commission's issuance of a Letter of Dismissal and Caution and a warning that, given the circumstances, he "should have considered" disqualifying himself and "should have at least" disclosed the relationship.

Nine years later, in the matter now before us, he handled the case of another Johnson family member under circumstances that raise troubling questions as to his impartiality. With no prosecutor present, he dismissed a charge against his friend, the retired former owner of the business, ostensibly because of a technical error on the ticket. There is evidence in the record that respondent, a former state trooper, was "a stickler for errors" on tickets, had been an instructor in the "traffic science training program" for the state police, and once contacted a police supervisor to advise him about recurring errors on some tickets. Nevertheless, at the end of the day, respondent should have known better. Whether legally trained or not, he should have known that he had no business dismissing his friend's ticket *ex parte*, without giving the prosecutor a chance to be heard. That is clear, even if, as the judge maintains, he had had very limited contact with Johnson personally over the previous decade. Although the maximum sentence his friend faced for this Seat Belt violation could not have meant so much to either of them (a \$50 fine plus a surcharge, and no points attaching to his driver's license), the favorable disposition under these circumstances undeniably conveys an appearance of impropriety.

Unfortunately, the record before us is unclear as to certain facts. While respondent maintains that he promptly notified the prosecutor of the dismissal, the prosecutor could not recall whether he was so notified. Nor do we know whether the prosecutor, had he been so informed, would have chosen to re-file this *de minimis* charge. And while both the judge and prosecutor testified that the judge typically notified the prosecutor prior to the disposition if there was a problem with a ticket, their testimony suggests that the judge dismissed other tickets prior to the prosecutor's involvement. If the judge dismissed similar tickets without the prosecutor's involvement against defendants with whom he had no relationship, that might diminish the appearance of favoritism here (but could establish a pattern of failing to follow the law).

Without pinning a medal on this judge – because I believe he should be censured – his misconduct, while procedurally deficient and certainly deserving of criticism, did not corrupt the system of justice, was not plainly motivated by favoritism, and thus, I believe, did not constitute “ticket fixing,” at least in the traditional sense. “Ticket fixing” is generally regarded as “showing and seeking” special treatment in the disposition of traffic charges, based not on the merits, but on favoritism (*Matter of Bulger*, 48 NY2d 32, 33 [1979]; *Matter of Reedy*, 64 NY2d 299 [1985]). Typically, in such cases, the judge either requests special consideration on behalf of himself or another defendant, or grants such a request made by someone with influence, or reaches out in a case not properly before him/her to impose a lenient disposition as a favor. More than three decades ago, the Commission identified a widespread pattern of such favors (often reciprocal), and over 150 judges who had engaged in the practice – including some who

had personally engaged in *dozens* of such incidents – were disciplined.

While more recent incidents have been rightly treated with more severity since judges were – and remain – on notice that misconduct of such “gravity” will not be tolerated and that even one incident may result in removal (*Matter of Reedy*, 64 NY2d 299, 302 [1985]), the fact remains that only one judge (*Reedy*) has been removed for a single episode of ticket fixing. And in *Reedy*, the case for removal was far stronger. In that instance, the respondent judge – who had previously been censured by the Commission for ticket fixing – communicated multiple times with the judge responsible for his son’s Speeding ticket, doctored the relevant ticket without the arresting officer’s consent, and declined to give any testimony to the Commission in defense of his actions.

While the Court of Appeals indeed acknowledged in *Reedy* that a single episode of ticket fixing warrants removal (*id.*), for reasons stated herein I do not think this particular case falls within that pronouncement. But regardless of whether the conduct here is characterized as ticket fixing, as my colleagues urge, imposing that sanction based on the facts before us is plainly disproportionate. While I would not return to the days when ticket fixing was leniently treated and would not hesitate to vote for removal in an appropriate case, I cannot do so on the facts here.

Guided by the standards set by the Court of Appeals, I find no exacerbating factors that would constitute “truly egregious circumstances.” Respondent did not reach out for a case that was not properly before him, or use his influence to dispose of a ticket he or a family member had received. He disposed of the Seat Belt ticket issued to Johnson on the return date, in open court and on the record (in contrast to several recent

cases we have seen involving questionable proceedings in which the judges conveniently “forgot” to turn on the recording equipment). There is no indication that he tried to conceal the disposition or otherwise cover up his wrongdoing. While it is clear that respondent should have heard from the prosecutor before dismissing the charge, there is evidence in this record that his failure to do so was not unusual and that his dismissal of the charge for a technical defect was neither exceptional nor plainly inappropriate – factors that somewhat diminish the appearance of favoritism.

Further, unlike the majority, I cannot find that respondent clearly “disregarded” the prior Letter of Dismissal and Caution. Significantly, the judge testified that in handling the Lynn Johnson case, he considered that it had been ten years since Johnson had been his employer and thus he believed the appearance of impropriety had diminished.<sup>1</sup> He stated: “I felt-- I still feel that a ten-plus year separation from employer-employee relation was more than sufficient to avoid the appearance of any impropriety” (Tr 153). While one can disagree with his judgment in that regard – and I fully concur with the majority in that respect – in my view that is not the testimony of a judge who was insensitive to his ethical obligations. I also note that, on its face, the cautionary letter does not tell the judge that he should never preside over any case involving a member of the Johnson family; rather, it states that given the totality of the circumstances in the earlier matter (including his private meeting with the defendant and

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<sup>1</sup> After selling the business in 1997, Johnson was a “consultant” for the company (from which respondent retired the day before handling the Seat Belt charge); there is no evidence in the record as to any professional contact with respondent in that capacity.

his offer to counsel her about her alcohol problems), he “should have considered” whether his impartiality could reasonably be questioned. One can reasonably conclude, from the same facts, that almost ten years later, faced with different circumstances, a different defendant and a *de minimis* charge, the judge evaluated the circumstances and made a quick, erroneous judgment that he could dispose of the matter.<sup>2</sup>

The Court of Appeals has set a high threshold for removal of judges, having stated repeatedly that “[r]emoval is an extreme sanction and should be imposed only in the event of truly egregious circumstances” (*Matter of Cunningham*, 57 NY2d 270, 275 [1982]; *see also*, *Matter of Restaino*, 10 NY3d 577, 589 [2008]). In my judgment, that standard, as developed in the 70 cases in which the Court of Appeals has imposed the ultimate sanction of removal in reviewing a Commission determination, does not support removal here. As the Court has reminded us, “removal should not be ordered for conduct that amounts simply to poor judgment, or even extremely poor judgment” (*Matter of Cunningham*, *supra*, 57 NY2d at 275). Lack of fitness for judicial office has not been shown in this case; the judge has not “debased his office” (*Matter of Feinberg*, 5 NY3d 206, 216 [2005]) or “destroy[ed] [his] usefulness on the bench” (*Matter of Cohen*, 74 NY2d 272, 278 [1989]) or “irredeemably damaged public confidence in the integrity of his court” (*Matter of McGee*, 59 NY2d 870, 871 [1983]) or “shown that he poses a

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<sup>2</sup> Aside from the Commission “warning” respondent received almost a decade earlier, the record is silent on the specific training he received on disqualification, “the appearance of impropriety” or *ex parte* proceedings. While we must presume that every judge understands these fundamental ethical principles, I would feel far more comfortable in voting for removal if I knew with some certainty that respondent had been instructed with sufficient clarity to *never* preside, particularly *ex parte*, over any case in which his impartiality might reasonably be questioned, and to *always* disclose a relationship that might be viewed as presenting a potential conflict.

threat to the proper administration of justice” (*Matter of VonderHeide*, 72 NY2d 658, 661 [1988]).

In short, I believe the conduct in the case before us falls short of the “truly egregious” circumstances in the cases described above. I am also mindful of the guidance provided for us in the cases where the Court of Appeals has rejected the Commission’s recommendation of removal and reduced the sanction to censure, including *Matter of Edwards*, 67 NY2d 153, 155 (1986) (“this single incident, which was fueled by extremely poor judgment, was an aberration”) and *Matter of Skinner*, 91 NY2d 142, 144 (1997) (“Removal is excessive where the misconduct amounts solely to poor judgment, even extremely poor judgment”). In *Skinner*, involving a judge who summarily disposed of two criminal cases despite knowing that he was not following the law, the Court of Appeals found the sanction of removal “unduly severe,” noting that these were two “isolated incidents” in the judge’s lengthy judicial career and that there was no indication that he “was motivated by personal profit, vindictiveness or ill will” (*Id.*).


To maintain a fair system, there should be some semblance of equality of sanctions. We have come a long way in holding judges responsible for their misconduct, but the case law does not support removal here. The disposition here is out of proportion to the results in other cases and overlooks the many cases in which judges have been censured for serious misconduct. The Court of Appeals has imposed “the weighty sanction of censure” for conduct that is “unquestionably serious,” even when the judge “has failed to this day” to recognize the impropriety of his actions (*Matter of Hart*, 7 NY3d 1, 9, 10 [2006] [“Censure has generally been employed when a judge’s conduct is

inconsistent with the role of judge or amounts to an abuse of judicial power” (*id.* at 9)]; *see also, Matter of Watson*, 100 NY2d 290, 303 [2003] [“Although [the] transgressions are serious, we are unpersuaded that his continued performance in judicial office presently threatens the proper administration of justice or that he has irredeemably damaged public confidence in his own impartiality or that of the state judiciary as a whole”]]. If we remove this judge on the facts presented, we are charting a new course that would make it too easy to reject “the weighty sanction of censure” in future cases and to require the sanction of removal in any case that involves serious misconduct.

To the extent that other vulnerable judges – who might stand on the brink of similar violations – might learn of the Determination herein, the severe sanction of censure would surely accomplish the necessary deterrent effect.<sup>3</sup>

In light of the foregoing, I respectfully dissent and vote to censure respondent.<sup>4</sup>

Dated: May 1, 2013

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

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<sup>3</sup> Or, better yet, compliance could be enhanced by ensuring that judges – at every level of our court system – receive the degree of ethics training that is so essential to ensuring public confidence in the judiciary as a whole.

<sup>4</sup> In my judgment, Charge II, which addresses respondent’s conversation with a prospective claimant in a small claims matter, does not in any way transform this case into one warranting removal. The charge alleges that respondent had a single *ex parte* discussion with an individual about the facts of an impending claim. The five paragraphs of specifications in the charge make no reference to discouraging the claimant from filing a claim because of bias, which is the basis for the majority’s finding of misconduct. Charge II is noteworthy, however, to the extent that the conduct described reiterates the need for judges to be wary of inappropriate informality, particularly as it relates to *ex parte* contacts.