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

JAMES P. GILPATRIC,

a Judge of the Kingston City Court,
Ulster County.

- -

THE COMMISSION:

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

APPEARANCES:

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

James E. Long for the Respondent

The respondent, James P. Gilpatric, a judge of the Kingston City Court, Ulster County, was served with a Formal Written Complaint dated June 21, 2005,

containing two charges.

On November 1, 2005, the administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On November 10, 2005, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Kingston City Court since January 1, 1994. He is an attorney.

2. Respondent is an alcoholic who sought assistance for this disease in June 1994 and had been alcohol-free from that time until September 1, 2004.

3. In the late-evening/early-morning period of August 31-September 1, 2004, respondent had a relapse of this disease and drank alcoholic beverages. He also took the over-the-counter medication Benadryl.

As to Charge I of the Formal Written Complaint:

4. On the morning of September 1, 2004, while still under the influence of alcoholic beverages, respondent appeared in the Ulster County Family Court as an attorney representing a party. The appearance was in connection with a routine scheduling calendar and not an evidentiary or other substantive proceeding. The matter

was adjourned.

As to Charge II of the Formal Written Complaint:

5. On September 1, 2004, while still under the influence of alcohol, respondent took the bench in Kingston City Court but was unable to continue to preside. He was relieved of his judicial duties.

6. From September 2 to September 15, 2004, respondent performed judicial duties and did not consume any alcoholic beverages.

7. On September 16, 2004, respondent entered a residential treatment program at the Tully Hill Alcohol Rehabilitation Center in Tully Hill, New York. He successfully completed the program in 21 days. Upon discharge from Tully Hill, he enrolled in the Pius XII Chemical Dependency Program in Newburgh, New York, on an out-patient basis. He continues to participate in the Pius XII program and in Alcoholics Anonymous.

8. On October 7, 2004, respondent resumed his judicial duties and has performed without impairment or incident.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.4(A)(2) and 100.4(A)(3) 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 of the Formal Written

Complaint are sustained, and respondent's misconduct is established.

Respondent has acknowledged that, while under the influence of alcohol, he appeared in court as an attorney and, later that same day, took the bench but was unable to continue to preside because of his impaired condition. Litigants and the public can have little faith in the decisions and judgment of a judge who appears in court while under the influence of alcohol. *See, Matter of Aldrich v State Comm. on Judicial Conduct*, 58 NY2d 279 (1983).

It is apparent from this record that respondent is an alcoholic who frankly recognizes his condition and has engaged in stringent efforts, over more than a decade, to fight the disease from which he suffers. We recognize that alcoholism is an insidious disease from which judges are not exempt and we acknowledge respondent's rehabilitative efforts. However, the public is entitled to a judge who does not come to court while under the influence of alcohol, and litigants should not have to wonder whether a judge has fallen off the wagon on a particular court date. There is also the humiliating institutional spectacle of local lawyers and court personnel knowing that a judge has an alcohol problem that he or she cannot control.

As the Court of Appeals has often stated, judges "are held to higher standards of conduct than members of the public at large and [even] relatively slight improprieties subject the judiciary as a whole to public criticism and rebuke." *Matter of Aldrich*, *supra*, 58 NY2d at 283; *see also Matter of Kuehnel*, 49 NY2d 465, 469 (1980);

Matter of Mazzei, 81 NY2d 568, 571-72 (1993). Respondent's conduct was a clear departure from the high standards expected of a judge.

In determining an appropriate disposition in such cases in the past, the Commission has considered mitigating and/or aggravating circumstances, including the totality of the judge's conduct and the judge's rehabilitative efforts. *See, e.g., Matter of Aldrich, supra* (judge was intoxicated while performing judicial duties and, while intoxicated, used vulgar, racial and sexist language and threateningly displayed a knife) (removal); *Matter of Wangler*, 1985 Annual Report 241 (judge was intoxicated and belligerent in court and at a meeting with court auditors and failed to promptly deposit and remit court funds) (removal); *Matter of Purple*, 1998 Annual Report 149 (judge presided in court while under the influence of alcohol on a single occasion, and had a subsequent DWI conviction) (censure); *Matter of Giles*, 1998 Annual Report 127 (judge twice presided over off-hours arraignments while under the influence of alcohol) (censure); *Matter of Bradigan*, 1996 Annual Report 71 (judge twice presided while under the influence of alcohol, conducting a bench trial and an arraignment, and engaged in unrelated misconduct in two small claims cases) (censure). Here, respondent took the bench while under the influence of alcohol but was unable to continue to preside. In addition, the record is uncontradicted that in the past 14 months respondent has performed his judicial duties without impairment or incident, while regularly attending Alcoholics Anonymous meetings, participating in AA programs, and continuing to undergo group and individual counseling.

In view of the circumstances in this case, we accept the recommendation of both Commission counsel and respondent that censure is appropriate. Further, staff is hereby authorized to observe respondent's public court sessions periodically in the future. The Commission will consider authorization of a new investigation and additional charges upon any observation that suggests that respondent is presiding while under the influence of alcohol. *See, Matter of Bradigan, supra*; *Matter of Giles, supra.*

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

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

Judge Klonick and Mr. Pope dissent and vote to reject the Agreed Statement on the basis that the proposed disposition is too harsh.

Judge Peters did not participate.

Mr. Coffey and Judge Luciano were not present.

CERTIFICATION

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

Dated: December 14, 2005

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

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DISSENTING OPINION
BY MR. POPE,
IN WHICH JUDGE
KLONICK JOINS

- -

I am deeply troubled by the Decision of the majority of the Commission to censure Judge Gilpatric because he suffers from an illness. I believe the only proper way in which to analyze this case is with a recognition that respondent's isolated actions were as a result of a recognized illness, namely alcoholism, and not as a result of any knowing or intentional misconduct on the part of the judge. I would vote to issue a confidential letter of caution based on the circumstances of this particular case.

The legislature of this state has defined alcoholism as "a chronic illness in which the ingestion of alcohol usually results in the further compulsive ingestion of alcohol beyond the control of the sick person to a degree which impairs normal functioning" (Mental Hygiene Law §1.03, subd. 13). The legislature defines a "recovered alcoholic" as "a person with a history of alcoholism whose course of conduct over a sufficient period of time reasonably justifies a determination that the person's capacity to function normally within his social and economic environment is not, and is

not likely to be, destroyed or impaired by alcohol" (*Id.*, subd. 15). The Court of Appeals has also recognized that "alcoholism is an illness which must be treated as a public health problem" (*Matter of Quinn*, 54 NY2d 386, 394 [1981]).

It is clear from this record that respondent is a recovering alcoholic who had an isolated relapse after more than ten years of continuous sobriety. Respondent's relapse lasted for part of a single day, during which, while under the influence of alcohol, he appeared in court as an attorney in connection with a scheduling calendar and later, as a judge, took the bench but was unable to preside. Thereafter, respondent took prompt action to fight his disease. He entered a residential treatment facility, enrolled thereafter in an out-patient program, and continues to attend AA meetings and to be involved in its programs. He has abstained from the consumption of alcohol since the date of his relapse. It appears that respondent is deeply committed to continuing his efforts to fight his illness while assisting others who are struggling with the disease.

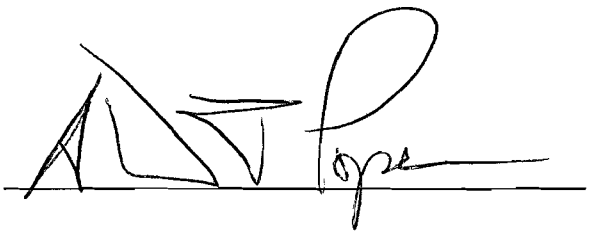
In contrast to other cases involving judges who have been disciplined for presiding while under the influence of alcohol, this case involves a single isolated episode without any exacerbating factors. *Compare, Matter of Purple*, 1998 Annual Report 149 (judge presided while under the influence of alcohol and engaged in an angry confrontation with the sheriff; two weeks later, he drove while under the influence of alcohol, was involved in an accident and was later convicted of Driving While Intoxicated); *Matter of Giles*, 1998 Annual Report 127 (judge presided on two occasions over off-hours arraignments while under the influence of alcohol, and also engaged in misconduct in two small claims cases); *Matter of Bradigan*, 1996 Annual Report 71

(judge presided on two occasions while under the influence of alcohol, including a bench trial in a drunk-driving case); *Matter of Wangler*, 1985 Annual Report 241 (judge appeared in court in an intoxicated condition and was sent home by his co-judge; on another occasion, he was intoxicated at a meeting with representatives of the State Comptroller's office; the judge also had significant depositing and reporting deficiencies); *Matter of Aldrich*, 58 NY2d 279 (1983) (judge presided on two occasions while under the influence of alcohol, used profane, menacing language and made inappropriate racial references, and threatened a security guard with a knife).

Under the circumstances, including respondent's record of honorable, competent service as a judge and a member of the bar, I do not believe that respondent's isolated relapse in any way warrants the sanction of public censure. The respondent has an illness, which he successfully controlled for more than ten years. I do not believe a judge, or anyone else for that matter, should be publicly sanctioned because of a one-time isolated failure to control an illness. Under present day medical, social and legal knowledge of this disease, a public sanction is simply unacceptable. This is especially so since respondent apparently did not conduct any substantive proceedings while under the influence of alcohol and there was no apparent harm to any litigant or client; nor did he engage in any exacerbating acts of misconduct. In addition, respondent's frank acknowledgment of his illness and his past and present record of commitment to fighting this disease should be taken into consideration in determining an appropriate sanction.

Accordingly, I respectfully vote to reject the Agreed Statement of Facts and would issue respondent a confidential letter of caution.

Dated: December 14, 2005



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