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

PAMELA L. KADUR,

a Justice of the Root Town Court,
Montgomery County.

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THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

J. Peter Doherty for Respondent

The respondent, Pamela L. Kadur, a Justice of the Root Town Court, Montgomery County, was served with a Formal Written Complaint dated February 28,

2002, containing four charges. Respondent filed an answer dated April 8, 2002.

By Order dated April 18, 2002, the Commission designated Paul A. Feigenbaum, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on September 17 and 18 and October 30, 2002, in Albany, New York, and the referee filed his report with the Commission dated January 29, 2003.

Commission counsel filed a brief with respect to the referee's report. Respondent's counsel did not file a brief but filed a letter dated February 28, 2003, advising the Commission of respondent's resignation effective March 5, 2003. Oral argument was waived. On March 13, 2003, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Root Town Court since 1993. She has attended and successfully completed all required training sessions for judges. At all times relevant herein, respondent was aware of the prohibition against presiding over cases in which she was related to a party.

As to Charge I of the Formal Written Complaint:

2. On July 24, 1999, respondent's son, Gunter Eric Kadur, was charged by the state police with No Seat Belt. According to court records, on September 7, 1999, respondent presided over the case and imposed a fine of $25 with a $25 mandatory surcharge. Respondent testified that she did not dispose of the case in court, but handled the charge in her kitchen at her home, where her son lived with her.

3. On March 3, 2000, respondent's son, Gunter Eric Kadur, was charged by the Montgomery County Sheriff's Department with Speeding (70 mph in a 55 mph zone). Five months later, in August 2000, while the regularly assigned ADA was on vacation, respondent approached an assistant district attorney ("ADA"), who was not the ADA assigned to respondent's court, concerning her son's ticket. Respondent did not disclose to the ADA that respondent was the judge presiding over the charge, and the ADA consented to a reduction. On August 23, 2000, respondent reduced the charge to Parking On The Pavement, a violation which carries no points on a driver's license, and assessed a fine of $50. In May 2001, respondent testified during the Commission's investigation that her son had paid the fine and that she had remitted it to the state comptroller. In fact, respondent did not require her son to pay the fine until July 1, 2001, after she knew she was under investigation by the Commission. Respondent admitted that she "took [her] time" adjudicating her son's ticket because she knew she should not have been handling the matter. Respondent did not docket the charge until July 2001 because she knew she should not have handled the case.

4. On September 10, 1998, respondent's nephew, Paul Thomas Beam, was charged with No Seat Belt. Respondent failed to disqualify herself and accepted a guilty plea from her nephew in court on or about September 30, 1998. Respondent assessed a fine of $30 with a $30 mandatory surcharge, which her nephew did not pay until March 9, 1999, five months after the adjudication by respondent.

5. On February 6, 2001, respondent's nephew, Paul Thomas Beam, was

charged with driving an Uninspected Motor Vehicle. Respondent failed to disqualify herself from the matter, and when her nephew initially appeared before her in court, respondent advised him not to plead guilty. Later, Mr. Beam returned to court and entered a guilty plea. Respondent waived any fine, based upon her knowledge of her nephew's personal circumstances, but imposed a $30 mandatory surcharge, which he paid in June 2001.

6. In January 2001, respondent presided over a violation of the dog ordinance against her brother-in-law, Richard Kadur, and imposed a fine of $5.

7. In 1996, respondent failed to disqualify herself and presided over a Speeding charge against her husband's first cousin, Christopher Walther, by accepting a plea to a reduced charge of Parking On The Pavement. Respondent assessed a fine of $50. Respondent did not disclose to the prosecution that the defendant was her relative.

8. In August 2000, respondent failed to disqualify herself and presided over a charge of No Seat Belt against her husband's first cousin, Christopher Walther. Respondent waived a fine because she felt sorry for the defendant.

As to Charge II of the Formal Written Complaint:

9. In an attempt to conceal that she had presided over her son's March 2000 Speeding charge, as described under Charge I, paragraph 3, above, respondent recorded her son's name in her cashbook for July 2001 as "G.E. Kadul" and in her July 2001 report to the State Comptroller as "G.E. Kadel." At the time she made those entries, respondent knew that she was under investigation by the Commission for presiding over

her son's cases.

10. In an attempt to conceal that she had presided over the No Seat Belt charge against her son described under Charge I, paragraph 2, above, respondent recorded her son's name in her cashbook for September 1999 as "G.E. Kadell," with the second "l" added in different color ink. After July 25, 2001, and sometime before January 2, 2002, when she was asked to appear before the Commission and to bring her cashbook, respondent altered the original entry by overwriting on it to change the spelling of the defendant's name to "Kadur."

11. Respondent's testimony that she made the original false entries in her records to conceal from the town board, and not from the Commission, that she had presided over these cases is lacking in candor. Respondent's testimony that by altering the 1999 entry back to "Kadur" she was trying to "correct" it rather than conceal her original misconduct is lacking in candor.

As to Charge III of the Formal Written Complaint:

12. On October 12, 1995, respondent's son, Gunter Eric Kadur, and a co-defendant were charged by the Montgomery County Sheriff's Department with Speeding at 100 mph in a 55 mph zone, a violation carrying eleven points on a driver's license upon conviction. In or about November 1995, on the consent of the district attorney's office, respondent's son and his co-defendant each entered a plea before respondent's co-judge, Hubert Janke, to a reduced charge of Speeding at 79 mph in a 55 mph zone, a violation carrying six points. Judge Janke assessed each defendant a fine of

$100, with a $25 mandatory surcharge. The co-defendant paid his fine and surcharge in December 1995, but respondent's son did not.

13. Judge Janke did not act to suspend respondent's son's license out of deference to respondent. However, for a period of approximately two years until Judge Janke left office in December 1997, he reminded respondent on a monthly basis that her son had not paid his fine and that the ticket was still outstanding.

14. In December 1997, as Judge Janke was preparing to leave judicial office, he handed respondent an envelope containing the ticket issued to her son in October 1995, along with the district attorney's plea agreement, and said to respondent, "Pam, this ticket is not going to go away. You have to do something with this ticket." Respondent knew at that time that shortly she would be the only judge in the Town of Root.

15. Thereafter, respondent deliberately neglected to take action either to transfer her son's ticket to another jurisdiction or to suspend her son's license or collect the fine until shortly before the hearing before the referee, when she remitted the fine to the state comptroller. Respondent knew that the ticket was pending before her.

16. Respondent was not candid when she testified on January 2, 2002, during the Commission's investigation that: (a) she did not know that her son had not paid the fine because she and Judge Janke "never really talked about the case"; (b) Judge Janke might have mentioned "a couple of times" that her son had not paid the fine; (c) she could not recall a conversation about the case as Judge Janke was leaving office; (d) she

never saw the ticket; and (e) the case did not appear on her TSLED reports. Respondent was not candid in her testimony at the hearing when she maintained that Judge Janke did not hand her the ticket upon leaving office.

17. On August 22, 2000, respondent's son, Gunter Eric Kadur, was charged by the state police with Speeding (72 mph in a 55 mph zone) in the Town of Root. Respondent received the ticket in her judicial capacity and, thereafter, failed to take any action either to transfer the case to a court which could hear the matter or to adjudicate the charge.

18. Respondent was aware that the charge was pending before her and she knew she should not handle the matter.

19. On January 2, 2002, respondent was not candid or credible when she testified during the Commission's investigation that she mailed her son's August 2000 Speeding ticket to the Town of Glen Court after first calling the court clerk to alert her. Respondent's testimony was inherently unbelievable on this point, and was directly contradicted by Heather Rose, the Glen Town Court clerk, and by respondent's own previous statement to a Commission investigator that respondent had "personally delivered" the ticket.

20. Respondent's testimony at the hearing was not candid when she maintained that she had transferred the charge to the Town of Glen.

As to Charge IV of the Formal Written Complaint:

21. The charge is not sustained and is therefore dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.2(B) and 100.3(E)(1)(d)(i) of the Rules Governing Judicial Conduct.[1] Charges I through III of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established. Charge IV is not sustained and is therefore dismissed.

As found by the referee, respondent knowingly presided over cases involving her relatives, made false entries in her official court records in an effort to conceal her misconduct, and failed to testify candidly during the Commission's investigation of her conduct. This record of deception, dishonesty and abuse of judicial power amply demonstrates respondent's lack of fitness to serve as a judge.

Between 1996 and 2001, respondent handled seven cases involving her relatives, including her son, nephew, brother-in-law and husband's first cousin. Such conduct violates well-established ethical standards requiring a judge's disqualification when a party to a proceeding is within the sixth degree of relationship to the judge or the judge's spouse, or is married to such a relative (Jud Law §14; Rules Governing Judicial

[1] Sections 100.1 and 100.2(A) of the Rules were also charged in the Formal Written Complaint. On February 20, 2003, in *Spargo v. NYS Comm'n on Jud Conduct*, 244 F Supp2d 72 (NDNY 2003), the Commission was barred from enforcing those provisions, and by letter dated March 3, 2003, Commission counsel requested that the Commission render a determination in the instant matter without reference to those sections. Accordingly, although the *Spargo* decision has been stayed by the U.S. Court of Appeals for the Second Circuit pending appeal, Sections 100.1 and 100.2(A) are not included in this determination.

Conduct §100.3[E][1][d][i]). As the Court of Appeals has stated:

> The handling by a judge of a case to which a family member is a party creates an appearance of impropriety as well as a very obvious potential for abuse, and threatens to undermine the public's confidence in the impartiality of the judiciary. Any involvement by a judge in such cases or any similar suggestion of favoritism to family members has been and will continue to be viewed...as serious misconduct.

Matter of Wait, 67 NY2d 15, 18 (1986); *see also Matter of Thwaits*, 2003 Ann Rep __ (Commn on Jud Conduct, Dec 30, 2002).

As respondent has conceded, she not only failed to disqualify herself from these cases but generally accorded lenient treatment to her relatives, basing the dispositions on information she knew about them because they were family members. For example, with respect to her son's Speeding ticket, respondent imposed a lenient disposition (a no-point violation) because she did not want to jeopardize his commercial driver's license; moreover, she "took [her] time" disposing of the matter, waiting five months to dispose of the case and not requiring her son to pay the fine for another ten months, after learning that she was under investigation by the Commission.

Respondent compounded her misconduct by making false entries in her official court documents on two occasions, deliberately misspelling her son's name in order to conceal that she had presided over her son's cases. In the latter instance, respondent made the false entries, in her cashbook and report to the State Comptroller, at a time when she knew she was under investigation by the Commission for presiding over her son's cases. "Such deception is antithetical to the role of a judge, who is sworn to

uphold the law and seek the truth" and "cannot be condoned." *Matter of Myers*, 67 NY2d 550, 554 (1986); *Matter of Intemann*, 73 NY2d 580, 581-82 (1989); *Matter of Moynihan*, 80 NY2d 322 (1992).

Respondent's lack of candor both during the Commission's investigation and at the hearing about her handling of her son's cases exacerbates her misconduct. *Matter of Gelfand*, 70 NY2d 211 (1987). A judge is obligated to testify truthfully in Commission proceedings, and the failure to do so impedes the efficacy of the disciplinary process and is destructive of a judge's usefulness on the bench.

In its totality, respondent's conduct demonstrates "a level of dishonesty and lack of judgment that is unacceptable for a member of our state's judiciary." *Matter of Conti*, 70 NY2d 416 (1987).

This determination is rendered pursuant to Judiciary Law §47 in view of respondent's resignation from the bench.

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Ms. Moore, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

CERTIFICATION

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

Dated: May 28, 2003

Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct