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

JOAN M. KLINE,

a Justice of the Guilford Town Court, the
Oxford Town Court and the Oxford Village
Court, Chenango County.

DETERMINATION

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THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

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

Scott Clippinger for the respondent

The respondent, Joan M. Kline, a Justice of the Guilford Town Court, Oxford Town Court and Oxford Village Court, Chenango County, was served with a

Formal Written Complaint dated July 11, 2017, containing seven charges. The Formal Written Complaint alleged that in several cases respondent acted in a manner that appeared to coerce guilty pleas (Charge I), undermined the right to counsel (Charge II), conveyed an appearance of bias (Charge III), elicited incriminatory responses from a defendant at arraignment (Charge IV), and made discourteous and threatening comments (Charge V); it was also alleged that she destroyed court records without authorization (Charge VI) and held extra-judicial positions, as a court clerk and as a fire police officer, that were incompatible with judicial office (Charge VII). Respondent filed an Answer dated August 29, 2017.

On October 17, 2017, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, 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 December 7, 2017, the Commission accepted the Agreed Statement and made the following determination:

1. From 2008 to the present, respondent has been a Justice of the Guilford Town Court, Chenango County. Her current term expires on December 31, 2017.

2. From March 2013 to July 2016, respondent served as Acting Justice of the Oxford Village Court, Chenango County. From March 2013 to May 4, 2017, respondent also served as clerk of the Oxford Village Court, Chenango County.

3. From 2009 to May 4, 2017, respondent served as a clerk of the Oxford Town Court, Chenango County.

4. From 2013 to the present, respondent has served as a clerk of the Bainbridge Town Court, Chenango County.

5. On May 16, 2017, respondent was temporarily assigned as a Justice of the Oxford Town Court and the Oxford Village Court, Chenango County, by Sixth Judicial District Acting Administrative Judge M. Rita Connerton, for terms to expire on December 31, 2017.

6. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint:

7. As set forth below, from December 2014 to January 2015, with respect to *People v Nathaniel R. Smith* and *People v Leslie G. Lapham*, in which the defendants were charged in the Oxford Village Court with violations of the Vehicle and Traffic Law ("VTL"), respondent, while acting in her capacity as court clerk but simultaneously holding the position of Acting Justice, acted in a manner that appeared intended to coerce the defendants to plead guilty by telling them that they could not enter a plea of not guilty to the charges against them.

People v Nathaniel R. Smith

8. On December 5, 2014, Nathaniel Smith was charged in the Oxford Village Court with Disobeying a Traffic Control Device, a violation of VTL Section 1110(a). The simplified information and supporting deposition both indicated "N.

CANAL 57-40."

9. Mr. Smith pled not guilty by mail. Mr. Smith also sent a letter to the Oxford Village Court, dated December 18, 2014, stating, "I am hoping my charges can be reduced or possibly thrown out."

10. On December 19, 2014, Mr. Smith initiated a telephone conversation with respondent, who told him that he was not allowed to plead not guilty because he had "already had a reduction." Mr. Smith told respondent that he would change his plea to guilty. On Mr. Smith's letter of December 18, 2014, respondent wrote: "He is remailing a Guilty Plea."

11. By letter dated December 21, 2014, then-Oxford Village Justice John V. Weidman notified Mr. Smith that the court accepted his guilty plea and assessed a fine and surcharge totaling $220.

12. By letter dated January 1, 2015, Mr. Smith wrote to the court "to formally change [his] plea to guilty" and enclosed a check in the amount of $220.

People v Leslie G. Lapham

13. On December 27, 2014, Leslie G. Lapham was charged in the Oxford Village Court with Disobeying a Traffic Control Device, in violation of VTL Section 1110(a), as to which a conviction would result in two points on a driver's license. The ticket and supporting deposition both indicated "S. CANAL 50 IN 30."

14. On January 5, 2015, Mr. Lapham telephoned the court and first spoke with respondent. Mr. Lapham asked for directions, stating that he had received a traffic ticket and that he wanted to appear in court. Respondent did not give him directions but

discouraged him from coming to court by stating that he could not plead not guilty to the charge in court and that, if he pled not guilty by mail, the police officer would rewrite the ticket for Speeding. Conviction on such a charge would result in six points on a driver's license.

15. Respondent then transferred Mr. Lapham's call to Judge Weidman, who also told Mr. Lapham that he could not plead not guilty in court, that if he pled not guilty by mail the officer who issued the ticket would rewrite it for Speeding, that the matter would then go to a jury trial, that the district attorney would probably want to interview him and that he may want to retain an attorney.

16. On January 6, 2015, Mr. Lapham pled guilty to the ticket by mail but attached a two-page explanation to Judge Weidman requesting that he consider dismissing the charge.

17. On January 8, 2015, the court issued a letter, signed by "Joan M. Kline, Court Clerk" over the typed name of Judge Weidman, accepting Mr. Lapham's guilty plea and assessing a fine and surcharge totaling $220.

As to Charge II of the Formal Written Complaint:

18. As set forth below, from July 2014 to September 2014, while presiding over three cases in which the defendants were each charged with at least one misdemeanor, respondent engaged in the following conduct:

A. In *People v Randy McCole,* in which the defendant appeared without counsel, respondent failed to properly inform the defendant of his right to an attorney

and/or his right to assigned counsel if financially eligible, then accepted a guilty plea to a misdemeanor without conducting an inquiry into whether the defendant had knowingly entered the plea.

B. In *People v Bridgitt Eggleston,* respondent (i) refused the defendant's request for an adjournment due to the absence of her attorney, (ii) negotiated a plea agreement with the prosecutor in the defense attorney's absence and (iii) accepted the defendant's guilty plea without confirming whether the defendant waived her right to counsel and without allocuting the defendant.

C. In *People v D. R.*, respondent engaged in an improper *ex parte* conversation about potential evidence with the defendant and prematurely destroyed and/or failed to maintain the court's records of the case, contrary to Section 2019 of the Uniform Justice Court Act, Section 214.11(a)(1) of the Uniform Civil Rules for the Justice Courts and Section 104 of the Rules of the Chief Administrator of the Courts, which require the retention of dismissed misdemeanor cases for six years.

People v Randy McCole

19. On July 22, 2014, respondent presided in Guilford Town Court over *People v Randy McCole,* involving charges, dating from 1998, of Aggravated Unlicensed Operation in the Second Degree, in violation of VTL Section 511(2)(a)(i), a misdemeanor, and Speeding, in violation of VTL Section 1180(b).

20. Mr. McCole, who appeared without an attorney, told respondent that he had previously been represented on the charges by an attorney who was now a judge and no longer practicing law. Mr. McCole also stated that he had talked to the assistant

district attorney, who advised him that he should seek representation.

21. Respondent did not inform the defendant of his rights to the aid of counsel, to an adjournment to obtain counsel or to assigned counsel if he were financially eligible.

22. After Mr. McCole had an opportunity to speak with the prosecutor, respondent accepted Mr. McCole's guilty plea to reduced charges of Aggravated Unlicensed Operation in the Third Degree, a misdemeanor under VTL Section 511(1)(a), and Disobeying a Traffic Control Device, a violation under VTL Section 1110(a), without conducting an inquiry to determine whether the defendant was entering the plea knowingly and intelligently.

People v Bridgitt Eggleston

23. On September 11, 2013, Bridgitt Eggleston was charged with Facilitating Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree, a violation of VTL Section 511-a(1), and was arraigned in Guilford Town Court on October 8, 2013.

24. On May 15, 2014, Ms. Eggleston was charged with Operation While Registration or Privilege Suspended or Revoked, a misdemeanor under VTL Section 512, and was arraigned in Guilford Town Court on May 29, 2014.

25. On July 22, 2014, Ms. Eggleston appeared before respondent in the Guilford Town Court in relation to the two above-referenced charges. Ms. Eggleston told respondent that she was unable to meet with her attorney, Joseph Ermeti, before her appearance, but that he had instructed her to request an adjournment. Respondent replied

that she would do nothing until she heard from Ms. Eggleston's attorney. When Ms. Eggleston asked what would happen if that did not occur that day, respondent said, "then that means he is not your attorney and you will have to answer this." Respondent did not adjourn Ms. Eggleston's case.

26. Approximately one hour later, respondent called the assistant district attorney to the bench where, in the absence of Ms. Eggleston, respondent said, "What I am going to do is I am going to cover the facilitating." The assistant district attorney agreed. Respondent then called Ms. Eggleston to the bench and, without giving the defendant an option to decline, said, "[T]he assistant DA to this court, has agreed to reduce 512 down to a 401(1)(a), which is an unregistered motor vehicle and you have a $177 fine and a mandatory $93 surcharge." When Ms. Eggleston indicated she did not have the money to pay, respondent said, "What I'm going to do is give you until August 21st." Ms. Eggleston said, "Okay. Thank you very much." Respondent made no inquiry as to whether Ms. Eggleston had waived her right to counsel and failed to conduct a plea allocution.

People v D. R.

27. On September 11, 2014, in Guilford Town Court, respondent arraigned D. R., who was charged with Failure to Provide Proper Sustenance, a misdemeanor, in violation of Section 353 of the Agriculture and Markets Law. Respondent advised Mr. R. that he was "entitled to an attorney at each and every part of these proceedings" and asked if he wished to have an attorney. Mr. R. responded, "Not at this time." Notwithstanding the provisions of Sections 170.10(3) and (4) of the Criminal

Procedure Law ("CPL"), respondent did not inform the defendant of his right to have assigned counsel if he were financially eligible.

28. At the arraignment, at which neither a prosecutor nor defense counsel was present, respondent engaged in a discussion with the defendant about the animals he was alleged to have neglected, viewed photographs of the allegedly abused animals that the defendant had with him, and inappropriately commented on their admissibility, noting that the photographs were undated.

29. On September 23, 2014, respondent dismissed the charge against the defendant.

30. Respondent prematurely destroyed and/or failed to maintain the court's records pertaining to *People v D. R.*, contrary to Section 2019 of the Uniform Justice Court Act, Section 214.11(a)(1) of the Uniform Civil Rules for the Justice Courts and Section 104 of the Rules of the Chief Administrator of the Courts, which require the retention of records of dismissed misdemeanor cases for six years.

As to Charge III of the Formal Written Complaint:

31. As set forth below, from April 2013 to October 2014, in connection with summary proceedings to recover possession of property pursuant to the Real Property Actions and Proceedings Law, respondent conveyed an appearance of bias or prejudice in favor of landlords and against tenants by engaging in the following conduct:

A. In *Drapaniotis v Coffyn*, respondent provided advice to and engaged in ex parte conversations with the landlords about the substance of the grounds for

eviction, without disclosing to the tenant the substance of such ex parte communications or offering to recuse herself as a result of such ex parte communications.

B. In *Hills v DeMorier*, respondent threatened to incarcerate the tenant if he failed to make timely payment of the amount respondent awarded to the landlord.

Drapaniotis v Coffyn

32. On July 24, 2014, Yuliya and Theodore Drapaniotis appeared before respondent and respondent's then co-judge, David P. Daniels, in the Guilford Town Court and stated that they were seeking to evict their tenant, Mitchell Coffyn.

33. On July 24, 2014, in the absence of Mr. Coffyn, respondent and Judge Daniels engaged the Drapaniotises in an ex parte conversation lasting approximately 45 minutes, during which, *inter alia*, the Drapaniotises alleged that Mr. Coffyn had brandished a shotgun at Mr. Drapaniotis, threatened and harassed them, was living with a woman who was verbally abusive to Ms. Drapaniotis, used illicit drugs and damaged their property.

34. Respondent gave detailed instructions to the Drapaniotises about how to effectuate personal and substituted service of the summary proceeding papers on Mr. Coffyn. She also assisted them in completing the legal forms.

35. Judge Daniels called a law enforcement authority to determine whether charges had been filed against Mr. Coffyn as a result of the alleged shotgun incident, then informed respondent and the Drapaniotises that Mr. Coffyn had been incarcerated after being charged in another court with Obstruction of Governmental Administration. Respondent and Judge Daniels advised the Drapaniotises that it was

unclear whether the obstruction charge was related to the alleged shotgun incident.

36. On August 5, 2014, respondent presided over *Drapaniotis v Coffyn*, a summary landlord-tenant proceeding to recover possession of real property. Respondent neither disclosed to Mr. Coffyn (the tenant) the substance of the ex parte conversation that had occurred on July 24, 2014, nor offered to recuse herself from the matter as a result of such conversation.

37. During the proceeding, Ms. Drapaniotis testified that she was seeking the tenant's eviction "[a]s a consequence of the mobile home tenant criminal action in violation of the law." After an extensive discussion, Mr. Coffyn stated that he was willing to move his trailer off the landlord's property, and respondent ordered the tenant to remove the trailer within 90 days and to clean up the lot.

38. After the proceeding concluded, respondent and Judge Daniels continued to converse with the Drapaniotises in the courtroom. Respondent said that she would have "gladly given" the Drapaniotises an order of protection if criminal charges had been filed against the tenant in her court. Respondent also stated, "I wish I could have done more ... I know you are upset with me."

39. On October 9, 2014, the Drapaniotises appeared again before respondent and, *inter alia*, complained that Mr. Coffyn was dismantling the trailer, had broken the water line and left dogs on the property. Mr. Coffyn was not present in court. In a conversation lasting approximately 16 minutes, the Drapaniotises catalogued several instances of their tenant's misbehavior, and respondent asked many questions and advised the Drapaniotises to call the sheriff. Respondent also said that if the tenant had

not vacated the premises by the court's deadline, she would "do a letter for criminal contempt." If the tenant failed to appear, respondent stated she would "send a warrant out for him." Despite professing that she could not give legal advice and that the landlords should seek an attorney, respondent advised them they could file a civil claim for the damaged water pipe.

Hills v DeMorier

40. On April 2, 2013, in Guilford Town Court, respondent presided over *Hills v DeMorier*, a summary landlord-tenant proceeding to recover possession of real property for failure to pay rent.

41. After the parties agreed that the tenant could remain on the premises until the end of April and pay the landlord rent in the amount of $635, respondent gratuitously threatened the tenant that if he failed to pay the amount "by the end of April ... we will put you in jail."

As to Charge IV of the Formal Written Complaint:

42. On October 21, 2014, while presiding over the arraignment in *People v D. B.*, respondent engaged in the following conduct:

A. Respondent failed to properly read the charges to the defendant;

B. Respondent asked questions of the defendant that created the appearance that respondent had prejudged the case and which could and did elicit incriminatory responses;

C. Respondent adjourned the charges in contemplation of dismissal

without notice to and the consent of the prosecution, as required by CPL Section 170.55(1); and

D. Respondent prematurely destroyed and/or failed to maintain the court's records pertaining to the case, contrary to Section 2019 of the Uniform Justice Court Act, Section 214.11(a)(1) of the Uniform Civil Rules for the Justice Courts and Section 104 of the Rules of the Chief Administrator of the Courts, which require the retention of dismissed violations cases for six years.

43. On October 8, 2014, D. B. was issued four appearance tickets, directing her to appear in Guilford Town Court on October 21, 2014, on two counts of failure to license and six counts of dog running at large, in violation of Sections 118(1)(a) and (d) of the Agriculture and Markets Law.

44. On October 21, 2014, Ms. B. and her husband appeared in court before respondent. Ms. B. was not represented by counsel and the prosecutor was not present.

45. Without informing Ms. B. of the sections of law with which she was charged or furnishing her with copies of the accusatory instruments, as required by CPL Section 170.10(2), respondent immediately asked, "Why are [the dogs] running at large and where are they running at large? Are they running on the neighbors?" and "Are they leashed?" The B.'s answered respondent's questions and discussed the circumstances in which their dogs were kept. Respondent adjourned the case in contemplation of dismissal without notice to or the consent of the prosecution, as required by CPL Section 170.55(1).

46. Respondent prematurely destroyed and/or failed to maintain the court's records pertaining to *People v D. B.*, contrary to Section 2019 of the Uniform Justice Court Act, Section 214.11(a)(1) of the Uniform Civil Rules for the Justice Courts and Section 104 of the Rules of the Chief Administrator of the Courts, which require the retention of dismissed violations cases for six years.

As to Charge V of the Formal Written Complaint:

47. As set forth below, on various occasions from February 2014 to September 2014, respondent made undignified, discourteous and, at times, threatening remarks to defendants, and in one such case respondent purposely or ignorantly misled the defendant by fundamentally misstating the meaning and significance of an adjournment in contemplation of dismissal.

People v Desiree Prosser

48. On February 25, 2014, Desiree Prosser appeared before respondent in the Guilford Town Court, on a warrant for failure to pay a court-ordered surcharge of $125 for a conviction of Harassment, a violation. With the consent of the prosecutor and Ms. Prosser's public defender, respondent vacated the original sentence of a conditional discharge and the imposition of the surcharge and resentenced Ms. Prosser to 15 days in jail, to run concurrently with a sentence imposed by another court.

49. During resentencing, respondent said to Ms. Prosser, "If you're in here again, it's not going to happen again. There will be no reduction anywhere. Not a one." Respondent added, "No more reductions for future charges. That means no matter

what you come in here with, I don't care if it's a misdemeanor, felony, I don't care, you are not going to get a reduction.... I'm sick of seeing you in here for stupid things."

50. Respondent wrote on the cover of the defendant's case file, "No Reduction(s) on future charges." Respondent also wrote on the commitment order dated February 25, 2014, "No more reductions for future charges."

51. On April 20, 2014, Ms. Prosser appeared before respondent. Respondent stated that Ms. Prosser was produced in court as a result of "court error." After a deputy sheriff noted that Ms. Prosser was going to be released from jail the next day, respondent said to Ms. Prosser:

> "[Y]ou really don't want to be back in this court . . . . Because there will be no reductions. You will go to jail. You will have whatever jail time we can give you .... I have this note on your file, "No reductions on future charges." And we will not reduce it, no matter what the DA says, no matter if the officers come in and say you've been behaving yourself, it does not matter .... You will go to jail .... I deal with the Village of Oxford, the Town of Oxford, the Town of Bainbridge. If you're in any of those three courts, you're going to be brought here because this is part of it. You're not getting into any trouble, and you will go to jail for it. So, you've got four courts at least that you don't want to be anywhere near."

People v Peter J. Seneck, Jr.

52. On May 8, 2014, Peter J. Seneck, Jr., was charged with Trespass, in violation of Penal Law Section 140.05, a violation, and Removal of Trees, in violation of Environmental Conservation Law Section 09-1501, a misdemeanor.

53. On July 22, 2014, Mr. Seneck appeared before respondent in the Guilford Town Court. Respondent advised Mr. Seneck that his application for a public defender had been denied. Mr. Seneck stated, "I was going to get an attorney. I just

can't afford one at this time." Respondent adjourned the case to August 26, 2014, but stated, "This is the last time I'm adjourning it. After that, if you don't show up with an attorney, then I'll just send you to jail."

People v D. S.

54. On August 27, 2013, respondent's then co-judge, David P. Daniels, granted an adjournment in contemplation of dismissal for a period of six months to D. S., who had been charged with Trespass, in violation of Penal Law Section 140.05. Respondent was present at the proceeding.

55. According to the court's case history report and the certificate of disposition, the charge against Mr. S. was dismissed by Judge Daniels on February 27, 2014, pursuant to the expiration of the period of the adjournment in contemplation of dismissal.

56. On August 12, 2014, Mr. S. came to the Guilford Town Court and asked to speak confidentially with respondent about the "expungement" of his record. Mr. S. implored respondent, *inter alia*, to confirm that his record had been "expunged," that all law enforcement agencies had been notified of the disposition of his case, and that his certificate of disposition include a reference to Section 160.50 of the "penal code."

57. Notwithstanding the provisions of CPL Sections 160.50(3)(b) and 170.55(8), respondent repeatedly and erroneously told Mr. S. that the disposition of his case had not been favorable to him. She told him, *inter alia*: "You were found guilty," "You know you were found guilty of it," "This was not an order dismissing the entire instrument," "It wasn't a complete acquittal," and "There is nothing which invalidated the

conviction."

58. When Mr. S. asked about the return of his fingerprints, respondent interrupted him and repeatedly and sharply asked if he was an attorney. When Mr. S. acknowledged that he was not, respondent said, "[W]hen you become an attorney, sir, then you can come back and talk to me. Otherwise, I am done with you."

59. Once, when Mr. S. stated that the certificate of disposition of his case needed to include a reference to the "penal code," respondent said sharply, "Unless you're an attorney, sir, I'm going to give it to you the way you have it .... Then you will take the seal as it is."

60. On August 19, 2014, Mr. S. returned to court to discuss the status of his records again. Respondent began the conversation with, "I'll listen to you one more time and that's it ... And then we're done .... I've done all I could .... If it's not what you want, I don't care." Respondent explained to Mr. S. that she had confirmed with an attorney at the OCA resource center that his records had been sealed, not expunged. When Mr. S. questioned whether that meant his records were "destroyed" and then interrupted respondent, she said, "Just listen to me or I will throw your butt out of here." Respondent attempted to explain that she had notified the appropriate authorities that his file was "sealed" and that, as a result, no one could access it. In contrast to her erroneous statements on August 12, 2014, respondent confirmed that Mr. S. had not been convicted of any crime. But when Mr. S. continued to ask about the expungement of his court records, respondent said, "[Y]ou need to leave ... or I will get you for contempt of court and then you will be in jail. You don't want that." Respondent explained that when his

file was sealed at the expiration of his adjournment in contemplation of dismissal period, it was like "[i]t never happened." Respondent stated that she would no longer speak to him about the issue but offered to speak further with his attorney, if he returned to the court with one.

People v Michael Gronowski

61. On September 16, 2014, in the Guilford Town Court, respondent arraigned Michael Gronowski, who was charged with Speeding, a violation of VTL Section 1180(b).

62. Respondent inquired as to how Mr. Gronowski knew to contact the assistant district attorney before appearing in court and then admonished him for having done so, stating, "You just jumped over the court and I'm not thrilled about it." Respondent stated that she would accept the plea agreement to a reduction, adding, "I'm not happy about it but, if you ever get another ticket, don't ever leave the court out of the proceedings .... Like I said, there's nothing on the ticket that says go to the district attorney." After imposing a $127 fine and $93 surcharge, respondent threatened, "And since you got one reduction already, if you ever get another ticket in this court, there will be no reduction."

As to Charge VI of the Formal Written Complaint:

63. As set forth below, from December 2008 to December 2015, respondent engaged in the improper practice of routine destruction of court records, by shredding the contents of Guilford Town Court, Oxford Village Court and Oxford Town

Court records for VTL cases, contrary to Section 2019 of the Uniform Justice Court Act, Section 214.11(a)(1) of the Uniform Civil Rules for the Justice Courts and Section 104 of the Rules of the Chief Administrator of the Courts.

64. Respondent engaged in the improper practice of routinely shredding the contents of the courts' records of VTL cases, within one year of the dispositions of the cases, making no electronic or any other copy of the destroyed documents, nor even summarizing the contents of the destroyed documents, notwithstanding various authorities requiring retention of all court records of VTL cases for six years and permission to destroy or to reproduce records in alternative formats. Respondent did not seek permission of the Deputy Chief Administrator for Management Support or other competent authority before shredding of court records, notwithstanding the requirement to do so.

65. The result of the unauthorized destruction of the paper records of respondent's courts is that the only remaining indication of the charges, actions and dispositions of such cases are the entries made by respondent into the court's computer-generated case history reports and the Simplified Informations and supporting depositions as originally transmitted electronically by the arresting officers.

As to Charge VII of the Formal Written Complaint:

66. At various times from March 2008 to October 2016, respondent held the extra-judicial positions of Oxford Village Court Clerk and Guilford Fire Department police officer, which are incompatible with judicial office.

67. From June 2008 to October 2016, respondent served as a fire police officer with the Guilford Fire Department while simultaneously serving as Guilford Town Justice, Oxford Town Justice and/or Acting Oxford Village Justice.

68. Respondent became a fire police officer in 2004, several years prior to becoming a town or village justice. In her capacity as fire police officer, respondent received training in the direction of traffic control and directed traffic during responses to fire calls. Respondent avers that she avoided directing traffic related to vehicular accidents to avoid potential conflicts of interest, that she issued no tickets or citations and that she did not carry a firearm. The Administrator has no evidence to the contrary.

69. Pursuant to CPL Sections 1.20(33) and 2.10(41) and General Municipal Law Section 209-c, members of fire police squads "have the powers of and render service as peace officers."

70. Respondent resigned from her position as fire police officer effective October 5, 2016.

71. In March 2013 respondent was appointed by the Oxford Village Board to the positions of Acting Oxford Village Justice and Court Clerk of the Oxford Village Court. As Court Clerk, respondent reported to Oxford Village Justice John V. Weidman.

72. By letter dated July 21, 2016, respondent notified the Oxford Village Board that she was resigning from her office as Acting Oxford Village Justice effective July 31, 2016, while retaining the Court Clerk position. Respondent's letter cited the

Commission's inquiry into her practice as the reason for her resignation.

Additional Factors

73. Respondent avers that she has halted the practice of the unauthorized destruction of court records, as a result of the Commission's investigation. She had believed she was complying with applicable record-retention requirements as long as the court's computer had a case history report. She now understands and acknowledges that she is required to keep and maintain all court records pertaining to criminal actions and civil proceedings for the time periods provided in the records retention and disposition schedules promulgated by the Office of Court Administration Division of Court Operations Office of Records Management ("ORM"). She further acknowledges that before disposing of any records pursuant to the retention and disposition schedules, she must first submit a records disposition request form to ORM and receive ORM's prior approval.

74. Although respondent avers that she was acting in her capacity as Oxford Village Court Clerk to former Judge Weidman when she improperly informed defendants Smith and Lapham (Charge I, *supra*) that they could not enter a plea of not guilty to the charges against them, she also acknowledges that, having simultaneously held the position of Acting Village Court Justice, she was bound by the Rules Governing Judicial Conduct to respect and to be faithful to and professionally competent in the law. Respondent acknowledges that her statements to the defendants were inaccurate and could have been perceived as coercive, and she pledges to refrain from any such conduct in the future.

75. Respondent now understands that her simultaneous holding of the positions of both court clerk and justice created the potential for conflicts of interest and for the receipt of and engagement in impermissible ex parte communications.

76. Respondent now understands that she must not engage litigants, including but not limited to those seeking to file petitions in landlord/tenant proceedings, in ex parte substantive conversations concerning their pending or impending proceedings.

77. Respondent acknowledges that her demeanor toward defendants and litigants as indicated herein was inappropriate, and she pledges to be patient, dignified and courteous to all those with whom she deals in an official capacity in the future.

78. Respondent now understands that it is inappropriate to ask defendants questions at arraignments that could potentially elicit incriminatory responses, and she pledges to refrain from such conduct in the future.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(3), 100.3(B)(4), 100.3(B)(6), 100.3(C)(1), 100.4(A)(3), 100.4(C)(2)(b) and 100.6(B)(4) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I through VII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

In numerous cases over a two-year period respondent made significant procedural errors, made inappropriate comments to litigants and engaged in other conduct

that was inconsistent with her ethical obligations as a judge, including the duty to be faithful to the law, to be patient, dignified and courteous to litigants, and to accord to everyone with a legal interest in a matter a full opportunity to be heard according to law (Rules, §§100.3[B][1], 100.3[B][3], 100.3[B][6]).

As a judge, respondent undermined the right to counsel in three cases by failing to properly inform two defendants charged with misdemeanors of the right to an attorney and/or to assigned counsel if eligible, and by denying another defendant's request for an adjournment so she could meet with her attorney. The right to counsel is a fundamental constitutional and statutory right, and it includes in all criminal cases the right to have an attorney assigned if the defendant is financially unable to retain counsel. At arraignment, a judge is required *inter alia* to advise a defendant of the right to counsel and to "take such affirmative action as is necessary to effectuate" the defendant's rights (CPL §§170.10[3][c], 170.10[4][a]). As the Court of Appeals has stated: "The right to counsel, in practical respects, remains absolutely fundamental to the protection of a defendant's other substantive rights" (*Matter of Bauer*, 3 NY3d 158, 164 [2004]; *see also, e.g., Matter of Fuller*, 2004 NYSCJC Annual Report 104; *Matter of Wood*, 1991 NYSCJC Annual Report 82). Informing defendants of the right to counsel is one of a judge's most important responsibilities at an arraignment, and the failure to do so cannot be excused even in isolated instances and even if the ultimate outcome of the case might be viewed as favorable. (Of the three cases here, one was dismissed outright and two resulted in a plea to reduced charges and a fine.) *See Matter of Reeves*, 63 NY2d 105, 109 (1984) (rejecting argument that the failure to advise parties of their rights was

inconsequential since most of the matters were settled). Respondent's handling of each of these cases included other procedural errors, including engaging in a substantive ex parte discussion with an unrepresented defendant, negotiating a plea ex parte with the prosecutor, and accepting a plea without inquiring whether the defendant had entered it knowingly and intelligently. As the Commission has stated, "Even if not intentional, a series of legal errors indicates inattention to proper procedure and neglect of judicial duty" (*Matter of Pemrick*, 2000 NYSCJC Annual Report 141).

In arraigning another defendant, respondent failed to properly inform him of the charges or to provide a copy of the charges as required by law (CPL §170.10[2]) and asked questions that conveyed the appearance of prejudgment and elicited incriminatory responses. Questioning an unrepresented defendant at arraignment about the relevant facts places the defendant in jeopardy of making incriminating admissions, which occurred in this instance as the defendant and her husband provided a detailed account of the underlying events. *See Matter of Trickler*, 2016 NYSCJC Annual Report 222; *Matter of Moore*, 2002 NYSCJC Annual Report 125; *Matter of Pemrick*, *supra*. The impropriety was compounded by another procedural error when respondent adjourned the case in contemplation of dismissal without the consent of the prosecutor, which was inconsistent with the statutory requirement (CPL §170.55[1]). It is a judge's responsibility to maintain professional competence in the law, and every judge – lawyer or non-lawyer – has an obligation to learn and adhere to the mandated procedures and ethical rules.

It is also the duty of every judge to be an exemplar of neutrality and

courtesy not only during court proceedings, but to everyone with whom the judge deals in an official capacity (Rules, §100.3[B][3]; *see, e.g.*, *Matter of Going*, 1998 NYSCJC Annual Report 129; *Matter of Mahon*, 1997 NYSCJC Annual Report 104). In several cases respondent violated this standard by making injudicious comments and conveying the appearance of bias. For example, she repeatedly admonished a defendant in a traffic case for negotiating a plea with the prosecutor before his arraignment, then told him, out of apparent pique, that he would not get another reduction in her court if he ever got a ticket again. In another case, after misinforming the defendant about the significance of an adjournment in contemplation of dismissal by stating, either purposely or ignorantly, that he had been "found guilty," respondent was rude and dismissive when he continued to press her about the status of the records of his case; she told him, "Just listen to me or I will throw your butt out of here," stated he could not talk to her unless he was a lawyer, and threatened to hold him in contempt unless he left the court. She conveyed the appearance of pro-landlord bias in *Hills* by threatening to send a tenant to jail if he did not pay the rent she had ordered, and in *Drapaniotis* by, *inter alia*, engaging in lengthy, substantive ex parte discussions with the landlords, coaching them about how to proceed and giving them legal advice, communications which she never disclosed before ordering the tenant to move from the property. While advising a prospective litigant about procedures is permissible, hearing specific information about the party's grievances ex parte is inconsistent with Rule 100.3(B)(6), which requires a judge to accord to every person with a legal interest in a case the right to be heard according to law. *See Matter of Curran*, 2018 NYSCJC Annual Report __; *Matter of Herder*, 2005 NYSCJC Annual

Report 169; *Matter of Rock*, 2002 NYSCJC Annual Report 149.

In addition, respondent did not properly perform her administrative responsibilities in that she did not comply with court-mandated retention schedules governing court records. Respondent has acknowledged that for seven years she shredded records of traffic and other cases after one year notwithstanding that such records are required to be maintained for six years, and that she did not submit a written request to court administrators, as required, prior to disposing of the records. While it is stipulated that respondent believed that she was acting in accordance with the applicable requirements, every judge is required to be familiar with the relevant standards and to maintain professional competence in judicial administration (*see* Rules, §100.3[C][1]). The failure to retain court records as required can have deleterious consequences, including thwarting the Commission's efforts to obtain a full record of relevant facts when examining a judge's conduct.

Finally, respondent held two extra-judicial positions that were incompatible with judicial office. It was contrary to the ethical rules for her to serve simultaneously for three years as court clerk of the Oxford Village Court and as acting justice of that court since doing so created the potential for conflicts of interest and impermissible ex parte communications (*Matter of Post*, 2011 NYSCJC Annual Report 141; *and see* NY Jud Ops 98-113 and 03-22). In addition, since members of fire police squads "have the powers of and render service as peace officers" (Gen Municipal Law §209-c), it was improper for respondent to continue to serve as a fire police officer after she became a judge, notwithstanding her claim that she avoided certain fire police activities in order to

avoid potential conflicts (Rules, §100.4[C][2][b]; *Matter of Miller*, 1995 NYSCJC Annual Report 121; *Matter of Straite*, 1988 NYSCJC Annual Report 226). Respondent resigned as a fire police officer in October 2016.[1]

In accepting the stipulated recommendation of censure, the most severe sanction available short of removal, we find that the totality of respondent's misconduct, and particularly the procedural and substantive irregularities in the record before us, represents a significant departure from the high standards of conduct required of every judge and reflects adversely on the judiciary as a whole. We believe, however, that the misconduct depicted herein, while serious in many respects, does not rise to the level of "truly egregious" misbehavior which has been held to warrant the ultimate sanction of removal (*Matter of Jung*, 11 NY3d 365, 375 [2008], quoting *Matter of Cunningham*, 57 NY2d 270, 275 [1982]). We note that respondent has acknowledged that her conduct was inconsistent with the ethical mandates and the procedures required by law, and we trust that she will abide by her pledge to conform to these standards in the future.

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

Mr. Belluck, Mr. Harding, Mr. Cohen, Ms. Corngold, Judge Falk, Ms.

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[1] As to Charge I, while we accept the stipulation that it was improper for respondent to tell two defendants that a plea of not guilty could not be entered, we note that in doing so it appears she was acting in her capacity as a court clerk and conveying the court's policy as to defendants who had received leniency in the issuance of their traffic tickets. Such a policy would undoubtedly tend to coerce a guilty plea and thus would be improper. As a judge, respondent had an obligation to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (Rules, §100.2[A]).

Grays, Judge Leach, Judge Mazzarelli, Mr. Stoloff, Judge Weinstein and Ms. Yeboah concur.

CERTIFICATION

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

Dated: December 26, 2017

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