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

THOMAS S. KOLBERT,

a Justice of the Cheektowaga Town Court,
Erie 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 (John J. Postel, Of Counsel) for the Commission

Taheri and Todoro, P.C. (by Michael S. Taheri) and Joel L. Daniels for Respondent

The respondent, Thomas S. Kolbert, a Justice of the Cheektowaga Town Court, Erie County, was served with a Formal Written Complaint dated July 2, 2002,

containing three charges. Respondent filed an answer dated July 17, 2002.

On October 30, 2002, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On November 8, 2002, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a Justice of the Cheektowaga Town Court, Erie County since April 1989.

As to Charge I of the Formal Written Complaint:

2. On or about December 20, 1999, after Cheektowaga Police Officer Richard Ford attempted without success to serve a warrant of arrest issued by Cheektowaga Town Justice Ronald Kmiotek on Valentine Bakowski, who had been charged with Issuing A Bad Check, a violation of Section 190.05(1) of the Penal Law, and Petit Larceny, a violation of Section 155.25 of the Penal Law, respondent contacted the Cheektowaga Police Department, identified himself as "Judge Kolbert" and spoke with the dispatcher. Respondent asked about the warrant for the defendant and was told that the defendant had not been arrested. Respondent advised the dispatcher that the general practice used by the police and court in cases involving an arrest warrant issued

for a local resident was to first contact the defendant and permit him the opportunity to appear in court without being arrested.

3. Respondent advised the dispatcher that he had been told that the defendant was attempting to pay the amount claimed, and advised the dispatcher that the police should not serve the warrant but that an appearance ticket should be issued for the defendant. The dispatcher related respondent's request to the police officer who was handling the case. The officer executed the warrant six days later.

4. Respondent had been asked by a friend to intervene in the police attempt to execute the warrant, and respondent advised his friend that he would do so.

As to Charge II of the Formal Written Complaint:

5. In January 1999 the Town of Cheektowaga Highway Department plowed snow off the street in front of respondent's personal residence and into respondent's driveway. Respondent was disturbed by the actions of the snowplow operator and motioned to Christopher Kowal, the Town Highway Superintendent who was driving down the street, to come over to respondent.

6. Respondent angrily complained to Mr. Kowal about the snowplow operator. Respondent told Mr. Kowal that if Mr. Kowal or the snowplow operator were to appear in respondent's court, respondent would impose the maximum sentence on them.

7. Respondent recognizes that his reference to his authority to impose sentences upon defendants constituted the assertion of his judicial office in connection

with a personal dispute. Respondent did not, thereafter, impose such maximum sentences as he had warned. Respondent asserts that he was angry because of the snowplow operator's irresponsible driving of the snowplow on a street where children were playing. There is evidence that the source of respondent's anger was the operator's plowing of the snow in front of respondent's residence and into his driveway. Although the reason for respondent's anger at the snowplow driver is in dispute, respondent recognizes that regardless of his motivation, his statements to Mr. Kowal were improper.

As to Charge III of the Formal Written Complaint:

8. On or about December 15, 2000, respondent was presented with an application for a warrant of arrest for the defendant in *People v. Thomas Stadler*, in which the defendant was charged with multiple violations of the Town of Cheektowaga Housing Code.

9. The property that was the subject of the alleged code violations was leased by respondent's personal friend who had complained to the Town Housing Inspector about the alleged violations. Respondent had visited his friend at the property on a number of occasions prior to the proceeding and knew that the property was in poor condition. Respondent would have disqualified himself from the proceeding before issuing the warrant had he recognized that the property involved was the same property at which his friend resided. Had respondent reviewed the papers, he believes he would have noticed that his friend resided at the property. Respondent acknowledges that the failure to adequately review the documents supporting the warrant application would not be an

excuse for his failure to disqualify himself.

10. Respondent failed to disqualify himself from *People v. Thomas Stadler* and issued the warrant for the defendant's arrest.

11. Respondent did not arraign the defendant after his arrest, had no further involvement in *People v. Thomas Stadler*, and disqualified himself from the matter after later being told that the case involved the property at which his personal friend resided.

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) and 100.3(E)(1) of the Rules Governing Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained insofar as they are consistent with the above facts, and respondent's misconduct is established.

In three separate incidents, respondent engaged in conduct that violated well-established ethical standards and undermined the fair administration of justice.

On and off the bench, judges are held to standards of conduct "much higher than for those of society as a whole." *Matter of Kuehnel*, 49 NY2d 465, 469 (1980). Every judge is obligated to act in a manner that promotes public confidence in the integrity of the judiciary and to avoid even the appearance of impropriety (Section 100.2[A] of the Rules Governing Judicial Conduct). Judges are also prohibited from lending the prestige of judicial office to advance the private interests of the judge or

others (Section 100.2[C] of the Rules).

By contacting the police department at the request of a friend and advising a dispatcher that the police should issue an appearance ticket to a defendant, rather than serve an arrest warrant, respondent intervened in a pending proceeding and used the prestige of judicial office in an attempt to advance the private interests of others. Invoking his judicial status by identifying himself as a judge, respondent acted as the defendant's advocate, lecturing the dispatcher about procedures and advising him that the defendant was attempting to pay the amount claimed. Respondent's conduct was a blatant assertion of influence for personal purposes, which is clearly prohibited by the ethical standards. *See Matter of LoRusso*, 1988 Ann Rep 195 (Commn on Jud Conduct, June 29, 1987); *Matter of Crosbie*, 1990 Ann Rep 86 (Commn on Jud Conduct, Sept 8, 1989). As the Court of Appeals has stated:

> [N]o judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved. There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary. Thus, any communication from a judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office. [Citations omitted.]
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> *Matter of Lonschein,* 50 NY2d 569, 571-72 (1980)

Respondent's threatening reference to his judicial authority in his

confrontation with the highway superintendent was also improper. By stating that he would impose the maximum sentence if the superintendent or snowplow operator appeared in his court, respondent inappropriately interjected his judicial office into a personal dispute and conveyed the impression that he was prepared to use his judicial authority as a weapon to retaliate against individuals because of personal grievances. Although respondent never acted on his threat, even the suggestion of such conduct seriously diminishes public confidence in the integrity of the judiciary and the fair administration of justice.

It was also improper for respondent to issue a warrant charging code violations on property leased by respondent's friend, especially since respondent's friend had complained about the alleged violations. Handling such a case creates an appearance of impropriety, which is prohibited by Section 100.2 of the Rules. As respondent has acknowledged, his failure to adequately review the documents in the matter does not excuse his failure to disqualify himself.

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

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

Ms. Moore was not present.

CERTIFICATION

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

Dated: December 26, 2002

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