STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

DETERMINATION

DENNIS LABOMBARD,

a Justice of the Ellenburg Town Court,
Clinton County.

THE COMMISSION:

Raoul Lionel Felder, Esq., Chair
Honorable Thomas A. Klonick, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Kathryn J. Blake, Of Counsel) for the Commission

Peter A. Dumas for the Respondent

The respondent, Dennis LaBombard, a Justice of the Ellenburg Town Court, Clinton County, was served with a Formal Written Complaint dated September 22, 2006, containing seven charges. The Formal Written Complaint alleged that respondent:

(i) presided over two cases in which his step-grandchildren were the defendants, (ii) contacted the judge presiding in a case in which his step-grandson was the defendant and lent the prestige of his judicial office to advance his step-grandson's interests, (iii) released a defendant based on the *ex parte* request of a former co-worker, (iv) asserted his judicial office to advance his private interests after a car accident, (v) improperly delegated his judicial duties, (vi) condoned a display in the court office that mocked two state troopers, and (vii) failed to supervise his court clerk who obtained and filed a false statement as a complaint against respondent's election opponent. Respondent filed a Verified Answer dated November 2, 2006, an amendment to his answer dated November 21, 2006, and a letter dated January 31, 2007, further amending his answer.

By Order dated November 9, 2006, the Commission designated Philip C. Pinsky, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on March 6 and 7 and April 10, 2007, in Albany. The referee filed a report dated August 17, 2007.

Commission Counsel filed a brief with respect to the referee's report and recommended the sanction of removal. Respondent did not file a brief with the Commission. On November 1, 2007, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. On August 9, 2004, Trooper Thomas C. Willette verified two Informations and issued appearance tickets to Devin LaClair: one for Criminal Mischief

in the Fourth Degree (Penal Law §145.00), a Class A misdemeanor, and the other for Criminal Trespass in the Third Degree (Penal Law §140.10), a Class B misdemeanor. The two Informations, relying on facts contained in the supporting deposition of Richard A. Cole, alleged that a trespass and property damage had occurred on Mr. Cole's property on August 4, 2004, in the Town of Clinton. The appearance tickets directed the defendant to appear in the Ellenburg Town Court on August 19, 2004.

2. Devin LaClair is a relative of former Clinton Town Justice Daniel LaClair, who at that time was the only Town Justice in the Town of Clinton.

3. Trooper Willette decided, without consulting respondent or Judge LaClair, to make the appearance tickets returnable in Ellenburg rather than in Clinton because he knew that Devin LaClair was related to Judge LaClair and, a year earlier, a speeding ticket he had issued to Mr. LaClair in the Town of Clinton had been sent to the Town of Ellenburg due to that relationship.

4. Trooper Willette notified Judge LaClair that he had arrested Devin LaClair and that he was going to send the matter to Ellenburg unless Judge LaClair objected. Judge LaClair told the trooper to "Go ahead and send it to Ellenburg." Judge LaClair then telephoned respondent concerning the *LaClair* case and told him that he was "sending over the case" because of a conflict of interest involving his relative.

5. After notifying the district attorney's office that the *LaClair* arraignment was going to take place in Ellenburg due to the conflict, Trooper Willette sent respondent a note stating as follows:

> I am sure you are familiar with the name on this paperwork. I didnt send him to T/Clinton because of the conflict of interest. I attempted to contact Ed Narrow with negative results. I did talk to Nancy at DA's office who said it was fine. Any questions call me.

6. After speaking with assistant district attorney Edward F. Narrow, Trooper Willette sent a note to Mr. Narrow stating: "I issued these at Ellenburg for known reasons. I have about eight more arrests with this incident. Any questions call me. I'm on vacation until 08/23."

7. On August 17, 2004, Mr. Narrow sent respondent a plea offer for *People v. Devin LaClair* and asked respondent to provide it to the defendant or his counsel at the arraignment. The plea offer was to reduce the original misdemeanor charges to a Trespass violation (Penal Law §140.05). The plea offer included a "recommended sentence" of "15 days in jail conditionally discharged upon the defendant completing 75 hours community service." Subsequently, the 75 hours was changed by the district attorney to 25 hours. On August 19, 2004, the *LaClair* case was adjourned to September 2, 2004.

8. Trooper Willette advised respondent that he would be filing criminal charges against several other individuals, including Kristin Drown and Patrick Drown, in connection with the alleged incident on Mr. Cole's property. Kristin and Patrick Drown are the stepchildren of respondent's daughter. Respondent did not inform the trooper that the Drowns were related to him, and he agreed to have those cases filed in his court.

9. Trooper Willette verified Informations against four individuals,

including Kristin Drown and Patrick Drown, charging them with Criminal Trespass in the Third Degree (Penal Law §140.10), a Class B misdemeanor, arising out of the events on Mr. Cole's property, and on August 23, 2004, the four defendants were issued appearance tickets returnable in the Ellenburg Town Court on September 2, 2004.

10. On September 2, 2004, respondent presided over the cases of the five defendants, including Devin LaClair, Kristin Drown and Patrick Drown. The defendants were present at the proceeding with their parents, including respondent's son-in-law and daughter, the father and stepmother of Kristin and Patrick Drown. Assistant district attorney Edward Narrow was also present. Respondent did not disclose to Mr. Narrow that he was related to Kristin and Patrick Drown, and Mr. Narrow did not know of the relationship.

11. None of the defendants was represented by counsel. All five defendants received youthful offender status.

12. With respect to Devin LaClair, respondent accepted the defendant's plea to the Trespass violation that had been offered by the district attorney's office. With respect to the remaining defendants, including Kristin and Patrick Drown, respondent granted an adjournment in contemplation of dismissal with the consent of the prosecutor. After the pleas were accepted but before the proceedings were concluded, Mr. Narrow left the court.

13. After Devin LaClair had pled guilty to Trespass as set forth in the plea offer, and after Mr. Narrow had departed, respondent sentenced Mr. LaClair to a weekend

in jail and did not impose any community service. The sentence respondent imposed did not comport with the plea offer.

14. As to the other four defendants, including his step-grandchildren Kristin and Patrick Drown, respondent did not impose community service as a condition of the adjournment in contemplation of dismissal. Mr. Narrow had consented to the disposition in each of those cases conditioned upon each of those defendants performing 25 hours of community service, as authorized by the Criminal Procedure Law (§170.55[6]). Respondent did not advise Mr. Narrow that he would not be imposing a community service requirement on the five defendants.

15. A month or two later, Mr. Narrow learned that community service had not been imposed on the five defendants. He did not move to vacate the sentences imposed.

As to Charge II of the Formal Written Complaint:

16. On November 1, 2004, Patrick Drown was charged in the Clinton Town Court with Criminal Mischief in the Third Degree (Penal Law §145.05), a Class E felony, based on allegations that he had damaged a motor vehicle. Mr. Drown was also charged with Making a Punishable False Written Statement (Penal Law §210.45), a Class A misdemeanor. Patrick Drown is the stepson of respondent's daughter.

17. The matter was transferred to the Mooers Town Court. On November 5, 2004, Mooers Town Justice Orville Nedeau arraigned Mr. Drown.

18. The next day, respondent telephoned Judge Nedeau and introduced

himself as either "Judge LaBombard" or "Dennis LaBombard." Respondent knew that Judge Nedeau knew him to be a judge. The telephone conversation lasted about ten minutes.

19. In the conversation, respondent said that Patrick Drown was his step-grandson, inquired as to the date of the next court appearance, and told Judge Nedeau that Mr. Drown was a "good kid." Respondent also made some statements about "the other people involved" in the events underlying the Criminal Mischief charge. Respondent's statements gave Judge Nedeau the impression that other individuals "maybe weren't telling the right information," "had been in trouble" and were more culpable than respondent's relative.

20. On December 9, 2004, Patrick Drown appeared with his attorney in the Mooers Town Court before Judge Nedeau. Respondent attended the proceeding with his daughter, Mr. Drown's stepmother, and sat in the back of the courtroom. He did not speak with Judge Nedeau.

21. On March 3, 2005, with the consent of the district attorney's office, Patrick Drown pled guilty before Judge Nedeau to the reduced charge of Criminal Mischief in the Fourth Degree (Penal Law §145.00), a Class A misdemeanor, and was sentenced to make restitution and perform community service. Judge Nedeau testified at the Commission hearing that respondent's call had no influence on his handling of the case.

As to Charge III of the Formal Written Complaint:

22. On October 17, 2004, State Trooper Richard Moore, who was off duty, approached Ryan Guay's truck after he had observed Mr. Guay and his brother "spotlighting" fields, an illegal method of deer hunting. After seeing rifles in the truck and speaking with the defendant, Trooper Moore called the station. Before the patrols arrived, the defendant allegedly threatened Trooper Moore with a piece of wood. Trooper Christopher Gonyo arrived at the scene and arrested Mr. Guay. The defendant was charged with Criminal Possession of a Weapon in the Third Degree (Penal Law §265.02), a Class D felony; Menacing in the Third Degree (Penal Law §120.15), a Class B misdemeanor; and violations of the Environmental Conservation Law. The defendant was taken to the State Police Barracks in Ellenburg for arraignment, and respondent was contacted to conduct the arraignment.

23. At the arraignment on October 17, 2004, respondent set bail of $5,000 cash or $10,000 bond as recommended by the district attorney's office.

24. The defendant's mother, Helen Guay, was present at the arraignment but did not speak to respondent. Respondent knew Ms. Guay since they had worked in the same department of Wyeth Laboratories for several years. (At the time of these events, respondent was no longer working there.) Respondent knew that the defendant, Ryan Guay, was Ms. Guay's son.

25. After respondent set bail, the defendant told respondent that he would lose his job if he did not go to work the next day. Respondent replied that he would

"make some phone calls" in the morning and "see what we can do about it, if I can release you and let you get to your job." Trooper Gonyo heard respondent make a comment about contacting the district attorney's office the next day "to make some sort of arrangement on the bail."

26. The defendant was unable to post bail and was transported to the Clinton County Jail.

27. The next morning Helen Guay telephoned respondent and said she was concerned that her son would lose his job. Respondent told her that he would confer with the district attorney's office to see what could be done to get the defendant out of jail so that he could get to work.

28. After speaking with Ms. Guay, respondent released Mr. Guay on his own recognizance based on the *ex parte* requests of the defendant and his mother. Respondent maintains that assistant district attorney Edward Narrow consented to the defendant's release; Mr. Narrow denies speaking to respondent about the matter or consenting to the defendant's release.

29. Respondent testified at the hearing that if the charge had not been a felony and had been before him for a disposition, he would have disqualified himself because of his work-related relationship with the defendant's mother.

With respect to Charge IV of the Formal Written Complaint:

30. On September 23, 2004, a car being driven by Valencia Baldwin in the Village of Chateaugay stopped for a red light and then waited to make a right turn in

order to allow a bicycle to cross the road. As Ms. Baldwin waited for the bicycle to cross, her car was hit from behind by a car driven by respondent.

31. After both cars pulled over to the curb, respondent told Ms. Baldwin that she was wrong in having stopped her car and that he was a judge and knew what he was talking about. He repeatedly told Ms. Baldwin in that conversation that he is a judge. Ms. Baldwin noticed that respondent's car had a "SMA" (State Magistrates Association) license plate, which she knew designated a town justice.

32. Ms. Baldwin went into a nearby barber shop to use a telephone to call the police. While she was on the phone, respondent, who also had entered the shop, continued to state several times that he is a judge. Several individuals overheard respondent's statements.

33. After giving Ms. Baldwin contact information, respondent left the scene, saying that he had to get to a doctor's appointment. Since there was no property damage and no physical injury, respondent was not required to remain at the scene until the police arrived.

As to Charge V of the Formal Written Complaint:

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

As to Charge VI of the Formal Written Complaint:

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

As to Charge VII of the Formal Written Complaint:

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

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(C), 100.3(B)(1), 100.3(B)(6), 100.3(E)(1) and 100.3(E)(1)(d)(i) 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. Charge I, paragraph 5, subdivision (B) and Charges II through IV 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 I, paragraph 5, subdivisions (A) and (C), and Charges V, VI and VII are not sustained and therefore are dismissed.

Respondent engaged in a series of willful, egregious misdeeds, both on and off the bench, in which he abused the power and prestige of his judicial office for his own personal advantage and for the benefit of others. The record establishes that he presided over the cases of his relatives and a former co-worker's son, changed his bail decision after an *ex parte* call from the defendant's mother, initiated an *ex parte* communication with the judge handling his relative's case, and asserted his judicial office after a car accident. Such "a pattern of injudicious behavior and inappropriate actions...cannot be viewed as acceptable conduct by one holding judicial office." *Matter of VonderHeide*, 72

NY2d 658, 660 (1988).

It is a fundamental precept of judicial ethics that a judge may not preside over a case in which a relative is a party (Rules, §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 by this court as serious misconduct.

Matter of Wait, 67 NY2d 15, 18 (1986). *See also*, *Matter of Thwaits*, 2003 Annual Report 171 (Comm on Judicial Conduct); *Matter of Pulver*, 1983 Annual Report 157 (Comm on Judicial Conduct).

Notwithstanding this well-established ethical prohibition, respondent presided over the cases of two step-grandchildren, granting the defendants an adjournment in contemplation of dismissal. Not even the presence in the courtroom of his daughter and son-in-law, the defendants' stepmother and father, prompted him to recognize the manifest impropriety of handling his relatives' cases. In addition, the fact that respondent eliminated the community service requirement effectively delivered a more favorable disposition to his family members than that agreed to by the district attorney and circumvented the procedural requirements applicable to them.

We reject respondent's argument that his misconduct is mitigated in any way by the rationale that he intended to treat his relatives the same as, or even more

harshly than, any other defendants. While handling a relative's case would be improper regardless of the disposition imposed, the result here is plainly a favorable one, which compounds the impropriety. We also reject as a mitigating factor respondent's claim that he did not impose community service for any defendants at that time because it was unavailable nearby. If respondent was unwilling to impose the community service condition required by the district attorney, he was obliged to so inform that office so that it would have an opportunity to reconsider its consent to the dispositions. Instead, he acted without notice to the district attorney under circumstances suggesting a deliberate effort to circumvent the procedural requirements for the benefit of his relatives as well as their co-defendants.

It was also improper for respondent to preside at a felony arraignment in which the defendant was his former co-worker's son. If, as respondent has acknowledged, his work-related relationship with the defendant's mother required his disqualification had the case been before him for a disposition, he should not have handled the arraignment. *See, Matter of Valcich*, 2008 Annual Report ___ (Comm on Judicial Conduct). Respondent seriously exacerbated his misconduct and conveyed the appearance of favoritism by releasing the defendant the next day after receiving an *ex parte* telephone call from the defendant's mother, who told respondent that she was concerned that her son would lose his job. Regardless of whether he consulted with the district attorney before releasing the defendant, respondent's conduct was improper. By considering an *ex parte* request with respect to the defendant's bail and acceding to the

implicit plea for special consideration, respondent violated well-established ethical rules and allowed his personal relationships to influence his actions as a judge. Such conduct impairs public confidence in the integrity and impartiality of the judiciary. *See, e.g., Matter of Gassman*, 1987 Annual Report 89 (Comm on Judicial Conduct) (after setting bail for three defendants, judge released them on recognizance after an *ex parte* contact by another judge).

Even more seriously, on two occasions respondent abused the prestige of judicial office by engaging in off-the-bench conduct that invoked his judicial status, both implicitly and explicitly, for his and his family's benefit. Especially improper was his telephone call to the judge handling a criminal case in which respondent's step-grandson had been charged. Notwithstanding respondent's claim that his intent was simply to inquire about the next court date, he should have recognized the importance of avoiding any involvement in the matter -- and specifically any contact with the judge handling the case, who knew respondent as a fellow judge -- in order to avoid any perception of using his judicial status to gain an advantage for his relative's interests. Presumably, a phone call inquiring about the court date could have been made by the defendant's parents or attorney. Respondent's call went well beyond a simple inquiry and could have had only one purpose: to influence the judge to give special consideration to respondent's relative.

After initiating contact with the judge handling the case, respondent advised the judge that the defendant was his relative and was "a good kid." Such conduct is improper, even in the absence of any specific request for favorable treatment, since it

appears to be an implicit request for special consideration. *Matter of Edwards*, 67 NY2d 153 (1986). Such conduct "is wrong, and has always been wrong" and undermines public confidence in the fair and impartial administration of justice. *Matter of Byrne*, 47 NY2d (b), (c) (Ct on the Judiciary 1979). Judges are prohibited from using the prestige of judicial office to advance private interests (Rules, §100.2[C]), and doing so on behalf of a friend or relative facing criminal charges is improper. *See, e.g., Matter of Kiley*, 74 NY2d 364 (1989); *Matter of Edwards*, *supra*; *Matter of Horowitz,* 2006 Annual Report 183 (Comm on Judicial Conduct); *Matter of Sharlow*, 2006 Annual Report 232 (Comm on Judicial Conduct); *Matter of Kolbert*, 2003 Annual Report 128 (Comm on Judicial Conduct); *Matter of LoRusso*, 1988 Annual Report 195 (Comm on Judicial Conduct).

Respondent's conduct was especially pernicious since he used his judicial influence not only to vouch for his relative, but to denigrate other individuals involved in the underlying incident. During his ten-minute conversation with the judge who was handling the case, respondent made additional statements that conveyed to the judge the clear impression that the other individuals were more culpable than respondent's relative. This was a reprehensible abuse of his judicial clout. *See, Matter of Kaplan*, 1997 Annual Report 96 (Comm on Judicial Conduct); *see also, Matter of Howell*, 2001 Annual Report 115 (Comm on Judicial Conduct); *Matter of Stevens*, 1999 Annual Report 153 (Comm on Judicial Conduct).

Finally, during the same period, respondent abused the prestige of judicial office when he repeatedly identified himself as a judge after a minor traffic accident. The

record establishes that he asserted his judicial status in the context of blaming the other motorist, and not simply, as respondent has claimed, to assure the other motorist that she would be able to reach him. Injecting his judicial status into the dispute was unnecessary and unseemly. Respondent's repeated references to the fact that he is a judge were a blatant misuse of his judicial prestige, demonstrating that he was using his judicial status for his personal advantage. *See*, *Matter of Werner*, 2003 Annual Report 198 (Comm on Judicial Conduct) (judge identified himself as a judge when his car was stopped by police); *see also*, *Matter of D'Amanda*, 1990 Annual Report 91 (Comm on Judicial Conduct) (judge used judicial prestige to avoid receiving three traffic tickets).

As the Court of Appeals has stated, removal is "a drastic sanction which should only be employed in the most egregious circumstances" (*Matter of Cohen,* 74 NY2d 272, 278 [1989]) and "'where necessary to safeguard the Bench from unfit incumbents'" (*Matter of Reeves,* 63 NY2d 105, 111 [1984], quoting *Matter of Waltemade*, 37 NY2d [a], [lll] [Ct on the Judiciary 1979]). The totality of respondent's willful misdeeds, both on and off the bench, shows a blatant disregard for the high ethical standards required of judges and renders him unfit to remain in office.

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

Judge Klonick, Mr. Coffey, Mr. Emery, Mr. Harding, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur except as follows.

Mr. Harding and Mr. Jacob dissent only as to the finding of misconduct as

to Charge I, paragraph 6 of the Formal Written Complaint concerning respondent's elimination of the community service requirement.

Mr. Felder and Ms. DiPirro were not present.

CERTIFICATION

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

Dated: December 12, 2007

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