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

DANIEL L. LA CLAIR,

a Justice of the Clinton Town Court,
Clinton County.

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THE COMMISSION:

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

APPEARANCES:

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

Harris Beach PLLC (by Thomas W. Plimpton) for Respondent

The respondent, Daniel L. LaClair, a justice of the Clinton Town Court, Clinton County, was served with a Formal Written Complaint dated March 8, 2005,

containing two charges.

On June 6, 2005, the administrator of the Commission, respondent's attorney and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On June 23, 2005, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Clinton Town Court since 1990. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. On or about January 30, 1997, respondent's wife, Bonnie Sue LaClair, was charged with Speeding at 50 miles per hour in a 30 mile-per-hour zone. The summons was returnable in the Chateaugay Town Court, Franklin County.

3. Between January 30, 1997, and February 17, 1997, respondent telephoned Chateaugay Town Justice John Clark, identified himself as a judge and said his wife had received a Speeding ticket in Judge Clark's court. Judge Clark, who is now deceased, told respondent that he would see what he could do.

4. On or about February 17, 1997, when respondent's wife appeared in court, Judge Clark granted her an adjournment in contemplation of dismissal of the

Speeding charge.

As to Charge II of the Formal Written Complaint:

5. On or about March 16, 2003, Daniel Lamb, a long-time acquaintance of respondent, was charged with Speeding at 50 miles per hour in a 30 mile-per-hour zone. The summons was returnable in the Chateaugay Town Court.

6. Between March 16, 2003, and March 31, 2003, respondent telephoned Chateaugay Town Justice Marie Cook, who knew respondent to be a judge. Respondent told Judge Cook that Mr. Lamb was a nice, elderly gentleman and that respondent would appreciate anything Judge Cook could do to "help" Mr. Lamb with respect to the Speeding ticket.

7. On or about March 31, 2003, based upon her conversation with respondent, Judge Cook reduced the charge against Mr. Lamb to a non-moving violation. Judge Cook recorded in her docket that the charge had been "reduced in the interest of Justice Danny LaClair."

Supplemental finding:

8. In response to the Commission's inquiries during the investigation of the allegations in Charge II above, respondent disclosed the conduct set forth under Charge I, which was otherwise unknown to the Commission. Respondent was cooperative throughout the Commission's proceedings. Other than the matters herein, respondent has an unblemished disciplinary record in his 15 years as a judge.

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) and 100.2(C) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to ask another judge to grant special consideration to a defendant, or even to make an implicit request for special treatment by contacting the presiding judge and identifying the defendant as a friend or relative. By engaging in such conduct in two cases, respondent violated the Rules enumerated above and engaged in ticket-fixing, which is a form of favoritism that has long been condemned. In *Matter of Byrne*, 47 NY2d (b), (c) (1979), the Court on the Judiciary declared that "a judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court, is guilty of *malum in se* misconduct constituting cause for discipline." Ticket-fixing was equated with favoritism, which the Court stated "is wrong, and has always been wrong" (*Id.* at [b]).

In the 1970s and 1980s, the Commission uncovered a widespread pattern of ticket-fixing throughout the state and disciplined over 140 judges for the practice. With the benefit of a significant body of case law, every judge in the state should be well aware that such conduct is prohibited.

As the Commission stated in a 1977 report about the assertion of influence in traffic cases, ticket-fixing results in "two systems of justice, one for the average citizen and another for people with influence." The report stated: "While most people charged with traffic offenses accept the consequences, including the full penalties of the law ... some are treated more favorably simply because they are able to make the right 'connections'" ("Ticket-Fixing: The Assertion of Influence in Traffic Cases," Interim Report, June 20, 1977, p. 16). Such conduct subverts the entire system of justice, which is based on the impartiality and independence of the judiciary, and undermines respect for the judiciary as a whole.

Here, respondent contacted the judge who was handling respondent's wife's traffic case, identified himself as a judge and identified the defendant as his spouse. As the Court of Appeals has held, such conduct is improper even in the absence of an explicit request for favorable treatment. *See, Matter of Edwards v. Comm. on Judicial Conduct,* 67 NY2d 153, 155 (1986). Following respondent's call, the presiding judge granted respondent's spouse an adjournment in contemplation of dismissal. In a second matter, respondent requested special consideration on behalf of a long-time acquaintance by contacting the judge handling the man's traffic case. In a telephone call to the presiding judge, respondent told the judge (who knew respondent to be a judge) that the defendant was "a nice, elderly gentleman" and that respondent would appreciate anything the judge could do to "help" the defendant. As a result of respondent's communication, the charge against the defendant was reduced.

The Court of Appeals has stated that even a single incident of ticket-fixing "is misconduct of such gravity as to warrant removal" (*Matter of Reedy v. Comm. on Judicial Conduct*, 64 NY2d 299, 302 [1985]), although mitigating factors may warrant a reduced sanction (*see, e.g.*, *Matter of Edwards*, *supra; Matter of Cipolla,* 2003 Annual Report 84 [Comm. on Judicial Conduct] [judge was censured, in part, for intervening in his friend's traffic case]; *see also*, *Matter of Bowers*, 2005 Annual Report 125 [Comm. on Judicial Conduct] [judge was censured, upon a joint recommendation, for sending a letter requesting special consideration for a defendant in a traffic case, untruthfully identifying the defendant as his relative]).

We note in mitigation that respondent has been forthright and cooperative in this proceeding and, indeed, informed the Commission of his misconduct as to the earlier incident, which had occurred eight years earlier and involved another judge who is now deceased. But for respondent's disclosure of the 1997 incident during the Commission's investigation, that incident probably would not have come to the Commission's attention.

While we conclude that censure is appropriate in this case, this decision, based upon stipulated facts and a joint recommendation by counsel to the Commission and the judge as to sanction, should not be interpreted to suggest that we will never impose the sanction of removal for such transgressions. We continue to regard ticket-fixing as extremely serious misconduct and underscore that such conduct will be condemned with strong measures.

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

Mr. Goldman, Mr. Coffey, Ms. DiPirro, Judge Klonick, Mr. Pope and Judge Ruderman concur.

Mr. Emery, Mr. Felder, Ms. Hernandez and Judge Luciano dissent and vote to reject the Agreed Statement of Facts on the basis that the disposition is too lenient and that respondent should be removed. Mr. Emery files a dissenting opinion in which Mr. Felder, Ms. Hernandez and Judge Luciano join insofar as it concludes that respondent's conduct warrants removal.

Judge Peters was not present.

CERTIFICATION

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

Dated: August 31, 2005

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

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DISSENTING OPINION BY MR. EMERY, IN WHICH MR. FELDER, MS. HERNANDEZ AND JUDGE LUCIANO JOIN IN PART

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The *Cook* and *LaClair* cases pose the issue of what is the proper sanction for judges who decide cases, not based upon the law and the facts, but for their personal benefit or for the benefit of their friends. I consider this category of judicial misconduct to be the most serious of any that comes before the Commission. The question these cases raise is whether a sanction less than removal is supportable for judges who abuse their power by making decisions that are devoid of legal analysis, contrary to the facts as presented, and designed knowingly and solely to further their own personal interests.

The Court of Appeals has defined the purpose of disciplinary proceedings as "not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents" (*Matter of Reeves*, 63 NY2d 105, 111 [1984], citing *Matter of Waltemade*, 37 NY2d [a], [lll]). In essence, our duties are protective rather than punitive. Our goal is to preserve the integrity and perception of judicial integrity within the justice system for litigants, victims, the state and other participants in the process by

upholding the Rules on Judicial Conduct. In doing so, we must be fair to the judges who are charged and sanctioned. We must realistically evaluate the individual circumstances of each violation. Regularly, judges assert that their misconduct is mitigated by a myriad of factors such as provocation by litigants or lawyers (*Matter of Mills*, 2005 Annual Report 185 [Comm. on Judicial Conduct]; *Matter of Bauer*, 3 NY3d 158 [2004]); personal, medical, family or psychological circumstances (*Matter of Horowitz*, 2006 Annual Report ___ [Comm. on Judicial Conduct]; *Matter of Washington*, 100 NY2d 873 [2003]); good faith mistakes of law (*Matter of Bauer*, *supra*; *Matter of Feinberg*, __ NY3d __, No. 125 [June 29, 2005]); an absence of personal, financial or other economic benefit (*Matter of DiStefano*; 2005 Annual Report 145 [Comm. on Judicial Conduct]; *Matter of Feinberg*, *supra*); and speedy and spontaneous acknowledgment of the violation and sincere apology to those affected (*Matter of Allman,* 2006 Annual Report ___ [Comm. on Judicial Conduct]*; Matter of DiStefano*, *supra*).

But excuses and exceptions cannot be allowed to eviscerate the fundamental rule animating the Commission's work: that judging must be fair, unbiased, untainted, and driven by the law and the facts, and that the personal desires and interests of individual judges can have no role whatsoever in decision-making. How to uphold this rule in the face of competing interests and individual circumstances, and how to determine the appropriate sanction based upon a legally supportable neutral principle, is a constant struggle for the members of the Commission. The *Cook* and *LaClair* cases

present what I believe is an opportunity to clarify how the Commission should make sanction decisions in a critical category of the cases.

In *LaClair*, Judge LaClair concedes that he telephoned Judge Cook and asked her to "help" a friend, Eric Lamb, who had received a Speeding ticket. In *Cook,* it is undisputed that Judge Cook received a phone call from Judge LaClair seeking special consideration for Mr. Lamb and that, as a result of the call, Judge Cook reduced Lamb's Speeding charge to a parking violation. Remarkably, Judge Cook noted on the court docket that the charge had been "reduced in the interest of Justice Danny LaClair."

Both justices also admit to other violations. Judge Cook concedes that *ex parte* she dismissed charges and amended a protective order as well as reduced or dismissed charges in 40 cases. In mitigation, she notes she is not an attorney, is new to the bench, and claims that the court schedule required her to deal *ex parte* with defendants. She also says she has reformed her practices to include the District Attorney.

Judge LaClair admits that he also asked a now-deceased town justice to fix a Speeding ticket for LaClair's wife with the result that the charge was adjourned in contemplation of dismissal. In mitigation, Judge LaClair asserts that he has been cooperative with the Commission and that he spontaneously confessed.

I dissent from the Commission's determination of censure in these cases for one simple reason: removal is the only sanction available to the Commission that is commensurate with the corrosive effect of judicial decisions perverted by a judge's

personal interest. This is a category of misconduct that strikes at the heart of our justice system. Decisions based on the personal interests of the judges, rather than the law and the facts, corrupt the system in two different and equally corrosive respects: they deny justice -- the simple but profound idea that acts contrary to law have consequences, no matter who the wrongdoer may be -- in the individual case at issue; and they infect the public with outrage and a depressing sense of despair when it becomes known that justice is not, in fact, blind in these cases. But, in contrast to judges whose misconduct is personal -- misbehavior off the bench that does not involve distortions of the justice system itself -- judges who pervert decision-making and abuse their power or discretion in their official capacity for their personal gain breed a special form of public cynicism and anger. I find it difficult, if not impossible, to excuse this category of judicial misconduct. And I simply cannot accept the proposition that misconduct of this sort is victimless. In fact, its victims are all of us, and the justice system itself.

With respect specifically to ticket-fixing, this Commission 28 years ago condemned this practice and demonstrated how the system of justice was "subverted" by such conduct (*Ticket Fixing: The Assertion of Influence in Traffic Cases*, Interim Report 1977 at p. 17). In that report the Commission stated: "The fixing of traffic tickets creates an illicit atmosphere within the courts which could easily carry over to other cases" (p. 19). The Commission discovered hundreds of judges who had engaged in ticket-fixing, either by seeking favors of other judges or by granting favors at the request of persons

with influence. The practice was so routine that it was not unusual for Commission investigators to find letters requesting special consideration in the court files, clipped to copies of the tickets or dockets. By releasing its Interim Report and by imposing public discipline in over 140 cases, the Commission placed every judge in the State on notice that ticket-fixing would not be tolerated, and by the early 1980s, ticket-fixing had all but ended in this State.

Thereafter, incidents of ticket-fixing were treated with particular severity, since judges now had the benefit of a significant body of case law concerning the impropriety of ticket-fixing. In 1985 the Court of Appeals upheld the Commission's determination of removal of a judge who had interceded on two Speeding tickets issued to his son and his son's friend, stating that "ticket-fixing is misconduct of such gravity as to warrant removal, even if this matter were petitioner's only transgression" (the judge had previously been disciplined for similar misconduct) (*Matter of Reedy*, 64 NY2d 299, 302 [1985]). In a later case, the Court reiterated that "as a general rule, intervention in a proceeding in another court should result in removal," although, citing mitigating factors, the Court censured a town justice who had inquired about procedures in connection with his son's case but had not made an overt request for special treatment. *Matter of Edwards*, 67 NY2d 153, 155 (1986). Surely, the message from those cases must be that ticket-fixing will no longer be tolerated in this State and that a judge who engages in such conduct faces removal.

The respondents here had the lesson of recent history. They may be contrite when caught, but no amount of contrition can override such inexcusable conduct. *See, Matter of Bauer*, *supra*, 3 NY3d at 165. Neither the administration of justice nor the people of the state of New York can afford the message that ticket-fixing will result in a mere public censure. Only removal from office will demonstrate the Commission's view of how harmful this conduct is to the administration of justice.

We are fortunate that, despite occasional misconduct of this type, we still have a judicial system that is the envy of the world and trusted and respected by most of those who participate in it and, more importantly, society at large. But cynicism and alienation are lurking dangers that will be the inevitable consequence of any tolerance for judicial misconduct of this sort. Judges who have every opportunity, and a fundamental obligation, to obey the rules should not escape removal when they intentionally pervert justice for their own benefit.

I believe that focusing the Commission's ultimate sanction on those who fall into this narrow category properly fulfills the Court of Appeals' mission for us ('to safeguard the Bench from unfit incumbents"). This is not a punitive role for the Commission. We are entrusted with attempting to preserve the honor and integrity of the judicial function and to thereby engender public trust and respect. If we abdicate this responsibility by allowing judges who use the system for personal gain to remain in office, we will have failed in our own legal obligation to uphold the principles embodied

in the misconduct Rules. Worse, we will fail, in the larger sense, to protect the system of justice.

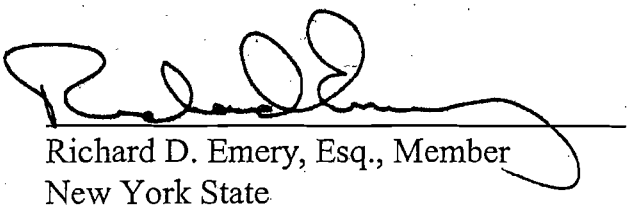
Cook and *LaClair* are poster-cases for application of these principles. Cook knowingly and intentionally distorted her judicial decision to curry favor with her fellow justice. LaClair twice knowingly and intentionally used his position as a judge to have another judge render a decision that LaClair wanted. All of this occurred in flat contravention of the law and of the facts of the cases which these judges have sworn to decide fairly. This is not tolerable -- no matter how apologetic, cooperative or unsophisticated these respondents claim to be. Had either of these judges accepted a bribe -- no matter how small -- from a third party, they would face imprisonment. That they have corrupted the judicial process for the approbation of their friends, without money changing hands, warrants no less than our most severe sanction.

For me, proven misconduct of this sort that invidiously distorts judicial decision-making presumptively warrants removal. Were the sanction of suspension available, I might also consider it in certain compelling cases. However, a sanction of less than removal under the current array of available sanctions, which leaves a judge in office who has knowingly abdicated his/her official decision-making for personal gain, is simply inconsistent with a justice system rooted in procedural and substantive fairness, and with the Commission's duty to protect the system and the public that relies upon it.

Therefore, I respectfully dissent and vote to reject the Agreed Statement in

both cases on the basis that the proposed disposition of censure is insufficient.

Dated: August 31, 2005



Richard D. Emery, Esq., Member
New York State
Commission on Judicial Conduct