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

REYNOLD N. MASON,

a Justice of the Supreme Court, 2nd Judicial
District, Kings County.

DETERMINATION

- -

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frederick M. Marshall, Vice 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 (Alan W. Friedberg, Of Counsel) for the Commission

Gentile & Dickler (Paul T. Gentile) for Respondent

The respondent, Reynold N. Mason, a justice of the Supreme Court, 2nd Judicial District, Kings County, was served with a Formal Written Complaint dated April

5, 2001, containing six charges.

On May 15, 2001, the Administrator moved for a summary determination and a finding that respondent's misconduct has been established based upon respondent's failure to answer the formal written complaint. Responding papers were due on June 6, 2001. By letter dated June 14, 2001, respondent requested a 21-day extension to respond to the motion. On June 15, 2001, respondent filed papers in opposition to the motion. By order dated June 20, 2001, the Commission denied the request for an extension and granted the motion for summary determination in all respects and determined that respondent's misconduct was established, and determined further that the order granting the motion for summary determination would be vacated provided that respondent file an Answer to the Formal Written Complaint within 20 days and be available for a hearing on or before August 6, 2001, or as soon thereafter as scheduled by a referee.

Respondent filed an answer dated July 9, 2001, and an amended answer dated August 7, 2001.

By order dated June 20, 2001, the Commission designated Mark S. Arisohn, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held in New York City on September 10, October 23 and 25 and November 7, 9 and 14, 2001. The referee filed his report with the Commission on February 22, 2002.

The parties filed briefs with respect to the referee's report. On May 9,

2002, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent served as an elected judge of the Civil Court of the City of New York, Kings County, from January 1995 through December 1997. He was elected a Supreme Court justice on November 4, 1997, and took office on January 1, 1998. Prior to becoming a judge, respondent practiced law and concentrated on landlord-tenant matters.

As to Charge I of the Formal Written Complaint:

2. Respondent resided in apartment 2H at 150 East 19th Street in Brooklyn, New York from 1986 or 1987 to August 31, 1992. The apartment was rent-stabilized at a monthly rental of $336.45.

3. Respondent's lease expired in March 1992, at which time, as a rent-stabilized tenant, respondent was entitled to a renewal lease, subject to statutory rent increases. Respondent remained in the apartment without a lease until August 1992, when he vacated the apartment and moved into a house he had purchased. When he vacated the apartment, respondent did not intend to return to the apartment, surrendered all rights to the apartment and was not liable for any future rent.

4. Upon vacating the apartment, respondent, without obtaining the

consent of the landlord, Samuel Leifer, permitted Rocky Abrams to occupy the apartment. Respondent, who was then married to Mr. Abrams' sister, had represented Mr. Abrams in a matrimonial action in 1990 or 1991.

5. Respondent sought to have Mr. Abrams pay rent directly to Mr. Leifer for the months of September, October and November 1992 so that Mr. Abrams would become Mr. Leifer's tenant at the rent respondent had been paying. Mr. Leifer did not accept Mr. Abrams' rent checks. For several months thereafter, respondent sent his own checks to Mr. Leifer for the rent on the apartment, which Mr. Leifer did not accept.

6. Mr. Leifer advised respondent that he would accept Mr. Abrams as a tenant only if Mr. Abrams signed a new lease at a higher rent than respondent had been paying. Under the applicable rent regulations, a landlord was entitled to a rent increase when the lease on a rent-stabilized apartment expired and to a vacancy allowance when an apartment was vacated.

7. Respondent unsuccessfully negotiated on Mr. Abrams' behalf to get a new lease for Mr. Abrams. Respondent did not advise the landlord that he wanted to sublease the apartment.

8. From December 1, 1992, through July 31, 1996, respondent collected rent on a monthly basis from Mr. Abrams in the amount that respondent had been paying, which was below the market value.

9. On August 4, 1994, respondent asked Mr. Abrams for the amount of

$1,009.35, representing the three months of rent in 1992 that Mr. Abrams had sent to Mr. Leifer and that Mr. Leifer had rejected. Mr. Abrams wrote a check to respondent dated January 2, 1995, for that amount.

10. In January 1995, while respondent was a judge, respondent deposited Mr. Abrams' check for the 1992 rent ($1,009.35) into his personal checking account.

11. Respondent had advised Mr. Abrams to pay the monthly rent by check payable to respondent. Mr. Abrams' understanding was that respondent would forward the funds to the landlord and that the funds were not for respondent's personal use. Mr. Abrams never gave respondent permission to use the funds for his own personal purposes.

12. All but two of Mr. Abrams' rent checks from December 1, 1992, to September 1, 1994, were made payable to respondent "as attorney" and all but one were deposited at respondent's direction into respondent's escrow account at Republic National Bank of New York. Two rent checks during that period were made payable to Reynold N. Mason (not "as attorney"). After September 1994, Mr. Abrams' rent checks, including his check for the rent covering September, October and November 1992, were made payable to Reynold N. Mason (not "as attorney").

13. As of December 1, 1994, although respondent had received more than $7,000 in rent payments which he deposited into his escrow account, the balance in respondent's escrow account was $1,940.72.

14. Mr. Leifer never gave permission for respondent to accept or retain rent for the apartment. Approximately five years after respondent had vacated the apartment, Mr. Leifer was unaware that respondent had collected rent from Mr. Abrams; in 1997 Mr. Leifer was "shocked" when Mr. Abrams came to court with a stack of cancelled rent checks made out to respondent.

15. Respondent received a total of $15,813.15 in rent payments from Mr. Abrams.

16. After January 1, 1995, when respondent became a judge, respondent transferred the funds remaining in his Republic National Bank of New York escrow account to his personal checking account.

17. Before and after becoming a judge, respondent withdrew funds from his attorney escrow account, which he used for personal purposes (*see* Charges V and VI).

18. Respondent has retained the rent payments he collected from Mr. Abrams, failed to preserve the funds he collected and used the funds for his personal purposes. Except for checks in 1992 and 1993, which Mr. Leifer refused to accept, respondent has refused to forward the rent payments to Mr. Leifer, even after Mr. Leifer demanded the money.

19. During the Commission's investigation, respondent stated that he held Mr. Abrams' rent checks in trust for Mr. Leifer to make certain that Mr. Leifer did

not lose the income on the apartment and to protect himself against a claim by Mr. Leifer that respondent was responsible for the rent after he vacated the apartment, although he acknowledged that he was not liable on the apartment after he vacated it.

20. When asked during the investigation to set forth the legal basis for collecting rent for the apartment, respondent's written response was:

> I do not claim any legal basis to do so. As I said earlier, I simply collected the rent to protect myself because Mr. Leifer refused to accept it, and I wanted to ensure that I was not left holding the bag if for some reason Mr. Abrams should suddenly become unavailable. The landlord and I had spoken about this, and I believe he understood what I was doing at the time.

21. Respondent's testimony at the hearing that he had subleased or attempted to sublease the apartment to Mr. Abrams is not credible and appears to be a recent fabrication attempting to justify his unauthorized retention of the rent funds he had collected. His testimony is contradicted by the evidence, including: (1) the absence of any such claim by respondent prior to the hearing; (2) respondent's earlier testimony specifically denying that Mr. Abrams was a subtenant and stating that he told Mr. Abrams that he would try to get him a lease; (3) Mr. Leifer's testimony that, in his negotiations with respondent concerning a lease for Mr. Abrams, respondent never requested a sublease; (4) Mr. Abrams' rent checks made out to respondent "as attorney"; and (5) Mr. Abrams' understanding that he was sending the rent to his attorney as a conduit and not for the personal use of the attorney. Moreover, respondent, a former landlord-tenant

attorney, knew that, by law, a sublease for a rent-stabilized apartment is limited to two years of a four-year period and is based on the tenant's intent to return to the apartment and maintaining the apartment as his or her primary residence (*see* Rent Stabilization Law §26-511, subd c [12] and Rent Stabilization Code §2525.6; RPL §226-b).

22. During the investigation, when respondent was asked about the nature of his relationship with Mr. Abrams, his present involvement with the apartment and the purpose of his retaining the funds he collected from Mr. Abrams, respondent never mentioned a sublease. Respondent's testimony at the hearing that he never advised the Commission of a sublease during the investigation because the Commission never asked about it lacks candor.

23. Respondent had no legal authority to permit Mr. Abrams to reside in the apartment after he moved out, to collect the rent payments from Mr. Abrams or to use the money he had collected from Mr. Abrams for his personal purposes.

As to Charge II of the Formal Written Complaint:

24. Respondent testified during the investigation that he had a warranty claim against Mr. Leifer, who had purchased the building in 1991 or 1992, for services that had not been provided by the former building owner in the 1980's. Respondent did not disclose that his warranty claims against the previous owner had been settled prior to 1992.

25. Under the settlement, which was established by the documentary evidence and the testimony of the former managing agent, respondent, who had withheld rent against the prior owner and was in arrears for over $6,500, agreed to pay $3,000 and the prior owner agreed to make repairs and to waive the remaining arrears for "breach of warranty" claims. After paying $1,000 of the amount he owed under the settlement, respondent agreed to make certain repairs himself in return for receiving a credit of $2,000. There is no evidence to support respondent's testimony at the hearing that his warranty claims continue because the former owner reneged in making repairs.

26. To underscore his position on his warranty claim, respondent testified during the investigation that he had "never withheld rent one day" during the earlier period. Confronted with evidence establishing that he had stopped paying rent for approximately 18 months and had been $6,500 in arrears when he negotiated a settlement for his warranty claims, respondent conceded at the hearing that he "may have" withheld rent.

27. Respondent testified at the hearing that he did not mention the settlement during his investigative testimony because he "was never asked that question" and, if he had been asked, he would not have mentioned the settlement because he did not recall it.

28. It is not credible that, having raised his warranty claims against the previous owner to justify his retention of the rent funds he had collected, respondent did

not recall that the claims had been settled. Respondent's failure to disclose the settlement was a violation of his duty to be candid in his testimony and in responding to Commission inquiries.

29. From December 1, 1992, to the date of the Formal Written Complaint, respondent did not advise Mr. Leifer that he was retaining the funds he had collected from Mr. Abrams because of alleged prior unreimbursed expenses constituting a warranty claim or a breach of warranty; failed to provide any legitimate reason for not giving Mr. Leifer, when Mr. Leifer demanded the money, an amount equaling the total amount of rent money he had collected from Mr. Abrams; and failed to advise Mr. Leifer how much he had collected.

30. Respondent testified during the investigation that the rents he collected were not his funds and that he was holding the funds for Mr. Leifer. In collecting the rents under those circumstances, respondent had a duty to apprise Mr. Leifer that he was collecting funds from Mr. Abrams and how much he had collected.

As to Charge III of the Formal Written Complaint:

31. The charge is not sustained and is, therefore, dismissed.

As to Charge IV of the Formal Written Complaint:

32. During the investigation, respondent received six letters from the Administrator of the Commission in which the Commission was seeking replies to

questions concerning the matters under investigation. The letters were dated, respectively, February 15, 2001; February 20, 2001; March 1, 2001; March 8, 2001; March 10, 2001; and March 19, 2001.

33. The February 15, 2001, letter set forth six questions for respondent to answer, asked respondent to reply within 10 days and advised respondent that failure to respond to the questions might constitute lack of cooperation.

34. The February 15, 2001, letter summarized the Commission investigation concerning Mr. Leifer's complaint and advised respondent that the Commission had learned from the former managing agent, after respondent's investigative testimony, that respondent had been reimbursed for certain renovations and related 1980's repairs. The letter stated that the Commission wanted to ascertain if respondent had forgotten about the settlement in testifying that he had never missed a rent payment and that he had a legal claim over some of the rent money he had collected for Mr. Leifer because of expenses that respondent had incurred before Mr. Leifer owned the building. The letter further stated that the Commission had authorized an Administrator's Complaint, dated February 14, 2001, a copy of which was attached to the letter, for an investigation concerning allegations that respondent had commingled escrow funds with his own personal funds, had made personal payments from his escrow account, had written escrow checks to "cash" and had transferred escrow funds to his personal bank account when he became a judge.

35. Respondent failed to respond to the February 15, 2001, letter.

36. At the hearing, respondent testified that he had read the February 15, 2001, letter but did not see the questions in the letter. This testimony is not credible.

37. In a letter dated February 20, 2001, the Commission asked respondent if he had located certain subpoenaed records and to clarify certain testimony that he had given concerning escrow records. Respondent failed to respond to the letter.

38. On March 1, 2001, the Commission sent respondent a letter requesting that he respond within five days to the February 15 and February 20, 2001 letters, copies of which were enclosed. Respondent failed to respond.

39. On March 8, 2001, the Commission again wrote to respondent, requesting that he respond to the February 15 and February 20, 2001 letters, copies of which were enclosed. The March 8, 2001, letter from the Administrator of the Commission stated in part:

> You have not responded to the letters and you have not advised me that you do not intend to respond. Please respond to the Commission's letters upon receipt of this letter. Your failure to respond to the letters may be deemed by the Commission to constitute a failure to cooperate with the Commission.

40. Respondent sent a letter to the Commission dated March 9, 2001, which requested a two-week extension to respond.

41. Respondent testified at the hearing that he considered his March 9,

2001, letter to the Commission, in which he requested a two-week extension, to be a substantive response to the Commission's inquiry. This testimony is not credible.

42. The Administrator of the Commission sent a letter to respondent dated March 10, 2001, in response to his March 9 letter, stating in part:

> The responses to earlier letters are all very much overdue. It is surprising to learn from your letter that despite your receipt of these letters, you were unaware that some papers . . . were past due. I believe the letters speak for themselves and clearly set forth the request for responses to questions; and all of these letters were sent to you after your last appearance here. So, it is very unclear why you believed that your last appearance here in some way excused you from responding to my letters. In fact, at your last appearance, you were two hours late and the referee had already left when you arrived; consequently, you did not testify.
>
> The Commission has your letter of March 9, in which you state that you have been busy. Whether that is an adequate reason for your failure to respond to the letters sent to you to date will be decided by the Commission.
>
> In response to your asking for two weeks to review and search [your] available records, we can only suggest that you respond to these letters as soon as possible. As I have advised you in recent letters, your failure to respond may be considered by the Commission as lack of cooperation. I can provide no other assurances at this time. The Commission is still awaiting a response.

43. Respondent testified that he did not respond to the March 10 letter because in his view it did not call for a response. This testimony is not credible.

44. On March 14, 2001, respondent wrote to the Commission requesting an extension of time until May 2001 to respond to the Commission's inquiries.

45. In a letter to respondent dated March 19, 2001, which was delivered by hand, the Commission's Administrator set forth the history of the Commission's requests for information, repeated the questions from the February 15, 2001 letter and concluded by stating:

> As to the above questions, I indicated that you should respond in 10 days. It is now more than a month later and you have made no attempt to respond to a single question.

46. On April 27, 2001, the Commission's Administrator sent a letter to respondent stating that it was significant that respondent had not responded to the Commission's six letters and further stating: "You have a continuing obligation to respond to the questions posed in those letters."

47. Respondent never provided the Commission with any substantive response to the Commission's letters.

48. Respondent testified at the hearing that he did not read in detail all the letters he received from the Commission and that he merely scanned or "speed read" the correspondence. He also testified that he did not open some letters from the Commission, notwithstanding that he could ascertain from the envelopes that they came from the Commission.

49. If respondent did not open some of the Commission's letters or did not read them in their entirety, as he testified, his conduct in that regard would be improper.

50. Based on respondent's testimony and the efforts made by the Commission to direct his attention both to the letters and to his failure to respond, it is clear that respondent read the letters and knew that the Commission was requesting his response to the questions that had been asked.

51. The questions asked of respondent in the six letters that he failed to answer were reasonable and were based on the pending investigation, and it was within the Commission's lawful authority to require answers to those questions.

52. The letters which respondent ignored were relevant to the allegations under investigation, gave respondent notice of the possible consequences of his continued refusal to cooperate with the Commission and provided respondent several opportunities to recant or explain his earlier testimony concerning his alleged warranty claim.

53. Respondent had a duty to cooperate with the Commission and to be truthful, and he failed to satisfy these duties. Respondent's failure to respond to the Commission's letters in any substantive way constituted a gross failure to cooperate with the Commission's duly-authorized investigation.

54. Respondent's claim that he was being harassed by the letters is not an excuse or justification for his refusal to answer the letters. The repeated inquiries were based on his repeated refusals to respond to the questions.

55. Respondent did not file any response to the Formal Written Complaint dated April 5, 2001, or to a motion for summary determination dated May 15,

2001, which required a response by June 6, 2001, until June 8, 2001, when his attorney sent a letter to the Commission requesting a postponement of the motion. When respondent's counsel asked respondent at the hearing to explain his delay in filing an Answer to the formal written complaint and being "almost in default or...in default concerning the complaint," respondent testified that he thought that the papers addressed to him, which were marked "Confidential," were "just another bunch of those things... and here's my basis. I didn't look at the stuff." Respondent's conscious disregard of Commission notices to him in this proceeding was part of a pattern that demonstrated his lack of cooperation.

As to Charge V of the Formal Written Complaint:

56. From on or about November 30, 1994, to on or about December 31, 1994, respondent, who was then an attorney, issued checks from his attorney escrow account at Republic National Bank of New York to himself, to "cash" or to pay his personal expenses, as set forth in Schedule A, which contravened basic and well-established standards in handling escrow funds.

As to Charge VI of the Formal Written Complaint:

57. From on or about January 1, 1995, to on or about April 25, 1995, respondent, who was then a judge of the Civil Court of the City of New York, issued checks from his attorney escrow account at Republic National Bank of New York to

"cash" or to pay his personal expenses, as set forth in Schedule B, which contravened basic and well-established standards in handling escrow funds.

58. On January 26, 1995, respondent wrote a check on his attorney escrow account to the New Era Democratic Club in the amount of $1,000, which was a political contribution.

Additional Findings:

59. Respondent's testimony at the hearing lacked candor in numerous, material respects, including his testimony that:

(a) he subleased the apartment to Mr. Abrams and had attempted to get Mr. Leifer's approval for a sublease;

(b) he did not advise the Commission during the investigation that he had subleased the apartment to Mr. Abrams because the Commission staff never asked about a sublease;

(c) he did not notice that Mr. Abrams' rent checks were made out to him "as attorney";

(d) he did not advise the Commission during the investigation of the settlement of his "warranty" claim because he was not asked about it and, moreover, did not recall that the claim, which he had raised as to justify his retention of the rent funds, had been settled;

(e) he read the Commission's February 15, 2001, letter but did not see the questions therein and did not realize that he was being asked to respond;

(f) he believed that his letter to the Commission dated March 9, 2001, asking for an extension to submit a response was a substantive response to the allegations;

(g) he did not respond to the Commission's letter dated March 10, 2001, because in his view it did not ask for a response;

(h) he did not respond to the Commission's letters because he believed that he had already given the Commission the information being sought; and

(i) he did not read the Administrator's Complaint attached to the February 15, 2001, letter when he received it and he never saw the Administrator's Complaint until it was shown to him during cross-examination.

60. Respondent's testimony throughout the proceeding was evasive, incredible and unreliable. His testimony at the hearing was, in numerous respects, inconsistent with his testimony during the investigation and, at times, inconsistent with other testimony he gave at the hearing.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.5(A)(i)(h) (formerly Section 100.7) of the Rules Governing Judicial Conduct and engaged in conduct that adversely affects his fitness to perform the official duties of a judge pursuant to Article 6,

Section 22 of the Constitution of the State of New York. Charges I, II, V and VI and paragraph 21 of Charge IV of the Formal Written Complaint are sustained insofar as they are consistent with the above facts, and respondent's misconduct is established. Charge III and paragraphs 19 and 20 of Charge IV are not sustained and are dismissed.

On and off the bench, judges "are held to higher standards of conduct than members of the public at large and ... relatively slight improprieties subject the judiciary as a whole to public criticism and rebuke." Matter of Kuehnel v. Commn on Jud Conduct, 49 NY2d 465, 469 (1980); Matter of Mazzei v. Commn on Jud Conduct, 81 NY2d 568, 572 (1993). As established by the evidence and as found by the referee, respondent's behavior, as an attorney and as a judge, fell well below established ethical standards.

After vacating his rent-stabilized apartment in 1992, respondent permitted Rocky Abrams, his former client and then-brother-in-law, to move into the apartment and, for the next four years, collected rent from Mr. Abrams, without the landlord's knowledge, based upon Mr. Abrams' understanding that respondent would negotiate a lease for Mr. Abrams and would hold the money in trust for the landlord. Respondent deposited Mr. Abrams' checks, most of which were written to respondent "as attorney," into his attorney escrow account and used the funds for his personal purposes. When the landlord demanded the funds from respondent after learning belatedly that respondent had

been collecting the rent payments for four years, respondent refused to provide the total funds he had collected.

In his sworn testimony, respondent has offered various, conflicting explanations for his retention of the funds, including that he had subleased the apartment to Mr. Abrams and that he had warranty claims against the previous owner of the building. Respondent's testimony in that regard is not only contradictory but inconsistent with the evidence presented. We are mindful of the tortuous history of litigation involving the apartment and need not resolve issues that are properly determined in a court with jurisdiction over landlord-tenant disputes. It is abundantly clear, however, that having collected the rent funds in trust and having deposited them into his escrow account, respondent had a duty, as a fiduciary, to preserve the funds he collected and to exercise the highest degree of care and trust with respect to the funds. Respondent clearly violated that duty by failing to advise the landlord of the amounts he collected and by using the funds for his personal purposes.

Respondent has acknowledged that he commingled the funds he had collected for Mr. Abrams, which were deposited into his attorney escrow account, with his personal funds. Both before and after he became a judge, respondent used his escrow account to write checks payable to cash and for other personal purposes. Escrow accounts are governed by strict ethical rules, intended to insure that funds which are held in trust are properly preserved. Respondent's misuse of his escrow account demonstrates

a notable carelessness in complying with established ethical standards.

Respondent compounded his misconduct by his willful refusal to respond to six letters during the Commission's investigation. Pursuant to Section 7000.3, subdivision (c), of the Commission's Operating Procedures and Rules (22 NYCRR §7000.3[c]), the Commission is authorized to "request a written response from the judge who is the subject of the complaint." By refusing to answer the Commission's written inquiries, respondent impeded the Commission's efforts to obtain a full record of the relevant facts and obstructed the Commission's discharge of its lawful mandate. His failure to cooperate with the Commission seriously exacerbated the underlying misconduct. Matter of Cooley v. Commn on Jud Conduct, 53 NY2d 64 (1981).

Conceding that his failure to respond to the Commission's letters was improper, respondent has offered various explanations in mitigation, including his belief that he was being harassed, that the letters were repetitive and that his requests for extensions were sufficient response. None of these factors excuses his failure over a period of several months to provide any substantive response to the questions posed in the Commission's letters. Moreover, respondent's testimony at the hearing that he failed to open some of the letters he received, although he recognized that they were from the Commission, demonstrates an unacceptable lack of respect for the process, created by Constitution and statute, under which the Commission is empowered to investigate the conduct of judges.

Respondent further exacerbated his misconduct by his repeated lack of candor throughout this proceeding. Matter of Gelfand v. Commn on Jud Conduct, 70 NY2d 211 (1987). As the referee concluded, respondent's investigative testimony concerning his purported warranty claims "was a violation of his duty to be candid," and his testimony at the hearing as to various pertinent matters was "incredible," "unworthy of belief" and "not supported in law and logic." Such deception is antithetical to the role of a judge, who is sworn to uphold the law and seek the truth. Matter of Myers v. Commn on Jud Conduct, 67 NY2d 550 (1986); Matter of Gelfand, *supra*. The giving of false testimony is inexcusable and destructive of a judge's usefulness on the bench. Matter of Gelfand, *supra*; Matter of Intemann v. Commn on Jud Conduct, 73 NY2d 580 (1989).

Respondent's conduct prior to his ascension to the bench may be considered with respect to determining his fitness for judicial office. *See* Matter of Pfingst, 33 NY2d (a), (kk), 409 NYS2d 986, 988 (Ct on the Jud 1973). The Commission is empowered to consider complaints with respect to "fitness to perform" judicial duties and to remove a judge "for cause, including but not limited to...conduct, on or off the bench, prejudicial to the administration of justice" (NY Const Art 6 §22[a]). The term "for cause" has been interpreted to include conduct that occurs "prior to the taking of judicial office." Matter of Sarisohn, 26 AD2d 388, 390 (2d Dept 1966). Significantly, in the instant matter respondent's pre-election misconduct continued after he ascended to the bench, since he

continued to collect rents from Mr. Abrams and refused to return the funds after he became a judge, negotiated with the landlord's attorney in his chambers, and continued to use his escrow account for personal purposes. As a judge, respondent obstructed the Commission's investigation by failing to respond to the Commission's inquiries and gave testimony concerning his conduct before and after ascending the bench that was evasive and incredible.

Viewed in its entirety, respondent's conduct demonstrates "a pattern of injudicious behavior and inappropriate actions which cannot be viewed as acceptable conduct by one holding judicial office." Matter of VonderHeide v. Commn on Jud Conduct, 72 NY2d 658, 660 (1988). Such conduct jeopardizes public confidence in the judiciary, which is indispensable to the administration of justice in our society. Matter of Levine v. Commn on Jud Conduct, 74 NY2d 294 (1989). This breach of the public trust demonstrates respondent's unfitness to serve as a judge.

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

With respect to the findings of misconduct, Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez and Ms. Moore concur. Judge Peters dissents only as to Charge I and votes that the charge be dismissed. Judge Luciano, Mr. Pope and Judge Ruderman dissent only as to paragraphs 19 and 20 of Charge IV and vote that the

allegations therein be sustained.

With respect to the sanction, Mr. Berger, Judge Ciardullo, Mr. Coffey, Ms. Hernandez, Judge Luciano, Mr. Pope and Judge Ruderman concur. Mr. Goldman, Ms. Moore and Judge Peters dissent and vote that respondent be censured.

Judge Marshall was not present.

CERTIFICATION

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

Dated: June 21, 2002

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

SCHEDULE A

CHECKS FROM REYNOLD N. MASON IOLA ACCOUNT
REPUBLIC NATIONAL BANK OF NEW YORK

Check Number	Date	Amount	Payee
1251	11/30/94	$1,940.00	Cash
1252	12/2/94	$500.00	Ida L. Moulanier
1257	12/6/94	$646.95	Carifta Travel Service
1258	12/4/94	$40.00	Dr. Verlaine Brunot
1259	12/9/94	$4,000.00	Reynold N. Mason
1260	12/9/94	$19,000.00	Reynold N. Mason
1261	12/11/94	$500.00	Afrika House
1262	12/12/94	$149.00	Reynold N. Mason
1263	12/12/94	$1,700.00	Reynold N. Mason
1265	12/12/94	$4,800.00	Munich Overseas, Ltd.
1266	12/13/94	$1,000.00	Reynold N. Mason
1268	12/14/94	$66.50	G.U. Insurance Company
1269	12/14/94	$2,000.00	Cash
1270	12/14/94	$1,303.20	Commonwealth Brokerage Inc.
1271	12/14/94	$302.62	Internal Revenue Service
1272	12/17/94	$400.00	St. Marks United Methodist Church

1273	12/18/94	$500.00	St. Marks United Methodist Church
1277	12/19/94	$300.00	Cash
1278	12/30/94	$328.00	Tessa Abrams
1279	12/31/94	$300.00	Tessa Abrams
1280	12/31/94	$4,000.00	Munich Overseas, Ltd.

SCHEDULE B

CHECKS FROM REYNOLD N. MASON IOLA ACCOUNT
REPUBLIC NATIONAL BANK OF NEW YORK

Check Number	Date	Amount	Payee
1281	1/13/95	$850.00	Tessa Abrams
1282	1/9/95	$300.00	Ayana Mason
1283	1/13/95	$225.00	Support Collection Unit
1284	1/16/95	$500.00	Tessa Abrams
1285	1/17/95	$498.00	Chase Automotive Finance
1286	1/20/95	$500.00	Tessa Abrams
1287	1/20/95	$225.00	Support Collection Unit
1288	1/22/95	$25.00	St. Marks Church
1290	1/23/95	$37.89	Kingsway Exterminating
1292	1/26/95	$1,000.00	New Era Democratic Club
1296	2/23/95	$216.00	Tessa Abrams
1297	2/28/95	$134.00	NYC Department of Finance
1299	4/25/95	$97.41	Cash