

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

DAVID J. PAJAK,

a Justice of the Pembroke Town Court,
Genesee County.

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the
Commission

Michael M. Mohun for Respondent

The respondent, David J. Pajak, a justice of the Pembroke Town Court,
Genesee County, was served with a Formal Written Complaint dated April 19, 2004,

Genesee County, containing one charge. Respondent filed an answer dated June 4, 2004.

On August 3, 2004, the administrator of the Commission, respondent and respondent's counsel 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 admonished and waiving further submissions and oral argument.

On September 23, 2004, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Pembroke Town Court, Genesee County since 1993. Respondent is an attorney.
2. On or about April 12, 2003, respondent operated a motor vehicle in the Town of Batavia while under the influence of alcohol, with the result that respondent was involved in a property damage accident with another motorist and was charged with Driving While Intoxicated, a violation of Section 1192(3) of the Vehicle and Traffic Law; Refusing To Take A Breath Screening Test, a violation of Section 1194 of the Vehicle and Traffic Law; Consumption of Alcohol, a violation of Section 1227(1) of the Vehicle and Traffic Law; and Failure To Keep Right, a violation of Section 1120A of the Vehicle and Traffic Law.
3. On or about November 19, 2003, respondent pleaded guilty in the Bergen Town Court to Driving While Intoxicated, a misdemeanor, in full satisfaction of all charges. Respondent paid a \$500 fine and \$125 surcharge.

4. During the course of the proceeding in Bergen Town Court, respondent completed an alcohol evaluation program, in which it was determined that he did not suffer from an alcohol-related pathology and that he did not need treatment.

5. There is no indication that, at the scene of the accident, in court or otherwise, respondent exerted or appeared to exert the influence of his judicial office for his own benefit, or for anyone else's benefit or detriment.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.4(A)(2) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22 of the New York State Constitution and Section 44(1) of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

A judge who operates a motor vehicle while under the influence of alcohol violates the law and imperils public safety. *Matter of Henderson*, 1995 Annual Report 118 (Comm'n on Jud Conduct). Respondent's unlawful conduct resulted in an accident, which caused property damage. By failing to abide by laws that he is called upon to apply in court, respondent undermined his effectiveness as a judge and brought the judiciary as a whole into disrepute.

In determining an appropriate disposition in such cases in the past, the Commission has considered mitigating and/or aggravating circumstances, including the

level of intoxication, whether the judge's conduct caused an accident or injury, whether the conduct was an isolated instance or part of a pattern, the conduct of the judge during arrest, and the need and willingness of the judge to seek treatment. *See, e.g., Matter of Siebert*, 1994 Annual Report 103 (Comm'n on Jud Conduct) (judge was convicted of Driving While Ability Impaired after causing a three-car accident [admonition]); *Matter of Henderson, supra* (judge was convicted of Driving While Intoxicated, identified himself as a judge and asked, "Isn't there anything we can do?" [admonition]); *Matter of Barr*, 1981 Annual Report 139 (Comm'n on Jud Conduct) (judge had two alcohol-related convictions, asserted his judicial office and was abusive and uncooperative during his arrests, but had made "a sincere effort to rehabilitate himself" [censure]).

In recent years, in the wake of increased recognition of the dangers of Driving While Intoxicated and the toll it exacts on society, alcohol-related driving offenses have been regarded with particular severity. We conclude, even in the absence of exacerbating factors, that public discipline is appropriate in this case. *See Matter of Burns*, 1999 Annual Report 83 (Comm'n on Jud Conduct). Such a result not only underscores the seriousness of such misconduct, but also serves as a reminder to respondent and to the public that judges are held to the highest standards of conduct, both on and off the bench (Section 100.1 of the Rules Governing Judicial Conduct).

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

Mr. Goldman, Judge Ciardullo, Ms. DiPirro, Mr. Emery, Mr. Felder, Judge Luciano, Judge Peters and Judge Ruderman concur.

Mr. Coffey dissents and votes to reject the agreed statement of facts on the basis that the disposition is too lenient.

Ms. Hernandez and Mr. Pope were not present.

CERTIFICATION

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

Dated: October 6, 2004

A handwritten signature in black ink, appearing to read "Lawrence S. Goldman", is written over a horizontal line.

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