

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

THOMAS E. RAMICH,

a Judge of the Elmira City Court,
Chemung County.

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

Joseph J. Balok, Jr. for Respondent

The respondent, Thomas E. Ramich, a Judge of the Elmira City Court,
Chemung County, was served with a Formal Written Complaint dated March 16, 2001,
containing four charges. Respondent filed an answer dated May 15, 2001.

By Order dated February 15, 2002, the Commission designated Sherman F. Levey, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 18, 2002, in Bath, New York, and the referee filed his report dated September 26, 2002, with the Commission.

On October 21, 2002, the Administrator of the Commission, respondent's counsel and respondent entered into a Stipulation, agreeing that the Commission make its determination based upon the referee's findings of fact and conclusions of law, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On November 8, 2002, the Commission approved the Stipulation and made the following determination.

1. Respondent has been a full-time Elmira City Court Judge since January 1, 1996.
2. Between 1982 and January 1, 1996, respondent served as a part-time Judge of the Elmira City Court and maintained a private practice of law.
3. After becoming a full-time judge on January 1, 1996, respondent became aware of the prohibition in the Rules Governing Judicial Conduct against the practice of law by full-time judges.
4. Tina Dunn served as the private secretary in respondent's law office from 1986 through 1996 and was appointed by respondent as his court secretary in 1997. Ms. Dunn and respondent regard themselves as personal friends as well as business or

professional associates.

As to Charge I of the Formal Written Complaint:

5. In May 1998 Ms. Dunn, on respondent's behalf, corresponded with National Finance and its attorneys, McMahon, Kublick, McGinty and Smith, PC, in connection with arranging the pay-off of a debt owed by James DeRico and Rita Garelle to Twin Tiers Eye Care Associates, the successor in interest to Steven Salsburg, MD PC, for whom respondent, as an attorney, had obtained a judgment in 1988.

6. In May 1998 respondent received at his home from McMahon, Kublick, McGinty and Smith, PC, a check for \$1,781.58 payable to Twin Tiers Eye Care Associates, reflecting the pay-off of the judgment.

7. Respondent gave the check to Ms. Dunn, who forwarded it on his behalf to Twin Tiers Eye Care Associates on May 2, 1998, with a bill for \$445.40.

8. On or about May 6, 1998, respondent signed, as an attorney for the judgment creditor, a Satisfaction of Judgment in *Steven Salsburg, MD PC v. James DeRico and Rita A. Garelle*, and Ms. Dunn filed it on respondent's behalf in the Chemung County Clerk's Office on May 7, 1998.

9. On May 28, 1998, Twin Tiers Eye Care Associates sent to respondent at his home a check for \$445.40.

10. Respondent did not report the \$445.40 income on his 1998 federal or state income tax return. Respondent subsequently filed an amended income tax return on or about June 23, 2000, reporting the \$445.40 income. The amended income tax return

was filed by respondent prior to the issuance of the Formal Written Complaint issued by the Commission, but following the initiation of an investigation by the Commission.

11. Respondent did not report to the Chief Clerk of the Elmira City Court in 1998 or 1999 the \$445.40 in extra-judicial income he had received in 1998 from Twin Tiers Eye Care Associates. Respondent reported the extra-judicial income to the Chief Clerk on or about July 14, 2000, prior to the issuance of the Formal Written Complaint, but after the initiation of the Commission's investigation.

As to Charge II of the Formal Written Complaint:

12. In or about April 1999, respondent agreed to represent Nancy Waite in connection with the purchase of real property located on Upland Drive in the Town of Elmira. Although respondent knew that as a full-time judge he was prohibited from practicing law, respondent rationalized his action on the basis that assisting a relative without compensation did not violate that rule and that this representation was not actually the practice of law. Nancy Waite was the sister of respondent's wife, from whom he was then estranged, and respondent testified that he had some ill-formed concept that this might in some way ameliorate matters with his estranged wife and perhaps lead to a reconciliation.

13. In connection with his representation of Nancy Waite, respondent personally received the abstract of title, survey, and proposed deed at court, reviewed and approved the documents, contacted the seller's attorney and paralegal and took various other steps consistent with representing a buyer of a personal residence.

14. When the time of the closing arrived, respondent, who had suffered an injury, arranged for his law clerk, Frederick M. Cerio, to represent Nancy Waite at closing.

15. In July 1999 respondent agreed to represent Gerald and Eileen Droleski in connection with their purchase of a personal residence at 829 Maple Avenue, Elmira, New York. Respondent has known Gerald Droleski since high school. Mr. Droleski had sustained a severe head injury in an accident and, although legally competent, was perceived by respondent to be somewhat irrational and over-emotional in various matters. Mr. Droleski appeared to rely substantially on respondent's judgment in various matters, and although it appears that respondent attempted to recommend other lawyers to Mr. Droleski, respondent eventually acquiesced in Mr. Droleski's insistence that respondent continue to assist him in connection with a purchase of personal real estate.

16. In connection with his representation of Gerald and Eileen Droleski, respondent received documents and performed other various services consistent with the legal representation of a purchaser of a personal residence, with many of these services performed at the offices of the Elmira City Court, and some performed by secretarial or clerical personnel of the court.

17. Respondent represented Gerald and Eileen Droleski at the closing, which was held at the office of the seller's law firm in Corning, New York.

18. In August 1999 respondent agreed to represent Russell and Mary

Suzanne Kissinger in connection with their purchase of a personal residence at 406 Hillbrook Road, Elmira, New York. Mrs. Kissinger is respondent's cousin. In connection with his representation of the Kissingers, respondent received documents and performed various other services consistent with the legal representation of a purchaser of a personal residence, with many of these services performed at the offices of the Elmira City Court, and some performed by secretarial or clerical personnel of the court.

19. In October 1999 respondent represented his clients, Russell and Mary Suzanne Kissinger, at the closing that was held at the seller's attorney's office in Elmira.

20. Respondent received no fee or other remuneration whatsoever for his representation of Nancy Waite, Gerald and Eileen Droleski, and Russell and Mary Suzanne Kissinger.

As to Charge III of the Formal Written Complaint:

21. On or about February 1, 1999, respondent sent an *ex parte* letter on court stationery to Elmira City Police Chief Michael Ciminelli concerning *People v. Todd M. Shock*, a pending case in which the defendant was charged with Reckless Endangerment, Second Degree and Criminal Mischief, Fourth Degree.

22. Respondent directed Chief Ciminelli to explain whether the defendant had been in police custody at a time after the warrant was issued but before it had been executed.

23. On or about February 3, 1999, Chief Ciminelli wrote to respondent

indicating that he would not respond to respondent's letter because of his concern about *ex parte* communications.

24. On or about November 1, 1999, respondent sent an *ex parte* letter on court stationery to Chief Ciminelli, questioning why the defendant in *People v. Seth Vaughn*, a pending case in which the defendant was charged with Violation of Probation, had not been arrested pursuant to an arrest warrant when he was allegedly in police custody on an earlier occasion.

25. Elmira City Police Captain Michael Ross responded on behalf of Chief Ciminelli indicating why the defendant had not been arrested on the earlier occasion and referring to facts relevant to an additional charge filed against the defendant.

26. On January 10, 2000, respondent sent an *ex parte* letter on court stationery to Chief Ciminelli concerning *People v. Frank Russell*, a pending case in which the defendant had been charged with Criminal Possession Of A Controlled Substance, Seventh Degree.

27. Respondent directed Chief Ciminelli to explain why an appearance ticket had been issued to a defendant charged with this crime and with his criminal history.

28. On January 10, 2000, respondent sent an *ex parte* letter on court stationery to Chief Ciminelli concerning *People v. Adolph M. Asch*, a pending case in which the defendant had been charged with Criminal Possession Of A Controlled Substance, Seventh Degree and Criminal Possession Of A Hypodermic Needle.

29. Respondent directed Chief Ciminelli to explain why an appearance ticket had been issued to a defendant charged with this crime and with his criminal history.

As to Charge IV of the Formal Written Complaint:

30. On or about September 12, 2000, respondent received a telephone call from Mary Jean Pauldine, an elderly woman whom he knew through participation in a community organization. She advised respondent that her son and daughter-in-law had received tickets for No Seat Belt in the Elmira area, and asked whether they had to return from their home in South Carolina to attend to the matter. Ms. Pauldine also spoke to respondent about her personal and health problems and described the circumstances that led to the traffic charges. Respondent advised Ms. Pauldine that her relatives could mail pleas to the court.

31. Within 30 minutes after the call, respondent was again contacted by Ms. Pauldine, who advised him that the tickets were pending in the Elmira City Court. Respondent told Ms. Pauldine, "All right, have them send me the tickets and I'll get back to them."

32. On or about September 14, 2000, the Uniform Traffic Tickets in *People v. John D. Pauldine* and *People v. Diane D. Pauldine* were delivered by Federal Express to respondent's home. A note from the defendants to respondent, referring to respondent's prior discussion with Ms. Pauldine, was included with the tickets. It did not occur to respondent that he should disqualify himself as a consequence of the two calls he

had received.

33. On or about September 22, 2000, respondent met in chambers with Chemung County Assistant District Attorney Geoffrey Peterson and advised Mr. Peterson about his discussions with Ms. Pauldine and the delivery of the tickets to his home.

34. Respondent relayed to Mr. Peterson the circumstances surrounding the traffic stop as told to respondent by Ms. Pauldine and also described Ms. Pauldine's personal and health problems. Respondent's purpose in relaying this information to the Assistant District Attorney was to obtain a favorable disposition of the tickets for the defendants. Respondent asked Mr. Peterson what he wanted to do with the case.

35. Mr. Peterson replied that the defendants should receive a "warning." Since there is no provision in the Vehicle and Traffic Law or the Criminal Procedure Law for disposing of a case by way of a "warning," Mr. Peterson used this term as a code word for "dismissal." Respondent then dismissed both charges.

36. Respondent dismissed the charges against both defendants notwithstanding that he was aware that neither defendant had made an appearance in the matter as required by law and that neither defendant had entered any plea.

37. Respondent presided over the disposition of these two traffic tickets notwithstanding that he was aware that he had engaged in *ex parte* discussions about the matters and knew that *ex parte* discussions concerning a pending matter were improper.

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)(6), 100.3(E)(1), 100.3(E)(1)(a)(ii), 100.4(A)(2), 100.4(A)(3), 100.4(G) and 100.4(H)(2) of the Rules Governing Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Although respondent was aware that the ethical standards bar a full-time judge from engaging in the private practice of law, respondent performed legal services in several matters, in some instances using court facilities and personnel, while serving as a full-time judge of the Elmira City Court. Such conduct is strictly prohibited (*see* Rules Governing Judicial Conduct, Section 100.4[G]); *Matter of Moynihan*, 80 NY2d 322 [1992]; *Matter of Intemann*, 73 NY2d 580 [1989]), even if the judge accepts no fee for the legal services (*Matter of Katz*, 1985 Ann Rep 157 [Comm'n on Jud Conduct, March 30, 1989]) or performs legal services for a relative (*see* Adv Op. 92-118).

In the *Twin Tiers* case, a matter he had previously handled as an attorney when he was permitted to practice law, respondent's role in connection with filing a Satisfaction of Judgment clearly constituted the prohibited practice of law. His misconduct was exacerbated by his failure to report the fee he received to the chief clerk of the court, as required by the ethical rules, or on his 1998 income tax returns. Such lapses are not excused by negligence or inattention and, even if inadvertent, create the appearance that respondent was intentionally concealing his extra-judicial activity. Moreover, respondent's use of his court secretary in the matter demonstrated a serious

confusion between his judicial role and his former role as a practicing attorney.

Respondent also practiced law in three additional matters, in which he represented his sister-in-law, his friend and his cousin in real estate transactions. Although he received no fee in these cases, respondent's activities, including reviewing legal documents, corresponding with the opposing attorneys and appearing with his clients at the closings, flouted the prohibition against the practice of law. Respondent's misconduct was again exacerbated by his use of court personnel and court facilities in connection with these matters.

Respondent's letters to the Police Chief to obtain information about pending matters violated Section 100.3(B)(6) of the Rules, which prohibits a judge from engaging in *ex parte* communications. Such communications, however well-intentioned, were improper. It is troubling that respondent continued to send similar *ex parte* inquiries even after the Police Chief questioned the propriety of such communications.

It was also improper for respondent to preside over the two *Pauldine* cases after having engaged in *ex parte* communications with the defendants' relative in which he obtained personal information about the cases. It should have been obvious to respondent that his impartiality could reasonably be questioned in the cases, especially after he had discussed the substance of his communications with the assistant district attorney for the purpose of obtaining a favorable disposition for the defendants. By presiding in the matters and dismissing the charges, although the defendants never appeared or entered a plea, respondent engaged in conduct that conveyed an appearance

of favoritism and undermined public confidence in the impartiality of the judiciary.

Respondent's conduct shows insensitivity and inattention to the high ethical standards applicable to judges. In mitigation, he has acknowledged his misconduct and, as the referee concluded, he now appears to recognize "the necessity for scrupulously following the relevant judicial rules in the future."

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

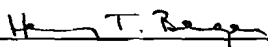
Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

Ms. Moore was not present.

CERTIFICATION

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

Dated: December 27, 2002



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