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

BRUCE S. SCOLTON,

a Justice of the Harmony Town Court,
Chautauqua County.

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

Honorable Bruce S. Scolton, *pro se*

The respondent, Bruce S. Scolton, a Justice of the Harmony Town Court, Chautauqua County, was served with a Formal Written Complaint dated January 24, 2007, containing one charge. The Formal Written Complaint alleged that respondent

failed to dispose of six small claims cases in a timely manner. Respondent filed a Verified Answer dated February 13, 2007.

On June 21, 2007, the Administrator of the Commission 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 admonished and waiving further submissions and oral argument.

On July 12, 2007, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Harmony Town Court since May 10, 1990. He is an attorney who was admitted to the practice of law in New York in 1977.

2. In *John R. and Patricia C. Gavin v. Randall L. Present*, a small claims action in which the claimants sought $493.23 in damages, respondent delayed holding a hearing from on or about March 23, 2004, until November 3, 2004, and thereafter delayed issuing a decision until October 10, 2006, notwithstanding that Mr. Gavin twice requested a decision from respondent, orally at the courthouse on August 30, 2004, and by letter dated September 30, 2004.

3. In *Sebastian A. Reale v. Raymond Nelson,* d/b/a *Ray Nelson Service, et al.*, a small claims action in which the claimant sought $3,015.00 in damages, respondent delayed holding a hearing from on or about September 23, 2003, until on or about January 13, 2004, and thereafter did not render a decision until October 10, 2006,

notwithstanding that he received a letter from the defendant's attorney, dated May 20, 2004, requesting a decision.

4. In *Richard Anderson v. Frank Roth*, a small claims action in which the claimant sought $350.00 in damages, respondent delayed holding a hearing in the case from May 10, 2004, to March 8, 2005.

5. In *Julie Sealy v. Jamie Burnett*, a small claims action in which the claimant sought $1,023.95 in damages, respondent delayed holding a hearing in the matter from September 13, 2004, to March 8, 2005.

6. In *Lynne Carlson v. Art Millace*, a small claims action in which the claimant sought $3,000.00 in damages, respondent delayed holding a hearing in the matter from September 13, 2004, to March 8, 2005.

7. In *Amy Dullong v. John Vistrand*, a small claims action in which the claimant sought $2,200.00 in damages, respondent took no action in the matter after the filing of the claim on June 21, 2004. Respondent never sent notice of the action to the defendant, never scheduled a hearing and never held a hearing. After receiving letters dated June 21, 2006, and August 18, 2006, from the Commission regarding the matter, respondent contacted the claimant, who indicated she no longer wished to pursue the matter.

8. Respondent acknowledges that he failed to dispose of the business of his court promptly, efficiently and fairly with respect to these six small claims cases, with the result that no action was taken in one of the cases, hearings were delayed from four to

ten months in five of the cases, and decisions were delayed from 23 to 33 months in two of the cases. Respondent has no excuse for his inaction and delay.

9. Both as an attorney and a judge, respondent is aware of the prejudice to the parties that may result when proceedings are delayed without good cause. Respondent commits himself to insuring that such delays do not recur.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(7) and 100.3(C)(1) 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 of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Over a three-year period, respondent was responsible for significant delays in six small claims matters that were filed in his court. Respondent has acknowledged that he has no excuse for his inaction and delays.

The ethical standards require every judge to dispose of court matters "promptly, efficiently and fairly," and further provide that "the judicial duties of a judge take precedence over all the judge's other activities" (Rules, §§100.3[B][7], 100.3[A]). In five cases, respondent delayed from four to ten months in scheduling a hearing, and in a sixth case respondent never scheduled a hearing for more than two years, at which point the claimant, not surprisingly, declined to pursue the matter further. The delays

respondent permitted amounted to an inexcusable neglect of his duties as a judge (Rules, §100.3[C][1]).

In addition, in two of the cases respondent delayed inexcusably in rendering a timely decision. In *Gavin v. Present*, respondent issued a decision 23 months after holding a hearing, and in *Reale v. Nelson*, he issued a decision 33 months after the hearing. Significantly, both decisions were rendered shortly after respondent had been contacted by the Commission, which was investigating the alleged delays.

The "informal and simplified" procedures for small claims are intended to provide litigants with an efficient and just resolution to their legal disputes (Uniform Justice Court Act §1804). This goal is thwarted when cases are delayed inexcusably for extended periods.

Respondent's excessive delays in scheduling small claims hearings, coupled with his delays in issuing decisions, constitutes neglect of his administrative and adjudicative responsibilities, which warrants discipline. *See*, *Matter of Leonard*, 1986 Annual Report 137 (Comm. on Jud. Conduct) (town justice was censured for delays in 14 small claims matters); *see also, e.g., Matter of Vincent*, 70 NY2d 208, 209 (1987) (judge failed to make timely deposits and remittals of court funds to the State Comptroller and "failed to dispose of his small caseload in a timely manner"); *Matter of Ware*, 1991 Annual Report 79 (Comm. on Jud. Conduct) (judge failed to take any action to dispose of 228 motor vehicle cases in which defendants failed to appear or answer the charges).

We view such delays as serious misconduct because of the adverse consequences on individual litigants, who are deprived of the opportunity to have their claims heard in a timely manner, and on public confidence in the administration of justice. Our decision in this case and in *Matter of Robichaud* (decision issued today) should not be interpreted to suggest that delays can never rise to a level warranting removal. We will not hesitate to impose sanctions in such cases to ensure that the public is protected from the deleterious effects of unwarranted delays.

In admonishing respondent, who has served as a judge since 1990, we note that he has acknowledged his misconduct and that his neglect of his judicial duties, as depicted in the record before us, is limited to the six matters described herein.

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

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

Mr. Felder and Ms. DiPirro were not present.