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

GERALD P. SHARLOW,

a Justice of the Massena Town Court,
St. Lawrence County.

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

Honorable Gerald P. Sharlow, *pro se*

The respondent, Gerald P. Sharlow, a justice of the Massena Town Court, St. Lawrence County, was served with a Formal Written Complaint dated November 3,

2004, containing one charge. The judge filed an answer dated November 17, 2004.

On February 23, 2005, 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 March 10, 2005, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Massena Town Court since June 2002; his judicial salary is $14,000. Respondent is not an attorney. He is retired from the Massena Police Department, where he was employed for 25 years and had reached the rank of sergeant. Respondent has attended and successfully completed all required training sessions for judges.

2. On or about February 10, 2004, respondent's son, J[redacted] S[redacted], then age 16, was charged in the Massena Village Court with Trespass, in violation of Section 140.05 of the Penal Law. The case was transferred to the Brasher Town Court after the Massena village justices disqualified themselves from the case, and Brasher Town Court Justice Jeremiah D. Mahoney scheduled the arraignment for March 16, 2004.

3. Prior to March 16, 2004, respondent wrote a letter to Judge Mahoney on Massena Town Court stationery, *inter alia* purporting to enter a plea of not guilty on behalf of his son and asking whether Judge Mahoney still required his son's appearance on March 16, 2004.

4. As a result of receiving respondent's letter, Judge Mahoney adjourned the matter and disqualified himself from J[redacted] S[redacted]'s case, causing the case to be transferred to another judge. Respondent subsequently hired an attorney to represent his son and, on the consent of the district attorney's office, the charge against respondent's son was ultimately adjourned in contemplation of dismissal.

5. Respondent regrets his conduct. He recognizes that it was improper to use his court stationery to intercede with another judge on his son's behalf.

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. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

By writing a letter on judicial stationery to the judge presiding in his son's case, respondent violated well-established ethical standards barring a judge from lending the prestige of judicial office to advance the private interests of the judge or others. Section 100.2(C) of the Rules Governing Judicial Conduct; *Matter of Edwards v. State Comm. on Judicial Conduct*, 67 NY2d 153 (1986). *See also, Matter of Nesbitt*, 2003 Annual Report 152 (Comm. on Judicial Conduct) (judge sent a letter on judicial stationery challenging an administrative determination concerning the judge's son);

Matter of Pennington, 2004 Annual Report 139 (Comm. on Judicial Conduct) (judge met with the district attorney to discuss his son's case).

In the letter, respondent acted as his son's advocate, noting that he had requested but not received a copy of the accusatory instrument, entering a not guilty plea on his son's behalf, and asking the presiding judge to advise him if his son had to appear on the date scheduled for arraignment. Section 170.10(1) of the Criminal Procedure Law requires a defendant's personal appearance in court for arraignment, and a plea of not guilty cannot be entered by mail.

Notwithstanding the absence of an explicit request for favorable treatment, such a communication conveys an implicit request for special consideration, which constitutes favoritism. *Matter of Edwards, supra.* Such conduct "is wrong, and always has been wrong" (*Matter of Byrne*, 47 NY2d [b] [Ct. on the Judiciary 1979]). Indeed, after receiving respondent's letter, the presiding judge felt constrained to disqualify himself from the case.

Although respondent's desire to assist his son is understandable, his "'paternal instincts' do not justify a departure from the standards expected of the judiciary" (*Matter of Edwards, supra*, 67 NY2d at 155).

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

Mr. Goldman, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Ciardullo and Mr. Coffey dissent and vote to reject the Agreed Statement on the basis that the disposition is too harsh and that the appropriate disposition is a letter of caution.

Ms. DiPirro and Judge Luciano were not present.

CERTIFICATION

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

Dated: March 22, 2005

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

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DISSENTING OPINION
BY JUDGE CIARDULLO,
IN WHICH MR. COFFEY
JOINS

- -

I cannot join in the majority opinion, because I believe that the penalty is too harsh for the misconduct. Because this case involves a single instance, and for the reasons set forth below, I would issue the respondent a private letter of caution.

Respondent, a judge in the Massena Town Court and a parent of a 16 year old son, wrote a letter on his court stationery to the judge in the Massena Village Court. The letter states:

> Dear Judge Mahoney,
>
> Judge sorry to have to come [sic] you with this case pending against my son J[redacted] S[redacted] case #04030004.9 PL 140.05 Trespass. At this time after conversation of this incident and lack of accusatory instrument and supporting statements I requested from the Massena Village Police Department my son pleads NOT GUILTY to the charge. If you still want my son to appear 3/16/2004 advise. Otherwise set for trial. I have heard nothing from the District attorneys office. Again sorry this has been sent to your Court.
>
> Respectfully Yours,
>
> Hon. Gerald P. Sharlow
> Massena Town Justice

It was wrong for respondent to send this letter on court stationery, a fact that he admits. Using his title and judicial office in this manner plainly violated ethical rules and lent the prestige of his office to advance private interests (Section 100.2[C]).

Even if respondent had not used his court stationery or judicial title to communicate with the arraigning court, the circumstances here warrant a cautionary statement. The record shows that respondent retired from the Massena Police Department after 25 years, and the Village court was situated within the Town of Massena. Both Village justices recused themselves from hearing the case. Because respondent was apparently well known, it is likely that any communication from the respondent to the Village court would create the appearance that he was invoking the prestige of his judicial office.

I am not prepared to state, however, that a judge who is a parent of a minor child may never appear or communicate with a court that is presiding over charges involving that child. A judge does not lose his or her rights and responsibilities as a parent simply because he or she holds judicial office. There are many situations where a minor legally lacks capacity to act and the parent must act for the child (for example, under Public Health Law §2504, a minor under the age of 18 legally cannot consent to medical treatment). Therefore, I do not condemn judges who appear in court, communicate with a prosecutor, or otherwise assist a child in trouble. In my view, an ethical problem arises only where the judge is known to be a judge and this knowledge is likely to result in favoritism. Those circumstances were present in this case. Respondent

ultimately took the appropriate action to cure the impropriety by retaining an attorney to represent his son.

I disagree with the majority that this case warrants a public sanction. I do not read respondent's letter as requesting any special consideration. Rather, the letter simply asks the court whether defendant must appear, and requests the court to enter a not guilty plea and set the matter down for trial. The statements in the letter are quite unremarkable and are common communications in justice court matters. For that reason, I view this case differently than other situations where judges have blatantly requested favorable treatment using court stationery. *See, Matter of Freeman,* 1992 Annual Report 44 (town justice was admonished for writing to another judge on court stationery in support of a customer of his private business, seeking to have customer's gun permit reinstated); *Matter of Martin*, 2002 Annual Report 121 (Supreme Court justice was admonished for writing two *ex parte* letters on judicial stationery in support of defendants awaiting sentencing); *Matter of Nesbitt*, 2003 Annual Report 152 (judge was admonished for sending a letter on judicial stationery to a school official challenging expulsion of his son from a college program, and requesting reinstatement of the son "pending hearing and determination of this matter by competent authority").

Therefore, I respectfully dissent.

Dated: March 22, 2005

Frances A. Ciardullo

Honorable Frances A. Ciardullo
Vice Chair
New York State
Commission on Judicial Conduct