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

TIMOTHY C. TAMSEN,

a Justice of the Newburgh Town Court,
Orange 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 (Robert H. Tembeckjian, Of Counsel) for the Commission

Honorable Timothy C. Tamsen, *pro se*

The respondent, Timothy C. Tamsen, a Justice of the Newburgh Town Court, Orange County, was served with a Formal Written Complaint dated November 15,

2001, containing one charge. Respondent filed an answer dated December 5, 2001.

By motion dated December 21, 2001, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's operating procedures and rules (22 NYCRR 7000.6[c]). Respondent opposed the motion by memorandum dated January 8, 2002, and affidavit dated January 11, 2002. The administrator filed a reply dated January 16, 2002, and respondent filed a reply dated January 24, 2002, and a letter dated January 30, 2002. By Decision and Order dated February 6, 2002, the Commission granted the administrator's motion and determined that the factual allegations were sustained and that respondent's misconduct was established.

The parties filed briefs with respect to the issue of sanctions. On May 10, 2002, the Commission heard oral argument, at which respondent appeared. By letter dated May 21, 2002, respondent submitted additional materials, and the deputy administrator filed a letter in response dated June 3, 2002. Thereafter the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Newburgh Town Court, Orange County since February 1998. In November 1998 he was elected to a four-year term as town justice.

2. In 1995 respondent was an attorney associated in the practice of law

in Orange County with Peter H. Neuman, Esq. Although the name of the firm was Neuman & Tamsen, respondent was not a partner.

3. On June 30, 1995, respondent represented Mr. and Mrs. Paul Coogan in connection with the sale of property located in Highland Mills to Mr. and Mrs. Charles Muller for $30,000. The legal fee due the firm of Neuman & Tamsen was $500. Respondent received a check from the purchasers for that amount, which he endorsed and deposited into an account maintained at M&T Bank entitled "Timothy C. Tamsen, Attorney." When the check was issued, the fee was owed to the firm of Neuman & Tamsen, but respondent deposited it into his M&T account without the knowledge and/or consent of Neuman. In so doing, respondent engaged in conduct adversely reflecting on his fitness to practice law, in violation of DR 1-102(a)(8) (now [7]) of the Code of Professional Responsibility (22 NYCRR §1200.3[a][8] [now(7)]), by misappropriating funds.

4. Respondent represented Albert Foldan in connection with a vehicle and traffic infraction. The matter was referred to Neuman & Tamsen by Ackerman, Wachs & Finton, P.C., an Albany law firm. The fee owed to Neuman & Tamsen was $250 and was paid by Ackerman, Wachs & Finton, P.C., by check dated February 2, 1996, which was payable to respondent. Respondent endorsed the check and deposited it into a personal account maintained at M&T Bank entitled "Timothy Tamsen." When the check was issued, the fee was owed to the firm of Neuman & Tamsen, but respondent

deposited it into his M&T account without the knowledge and/or consent of Neuman. In so doing, respondent engaged in conduct adversely reflecting on his fitness to practice law, in violation of DR 1-102(a)(8) (now [7]) of the Code of Professional Responsibility (22 NYCRR §1200.3[a][8] [now(7)]), by misappropriating funds.

5. On December 14, 1995, respondent received $450 on behalf of Neuman & Tamsen from Luis Vasquez as a retainer in connection with an uncontested matrimonial action. Respondent admitted under oath that the funds were deposited into a personal account without the knowledge and/or consent of Neuman. By depositing such funds into his personal account, respondent engaged in conduct adversely reflecting on his fitness to practice law, in violation of DR 1-102(a)(8) (now [7]) of the Code of Professional Responsibility (22 NYCRR §1200.3[a][8] [now(7)]), by misappropriating funds.

6. In November 1995 respondent was retained by James Denton to defend him against a charge of driving while intoxicated. Respondent received a $350 check from Denton dated November 1, 1995, which was payable to him. When the check was issued, the fee was owed to the firm of Neuman & Tamsen, but respondent deposited it into a personal account without the knowledge and/or consent of Neuman. In so doing, respondent engaged in conduct adversely reflecting on his fitness to practice law, in violation of DR 1-102(a)(8) (now [7]) of the Code of Professional Responsibility (22 NYCRR §1200.3[a][8] [now(7)]), by misappropriating funds.

7. In May 1995 respondent was retained by Robert Browne to represent his son, Thomas, in a criminal matter. The Neuman & Tamsen receipt book reflects that Robert Gunsch paid the firm $500 by check on May 10, 1995, in connection with an unrelated matter and that he was given receipt number 001782 by the office manager. The firm copy of receipt number 001783 indicated that Gunsch paid an additional $500 to the firm on the same date. The firm copy of receipt number 001783 also indicated that the name Gunsch was written over another name. The receipt was written in respondent's handwriting and signed by respondent. Moreover, the box indicating that the $500 was received in cash was changed to indicate that the amount was paid by check. The original receipt was given to Browne, not Gunsch, and reflected that the $500 was paid to respondent by Browne in cash, not by check. When respondent received the money, the fee was owed to the firm of Neuman & Tamsen, but respondent knowingly altered the receipt book to disguise his theft. In so doing, respondent engaged in conduct adversely reflecting on his fitness to practice law, in violation of DR 1-102(a)(8) (now [7]) of the Code of Professional Responsibility (22 NYCRR §1200.3[a][8] [now(7)]), by misappropriating funds, and respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of DR 1-102(a)(4) of the Code of Professional Responsibility (22 NYCRR §1200.3[a][4]).

8. On July 25, 1995, respondent received $450 on behalf of Neuman & Tamsen from Carlos Mera as a retainer in connection with an uncontested matrimonial

action. Respondent failed to deposit the funds into a firm account. Instead, he took the money for his personal use without the knowledge and/or consent of Neuman. In so doing, respondent engaged in conduct adversely reflecting on his fitness to practice law, in violation of DR 1-102(a)(8) (now [7]) of the Code of Professional Responsibility (22 NYCRR §1200.3[a][8] [now(7)]), by misappropriating funds.

9. By reason of the foregoing, respondent engaged in conduct adversely reflecting on his fitness to practice law, in violation of DR 1-102(a)(8) (now [7]) of the Code of Professional Responsibility (22 NYCRR §1200.3[a][8] [now(7)]), by misappropriating funds, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of DR 1-102(a)(4) of the Code of Professional Responsibility (22 NYCRR §1200.3[a][4]).

10. As a result of respondent's actions as set forth above, and following formal disciplinary proceedings, respondent was disbarred as an attorney by Opinion and Order of the Appellate Division, Second Department, dated June 11, 2001. The Appellate Division Opinion and Order noted that "respondent has a long disciplinary history" in that he had previously been cautioned twice and admonished four times as an attorney.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.3(B)(1) of the Rules Governing Judicial Conduct and lacks fitness to perform the official duties of a judge

pursuant to Article 6, Section 22 of the Constitution of the State of New York. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent's misappropriation of funds from the law firm with which he was associated and his attempt to conceal his theft by altering firm records constitute serious misconduct for which he has been disbarred as an attorney. Matter of Tamsen, 284 AD2d 8 (2d Dept 2001). Relying upon the findings of the Appellate Division (*see* Matter of Embser v. Commn on Jud Conduct, 90 NY2d 711 [1997]), we conclude that respondent has demonstrated that he lacks the integrity to sit on the bench and is unfit for judicial office.

Respondent's removal is warranted even though his misconduct predates his ascension to the bench (*see* Matter of Pfingst, 33 NY2d [a], 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). As the Court stated in Sarisohn:

> A judicial officer is nonetheless unfit to hold office and the interests of the public are nonetheless injuriously affected even though the misdeeds which portray his unfitness

occurred prior to ascending such office.

Id.

We are unpersuaded by respondent's argument that his derelictions as an attorney do not impair his fitness to serve as a judge. The Court of Appeals has upheld the removal of a lawyer-judge for his "unethical and unlawful conduct" as an attorney, "notwithstanding that all of the wrongdoings related to conduct outside his judicial office." Matter of Boulanger v Commn on Jud Conduct, 61 NY2d 89, 92 (1984); *see also* Matter of Embser, *supra*; Matter of Steinberg v Commn on Jud Conduct, 51 NY2d 74, 83-84 (1980). Nor do the character letters submitted by respondent attesting to his integrity and judicial demeanor warrant the imposition of a lesser sanction. *See* Matter of Shilling v Commn on Jud Conduct, 50 NY2d 397, 399, 402 (1980).

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

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

Mr. Pope dissents as to the disposition only and votes that the appropriate sanction is censure.

Judge Peters did not participate.

Judge Marshall was not present.

CERTIFICATION

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

Dated: July 2, 2002

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