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

MICHELLE A. VAN WOEART,

a Justice of the Princetown Town Court,
Schenectady County.

DETERMINATION

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Nina M. Moore
Honorable Karen K. Peters
Richard A. Stoloff, Esq.

APPEARANCES:

Robert H. Tembeckjian (Jill S. Polk, Of Counsel) for the Commission

Capasso & Massaroni LLP (by John R. Seebold) for the Respondent

The respondent, Michelle A. Van Woeart, a Justice of the Princetown Town Court, Schenectady County, was served with a Formal Written Complaint dated January 10, 2012, containing two charges. The Formal Written Complaint alleged that respondent

failed to expeditiously transfer from her court tickets issued to herself and her sons for violations of a dog-control ordinance, sent improper messages to the animal control officer and the judges of the transferee court, and failed to maintain proper records of the tickets. Respondent filed a verified answer dated February 2, 2012.

On June 6, 2012, the Administrator, respondent's counsel 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 censured and waiving further submissions and oral argument. The Commission had rejected an earlier Agreed Statement.

On June 14, 2012, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Princetown Town Court, Schenectady County, since 1997. Her current term expires on December 31, 2013. She is not an attorney. At all times relevant herein, respondent has been the only Justice of the Princetown Town Court. She also serves as one of two court clerks in the Princetown Town Court.[1]

[1] Although the Commission considers the positions of justice and clerk of the same town court to be incompatible, requiring that respondent vacate one or the other, respondent received an Opinion from the Advisory Committee on Judicial Ethics, distinguishing her situation from others in which it previously declared such positions incompatible (Op. 11-92). Judiciary Law 212(2)(1)(iv) provides as follows: "Actions of any judge or justice of the uniform [sic] court system taken in accordance with findings or recommendations contained in an advisory opinion issued by the [Advisory Committee] shall be presumed proper for the purposes of any subsequent investigation by the [Commission]." Although the Opinion at issue was issued in the course of

2. Matthew and Mark Van Woeart are respondent's sons, now approximately 24 and 29 years of age, respectively.

As to Charge I of the Formal Written Complaint:

The tickets issued on or about September 23, 2009

3. On September 23, 2009, Dawn Campochiaro, the Princetown Animal Control Officer ("ACO"), issued appearance ticket number 541 to Matthew Van Woeart and appearance ticket number 542 to Mark Van Woeart for Dog Running at Large, a violation of Section 3 of the Princetown dog-control ordinance.[2] The tickets were returnable before respondent in the Princetown Town Court on October 7, 2009.

4. Tickets for violations of the local ordinance are issued in triplicate as follows: the white copy is to be served upon the defendant, the pink copy is to be filed in the court and the yellow copy is maintained by the ACOs.

5. Ms. Campochiaro attached each defendant's white ticket on the door of his residence. Since Matthew Van Woeart lived at respondent's home, his copy was attached to the door of their joint residence.

6. Ms. Campochiaro placed the court's pink copies and the supporting depositions in the court clerk's window slot at the courthouse, which was the protocol for

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the Commission's investigation, the Commission did not consider it appropriate to proceed further against respondent with regard to her simultaneously holding the town court justice and town court clerk positions.

[2] The tickets of September 23, 2009, and October 28, 2009, issued to Mark Van Woeart, both misspell his first name as "Marc."

filing with the court when the office was not open.

7. Prior to the October 7, 2009, return date, respondent knew that a copy of each ticket and supporting deposition had been filed in the Princetown Town Court, knew that her sons were named defendants on the tickets, and knew that the tickets were returnable in her court. Neither Ms. Campochiaro nor the defendants appeared in court on the return date.

The tickets issued on or about October 28, 2009

8. On October 28, 2009, Ms. Campochiaro issued appearance ticket number 560 to respondent and Matthew Van Woeart and appearance ticket number 561 to Mark Van Woeart for Dog Running at Large, a violation of Section 3 of the Princetown dog-control ordinance. The tickets were returnable before respondent in the Princetown Town Court on November 4, 2009.

9. These tickets were also issued in triplicate, in accordance with the usual practice. Ms. Campochiaro attached the white copy of Mark Van Woeart's ticket to the door of his house. She brought the white copy of the ticket issued to respondent and Matthew Van Woeart, along with the court's pink copies of both tickets and the supporting depositions, to the Princetown court clerk's office.

10. Prior to the November 4, 2009, return date, respondent knew that a copy of each ticket and supporting deposition had been filed in the Princetown Town Court, knew that she and her sons were named defendants on the tickets, and knew that the tickets were returnable in her court. Neither Ms. Campochiaro nor any of the

defendants, including respondent, appeared in court on the return date.

Respondent's conduct with respect to the tickets

11. On October 28, 2009, Ms. Campochiaro informed respondent by email that she had placed Matthew's and respondent's copy of the October 28, 2009, ticket in the court clerk's mail slot and asked whether the September 23, 2009, tickets had been transferred to the Town of Rotterdam.

12. On October 29, 2009, at 9:27 AM, respondent replied to Ms. Campochiaro by email that the "case has to go to the county court judge to be transferred." Respondent also advised Ms. Campochiaro to "look at the cpl for service of appearance ticket."

13. Later that day at 5:57 PM, respondent sent Ms. Campochiaro a second email. Respondent wrote:

> [I] read Mr. Lee's deposition and agree he shouldn't have to feel threatened in his own driveway. But he said when he rode by the house he saw the dogs loose. Correct me if I'm wrong, but I don't think our dog law says dogs have to be leashed on our own property.

Respondent also stated, "I will let you know when Judge Drago sends these matters to another court."

14. On November 8, 2009, in another email to Ms. Campochiaro, respondent said that she was unable to request a transfer of the case and asked Ms. Campochiaro to come to the court. Respondent further advised Ms. Campochiaro that "[i]t's an easy fix though."

15. On November 23, 2009, Ms. Campochiaro went to the court and, at the behest of respondent, signed accusatory instruments for the tickets issued on October 28, 2009. Respondent did not request the execution of an accusatory instrument for the September 23, 2009, tickets.

16. Respondent did not request that the tickets be removed from her court until January 5, 2010. On that date, by letter to County Court Judge Drago, respondent requested that the "attached violations of the Princetown Town Law" be transferred to another jurisdiction. Respondent did not advise Ms. Campochiaro of this request.

17. Judge Drago issued an order dated January 12, 2010, transferring the matters to Duanesburg Town Court. Respondent did not advise Ms. Campochiaro that the matters had been transferred.

18. By letter dated January 26, 2010, respondent sent the judges of the Duanesburg Town Court "[a]ll necessary paperwork relative to this case" and the order of transfer. While respondent does not recall what specific "paperwork" she sent to the Duanesburg Town Court, all of the original tickets and documents were in the disposing court's file prior to resolution.

19. In the January 26, 2010 letter, respondent informed the transferee justices that she had recused herself because the "alleged violations have named [her] sons." She further advised "that service was not complete, due to the appearance tickets being left at the house, taped to the door on the case involving my son, Mark Van Woeart

and his dog Hanna," and that her copy had been left in her office. Respondent also alleged that the dog "Sophie" was registered to her son Matthew and stated that she was "[h]opeful of getting my name removed from the informations" because "[I] was unnecessarily named on the appearance ticket and information." Respondent did not advise Ms. Campochiaro that the matters were sent to Duanesburg Town Court or provide her with a copy of the letter.

20. Respondent acknowledges that the statements contained in her January 26th letter were *ex parte* communications to the transferee judges, expressed her biased judicial opinion on a matter from which she had recused herself, and were improper.

21. By letter dated February 1, 2010, Duanesburg Town Justice Robert B. Butler recused himself from the matter due to his familiarity with respondent. By letter dated February 3, 2010, Duanesburg Justice Rita LaBelle recused herself because of her familiarity with respondent's family. By order dated February 5, 2010, Judge Drago removed the matters to Scotia Village Court, where they were disposed of on June 23, 2010. Respondent was granted a six-month adjournment in contemplation of dismissal, without the imposition of a fine or conditions.

Respondent failed to keep adequate records

22. Respondent acknowledges that she did not keep complete and accurate records of the above proceedings pertaining to her and her sons, as required by Section 214.11 of the Uniform Civil Rules for the Justice Courts. The only record

respondent maintained in the Princetown Town Court of the tickets issued to her and her sons was a large envelope with a hand written label entitled *Town of Princetown versus Van Woeart.*

A. This record did not have a docket number assigned to it and did not contain a copy of the September 23, 2009, or October 28, 2009, appearance tickets.

B. Copies of the emails between respondent and the ACO were not maintained in this envelope.

C. There was no record of the documents sent to Judge Drago on January 5, 2010.

D. There was no record of the documents forwarded to the transfer court on January 26, 2010.

E. None of the September or October 2009 tickets were entered into the Princetown Town Court computer system.

Respondent failed to follow her own protocol in processing and transferring the appearance tickets

23. Respondent acknowledges that she failed to follow her own court's regular procedure for processing and transferring appearance tickets, in that she failed to input information from the appearance tickets issued to her and to her sons in September and October 2009 into the court's computer system, failed to generate a docket number, failed to affix a label with the computer generated docket number and case name onto the file folder and failed to maintain copies of the original documents in the file folder once the matter was transferred.

As to Charge II of the Formal Written Complaint:

24. In 2005, on two separate occasions, respondent was warned by

Darrell Corbett, the Princetown Animal Control Officer ("ACO"), that her dogs were running onto neighbors' property. In one instance the dogs allegedly tore up garbage and killed wild ducks; in another instance the dogs allegedly attacked and injured a neighbor's dog. Respondent paid the veterinarian bill for the injured dog.

25. On March 11, 2006, Mr. Corbett received a complaint from April Lopuch regarding respondent's dogs being on her property. On that date, Mr. Corbett took a supporting deposition from Ms. Lopuch.

26. On March 11, 2006, before Mr. Corbett had issued any tickets to respondent, respondent advised him that the dogs were "going to run free" and that he should just "write [her] a ticket."

27. On March 13, 2006, Darrell Corbett issued appearance ticket number 545 to respondent and appearance ticket number 544 to Mark Van Woeart for Dog Running at Large, a violation of Section 3 of the Princetown dog-control ordinance, and Dangerous Dog under Section 121 of the Agriculture & Markets Law (since renumbered Section 123). The tickets were returnable before respondent in the Princetown Town Court on March 29, 2006.

28. These tickets were issued in triplicate, in accordance with the usual practice. Mr. Corbett personally served Mark Van Woeart by handing him a copy of his ticket at his home and personally served respondent by handing her a copy of her ticket at her home. Mr. Corbett filed the court's copies of the tickets by handing them to respondent at the Princetown town courthouse.

29. Prior to the March 29, 2006, return date, respondent knew that a copy of each ticket had been filed in the Princetown Town Court, knew that she and her son were named defendants on the tickets, and knew that the tickets were returnable in her court. Mr. Corbett did not appear in court on the return date and did not file an accusatory instrument for either of the tickets.

30. Respondent did not request that the tickets be removed from her court. There is no record that the tickets were transferred to another court. There is no record of the disposition of the tickets.

31. Respondent failed to keep complete and accurate records of the proceedings as required by Section 214.11 of the Uniform Civil Rules for the Justice Courts and/or failed to properly supervise court personnel, with the result that the records required by that section were not maintained.

A. There is no record at all of the tickets in the Princetown Town Court.

B. There is no file.

C. There is no docket number.

D. There are no copies of the tickets or supporting depositions.

E. There is no request for removal to another court.

F. There is no order of transfer.

G. There is no record that the tickets were ever entered into the Princetown Town Court computer system.

Additional Observations

32. Respondent has admitted the charges, is remorseful, and assures the

Commission that lapses such as occurred here will not recur.

33. With respect to the appearance tickets issued in September and October 2009, while respondent failed to immediately disqualify herself, she ultimately effectuated transfers to the Duanesburg Town Court once the ACO filed an accusatory instrument.

34. With respect to the appearance tickets issued on March 13, 2006, no charge was actually pending before respondent since the ACO never filed any accusatory instruments with respect to the appearance tickets and never followed up on the matter.

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), 100.2(C), 100.3(B)(6), 100.3(C)(1), 100.3(C)(2), 100.3(E)(1)(d)(i), and 100.4(A)(1), (2) and (3) 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. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

After respondent and her sons were issued appearance tickets in 2009 with respect to violations of a local ordinance, respondent engaged in a series of acts that were contrary to the ethical rules.

Section 100.3(E)(1)(d)(i) of the Rules requires a judge to disqualify himself or herself "in a proceeding in which the judge's impartiality might reasonably be

questioned," including instances where the judge or a relative within the sixth degree of relationship to the judge or the judge's spouse is a party to the proceeding. It is clear from this record that respondent did not expeditiously transfer the 2009 matters in which she and her sons were the defendants. Upon learning that she and her sons had been served with appearance tickets that were returnable in her court, where she is the sole judge, respondent should have promptly disqualified herself and sent the matters to County Court with an explanation that she was recused because she and her sons were the prospective defendants. Even if she believed that no charges were pending in the absence of an accusatory instrument[3], allowing tickets issued to her and her children to languish in her court created an appearance of impropriety and should have been avoided. Moreover, even if the initial delay might be attributed to the absence of an accusatory instrument, the record indicates that after an accusatory instrument was signed, respondent did not write to the County Court requesting the transfer of the matters until six weeks later.

Respondent compounded her misconduct by making biased, *ex parte* comments about the matters in her letter to the judges of the transferee court. Section 100.3(B)(6) of the Rules prohibits a judge from initiating or considering unauthorized *ex parte* communications with respect to a pending or impending matter. As has been stipulated, respondent's comments in her letter, which was not copied to the ACO,

[3] A criminal action is commenced by the filing of an accusatory instrument, which must be filed before an arraignment can take place (*see*, CPL §§100.05, 150.50[1]). *See*, Agreed Statement, ¶38 (stipulating with respect to the 2006 appearance tickets issued to respondent and her son that "no charge was actually pending before respondent" since an accusatory instrument was never filed).

expressed her biased judicial opinion on a matter from which she had recused herself and were improper. Identifying the defendants as her sons, explaining why the service of the tickets was defective, and stating that she was "hopeful" of having her name removed from the matters since the dog was registered to her son all could be viewed as an attempt to assert her judicial office and influence the judges who would be deciding the matters. Such conduct is inconsistent with well-established ethical principles. *See*, *Matter of Allen,* 2012 Annual Report 64.

Additionally, with respect to both the 2006 and 2009 tickets issued to her sons and herself, respondent failed to maintain complete and accurate records of the matters as required by law (22 NYCRR §214.11). It appears that the tickets were never entered into the court's computer system; no file was created, and no docket number was assigned; and the court's records do not contain either the originals or copies of the court's copy of the tickets. Although it was stipulated that respondent sent all the paperwork relative to the 2009 tickets to the transferee court, a judge is specifically required to maintain copies of all original documents forwarded to another court (22 NYCRR §214.11[a][1]). Respondent's failure to maintain proper records of these matters created an appearance of impropriety (Rules, §100.2[A]). Since respondent and her sons were parties to the matters, and since respondent herself is the court clerk, she should have been especially sensitive to the requirements regarding proper record-keeping.

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Harding and Ms. Moore concur.

In an opinion, Mr. Stoloff concurs as to the sanction of censure but dissents as to certain stipulated findings and conclusions and votes that Charge II was not sustained.

In separate opinions, Mr. Cohen and Mr. Emery dissent and vote to reject the Agreed Statement of Facts on the basis that the record requires factual development at a hearing in order to determine the appropriate sanction.

Judge Peters did not participate.

CERTIFICATION

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

Dated: August 20, 2012

Jean M Savanyu

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

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

MICHELLE A. VAN WOEART,

a Justice of the Princetown Town Court,
Schenectady County.

OPINION
BY MR. STOLOFF
DISSENTING IN PART
AND CONCURRING
AS TO SANCTION

While I agree with the majority's conclusion that the appropriate sanction for respondent's conduct is censure, I cannot agree with certain stipulated findings, and the inferences therefrom, in the Agreed Statement of Facts and in the Determination.

While respondent's *ex parte* communication with respect to the 2009 appearance tickets warrants censure, the record on balance, in my view, evidences several mitigating factors: (a) that respondent assisted in causing the animal control officer ("ACO") to file an Information naming respondent and her son, which was a condition precedent to the court obtaining jurisdiction of the matter; (b) that the 2006 and 2009 matters could not be transferred unless or until the accusatory instrument was filed, and respondent had no obligation to assist in that regard; (c) that a docket number could not be created until such time as an accusatory instrument was filed with the Court; (d) that overall, respondent may have been trying to do the right thing, though perhaps clumsily; and (e) that the purported record-keeping "deficiencies" with respect to both the 2006 and

2009 matters are relatively minor at best.

Had it not been for the *ex parte* communication which could be construed or misconstrued as an attempt to unduly influence the judge to whom the matter was eventually assigned, I believe the appropriate sanction would have been admonition at most and potentially a confidential letter of caution.

Consideration of respondent's handling of these matters and her alleged record-keeping deficiencies requires careful analysis of the Criminal Procedure Law. With respect to the appearance tickets issued to respondent and her son on March 13, 2006 (Ex. J[1]), the ACO failed to file an accusatory instrument with respect to the matters, a condition precedent to their prosecution. From my analysis, it seems clear that respondent never transferred the 2006 matters because no accusatory instrument was ever filed, for which respondent cannot be faulted.

With respect to the appearance tickets dated September 23, 2009 and October 28, 2009 (Ex. A and B), the record shows that respondent actually advised the ACO to file the required accusatory instrument naming the respondent and her son. In a series of communications between respondent and the ACO between October 28, 2009 and November 8, 2009, respondent imparted to the ACO that she could not request the County Court Judge to transfer the case, stating: *"I'll explain when you come in. It's an easy fix"* (Ex. C, D and E) (Emphasis added). Accusatory instruments were then created

[1] All references to Exhibits are those attached to the Agreed Statement of Facts.

and sworn to on November 23, 2009 (Ex. F).[2] Had no accusatory instrument been filed, the matters could not have been prosecuted.

A criminal action is commenced upon the filing of an accusatory instrument in the criminal court. An accusatory instrument can consist of an Information, Simplified Information, Prosecutor's Information, Misdemeanor Complaint or Felony Complaint (see CPL §100.05), and is defined in CPL §100.10. The relevant section is CPL §100.10(1), which defines an Information.[3] It is the Information that serves as the basis for the commencement of the criminal action and for the prosecution thereof in the local criminal court.[4]

Following the filing with the local criminal court of the Information, the defendant must be arraigned thereon (CPL §170.10[1]). The exceptions to that section are irrelevant to this matter.

Thus, in order for the court to have jurisdiction to remove an action from one criminal court to another, the criminal action must be based upon an Information, a Simplified Information, Prosecutor's Information or a Misdemeanor Complaint (CPL §170.15). Since a criminal action is not commenced until an Information is filed, one cannot seek to have the matter removed absent the filing of the Information.

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[2] In the record before us, the supporting depositions are not attached to each Information.

[3] These charges cannot be commenced by a Simplified Traffic Information, Simplified Parking Information, Simplified Environmental Conservation Information, Prosecutor's Information, Misdemeanor Complaint or Felony Complaint. Since there was no prior conviction that the dog was a dangerous dog under Agriculture & Markets Law §121, the dangerous dog charge in 2006 would not be a misdemeanor.

[4] The Information commences a criminal action only when filed with the local criminal court (*see People v. Quiles*, 179 Misc2d 59, 63, 683 NYS2d 775, 779 [Crim Ct NY Co 1998]).

An appearance ticket (defined in CPL §150.10) is not an Information. It serves solely as a notice to appear and does not commence a criminal action (Preiser, Practice Commentary, McKinney's Cons Laws of NY, Book 11A, CPL §150.10). The public servant who filed the appearance ticket is required to file the same with the court at or prior to the court date (CPL §150.50). An appearance ticket is merely an invitation to appear, and the filing of the accusatory instrument, not the appearance ticket, gives the lower court jurisdiction.[5]

Further, an appearance ticket is not an Information as it fails to contain factual allegations which, if true, would establish every element of the offense charged and the defendant's commission thereof. A prosecution of a violation of the town's Dog Control Law necessarily presupposes a criminal action which must be commenced by the filing of a valid and sufficient accusatory instrument in order for the local criminal court to obtain jurisdiction.

Here, respondent did not waive her right to be prosecuted by an Information, and the record reveals that rather than attempting to avoid prosecution (which, as a defendant, she had a right to do), respondent actually helped assist the ACO in moving the case forward. As noted above, on November 8, 2009, as a courtesy, she advised the ACO by email that she could not ask the County Court Judge to transfer the case but asked the ACO to stop by that week, stating, "I'll explain when you come in. It's an easy fix." The appearance ticket did not provide the lower court with jurisdiction

[5] *People v. Coore*, 149 Misc2d 864, 865, 566 NYS2d 992, 993 (Yonkers City Ct 1991).

to render a judgment of conviction or even to arraign the defendant.[6]

It is my opinion that advising the ACO to file an Information charging respondent and her sons with the violation referred to in the appearance tickets should be viewed as a significant mitigating factor. This should be the duty of the prosecutor or Town Attorney. Without respondent's proactive assistance, the case could not have moved forward.

With respect to the absence of a file or docket number for the matters, it must be noted that the appearance ticket, without being accompanied by an Information, is not a document which would create or cause the court or its clerk to create a file. Where no accusatory instrument is filed on or before its return date, many courts return the appearance ticket to the officer or merely place the ticket in a dead file, as the court lacks jurisdiction without the filing of the accusatory instrument. Apparently this is what respondent did with respect to the 2006 matters. Further, as noted above, respondent understood that the matters could not be transferred in the absence of an Information, which explains the absence of a transfer order or a request for removal to another court. Therefore, in my view, the absence of these records should not be viewed as evidence of misconduct.

I know of no rule which requires the court to teach the prosecutor how to prosecute a case. It is my opinion that, with respect to the 2006 appearance tickets, the court's failure to advise the ACO that he was required to file an Information should not

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[6] *People v. Roslyn Sephardic Center*, 17 Misc2d 74, 847 NYS2d 332 (Sup Ct App Term 2d Dept 2007).

be raised to the level of actionable misconduct, nor is it exacerbating. Neither the court nor a defendant is required to advise a prosecutor how to obtain jurisdiction in the local criminal court. Accordingly, since the gist of Charge II seems to be respondent's alleged failure to transfer the matters and the absence of a file and other records, it is my opinion the charge should not be sustained.

Furthermore, from the record I do not know whether the ACO, a Town Attorney or the District Attorney prosecutes the charges in the Princetown Town Court or the Duanesburg Town Court, as the record and the Agreed Statement of Facts are silent on this matter.

There is no doubt that a portion of respondent's letter to the justices of the Town of Duanesburg contained *ex parte* communications. However, in my view the second paragraph of the letter does not clearly have the import assigned in the dissents of either Mr. Cohen or Mr. Emery. Under the CPL, the appearance ticket must be served personally, rather than being taped to a door, left at one's office, or slid under a window (CPL §150.40[2]).[7] If the recipient (defendant) does not appear in court, then the process must continue with the defendant being personally served with either a summons or an appearance ticket, since a defendant's failure to respond even to a properly served appearance ticket does not subject him to any adverse action in the case pending against

[7] *People v. Giusti*, 176 Misc2d 377, 381, 673 NYS2d 824, 827 (Crim Ct NY Co 1998); *People v. Gross*, 148 Misc2d 232, 239, 560 NYS2d 227, 233 (Crim Ct Kings Co 1990).

him.[8] While respondent should not have presented the information regarding how the appearance ticket was served to the Duanesburg judges in this manner, she may well have intended it simply as an explanation, should she or her son have chosen not to appear in court on the new return date, or to indicate that she would voluntarily appear in court and permit herself to be arraigned, thus waiving the improper service.

Violations of a town Dog Control Law generally can be alleged against either the owner of the dog or the harborer of the dog. While it may not be unusual for the ACO to charge both and then have one party communicate with the ACO indicating that he or she is the dog owner as opposed to the other party charged, respondent's statement ("I am hopeful of getting my named removed from the informations regarding my other son Matthew's dog, Sophie") can too easily have been misconstrued. While respondent might not have intended to affect the outcome of her case by such a communication, she should have been mindful that her statement could have been construed as an attempt to influence the court to whom the matter was assigned to dismiss the charges against her upon yet unproven facts, as opposed to an intended communication with the ACO for a reasonable purpose. Correspondingly, I view respondent's statement that she was unnecessarily named on the appearance ticket and Information not as a clear request that the court dismiss the charge, but rather as an explanation that the dog was registered to her son, a fact which is undisputed. Since it would be up to the ACO and not the court to amend the Information accordingly, the

[8] *People v. Byfield*, 131 Misc2d 884, 886, 502 NYS2d 346, 348 (Crim Ct NY Co 1986). In fact, the only potential consequence of failing to appear in response to a properly served appearance ticket would be prosecution pursuant to Penal Law §215.58 (*Id.*, fn 2).

prosecution would have continued and the issue of the registration ultimately determined.

For the foregoing reasons, I concur that the appropriate sanction is censure while disagreeing with certain stipulated facts and conclusions in the Agreed Statement of Facts and in the Determination.

Dated: August 20, 2012

Richard A. Stoloff, Esq., Member
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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Pursuant to Section 44, subdivision 4,
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Schenectady County.

DISSENTING OPINION
BY MR. COHEN

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The majority has determined that the appropriate sanction for respondent's conduct is public censure. At day's end, it may well be that the majority is correct and I would concur in that sanction. Nonetheless, without further development of the record addressed to respondent's intent and based solely upon the Stipulation between the parties, I am unable to do so.

To my mind, the critical issue is the precise intent of respondent when she, albeit belatedly, recused herself from the companion complaints against herself and her sons and transferred those complaints by letter to the two judges of Duanesburg Town Court. In so doing, on January 26, 2010 on Princetown Town Court letterhead, she wrote the following without copying the Animal Control Officer ("ACO") who issued the tickets:

> I have enclosed paperwork and ORDER transferring the Dog violations to your town. Since the alleged violations have named my sons on this matter, I have recused myself from

this case. I have enclosed a copy of the Animal Control Law for the Town of Princetown and all necessary paperwork relative to this case.

I would like you to be aware, however, that service was not complete, due to the appearance tickets being left at the house, taped to the door on the case involving my son, Mark Van Woeart and his dog Hanna. The appearance tickets were left at my office slid under my window. I am hopeful of getting my name removed from the informations regarding my other son Matthew's dog, Sophie. She is registered to him and I feel I was unnecessarily named on the appearance ticket and information.

Contact me if you need anything further. (Emphasis added.)

The majority has accepted that respondent's purpose in doing so was wrongful. On this issue, the parties stipulated -- and the determination accepts -- that the statements contained in the letter "were *ex parte* communications to the transferee judges, expressed her biased judicial opinion on a matter from which she had recused herself, and were improper" (Determination, par. 20).

It may be that to gain that Stipulation, both sides had to compromise somewhat – the Commission staff not obtaining from respondent a stipulated admission that respondent actually intended to influence the outcome of the proceedings against respondent and her sons, and respondent not obtaining a stipulated admission from the Commission that respondent merely intended a formal, on the record, statement to the newly assigned judges(s) of her position as a litigant. The process of obtaining a stipulation to deal with somewhat disputed circumstances and events often requires a give and take between the litigants which sometimes leaves certain relevant but nuanced facts

or conclusions on the cutting room floor.

Now, it may well be that in writing her letter, respondent was actually attempting to communicate *pro se* on behalf of her sons and herself, and simply chose an extremely poor way in which to do so. Her course of action would not have been ideal, to be sure, but that may have been her true motivation.

On the other hand, perhaps respondent simply, and in raw fashion, tried to get the letter's recipients to see her as a judge of coordinate jurisdiction who should (euphemistically) be accorded a "favor" that, pure and simple, would be simply unavailable to someone without robes. The fact that she communicated in a writing that would or at least could become part of a court record undermines the notion that her action was corrupt (as proposed by Commissioner Emery); "corrupt" *ex parte* communications are typically made verbally.

In my judgment, simply looking at a letter written by a respondent in cold type does not allow the Commission, or at least me, the ability to truly know what motivated respondent in those few brief moments in which she decided to author the offending letter and executed on her intention.

Most will agree that one of the most disturbing forms of judicial misconduct that warrants sanction is conduct intended to personally benefit the judge who commits it. Without the answer to the pivotal question which the stipulated facts do not answer to my satisfaction – *i.e.,* whether respondent was transparently trying to use her judgeship to improperly (or perhaps, corruptly) influence other judges to shortcut and actually undermine the judicial process in her (and her family's) favor – I am unable to determine

whether the recommended sanction of public censure is the appropriate one.[1]

Accordingly, I respectfully dissent for the limited purpose of rejecting the Stipulation of Facts as presently constructed, opting instead for a factual hearing limited to the testimony of respondent on her intent in writing her letter (and any testimony she might wish to proffer at a hearing bearing on that intent).

Dated: August 20, 2012

Joel Cohen, Esq., Member
New York State
Commission on Judicial Conduct

[1] At the same time, I see no need, in dissent, for the more extravagant words or sentiments expressed by my colleague in dissent to critique the majority's judgment in endorsing the sanction of public censure, respondent's mothering skills, or a supposed disparity in upstate versus downstate justice.

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

MICHELLE A. VAN WOEART,

a Justice of the Princetown Town Court,
Schenectady County.

DISSENTING OPINION
BY MR. EMERY

- -

Paragraph 21 of the Agreed Statement, which the majority has accepted in its determination (par. 20), characterizes the central misconduct at issue in this case as follows:

> Respondent acknowledges that the statements contained in her January 26th letter were *ex parte* communications to the transferee judges, expressed her biased judicial opinion on a matter from which she had recused herself, and were improper.

The problem is that this description of the misconduct here is sanitized with legal jargon of which George Orwell would be envious. Were it to resemble what really *happened* in this case, I might not dissent. But the facts, even as presented in the Agreed Statement, when deciphered for what they really mean, provide a clear picture that demonstrates that respondent Van Woeart's actions were far more malicious and corrosive of the judicial process than the determination conveys.

In her *ex parte* letter to the judges of the Duanesburg Town Court, to whom she was transferring the cases in which she and her sons were named as defendants, respondent did two things which the majority ignores in its determination. First, in response to the tickets against her and her two sons for Dog Running At Large, respondent – the judge before whom these charges were originally returnable – intentionally incriminated her sons in an effort to exonerate herself. In writing to the judges to whom she was transferring a case she should have never touched in the first place, she threw her sons under the proverbial bus. She specifically informed the transferee judges that "Hanna" was her son Mark's dog and that "Sophie" was her son Matthew's (Agreed Statement, par. 20). Though she had been named by the Animal Control Officer (ACO), she was attempting to have her name removed, *ex parte,* from the accusations by implicating her children.

Second, she pointedly urged, *ex parte,* the transferee judge to dismiss the charges against her. By providing information that incriminated her sons, she was "[h]opeful of getting my name removed from the informations" because "I was unnecessarily named on the appearance ticket and information" (Agreed Statement, par. 20). She also told the transferee judges, *ex parte*, that the service of the tickets was legally deficient.

This sort of bald-faced, corrupt behavior should not be clothed in bland, obfuscatory language. Incriminating your children to benefit yourself in your official judicial capacity does qualify, in the nether world of legalism, as "express[ing] her biased judicial opinion," which is "improper" (Determination at pp. 12-13). But that is obtuse.

We have an obligation to call it what it was – corrupt. Respondent was using her judgeship for her personal benefit – to avoid the legal consequences of her alleged unlawful conduct. It is the moral and ethical equivalent, in my view, of offering the transferee judges a bribe to drop her charges. Perhaps it is even worse because she was using her official position not only to benefit herself, but to do so by incriminating others – her children.

I am unpersuaded that there can be any mitigating spin on such blatant misconduct. Commissioner Stoloff's circumlocutions about the applicable procedures which he thinks mitigate other aspects of Van Woeart's misconduct do not address this central point. Commissioner Cohen's dissent essentially agrees with me employing homogenized language. The fact that the underlying charges against Van Woeart were of a relatively minor nature is of no significance. The corruption is the use of judicial office for personal benefit – an attempt to avoid the consequences of the charges against her – no matter how trivial those charges and consequences may have been. *See Matter of Schilling*, 2013 Annual Report ___ (May 8, 2012) (judge removed for misconduct related to the disposition of two Speeding tickets). Moreover, it is clear that in her *ex parte* letter, respondent was lobbying privately for a favorable result. In her cover letter sending the case to another court, there was no need for her to describe why the service of the tickets was deficient or why she should not have been named as a defendant, and any claim that she was merely informing the transferee court of legal issues she would raise in the future is simply more obfuscation. Notably, she did not copy the letter to the ACO

who had issued the tickets, or even notify the ACO that the cases had been sent to the Duanesburg court.

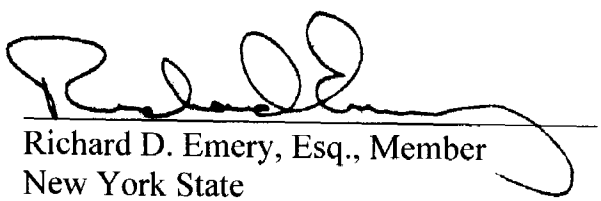
Nor does Van Woeart's status as a non-lawyer entitle her to lenience. As I have previously written, a two-tier system of disciplinary sanctions, in which non-lawyer justices are treated with comparative lenience, is anathema to a fair-minded system of justice and equal treatment under the law. *Matter of Menard*, 2011 Annual Report 126 (Emery Dissent). The Court of Appeals has agreed with this view (*Matter of Roberts*, 91 NY2d 93, 97 [1997]; *Matter of Fabrizio*, 65 NY2d 275, 277 [1985]; *see also Matter of VonderHeide*, 72 NY2d 658, 660 [1988] ["Ignorance and lack of competence do not excuse violations of ethical standards"). Non-lawyer judges such as Van Woeart cannot get a pass because they "don't get it." There is no "Upstate Justice" and "Downstate Justice"; there is justice. But this Commission continues to accord undue lenience to non-lawyer judges who engage in stupid, but nonetheless corrupt, conduct which tramples due process in their communities.

Three meetings ago we voted to remove a judge who is a lawyer for similar ticket fixing shenanigans. *Matter of Schilling*, *supra*. This case is comparable to *Schilling* in several respects, including that records pertaining to the matters in which the judge acted improperly are missing from both judges' courts. In other respects, the misconduct presented here is arguably worse. Not only did Van Woeart attempt to fix a ticket, but she also had record-keeping violations related to these cases (all the more inexcusable since she is also the court clerk), and she unduly delayed her recusal for reasons that are unexplained in the record presented to us. Moreover, the record shows

that several years earlier a ticket issued to Van Woeart for a similar violation also suspiciously disappeared from the court records.

Why the majority has decided to minimize the seriousness of Van Woeart's misconduct totally escapes me. Certainly no one has explained to me what I am missing and why she should continue as a judge, given the plain misconduct she has admitted. Consequently, I vote to reject the Agreed Statement. I believe that the matter should proceed to a hearing at which respondent will get the due process she does not seem to understand, even for her own children.

Dated: August 20, 2012



Richard D. Emery, Esq., Member
New York State
Commission on Judicial Conduct