

TENTH ANNUAL REPORT

March 1985

New York State
Commission on Judicial Conduct



1985 ANNUAL REPORT
OF THE
NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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To the Governor, the Chief Judge of the Court of Appeals
and the Legislature of the State of New York:

Pursuant to Section 42, paragraph 4, of the Judiciary
Law of the State of New York, the New York State
Commission on Judicial Conduct respectfully submits
this annual report of its activities. The report
covers the period from January 1, 1984, through
December 31, 1984.

Respectfully submitted,

Lillemor T. Robb, Chairwoman,
On Behalf of the Commission

March 1, 1985
New York, New York

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INTRODUCTION

The State Commission on Judicial Conduct is the disciplinary agency constitutionally designated to review complaints of judicial misconduct in New York State. The Commission's objective is to enforce the obligation of judges to observe high standards of conduct while safeguarding their right to decide cases independently.

By offering a forum for citizens with conduct-related complaints, the Commission seeks to insure compliance with established standards of ethical judicial behavior, thereby promoting public confidence in the integrity and honor of the judiciary. The Commission does not act as an appellate court, does not make judgments as to the merits of judicial decisions or rulings, and does not investigate complaints that judges are either too lenient or too severe in criminal cases.

All 50 states and the District of Columbia have adopted a commission system to meet these goals.

In New York, a temporary commission created by the Legislature in 1974 began operations in January 1975. It was made permanent in September 1976 by a constitutional amendment. A second constitutional amendment, effective on April 1, 1978, created the present Commission with expanded membership and jurisdiction.¹ This is the Commission's tenth Annual Report.

¹For the purpose of clarity, the Commission which operated from September 1, 1976, through March 31, 1978, will henceforth be referred to as the "former" Commission. A description of the temporary and former commissions, their composition and workload, is appended.

STATE COMMISSION ON JUDICIAL CONDUCT

Authority

The State Commission on Judicial Conduct has the authority to receive and review written complaints of misconduct against judges, initiate complaints on its own motion, conduct investigations, file Formal Written Complaints and conduct formal hearings thereon, subpoena witnesses and documents, and make appropriate determinations as to dismissing complaints or disciplining judges within the state unified court system. This authority is derived from Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law of the State of New York.

The Commission does not act as an appellate court. It does not review judicial decisions or alleged errors of law, nor does it issue advisory opinions, give legal advice or represent litigants. When appropriate, it refers complaints to other agencies.

By provision of the State Constitution (Article VI, Section 22), the Commission:

shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system...and may determine that a judge or justice be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge or justice be retired for mental or physical disability preventing the proper performance of his judicial duties.

The types of complaints that may be investigated by the Commission include improper demeanor, conflicts of interest, intoxication, bias, prejudice, favoritism, gross neglect, corruption, certain prohibited political activity and other misconduct on or off the bench.

Standards of conduct are set forth primarily in the Rules Governing Judicial Conduct (originally promulgated by the Administrative Board of the Judicial Conference and subsequently adopted by the Chief Administrator of the Courts with the approval of the Court of Appeals) and the Code of Judicial Conduct (adopted by the New York State Bar Association).

If the Commission determines that disciplinary action is warranted, it may render a determination to impose one of four sanctions, subject to review by the Court of Appeals upon timely request by the respondent-judge. If review is not requested within 30 days of service of the determination upon the judge, the determination becomes final. The Commission may render determinations to:

- admonish a judge publicly;
- censure a judge publicly;
- remove a judge from office;
- retire a judge for disability.

In accordance with its rules, the Commission may also issue a confidential letter of dismissal and caution to a judge, despite a dismissal of the complaint, when it is determined that

the circumstances so warrant. In some cases the Commission has issued such a letter after charges of misconduct have been sustained.

Procedures

The Commission convenes once a month. At its meetings, the Commission reviews each new complaint of misconduct and makes an initial decision whether to investigate or dismiss the complaint. It also reviews staff reports on ongoing matters, makes final determinations on completed proceedings, considers motions and entertains oral arguments pertaining to cases in which judges have been served with formal charges, and conducts other Commission business.

No investigation may be commenced by staff without authorization by the Commission. The filing of formal charges also must be authorized by the Commission.

After the Commission authorizes an investigation, the complaint is assigned to a staff attorney, who is responsible for conducting the inquiry and supervising the investigative staff. If appropriate, witnesses are interviewed and court records are examined. The judge may be asked to respond in writing to the allegations. In some instances the Commission requires the appearance of the judge to testify during the course of the investigation. The judge's testimony is under oath, and at least one Commission member must be present. Although such an "investigative appearance" is not a formal hearing, the judge is

entitled to be represented by counsel. The judge may also submit evidentiary data and materials for the Commission's consideration.

If the Commission finds after an investigation that the circumstances so warrant, it will direct its administrator to serve upon the judge a Formal Written Complaint containing specific charges of misconduct. The Formal Written Complaint institutes the formal disciplinary proceeding. After receiving the judge's answer, the Commission may, if it determines there are no disputed issues of fact, grant a motion for summary determination. It may also accept an agreed statement of facts submitted by the administrator and the respondent-judge. Where there are factual disputes that make summary determination inappropriate or that are not resolved by an agreed statement of facts, the Commission appoints a referee to conduct a formal hearing and report proposed findings of fact and conclusions of law. Referees are designated by the Commission from a panel of attorneys and former judges. Following the Commission's receipt of the referee's report, on a motion to confirm or disaffirm the report, both the administrator and the respondent may submit legal memoranda and present oral argument on issues of misconduct and sanction. The respondent-judge (in addition to his or her counsel) may appear and be heard at oral argument.

In deciding motions, considering proposed agreed statements of fact and making determinations with respect to misconduct and sanction, and in considering other matters

pertaining to cases in which Formal Written Complaints have been served, the Commission deliberates in executive session, without the presence or assistance of its administrator or regular staff. The clerk of the Commission assists the Commission in executive session but does not participate in either an investigative or adversarial capacity in any cases pending before the Commission.

The Commission may dismiss a complaint at any stage during the investigative or adjudicative proceedings.

When the Commission determines that a judge should be admonished, censured, removed or retired, its written determination is forwarded to the Chief Judge of the Court of Appeals, who in turn serves it upon the respondent-judge. Upon completion of service, the Commission's determination and the record of its proceedings become public. (Prior to this point, by operation of the strict provisions in Article 2-A of the Judiciary Law, all proceedings and records are confidential.) The respondent-judge has 30 days to request full review of the Commission's determination by the Court of Appeals. The Court may accept or reject the Commission's findings of fact or conclusions of law, make new or different findings of fact or conclusions of law, accept or reject the determined sanction, or make a different determination as to sanction. If no request for review is made within 30 days, the sanction determined by the Commission becomes effective.

Membership and Staff

The Commission is composed of 11 members serving four-year terms. Four members are appointed by the Governor, three by the Chief Judge of the Court of Appeals, and one each by the four leaders of the Legislature. The Constitution requires that four members be judges, at least one be an attorney, and at least two be lay persons. The Commission elects one of its members to be chairperson and appoints an administrator and a clerk. The administrator is responsible for hiring staff and supervising staff activities subject to the Commission's direction and policies.

The chairwoman of the Commission is Mrs. Gene Robb of Newtonville. The other members are: John J. Bower, Esq., of Upper Brookville; David Bromberg, Esq., of New Rochelle; E. Garrett Cleary, Esq., of Rochester; Dolores DelBello of South Salem; Victor A. Kovner, Esq., of New York City; Honorable William J. Ostrowski of Buffalo, Justice of the Supreme Court, Eighth Judicial District; Honorable Isaac Rubin of Rye, Justice of the Appellate Division, Second Department; Honorable Felice K. Shea of New York City, Justice of the Supreme Court, First Judicial District; and John J. Sheehy, Esq., of New York City. Appellate Division Justice Fritz W. Alexander, II, served as a member of the Commission until January 1985, when he was appointed to the Court of Appeals by Governor Cuomo. The Commission takes this opportunity to recognize Judge Alexander's dedicated and distinguished service as a member of the Commission.

The administrator of the Commission is Gerald Stern, Esq. The deputy administrator is Robert H. Tembeckjian, Esq. The chief attorney in Albany is Stephen F. Downs, Esq. The chief attorney in Rochester is John J. Postel, Esq. The clerk of the Commission is Albert B. Lawrence, Esq.²

The Commission has 41 full-time staff employees, including ten attorneys. A limited number of law students are employed throughout the year on a part-time basis.

The Commission's principal office is in New York City. Offices are also maintained in Albany and Rochester.

²Biographies are appended.

COMPLAINTS AND INVESTIGATIONS IN 1984

In 1984, 667 new complaints were received. Of these, 481 were dismissed upon initial review, and 186 investigations were authorized and commenced.³ As in previous years, the majority of complaints were submitted by civil litigants and by complaining witnesses and defendants in criminal cases. Other complaints were received from attorneys, judges, law enforcement officers, civic organizations and concerned citizens not involved in any particular court action. Among the new complaints were 40 initiated by the Commission on its own motion.

The Commission carried over 191 investigations and proceedings on formal charges from 1983.

Some of the new complaints dismissed upon initial review were frivolous or outside the Commission's jurisdiction (such as complaints against attorneys or judges not within the state unified court system). Many were from litigants who complained about a particular ruling or decision made by a judge in the course of a proceeding. Absent any underlying misconduct, such as demonstrated prejudice, intemperance or conflict of interest, the Commission does not investigate such matters, which belong in the appellate courts. Judges must be free to act, in

³The statistical period in this report is January 1, 1984, through December 31, 1984. Statistical analysis of the matters considered by the temporary, former and present Commissions is appended in chart form.

good faith, without fear of being investigated for their rulings or decisions.

Of the combined total of 377 investigations and proceedings on formal charges conducted by the Commission in 1984 (191 carried over from 1983 and 186 authorized in 1984), the Commission made the following dispositions in 222 cases:

- 95 matters were dismissed outright after investigations were completed.
- 53 matters involving 45 different judges were dismissed with letters of dismissal and caution. (49 of these matters were dismissed with caution upon conclusion of an investigation and 4 were issued upon conclusion of a formal proceeding.)
- 14 matters involving 12 different judges were closed upon resignation of the judge from office. (12 of these matters were closed at the investigation stage and 2 during the formal proceeding stage.)
- 28 matters involving 21 different judges were closed upon vacancy of office due to reasons other than resignation, such as the judge's retirement or failure to win re-election. (26 of these matters were closed at the investigation stage, and 2 during the formal proceeding stage.)
- 32 matters involving 24 different judges resulted in formal discipline (admonition, censure or removal from office).

One hundred fifty-five matters were pending at the end of the year.

ACTION TAKEN IN 1984

Formal Proceedings

No disciplinary sanction may be imposed by the Commission unless a Formal Written Complaint, containing detailed charges of misconduct, has been served upon the respondent-judge, and the respondent has been afforded an opportunity for a formal hearing. These proceedings fall within the confidentiality provisions of the Judiciary Law and are not public unless confidentiality is waived, in writing, by the judge.

In 1984, the Commission authorized Formal Written Complaints against 29 judges.

The confidentiality provisions of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibit public disclosure by the Commission with respect to charges served, hearings commenced or other matters, absent a waiver by the judge, until a case has been concluded and a final determination has been filed with the Chief Judge of the Court of Appeals and forwarded to the respondent-judge. Following are summaries of those matters which were completed during 1984 and made public pursuant to the applicable provisions of the Judiciary Law.

Determinations of Removal

The Commission completed twelve disciplinary proceedings in 1984 in which it determined that the judge involved be removed from office.

Matter of William G. Mayville

William G. Mayville, a justice of the Fort Covington Town Court, Franklin County, was served with a Formal Written Complaint dated February 3, 1983, alleging inter alia that he heard cases involving his relatives, issued criminal summonses to civil litigants and otherwise threatened them with arrest, entered civil judgments before trial and treated lawyers and litigants rudely. Judge Mayville filed an answer dated February 22, 1983.

A hearing was held before a referee, Francis C. LaVigne, Esq. Both sides filed papers with respect to the referee's report to the Commission. Judge Mayville did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated March 15, 1984, that Judge Mayville be removed from office. A copy of the determination is appended.

Judge Mayville requested review of the Commission's determination by the Court of Appeals but died before the Court could hear the matter. On June 12, 1984, the Court dismissed the request for review because of the judge's death, vacated the

Commission's determination and dismissed the Formal Written Complaint.

Matter of Robert W. Reese

Robert W. Reese, a justice of the Ilion Village Court, Herkimer County, was served with a Formal Written Complaint dated December 27, 1983, alleging that he attempted to deny a trial to a defendant and failed to cooperate with a Commission investigation. Judge Reese did not answer the Formal Written Complaint.

The Commission granted the administrator's motion for summary determination and found misconduct established. Judge Reese did not submit a memorandum as to appropriate sanction and did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated March 22, 1984, that Judge Reese be removed from office. A copy of the determination is appended.

Judge Reese did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on May 15, 1984.

Matter of Harold W. Katz

Harold W. Katz, a judge of the Family Court, Warren County, was served with a Formal Written Complaint dated April 1, 1983, alleging that he had practiced law while sitting as a full-time judge, failed to meet his personal financial

obligations, solicited and obtained a loan from a lawyer who appeared in his court, engaged in improper business activities, and gave misleading testimony before a member of the Commission. Judge Katz filed an answer dated April 21, 1983. Judge Katz was served with a Supplemental Formal Written Complaint dated May 11, 1983, making similar allegations. Judge Katz answered the Supplemental Formal Written Complaint on May 24, 1983.

A hearing was held before a referee, Margrethe R. Powers, Esq. Both sides filed motion papers with respect to the referee's report to the Commission.

Judge Katz was served with a second Formal Written Complaint dated October 28, 1983, alleging that he had failed to repay a loan to a former client and that he had failed to cooperate with a Commission investigation. Judge Katz did not answer the second Formal Written Complaint.

The Commission granted the administrator's motion for summary determination and found misconduct established with respect to the second Formal Written Complaint.

With respect to sanction, the Commission received memoranda from Judge Katz and the administrator. Judge Katz did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated March 30, 1984, that Judge Katz be removed from office. A copy of the determination is appended.

Judge Katz did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on May 15, 1984.

Matter of Robert P. Reeves

Robert P. Reeves, a judge of the Family Court, Rensselaer County, was served with a Formal Written Complaint dated June 21, 1982, alleging that, over a period of years, he failed to perform properly his judicial duties and engaged in a course of conduct prejudicial to the administration of justice. Judge Reeves filed an answer dated July 12, 1982.

A hearing was held before a referee, the Honorable J. Clarence Herlihy. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Reeves appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated April 9, 1984, that Judge Reeves be removed from office.

Judge Reeves requested review of the Commission's determination by the Court of Appeals. On October 11, 1984, the Court of Appeals accepted the Commission's determination and ordered Judge Reeves' removal from office. 63 NY2d 105 (1984).

Matter of Paul Moulton

Paul Moulton, a justice of the Ossian Town Court, Livingston County, was served with a Formal Written Complaint

dated October 26, 1983, alleging that he had failed to report cases and remit moneys to the state comptroller, notwithstanding that he had been previously cautioned by the Commission concerning his recordkeeping habits. Judge Moulton did not answer the Formal Written Complaint.

The Commission granted the administrator's motion for summary determination and found misconduct established. Judge Moulton did not submit a memorandum as to appropriate sanction and did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated April 13, 1984, that Judge Moulton be removed from office. A copy of the determination is appended.

Judge Moulton did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on August 28, 1984.

Matter of James H. Reedy

James H. Reedy, a justice of the Galway Town Court and Galway Village Court, Saratoga County, was served with a Formal Written Complaint dated April 20, 1983, alleging certain improprieties with respect to a traffic case pending against his son. Judge Reedy filed an answer dated May 13, 1983.

A hearing was held before a referee, the Honorable Morris Aarons. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Reedy and his counsel appeared for oral argument.

The Commission filed with the Chief Judge its determination dated June 29, 1984, that Judge Reedy be removed from office. A copy of the determination is appended.

Judge Reedy requested review of the Commission's determination by the Court of Appeals, where the matter is pending.

Matter of Steve A. Skramko

Steve A. Skramko, a justice of the Warren Town Court, Herkimer County, was served with a Formal Written Complaint dated January 25, 1984, alleging that he requested special consideration for two defendants appearing in other courts. Judge Skramko filed an answer dated February 13, 1984.

A hearing was held before a referee, H. Wayne Judge, Esq. The administrator filed motion papers with respect to the referee's report to the Commission. Judge Skramko neither filed motion papers nor appeared for oral argument.

The Commission filed with the Chief Judge its determination dated August 23, 1984, that Judge Skramko be removed from office. A copy of the determination is appended.

Judge Skramko did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on October 2, 1984.

Matter of Thomas R. Mills

Thomas R. Mills, a justice of the Schroepel Town Court, Oswego County, was served with a Formal Written Complaint dated February 23, 1984, alleging that he offered a favorable disposition to a female defendant on a criminal charge in exchange for sexual favors, and failed to perform properly his administrative and adjudicative responsibilities. Judge Mills filed an answer dated March 16, 1984.

A hearing was held before a referee, the Honorable John S. Marsh. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Mills did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated August 30, 1984, that Judge Mills be removed from office. A copy of the determination is appended.

Judge Mills did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on November 1, 1984.

Matter of Robert C. Newman

Robert C. Newman, a justice of the Arcade Town Court and Arcade Village Court, Wyoming County, was served with a Formal Written Complaint dated May 18, 1984, alleging certain improprieties with respect to depositing, reporting and

remittance requirements. Judge Newman did not answer the Formal Written Complaint.

The Commission granted the administrator's motion for summary determination and found misconduct established. Judge Newman did not submit a memorandum as to appropriate sanction and did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated September 28, 1984, that Judge Newman be removed from office. A copy of the determination is appended.

Judge Newman did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on November 8, 1984.

Matter of Charles D. Wangler

Charles D. Wangler, a justice of the Oswegatchie Town Court, St. Lawrence County, was served with a Formal Written Complaint dated June 27, 1984, alleging certain improprieties with respect to depositing, reporting and remittance requirements, and that he twice appeared to be intoxicated while performing his judicial duties. Judge Wangler did not answer the Formal Written Complaint.

The Commission granted the administrator's motion for summary determination and found misconduct established. Both sides submitted memoranda as to appropriate sanction. Judge Wangler did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated September 28, 1984, that Judge Wangler be removed from office. A copy of the determination is appended.

Judge Wangler did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on November 16, 1984.

Matter of William W. Seiffert

William W. Seiffert, a judge of the District Court, Nassau County, was served with a Formal Written Complaint dated November 30, 1983, alleging that he sought special consideration on behalf of three defendants. Judge Seiffert filed an answer dated December 19, 1983.

A hearing was held before a referee, Gilbert A. Holmes, Esq. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Seiffert appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated October 26, 1984, that Judge Seiffert be removed from office. A copy of the determination is appended. A motion to reconsider the determination was denied by the Commission on December 18, 1984.

Judge Seiffert requested review of the Commission's determination by the Court of Appeals, where the matter is pending.

Matter of Ronald L. Fabrizio

Ronald L. Fabrizio, a justice of the New Windsor Town Court, Orange County, was served with a Formal Written Complaint dated January 4, 1984, alleging that he sought special consideration on behalf of two defendants in other courts, that he was undignified and discourteous to a defendant in his court, that he altered a transcript, that he presided over a case involving his dentist, that he used racial epithets and that he falsely testified before a Commission member. Judge Fabrizio filed an answer dated January 12, 1984.

A hearing was held before a referee, the Honorable Richard L. Baltimore, Jr. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Fabrizio and his counsel appeared for oral argument.

The Commission filed with the Chief Judge its determination dated December 26, 1984, that Judge Fabrizio be removed from office. A copy of the determination is appended.

Judge Fabrizio requested review of the Commission's determination by the Court of Appeals, where the matter is pending.

Determinations of Censure

The Commission completed five disciplinary proceedings in 1984 in which it determined that the judges involved should be censured.

Matter of Donald H. Loper

Donald H. Loper, a justice of the Canisteo Village Court, Steuben County, was served with a Formal Written Complaint dated March 2, 1983, alleging that he refused to allow a litigant to file a civil claim in his court on the basis of an ex parte communication by the judge with the prospective defendant. Judge Loper filed an answer dated March 21, 1983.

A hearing was held before a referee, W. David Curtiss, Esq. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Loper appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated January 25, 1984, that Judge Loper be censured. A copy of the determination is appended.

Judge Loper did not request review of the Commission's determination, which thus became final.

Matter of Thomas S. Agresta

Thomas S. Agresta, a justice of the Supreme Court, Eleventh Judicial District, Queens County, was served with a Formal Written Complaint dated October 18, 1983, alleging that

he made an epithetical remark with racial connotations during the sentencing of a defendant. Judge Agresta filed an answer dated November 7, 1983.

A hearing was held before a referee, Edward Brodsky, Esq. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Agresta and his counsel appeared for oral argument.

The Commission filed with the Chief Judge its determination dated July 5, 1984, that Judge Agresta be censured. A copy of the determination is appended.

Judge Agresta requested review of the Commission's determination by the Court of Appeals, where the matter is pending.

Matter of Martin B. Klein

Martin B. Klein, a judge of the New York City Civil Court, Bronx County, was served with a Formal Written Complaint dated January 11, 1984, alleging that he altered a signed decision in a case after receiving ex parte communications from the defendant's counsel. Judge Klein filed an answer dated February 14, 1984, and an amended answer dated March 8, 1984.

A hearing was held before a referee, Walter Gellhorn, Esq. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Klein and his counsel appeared for oral argument.

The Commission filed with the Chief Judge its determination dated August 30, 1984, that Judge Klein be censured. A copy of the determination is appended. A motion to reconsider the determination was denied by the Commission on October 19, 1984.

Judge Klein requested review of the Commission's determination by the Court of Appeals, then withdrew the request, and the Commission's determination thus became final.

Matter of John J. Fromer

John J. Fromer, a judge of the County Court, Greene County, was served with a Formal Written Complaint dated February 16, 1984, alleging that he made an improper comment to a newspaper reporter on a pending rape case. Judge Fromer did not answer the Formal Written Complaint.

Judge Fromer, his counsel and the administrator entered into an agreed statement of facts on April 26, 1984. The Commission approved the agreed statement. The administrator filed a memorandum with respect to appropriate sanction. Judge Fromer did not file a memorandum or appear for oral argument.

The Commission filed with the Chief Judge its determination dated October 25, 1984, that Judge Fromer be censured. A copy of the determination is appended.

Judge Fromer requested review of the Commission's determination by the Court of Appeals, then withdrew the request, and the Commission's determination thus became final.

Matter of Louis Grossman

Louis Grossman, a judge of the New York City Civil Court, New York County, was served with a Formal Written Complaint dated December 2, 1983, alleging that he mistreated a child he was interviewing in connection with a matrimonial proceeding. Judge Grossman filed an answer dated January 10, 1984.

The Commission denied a motion to dismiss the Formal Written Complaint on February 10, 1984. A hearing was held before a referee, the Honorable James D. Hopkins. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Grossman and his counsel appeared for oral argument.

The Commission filed with the Chief Judge its determination dated November 20, 1984, that Judge Grossman be censured. A copy of the determination is appended.

Judge Grossman did not request review of the Commission's determination, which thus became final.

Determinations of Admonition

The Commission completed seven disciplinary proceedings in 1984 in which it determined that the judge involved should be admonished.

Matter of Joseph S. Calabretta

Joseph S. Calabretta, a justice of the Supreme Court, Eleventh Judicial District, Queens County, was served with a Formal Written Complaint dated June 27, 1983, alleging that he interceded on behalf of a relative in a case pending before another judge. Judge Calabretta filed an answer dated July 5, 1983.

Judge Calabretta, his counsel and the administrator entered into an agreed statement of facts on December 7, 1983. The Commission approved the agreed statement. Both sides submitted memoranda with respect to appropriate sanction. Judge Calabretta and his counsel appeared for oral argument.

The Commission filed with the Chief Judge its determination dated April 11, 1984, that Judge Calabretta be admonished. A copy of the determination is appended.

Judge Calabretta did not request review of the Commission's determination, which thus became final.

Matter of Hansel L. McGee

Hansel L. McGee, a judge of the New York City Civil Court, Bronx County, was served with a Formal Written Complaint

dated June 14, 1983, alleging that he interceded on behalf of a relative in a case pending before another judge. Judge McGee filed an answer dated June 29, 1983.

A hearing was held before a referee, Robert L. Ellis, Esq. Both sides filed motion papers with respect to the referee's report to the Commission. Judge McGee did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated April 12, 1984, that Judge McGee be admonished. A copy of the determination is appended.

Judge McGee did not request review of the Commission's determination, which thus became final.

Matter of Claude E. Dougherty

Claude E. Dougherty, a justice of the Clymer Town Court, Chautauqua County, was served with a Formal Written Complaint dated August 10, 1983, alleging that he failed for a year to return to a defendant bail money to which the defendant was entitled. Judge Dougherty did not answer the Formal Written Complaint.

Judge Dougherty, his counsel and the administrator entered into an agreed statement of facts on December 27, 1983. The Commission approved the agreed statement. Both sides filed memoranda with respect to appropriate sanction. Judge Dougherty did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated April 16, 1984, that Judge Dougherty be admonished. A copy of the determination is appended.

Judge Dougherty did not request review of the Commission's determination, which thus became final.

Matter of Frank P. DeLuca

Frank P. DeLuca, a justice of the Supreme Court, Tenth Judicial District, Suffolk County, was served with a Formal Written Complaint dated August 15, 1983, alleging inter alia that he improperly intervened in a felony proceeding before another judge. Judge DeLuca filed an answer dated September 16, 1983.

A hearing was held before a referee, Robert MacCrate, Esq. Both sides filed motion papers with respect to the referee's report to the Commission. Judge DeLuca and his counsel appeared for oral argument.

The Commission filed with the Chief Judge its determination dated July 2, 1984, that Judge DeLuca be admonished. A copy of the determination is appended.

Judge DeLuca requested review of the Commission's determination by the Court of Appeals. The request was dismissed by the Court on October 15, 1984, because Judge DeLuca did not pursue the matter further, and the Commission's determination thus became final.

Matter of John F. Innes, Jr.

John F. Innes, Jr., a justice of the Stafford Town Court, Genesee County, was served with a Formal Written Complaint dated August 3, 1983, alleging that he drove an automobile while he was intoxicated and that he was convicted of Driving While Ability Impaired. Judge Innes filed an answer dated September 8, 1983.

A hearing was held before a referee, the Honorable John J. Darcy. Both sides filed papers with respect to the referee's report to the Commission. Judge Innes did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated July 6, 1984, that Judge Innes be admonished. A copy of the determination is appended.

Judge Innes did not request review of the Commission's determination, which thus became final.

Matter of Joseph M. Darby

Joseph M. Darby, a justice of the Ossining Town Court, Westchester County, was served with a Formal Written Complaint dated September 23, 1983, alleging that he permitted his law partner to appear in his court. Judge Darby filed an answer dated October 14, 1983. Judge Darby was served with a second Formal Written Complaint on January 13, 1984, alleging that he presided over a case in which the defendant was a former client.

Judge Darby answered the second Formal Written Complaint on January 31, 1984.

Judge Darby, his counsel and the administrator entered into an agreed statement of facts on March 29, 1984. The Commission approved the agreed statement. Both sides submitted memoranda with respect to appropriate sanction. Judge Darby did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated August 30, 1984, that Judge Darby be admonished. A copy of the determination is appended.

Judge Darby did not request review of the Commission's determination, which thus became final.

Matter of Joseph E. Myers

Joseph E. Myers, a justice of the Norfolk Town Court, St. Lawrence County, was served with a Formal Written Complaint dated February 18, 1983, alleging inter alia that he displayed a dart board in his chambers and represented that it was used to determine fines. Judge Myers filed an answer dated March 7, 1983.

A hearing was held before a referee, Martin M. Goldman, Esq. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Myers appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated October 24, 1984, that Judge Myers be admonished. A copy of the determination is appended.

Judge Myers did not request review of the Commission's determination, which thus became final.

Dismissed Formal Written Complaints

The Commission disposed of ten Formal Written Complaints in 1984 without rendering public discipline.

In two of these ten matters, the Commission determined that the judges' misconduct was not established, dismissed the Formal Written Complaints and issued each of the judges involved a confidential letter of dismissal and caution.

In two other cases, the Commission determined that the judges' misconduct had been established but that public discipline was not warranted, dismissed the Formal Written Complaints and issued each of the judges involved a confidential letter of dismissal and caution.

In two cases, the Commission found that the judge involved had committed misconduct but that, upon the judge's resignation from office, further action was not warranted.

In another case, the Commission dismissed the Formal Written Complaint, sua sponte, after finding that it was without jurisdiction since the judge had been removed from office by the Court of Appeals in another matter.

In two cases, after hearings before referees, the Commission found that misconduct was not established and dismissed the Formal Written Complaints.

In the remaining case, the judge died before the matter could be brought to a hearing.

Letters of Dismissal and Caution

Pursuant to Commission rule, 22 NYCRR 7000.1(1), a "letter of dismissal and caution" constitutes the Commission's written confidential suggestions and recommendations to a judge.

Where the Commission determines that the misconduct would not warrant public discipline, the Commission, by issuing a letter of dismissal and caution, can privately call a judge's attention to de minimis violations of ethical standards which should be avoided in the future. Such a communication is valuable since it is the only method by which the Commission may caution a judge as to his or her conduct without making the matter public.

Should the conduct addressed by the letter of dismissal and caution continue unabated or be repeated, the Commission may authorize an investigation on a new complaint which may lead to a Formal Written Complaint and further disciplinary proceedings.

In 1984, 45 letters of dismissal and caution were issued by the Commission, two of which were issued after formal charges had been sustained and determinations made that the

judges involved had engaged in misconduct. The 45 letters addressed various types of conduct.

For example, several judges were cautioned for being discourteous. Several others were cautioned with regard to their failure to abide by reporting and remitting requirements vis-a-vis fines, bail, court fees and other monies collected in an official capacity.

Two judges were cautioned for repeatedly parking their cars illegally for lengthy periods in no-parking zones and displaying placards that identified them as judges on official business. (The initial complaint had been made by an area resident who questioned why a judge would have special privileges to park on a street on which all parking is prohibited.)

A number of judges were cautioned for having engaged in inappropriate political activity. For example, one judge (who was not a candidate for judicial office at the time) attended a party caucus at which the party's candidate for a certain office was decided. Several other judges (who were candidates for judicial office) were cautioned for making or permitting their campaign committees to make contributions to political parties.

Since April 1, 1978, the Commission has issued 256 letters of dismissal and caution, 21 of which were issued after formal charges had been sustained and determinations made that the judges involved had engaged in misconduct.

Matters Closed Upon Resignation

Twelve judges resigned in 1984 while under investigation or under formal charges by the Commission.

Since 1975, 126 judges have resigned while under investigation or charges by the temporary, former or present Commission.

The jurisdiction of the temporary and former commissions was limited to incumbent judges. An inquiry was therefore terminated if the judge resigned, and the matter could not be made public. The present Commission may retain jurisdiction over a judge for 120 days following a resignation. The Commission may proceed within this 120-day period, but no sanction other than removal may be determined by the Commission within such period. (When rendered final by the Court of Appeals, the "removal" automatically bars the judge from holding judicial office in the future.) Thus, no action may be taken if the Commission decides within that 120-day period following a resignation that removal is not warranted.

SUMMARY OF COMPLAINTS CONSIDERED BY THE
TEMPORARY, FORMER AND PRESENT COMMISSIONS

Since January 1975, when the temporary Commission commenced operations, 6812 complaints of judicial misconduct have been considered by the temporary, former and present Commissions.

Of the 6812 complaints received since 1975, 4604 were dismissed upon initial review and 2208 investigations were authorized. Of the 2208 investigations authorized, the following dispositions have been made through December 31, 1984:

- 949 dismissed without action after investigation;
- 401 dismissed with caution or suggestions and recommendations to the judge;
- 153 closed upon resignation of the judge;
- 147 closed upon vacancy of office by the judge other than by resignation; and
- 403 resulted in disciplinary action.
- 155 are pending.

Of the 403 disciplinary matters noted above, the following actions have been recorded since 1975 in matters initiated by the temporary, former or present Commission⁴:

- 58 judges were removed from office;
- 3 judges were suspended without pay for six months;

⁴It should be noted that several complaints against a single judge may be disposed of in a single action. This accounts for the apparent discrepancy between the number of complaints which resulted in action and the number of judges disciplined.

- 2 judges were suspended without pay for four months;
- 139 judges have been censured publicly;
- 66 judges have been admonished publicly; and
- 59 judges have been admonished confidentially by the temporary or former Commission, which had such authority.

In addition, 126 judges resigned during investigation, upon the commencement of disciplinary proceedings or in the course of those proceedings.

REVIEW OF COMMISSION DETERMINATIONS
BY THE COURT OF APPEALS

Determinations rendered by the Commission are filed with the Chief Judge of the Court of Appeals and served by the Chief Judge on the respondent-judge, pursuant to statute. The Judiciary Law allows the respondent-judge 30 days to request review of the Commission's determination by the Court of Appeals. If review is waived or not requested within 30 days, the Commission's determination becomes final.

In 1984, the Court had before it five requests for review,⁵ one of which had been filed in 1983 and four of which were filed in 1984. Of these five matters, the Court decided two in 1984, and three are pending.

Matter of Barbara M. Sims

On May 16, 1983, the Commission determined that Barbara M. Sims, a judge of the Buffalo City Court, Erie County, be censured for certain acts of misconduct in ten cases in which the judge appeared to demonstrate favoritism to her husband (an attorney) and his clients. A charge of misconduct in an eleventh case was dismissed.

Judge Sims requested review of the Commission's determination by the Court of Appeals.

⁵Three other cases decided by the Court in January 1984 were reported on in last year's annual report: Matters of Kelso, Boulanger and Cerbone.

In its unanimous opinion dated March 29, 1984, the Court held that Judge Sims had engaged in misconduct in the ten cases as found by the Commission, and in the eleventh matter, in which Judge Sims had signed an arrest warrant in a case in which her son was the complaining witness. The Court rejected the sanction of censure determined by the Commission and removed Judge Sims from office. 61 NY2d 349 (1984).

Matter of Robert P. Reeves

On April 9, 1984, the Commission determined that Robert P. Reeves, a judge of the Family Court, Rensselaer County, be removed from office for failing, over a three-year period, to perform his judicial duties properly, and for engaging in a course of conduct prejudicial to the administration of justice, including a direction that a court clerk file falsified reports to the Office of Court Administration.

Judge Reeves requested review of the Commission's determination by the Court of Appeals.

In its opinion dated October 11, 1984, the Court accepted the Commission's determination and removed Judge Reeves from office. Two judges dissented as to the sanction only, voting that the sanction of censure was appropriate. 63 NY2d 105 (1984).

CHALLENGES TO COMMISSION PROCEDURES

The Commission's staff litigated a number of cases in state and federal courts in 1984, involving several important constitutional and statutory issues relative to the Commission's jurisdiction and procedures.

Stern v. Morgenthau

In June 1983 Gerald Stern, the administrator of the Commission, was served with a subpoena duces tecum issued by the District Attorney of New York County, requiring him to appear before a grand jury with Commission records and files pertaining to a Commission investigation of certain judges. (The Commission had previously determined not to refer the requested materials to the District Attorney's office, pursuant to Judiciary Law Section 44[10].) Mr. Stern moved in Supreme Court, New York County, to quash the subpoena duces tecum on the grounds that the requested materials are confidential under Judiciary Law Section 45. Mr. Stern's appearance before the grand jury was stayed pending determination of the motion to quash.

In a decision dated August 1, 1983, Acting Supreme Court Justice Joan B. Carey denied the motion to quash. Stating that "the investigation by the grand jury into judicial misconduct should and must be afforded the greatest possible breadth" in order to maintain the integrity of the judicial system, Judge Carey concluded that Judiciary Law Section 45 does not bar disclosure of the subpoenaed materials to the grand jury. Judge

Carey found that the statute does not reflect a "clear constitutional or legislative expression" to limit the power of a grand jury subpoena and stated that the secrecy accorded to grand jury investigations was sufficient to protect the confidentiality of the Commission's records.

On August 5, 1983, Judge Carey granted Mr. Stern's motion to renew and, with the District Attorney's consent, excluded lawyers' work product from the materials Mr. Stern was required to produce.

On appeal, the Appellate Division, First Department, unanimously affirmed in an order, issued without an opinion, dated December 1, 1983. Mr. Stern obtained leave to appeal to the Court of Appeals.

On June 12, 1984, the Court of Appeals, in a unanimous decision, reversed the Appellate Division's order and granted the motion to quash the subpoena duces tecum. Matter of Stern v. Morgenthau, 62 NY2d 331 (1984). The Court held that the confidential records of the Commission were exempt from grand jury scrutiny, notwithstanding the nonimpairment clause of the Constitution (N.Y. Const., Art. I, §6) and the broad power of the grand jury to investigate criminal activity. Noting that Sections 44, 45 and 46 of the Judiciary Law "establish a legislative scheme to insure the confidentiality of Commission records," the Court stated that the traditional powers of the grand jury must yield to the Commission's function and "the overriding constitutional concern to protect the standards of the judicial system as a

whole and to insure that none but qualified judges remain a part of it." The Court concluded:

It is obvious that judges are not exempt from criminal prosecution for their conduct. The law binds all men equally, the judges no less than the judged. The responsibilities of the commission, however, transcend the criminal prosecution of individuals. Its concern is institutional, to protect the integrity of the judiciary and thereby preserve and enhance the public's confidence in its courts. Experience teaches that the effective performance of that function necessarily requires the free flow of information to the Commission and the confidentiality of its proceedings until wrongdoing is established.

62 NY2d at 339

Sims v. Commission (Federal Court Case)

Buffalo City Court Judge Barbara M. Sims, the Buffalo Chapter of the National Bar Association, the Committee for Community Politics and the Northern Region Black and Puerto Rican Political Caucus brought an action in the United States District Court (W.D.N.Y.) against the Commission, a newspaper, a television station, various editors and others, claiming civil rights violations in connection with the news reporting and investigation of the judge. Asserting violations of constitutional rights, the plaintiffs sought damages and declaratory and injunctive relief. A motion by the Commission for summary judgment, pending since oral argument before Judge John T. Elfvin on January 31, 1983, was granted on June 28, 1984; a similar motion

by other defendants was denied. The plaintiffs' motion for reconsideration was denied on December 28, 1984.

Matter of Sims (Court of Appeals Review)

The Commission had determined in 1983 that Buffalo City Court Judge Barbara M. Sims should be censured. Judge Sims requested review of that determination by the Court of Appeals. The judge asserted, inter alia, that she was denied her rights to procedural and substantive due process during the Commission's investigation. Specifically, she argued that the Commission's investigation impermissibly exceeded the scope of the initiatory complaints and constituted an improper "fishing expedition."

The Court held that the Commission's investigation was "based on adequate factual and legal requirements" as provided by Judiciary Law Section 44, subdivision 2, and the Commission's rules. 61 NY2d 349, 358 (1984). As noted earlier, the Court also ordered Judge Sims removed from office.

SPECIFIC PROBLEM AREAS IDENTIFIED BY THE COMMISSION

In the course of its inquiries into individual complaints, the Commission has identified certain activities which appear to occur periodically and sometimes frequently. Several such areas are discussed below.

Political Activity by Law Secretaries

The Rules Governing Judicial Conduct prohibit a judge from participating in any political activity, except his or her own campaign for elective judicial office (Section 100.7 of the Rules). The Rules also limit the political activities in which a judge's personal appointees may engage. For example, Section 100.3(b)(5) of the Rules prohibits a judge's personal appointees from serving as a district leader, county leader, county executive committee member, State committee member or State chairperson. It also limits contributions to a particular campaign or political activity to \$300 per year, except for one's own campaign. In addition, Section 25.43 of the Chief Administrator's Rules prohibits politically motivated conduct in the administration of the courts, such as basing promotions on party affiliation.

The intent of these rules seems clear: to keep politics out of the courthouse to the greatest extent possible, given the political process through which judges attain office, and to protect judges from even the appearance of being susceptible to political influence, directly or indirectly (e.g. through their

key employees). However, the Rules specifically bar court personnel from holding only the party leadership positions listed. Party posts not listed are not proscribed.

In investigating a 1984 complaint which proved unfounded concerning a particular Supreme Court justice, the Commission became aware that numerous law secretaries in one area of the state also serve as elected members of a political party's district committee. District committee members, among other things, raise funds for the party, help designate candidates for office, elect town leaders and otherwise engage in political conduct.

There is no specific rule barring a judge's law secretary from being a district committee member. This omission may have been deliberate because the position is not considered a party leadership post. Yet if the intent of the Rules is to disallow active and continuing political activity by court appointees -- especially those close to the judge -- that purpose may be defeated by permitting law secretaries to serve as district committee members.

It is not uncommon for political activities to enter the courthouse, figuratively if not always literally, as law secretaries who serve on district committees sell tickets to political events to lawyers who practice in the same courts in which the law secretaries work. The implicit advantage a law secretary has in selling such tickets to a lawyer often obviates a heavy-handed approach, but it is coercive nonetheless.

The anomalies in what the Rules allow should be thoroughly examined by the Office of Court Administration, with appropriate changes enacted to end politics in the courthouse.

Raising Funds for Charitable,
Civic or Other Organizations

Section 100.5 of the Rules Governing Judicial Conduct outlines the types of extra-judicial activities in which a judge may engage. Speaking, writing and teaching on non-legal subjects is permitted, for example, to the extent such conduct does not interfere with the performance of the judge's duties or detract from the dignity of judicial office.

A judge may also participate in civic and charitable activities, with several specific limitations. For example, if a particular organization is likely to be engaged in proceedings that would ordinarily come before the court, a judge may not serve as an officer, director, trustee or advisor of the organization (Section 100.5[b][1] of the Rules). Nor shall a judge "solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of the office for that purpose" (Section 100.5[b][2]). However worthy the cause, a judge should not promote a charity's fund-raising event. Indeed, a judge may not even be listed on a charity's stationery which is used for fund-raising purposes. Similarly, the Rules specifically prohibit a judge from being a speaker or the guest of honor at an organization's fund-raising

events, though attendance at such events is permitted (Section 100.5[b][2]).

The intent of these provisions is to preserve the independence and impartiality of the judiciary, to protect against the prestige of judicial office being used to advance private (albeit sometimes worthy) causes, and to guard against the duress an attorney or other citizen might feel to participate in a function involving a judge.

While most of the strictures set forth in the Rules appear to be honored, occasionally judges lend their names and positions to a charitable fund-raiser by serving on the "reception committee" for the fund-raiser or as "sponsors" to the fund-raising event. It is difficult from a disciplinary point of view to distinguish such forms of participation in fund-raising events from being the guest of honor or speaker at a charity's fund-raising event.

Also troubling under any reasonable interpretation of present rules is the widespread participation of judges as speakers and guests of honor at bar association fund-raising dinners. Under the broad definition of the applicable rule, a judge would be prohibited from being a speaker or honoree at a bar association fund-raiser, insofar as a bar association is a fraternal organization, and fraternal organizations are specifically covered by the Rules. If a distinction is to be made between the fund-raisers of bar associations and those of other

fraternal, civic or charitable organizations, those who promulgate the Rules will have to do so.

The Commission recognizes that not every bar association event at which a judge is honored is a fund-raiser, but some such events clearly are. It is noteworthy that bar associations tend to honor the most prestigious or influential members of the judiciary, often including administrative judges and other judges in supervisory positions.

It is time to come to grips with this problem. Either it should be permissible for a judge to be a "drawing card" for the fund-raising event of an organization primarily devoted to educational, religious, charitable, fraternal or civic work, or it should be prohibited; and if there is an intent to permit such activity for bar associations, clear and logical distinctions should be drawn.

Presently, there is widespread confusion as to the extent of the prohibitions. We have privately urged that the Rules be clarified, and we now do so publicly.

Business Activity by Judges

A judge who serves on a full-time court is expected to be a full-time judge. The Rules Governing Judicial Conduct emphasize that concept particularly with respect to extrajudicial financial activities.

Judges are generally prohibited by the Rules from engaging in financial and business activities that would reflect

adversely on their impartiality, interfere with the proper performance of their judicial duties, exploit their judicial position or involve them with lawyers or others likely to come before the court (Section 100.5[c][1]).

The Rules go on specifically to prohibit certain judges from actively participating in any form of business enterprise organized for profit, including service as a general partner, board member, officer, director, etc. The courts to which the rule applies are listed and include every court in the state unified court system except for town and village courts and, with one exception, city courts.⁶

In 1984, the Commission investigated a complaint that a particular city court judge was actively engaging in massive extra-judicial business activities. The inquiry identified a deficiency in the Rules.

Some city court judgeships are full-time positions (e.g. Buffalo City Court) and some are part-time (e.g. Newburgh City Court). Yet even though the rule prohibiting business activity is intended to apply to full-time judges, the omission of city court in its listing seems to exempt full-time city court judges from its proscriptions.

⁶The Civil and Criminal Courts of the City of New York are the only city courts listed. Thus, judges from these two courts are apparently the only city court judges prohibited from such business activity.

Some city charters compensate for this deficiency by applying the rule's prohibitions to their full-time city court judges. Other city charters do not. The rule's omission of full-time city court judges, and disparate city charters throughout the state, have thus created a situation in which some full-time city court judges are free to engage in certain business activities, while some full-time city court judges -- and all other full-time judges -- are not.

This unequal application of what should be a uniform statewide standard must be corrected. The Rules Governing Judicial Conduct should be amended to extend to full-time city court judges the same proscriptions on business activity as apply to all other full-time judges in the state.

Practice of Law by Part-time Judges

Of the 3500 judges and justices throughout New York State, approximately 2400 serve part-time in town and village courts. These part-time justices are not required by law to be attorneys, and in fact nearly 2000 of them are not.

Section 100.5(f) of the Rules Governing Judicial Conduct governs those part-time justices who happen also to be practicing lawyers, to guard against those conflicts of interest that would inevitably arise when one's adjudicatory responsibilities cross paths with client obligations.

Certain advantages a practicing lawyer-judge might have are neutralized by the Rules. For example, a practicing

lawyer-judge may not practice law in his or her own court, thus eliminating the appearance of impropriety inherent in a lawyer-judge representing a client before his own co-judge and court personnel. Nor may the partners or associates of a lawyer-judge practice law in that judge's own court.

The Rules also prohibit a lawyer-judge in a particular county from practicing law in any other court in the same county which is presided over by a lawyer-judge.

Town courts typically have two part-time justices each. In some of these courts, one of the justices is a lawyer and the other is not. As to such courts, various lawyer-judges have interpreted the restrictions on same-county practice in different ways.

Some practicing lawyer-judges interpret the rule to mean they may not appear in a part-time court in their own county if the case is being heard by the court's lawyer-judge. If the court's non-lawyer-judge is presiding, they believe they may appear. Those who subscribe to this interpretation suggest that the intent of this provision is to avoid the appearance of practicing lawyer-judges trading favorable rulings when they appear before each other; such an appearance is moot if the presiding judge is not a lawyer and therefore can never appear in the court of the practicing lawyer-judge before him.

Other practicing lawyer-judges interpret the rule literally and do not appear in any part-time court in their own

county in which one of the judges is a lawyer, whether or not that particular judge is presiding over the case at hand. The theory here is that the undisputed prohibition on practicing before another lawyer-judge is only once-removed from practicing before that judge's non-lawyer colleague; the lawyer-judge may advise his or her non-lawyer-judge colleague on law and procedure, and thus be involved in cases actually presided over by someone else. Moreover, there may be subtle pressures on a non-lawyer-judge who presides over a case involving a lawyer-judge before whom his or her co-judge may someday appear.

There are other issues which sometimes pose troubling questions with regard to part-time judges who practice law. For example, should such a judge participate as a lawyer in cases involving the interests of the county, city, town or village in which he or she sits? Would such a judge be disqualified from subsequently presiding over other cases involving county, city, town or village interests?

In 1984, the Commission considered two such complaints, involving part-time judges who, as privately-retained lawyers, represented claimants against agencies of the towns in which the judges preside. While there is no rule specifically addressing such situations, one relevant advisory opinion of the New York State Bar Association Committee on Professional Ethics (1973, #308) states as follows:

It would be improper for the acting city court judge to represent a claimant against the city even though the proceeding is in [a

court other than city court]. His position as a city court judge is inconsistent and in conflict with his prosecuting clients' claims against the city.

Conflicts are inevitable in a system which permits judges to practice law during their tenure on the bench. The reason given for not imposing more stringent restrictions on a part-time judge's law practice is that lawyers would not serve as part-time judges if their law practices were unduly hampered. This practical argument must be balanced against the negative appearances that may arise from permitting part-time judges to practice law before agencies of the judge's town, village or city. The official relationship between a part-time judge and the municipality might appear to give the judge an unfair advantage in practicing law before municipal colleagues. Indeed, a particular client with a matter before a municipal agency might seek to retain the part-time judge as a lawyer, in order to benefit from whatever influence the judge's mere presence might have on the hearing officer.

So long as State policy continues to permit such part-time law practice, more detailed rules are necessary, not only to protect the public interest in the impartial administration of justice but also to offer meaningful guidance to part-time lawyer-judges faced with nettlesome questions regarding the permissible scope of their law practices.

Numerous opinions covering various aspects of the practice of law by part-time judges have been issued over the

years by several authorities, such as the Office of Court Administration (when it issued such opinions), the State Attorney General, the State Comptroller and the New York State Bar Association. It would be helpful for OCA to consolidate these various opinions in a manner that would make them accessible and useful to those judges affected by them. It would also provide an opportunity to consider appropriate changes.

After Hours "Arraignment" or Bail Release

From time to time the Commission receives a complaint alleging that a judge, apparently as a favor to a friend or relative, appeared at a police station to arraign a particular defendant arrested after court hours.⁷ The procedure secures the prompt release of the defendant, who consequently does not have to spend the night in jail.

Investigation of these complaints has revealed inconsistencies in the way various city and county authorities process after-hours arrests, leaving some more susceptible than others to the appearance of a judge accelerating the procedure at the behest of a friend.

⁷This should not be confused with a situation in which prompt arraignment is requested by the police because (a) there is no local detention facility and (b) a county jail will not accept a defendant without a judge's order.

In one county, particular judges are assigned on particular days for emergency bail applications. The judge is "on call" after court hours, and all bail applications go to him or her. In felony cases, the District Attorney's office is advised of the bail application so that an assistant district attorney may make a recommendation before the judge acts. This system eliminates the possibility of the defendant arranging for the intercession of a judge who may be a neighbor or acquaintance.

In one particular city, late-night bail applications are handled informally. Virtually anyone -- a defendant's parent, neighbor, friend or lawyer -- can call any judge at any time after hours and request that the judge go to the police station to secure the defendant's release. The judge, who is under no obligation to participate, may or may not choose to intercede. Such intercession is more likely, of course, if the caller and the judge are acquainted. A defendant who personally knows a judge or whose lawyer has local community influence is thus at an advantage over someone who does not.

In another city, the city court judges are given printed "release" forms, which they are authorized to sign after court hours. The form orders the police to release the defendant either on bail or without bail. Apparently, the defendant need not appear before the judge in order to obtain such a release. The procedure is not regarded as an arraignment and does not appear to have a statutory basis.

In many towns and villages, the practice is to bring the defendant to the judge's home for an after-hours arraignment. Such prompt arraignment is necessary because many towns do not have detention facilities, and the local magistrate must sign an order committing the defendant to a county facility. In some towns, the local magistrates are "on call" on alternating weeks, while in others the choice of which judge to call is left up to the police.

These informal bail release procedures have evolved to meet various needs: to ease jail overcrowding, to obtain the release of a defendant likely to return to court but facing overnight incarceration because the arrest was after-hours, and to obtain commitment orders without which a defendant cannot be admitted to jail. Yet some of these informal and varied procedures can give rise to at least an appearance of impropriety in areas which do not have safeguards such as the "on call" system noted above. Further, they make for ad hoc and uneven application of bail procedures in different parts of the state.

Over the years, the Commission has disciplined several judges for bail release abuses. A Supreme Court justice was admonished for going to police stations, at the request of his former law partner, to sign handwritten orders of release for his former partner's clients. Another Supreme Court justice was admonished for arraigning defendants at his home at the request of defense counsel, accepting pleas of guilty to lesser offenses

and keeping no records of the proceedings, in an area without an assigned "on call" system.

The Commission recommends that the Office of Court Administration establish uniform statewide procedures for after-hours bail applications, with safeguards such as the assigned "on call" system noted above.

Unreported Medical Disabilities

In its 1978 annual report, the Commission identified a problem in court administration and judicial discipline which has scarcely improved in the intervening seven years: severely disabled judges whose conditions are not reported.

Over the years, relatively few complaints of any type have been made against judges by lawyers, law enforcement personnel, court personnel or other judges. Yet on numerous occasions, when Commission investigation of a complaint reveals the judge to be mentally or physically disabled, the judge's condition turns out to have been common knowledge among those with regular business before the court. Often the disabled judge's duties are assumed by a colleague. While such assistance is more easily managed -- and the disability more easily concealed -- in a court with many judges, the burden of a disabled judge on a small court can be extreme.

It is difficult, of course, for most people to report a colleague who is incapacitated. The natural reaction is to "cover" for the disabled judge and hope for a speedy recovery.

Sometimes, however, the incapacity is permanent, and the public interest in the administration of justice is compromised by a court operating without a full complement of able jurists.

Although it has the authority to do so, the Commission has never retired a judge for disability, in part because complaints of a judge's incapacity are almost never made. Yet the lack of a public record of cases on disability does not mean the matter is unaddressed. At least one or two complaints each year end in resignation or voluntary retirement, after investigation reveals that the alleged "misconduct" was, in fact, a manifestation of the judge's disability.

The public interest requires that judges, law enforcement officers, court personnel, lawyers and others report ongoing instances of a judge's mental or physical incapacity. While there is no set recovery period beyond which a judge's disability would seem to necessitate review, there are reasonable limits which in the past have been ignored. In a previous annual report, for example, the Commission noted an instance in which a particular judge was mentally incapacitated for a year and a half and presided over only one single-day case in that time. Other area judges, the town board, area law enforcement authorities and others knew of this condition but did not report it.

A 1984 complaint alleged that a particular judge's records and court finances were in disarray, and that on the bench the judge was habitually intemperate. Preliminary

investigation confirmed the allegations. When asked to comment, the judge candidly reported that he had a serious, long-term health problem and was constantly on medication that affected his ability to concentrate and think clearly. He conceded that his courtroom behavior was, at best, erratic, that his court records and accounts were chaotic, and that he was unable to discharge his judicial duties properly. The judge resigned, and the matter was not made public, i.e. the Commission did not reveal the judge's name or location or otherwise identify the basis of the resignation.

Another 1984 complaint alleged that a particular part-time judge was acting irrationally while presiding over cases. (The complaint was made by one of the judge's colleagues.) Investigation confirmed that the judge was exhibiting bizarre behavior, telling one defendant he would "shoot" him if he had a gun, dismissing a case because a number was missing from the file, saying he would "fight it out" with another judge if the other judge referred a case to him, and shouting at a defendant of Italian descent that the "paisanos" had shot off his leg during the war. Further inquiry revealed that the judge had earlier undergone major surgery for serious medical problems, including a clot on the brain. Yet for eight months he presided over cases while suffering what his doctor later said was a significantly deteriorated ability to function as a result of the brain surgery. The judge resigned and the Commission inquiry was closed and not made public.

Better management and supervision of the part-time courts would help mitigate the problem of hidden disability.

The Office of Court Administration should act vigorously to identify glaring examples of prolonged disability so that the administration of justice is not impaired, in full-time as well as part-time courts. It may not always be apparent that a particular judge is disabled, as in the example above of the judge on medication. But in certain instances it seems clear. The judge who heard only a single, one-day case in a year and a half, for example, was disabled, but no mechanism existed to identify and report the problem. The judge who presided for eight months while mentally disabled is another illustration of the problem.

The Commission recommends that OCA explore new alternatives to insure earlier identification of disability problems.

Favoritism in Awarding Appointments

The authority to appoint referees, receivers, conservators and guardians is among the most sensitive powers a judge has. Section 100.3(b)(4) of the Rules Governing Judicial Conduct specifically directs that a "judge shall not make unnecessary appointments...[and] shall exercise the power of appointment only on the basis of merit, avoiding favoritism." It also prohibits nepotism, directing that a judge not award appointments to a relative within six degrees of relationship to the judge or judge's spouse.

In several previous annual reports, the Commission has commented on specific disciplinary proceedings involving favoritism in appointments, and on the appointments process itself.

While the Rules set forth certain prohibitions, there are virtually no rules governing the actual selection of appointees. Judges throughout the state are more or less free to designate whomever they please, except for relatives. It may not be uncommon for a judge to appoint "whoever comes to mind," as one judge described the way he made appointments. Yet certain choices, though not specifically proscribed, inevitably create appearances of impropriety. The appointment of the judge's campaign manager as a receiver, for example, or the judge's largest campaign contributor, may raise ethical issues even if the appointee were most qualified for the job. Some judges have sought guidelines not only to enable them to select the best-qualified people but also to protect themselves and the appointments process from the appearance of impropriety.

Without some procedure which tempers a judge's discretion with meaningful checks and balances, abuses may occur. The Commission believes that avoiding favoritism and appointing qualified individuals are not incompatible.

While the Commission favors no particular system of checks and balances, we urge the adoption of a sensible statewide procedure, and we note that the Office of Court Administration and the Court of Appeals have recently reviewed the status quo and are considering changes.

The Right to a Public Trial

With certain exceptions specifically authorized in law, such as cases involving "youthful offenders," all court proceedings are -- or should be -- open to the public (Section 4 of the Judiciary Law). Periodically the Commission receives complaints alleging that some judges are conducting court proceedings in private, even though the cases are not within the exempted categories. The reasons vary.

Judges in some towns and villages, for example, are compelled to hold court in places other than courthouses, simply because adequate court facilities are not available. As a result, court may be held at the judge's house or place of business, impairing the litigant's right to a trial in a public place, and impairing the public's right to be present at court proceedings. Even if in theory such sessions are open to the public, few people are likely to know about or attend proceedings in the judge's house.

The Uniform Justice Court Act, which imposes certain geographic limits on where court may be held, does not set a standard for the type of facility. In 1972, the Administrative Board of the Judicial Conference promulgated a rule (Section 30.2[a]) stating that the "public is best served by town and village courts which function in facilities provided by the municipality," and requiring judges to hold court in such facilities when they are, in fact, provided.

There are further guidelines in case law. A judge may not hold court in a police barracks or school house, for example, because buildings to which access is limited or which are not truly open to the public cannot satisfy the constitutional and statutory mandates for public proceedings.⁸ This standard is not strictly enforced. In one jurisdiction, court proceedings have been held in the office of a police official, located in a police station.

Where the municipality does not provide a court facility, the judge is left to hold court wherever practical. Some judges, however, seek deliberately to hold court in private settings, even when courtrooms are provided and available. For example, one complaint concerned a judge who was allegedly rude. Commission investigators had difficulty observing court proceedings because the judge adjourned cases from the courtroom to chambers, where proceedings that should have been public were in fact conducted in private. While some facets of a public case must be pursued in confidential settings (e.g. settlement discussions or arguments between opposing counsel on certain evidentiary matters), the taking of testimony and other on-the-record proceedings are supposed to be public.

⁸People v. Schoonmaker, 65 Misc2d 393, 317 NYS2d 696 (Co. Ct. Greene Co. 1971); People v. Rose, 82 Misc2d 429, 368 NYS2d 387 (Co. Ct. Rockland Co. 1975).

In one case reported in last year's annual report, a judge went so far as to deny a particular reporter access to public court proceedings and records, in part because of an inappropriate and legally unsupportable view that such proceedings and records should be private. Apparently the judge in this instance wanted to spare particular local citizens the embarrassment of a public proceeding. Such conduct is not authorized in law. Moreover, improperly manipulating the administration of justice for the benefit of a few, distorts a process meant to apply equally to all. The judge was admonished. (Matter of Burr, unreported; see, 1984 Annual Report of the State Commission on Judicial Conduct, pp. 23-24, 72-75.)

Where the private discharge of public court business constitutes misconduct, the Commission can and will act to discipline the offending judge. Where circumstances not within the judge's control play a deciding role, however, such as when a municipality does not provide proper facilities and the judge holds court at home, the Commission's options are effectively limited.

The Office of Court Administration should undertake a review of the disparate court arrangements throughout the state and attempt to effect appropriate change by developing standards for local judges. Such standards should then be implemented by administrative judges to ensure that public proceedings are in fact public.

Jurisdiction over Housing Judges

As set forth in the Constitution and the Judiciary Law, the Commission has disciplinary jurisdiction over judges and justices of the state unified court system. The "unified court system" is defined by Article 6, Section 1, of the Constitution as the Court of Appeals, Supreme Court (including the Appellate Division), Court of Claims, County Court, Surrogate's Court, Family Court, New York City Civil Court, New York City Criminal Court, District Courts, City Courts, Town Courts and Village Courts.

In 1972, the legislature statutorily created a "housing part" of the New York City Civil Court, to deal with a variety of housing matters, such as enforcement of building and health codes, evictions, etc. The law (Section 110 of the New York City Civil Court Act) provided that housing part proceedings be presided over by judges or "hearing officers."

Pursuant to statute, housing part hearing officers were appointed for 5-year terms by the administrative judge of the New York City Civil Court, and they must have been lawyers admitted to practice at least five years prior to service. Pursuant to the Constitution, New York City Civil Court judges are elected for 10-year terms and must be lawyers admitted to practice at least 10 years prior to service.

In 1978, the legislature amended the New York City Civil Court Act, changing the title "hearing officer" to

"housing judge." In all other material respects, the Act was unchanged.

Every year, the Commission receives numerous complaints against housing judges. To date, the Commission has not investigated such complaints, on the grounds that it lacks the jurisdiction to do so, since housing judges may not be judges of the unified court system. It is the Commission's position that it may only exercise such jurisdiction if a court rules that present law in fact confers such authority, or if either the Constitution or the Judiciary Law is amended (i) to specifically give the Commission authority over housing judges or (ii) to declare housing judges as judges of the unified court system, thereby making the Commission's jurisdiction over them automatic.

In 1984, the legislature in fact considered two bills concerning housing judges. One, which passed and was signed into law, declared that housing judges were "judicial officers." The other, which did not become law, would have specifically conferred upon the Commission jurisdiction over housing judges.

Some analysts have suggested that by declaring housing judges to be "judicial officers," the legislature effectively made them judges of the unified court system, subject to the Commission's jurisdiction. Other analysts have said that the legislature's "judicial officers" bill really addressed pension, retirement and other tenure-related matters, and that rejection of the specific jurisdiction-conferring bill signaled the

legislature's intent to keep housing judges outside the Commission's domain.

The public perceives no meaningful distinctions between a Civil Court judge and a housing judge. Whatever their constitutional or legislative underpinnings, in practical application the powers of the two seem equivalent.

For example, while Civil Court judges serve 10-year terms and housing judges serve 5-year terms, both are full-time positions. Housing judges have contempt power. Their determinations are final and appealable in the same manner as judgments of the Civil Court. The housing judge has both law and equity jurisdiction, and the rules of evidence apply in housing part proceedings. Two substantive differences between a housing judge and a Civil Court judge are (i) the housing judge is limited to housing matters and (ii) the housing judge cannot preside over a jury trial.

Presently, housing judges are subject to discipline by their administrative judge. The elaborate procedural and due process guarantees that are afforded in law to judges under the Commission's jurisdiction do not apply to housing judges.

Unless the law is interpreted by the courts or changed by the legislature, the Commission is constrained to continue its present policy and not assert jurisdiction over housing judges.

Advisory Opinions

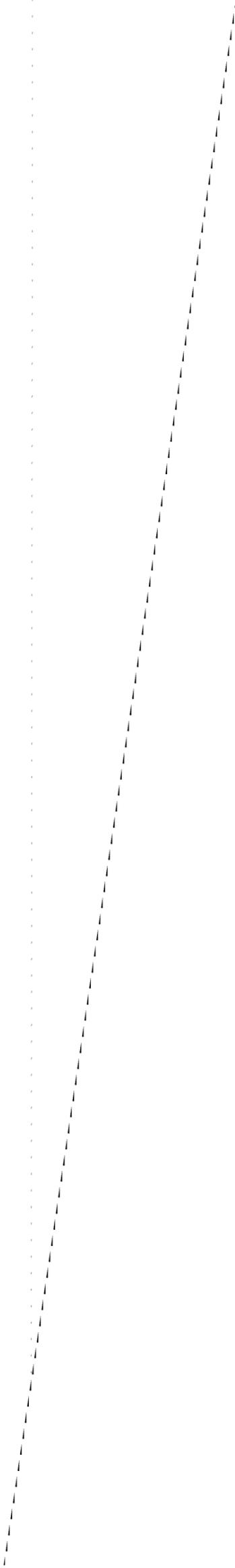
Judges throughout the state routinely seek advisory opinions on whether particular activities not specifically addressed in the Rules Governing Judicial Conduct would be permissible.

In the past, the Office of Court Administration offered advisory opinions on such questions posed by judges who were uncertain as to the intent of the Rules. Such opinions were very helpful to the judge, and while they were not binding on the Commission, they would certainly be given great weight if the conduct of a judge who had received an opinion on point were under investigation. In 1979, the State Bar Association's Committee on Professional Ethics compiled and printed all OCA advisory opinions.

OCA no longer offers advisory opinions, thus leaving judges who seek guidance on specific situations with few alternatives.

For several years the Commission has recommended that OCA issue advisory opinions. A number of judicial associations have made the same recommendation. We now make it again.

Judges ought to have guidance when necessary on particular matters not addressed specifically in the Rules without feeling they risk disciplinary proceedings every time they make a good faith attempt to interpret them.



SPECIAL SECTION

POLITICAL ACTIVITY BY JUDGES: CLEARER RULES ARE NEEDED

I. Background

The ethical standards governing judges' political activity are found in the Rules Governing Judicial Conduct ("Rules"), the Code of Judicial Conduct ("Code"), and the Election Law. The Rules were promulgated by the Chief Administrative Judge with the approval of the Court of Appeals. The Code, proposed by the American Bar Association, was adopted in New York by the State Bar Association. (The Rules and Canon 7 of the Code are appended to this report.)

The State Commission on Judicial Conduct, which has the obligation to enforce these standards, has expressed concern that some are so vague that they provide insufficient guidance for judges. When ethical standards which should be clear are vague and confusing, they cannot be enforced.¹

¹Our observation should not be confused with those necessary rules which concern general standards of good conduct. Obviously, not every ethical standard should address specific conduct. There must be some general rules requiring, for example, high standards of conduct and prohibiting conduct that brings the judiciary into disrepute. These are essential to govern a wide range of conduct for which it would be impractical to have specific rules. The concern we express here is that rules as to certain political activity which should be clear are vague and inconsistent with other recognized ethical standards.

II. Political Activity By Judges

(A) Political activity generally prohibited

The sense of the Rules and the Code is that political activity by judges is prohibited except for some activity by judicial candidates. Thus, a judge may not participate in partisan politics, except his or her own campaign to a limited degree, make political contributions, endorse candidates for public office or serve as a leader or officer in political organizations. A judicial candidate may attend political dinners.

The Rules also expressly prohibit participation in any political campaign for public office except a judge's own campaign for elective judicial office (Section 100.7). A judge is prohibited from serving as an officer or functionary of any political party, club or organization, or from allowing the judge's name to be used in connection with any such activity (Section 100.7[d]). Although membership in political clubs is not "encouraged," it is not prohibited. The Rules prohibit "[a]ny other activity of a partisan political nature" (Section 100.7[e]).

The Code is similar to the Rules in barring certain political activity of judges who are not candidates for judicial office. The Code bars acting as a political leader, holding office in a political organization, publicly endorsing a candidate for public office, soliciting funds for a political organization or paying an assessment or making a contribution to

such a body, attending "political gatherings" or purchasing tickets for party dinners or other (political) functions (Canon 7A[1]). The Code also contains a general provision, similar to one in the Rules, barring "any other political activity." The only political activity that is permitted is "to improve the law, the legal system, or the administration of justice" (Canon 7A[4]).

(B) Campaign activity under the Rules

A judge may take part in his or her own campaign for elective judicial office (Section 100.7). During the nine months preceding a primary election, judicial nominating convention, party caucus or other party meeting for nominating a candidate for the elective judicial office for which the judge is an "announced candidate," the judge may attend politically sponsored dinners or other affairs (Section 100.7[a][1]).

If the judge is a candidate in the general election for a judicial office, he or she may engage in limited political activity (e.g., attend politically sponsored dinners or affairs) for three months after the election, or until February 1st after the election, whichever comes first. If the judge is not a candidate in the general election, such political activity must end on the day of the primary election, convention, caucus or meeting at which nominees are selected (Section 100.7[a][1]).

Political dinners are held for the purpose of raising funds for political parties. The cost of attendance may be \$75

to \$200 per person, or more. Several years ago it was quite common for judges to purchase tickets and attend these dinners. That practice has abated since the mid 1970's largely because of the prohibitions against political activity. Judges running for office may attend political dinners during the specified period but they have no clear guidelines as to whether they can purchase tickets to attend.

During the period in which a judge may attend politically sponsored dinners or other affairs, the judge is governed by a rule which says that if the cost of a ticket to a politically sponsored dinner or other affair "clearly exceeds the proportionate cost of the dinner or affair, reference should be made to the Election Law" (Section 100.7[a][2]). Thus, on the crucial question whether a judge running for office may purchase a ticket to a political function, if the cost exceeds the actual cost of the food, the judge is given no direction or guidance, except to read "the Election Law."

Presumably, the purpose of the "reference" to the "Election Law" is to place judges on notice that there is a provision of the Election Law barring campaign contributions "directly or indirectly" by judicial candidates (Election Law, Section 17-162). One interpretation of the Rules, by implication, is that a ticket to a political dinner may include a political contribution for a substantial part of its cost. In 1975 the State Board of Elections said in an advisory opinion that if the cost of a ticket to a political affair exceeds the

actual cost of food and beverages provided to the ticket purchaser, the total cost of the ticket constitutes a contribution. The Board concluded that the purchase of such a ticket by a judicial candidate is barred by the Election Law. Op. St. Bd. Elect., Oct. 21, 1975. Counsel to OCA have advised judges to the contrary, at a time when OCA Counsel were authorized to render advisory opinions. Judges were advised privately that the Rules did not prohibit such purchases of tickets.² In reply to an inquiry from the Commission's Administrator for clarification, OCA Counsel explained that the portion of the ticket that exceeds the cost of food or beverage is indeed a contribution, but it should be permitted on the theory that the contribution offsets campaign expenses incurred on behalf of the candidate by the political party that sponsored the dinner. Since contributions are prohibited by the Election Law and the Rules, it is important that this rationale be reconsidered and the rule be clarified.

²On October 18, 1975, Counsel to the Office of Court Administration advised a judge, who was a candidate for judicial office, that it was proper to purchase tickets to, and attend, a political party dinner (Opinion #38). In another opinion, a Counsel to the Office of Court Administration stated that a \$150 ticket could properly be purchased by a judicial candidate (Opinion #42). Another judicial candidate was advised that the purchase of two \$200 tickets would not violate the Rules Governing Judicial Conduct, although Counsel expressly refused to say whether it would violate the Election Law (Opinion #82).

On January 6, 1977, a judge who was running for office was advised that he or she could be the guest of honor at a political dinner (Opinion #69).

The Rules state in Section 100.7(b) that political contributions by judges, directly or indirectly, are prohibited. Judges who are candidates for judicial office again are directed "to the Election Law" with respect to political contributions. Although the Election Law prohibits contributions by judicial candidates, the Rules do not so indicate.

While the Rules provide that a judge may participate in his or her own campaign for elective judicial office (100.7[c]), no standards are provided which would govern or limit such activity. The Code, however, sets forth some standards and limitations.

(C) Campaign activity under the Code

A candidate for judicial office, "insofar as permitted by law," may attend political gatherings, speak on his or her own behalf to such gatherings, identify himself or herself as a member of a political party and "contribute to a political party or organization." Thus, although the Code seems to permit contributions by judicial candidates, it does so only insofar as permitted by law, and in New York the Election Law bars contributions by judges.

The Code contains a section on "Campaign Conduct." No similar section is provided by the Rules. A candidate for elective judicial office must "maintain the dignity appropriate to judicial office," and should not allow any other person to do what the judge is not allowed to do (Canon 7B[1][b]).

A candidate for judicial office must not make pledges or promises of conduct in office, announce views on disputed legal or political issues, or misrepresent his or her identity, qualifications, present position or other fact (Canon 7B[1][c]).

A candidate must not solicit or accept campaign funds, "or solicit publicly stated support," but may establish committees to secure and manage the expenditure of campaign funds and to obtain public statements of support for the candidate [Canon 7B[2]]. Campaign committees may solicit campaign contributions and public support from lawyers. Committees may solicit funds "no earlier than six months before a primary election and no later than six months³ after the last election in which [the candidate] participates during the election year." Campaign contributions cannot be used for the private benefit of the candidate (Canon 7B[2]).

A commentary to Canon 7B(2) of the Code provides that the names of campaign contributors should not be revealed to the candidate, unless the candidate is required by law to file a list of campaign contributors. In New York, a list of

³The Code provision relating to the length of time after an election in which committees may solicit funds seems to conflict with a related provision in the Rules. No political activity of any kind is permitted by a judicial candidate, under the Rules, after February 1 following the general election if he or she is a candidate in the general election. §100.7(a)(1). The Code refers to the time frame for activity by campaign committees; the Rules refer to the time frame for activity by a judicial candidate.

contributors must be filed on behalf of the candidate, but may be signed by an officer of the campaign committee. Thus, a judicial candidate is not required to file such a list. In a written advisory opinion, the New York State Bar Association Committee on Professional Ethics in 1973 expressed the view that judicial candidates in New York should not see such a list or learn "in any other way" the identity of contributors (Opinion #289). There is no Rule or Canon on point.

III. Issues Created By The Rules And The Code

Although the Rules and Code provide some guidance for judicial candidates, in certain respects the full extent to which a judge may participate in his or her campaign is less than clear.

May a Judicial Candidate Attend a Fund-Raiser on His or Her Behalf?

One issue is whether a candidate for judicial office may attend a fund-raiser for his or her campaign. As a matter of practice, some judges do not attend their own fund-raisers (sponsored and run by their campaign committees) because if they attended they would meet contributors (assuming that tickets were sold in advance) or would be participating in fund-raising (assuming that those in attendance would be asked to contribute). Thus, according to this view, judges who attended would be violating the Rules and the Code provisions against fund-raising and engaging in partisan political activity (not

expressly permitted for candidates). Moreover, the Code commentary suggests that candidates should not even see lists of contributors unless required by law. Attendance at fund-raisers would clearly bring candidates face to face with contributors or potential contributors. In recent years, invitations to some fund-raisers have been individually numbered and engraved in a bold, dark number, which may be intended to indicate to each person being solicited that there is a record of each solicitation and, presumably, a record of each acceptance. Some lawyers have expressed the belief that there is a clear, coercive message to such invitations.

Some judges attend their own fund-raisers. The view that such conduct is proper is based on (1) lack of any specific prohibition and (2) the general exception to the prohibition of political activity (including attendance at political affairs) during the period in which such limited activity for a candidate is permitted. Thus, according to this view, since attendance at political functions is permitted for candidates, attendance at one's own fund-raiser is implicitly permitted. Also, at some fund-raisers contributions are not paid in advance but are solicited at the event; some judicial candidates leave before the solicitation takes place.

This issue has caused too much concern for too long. If the rule-making authorities desire the standard to be that a judge not attend his or her fund-raiser, such a rule should be

promulgated. If attending one's own fund-raiser is deemed acceptable, that ought to be made clear in the Rules.

May a Judicial Candidate Purchase a Ticket
To Attend a Political Dinner?

An equally perplexing issue, created by the lack of clear direction in the Rules and the Code, and exacerbated by past opinions of OCA Counsel which seem to conflict with the Election Law and an opinion of the State Board of Elections, is whether judicial candidates may purchase tickets to political functions when the cost of such tickets exceeds the cost of the food and drinks at such functions. Counsel to OCA in the past have advised judicial candidates that they may purchase tickets to political dinners. The rationale of one OCA Counsel was that the amount exceeding the actual cost of the dinner is a contribution, which would pay for expenses incurred by the political party on behalf of the candidate (See p. 73). Such reasoning assumes that no other payment is made by the candidate to the political party for expenses incurred; that assumption has not been expressed to candidates who have asked for advice by OCA. Moreover, contributions are expressly prohibited by law and the Rules, and if expenses incurred by a political party on behalf of a candidate may be repaid, they should not be repaid by a general contribution or assessment. (We urge below that a Rule be promulgated to instruct judges how to respond to political parties which request payment for expenses incurred by the political parties.)

Since enforcement of ethical standards by the Commission must be based on due process of law, including fair notice in the standards that certain conduct is prohibited, it is unfair to publicly discipline a judge-candidate for purchasing a ticket to a political function when the Rules may be understood to allow purchasing tickets to attend such functions. The responsibility to clarify this standard is especially important in view of the expressed opinions of OCA counsel.

May Fund-Raising For a Judicial Candidate
Continue After the Election?

Another question raised by candidates is whether fund-raising may continue after the candidate's election and, if so, even after the candidate takes office. Recently, certain judges' committees sought an opinion on whether a fund-raiser could be held four months after the successful candidates took office. The Code seems to permit it for a period of six months after the general election, but the Rules suggest that all political activity by judges must cease three months after the election. Thus, the Rules appear to be in conflict with the Code, which seems to authorize a longer period for fund-raising.⁴ Moreover, it is less than clear in any event whether a judge's campaign committee is also restricted. The

⁴When the Rules and the Code are in conflict the Rules take precedence. 29 McKinney's, Code of Judicial Conduct, 517 [preamble].

Rules refer only to the judge and do not even address the subject of campaign committees.

Fund-raising after the election may raise additional ethical problems since some candidates make loans to their campaigns, pursuant to the Election Law. Those loans often will be repaid only if the candidate is successful and if fund-raising continues after the candidate is elected. Lawyers who appear in court are asked to contribute to the successful candidate's campaign. When the candidate has made loans to the campaign, the money raised will be given to the candidate in payment of the loans. Thus, the successful candidate is likely to have a strong, personal interest in having funds raised--not only to pay off other campaign debts but to repay the candidate's loan.

Problems raised by post-election political activity and fund-raising are especially troublesome. Candidates understandably find it essential to spend more than they have during the campaign in the hope of raising funds later to pay off campaign deficits. This occurs at every level of government, for all types of elective offices.

Whether the standard should be the same for judges may be a matter of opinion. But regardless what standards should apply, clear standards ought to be expressed so that no one is in doubt whether a judge's post-election conduct is proper.

Other Issues

There are other questions raised by the prevailing standards for which answers are not readily available. A judge is not prohibited from being a member of a political club or organization (Rules), but a judge cannot attend "political gatherings" (Code) or "affairs" (Rules). Is it logical to permit membership in a political organization while barring attendance at meetings? It is doubtful that this curious result is intended. In fact, the Court of Appeals has interpreted the applicable 1974 standards to permit judges to attend political meetings. Matter of Rosenthal v. Harwood, 35 NY2d 469 (1974). A clearer definition of "gatherings" and "affairs" is needed. It would also provide a definitive answer to the question asked by judges whether a judge may speak at a politically sponsored, educational forum on a subject concerning the law if no funds are raised and there is no political activity at the forum. The answer may be in doubt since such a forum might fairly be defined as a "political gathering."

Judges have asked how they become "announced candidates," which would permit their attendance at political functions as well as other limited political activity. If a City Court judge wishes to become a County Court judge or Supreme Court justice, and expresses his or her intention as such, it is arguable that the judge would be permitted to raise funds six months before every election and (under the Code) six months after every election during every year that there is a higher

court vacancy. The judge's candidacy may thus authorize political activity through much of the judge's career. Some sharpening of language seems necessary to take into account that many judges do legitimately seek higher judicial office each year.

The substantial differences between the Code and the Rules as to political and campaign activity raise other problems as well. Candidates for judicial office who are not judges are subject to the Code, but may not be subject to the Rules. (The Code of Professional Responsibility for lawyers incorporates Canon 7 of the Code but makes no reference to the Rules; the Code itself has a provision making it applicable to non-judicial candidates as well as to judges, but there is no similar provision in the Rules.)

Thus, since judges are bound by the Rules and the Code, and since the Rules take precedence over the Code when the two are inconsistent, it is arguable that some standards are applicable to judges, but not to others running for judicial office. For example, the Rules and Code are not identical as to the length of time campaign committees may raise funds following an election. It is arguable that the campaign committees of non-judges running for judicial office are subject only to the limitations of the Code while incumbents' committees are bound by the Rules and the Code.

One of the advantages of adopting Rules as to campaign activity would be a re-examination of the Code provision in the

light of contemporary standards and practices. The Code prohibits judges from soliciting "publicly stated support" (Canon 7B[2]). This provision has been interpreted by the State Bar Association's Committee on Professional Ethics as barring a judicial candidate from seeking endorsements. (1973, Opinion #289). If such a standard is to be followed in New York State, it should be stated clearly in a Rule. Judges may be uncertain whether they can personally seek endorsements.

The letter and spirit of Rule 100.7 and Canon 7 of the Code bar partisan political activity, even for judicial candidates, unless specifically permitted. Thus, as a condition for obtaining a judicial nomination, a candidate for judicial office may not agree to refuse another political party's nomination; a judge may choose to refuse a party's nomination, but not as a condition for accepting another nomination. The Court of Appeals has held that for a judge to make such a pledge would violate the standard against "partisan political activity." A political party's by-laws compelling a candidate to refuse another party's nomination is invalid, said the Court, because it seeks to compel unethical conduct. Matter of Rosenthal v. Harwood, supra, 35 NY2d at 474.

The Court observed that political activity permitted by the Rules and the Code does not include such traditional political activity as endorsements of other candidates, or contributions to other candidates, even if such other candidates

are in the same political party as the judicial candidate. 35 NY2d at 473.

Thus, a judicial candidate must take precautions against making a contribution or paying an assessment to a political party, which would use funds to help elect other candidates endorsed by the party. How such precautions are to be taken when a political party asks for a particular sum to offset the political party's expenses on behalf of the candidate is not covered by the applicable standards. Clearly, if such payments to political parties are to be permitted, a candidate should approve payment only for those expenditures actually incurred for the candidate. A candidate should not approve any payments unless it is shown that specific expenditures were made for that candidate's campaign. No judicial candidate should pay more than his or her pro rata share of the cost of campaign materials used for several candidates. As the Court of Appeals stated: "They may not contribute to the political war-chests of other candidates." 35 NY2d at 473.

It appears that judges would greatly benefit by rules which cover the subject of determining how to respond to requests by political parties for the judges' pro rata share of campaign costs.

IV. Developing A Comprehensive Set Of Standards Governing Political And Campaign Activity Under The Rules

The Commission believes that the political activity sections of the Rules and the Code are the most confusing and

difficult to comprehend of all the sections, especially when vague references are also made to "the Election Law." As to other ethical standards, the Code and the Rules generally are similar and reasonably clear. Yet a judge who wants to know the obligations of a judicial candidate must understand the Rules and the Code, try to resolve inconsistencies, and then determine what is meant by vague references to "the Election Law."⁵

In addition to being inconsistent in certain respects, the Rules and the Code differ in one material respect: the Rules make no attempt to focus on campaign activity. Judges who want to abide by ethical standards for political activity do not receive adequate guidance from the Rules.

It would be a mistake to assume that these problems arise infrequently. There are approximately 3,500 judges in the state, more than two-thirds of whom, as town and village justices, have relatively short terms of office. Some judges are candidates for higher office whenever a vacancy occurs. They may have been successful in winning a City Court judgeship, for example, but repeatedly unsuccessful trying to win election to County Court or Supreme Court. Thus, judges in their quest for higher judicial office may be given the nomination each time

⁵It is noteworthy in this context that there is no formal procedure in this state to give advisory opinions as to the meaning of the Rules and how they might apply to specific situations. The Commission believes that advisory opinions should be provided.

there is a vacancy, only to lose in the general election, or may seek the nomination but not obtain it. Such a candidate may be repeatedly trying to raise funds for an upcoming campaign, or to pay the debts of a prior campaign, and when the next vacancy occurs, the process starts all over again. Under such circumstances, the Code provision, which permits fund-raising six months before the election and six months after the election, would permit a continuing process of fund-raising as long as there are vacancies in the higher court. (Indeed, the concept of the "announced candidate" standard is so vague that, arguably, a judge may believe that he or she can announce a candidacy even before it is clear that there will be a vacancy.)

Although judges may not participate, directly or indirectly, in soliciting or receiving campaign funds, judges' campaign committees are permitted to engage in such activity. It is therefore imperative that the ethical standards be clear to guide a judge in this respect and insure against express or implied intimidation of lawyers. Lawyers who practice in a particular judge's court may and often do feel subtle pressure to contribute to the judge's campaign. Amending the Rules may not resolve this problem, since campaigns are expensive and it is natural that campaign committees will look to lawyers for contributions. But the Rules should be clear, and if they are made clearer, judges will have a better understanding of their obligations. The Rules also ought to underscore the candidate's responsibility in making certain that his or her campaign

committees abide by the ethical standards for judges. The Rules should make clear that although a judge should not supervise or participate in fund-raising, he or she should have responsibility for other aspects of the campaign committee's conduct.

At present, the Rules and the Code are inadequate as to political activity in judicial campaigns and in seeking political support. Those who earnestly seek guidance may not receive it while those who seek loopholes are apt to find them. On the subject of political activity, unlike other areas of judicial conduct,⁶ it is possible to develop clearly definable, specific standards. That task should be undertaken.

V. The System Of Selecting Judges: A Comment

We have noted some of the inherent conflicts facing candidates for elective judicial office. It is neither our purpose nor function to enter the debate on what is the best way to select judges. Our prescribed mission is to identify instances of judicial misconduct. In doing so, we interpret and enforce the applicable Rules and Canons, and render disciplinary

⁶As noted above, a Code or set of Rules cannot, and should not, deal with every conceivable form of misconduct. Accordingly, there must be rules mandating high standards of conduct and barring conduct, which conveys appearances of impropriety and which brings the judiciary into disrepute. General standards are essential. But when a subject, such as political activity, is so clearly definable, it is inexcusable not to have clearer rules, which would identify certain standard forms of political activity that are inappropriate for judicial candidates because of the nature of the office they are seeking.

sanctions in appropriate cases, subject to review by the Court of Appeals. Since our jurisdiction extends to judges who are appointed and elected, it would be inappropriate for us as a body to choose between these systems.

We have prepared this special section to reveal the plight of judicial candidates who are responsible for complying with rules, some of which are not easily understood, as well as our own sense of frustration in attempting to interpret and enforce such rules.

CONCLUSION

Public confidence in the integrity and impartiality of the judiciary is essential to the rule of law. The members of the State Commission on Judicial Conduct believe the Commission contributes to that ideal and to the fair and proper administration of justice.

Respectfully submitted,

Mrs. Gene Robb, Chairwoman
Fritz W. Alexander, II*
John J. Bower
David Bromberg
E. Garrett Cleary
Dolores DelBello
Victor A. Kovner
William J. Ostrowski
Isaac Rubin
Felice K. Shea
John J. Sheehy

*Resigned from the Commission in February 1985 upon being appointed to the Court of Appeals.

APPENDIX A

BIOGRAPHIES OF COMMISSION MEMBERS

HONORABLE FRITZ W. ALEXANDER, II, is a graduate of Dartmouth College and New York University School of Law. He was appointed to the Court of Appeals by Governor Cuomo in January 1985. Previously he was an Associate Justice of the Appellate Division, First Department, to which he had been appointed by Governor Carey in October 1982. He had been appointed a Justice of the Supreme Court for the First Judicial District by Governor Carey in September 1976 and was elected to that office in November 1976. He was a Judge of the Civil Court of the City of New York from 1970 to 1976. He previously was senior partner in the law firm of Dyett, Alexander & Dinkins and was Executive Vice President and General Counsel of United Mutual Life Insurance Company. Judge Alexander is a former Adjunct Professor of Cornell Law School, and he currently is a Trustee of the Law Center Foundation of New York University Law School and a Director of the New York Society for the Prevention of Cruelty to Children. He is a member and past President of the Harlem Lawyers Association, a member of the Association of the Bar of the City of New York and the National Bar Association, and he serves as a member of the Executive Committee of the Judicial Council of the National Bar Association. Judge Alexander is a member and founder of 100 Black Men, Inc., and founder and past president of the Dartmouth Black Alumni Association.

JOHN J. BOWER, ESQ., is a graduate of New York University and New York Law School. He is a partner in Bower & Gardner in New York City. He is a Fellow of the American College of Trial Lawyers, a Member of the Federation of Insurance Counsel and a Member of the American Law Institute.

DAVID BROMBERG, ESQ., is a graduate of Townsend Harris High School, City College of New York and Yale Law School. He is a member of the firm of Bromberg, Gloger, Lifschultz & Marks. Mr. Bromberg served as counsel to the New York State Committee on Mental Hygiene from 1965 through 1966. He was elected a delegate to the New York State Constitutional Convention of 1967, where he was secretary of the Committee on the Bill of Rights and Suffrage and a member of the Committee on State Finances, Taxation and Expenditures. He serves, by appointment, on the Westchester County Planning Board. He is a member of the Association of the Bar of the City of New York and has served on its Committee on Municipal Affairs. He is a member of the New York State Bar Association and is presently serving on its Committee on the New York State Constitution. He serves on the National Panel of Arbitrators of the American Arbitration Association.

E. GARRETT CLEARY, ESQ., attended St. Bonaventure University and is a graduate of Albany Law School. He was an Assistant District Attorney in Monroe County from 1961 through 1964. In August of 1964, he resigned as Second Assistant District Attorney to enter private practice. He is now a partner in the law firm of Harris, Beach, Wilcox, Rubin and Levey in Rochester. In January 1969 he was appointed a Special Assistant Attorney General in charge of Grand Jury Investigation ordered by the late Governor Nelson A. Rockefeller to investigate financial irregularities in the Town of Arietta, Hamilton County, New York. In 1970 he was designated as the Special Assistant Attorney General in charge of an investigation ordered by Governor Rockefeller into a student-police confrontation that occurred on the campus of Hobart College, Ontario County, New York, and in 1974 he was appointed a Special Prosecutor in Schoharie County for the purpose of prosecuting the County Sheriff. Mr. Cleary is a member of the Monroe County and New York State Bar Associations, and he has served as a member of the governing body of the Monroe County Bar Association, Oak Hill Country Club, St. John Fisher College, Better Business Bureau of Rochester, Automobile Club of Rochester, Hunt Hollow Ski Club and the Monroe County Advisory Committee for the Title Guarantee Company. In 1981 he became the Chairman of the Board of Trustees of St. John Fisher College. He and his wife Patricia are the parents of seven children.

DOLORES DEL BELLO received a baccalaureate degree from the College of New Rochelle and a masters degree from Seton Hall University. She is presently Regional Public Relations Director for Bloomingdale's. Mrs. DelBello is a member of the League of Women Voters; the Board of Directors for the Naylor Dana Institute for Disease Prevention; American Health Foundation; the Board of Trustees of St. Cabrini Nursing Home, Inc.; Hadassah; the Westchester Women in Communications; Alpha Delta Kappa, the international honorary society for women educators; the Board of Directors for the Hudson River Museum; Board of Directors Universitas Internationalis Coluccio Salutati; Advisory Committee, Westchester County Chapter, New York State Association for Retarded Children; and the Board of Directors, Lehman College Performing Arts Center.

VICTOR A. KOVNER, ESQ., is a graduate of Yale College and the Columbia Law School. He is a partner in the firm of Lankenau Kovner & Bickford. Mr. Kovner has been a member of the Mayor's Committee on the Judiciary since 1969. He was a member of Governor Carey's Court Reform Task Force and now serves on the board of directors of the Committee for Modern Courts. Mr. Kovner is Chairman of the Committee on Communications Law of the Association of the Bar of the City of New York, and serves as a member of its Council on Judicial Administration. He is also a member of the advisory board of the Media Law Reporter. He formerly served as President of Planned Parenthood of New York City. Mr. Kovner serves in the House of Delegates of the New York State Bar Association.

HONORABLE WILLIAM J. OSTROWSKI is a graduate of Canisius College and received law degrees from Georgetown and George Washington Universities. He attended the National Judicial College in 1967. Justice Ostrowski is a Justice of the Supreme Court in the Eighth Judicial District and was elected to that office in 1976. During the preceding 16 years he was a judge of the City Court of Buffalo, and from 1956 to 1960 he was a Deputy Corporation Counsel of the City of Buffalo. He served with the 100th Infantry Division in France and Germany during World War II. He has been married to Mary V. Waldron since 1949 and they have six children and five grandchildren. Justice Ostrowski is a member of the American Law Institute, the Fellows of the American Bar Foundation, the American Bar Association and its National Conference of State Trial Judges; American Judicature Society; National Advocates Society; New York State Bar Association and its Judicial Section; Erie County Bar Association; and the Lawyers Club of Buffalo.

MRS. GENE ROBB is a graduate of the University of Nebraska. She is a former President of the Women's Council of the Albany Institute of History and Art and served on its Board. She also served on the Chancellor's Panel of University Purposes under Chancellor Boyer, later serving on the Executive Committee of that Panel. She served on the Temporary Hudson River Valley Commission and later the permanent Hudson River Valley Commission. She is a member of the Board of the Salvation Army Executive Committee for the New York State Plan. She is on the Board of the Saratoga Performing Arts Center, the Board of the Albany Medical College, the Board of Trustees of Union College and the Board of Trustees of the New York State Museum. Mrs. Robb is a former member of the Advisory Committee of the Center for Judicial Conduct Organizations of the American Judicature Society, and now is a member of the Society's Board. Mrs. Robb received an honorary degree of Doctor of Law from Siena College, Loudonville, in 1982. She serves on the Visiting Committee for Fellowships and Internships of the Nelson A. Rockefeller Institute of Government. In 1984 Mrs. Robb was awarded the Regents Medal of Excellence for her community service to New York State. She is the mother of four children and grandmother of ten. Mrs. Robb has been a member of the Commission since its inception.

HONORABLE ISAAC RUBIN is a graduate of New York University, the New York University Law School (J.D.) and St. John's Law School (J.S.D.). He is presently a Justice of the Appellate Division, Second Department, to which he was appointed by Governor Carey in January 1982 and reappointed by Governor Cuomo in January 1984. Prior to this appointment, Justice Rubin sat in the Supreme Court, Ninth Judicial District, where he served as Deputy Administrative Judge of the County Courts and superior criminal courts. Judge Rubin previously served as a County Court Judge in Westchester County, and as a Judge of the City Court of Rye, New York. He is a director and former president of the Westchester County Bar Association. He has also served as a member of the Committee on Character and Fitness of the Second Judicial Department, and as a member of the Nominating Committee and the House of Delegates of the New York State Bar Association.

HONORABLE FELICE K. SHEA is a graduate of Swarthmore College and Columbia Law School. She is a Justice of the Supreme Court, First Judicial District (New York County), and served previously as a Judge of the Civil Court of the City of New York. Justice Shea is President of the Alumni Association of Columbia Law School, a Director of the Association of Women Judges of the State of New York, a Director of the New York Women's Bar Association, a Fellow of the American Bar Foundation, and a Fellow of the American Academy of Matrimonial Lawyers. She is also a member of the Association of the Bar of the City of New York and serves on its Committee on Legal Education and Admission to the Bar.

JOHN J. SHEEHY, ESQ., is a graduate of the College of the Holy Cross, where he was a Tilden Scholar, and Boston College Law School. He is a partner in the New York office of Rogers & Wells. He is a senior member of the firm's litigation department and chairman of its personnel committee. Mr. Sheehy was an Assistant District Attorney in New York County from 1963 to 1965, when he was appointed Assistant Counsel to the Governor by the late Nelson A. Rockefeller. Mr. Sheehy joined Rogers & Wells in February 1969. He is a member of the bars of the United States Supreme Court, the United States Court of Appeals for the Second and Eighth Circuits, the United States District Court for the Southern, Eastern and Northern Districts of New York, the United States Court of International Trade and the United States Court of Military Appeals. He is a member of the American and New York State Bar Associations, Chairman of the Parish Council of Epiphany Church in Manhattan and a member of the Metropolitan Club. He is also a Commander in the U.S. Naval Reserve, Judge Advocate General Corps. John and Morna Ford Sheehy live in Manhattan and East Hampton, with their three children.

ADMINISTRATOR OF THE COMMISSION

GERALD STERN, ESQ., is a graduate of Brooklyn College, the Syracuse University College of Law and the New York University School of Law, where he received an LL.M. in Criminal Justice. Mr. Stern has been Administrator of the Commission since its inception. He previously served as Director of Administration of the Courts, First Judicial Department, Assistant Corporation Counsel for New York City, Staff Attorney on the President's Commission on Law Enforcement and the Administration of Justice, Legal Director of a legal service unit in Syracuse, and Assistant District Attorney in New York County. He has taught constitutional law at Queens College (C.U.N.Y.) and Lehman College (C.U.N.Y.) as an adjunct professor of political science and presently teaches Professional Responsibility at Pace University School of Law as an adjunct Professor of Law.

DEPUTY ADMINISTRATOR

ROBERT H. TEMBECKJIAN, ESQ., is a graduate of Syracuse University and Fordham Law School. He previously served as Clerk of the Commission, as publications director for the Council on Municipal Performance in New York, staff director of the Governor's Cabinet Committee on Public Safety in Ohio and special assistant to the Deputy Director of the Ohio Department of Economic and Community Development. Mr. Tembeckjian is on the boards of the South Manhattan Development Corporation and the Play Schools Association, Inc.

CLERK OF THE COMMISSION

ALBERT B. LAWRENCE, ESQ., is a graduate of the State University of New York and Antioch School of Law. He joined the Commission staff in 1980 and has been Clerk of the Commission since April 1, 1983. He is a former newspaper reporter who has written on criminal justice and legal topics. Mr. Lawrence is on the adjunct faculty of Empire State College, where he teaches business law. He is chairman of the advisory council for New Start, a program which counsels young men and women who have recently been released from jail. He is a member of the Board of Directors of Big Brothers/Big Sisters of Rensselaer County and a founding member of the Capital District Civil Liberties Organization.

CHIEF ATTORNEY, ALBANY

STEPHEN F. DOWNS, ESQ., is a graduate of Amherst College and Cornell Law School. He served in India as a member of the Peace Corps from 1964 to 1966. He was in private practice in New York City from 1969 to 1975, and he joined the Commission's staff in 1975 as a staff attorney. He has been Chief Attorney in charge of the Commission's Albany office since 1978.

CHIEF ATTORNEY, ROCHESTER

JOHN J. POSTEL, ESQ., is a graduate of the University of Albany and the Albany Law School of Union University. He joined the Commission's staff in 1980 as an assistant staff attorney in Albany. He has been Chief Attorney in charge of the Commission's Rochester office since April 1984.

COMMISSION STAFF

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Gerald Stern

DEPUTY ADMINISTRATOR

Robert H. Tembeckjian

CLERK OF THE COMMISSION

Albert B. Lawrence

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Cody B. Bartlett*

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Mark D. O'Connor*

John C. Turi

* Denotes individuals who left the Commission staff prior to March 1985.

APPENDIX B

COMMISSION BACKGROUND

Temporary State Commission on Judicial Conduct

The Temporary State Commission on Judicial Conduct commenced operations in January 1975. The temporary Commission had the authority to investigate allegations of misconduct against judges in the state unified court system, make confidential suggestions and recommendations in the nature of admonitions to judges when appropriate and, in more serious cases, recommend that formal disciplinary proceedings be commenced in the Court on the Judiciary. All proceedings in the Court on the Judiciary and most proceedings in the Appellate Division were public.

The temporary Commission was composed of two judges, five lawyers and two lay persons. It functioned through August 31, 1976, when it was succeeded by a permanent commission created by amendment to the State Constitution.

The temporary Commission received 724 complaints, dismissed 441 upon initial review and commenced 283 investigations during its tenure. It admonished 19 judges and initiated formal disciplinary proceedings against eight judges, in either the Appellate Division or the Court on the Judiciary. One of these judges was removed from office and one was censured. The remaining six matters were pending when the temporary Commission was superseded by its successor Commission.

Five judges resigned while under investigation.*

Former State Commission on Judicial Conduct

The temporary Commission was succeeded on September 1, 1976, by the State Commission on Judicial Conduct, established by a constitutional amendment overwhelmingly approved by the New York State electorate and supplemented by legislative enactment (Article 2-A of the Judiciary Law). The Commission's tenure lasted through March 31, 1978, when it was replaced by the present Commission.

* A full account of the temporary Commission's activity is available in the Final Report of the Temporary State Commission on Judicial Conduct, dated August 31, 1976.

The former Commission was empowered to investigate allegations of misconduct against judges, impose certain disciplinary sanctions* and, when appropriate, initiate formal disciplinary proceedings in the Court on the Judiciary, which, by the same constitutional amendment, had been given jurisdiction over all 3,500 judges in the unified court system.

The former Commission, like the temporary Commission, was composed of two judges, five lawyers and two lay persons, and its jurisdiction extended to judges within the state unified court system. The former Commission was authorized to continue all matters left pending by the temporary Commission.

The former Commission considered 1,418 complaints, dismissed 629 upon initial review, authorized 789 investigations and continued 162 investigations left pending by the temporary Commission.

During its tenure, the former Commission took action which resulted in the following:

- 15 judges were publicly censured;
- 40 judges were privately admonished;
- 17 judges were issued confidential letters of suggestion and recommendation.

The former Commission also initiated formal disciplinary proceedings in the Court on the Judiciary against 45 judges and continued six proceedings left pending by the temporary Commission.

Those proceedings resulted in the following:

- 1 removal
- 2 suspensions
- 3 censures
- 10 cases closed upon resignation by the judge
- 2 cases closed upon expiration of the judge's term
- 1 proceeding closed without discipline and with instruction by the Court on the Judiciary that the matter be deemed confidential.

*The sanctions that could be imposed by the former Commission were: private admonition, public censure, suspension without pay for up to six months, and retirement for physical or mental disability. Censure, suspension and retirement actions could not be imposed until the judge had been afforded an opportunity for a full adversary hearing; these Commission sanctions were also subject to a de novo hearing in the Court on the Judiciary at the request of the judge.

The remaining 32 proceedings were pending when the former Commission expired. They were continued by the present Commission.

In addition to the ten judges who resigned after proceedings had been commenced in the Court on the Judiciary, 28 other judges resigned while under investigation by the former Commission.

Continuation in 1978, 1979 and 1980 of Formal Proceedings Commenced by the Temporary and Former Commissions

Thirty-two formal disciplinary proceedings which had been initiated in the Court on the Judiciary by either the temporary or former Commission were pending when the former Commission was superseded on April 1, 1978, and were continued without interruption by the present Commission.

The last five of these 32 proceedings were concluded in 1980, with the following results, reported in greater detail in the Commission's previous annual reports:

- 4 judges were removed from office;
- 1 judge was suspended without pay for six months;
- 2 judges were suspended without pay for four months;
- 21 judges were censured;
- 1 judge was directed to reform his conduct consistent with the Court's opinion;
- 1 judge was barred from holding future judicial office after he resigned; and
- 2 judges died before the matters were concluded.

State Commission on Judicial Conduct

The present Commission was created by amendment to the State Constitution, effective April 1, 1978. The amendment created an 11-member Commission (superseding the nine-member former Commission), broadened the scope of the Commission's authority and streamlined the procedure for disciplining judges within the state unified court system. The Court on the Judiciary was abolished, pending completion of those cases which had already been commenced before it. All formal disciplinary hearings under the new amendment are conducted by the Commission.

Subsequently, the State Legislature amended Article 2-A of the Judiciary Law, the Commission's governing statute, to implement the new provisions of the constitutional amendment.

RULES GOVERNING JUDICIAL CONDUCT

(Statutory authority: Constitution, art. VI, §§ 20(b)-(c), 28(b))

Sec.	Sec.
100.1 Upholding the independence of the judiciary	100.4 Activities to improve the law, the legal system, and the administration of justice
100.2 Avoiding impropriety and the appearance of impropriety	100.5 Extra-judicial activities
100.3 Impartial and diligent performance of judicial duties	100.6 Compensation received for extra-judicial activities
	100.7 Political activity of judges prohibited

Historical Note

Part (§§ 100.1-100.8) filed Aug. 1, 1972; renum. Part 111, new (§§ 100.1-100.7) added by renum. Part 33, filed Feb. 2, 1982 eff. Jan. 1, 1982.

Section 100.1 Upholding the independence of the judiciary. An independent and honorable judiciary is indispensable to justice in our society. Every judge shall participate in establishing, maintaining, and enforcing, and shall himself or herself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Part shall be construed and applied to further that objective.

Historical Note

Sec. filed Aug. 1, 1972; renum. 111.1, new added by renum and amd. 33.1, filed Feb. 2, 1982 eff. Jan. 1, 1982.

100.2 Avoiding impropriety and the appearance of impropriety. (a) A judge shall respect and comply with the law and shall conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(b) No judge shall allow his or her family, social, or other relationships to influence his judicial conduct or judgment.

(c) No judge shall lend the prestige of his or her office to advance the private interests of others; nor shall any judge convey or permit others to convey the impression that they are in a special position to influence him or her. No judge shall testify voluntarily as a character witness.

Historical Note

Sec. filed Aug. 1, 1972; renum. 111.2, new added by renum and amd. 33.2, filed Feb. 2, 1982 eff. Jan. 1, 1982.

100.3 Impartial and diligent performance of judicial duties. The judicial duties of a judge take precedence over all his other activities. Judicial duties include all the duties of a judicial office prescribed by law. In the performance of these duties, the following standards apply:

(a) **Adjudicative responsibilities.** (1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in proceedings before him or her.

(3) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom he or she deals in an official capacity, and shall require similar conduct of lawyers, and of his or her staff, court officials, and others subject to his or her direction and control.

(4) A judge shall accord to every person who is legally interested in a matter, or his or her lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending matter. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a matter before him or her if notice by the judge is given to the

parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(5) A judge shall dispose promptly of the business of the court.

(6) A judge shall abstain from public comment about a pending or impending matter in any court, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subdivision does not prohibit judges from making public statements in the course of their official duties or from explaining for public information in procedures of the court.

(b) *Administrative responsibilities.* (1) A judge shall diligently discharge his or her administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge shall require his or her staff and court officials subject to his or her direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) A judge shall take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment only on the basis of merit, avoiding favoritism. A judge shall not appoint or vote for the appointment of any person as a member of his or her staff or that of the court of which the judge is a member, or as an appointee in a judicial proceeding, who is a relative within the sixth degree of relationship of either the judge or the judge's spouse. A judge shall also refrain from recommending a relative for appointment or employment to another judge serving in the same court. A judge shall not approve compensation of appointees beyond the fair value of services rendered. Nothing in this section shall prohibit appointment of the spouse of a town or village justice, or other member of such justice's household, as clerk of the town or village court in which such justice sits, provided that such justice obtains the prior approval of the Chief Administrator of the Courts, which may be given upon a showing of good cause.

(5) A judge shall prohibit members of his staff who are the judge's personal appointees from engaging in the following political activity:

(i) serving as a district leader, member of a county executive committee, county leader, State committeeman or State chairman of any political party;

(ii) contributing, directly or indirectly, money or other valuable consideration in amounts exceeding \$300 in the aggregate during any calendar year commencing on January 1, 1976, to any political campaign for any political office or to any partisan political activity including, but not limited to, the purchasing of tickets to a political function, except that this limitation shall not apply to an appointee's contributions to his or her own campaign. Where an appointee is a candidate for judicial office, reference should be made to appropriate sections of the Election Law;

(iii) personally soliciting funds in connection with a partisan political purpose, or personally selling tickets to or promoting a fund-raising activity of a political candidate, political party, or partisan political club; or

(iv) political conduct prohibited by section 25.43 of this Part.

(c) *Disqualification.* (1) A judge shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned, including, but not limited to circumstances where:

(i) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) the judge served as lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law served during such association as a lawyer

concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(iii) the judge knows that, he or she, individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(iv) the judge or the judge's spouse, or a person within the sixth degree of relationship to either of them, or the spouse of such a person:

(a) is a party to the proceeding, or an officer, director, or trustee of a party;

(b) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; and

(c) is to the judge's knowledge likely to be a material witness in the proceeding;

(v) the judge or the judge's spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.

(2) A judge shall inform himself or herself about his or her personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children residing in the judge's household.

(3) For the purposes of this section:

(i) the degree of relationship is calculated according to the civil law system;

(ii) *fiduciary* includes such relationships as executor, administrator, trustee and guardian;

(iii) *financial interest* means ownership of a legal or equitable interest, however small, or a relationship as director, advisor or other active participant in the affairs of a party, except that:

(a) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(b) an office in an educational, religious, charitable, fraternal or civic organization is not a "financial interest" in securities held by the organization;

(c) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome could substantially affect the value of the securities.

(d) *Remittal of disqualification.* A judge disqualified by the terms of subparagraph (c)(1)(iii) or (iv) of this section may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his or her financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Historical Note

Sec. filed Aug. 1, 1972; amd. filed Nov. 26, 1976; renum. 111.3, new added by renum. and amd. 33. 3, filed Feb. 2, 1982; amd. filed Nov. 15, 1984 eff. Oct. 22, 1984.

100.4 Activities to improve the law, the legal system, and the administration of justice. A judge, subject to the proper performance of his or her judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not cause doubt on the capacity to decide impartially any issue that may come before him or her:

(a) A judge may speak, write, lecture, teach and participate in other activities concerning the law, the legal system, and the administration of justice.

(b) A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

(c) A judge may serve as a member, officer or director of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. He or she may assist such an organization in raising funds and may participate in their management and investment, but shall not personally participate in public fund-raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Historical Note

Sec. filed Aug. 1, 1972; amd. filed Nov. 28, 1976; renum. 111.4, new added by renum. and amd. 33.4, filed Feb. 2, 1982 eff. Jan. 1, 1982.

100.5 Extra-judicial activities. (a) *Avocational activities.* A judge may write, lecture, teach and speak on nonlegal subjects, and engage in the arts, sports and other social and recreational activities, if such avocational activities do not detract from the dignity of the office or interfere with the performance of judicial duties.

(b) *Civic and charitable activities.* A judge may participate in civic and charitable activities that do not reflect adversely upon impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or nonlegal advisor of an educational, religious, charitable, fraternal or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or her or will be regularly engaged in adversary proceedings in any court.

(2) No judge shall solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of the office for that purpose, but may be listed as an officer, director or trustee of such an organization; provided, however, that no such listing shall be used in connection with any solicitation of funds. No judge shall be a speaker or the guest of honor at an organization's fund-raising events, but he or she may attend such events.

(3) A judge shall not give investment advice to such an organization, but he or she may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

(c) *Financial activities.* (1) A judge shall refrain from financial and business dealings that tend to reflect adversely on impartiality, interfere with the proper performance of judicial duties, exploit judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) No judge or justice of the Court of Appeals, Appellate Division, Supreme Court, Court of Claims, County Court, Surrogate's Court, Family Court, District Court, Civil Court of the City of New York, or Criminal Court of the City of New York shall be a managing or active participant in any form of business enterprise organized for profit, nor shall he or she serve as an officer, director, trustee, partner, advisory board member or employee of any corporation, company, partnership or other association organized for profit or engaged in any form of banking or insurance;

(i) provided, however, that this rule shall not be applicable to those judges and justices of the courts herein who assumed judicial office prior to July 1, 1965 and maintained such nonjudicial interests prior to that date; and it is

(ii) further provided, that any person who may be appointed to fill a vacancy in one of the courts enumerated herein on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from this rule during the period of such interim or temporary appointment; and it is

(iii) further provided, that nothing in this section shall prohibit a judge or justice of the courts enumerated herein from investing as a limited partner in a limited partnership, as contemplated by article 8 of the Partnership Law, provided that such judge or justice does not take any part in the control of the business of the limited partnership and otherwise complies with this Part.

(3) Neither a judge nor a member of his or her family residing in his or her household shall accept a gift, bequest or loan from anyone, except as follows:

(i) a judge may accept a gift incident to a public testimonial to him or her; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his or her spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(ii) a judge or a member of his or her family residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(iii) a judge or member of his or her family residing in his or her household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, and, if its value exceeds \$100, the judge reports it in the same manner as he or she reports compensation in section 100.6 of this Part.

(4) For the purposes of this section, *member of his or her family residing in his or her household* means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his or her family, who resides in his or her household.

(5) A judge is not required to disclose his or her income, debts or investment, except as provided in this section and sections 100.3 and 100.6 of this Part.

(6) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by him or her in financial dealings or for any other purpose not related to his or her judicial duties.

(d) *Fiduciary activities.* No judge, except a judge who is permitted to practice law, shall serve as the executor, administrator, trustee, guardian or other fiduciary, designated by an instrument executed after January 1, 1974, except for the estate, trust or person of a member of his or her family, and then, only if such service will not interfere with the proper performance of judicial duties. *Members of his or her family* include a spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship.

(1) A judge shall not serve as a family fiduciary if it is likely that as a fiduciary he or she will be engaged in proceedings that would ordinarily come before him or her, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to the judge in his or her personal capacity.

(e) *Arbitration.* No judge, other than a part-time judge, shall act as an arbitrator or mediator. A part-time judge acting as an arbitrator or mediator shall do so with particular regard to sections 100.1, 100.2 and 100.3 of this Part.

(f) *Practice of law.* A judge who is permitted to practice law shall, nevertheless, not practice law in the court in which he or she is a judge, whether elected or appointed, nor shall a judge practice law in any other court in the county in which his or her court is located which is presided over by a judge who is permitted to practice law. He shall not participate in a judicial capacity in any matter in which he or she has represented any party or any witness in connection with that matter, and he or she shall not become engaged as an attorney in any court, in any matter in which he or she has participated in a judicial capacity. No judge who is permitted to practice law shall permit his or her partners or associates to practice law in the court in which he or she is a judge. No judge who is permitted to practice law shall permit the practice of law in his or her court by the law partners or associates of another judge of the same court who is permitted to practice law. A judge may permit the practice of law in his or her court by the partners or associates of a judge of a court in another town, village or city who is permitted to practice law.

(g) *Extra-judicial appointments.* No judge shall accept an appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state or locality on ceremonial occasions or in connection with historical, educational and cultural activities.

(h) *Employment of part-time judges.* A part-time judge may accept private employment or public employment in a Federal, State or municipal department or agency, provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties. No judge shall accept employment as a peace officer as that term is defined in section 1.20 of the Criminal Procedure Law.

Historical Note

Sec. filed Aug. 1, 1972; renum. 111.5, new added by renum. and amd. 33.5, filed Feb. 2, 1982; amd. filed Dec. 21, 1983 eff. Dec. 2, 1983. Amended (c) and (e).

100.6 Compensation received for extra-judicial activities. A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Part, if the source of such payments does not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety subject to the following restrictions:

(a) Compensation must not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement must be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

(c) A judge must report the date, place and nature of any activity for which he or she received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. Such report must be made annually and must be filed as a public document in the office of the clerk of the court on which he or she serves or other office designated by rule of court. This subdivision shall not apply to any judge who is permitted to practice law.

(d) Except as provided in section 100.5(h) of this Part, no judge shall solicit or receive compensation for extra-judicial activities performed for or on behalf of:

- (1) New York State, its political subdivisions or any officer or agency thereof;
- (2) a school, college or university that is financially supported, in whole or in part, by New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for teaching a regular course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or
- (3) any private legal aid bureau or society designed to represent indigents in accordance with article 18-B of the County Law.

Historical Note

Sec. filed Aug. 1, 1972; repealed, new added by renum. 100.7, filed Nov. 26, 1976;
renum. 111.6, new added by renum. and amd. 33.6, filed Feb. 2, 1982 eff. Jan. 1, 1982.

100.7 Political activity of judges prohibited. No judge or justice during a term of office shall hold any office in a political party or organization or contribute to any political party or political campaign or take part in any political campaign except his or her own campaign for elective judicial office. Political activity prohibited by this section includes:

(a) The purchase, directly or indirectly, of tickets to politically sponsored dinners or other affairs, or attendance at such dinners or other affairs, except as follows:

(1) this limitation shall not apply during the period beginning nine months before a primary election, judicial nominating convention, party caucus or other party meeting for nominating a candidate for elective judicial office for which the judge is an announced candidate, or for which a committee or other organization has publicly solicited or supported his or her candidacy, and ending, if the judge is a candidate in the general election for that office, three months after the general election, or the first day of February after the general election, whichever is sooner. If the judge is not a candidate in the general election, this period shall end on the date of the aforesaid primary election, convention, caucus or meeting;

(2) in periods in which a judge may purchase tickets to politically sponsored dinners or other affairs pursuant to this paragraph, where the cost of a ticket to such dinner or other affair clearly exceeds the proportionate cost of the dinner or affair, reference should be made to the Election Law.

(b) Contributions, directly or indirectly, to any political campaign for any office or for any political activity. Where the judge or justice is a candidate for judicial office, reference should be made to the Election Law.

(c) Participation, either directly or indirectly, in any political campaign for any office, except his or her own campaign for elective judicial office.

(d) Serving as an officer or functionary of any political party, club or organization during a term of office or permitting his or her name to be used in connection with any activity of such political party, club or organization. Membership in political clubs, while not prohibited, is not to be encouraged.

(e) Any other activity of a partisan political nature.

Historical Note

Sec. filed Aug. 1, 1972; renum. 100.6, new filed Nov. 26, 1976; renum. 111.7, new added
by renum. and amd. 33.7, filed Feb. 2, 1982 eff. Jan. 1, 1982.

Canon 7 of the Code of Judicial Conduct

A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office

(A) Political Conduct in General.

- (1) A judge or a candidate for election to judicial office should not:
 - (a) act as a leader or hold any office in a political organization;
 - (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;
 - (c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);
- (2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.
- (3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.
- (4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

(B) Campaign Conduct.

- (1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:
 - (a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;
 - (b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), he should not allow any other person to do for him what he is prohibited from doing under this Canon;
 - (c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identify, qualifications, present position, or other fact.
- (2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not himself solicit or accept campaign funds, or solicit publicly stated support, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate's committees may solicit funds for his campaign no earlier than six months before a primary election and no later than six months after the last election in which he participates during the election year. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.
- (3) An incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2).

State of New York
Commission on Judicial Conduct

Determinations
Rendered in 1984

In the Matter of the Proceeding Pursuant to Section 44,
subdivision 4, of the Judiciary Law in Relation to

THOMAS S. AGRESTA,

a Justice of the Supreme Court, Eleventh
Judicial District (Queens County).

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for
Commission

Schoer & Sileo (By Michael G. Sileo) for Respondent

The respondent, Thomas S. Agresta, a justice of the Supreme Court, Eleventh Judicial District, was served with a Formal Written Complaint dated October 18, 1983, alleging that he made a remark with racial connotations during the sentencing of a defendant. Respondent filed an answer dated November 7, 1983.

By order dated November 16, 1983, the Commission designated Edward Brodsky, Esq., as referee to hear and report proposed findings of

fact and conclusions of law. A hearing was held on December 19, 1983, and the referee filed his report with the Commission on February 27, 1984.

By motion dated March 22, 1984, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent opposed the motion by cross motion on April 9, 1984. The Commission heard oral argument on the motions on May 10, 1984, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Supreme Court and has been since 1969.
2. On May 23, 1983, respondent presided over the sentencing of Eris Blount and Daniel Hayes, who had been convicted by a jury of two counts each of robbery.
3. Respondent had also presided over two previous trials of Mr. Blount, Mr. Hayes and a third man, James McNeil.
4. In the course of these proceedings, respondent had reviewed a video-taped confession of Eris Blount in which he implicated in a murder and other crimes a man who was never charged. Respondent suppressed the confession, and it was precluded from being admitted into evidence.
5. At Eris Blount's sentencing on May 23, 1983, respondent attempted to elicit from Mr. Blount information which would implicate the other man.
6. Respondent said in open court, "...I know there is another nigger in the woodpile, I want that person out, is that clear?"
7. Mr. Blount, Mr. Hayes and the man respondent was seeking to have implicated are black.
8. The words "another nigger in the woodpile" referred to the third man and to the two defendants. As such, the term constituted a racial epithet.

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(a)(3) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3A(3) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established. Respondent's cross motion is denied.

Racial epithets, indefensible when uttered by a private citizen, are especially offensive when spoken by a judge. Whether or not he meant it as a racial slur, respondent's use of the term "nigger" in any context is indefensible. That he used the term in open court with black defendants before him and in obvious reference to a particular black person makes his conduct especially egregious.

Furthermore, respondent has persisted in the belief that his remark was not inappropriate and that his "metaphor" was misunderstood. Respondent's claim that he was not referring to a black man and that he apologized for his remark (the apology appeared only in a confidential letter to the Commission) are not persuasive.

The law of New York is clear that such language by a judge will not be tolerated. Matter of Cerbone v. State Commission on Judicial Conduct, 61 NY2d 93 (1984); Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465 (1980); Matter of Bloodgood, unreported (Com. on Jud. Conduct, June 11, 1981). The only mitigating factors in this case are respondent's age and his long and unblemished record on the bench.

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

Mrs. Robb, Judge Alexander, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bower was not present.

Dated: July 5, 1984

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

JOSEPH S. CALABRETTA,

a Justice of the Supreme Court, Eleventh
Judicial District (Queens County).

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for
the Commission

Suozzi, English & Cianciulli, P.C. (J. Irwin
Shapiro, Of Counsel) for Respondent

The respondent, Joseph S. Calabretta, a justice of the Supreme Court, Eleventh Judicial District, was served with a Formal Written Complaint dated June 27, 1983, alleging that he interceded on behalf of a relative in a case pending before another judge. Respondent filed an answer dated July 5, 1983.

On December 7, 1983, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the

hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement on December 15, 1983, and on February 10, 1984, heard oral argument on the issues herein. Respondent and his counsel appeared for oral argument. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact.

1. On January 10, 1983, the case of Norman P. Weiss v. G. Ronald Hoffman appeared on the calendar in Supreme Court, Nassau County, Special Term, Part II, before Supreme Court Justice Vincent R. Balledda, Jr. Allen Paul Ansell represented the plaintiff, and Joseph Derrico represented the defendant.

2. Mr. Derrico requested an adjournment of one month because the attorney in his office who was to try the case was actually engaged in another matter. After hearing both sides on the request, including opposition by the plaintiff's attorney, Judge Balledda noted that the case had already been adjourned several times and suggested to Mr. Derrico that someone else in his firm be prepared to try the case. Judge Balledda then scheduled the case for trial before himself on January 12, 1983.

3. On the evening of January 10, 1983, Mr. Derrico went to respondent's home and requested respondent's help in getting an adjournment in Weiss v. Hoffman. Respondent and Mr. Derrico are first cousins once removed.

4. While Mr. Derrico was still at respondent's home but not in the same room where the telephone conversation took place, respondent telephoned Judge Balledda at his home and in the ensuing conversation:

(a) Respondent called Judge Balledda's attention to Weiss v. Hoffman;

(b) respondent advised Judge Balledda that he had a relative who was involved in the case;

(c) respondent, in order to refresh Judge Balledda's recollection of the case, told him that the case involved the dissolution of a partnership;

(d) respondent told Judge Balledda that the relative would like to have an adjournment of the case and would make an application to that effect on January 12, 1983, by submitting an affidavit of actual engagement;

(e) after Judge Balledda advised respondent that he would make no commitment over the telephone on the prospective application, respondent reiterated that the relative would submit an affidavit of actual engagement.

5. Respondent's telephone call to Judge Balletta on January 10, 1983, was a request for an adjournment on behalf of his relative.

6. As a result of respondent's telephone call, Judge Balletta disqualified himself on January 12, 1983, from further participation on the application for adjournment and the trial of Weiss v. Hoffman.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2 of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

By his call to Judge Balletta, respondent sought special consideration for a relative. Such conduct violates ethical standards and warrants public discipline. See Section 100.2 of the Rules Governing Judicial Conduct; Matter of Byrne, 420 NYS2d 70, 71, 72 (Ct. on the Judiciary, 1979); Matter of Montaneli, unreported (Com. on Jud. Conduct, Sept. 10, 1982); Matter of Kaplan, NYLJ, May 20, 1983, p. 7, col. 1 (Com. on Jud. Conduct, May 17, 1983).

In determining appropriate sanction, the Commission has considered respondent's fine record on the bench and that he was candid, cooperative and contrite throughout this proceeding.

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

Mrs. Robb, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

Mr. Bower, Mr. Cleary and Judge Rubin dissent and vote that the appropriate disposition would be a letter of dismissal and caution.

Judge Alexander and Mr. Sheehy were not present.

Dated: April 11, 1984

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

JOSEPH M. DARBY,

a Justice of the Town Court of Ossining,
Westchester County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel)
for the Commission

Barnes and Barnes (By Thomas G. Barnes) for
Respondent

The respondent, Joseph M. Darby, a justice of the Ossining Town Court, Westchester County, was served with a Formal Written Complaint dated September 23, 1983, alleging that he permitted his law partner to appear in his court. Respondent filed an answer dated October 14, 1983. On January 13, 1984, respondent was served with a second Formal Written Complaint, alleging that he presided over a case in which the defendant was a former client. Respondent answered the second Formal Written Complaint on January 31, 1984.

On March 29, 1984, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement on May 10, 1984. Oral argument was waived. On June 21, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint dated September 23, 1983:

1. Respondent is a part-time justice of the Ossining Town Court and has been since January 1, 1982. He is also a practicing attorney.

2. On December 10, 1982, respondent received a telephone call at his home. The caller informed respondent that Gerald Navin had been arrested for Driving While Intoxicated.

3. Mr. Navin is a former client of respondent and on December 10, 1982, was employed by a major client of respondent's law firm, Biondo, Darby & Barlaam.

4. Respondent called the Ossining Village Police Department and was referred by the dispatcher to Officer Kenneth Donato of the Ossining Town Police Department who had arrested Mr. Navin.

5. Respondent spoke with Officer Donato and inquired about Mr. Navin's condition. Respondent advised Officer Donato that Mr. Navin was a client of his firm.

6. Officer Donato knew respondent to be an Ossining Town Justice.

7. Officer Donato asserts that he advised respondent that Mr. Navin had called respondent's law partner, Peter Biondo. Respondent asserts that he does not recall whether Officer Donato advised him that Mr. Navin had called Mr. Biondo.

8. On January 17, 1983, Mr. Biondo appeared with Mr. Navin in the Ossining Town Court before the Honorable Edwin S. Shapiro.

9. Respondent asserts that he did not know that Mr. Biondo was appearing in his court, and there is no proof to the contrary.

10. Respondent should have ascertained whether any members of his firm were representing Mr. Navin so that he could have urged them not to practice in his court.

11. Respondent left the firm of Biondo, Darby & Barlaam on November 1, 1983.

As to Charge I of the Formal Written Complaint dated January 13, 1984:

12. On November 18, 1982, respondent presided over People v. John F. Thompson, in which the defendant was charged with Disorderly Conduct.

13. In the absence of a prosecutor and the arresting officer, respondent accepted the defendant's plea of guilty and sentenced him to a conditional discharge and a fine of \$25 to be imposed only if the defendant were arrested on any other criminal matter within three months.

14. Respondent had served as Mr. Thompson's attorney in two motor vehicle matters and one criminal matter in 1980 and 1981. Respondent represented Mr. Thompson at the request of his employer, who was a client of respondent's law firm.

15. Respondent asserts that when Mr. Thompson appeared before him on November 18, 1982, he did not regard Mr. Thompson as a client because he had represented him as a favor to the employer and had never received a fee.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(c) and 100.5(f) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3C of the Code of Judicial Conduct. The charge in the Formal Written Complaint dated September 23, 1983, and the charge in the Formal Written Complaint dated January 13, 1984, are sustained, and respondent's misconduct is established.

A judge's obligation to be and appear fair and impartial in matters before the court is fundamental to public confidence in the administration of justice. Specifically, a judge is prohibited from participating in any case in which his impartiality might reasonably be questioned. Section 100.3(c) of the Rules Governing Judicial Conduct. In addition, a part-time judge who also practices law is obliged to ensure that his law partners and associates do not practice in his court, regardless of who presides. Section 100.5(f) of the Rules.

By his conduct, respondent created the appearance of impropriety in three respects. He telephoned the arresting officer in Navin and, by expressing interest in the case, conveyed the impression that he was in a special position to influence the officer. See, Matter of Montaneli, unreported (Com. on Jud. Conduct, Sept. 10, 1982). He permitted his law partner to practice in respondent's court before another judge. See,

Matter of Sullivan, unreported (Com. on Jud. Conduct, April 22, 1983). He presided over a case involving a former client. See, Matter of Filipowicz, 54 AD2d 348 (2d Dept. 1976); Matter of Sullivan, supra.

Respondent has acknowledged his misconduct and conceded that public sanction is appropriate.

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin and Judge Shea concur.

Judge Alexander and Mr. Sheehy were not present.

Dated: August 30, 1984

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

FRANK P. DeLUCA,

a Justice of the Supreme Court, Suffolk
County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Robert Straus and Jean M. Savanyu, Of
Counsel) for the Commission

Domenick A. Pelle for Respondent

The respondent, Frank P. DeLuca, a justice of the Supreme Court, Tenth Judicial District, was served with a Formal Written Complaint dated August 15, 1983, alleging, inter alia, that he improperly intervened in a felony proceeding before another judge. Respondent filed an answer dated September 16, 1983.

By order dated September 29, 1983, the Commission designated Robert MacCrate, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on November 21, 1983, and the referee filed his report with the Commission on February 27, 1984.

By motion dated March 9, 1984, the administrator of the Commission moved to adopt findings of fact proposed by the administrator, to confirm the referee's conclusions of law and for a finding that respondent be censured. Respondent opposed the motion by cross motion on April 16, 1984. On May 11, 1984, the Commission heard oral argument on the motions, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Supreme Court and has been since 1971.
2. Respondent has known socially for a number of years Nancy Ambrosio and members of her family, including her son, John.
3. On May 15, 1978, John Ambrosio pleaded guilty in Supreme Court before Justice Paul T. D'Amaro to Promoting Gambling, First Degree.
4. On January 4, 1979, Judge D'Amaro sentenced Mr. Ambrosio to a \$1,000 fine and four months in jail and stayed execution of the sentence until February 8, 1979.
5. Judge D'Amaro extended the stay of execution to March 8, 1979, April 9, 1979, and May 3, 1979, because Mr. Ambrosio's mother was dying of cancer.
6. On April 9, 1979, one of the members of the Ambrosio family called respondent and indicated that Judge D'Amaro did not believe that Mrs. Ambrosio was dying. The family member asked respondent to speak with Judge D'Amaro.
7. Respondent and Judge D'Amaro had been acquainted for more than 20 years.
8. On April 10, 1979, from his chambers in Riverhead, respondent called Judge D'Amaro's chambers in the same courthouse.
9. Respondent spoke to Judge D'Amaro, indicated that he wanted to see him privately about something and suggested that they meet at Exit 52 of the Long Island Expressway on their way to their respective homes.
10. The judges met as planned. Respondent told Judge D'Amaro that Mrs. Ambrosio was dying of cancer and that it was a good family.
11. Judge D'Amaro told respondent that he knew of Mrs. Ambrosio's illness and suggested that respondent could have told him this information over the telephone.

12. Respondent testified that he did not believe at the time that it was improper for him to speak to Judge D'Amaro and that he still thinks that it was not improper.

13. Mrs. Ambrosio died on April 27, 1979.

14. On May 3, 1979, Judge D'Amaro adjourned the Ambrosio case to May 17, 1979.

15. On May 17, 1979, Mr. Ambrosio's attorney asked Judge D'Amaro to consider an intermittent sentence. Judge D'Amaro told defense counsel to put his motion in writing and accorded the district attorney an opportunity to answer. He adjourned the matter to May 31, 1979, and then to June 14, 1979, the latter at the district attorney's request.

16. On June 14, 1979, Judge D'Amaro modified the sentence from a definite sentence of four months and a \$1,000 fine to an intermittent sentence of ten months to be served on weekends. The district attorney interposed no objection to this modification.

As to Charge II of the Formal Written Complaint:

17. The charge is not sustained and is, therefore, dismissed.

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) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2A, 2B and 3A(4) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established. Respondent's cross motion is denied.

On behalf of the Ambrosio family, respondent met with Judge D'Amaro to convey to him that the Ambrosios were a "good" family and that the defendant's mother was dying. This message could have had only one purpose: to influence Judge D'Amaro to give special consideration to the defendant. Whether respondent's concern was for the defendant or, as he asserts, the family, is of no moment. The benefit to the family could not be had without benefit to the defendant.

That the defendant had already been sentenced does not absolve respondent. Obviously, the matter was still before Judge D'Amaro. If it were not, there would have been no reason for respondent to communicate with Judge D'Amaro. The defendant was still in jeopardy in some way, and his fate was still in Judge D'Amaro's hands. The execution of sentence had been stayed, and the sentence was subject to modification.

Requests by one judge to another for special consideration for any person are "wrong and always ha[ve] been wrong" (Matter of Byrne, 47

NY2d [b] [Ct. on the Judiciary, 1978]), whether for favorable treatment as to sentence (Matter of Dixon v. State Commission on Judicial Conduct, 47 NY2d 523 [1979]; Matter of Bulger v. State Commission on Judicial Conduct, 48 NY2d 32 [1979]), or for lesser matters (Matter of Kaplan, N.Y.L.J., May 20, 1983, p. 7, col. 1 [Com. on Jud. Conduct, May 17, 1983]; Matter of Calabretta, unreported [Com. on Jud. Conduct, April 11, 1984]; Matter of Hansel L. McGee, unreported [Com. on Jud. Conduct, April 12, 1984]).

Despite this well-settled law, respondent fails to recognize that his conversation with Judge D'Amaro was improper.

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Rubin concur.

Judge Shea and Mr. Sheehy dissent as to sanction only and vote that the appropriate disposition would be to issue a letter of dismissal and caution.

Judge Alexander was not present.

Dated: July 2, 1984

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

CLAUDE E. DOUGHERTY,

a Justice of the Clymer Town Court,
Chautauqua County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Cody B. Bartlett, Of Counsel)
for the Commission

Van Every and Claire (By Robert W. Van Every)
for Respondent

The respondent, Claude E. Dougherty, a justice of the Clymer Town Court, Chautauqua County, was served with a Formal Written Complaint dated August 10, 1983, alleging that he failed for a year to return to a defendant bail money to which the defendant was entitled. Respondent did not answer the Formal Written Complaint.

On December 27, 1983, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving

the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, stipulating that the agreed statement be executed in lieu of respondent's answer and further stipulating that the Commission make its determination upon the pleadings and the agreed upon facts.

The Commission approved the agreed statement on January 12, 1984. Oral argument was waived. On March 8, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Clymer Town Court, Chautauqua County, and has been since 1978. He also served by designation as a justice of the French Creek Town Court, Chautauqua County, from January 1, 1981, to December 31, 1981.

2. Respondent is not an attorney. He has attended several training courses for judges sponsored by the Office of Court Administration.

3. Between July 3, 1981, and July 6, 1981, respondent received \$1,000 bail posted by James Mylett for Paul S. Asmar, who was charged with a misdemeanor in the French Creek Town Court.

4. On September 29, 1981, Mr. Asmar duly appeared by counsel, and the matter was adjourned for six months in contemplation of dismissal.

5. Mr. Asmar's attorney, C. Edward Fagan, made a demand for return of the \$1,000 bail, and respondent agreed to return the bail.

6. By memorandum of November 18, 1981, and by letter of March 31, 1982, Mr. Fagan again requested return of the bail. Respondent received each of these communications within five days of the date of each.

7. On November 11, 1981, December 1, 1981, and April 22, 1982, Mr. Fagan, or someone from his law office on his behalf, spoke with respondent by telephone and requested that he return the bail. On November 11 and December 1, respondent promised that he would return the bail promptly.

8. On April 26, 1982, respondent sent a check to James Mylett, mistakenly made out in the amount of \$2,000. Respondent stopped payment on the check after being informed by Mr. Mylett that the bank had dishonored it for insufficient funds.

9. On June 2, 1982, Mr. Fagan, or someone in his law office on his behalf, spoke to respondent by telephone and again requested that he return the \$1,000 bail.

10. On September 23, 1982, Mr. Asmar and Mr. Mylett initiated an action in the Chautauqua County Court, asking that respondent show cause on September 27, 1982, why the bail money should not be returned.

11. On September 27, 1982, one hour before the return time of the order to show cause, respondent appeared in the Chautauqua County Court and produced a check for \$1,000 payable to James Mylett for bail posted for Paul S. Asmar.

12. Respondent turned the check over to a secretary in the Chautauqua County District Attorney's Office after being directed to turn it over to Mr. Fagan.

13. Mr. Fagan received the check on September 30, 1982.

14. Between September 29, 1981, and April 26, 1982, and from April 26, 1982, to September 27, 1982, respondent made no attempt to return the bail money, notwithstanding that Mr. Asmar had duly appeared in court and respondent knew that the bail must be returned according to law.

15. Respondent has no excuse for his failure to return the \$1,000 in a timely fashion.

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(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent was required by Section 530.80(3) of the Criminal Procedure Law to return the bail for Mr. Asmar to the person who posted it. Mr. Asmar duly appeared on September 29, 1981; his attorney demanded release of the bail, and respondent promised to return it. However, he did not do so until a year later, on September 27, 1982, after Mr. Asmar's attorney had made numerous demands and had been forced to initiate a lawsuit against respondent.

For this delay of a simple task, respondent has no excuse. He knew that the money should have been returned and repeatedly promised to do so. By failing to promptly dispose of the business of his court, he neglected his adjudicative and administrative responsibilities, in violation of Sections 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct. Respondent acknowledges that for such misconduct public sanction is appropriate.

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

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary,
Mrs. DelBello, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Mr. Kovner and Judge Rubin were not present.

Dated: April 16, 1984

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

RONALD L. FABRIZIO,

a Justice of the Town Court of New Windsor,
Orange County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for
the Commission

Stewart A. Rosenwasser for Respondent

The respondent, Ronald L. Fabrizio, a justice of the New Windsor Town Court, Orange County, was served with a Formal Written Complaint dated January 4, 1984, alleging that he sought special consideration on behalf of two defendants in other courts, that he was undignified and discourteous to a defendant in his court, that he altered a transcript, that he presided over a case involving his dentist, that he used racial epithets and that he falsely testified before a Commission member. Respondent filed an answer dated January 12, 1984.

By order dated January 23, 1984, the Commission designated Richard L. Baltimore, Jr., Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 3, 4, 10, 11 and 12, 1984, and the referee filed his report with the Commission on September 4, 1984.

By motion dated October 5, 1984, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on October 23, 1984.

On November 13, 1984, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the New Windsor Town Court, Orange County, and has been since January 1, 1982.
2. On April 3, 1983, Bohdan Kryzaniwsky was ticketed for Speeding in the City of Newburgh by Officer John Vigniero.
3. Mr. Kryzaniwsky is the brother of respondent's dentist, Dr. George Kryzaniwsky.
4. After he received the ticket, Mr. Kryzaniwsky went to see respondent and asked whether respondent could help him in some way.
5. Respondent told Mr. Kryzaniwsky that he would call Officer Vigniero.
6. The case was scheduled for trial on May 3, 1983. Having no other business in the court that day, respondent went to the Newburgh City Court and asked to see Officer Vigniero.
7. Respondent told Officer Vigniero that Mr. Kryzaniwsky was a friend and asked him to consent to a reduction of the charge to one that would carry no points on a driver's license.
8. Respondent gave the officer his business card, identifying him as a judge, and left.
9. Because of respondent's request, Officer Vigniero consented to a reduction of the charge to Failure To Keep Right.

As to Charge II of the Formal Written Complaint:

10. On January 31, 1983, Alexander Supik, Jr., received tickets for Speeding and Driving Without Insurance in the Town of Newburgh.

11. Mr. Supik and members of his family have been friends of respondent for more than ten years.

12. In early February 1983, Mr. Supik went to respondent's chambers and asked him what to do about the tickets he had received.

13. Mr. Supik told respondent that he was guilty of the offenses charged.

14. Respondent told Mr. Supik that he would "take care of" the tickets, and Mr. Supik turned them over to respondent.

15. Respondent then communicated with the Newburgh Town Court, seeking special consideration for Mr. Supik.

16. On February 3, 1983, Justice Angelo Darrigo of the Newburgh Town Court dismissed the Driving Without Insurance charge on the ground that Mr. Supik had produced proof of insurance. Mr. Supik was fined \$15 on the Speeding charge.

17. In March 1984, Mr. Supik's mother, Anna Margaret Supik, called respondent and told him that her son had been asked to talk to the Commission staff concerning the tickets.

18. Respondent told Ms. Supik that Mr. Supik "had better say the right thing" and that respondent would see who his friends are.

19. Respondent also said, "People think I am a bastard now. When this is over, they can call me Mr. Bastard for all I care." When respondent made the statement, he knew that one of the charges in this proceeding involved his handling of Mr. Supik's tickets.

As to Charge III of the Formal Written Complaint:

20. On October 13, 1982, Mostafa Soltani was ticketed in the Town of New Windsor for Insufficient Headlights, Driving Without A License, Driving Without Insurance and Driving An Unregistered Vehicle.

21. Mr. Soltani is a civil engineer who lives at West Point with his wife, an Army captain. Mr. Soltani was born in Iran.

22. Mr. Soltani appeared before respondent on December 28, 1982. Respondent referred to Mr. Soltani as "the Iranian guy" and told him to "shut up" when he attempted to speak.

23. When Mr. Soltani attempted to explain that he had an international driver's license, respondent referred to the license as "bullshit." Respondent said, "I am a retired colonel from the United States Military Police, and I don't want you to tell me what the laws of the State of New York are."

24. Mr. Soltani was at all times courteous and respectful to respondent. Respondent was, according to several witnesses in the courtroom, discourteous and undignified.

25. Respondent ordered Mr. Soltani held in lieu of \$225 cash bail on the traffic charges and, according to two court clerks, said that he was holding Mr. Soltani as a "hostage," although Mr. Soltani did not hear the remark. Respondent refused to accept a check for the bail from Mr. Soltani, and Mr. Soltani spent a night in jail.

26. Prior to the proceeding on December 28, 1982, respondent told his court clerk, Yvette Donegan, that he was going to "get the Iranian bastard."

27. On February 1, 1983, respondent dismissed one of the charges against Mr. Soltani and fined him a total of \$60 on the remaining charges.

As to Charge IV of the Formal Written Complaint:

28. After the conclusion of the Soltani case, the Office of Court Administration asked respondent for transcripts of the proceedings on December 28, 1982, and February 1, 1983. Respondent was aware that the transcripts were being requested because his conduct in the Soltani case was being reviewed.

29. Respondent asked his court reporter, Alberta Goucher Murtagh, to prepare the transcripts.

30. Ms. Murtagh prepared a "rough draft" of the transcripts and gave them to respondent.

31. Respondent made several changes to the transcripts in his own handwriting. Among the changes, respondent added that he had advised Mr. Soltani of his right to counsel and a supporting deposition on all charges and noted that Mr. Soltani refused counsel. Respondent also crossed out a statement attributed to him in Ms. Murtagh's transcript: "I am a retired colonel from the United States Military Police, and I don't want you to tell me what the laws of the State of New York are."

32. Respondent then told Ms. Murtagh to retype the transcripts to incorporate his changes.

33. Respondent ordered the transcripts sent to the Office of Court Administration. The transcripts were certified as true and accurate by Ms. Murtagh. There was no indication that the transcripts had been altered by respondent.

As to Charge V of the Formal Written Complaint:

34. On or about July 8, 1983, respondent learned that Ms. Murtagh had been subpoenaed to appear for the purpose of giving testimony before the Commission staff and had been directed to bring her stenographic notes in People v. Mostafa Soltani.

35. Ms. Murtagh told respondent that she was concerned that, because of the changes he had made to the transcripts, her stenographic notes and the transcripts would not "match."

36. Respondent told Ms. Murtagh, "Everything should match up."

37. Ms. Murtagh took this as a direction to alter her notes to match the changes that respondent had made in the transcripts. She did so and submitted the altered notes to the Commission staff.

As to Charge VI of the Formal Written Complaint:

38. On August 2, 1982, respondent presided over Ethan Allen Agency v. Dr. George Kryzaniwsky, a small claims case.

39. Dr. Kryzaniwsky had been respondent's regular dentist for approximately ten years.

40. On August 13, 1982, respondent decided the case in favor of Dr. Kryzaniwsky and dismissed the plaintiff's claim.

41. Respondent never notified the plaintiff or the plaintiff's attorney of his relationship with Dr. Kryzaniwsky or offered to disqualify himself.

As to Charge VII of the Formal Written Complaint:

42. In 1982 and 1983, while acting in his official capacity, respondent used racial epithets, such as "nigger" and "spick," in the presence of a court clerk and a police sergeant.

43. In July 1983, respondent spoke in chambers with Hilda Kogut, a special agent for the Federal Bureau of Investigation.

44. Investigator Kogut inquired about a defendant in respondent's court. Respondent referred to the defendant as a "nigger."

45. Between May 1, 1982, and February 1, 1983, respondent used the term "nigger" while conferring in chambers on official business with David A. Lindine, an attorney for the Legal Aid Society.

As to Charge VIII of the Formal Written Complaint:

46. The charge is not sustained and is, therefore, dismissed.

As to Charge IX of the Formal Written Complaint:

47. Respondent failed to cooperate with a Commission investigation in that he:

(a) Testified falsely before a member of the Commission on August 30, 1983, that he did not ask Officer John Vigniero on May 3, 1983, to agree to a reduction of the charge in People v. Bohdan Kryzaniwsky;

(b) testified falsely before a member of the Commission on October 3, 1983, that Alexander Supik, Jr., had asked him to obtain an adjournment from the Newburgh Town Court because Mr. Supik wanted to play basketball on the date that he was due in court and that respondent called the court only to obtain an adjournment;

(c) testified falsely before a member of the Commission on October 3, 1983, that Mr. Supik had told respondent that he had gone to the Newburgh Town Court and produced proof of automobile insurance;

(d) testified falsely before a member of the Commission on August 30, 1983, and at the hearing on April 11, 1984, that a courtroom spectator and not respondent had used the term "hostage" on December 28, 1982, in People v. Mostafa Soltani;

(e) testified falsely on October 3, 1983, that on or about July 8, 1983, he had not directed Alberta Murtagh to alter the stenographic notes in People v. Mostafa Soltani before providing them to the Commission; and,

(f) testified falsely before a member of the Commission on August 30, 1983, and at the hearing on April 11 and 12, 1984, that he had not used racial epithets in his judicial capacity or at any other time in his life.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a) and 100.3(c) of the Rules Governing Judicial Conduct; Canons 1, 2, 3A and 3C of the Code of Judicial Conduct, and Sections 700.5(a) and 700.5(e) of the Special Rules Concerning Court Decorum of the Appellate Division, Second Department. Charges I through VII and paragraphs 20(a) through (e) and (g) of Charge IX of the Formal Written Complaint are sustained, and respondent's misconduct is established.

In a relatively brief judicial career, respondent has demonstrated by a persistent and varied pattern of misconduct that he is unfit for the bench.

Respondent created the appearance of impropriety by sitting on a case in which one of the parties was his dentist of long standing, without disclosing the relationship or offering to disqualify himself. In so doing, he heard a case in which his impartiality might reasonably be questioned, in violation of Section 100.3(c) of the Rules Governing Judicial Conduct.

Respondent intervened in two cases in other courts to obtain special consideration for defendants who had asked him for help, long after the practice had been condemned by the courts and this Commission. Matter of Dixon v. State Commission on Judicial Conduct, 47 NY2d 523 (1979); Matter of Bulger v. State Commission on Judicial Conduct, 48 NY2d 32 (1979); Bartlett v. Enea, 45 AD2d 471 (4th Dept. 1974); "Ticket-Fixing: The Assertion of Influence in Traffic Cases," Interim Report by the State Commission on Judicial Conduct (June 20, 1977).

Respondent was discourteous to a foreign-born defendant and created the appearance that he was basing his bail decision on his biased views of the defendant's national origin. He repeatedly used racist language while performing his judicial duties. Standing alone, this is serious misconduct. Matter of Cerbone v. State Commission on Judicial Conduct, 61 NY2d 93 (1984); Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465 (1980); Matter of Bloodgood, unreported (Com. on Jud. Conduct, June 11, 1981).

Respondent exacerbated his serious misdeeds by numerous attempts to frustrate the Commission investigation into his conduct. At a time when he knew his conduct in the Soltani case had been called into question, he made changes in the transcripts of the case to make his conduct look more proper. He then ordered the court stenographer to change her notes so that his alterations might go undetected. Such alterations of official records constitute serious misconduct. Matter of Jones, 47 NY2d (mmm) (Ct. on the Judiciary 1979). Respondent threatened a witness by telling his mother that by the witness' testimony respondent would "see who his friends are," and by indicating that people would call him a "bastard" once the Commission proceeding was concluded. (See, Matter of Mahar, unreported

[Com. on Jud. Conduct, June 10, 1982]]. Respondent further attempted to obstruct the Commission's discharge of its lawful mandate by repeatedly giving false testimony. Such lack of candor is "totally unacceptable, for a Judge is, of course, sworn to uphold the truth-seeking process." Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74, 78 (fn.) (1980).

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

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Kovner was not present.

Dated: December 26, 1984

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

JOHN J. FROMER,

a Judge of the County Court, Greene
County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Stephen F. Downs and Henry S. Stewart,
Of Counsel) for the Commission

Garry, Cahill & Edmunds (By John T. Garry, II) for
Respondent

The respondent, John J. Fromer, a judge of the County Court,
Greene County, was served a Formal Written Complaint dated February 16,
1984, alleging that he made an improper comment on a pending case to a
newspaper reporter. Respondent did not answer the Formal Written
Complaint.

On April 26, 1984, the administrator of the Commission,
respondent and respondent's counsel entered into an agreed statement of
facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving

the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, stipulating that the agreed statement be executed in lieu of respondent's answer and further stipulating that the Commission make its determination based upon the pleadings and the agreed upon facts. The Commission approved the agreed statement on May 10, 1984. Oral argument was waived. On August 21, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

1. On June 29, 1983, respondent met with the Greene County District Attorney and defense counsel to discuss a possible plea bargain in People v. Ronald Hickey. Mr. Hickey was charged with Rape, Third Degree, and Burglary, Third Degree.

2. It was alleged that on May 22, 1983, Mr. Hickey had entered a woman's apartment with a stocking mask over his face, put his hands on the woman's throat and said, "Shut up and lay there if you know what's good for you." Mr. Hickey raped the victim several times and then fell asleep in her bed. He was found asleep in the victim's bed with the stocking mask over his head.

3. During the plea negotiations, it was agreed that Mr. Hickey would plead guilty to the charge of Rape, Third Degree. It was also agreed that the charge of Burglary, Third Degree, would be dismissed and that Mr. Hickey would receive a one-year jail sentence.

4. Mr. Hickey subsequently pled guilty to Rape, Third Degree, before respondent, and sentencing was scheduled for August 23, 1983.

5. On August 19, 1983, a newspaper reporter contacted respondent and asked him for information concerning the Hickey case in light of public criticism about a rumored reduction of the charge and the proposed sentence.

6. Respondent explained to the reporter that the charge had not been reduced and that the defendant had pled guilty to the same charge for which he had been indicted.

7. With respect to sentence, respondent said to the reporter:

As I recall he [the defendant] did go into her [the victim's] apartment without permission....He was drunk, jumped into the sack with her, had sex and went to sleep. I think it started without consent, but maybe they ended up enjoying themselves.

It was not like a rape on the street....People hear rape and they think of the poor girl in the park dragged into the bushes. But it wasn't like that.

8. At the pretrial conference on June 29, 1983, the defense counsel had stated that the defendant claimed he was drunk on the night of the rape, that after the initial rape he fell asleep, that the victim later awoke him, that they engaged again in sexual intercourse and that he then went back to sleep. It was on the basis of this statement that respondent said to the reporter, "[M]aybe they ended up enjoying themselves."

9. The district attorney did not assent to the truth of the defense counsel's recitation of his client's statement. The district attorney did consent to a minimal sentence.

10. Respondent has acknowledged his misconduct and has indicated that he regrets that he made the statement.

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(a)(4) and 100.3(a)(6) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(4) and 3A(6) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

It would have been improper for respondent to make any public comment, no matter how minor, to a newspaper reporter or to any one else, about a case pending before him. The nature of respondent's misconduct was greatly exacerbated when he granted an interview to a reporter in which he recited his opinions with regard to the law controlling the case and stated in detail his views of the facts of the case. The misconduct was further compounded by respondent's crude and offensive comments about the victim of the rape and about the rape itself. Respondent's comments were not based on fact but were a distorted version and extrapolation of unsworn statements made by defense counsel in argument during a pre-trial conference.

By making the comments "I think (underlining added) it started without consent..." and "...maybe they ended up enjoying themselves", respondent publicly questioned whether there ever was a rape or whether the victim had consented to the sexual intercourse--without having any supporting facts for his comments. The comments that this was "...not like a rape on the streets..." and was not a situation "...of the poor girl in the park dragged into the bushes", when taken with the previous statements, further underscore respondent's lack of sensitivity and understanding of the situation.

Respondent's statements were humiliating and demeaning to the victim of the rape, in no small measure because respondent was, in effect, publicly stating that she had probably consented to the

sexual intercourse. The burden upon the victim of such gratuitous observations is obvious.

Moreover, such comments have the effect of discouraging complaints of rape and sexual harassment. The impact upon those who look to the judiciary for protection from sexual assault may be devastating.

Respondent's conduct violates the basic tenets of fairness in the administration of justice and brings the administration of justice into public disrepute.

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

Mrs. Robb, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Mr. Bower dissents as to sanction only and votes that the appropriate disposition would be to issue a letter of dismissal and caution.

Judge Alexander and Judge Rubin were not present.

Dated: October 25, 1984

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

JOHN J. FROMER,

a Judge of the County Court, Greene
County.

DISSENTING OPINION
BY MR. BOWER

I dissent with respect to the sanction imposed. I find that it is excessive and it is not consistent with any standard of sanction for errant judges.

The litmus test of justice in a democratic society is equality: equality of rights; equality of opportunity and equality in the imposition of sanctions. In my judgment, the majority erred in denying such equality to respondent.

The degrees of sanction are set forth by the Judiciary Law (Section 44). From the harshness of removal through censure and admonition to dismissal with a letter of caution, the Commission is vested with discretion in applying sanctions. The appropriateness of the penalty requires fairness, common sense and consistency. When there is no consistency, there are no standards. It is for that reason that we best review what are, in effect, proper sanctioning standards.

Removal is for cases of great severity. While there is no hard-and-fast rule as to what conduct will result in the penalty of removal, a review of the cases decided by the Commission shows that it is sparingly applied and only in cases of truly extreme nature. The misconduct to merit removal must have been truly egregious. Examples are shady dealings with public or private funds, repeated persistent violations of litigants' legal rights or serious infractions of the Canons and Rules bordering on unethical conduct and transgressing on the moral sense of the community. Removal has also been applied in cases where the conduct severely damaged or destroyed the public's confidence in the judge or his ability to continue to sit because his acts degraded the judicial system. Obviously, the sanction of removal is greatly damaging to one's career and reputation.

Admonition and censure are frequently regarded as one and the same by members of the judiciary because they are both public. Aside from their non-private nature, they are indeed unlike.

Admonition is the mildest form of public sanction. By definition, it is to put someone in mind of his duties or to counsel against wrong practices or to give authoritative warning advice.¹ It is truly a reminder to the recipient that his conduct was substandard and to refrain from a repetition. Because it is a public warning or reminder, it usually results in widespread publicity. Its admonitory effect is frequently lost because of this feared publicity and in the mind of most judges, it is simply and purely a form of punishment. This makes its warning, rather than punitive purpose, nugatory.

Conduct on one occasion that violates a Rule or Canon but does not result in the deprivation of a legal right and does not tend to bring the judiciary and the court system into disrepute, should usually be dealt with by way of admonition.

Censure, on the other hand, is far more severe than admonition and should be reserved for cases which almost but not quite come up to the standard of conduct which normally results in removal. The very dictionary definition of "censure" shows that it is far more extensive than admonition. It is "a condemnatory judgment", it is "criticism", it is "an adverse judgment, unfavorable opinion, hostile criticism; blaming, finding fault with, or² condemned as wrong; expression of disapproval or condemnation." It is not a reminder of a duty breached by an occasional errant judge, it is a severe critical appraisal and condemnation short of removal. As such, it should be (and sometimes is) used to sanction conduct which is serious, often repetitive or which tends to result in public disrespect for the courts and our system of justice.

One does not need an exhaustive review of the cases decided by the courts and this Commission and resulting in either censure or admonition in order to highlight the impropriety of the sanction of censure meted out to respondent. Illustrative examples will suffice.

In Matter of Mertens, 56 AD2d 456, 392 NYS2d 860 (1st Dept., 1977), there were over 100 instances of complaints of undignified, oppressive, rude, injudicious and intemperate instances of behavior in open court of which 33 were sustained. There had been a prior "sharp" admonition four years prior to Judge Mertens which seemed to have gone unheeded by him. His pattern of behavior ranged through the gamut of

¹Oxford English Dictionary

²Ibid.

improper demeanor. It resulted in embarrassment, ridicule and shame, not to mention financial loss to lawyers and litigants alike. He was censured.

In Matter of Sena, unreported (Com. on Jud. Conduct, Jan. 18, 1980), there were 38 charges of extremely intemperate, rude and injudicious behavior of which 27 were sustained. The sanction was censure.

Matter of Whalen, unreported (Com. on Jud. Conduct, Jan. 20, 1983), involved a judge who presided in 37 matters in which his employer was one of the parties. His sanction was censure.

In Matter of Sullivan, unreported (Com. on Jud. Conduct, April 22, 1983), a judge failed to disqualify himself in several cases involving his law firm. The sanction was censure.

In Matter of Sims, unreported (Com. on Jud. Conduct, May 16, 1983), the judge was censured for signing orders in ten cases in which the defendants were clients or former clients of hers or her husband's. (Interestingly enough, upon her appeal to the Court of Appeals, the censure was modified and she was removed from office.)

In Matter of Roncallo, unreported (Com. on Jud. Conduct, Jan. 6, 1983), a judge presided over the merits of a case which involved an insurance commission-sharing practice by the Republican party leaders in Nassau County. He was not inhibited in hearing the case even though he, himself, was participating in the commission-sharing scheme. His punishment was censure.

As to how admonitions have been applied, another representative sample will serve a useful purpose:

In Matter of Sharpe, unreported (Com. on Jud. Conduct, June 6, 1983), a judge cited for contempt an assistant district attorney for the lateness of a police officer not under his control and ordered him detained. He was put in a detention room with the very prisoners whom he was prosecuting that morning. The sanction imposed was admonition.

In Matter of Certo, unreported (Com. on Jud. Conduct, Feb. 11, 1983), the respondent was a participant in a fund-raising testimonial where \$10,000 was raised and given to him for his personal use. The sanction was admonition.

The underlying facts of the case at bar demonstrate the inappropriateness of censuring the respondent.

Judge Fromer is generally regarded as a hard-working, able and fair judge. Nonetheless, in the case at bar he chose to discuss a pending case after a plea bargain had been effected but sentence had not been pronounced, with a newspaper reporter. It was improper for this discussion to be held in a pending case. It was improper for Judge Fromer to have repeated the sense of what the defense counsel alleged at the plea-bargaining session as the facts of the case. It was, in short,

defense counsel's contention that the defendant, who knew the complainant, entered into her apartment wearing a stocking mask and threatened her unless she consented to have sexual intercourse with him. Thereafter, the defendant allegedly fell asleep and it was the complainant who woke him and they had intercourse again. During this recitation of the defense counsel, the prosecutor stood silent. The majority construes this as lack of assent to this version. It seems, however, that this bizarre story, if it did not carry some convincing value in the prosecutor's mind, would have prompted some expression of dissent. Right or wrong, Judge Fromer construed the silence as most ordinary people would, as not being contradictory of this version. He unwisely, nay foolishly, synthesized the implications of the story and repeated it to the newspaper reporter. I have no doubt that in the mind of the victim Judge Fromer's words spoken to the press must have caused some distress. I would venture to guess, however, that under the circumstances, the indictment for Rape, Third Degree, and plea bargain struck, with the mild sentence to be imposed, carried a far greater degree of discomfort to the complainant. Very little of what Judge Fromer said to the reporter could have added to the resentment already felt by the complainant on the heels of the way that the case had been handled and the disposition to be effected.

Respondent has never been the object of discipline. From the moment that this Commission expressed an interest in his remarks concerning the Hickey case, he has acknowledged his misconduct and has expressed sincere contrition. It was truly a foolish statement, erroneously made, for which I am sure Judge Fromer would have been glad to apologize to the complainant.

Instead, the Commission imposed the penalty of censure. The vote to censure came at the same meeting where the Commission also dealt with the matter of Judge Myers, of the Norfolk Town Court in St. Lawrence County. It is worthwhile to compare the facts in that case with the one at bar. In Myers, the operative facts as found by the Commission showed that the respondent hung a dart board in his chambers and offered defendants an opportunity to throw a dart to determine their fines. In one instance, he indicated that if a defendant missed the board, she would be sentenced to seven days in jail. He used a printed release form which recited that:

I of my own free will would like to toss a dart at the board to decide the amount of fine which will be charged to me for my conviction of the violation with which I have been charged. I do not hold the Judge responsible for this opportunity to decide on the amount of fine, and I resolve [sic] all interested parties from this act, I do it on my own free will.

Several defendants were solicited to throw darts, resulting in such witty remarks as: "Sure, bend over." Surely, the throwing of darts and comments of the above nature are not conducive to respect for the law and the decorum of the judicial process. These repeated instances of unjudgelike conduct caused this Commission to impose only the sanction of admonition on Judge Myers (with two members dissenting in favor of a harsher penalty).

The disparity of treatment accorded to Judge Myers and to Judge Fromer demonstrates the need for consistent standards of judgment. To admonish one who, with his dart board and repeated clowning games and banter, must have been the laughing stock of the community while censuring a worthwhile, capable and serious-minded judge, defies my sense of balanced judgment and points out the majority's excessively severe view of Judge Fromer's conduct.

In meting out a proper sanction in this case, I would take into account the following factors:

1. Was anyone deprived of a substantial legal right by the respondent? I believe that the answer is in the negative.
2. Was there the slightest semblance of moral turpitude or improper ethics involved in the conduct? The answer is in the negative.
3. Was the conduct of such a nature that future litigants in respondent's court will lose confidence in the fairness of the judge or the proceedings? The answer is in the negative.
4. Was the dignity of the court or the judicial system degraded by the conduct? The answer is in the negative.
5. Does respondent's past conduct require that he be made an example of for public discipline? The answer is in the negative.
6. In the absence of public discipline, would the conduct be likely to be repeated? The answer is in the negative.
7. Is there a compelling need for public discipline in this one isolated case of a gauche remark and improper discussion of a case still pending? Not only is the answer in the negative but any beneficial effect of a confidential letter of caution will be dissipated by the overkill of the public censure.

A consideration of these factors leads me to conclude that either censure or admonition is far too severe for disciplining the respondent for a one-time, foolish remark. I believe that this would be a proper case for a dismissal with a strongly worded letter of caution.

Dated: October 25, 1984

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

LOUIS GROSSMAN,

a Judge of the Civil Court of the City of
New York and Acting Justice of the Supreme
Court, First Judicial District.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern for the Commission

Shea & Gould (By Milton S. Gould, Herbert B. Evans
and Peter C. Neger) for Respondent

The respondent, Louis Grossman, a judge of the New York City Civil Court, New York County, and Acting Justice of the Supreme Court, First Judicial District, was served with a Formal Written Complaint dated December 2, 1983, alleging that he mistreated a child he was interviewing in connection with a matrimonial proceeding. Respondent filed an answer dated January 10, 1984.

On January 17, 1984, the Commission designated the Honorable James D. Hopkins as referee to hear and report proposed findings of fact and conclusions of law.

On January 26, 1984, respondent moved to dismiss the Formal Written Complaint. The administrator of the Commission opposed the motion on February 1, 1984. Respondent replied on February 6, 1984. The administrator filed a sur-reply on February 8, 1984. By determination and order dated February 10, 1984, the Commission denied the motion to dismiss.

A hearing was held on March 28 and April 2, 3 and 4, 1984, and the referee filed his report with the Commission on August 1, 1984.

By motion dated August 15, 1984, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on September 8, 1984. The administrator filed a reply on September 18, 1984.

On September 21, 1984, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charges I through VI of the Formal Written Complaint:

1. Respondent is a judge of the New York City Civil Court and has been since January 1, 1969. He also serves by designation as an Acting Justice of the Supreme Court, First Judicial District, and has since January 1, 1977.

2. From January to July 1982, respondent presided over a matrimonial action, _____ v. _____. *

3. Several unusual incidents occurred during the trial. A fire cracker or some sort of loud explosion took place outside the courtroom on June 1, 1982. The attorneys for the parties received threatening telephone calls at their homes on June 14, 1982. A bomb threat directed to the trial courtroom was received by the administrative judge on July 6, 1982. There were rumors of outside interference in the case which came to the attention of the administrative judge.

4. The case was bitterly contested. Custody of the child of the marriage and visitation rights were prime issues in the case. There were claims by the plaintiff-wife of sexual abuse of the child by the

* The names of the parties are omitted in accordance with the confidentiality requirements of Section 235 of the Domestic Relations Law.

defendant-husband. The plaintiff also testified that the child had reported that his father had said that he had the power to "fix" the judge.

5. The child was four years old at the time of the trial. There had been psychiatric testimony during the trial that he was emotionally disturbed as a result of his parents' difficult marriage and divorce.

6. By agreement of the parties, respondent interviewed the child in a robing room adjacent to the courtroom, outside the presence of the parties and their attorneys. The purpose of the interview was to determine whether the father should be given visitation rights in light of the claim of sexual abuse of the child and whether the child's statements of sexual abuse should be credited.

7. Respondent interviewed the child on June 7, 10, 17 and 21, 1982. A court reporter recorded the minutes of the four sessions.

8. Each interview lasted an hour or more. The transcripts of the four interviews total 221 pages.

9. During the first session, respondent commenced questioning the child regarding the allegations of sexual abuse and, after the child raised it, the "fixing" remark. Respondent had intended to raise the "fixing" question with the child and the child gave him the opening. During the second, third and fourth interviews, respondent questioned the child almost exclusively on the issue of the "fixing" remark.

10. During the four interviews, respondent:

(a) Called the child a liar or stated that he was not telling the truth more than 200 times;

(b) told the child approximately 40 times that he had given contradictory testimony;

(c) admonished the child to tell the truth more than 200 times;

(d) asked the child approximately 150 times who had told the child to testify as he had;

(e) told the child more than ten times that he had "better remember" or "must remember" after the child had indicated that he did not know the answer to a question;

(f) inaccurately indicated to the child on four occasions that he might go to jail if he did not tell the truth;

(g) inaccurately pointed out to the child that handcuffs worn by the court officer were used for people who did not tell the truth; and,

(h) told the child more than 50 times that there would be "serious trouble" or "serious consequences" if he did not tell the truth, including that the child would be punished by God, that he could not leave the court, that he would have to repeatedly return to court, that lies would "hurt" the child's mother, that the child might be handcuffed by a court officer, that the child would have to live with his father against his expressed wishes, that respondent would "call the man in and that's the end," and that "it will be the end of you, anyway."

11. The transcripts of the four interviews indicate that the child cried on three occasions, protested that he was tired or needed to rest 14 times, said that he wanted to leave nine times, and said several times that he wanted his father and did not want to talk. Respondent did not suspend or terminate his questioning of the child on any of those occasions.

12. Respondent's questioning was done roughly and in rapid-fire fashion. Respondent himself acknowledged in colloquy with the attorneys after the interviews that he had been "rough" with the child and that he had "fired" questions at him.

13. None of the actions set forth in paragraphs 10, 11 and 12 above was justified by the exigencies of the case or the unusual circumstances which accompanied the trial.

14. Respondent repeatedly stated that the allegation that someone had told the child that he could "fix" the judge was the most important aspect of the case and that he would not proceed with the trial until he ascertained from the child who had made the remark.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(2), 100.3(a)(3) and 100.3(a)(4) of the Rules Governing Judicial Conduct; Canons 1, 2, 3A(2), 3A(3) and 3A(4) of the Code of Judicial Conduct, and Sections 604.1(b), 604.1(e)(1) and 604.1(e)(5) of the Rules of the Appellate Division, First Department. Charges I through VI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The purpose of interviewing the four-year-old child was to inquire into matters that might shed light on the twin issues of custody and visitation in an atmosphere in which the child could be protected from the intimidation of his parents and the adversarial examination of their attorneys. Respondent would have had the obligation to protect any witness from harassing or intimidating questions. Special considerations apply to children who are witnesses; and especial solicitude must be shown a four-year old child caught in the midst of bitter and contentious

matrimonial proceedings. In such circumstances, a judge has the duty to be understanding, sympathetic and protective in dealing with a child.

Instead, respondent ignored his obligation to the child. He lost the sense of detachment required of him, vented his displeasure on the child and engaged in what the referee correctly termed a "relentless and tenacious interrogation of the child" concerning the "judge fixing" remark.

Respondent turned the sessions with the child into a series of grueling cross-examinations in which he became preoccupied and obsessed in pursuing the source of the "fixing" remark and all but abandoned the serious allegations of child abuse that bore directly on the issues he was to determine.

To prolong the questioning of the child over four sessions and several hours on an issue collateral to the case can only be perceived as unnecessary and unwarranted. As the referee found, respondent not only overstepped the bounds of his discretion but misused and harassed the child.

The referee further stated:

The child was barely at the age where his statements might be considered for any purpose; and he was questioned in the absence of anyone known intimately to him or representing his interests. Because of his age, the reliability of his answers on any count was suspect....In this milieu, the child was closeted with the respondent and subjected to his queries without the benefit of assistance from any one on his behalf. The respondent, obsessed with the objective of discovering who had impugned his reputation for impartiality and honesty, allowed himself to interrogate the child in a manner and over a period of time which it is doubtful he would have allowed to attorneys in the courtroom.

(Referee's Report, p. 61)

However swept away by the "fixing" issue in the case, respondent was not intentionally cruel or sadistically inclined toward the child. There was also testimony at the hearing in this matter that respondent has enjoyed an excellent reputation in a long and heretofore unblemished career on the bench.

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

Mrs. Robb, Mr. Bromberg, Mrs. DelBello, Judge Ostrowski, Judge Rubin and Judge Shea concur.

Mr. Kovner and Mr. Sheehy dissent as to sanction only and vote that respondent be admonished.

Judge Alexander, Mr. Bower and Mr. Cleary dissent as to sanction only and vote that respondent be issued a confidential letter of dismissal and caution.

Dated: November 20, 1984

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

LOUIS GROSSMAN,

a Judge of the Civil Court of the City
of New York and Acting Justice of the
Supreme Court, First Judicial District.

DISSENTING OPINION
BY MR. KOVNER

I dissent as to sanction only. I view the unusual circumstances surrounding the trial as mitigating, but not excusing, the misconduct. At the request of the administrative judge, respondent accepted responsibility for this unusually bitter trial only after other judges had declined to accept this trial. As an assignment judge, respondent would not ordinarily have borne this responsibility. Indeed, after the explosion, the subsequent bomb threats, and at least one of the plainly improper efforts by persons associated with the court system to influence the court, respondent seriously considered declaring a mistrial, only to yield to a further request by his administrative judge to complete the trial.

The shocking attempts to influence the disposition of the case by persons associated with the court system are the context in which the excessive attention devoted to the child's statement that he was told the judge could be "fixed" must be considered.

I reject the inference that the overbearing nature of the examination was "selfish". Given the baselessness of the charge that the judge could be "fixed", the origin of the child's remark was clearly related to the central question of the validity of the allegation of sexual abuse made against the father. My rejection of that inference, however, should not be viewed as condoning an examination clearly improper in volume and tone.

I believe a lesser sanction would have been appropriate.

Dated: November 20, 1984

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

LOUIS GROSSMAN,

a Judge of the Civil Court of the
City of New York and Acting Justice
of the Supreme Court, First Judicial
District.

DISSENTING OPINION BY
JUDGE ALEXANDER IN
WHICH MR. BOWER,
MR. CLEARY AND
MR. SHEEHY JOIN

I concur in the dissenting views of Mr. Kovner. I would only add that in my view, the majority focuses unduly upon the excessiveness of respondent's misconduct, to the exclusion of due consideration being given to respondent's exemplary record as a judge, heretofore unblemished. Without intending to condone in any sense the "relentless and tenacious interrogation of the child" or to suggest that respondent's conduct was not clearly improper, it would appear that this is a single aberrational circumstance, unlikely ever to be repeated. Having due regard for all the circumstances here present, I would impose a less severe sanction.

Dated: November 20, 1984

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

JOHN F. INNES, JR.,

a Justice of the Stafford Town Court,
Genesee County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Cody B. Bartlett, Of Counsel) for the
Commission

Cooney, Fussell and Humphrey (By Robert F. Humphrey)
for Respondent

The respondent, John F. Innes, Jr., a justice of the Stafford
Town Court, Genesee County, was served with a Formal Written Complaint
dated August 3, 1983, alleging that he drove an automobile while he was
intoxicated and that he was convicted of Driving While Ability Impaired.
Respondent filed an answer dated September 8, 1983.

By order dated November 18, 1983, the Commission designated John
J. Darcy, Esq., as referee to hear and report proposed findings of fact and

conclusions of law. A hearing was held on December 29, 1983, and the referee filed his report with the Commission on February 29, 1984.

By motion dated April 10, 1984, the administrator of the Commission moved to confirm the referee's report, to adopt additional conclusions of law and for a finding that respondent be admonished. Respondent opposed the motion by letter dated May 2, 1984. Oral argument was waived. On May 10, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Stafford Town Court and was on October 3, 1981.

2. On October 3, 1981, at about 1:30 A.M., respondent was driving on West Main Street in the Town of Batavia.

3. Ronald P. Merrill, a deputy sheriff in Genesee County, was patrolling West Main Street at the time.

4. Deputy Merrill saw respondent's car tailgating another vehicle.

5. Deputy Merrill followed respondent's car for about a mile and watched it weave within the westbound lane and at one point cross over into the eastbound lane. Respondent was driving slightly in excess of the posted speed limit.

6. Deputy Merrill stopped respondent's car in a parking lot. After the deputy had parked his patrol car behind respondent's car, respondent backed up and his car struck the patrol car, causing \$79 in damages to the patrol car.

7. Deputy Merrill identified respondent by his driver's license.

8. Respondent left his car. Deputy Merrill smelled a strong odor of alcohol on respondent's breath. Respondent's speech was slurred, and he appeared to Deputy Merrill to be excited and nervous. Respondent's eyes were bloodshot, and he was unsteady on his feet.

9. Deputy Merrill asked respondent to perform two sobriety tests. Respondent was unable to maintain his balance walking heel-to-toe and was unable to touch his finger to his nose.

10. Deputy Merrill took respondent to the Genesee County Sheriff's Department, where he was given a breathalyzer test at 2:01 A.M.

11. The test indicated that respondent had .18% blood alcohol content.

12. A person with .06% blood alcohol content is deemed to be under the influence of alcohol, and a person with .10% blood alcohol content is deemed to be intoxicated.

13. Throughout his contact with the sheriff's department, respondent was civil and told Deputy Merrill, "Do what you have to do, and I don't want any special favors."

14. Respondent was charged with Driving While Intoxicated and Failure To Keep Right.

15. On October 15, 1981, respondent pleaded guilty in Batavia Town Court to Driving While Ability Impaired and Failure To Keep Right. He paid a \$20 fine and agreed to attend a Department of Motor Vehicles drinking driver school.

16. Respondent subsequently attended and completed the drinking driver school.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(a) of the Rules Governing Judicial Conduct and Canons 1 and 2A of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

A judge is expected to adhere to the highest standards of conduct, both on and off the bench. Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465, 469 (1980). A judge who drinks and drives violates the law and endangers public welfare. When a judge's drinking leads to repeated public incidents and is accompanied by attempts to win favored treatment because of his position, severe sanction is warranted. Matter of Quinn v. State Commission on Judicial Conduct, 54 NY2d 386 (1981); Matter of Barr, unreported (Com. on Jud. Conduct, Oct. 3, 1980).

Even without such exacerbating circumstances, public sanction has been held to be appropriate. In Matter of Killam, 388 Mass. 619, 447 NE2d 1233 (Mass. 1983), a judge was censured for a single incident of driving while under the influence of alcohol, notwithstanding his unblemished record on the bench.

Unlike the situation in Quinn and Barr, here, there is but a single incident of drunken driving. Furthermore, respondent cooperated with the police and the court that sentenced him and in no way sought favor because of his judicial office.

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

Mrs. Robb, Judge Alexander, Mr. Bromberg, Mrs. DelBello, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Cleary dissents as to sanction only and votes that the appropriate disposition would be to issue a confidential letter of dismissal and caution.

Mr. Bower and Mr. Kovner were not present.

Dated: July 6, 1984

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

JOHN F. INNES, JR.,

a Justice of the Stafford Town Court,
Genesee County.

DISSENTING OPINION
BY MR. CLEARY

I concur in the majority's finding of misconduct. However, I feel that the sanction of public admonition is unnecessary under the circumstances.

The respondent did not profit by his misconduct, did not injure or destroy anyone's rights or property, nor did he seek any preferential treatment. He entered a plea of guilty, attended a "drinking driver" school, and of greatest importance, both his arrest and conviction have already received publicity in the local press. As a result, he has been punished for his behavior and there is no reason to fear that the public will perceive he is going unpunished or that the matter was suppressed.

I do not feel it is necessary to republicize this subject, some 32 months later, and would issue a confidential letter of dismissal and caution.

Dated: July 6, 1984

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

HAROLD W. KATZ,

a Judge of the Family Court, Warren
County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Stephen F. Downs and John J. Postel,
Of Counsel) for the Commission

Hancock & Estabrook (By Donald P. McCarthy and
Daniel B. Berman) for Respondent

The respondent, Harold W. Katz, a judge of the Family Court, Warren County, was served with a Formal Written Complaint dated April 1, 1983, alleging that he had practiced law while sitting as a full-time judge, that he had failed to meet his personal financial obligations, that he solicited and obtained a loan from a lawyer who appeared in his court, that he engaged in improper business activities, and that he gave misleading testimony before a member of the Commission. Respondent filed an

answer dated April 21, 1983. Thereafter, respondent was served with a Supplemental Formal Written Complaint dated May 11, 1983, making similar allegations. Respondent answered the Supplemental Formal Written Complaint on May 24, 1983.

By order dated May 5, 1983, the Commission designated Margrethe R. Powers, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 18 and 19, 1983, and the referee filed her report with the Commission on September 20, 1983.

By motion dated November 18, 1983, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a finding that respondent's misconduct was established. Respondent opposed the motion by cross-motion on December 5, 1983. Thereafter, the Commission, in a determination and order dated January 17, 1984, made the findings of fact enumerated in paragraphs 1 through 51 below.

Respondent was served with a second Formal Written Complaint dated October 28, 1983, alleging that he had failed to repay a loan to a former client and that he had failed to cooperate with a Commission investigation. Respondent did not answer the second Formal Written Complaint.

By motion dated November 23, 1983, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established with respect to the second Formal Written Complaint. Respondent did not oppose the motion or file any papers in response thereto.

By determination and order dated December 15, 1983, the Commission granted the administrator's motion for summary determination, found respondent's misconduct established and set a schedule for argument as to appropriate sanction.

With respect to sanction, the Commission received memoranda from respondent and the administrator. Respondent waived oral argument. Thereafter, the Commission considered the record of both proceedings and made the following determination.

As to Charge I of the Formal Written Complaint dated April 1, 1983:

1. Respondent was admitted to the bar in 1945.

2. Respondent became a Family Court Judge in 1974. As a full-time judge, he is not permitted to practice law.
3. In 1969, respondent prepared wills for Leon H. and Maude H. Mead.
4. In 1978, after respondent had become a full-time judge, the Meads solicited his legal services to prepare new wills.
5. Although respondent knew that he was not permitted to practice law, he agreed to prepare new wills for the Meads at no cost.
6. Respondent made extensive changes in the wills, including changing beneficiaries and bequests. The changes required the exercise of respondent's legal judgment.
7. Respondent's court clerk typed the wills, and they were signed by the Meads in respondent's court chambers on March 21, 1980. Respondent and his court clerk witnessed the wills.
8. Respondent was named executor to the Meads' estate.
9. Respondent kept the originals of the wills in his possession.

As to Charge II of the Formal Written Complaint dated April 1, 1983:

10. As the result of respondent's representation of the Meads and the estates of Mrs. Mead's sisters, respondent had considerable knowledge of the Meads' assets and financial position.
11. Mr. Mead testified that he and his wife had "extreme confidence" in respondent.
12. In November 1978, respondent approached the Meads and solicited a loan of \$50,000. He did not specify what the money was to be used for and did not inform the Meads of his financial position.
13. The Meads agreed to lend respondent \$32,000. On December 5, 1978, respondent signed a note promising to repay the money in one year at 10 percent interest.
14. Respondent did not repay the loan as promised.
15. Respondent tendered interest payments of \$3,200 and \$4,000 in April 1980 and June 1980, respectively. The \$3,200 check was never

cash. The Meads would not accept the \$4,000 payment because it was \$800 deficient, and respondent issued a new check for \$4,800.

16. In February 1981, respondent made an additional interest payment of \$1,600 but has not repaid any portion of the principal of the loan.

17. The Meads sent six letters to respondent demanding repayment. Respondent did not respond to the letters.

18. The Meads commenced an action against respondent and obtained a judgment on May 17, 1983. The judgment remained unsatisfied on July 18, 1983.

As to Charge III of the Formal Written Complaint dated April 1, 1983:

19. Respondent presided in the Surrogate's Court in Warren County in 1974 and from 1979 to 1982.

20. John Herlihy, an attorney and close friend of respondent, appeared from time to time in Surrogate's Court.

21. Mr. Herlihy represented five estates in Surrogate's Court between July 1974 and March 1980, while respondent was assigned to that court. Mr. Herlihy appeared in a guardianship proceeding in Surrogate's Court in February 1980, while respondent was sitting in that court.

22. Respondent signed six orders in Mr. Herlihy's cases.

23. On or about January 19, 1978, respondent solicited and accepted a loan of \$10,000 from Mr. Herlihy. The loan was repaid on December 19, 1978, with \$800 interest.

24. On April 29, 1981, respondent solicited and accepted a \$2,000 loan from Mr. Herlihy. Respondent repaid that loan on March 26, 1982.

As to Charge IV of the Formal Written Complaint dated April 1, 1983:

25. While sitting as a judge, respondent solicited and accepted loans from persons other than relatives and lending institutions.

26. Respondent failed to file a report with his court clerk reporting the loans that he had received from the Meads, the Combs* and Mr. Herlihy.

27. Respondent was aware, at least by September 8, 1982, when he testified before a member of the Commission, of the requirement of filing such reports with his court clerk.

28. Notwithstanding his awareness of the filing requirements, respondent, as of April 21, 1983, had failed to report loans he had received from persons other than family members or lending institutions.

29. As of July 18, 1983, respondent had failed to file required reports with respect to outstanding loans.

As to Charge V of the Formal Written Complaint dated April 1, 1983:

30. The charge is not sustained and is, therefore, dismissed.

As to Charge VI of the Formal Written Complaint dated April 1, 1983:

31. On December 15, 1967, respondent signed a promissory note for \$11,000 at 4 percent interest payable to Marjorie Baker.

32. As of April 1976, respondent had not repaid \$7,183.89 on the note.

33. On April 12, 1976, an action was commenced against respondent to recover the unpaid balance with interest, and on August 12, 1976, an order was entered in Supreme Court, directing that a judgment for \$7,183.89 plus interest be entered against respondent unless the full amount was paid within 45 days. Respondent failed to pay the full amount within the time provided.

34. On November 14, 1978, judgment was entered against respondent for \$1,643.07, representing the balance owed.

* On May 26, 1982, respondent renegotiated a loan from Glenn and Sandra Combs for \$31,876.45. See the findings as to Charge I of the Supplemental Formal Written Complaint, infra.

As to Charge VII of the Formal Written Complaint dated April 1, 1983:

35. The charge is not sustained and is, therefore, dismissed.

As to Charge I of the Supplemental Formal Written Complaint dated May 11, 1983:

36. Respondent represented the estate of Wade Houghton, who died in 1971.

37. Glenn Combs was executor and sole beneficiary of the estate of his uncle, Wade Houghton.

38. While representing the estate, respondent approached Mr. Combs and asked whether he needed the money that he would receive from the estate.

39. On February 24, 1971, pursuant to respondent's solicitation, Mr. Combs agreed to lend respondent \$16,000 at 6 percent interest, payable on demand.

40. Respondent did not inform Mr. Combs of any outstanding debts and stated only that the money was to be used for property.

41. Respondent failed to repay the loan when payment was demanded in 1979.

42. As of October 10, 1981, respondent owed Mr. Combs \$29,681.45.

43. An attorney representing Mr. Combs sent respondent six letters demanding payment between September 30, 1981, and May 26, 1982. Respondent disregarded the letters and did not repay the loan.

44. On May 26, 1982, Mr. Combs' attorney obtained a new promissory note from respondent for \$31,876.45 and negotiated a repayment schedule. Respondent provided a mortgage as collateral.

45. On August 12, 1982, respondent made a payment of \$1,137.98, representing three monthly installments.

46. No additional payments were made by respondent on the loan, notwithstanding that Mr. Combs' attorney sent letters demanding repayment in September and November 1982.

47. On December 31, 1982, Mr. Combs commenced an action against respondent. Respondent did not contest the action, and on March 4, 1983, Mr. Combs obtained a judgment for \$34,558.17.

48. As of July 18, 1983, the judgment had not been satisfied.

As to Charge II of the Supplemental Formal Written Complaint dated May 11, 1983:

49. On September 8, 1982, respondent testified before a member of the Commission concerning his personal finances.

50. On May 26, 1982, respondent had signed a promissory note to Mr. Combs for \$31,876.45. On August 12, 1982, 27 days before his testimony before a member of the Commission, respondent had paid Mr. Combs \$1,137.98 on the newly-executed note.

51. Respondent was aware of his remaining debt of \$30,738.47 to Mr. Combs at the time he testified before a member of the Commission. Nevertheless, he testified that he did not know of any outstanding debts he had other than to banks and the Meads.

As to Charge I of the Formal Written Complaint dated October 28, 1983:

52. In 1961, respondent offered his legal services to Laura R. Woodruff.

53. Respondent suggested to Ms. Woodruff that she give him money to place "in mortgages."

54. Ms. Woodruff gave respondent \$100,000. For a number of years, respondent repaid Ms. Woodruff quarterly at 6 percent interest, although occasionally some of respondent's checks were returned for insufficient funds.

55. During this time, respondent also prepared Ms. Woodruff's tax returns.

56. In 1980 or 1981, respondent told Ms. Woodruff that he was raising the interest on the money to 12 percent and began making quarterly payments at that rate.

57. Respondent subsequently fell behind in his payments. When Ms. Woodruff complained, respondent voluntarily gave her three notes. One of the notes, for \$15,000, was repaid by respondent. Two notes, one for \$33,000 due on January 1, 1983, and one for \$53,460 due on January 1, 1985, were not repaid.

58. Ms. Woodruff was never given by respondent any evidence that there were any mortgages, bonds or investments made on her behalf with the

money. Respondent has never made a formal or informal accounting of his use of the funds.

59. On February 1, 1983, Ms. Woodruff commenced an action against respondent for repayment of the two notes.

60. Respondent did not contest the action, and on July 7, 1983, a judgment for \$115,038.94 was entered against respondent.

61. As of November 23, 1983, the judgment had not been satisfied.

As to Charge II of the Formal Written Complaint dated October 28, 1983:

62. On August 24, 1983, respondent instructed his court clerk not to allow a Commission investigator to examine his court records to determine whether he had filed a report of debts owed to persons other than relatives or lending institutions.

As to Charge III of the Formal Written Complaint dated October 28, 1983:

63. Respondent failed to cooperate with a Commission investigation in that he:

(a) Failed to respond to letters from the Commission dated July 28, 1983, and August 17, 1983, notwithstanding that his response was requested in the letters; and,

(b) failed without explanation to appear to give testimony before a member of the Commission on October 5, 1983, notwithstanding that he had been granted adjournments on two prior dates.

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(a)(1), 100.5(c)(1), 100.5(c)(3)(iii), 100.5(d) and 100.6(c) of the Rules Governing Judicial Conduct; Canons 1, 2A, 3A(1), 5C(1), 5C(4)(c), 5D and 6C of the Code of Judicial Conduct; Disciplinary Rules 4-101(B)(2), 4-101(B)(3) and 5-104(A) and Ethical Considerations 5-6 of the Code of Professional Responsibility; and Article 6, Section 20(b)(4) of the New York State Constitution. Charges I through IV and VI of the Formal Written Complaint dated April 1, 1983, Charges I and II of the Supplemental Formal Written Complaint dated May 11, 1983, and Charges I through III of the Formal Written Complaint dated October 28, 1983, are sustained, and respondent's misconduct is established.

As an attorney, respondent was a fiduciary for those whose money he handled and was required to exercise the highest degree of care and trust. Matter of Boulanger, 61 NY2d 89 (1984); McMahon v. Pfister, 39 AD2d 691 (1st Dept. 1972). On three separate occasions, respondent took advantage of that trust and the knowledge he had gained of the financial affairs of the Meads, Mr. Combs and Ms. Woodruff to solicit loans, which he never repaid in full.

Respondent also solicited two loans from an attorney who appeared in his court, in clear violation of the ethical standard set forth in Section 100.5(c)(3)(iii) of the Rules Governing Judicial Conduct. See, Matter of Garvey, unreported (Com. on Jud. Conduct, June 23, 1981).

Respondent concealed his financial improprieties by failing to file with his court clerk required reports of his outstanding debts owed to persons other than relatives or lending institutions, as required by Sections 100.5(c)(3)(iii) and 100.6(c) of the Rules Governing Judicial Conduct. He also instructed his court clerk not to allow a Commission investigator to examine his public court records to determine whether he had filed a report of such debts. Such misconduct is to be condemned. Matter of Boulanger, supra; Matter of Jordan, 47 NY2d (xxx) (Ct. on the Judiciary 1979).

Respondent compounded his misconduct by testifying before a member of the Commission that he knew of no debts other than to the Meads when, in fact, he was indebted to Mr. Combs. See, Matter of Perry, 53 AD2d 882 (2d Dept. 1976). Respondent's refusal to answer letters from the Commission and his failure to appear to testify before a member tended to obstruct the Commission's investigation and further exacerbated his misconduct. Matter of Osterman, 13 NY2d (a), (1) (Ct. on the Judiciary 1963); Matter of Jordan, supra; Matter of Cooley, 53 NY2d 64, 65-66 (1981).

Respondent's argument that his conduct on the bench has not been called into question in this proceeding is irrelevant. His egregious violations of his trust as an attorney and as a judge and his pattern of deception and obstruction demonstrate his unfitness to serve on the bench.

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

This determination is rendered pursuant to Section 47 of the Judiciary Law in view of respondent's resignation from the bench.

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello,
Mr. Kovner, Judge Ostrowski, Judge Rubin and Judge Shea concur.

Judge Alexander and Mr. Sheehy were not present.

Dated: March 30, 1984

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

MARTIN B. KLEIN,

Determination

a Judge of the Civil Court of the City
of New York, Bronx County, and Acting
Justice of the Supreme Court, Bronx
County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Karen Kozac, Of Counsel) for the
Commission

Mordkofsky & Goldstein, P.C. (By Norman J.
Mordkofsky) for Respondent

The respondent, Martin B. Klein, a judge of the New York City Civil Court, Bronx County, was served with a Formal Written Complaint dated January 11, 1984, alleging that he altered a signed decision in a case after receiving ex parte communications from the defendant's counsel. Respondent filed an answer dated February 14, 1984, and an amended answer dated March 8, 1984.

By order dated February 17, 1984, the Commission designated Walter Gellhorn, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 9 and 10, 1984, and the referee filed his report with the Commission on May 21, 1984.

By motion dated May 25, 1984, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be censured. Respondent opposed the motion by cross motion on June 13, 1984. The Commission heard oral argument on the motions on June 22, 1984, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a judge of the New York City Civil Court and has been since 1977. In January 1982, respondent was designated an Acting Justice of the Supreme Court, Twelfth Judicial District.

2. On November 10, 1982, in CCM Holding Co. et al. v. Sasson Jeans, respondent heard argument on plaintiffs' motion for a preliminary injunction prohibiting defendant from taking steps to terminate its contract with plaintiffs as defendant was seeking to do. Respondent reserved decision on the motion and, pending determination, he continued a temporary restraining order that had been granted earlier by another judge.

3. On June 2, 1983, respondent reviewed a draft decision in the case from a law assistant in a pool assigned to Supreme Court. Respondent cursorily read the draft decision and, without reading the motion papers, signed the draft decision. The decision denied plaintiffs' motion for a preliminary injunction.

4. Respondent returned the decision to his law assistant, Daniel Kalish, who had also done a cursory review of the pool assistant's draft without reading the motion papers in accordance with the practice permitted by respondent.

5. Mr. Kalish notified the defendant's counsel that the decision had been signed and told him that he could pick up a copy in chambers. Contrary to respondent's instruction, Mr. Kalish did not inform plaintiffs' counsel.

6. On June 3, 1983, Barry Kaplan, an attorney for the defendant, came to respondent's chambers to pick up a copy of the decision. Mr. Kaplan read the decision in chambers and told Mr. Kalish that the decision did not address the issue of the temporary restraining order.

7. Mr. Kalish relayed Mr. Kaplan's concern to respondent.

8. Based on this ex parte communication from Mr. Kaplan and without notifying the plaintiffs' attorney, respondent added to the decision in his own handwriting, "TRO is terminated."

9. Mr. Kalish returned the amended decision to Mr. Kaplan, who then expressed concern that the decision did not recite when the TRO was terminated and asked whether it was terminated "forthwith."

10. Mr. Kalish took the decision and Mr. Kaplan's comment back to respondent.

11. Respondent then wrote "forthwith" after the words "TRO is terminated" on the face of the decision.

12. Respondent testified before a member of the Commission on November 3, 1983, that the word "forthwith" had been suggested by defendant's counsel. At the hearing in this matter on April 9, 1984, respondent testified that he did not recall who proposed that language and indicated that he had been mistaken in his previous testimony.

13. After respondent added "forthwith" to the decision, Mr. Kalish returned to the outer office and gave Mr. Kaplan the newly-amended decision. Mr. Kaplan then expressed a concern with the last sentence of the decision which read in part, "Settle order for deposition...."

14. Mr. Kalish discussed Mr. Kaplan's concern with respondent. Respondent further amended the decision to read, "Settle order only for deposition...."

15. Respondent was aware that the suggestions coming to him through Mr. Kalish were offered by an attorney for the defendant without the knowledge of the plaintiffs' attorney.

16. During his appearance on November 3, 1983, respondent acknowledged that he was aware that the suggestions were being proposed by defendant's counsel. At the hearing on April 9, 1984, however, he denied knowledge as to which party the attorney represented and said that his previous testimony had been inaccurate.

17. Respondent made the changes in the decision without understanding their significance and without reading any of the motion papers in the case.

18. Respondent testified at the hearing that he had discussed with Mr. Kalish the significance of the added language and had concluded that there was none.

19. At Mr. Kaplan's suggestion and with respondent's concurrence, Mr. Kalish immediately delivered respondent's amended decision to the clerk of Special Term for filing on Friday afternoon, June 3, 1983.

20. On June 6, 1983, the plaintiffs' attorney, Michael Cardozo, obtained a copy of the decision from a clerk for his law firm who had discovered it while searching decisions in Special Term.

21. Because of the inserted language, Mr. Cardozo was concerned that the temporary restraining order granted to his client may have been lifted when the decision was filed. To avoid the possibility of any adverse financial consequences to his client, Mr. Cardozo and his firm immediately prepared papers for the Appellate Division, which stayed respondent's decision and granted a new temporary restraining order.

22. At the hearing in this matter on April 9, 1984, respondent testified that in his view his communications with Mr. Kaplan through Mr. Kalish and the subsequent amendments to his decision were within his judicial discretion and did not constitute judicial misconduct.

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(a)(4) and 100.3(b)(2) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(4) and 3B(2) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established. Respondent's cross motion is denied.

Respondent altered a signed decision after he had received and considered ex parte communications from one attorney in the case without having notified or heard the other side. These communications were not authorized by law and clearly violate Section 100.3(a)(4) of the Rules Governing Judicial Conduct.

Respondent's misconduct is especially serious in view of the circumstances. He made and altered his decision some seven months after the matter had been argued before him without having read the motion papers and knowing that his law assistant would not have read them. Thus, he could not have fully appreciated the potential significance of the changes proposed by defendant's counsel. It was especially important under these circumstances that plaintiffs' counsel be afforded an opportunity to be heard. By his negligence, respondent disregarded ethical standards that require him to diligently perform his judicial duties. Section 100.3 of the Rules.

Respondent's failure to recognize that he was wrong further exacerbates his misconduct.

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Mr. Sheehy concur.

Judge Alexander, Mr. Cleary and Judge Shea dissent as to sanction only and vote that respondent be admonished.

Judge Rubin was not present.

Dated: August 30, 1984

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

DONALD H. LOPER,

a Justice of the Village Court of
Canisteo, Steuben County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Cody B. Bartlett, Of Counsel)
for the Commission

Shults and Shults (By William A. Argentieri)
for Respondent

The respondent, Donald H. Loper, a justice of the Canisteo Village Court, Steuben County, was served with a Formal Written Complaint dated March 2, 1983, alleging that he refused to allow a litigant to file a civil claim in his court on the basis of an ex parte communication with the prospective defendant. Respondent filed an answer on March 21, 1983.

By order dated April 18, 1983, the Commission designated W. David Curtiss, Esq., as referee to hear and report proposed findings of fact and

conclusions of law. The hearing was held on June 28, 1983, and the referee filed his report with the Commission on October 18, 1983.

By motion dated November 10, 1983, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured.* Respondent opposed the motion by cross-motion on November 28, 1983. The Commission heard oral argument on the motions on December 15, 1983, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Canisteo Village Court and has been since 1981. He is also a justice of the Hartsville Town Court and has been since 1977.

2. Respondent, a non-lawyer, has attended training sessions for non-lawyer judges sponsored by the Office of Court Administration.

3. In January 1982, respondent was called by June Eid, who said that she wanted to file a claim against a hardware store owner, Kenneth Spencer, for damages caused during the removal of her dishwasher for repairs.

4. Respondent told Ms. Eid to come to court the following evening and to bring estimates of the damage.

5. Respondent then went to the home of Mr. Spencer. Respondent engaged in an ex parte conversation with Mr. Spencer concerning the merits of Ms. Eid's claim. Mr. Spencer denied responsibility for the damage and assured respondent that an employee with 35 years experience in appliance repair work would not have been negligent.

6. Ms. Eid appeared in respondent's court the following evening with the requested estimates.

7. Respondent told Ms. Eid that he had spoken with Mr. Spencer and had determined that he was not liable for the damage. He foreclosed Ms. Eid from filing her claim and stated that he would not accept it at a later time.

*The administrator also requested that the Commission overrule the referee and admit into evidence Commission Exhibit 2 as marked for identification at the hearing. That request is hereby denied.

8. In testimony rejected by the referee and the Commission, respondent:

(a) On October 19, 1982, denied he had ever spoken with Mr. Spencer concerning Ms. Eid's claim;

(b) on June 28, 1983, testified that he called Mr. Spencer on the telephone after Ms. Eid had appeared in court and had asked him only whether he had done business with Ms. Eid; and,

(c) on June 28, 1983, testified that he had refused to hear Ms. Eid's complaint on the date of her court appearance because she was under the influence of alcohol and that he told her to return at another time.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established. Respondent's cross-motion is denied.

Respondent denied Ms. Eid access to the court to address her legal grievance. He prejudged the matter based solely on an improper ex parte communication and refused to hear Ms. Eid's position. These actions were contrary to respondent's duty to hear impartially both sides of a dispute and to render a fair and unbiased decision. Such misconduct warrants public sanction. See, Matter of Howard Miller, unreported (Com. on Jud. Conduct, Feb. 11, 1980); Matter of Racicot, unreported (Com. on Jud. Conduct, Feb. 6, 1981).

Here, respondent exacerbated his misconduct by failing to be candid with the Commission after a complaint was made. He first testified that he had never spoken with Mr. Spencer about the matter. Later, he acknowledged that there was a conversation over the telephone after Ms. Eid appeared in court and that he asked Mr. Spencer only whether he had done business with Ms. Eid. The preponderance of the credible evidence is that respondent visited Mr. Spencer's home before Ms. Eid's court appearance and discussed the merits of her complaint.

Respondent's belated contention that he did not entertain Ms. Eid's complaint because she was under the influence of alcohol "lack[s] the ring of truth." Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74, 81 (1980).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello,
Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Judge Alexander and Judge Rubin were not present.

Dated: January 25, 1984

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

HANSEL L. MC GEE,

a Judge of the Civil Court of the City
of New York, Bronx County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Robert Straus, Of Counsel) for
the Commission

Murray Richman for Respondent

The respondent, Hansel L. McGee, a judge of the New York City Civil Court, was served with a Formal Written Complaint dated June 14, 1983, alleging that he had interceded on behalf of a relative in a case pending before another judge. Respondent filed an answer dated June 29, 1983.

By order dated July 8, 1983, the Commission designated Robert L. Ellis, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on September 22, 1983, and the referee filed his report with the Commission on November 15, 1983.

By motion dated December 6, 1983, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion by cross-motion on December 15, 1983. Oral argument was waived.

The Commission considered the record of the proceeding on February 10, 1984, and made the following findings of fact.

1. Respondent is a judge of the New York City Civil Court and has been since January 1, 1982.
2. On December 17, 1982, respondent's nephew was arrested on a criminal charge.
3. That evening, respondent went to the courthouse where his nephew was to be arraigned. Respondent and the nephew's father retained an attorney at the courthouse to represent the nephew.
4. Respondent entered the courtroom and asked where he could find the presiding judge. He was directed to the robing room of Judge Irene J. Duffy of the New York City Family Court, who was assigned to criminal arraignments on December 17, 1982.
5. Respondent went to Judge Duffy's robing room and introduced himself as a judge.
6. Respondent told Judge Duffy that his nephew had been arrested and was to be arraigned that evening.
7. Judge Duffy told respondent that she could not speak to him concerning the matter and asked him to leave. She referred him to the prosecutor.
8. Respondent told Judge Duffy that his nephew had recently finished law school and indicated that he was angry with the nephew for getting into trouble.
9. Respondent said to Judge Duffy, "I hope that you set low bail," and left the robing room.
10. Respondent returned to the courtroom and approached an assistant district attorney, Steven Milligram.
11. Respondent introduced himself as a judge of the Civil Court and asked Mr. Milligram to recommend either release or low bail for his nephew.
12. Mr. Milligram told respondent that he could not discuss the case with a member of the defendant's family.

13. Mr. Milligram then asked another assistant district attorney to handle the nephew's case so that it would not appear that the prosecutor's recommendation for bail or release was based on respondent's request.

14. Respondent took a seat in the courtroom and watched the arraignment of his nephew and his two co-defendants by Judge Duffy.

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) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2A, 2B and 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established. Respondent's cross-motion is denied.

Respondent used the prestige of his office to attempt to benefit his nephew by influencing Judge Duffy's decision as to bail, first by approaching the judge herself and then by appealing to the prosecutor to recommend low bail or release. In both conversations, respondent plainly thought that his position as a judge could obtain special treatment for his nephew. Such a solicitation of favoritism "is wrong, and always has been wrong;" it is malum in se misconduct. Matter of Byrne, 420 NYS2d 70, 71, 72 (1979). See, also, Matter of Lonschein, 50 NY2d 569 (1980); Matter of Shilling, 51 NY2d 397 (1980); Matter of Montaneli, unreported (Com. on Jud. Conduct, Sept. 10, 1982); Matter of Kaplan, NYLJ May 20, 1983, p. 7, col. 1 (Com. on Jud. Conduct, May 17, 1983).

Respondent's contentions that he approached Judge Duffy and the prosecutor only to ascertain the amount of bail "lack the ring of truth." Matter of Steinberg, 51 NY2d 74, 81 (1980). Judge Duffy and Mr. Milligram, neither of whom have a motive to misrepresent the facts, swear otherwise. Had that been the true objective, respondent's purported purpose would have been more appropriately undertaken by his nephew's attorney, whom respondent had helped to engage. Furthermore, there was no rational reason to believe that the amount of bail could have been ascertained before arraignment, since the determination of bail is one of the chief purposes of the arraignment.

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Judge Ostrowski, Judge Rubin and Judge Shea concur.

Mr. Kovner dissents as to sanction only and votes that respondent be censured.

Judge Alexander did not participate.

Mr. Sheehy was not present.

Dated: April 12, 1984

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

WILLIAM G. MAYVILLE

a Justice of the Fort Covington Town
Court, Franklin County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (John J. Postel and Henry Stewart,
Of Counsel) for the Commission

John E. Aber for Respondent

The respondent, William G. Mayville, a justice of the Fort Covington Town Court, Franklin County, was served with a Formal Written Complaint dated February 3, 1983, alleging inter alia that he heard cases involving his relatives, issued criminal summonses to civil litigants and otherwise threatened them with arrest, entered civil judgments before trial and treated lawyers and litigants rudely. Respondent served an answer dated February 22, 1983.

By order dated March 10, 1983, the Commission designated the Honorable Francis C. LaVigne as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on June 7 and 8 and July 13, 1983, and the referee filed his report with the Commission on November 15, 1983.

By motion dated December 16, 1983, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed. Respondent waived oral argument before the Commission and thereafter submitted a written statement dated January 30, 1984.

Upon the record of this proceeding, the Commission makes the following findings of fact.

Preliminarily, as to all charges, the Commission finds as follows:

1. Millie Rhoades is the Fort Covington Town Clerk and a principal in the accountant firm of Rhoades and Rhoades. James G. Manson is the owner of Badger Sales and Manson's Farm Supplies and is related to respondent by marriage.

As to Charge I of the Formal Written Complaint:

2. In 1981, on behalf of Rhoades and Rhoades, Ms. Rhoades requested that respondent collect a bill for services allegedly rendered to Shirley Morton in the amount of \$19.63.

3. In December 1981, Ms. Morton received a letter signed by respondent on official Town stationery, requesting that she send money to the Fort Covington Town Court. She had not received any prior communication from respondent regarding this matter.

4. Ms. Morton telephoned respondent and inquired what the money was for. Respondent told her it was for an ASPCA bill. Ms. Morton advised respondent that she had been an ASPCA volunteer, was not their treasurer, and did not pay their bills.

5. In January 1982, Ms. Morton received a second letter signed by respondent on official Town stationery, stating in part: "we will have to settle this matter as Rhoades & Rhoades has asked me to settle this matter." Enclosed with the letter was a copy of a bill from Rhoades and Rhoades to Shirley Morton for \$19.63.

6. On February 8, 1982, respondent issued a criminal summons for Ms. Morton, ordering her appearance in court on February 11, 1982, on a charge of Criminal Contempt Second Degree, because of her alleged failure

to appear on the civil claim, notwithstanding that he had not issued any earlier summons. Ms. Morton was served with this summons on February 10, 1982.

7. On February 10, 1982, Ms. Morton called respondent and requested an adjournment to obtain counsel. Respondent refused to grant Ms. Morton an adjournment. During the telephone conversation, respondent became angry and asked: "Where are you? Where are you? I am going to have you arrested for contempt of court."

8. On February 11, 1982, Ms. Morton appeared in respondent's court with her attorney, Vaughn N. Aldrich, to respond to the criminal summons. No one was present on behalf of Rhoades and Rhoades. Respondent told Ms. Morton that "he was going to get [her]" and "he hoped [s]he had brought [her] checkbook because [s]he was going to pay and [she] was going to pay good."

9. Respondent advised Ms. Morton that she was charged with criminal contempt and asked how she pled, to which she replied not guilty. Respondent told Ms. Morton and Mr. Aldrich that the criminal contempt charge was filed because Ms. Morton had ignored his orders. When Mr. Aldrich asked where the summons and the affidavit of service were, respondent could not produce copies of either item. Respondent then stated that he was going to serve Ms. Morton with another criminal summons, charging her with contempt of court for the way in which she had spoken to him on the telephone on February 10, 1982.

10. Mr. Aldrich requested a hearing on the original contempt charge and asked that, pending the hearing, bail be set or Ms. Morton be released on her own recognizance. Respondent set bail at \$100.00 on the charge of criminal contempt and stated that until bail was posted, Ms. Morton would be sent to jail. Respondent advised Ms. Morton and Mr. Aldrich that he was going to call the police and have Ms. Morton transported to jail, and he moved toward the telephone.

11. Ms. Morton was shocked and frightened by respondent's actions and was crying.

12. Respondent dialed the New York State Police, but did not complete the call or speak to the police. At the request of Mr. Aldrich, respondent finally dropped the charge, and withdrew the bail he had set.

13. Respondent angrily and rudely told Ms. Morton to leave his court, saying, "I don't ever want to see your face again."

14. Throughout Ms. Morton's appearance before respondent, he was intimidating and abusive toward her, frightening her and causing her to cry.

15. Ms. Morton subsequently received a civil summons from respondent dated February 15, 1982, in the case of Rhoades and Rhoades v. Shirley Morton.

16. On February 24, 1982, Ms. Morton wrote Rhoades and Rhoades a check for \$19.63. While she disputed the bill, she paid it on advice of counsel and because she was afraid that if she did not, she would go to jail. Later on February 24, respondent entered a judgment against Ms. Morton for \$19.63.

As to Charge II of the Formal Written Complaint:

17. In May 1981, Richard Gardner was served a summons issued by respondent for services allegedly performed by Rhoades and Rhoades in connection with a tavern his wife Elvita Gardner owned. The summons directed Mr. Gardner to appear in respondent's court regarding a civil claim for \$80.00.

18. Mr. Gardner telephoned respondent and told him that he disputed the claim and that his wife should have received the summons. He requested an adjournment because Ms. Gardner was in the hospital. Respondent denied the request, stating that "Millie needed her money" and "he was there to collect the money that was owed." Respondent threatened Mr. Gardner with arrest if he did not appear, stating that he would "have [his] ass in contempt of...court."

19. Mr. Gardner appeared in respondent's court on May 27, 1981, the return date of the summons. Respondent told him that Ms. Rhoades did not have to be present because it was a small claims case and respondent could act as attorney for both parties. Respondent advised Mr. Gardner that he did not need a lawyer to represent him in the case. When Mr. Gardner questioned how respondent could act as attorney for both sides and asked if Ms. Gardner should not be present, respondent became angry, raised his voice and repeated his intention to "collect the money."

20. Respondent asked Mr. Gardner if he was "guilty or not guilty," and Mr. Gardner replied, "guilty." Respondent thereafter entered judgment for \$95.30 in favor of Rhoades and Rhoades.

21. Before he had completed payment of the judgment, Mr. Gardner asked respondent for an extension of time. Respondent denied the request and rudely threatened him with arrest for contempt of court, incarceration and further court costs. Mr. Gardner paid the final installment on the judgment two or three days later because he did not want to go to jail.

As to Charge III of the Formal Written Complaint:

22. In May 1981, Rhoades and Rhoades presented respondent with a bill for \$330.00 for services allegedly rendered to Ann Jobin. On May 20, 1981, respondent sent Ms. Jobin a summons and letter in connection with the matter, which she received on May 27.

23. On June 9, 1981, respondent sent a second letter to Ms. Jobin. He received a call from her on June 19, and sent her a third letter on June 22.

24. On September 1, 1981, respondent wrote a letter to Ms. Jobin's mother, who was not a party to the case, stating: "This court is making a last honest effort to have this claim paid for. This court will have to take action against you as part owner and Mrs. Jobin...I wish I don't have to pursue this any farther, but I may not have choice." When Ms. Jobin received the letter addressed to her mother, she telephoned respondent, acknowledged that she owed the money and stated that she was unable to pay it at that time.

25. On November 23, 1981, Ms. Jobin received another letter from respondent, saying that a warrant would be issued for her arrest if she did not appear.

26. On November 25, 1981, Ms. Jobin went to court in honor of the criminal summons. Respondent told her that he had no choice but to collect the money because Ms. Rhoades was the Fort Covington Town Clerk, respondent had to deal with her all the time, and he did not want any problems with her. At that appearance Ms. Jobin paid \$339.35 to respondent.

As to Charge IV of the Formal Written Complaint:

27. In January 1982, Manson's Farm Supplies sent to respondent a bill allegedly outstanding against Fred Fleury.

28. On January 27, 1982, respondent issued a summons against Mr. Fleury. Mr. Fleury retained an attorney, Richard Edwards, who gave him a notice of appearance and a letter requesting an adjournment to hand to the judge.

29. On February 4, 1982, Mr. Fleury appeared in court before respondent in response to the summons. No representative of the plaintiff appeared. When Mr. Fleury gave respondent the notice from his attorney, respondent told him he would have to pay the bill anyway, and that if Fleury had an attorney, respondent was going to charge him. Respondent also said that if Mr. Fleury did not pay the bill, respondent would have to disqualify himself because of his relationship to the Mansons.

30. Mr. Fleury agreed to pay the bill, but told respondent that he first needed an estimate in order to collect damages from his insurance company. Respondent agreed to obtain an estimate from Manson's Farm Supplies and send it to Mr. Fleury, which he subsequently did. The day after receiving the estimate, Mr. Fleury mailed respondent a check for the amount due.

31. On February 10, 1982, respondent entered a judgment against Mr. Fleury for \$209.05, notwithstanding that no one had appeared for the plaintiff, there had not been a trial, Mr. Fleury's attorney had requested an adjournment, and respondent had stated that he would have to disqualify himself because of his relationship to the Mansons. Mr. Fleury subsequently received another writing from respondent, stating that he was in contempt of court for not sending the money. Mr. Fleury thereafter telephoned respondent and learned that respondent had never received the check. He then went to respondent's house and gave him a new check for the amount of the judgment.

As to Charge V of the Formal Written Complaint:

32. In February 1981, Badger Sales sent to respondent a bill for \$38.85 allegedly outstanding against Allan B. Wilson, for the purchase of a machine part. Respondent thereafter issued a summons against Mr. Wilson, which was served by mail.

33. When Mr. Wilson appeared at court on the return date stated on the summons, no one was present. He then called respondent and was told by respondent's wife that court was not being held because respondent was ill. Two weeks later, Mr. Wilson appeared at court, on the date scheduled by telephone, to find again that court was not being held. Mr. Wilson subsequently learned that respondent was in the hospital.

34. On February 27, 1981, respondent telephoned Mr. Wilson and asked him to appear in court in a half hour. Mr. Wilson told respondent that it was impossible to drive in a half hour from Potsdam, where he lived, to Fort Covington, and that his car was out of order. Respondent told Mr. Wilson that if he did not appear that night in response to the summons, respondent would issue a warrant for Mr. Wilson's arrest for failure to appear. When Mr. Wilson said that he could come to court the following day, respondent replied that was "not good enough." Shortly thereafter, Mr. Wilson received a telephone call from someone purporting to be a state trooper, who stated that if Mr. Wilson appeared in respondent's court by 10:00 the next morning, a warrant would not be issued for his arrest.

35. On the morning of February 28, 1981, Mr. Wilson appeared at respondent's house. Respondent exhibited an arrest warrant he had prepared

for Mr. Wilson and indicated that, if he had not appeared, he would have been arrested.

36. Mr. Wilson asked respondent if he was related to Mr. Manson of Badger Sales. Respondent replied that Jamie Manson married his daughter but that the relationship made no difference on the case. Respondent asked Mr. Wilson if he had the money, and Mr. Wilson agreed to pay the debt.

37. Respondent's docket indicates that on February 21, 1981, one week before Mr. Wilson's appearance, respondent entered a judgment against the defendant in Badger Sales v. Allan Wilson in the amount of \$42.75.

As to Charge VI of the Formal Written Complaint:

38. In September 1981, Farquhar's Hardware sent to respondent a bill for \$40.01 allegedly outstanding against Donald LaMere, for the purchase of a fan. On September 30, 1981, respondent issued a summons against Mr. LaMere.

39. Mr. LaMere ignored the summons, and respondent issued a second one, which Mr. LaMere also ignored.

40. On December 7, 1981, respondent issued a third summons which was initialed "WGM". It stated: "I will have to and will take action on above date."

41. On December 8, 1981, Mr. LaMere paid the bill to Farquhar's Hardware, and in his docket respondent entered judgment against the defendant in Farquhar's Hardware v. Donald LaMere for \$44.04, marking it also "Pd in full to Farquhar's Hardware".

As to Charge VII of the Formal Written Complaint:

42. In January 1982, Don's Heating sent respondent a bill allegedly outstanding against Donald LaMere, for repairs to a furnace. Respondent thereafter issued a summons against Mr. LaMere.

43. In January 1982, soon after the issuance of the summons, respondent saw Mr. LaMere in public and said that if he did not appear in court on the return date, respondent would issue a warrant for his arrest. Respondent then handed Mr. LaMere a property execution dated January 19, 1982, and Mr. LaMere later received by registered mail a default judgment dated January 19, 1982.

44. On January 29, 1982, respondent issued and sent a criminal summons to Mr. LaMere, returnable on February 4, 1982. Mr. LaMere called

his attorney, who advised him to appear in court but not to pay until satisfied that the work on his furnace was completed. On the return date, Mr. LaMere appeared before respondent, disputed the bill and obtained an adjournment for one week. Respondent stated that Mr. LaMere was "lucky" he came in when he did because respondent had already sent out the troopers with a warrant for Mr. LaMere's arrest.

45. When Mr. LaMere stated that he was not satisfied with the work performed, respondent replied, "I am not here to see if you are satisfied with the work...I am here to collect his bill that you didn't pay...." Respondent told Mr. LaMere that he would have to pay \$50.00 in court fees to bring a claim against Don's Heating.

46. Mr. LaMere's wife signed a check in payment of the bill and gave it to respondent. Mr. LaMere paid the bill because he was afraid of going to jail and losing his job. He later called his attorney and was told to stop payment on the check if not satisfied that the work on the furnace was properly done. Mr. LaMere then notified respondent that the check would be no good because he and his wife had decided not to pay the bill, and he went to the bank and withdrew all the funds in the checking account on which the check had been drawn.

47. Thereafter, respondent went to the bank and endorsed his name on the back of the check issued by Mrs. LaMere payable to Don's Heating. He later had Don's Heating endorse it.

48. Sometime thereafter, respondent called Mr. LaMere's sister-in-law and stated that if Mr. LaMere did not appear in court that evening, he would issue a warrant, that Mr. LaMere could be sentenced up to four days in jail, but that he would not go to jail if he made the check good. Mr. LaMere then bought a money order and sent it to respondent because he feared that he or his wife would be arrested.

49. On April 17, 1982, respondent entered in his docket a judgment against Mr. LaMere for \$125.91 in Don's Heating v. Donald LaMere and also showed it marked paid on that date.

As to Charge VIII of the Formal Written Complaint:

50. In September 1982 Lewis Marine (a business) sent to respondent a bill allegedly outstanding against Donald LaMere, for the purchase of a fishing pole. In a subsequent telephone conversation with Mr. LaMere's brother-in-law, respondent stated that a warrant would be issued for Mr. LaMere's arrest if he were not in court on the day required by the summons. Mr. LaMere then called respondent and said that arrangements for payment had already been made with Lewis Marine. Respondent told Mr. LaMere that he still had to appear in court; that if he

did not appear, respondent would take action to see that he was brought into court, and that he would be put "away for awhile".

As to Charge IX of the Formal Written Complaint:

51. On December 3, 1981, respondent issued a summons in the matter of Bruce's Garage v. Herman LaPage for \$33.02.

52. On December 10, 1981, Mr. LaPage called respondent and promised to pay by January 2 or 3.

53. On January 18, 1982, respondent issued a default judgment and a property execution.

54. On February 5, 1982, respondent issued a criminal summons to Mr. LaPage, ordering his appearance on a charge of criminal contempt.

55. When Mr. LaPage appeared in court on the return date, respondent asked Mr. LaPage if he owed Bruce's Garage the money, and Mr. LaPage said he did.

56. On February 15, 1982, Mr. LaPage paid \$23.00, and on April 17, 1982, paid the balance of \$13.37.

57. On February 18, 1983, respondent entered in his docket a judgment for \$36.07 in favor of Bruce's Garage against Herman LaPage.

As to Charge X of the Formal Written Complaint:

58. After receiving a bill for rent money allegedly owed by Patricia Ann White to Norman Meyette, respondent sent summonses to Ms. White on September 4, 1981, and January 21, 1982, only one of which she received.

59. Ms. White went to respondent's home, acknowledged the debt and agreed to pay the money in monthly installments.

60. In February 1982, after Ms. White failed to make a few payments, respondent, in February 1982, sent her a criminal summons charging her with criminal contempt of court, second degree, and directing her appearance in court. No accusatory instrument had been filed against Ms. White in respondent's court when the criminal summons was issued.

61. When Ms. White appeared at respondent's home in response to the criminal summons, she told respondent that, despite financial problems, she would continue making payments according to the schedule.

62. Norman Meyette was not present on either occasion that Ms. White appeared before respondent.

As to Charge XI of the Formal Written Complaint:

63. After receiving a bill from Leroux Oil Company against John Youmell, respondent issued and sent a civil summons to Mr. Youmell on February 1, 1982.

64. On February 11, 1982, respondent issued a criminal summons to Mr. Youmell, ordering him to appear on a charge of criminal contempt of court for "failure to answer summons was ordered by court." The criminal summons bears the statement: "UPON YOUR FAILURE TO APPEAR AS ABOVE DIRECTED A WARRANT WILL BE ISSUED FOR YOUR ARREST."

65. No accusatory instrument had been filed in respondent's court.

66. On February 24, 1982, respondent issued a civil subpoena to Mr. Youmell and typed on the subpoena: "FAILURE TO ANSWER WILL RESULT IN YOUR ARREST. (CONTEMPT (sic) OF COURT).

67. Mr. Youmell received the civil summons, the criminal summons and the civil subpoena, but ignored them until respondent called Mr. Youmell's sister and told her that if Mr. Youmell failed to appear in court as directed, troopers would come and pick him up.

68. Thereafter, Mr. Youmell appeared in respondent's court. When he attempted to explain why he disputed the bill, respondent told him that he must pay the bill and could "have [his] say" only after the bill had been paid. Respondent told Mr. Youmell that if he did not pay the bill, he would be sent to jail, and when he got released, he would have to pay the bill.

69. No one appeared on behalf of Leroux Oil Company when Mr. Youmell appeared in respondent's court.

70. On April 1, 1982, respondent entered judgment against John Youmell. On that date Mr. Youmell paid respondent the claim.

As to Charge XII of the Formal Written Complaint:

71. LaBelle Exxon gave respondent a bill for \$291.82 allegedly outstanding against Martin Haenel for tires and gasoline. On January 20, 1982, respondent issued a civil summons.

72. On January 25, 1982, when Mr. Haenel received the summons, he went to respondent's house and told him that he did not have the money to pay the bill. Mr. Haenel agreed to make installment payments.

73. When Mr. Haenel failed to make some of the payments, respondent issued a civil subpoena on March 16, 1982, and sent it to Mr. Haenel. On the subpoena, respondent stated: "You failed to live up to your agreement with this court, therefore you are to make payment in full on above date, plus all expenses. Ps. there will no more dates made for you...."

74. On March 18, 1982, Mr. Haenel went to respondent's house, and respondent told him he had to pay the bill in full immediately or respondent could have him arrested and put in jail. Mr. Haenel paid respondent most of the claim that day.

75. On April 1, 1982, respondent entered a judgment against Mr. Haenel in LaBelle Exxon v. Martin Haenel in the amount of \$294.32, and defendant paid off the balance.

As to Charge XIII of the Formal Written Complaint:

76. In January 1982, Leroux Oil Company sent respondent a bill for \$69.93 allegedly owed by Howard Lamb, Sr. On January 29, 1982, respondent issued a summons for Mr. Lamb to appear before him on February 10, 1982, on a civil claim for \$69.93.

77. On February 1, 1982, respondent entered judgment against Mr. Lamb in Leroux Oil v. Howard Lamb, Sr., in the amount of \$73.43.

78. On February 11, 1982, respondent issued a criminal summons ordering Mr. Lamb to appear on February 18, 1982, on a charge of contempt of court for "failure to ans. summons or mandate of court."

79. When respondent issued the criminal summons, no accusatory instrument against Mr. Lamb had been filed in respondent's court.

80. On February 24, 1982, respondent issued a civil subpoena to Mr. Lamb, directing him to appear on March 4, 1982, and typed on the subpoena: "FAILURE TO ANS, WILL SUBJECT TO ARREST (CONTEMPT OF COURT)".

81. Mr. Lamb appeared in respondent's court on March 4, 1982. No one appeared on behalf of Leroux Oil Company. Respondent shouted at Mr. Lamb and told him that if he had not appeared, he would have been held in contempt of court. When respondent asked if he owed Leroux Oil the money claimed, Mr. Lamb said that he did and paid respondent \$74.93 on the claim.

As to Charge XIV of the Formal Written Complaint:

82. On February 15, 1982, respondent issued a summons to Robert Phillip, returnable on February 25, 1982, based on a \$90.00 civil claim filed by J. & D. Plumbing. The summons states in part: "PLEASE BE READY TO PAY SAME ON ABOVE DATE."

83. Jerome Brockway, the owner of J. & D. Plumbing, is respondent's co-justice in the Town of Fort Covington.

84. On February 25, 1982, Mr. Phillip paid the balance of the bill to Jerome Brockway's son.

85. On February 26, 1982, respondent issued a civil subpoena to Mr. Phillip in the case, returnable on March 4, 1982.

86. On March 4, 1982, respondent entered judgment in his docket in the amount of \$108.94 against Mr. Phillip in J. & D. Plumbing v. Robert Phillip, and marked the docket paid in full.

As to Charge XV of the Formal Written Complaint:

87. On June 6, 1981, Gene Deschambault signed a criminal information before respondent in connection with a dispute over some auto repairs involving Laga Martin, Jr.

88. On June 10, 1981, respondent issued and sent a summons and sent a copy of the criminal information to Mr. Martin. On the scheduled court date, both Mr. Martin and Mr. Deschambault appeared before respondent, who took testimony and rendered a decision against Mr. Martin.

89. On July 17, 1981, respondent entered judgment against Mr. Martin in the amount of \$302.50. The amount of the judgment was paid in full on August 7, 1981.

As to Charge XVI of the Formal Written Complaint:

90. On January 29, 1982, respondent issued a summons to Jean Smith, returnable February 10, 1982, in Leroux Oil v. Joan Smith, a civil claim for an alleged debt of \$82.58.

91. On February 8, 1982, respondent entered a judgment against Ms. Smith for the amount of \$86.08.

92. On March 1, 1982, respondent issued a civil summons to Ms. Smith and typed on the summons: "THIS MONEY BELONGS TO THE STATE OF NEW YORK, SORRY BUT WILL HAVE TO BE PAID."

93. On March 16, 1982, respondent issued a civil subpoena to Ms. Smith and typed on the subpoena: "CONTEMPT OF COURT OF ARESST WILL BE ISSUED ON ABOVE DATE., IF YOU DON,T SHOW JUST CAUSE WHY YOU FAILED TO PAY MONEY OWED TO COURT HASEN,T BEEN PAID [sic]...."

94. On April 6, 1982, the bill was paid in full.

95. No appearances were noted on the judge's docket for this case.

As to Charge XVII of the Formal Written Complaint:

96. In September 1981, Franklin County Public Defender Kenneth Murtagh, Franklin County District Attorney Joseph Ryan and respondent had a conversation in the District Attorney's office regarding People v. Charles Donnelly, a case pending before respondent.

97. During the conversation, respondent stated: "I know all about this case and I know the defendant Charlie Donnelly, and he is guilty." Respondent said that he knew that Mr. Donnelly had been charged with sexual abuse because he had overheard "a girl...in the courtroom" discussing the charge and implicating Mr. Donnelly.

98. Mr. Murtagh warned respondent that if he presumed Mr. Donnelly's guilt, Mr. Murtagh would move to disqualify him from the case. Respondent replied that he was "not going to have anything to do with you" and was "not going to discuss any case with you."

99. Defendant Donnelly subsequently appeared before respondent for a preliminary hearing on the sexual abuse charge on September 18, 1981. At the conclusion of the preliminary hearing, respondent held Mr. Donnelly over for the grand jury.

As to Charge XVIII of the Formal Written Complaint:

100. In May 1982, Badger Sales sent to respondent a bill for payment allegedly owed by Carl Demers, for installation of a silo distributor. On May 6, 1982, respondent issued and sent a summons to Mr. Demers.

101. On June 1, 1982, Mr. Demers telephoned respondent and said he would pay part of the original bill but would not pay all of it or the

late charges sought by Badger Sales because the machine was not properly repaired. Respondent replied that he "had no grounds to say anything one way or another," and that "when someone gave him a bill to collect, he collected it."

102. On June 1, 1982, respondent entered judgment against Mr. Demers in Badger Sales v. Carl Demers in the amount of \$525.77. On June 1 and July 1, 1982, Demers paid \$150.00.

As to Charge XIX of the Formal Written Complaint:

103. On February 15, 1982, respondent issued a summons to the defendant in J. & D. Plumbing v. Kenneth McElwain, based on a bill for \$94.27 allegedly owed for furnace repairs. The summons stated: "PLEASE BE READY TO MAKE PAYMENT ON ABOVE DATE."

104. Jerome Brockway, the owner of J. and D. Plumbing, is respondent's co-justice.

105. On February 25, 1982, the return date of the summons, Mr. McElwain appeared before respondent in the Fort Covington Town Court. Plaintiff Jerome Brockway did not appear. Respondent entered judgment against Mr. McElwain on that date in the amount of \$97.77. Mr. McElwain paid respondent in full.

As to Charge XX of the Formal Written Complaint:

106. On February 15, 1982, in J. and D. Plumbing v. Martin Lonkey, a civil claim for \$202.73, notwithstanding that neither party had appeared in court and no evidence had been presented, respondent issued a summons on which was typed: "PLEASE BE READY TO MAKE PAYMENT ON ABOVE DATE." The summons was returnable on February 25, 1982.

107. Jerome Brockway, the owner of J. and D. Plumbing, is respondent's co-justice.

108. On March 18, 1982, respondent entered a judgment against the defendant in the amount of \$206.23.

As to Charge XXI of the Formal Written Complaint:

109. On November 23, 1982, between 8:00 a.m. and 9:00 a.m., respondent called the home of Warren Rollins, spoke with Mr. Rollins' daughter, and ordered that he appear in court at 10:00 that morning with regard to a dispute with Stewart Meaux over the purchase of some hay.

110. Mr. and Mrs. Rollins appeared before respondent that morning. Mr. Meaux was present. Respondent stated that he could not handle the matter in small claims court because the amount exceeded his small claims jurisdiction, but he stated he would act as "arbitrator" in the matter.

111. After both parties had agreed to a settlement concerning payment for the hay, respondent told Mr. and Mrs. Rollins that he had the power to force the FMHA to foreclose on their farm if they did not pay for the hay as agreed. Thereafter, the Rollinses paid Mr. Meaux in compliance with the settlement agreement.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1), 100.3(a)(3), 100.3(a)(4) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1), 3A(3), 3A(4) and 3C(1) of the Code of Judicial Conduct. Charges I through XXI of the Formal Written Complaint are sustained and respondent's misconduct is established.

Respondent's conduct violates the relevant ethical standards. He has engaged in a pattern of denying litigants the right to be heard. He threatened civil litigants with arrest to coerce payment of alleged debts. He issued criminal summonses in civil cases. He presided over matters involving relatives and his co-justice. He prejudged the merits of the proceedings before him and sought to collect, in advance of trial and judgment, the money allegedly owed by defendants. He improperly entered judgments before trial. He issued civil summonses with personal notes warning defendants to be ready to pay, and he threatened defendants with jail if they did not appear in court upon his often brusque and unjustified demand.

Respondent, in essence, converted his judicial office into a debt-collecting service for local businesses, including those run by members of this family, his co-judge and the town clerk. He has deprived those appearing before him of their rights and has demonstrated his lack of fitness for office.

Public confidence in the integrity and impartiality of the judiciary is essential to the administration of justice. Judicial office is a high public trust and not a personal vehicle to be used on behalf of familial or other private interests. A judge is obliged to discharge the responsibilities of office in a judicious and fair manner.

By his conduct, respondent has violated the public trust. He has used the prestige of office to benefit private interests, and he has irreparably undermined public confidence in the integrity and impartiality of his court. He has thereby severely prejudged the administration of

justice and shown that he lacks the moral judgment and fitness to serve on the bench.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bromberg, Mr. Cleary and Mrs. DelBello were not present.

Dated: March 15, 1984

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 R. MILLS,

a Justice of the Schroepel Town Court,
Oswego County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

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

John F. Henry for Respondent

The respondent, Thomas R. Mills, a justice of the Schroepel Town Court, Oswego County, was served with a Formal Written Complaint dated February 23, 1984, alleging that he offered a favorable disposition to a female defendant of a criminal charge in exchange for sexual favors and alleging that he had failed to perform his administrative and adjudicative responsibilities. Respondent filed an answer dated March 16, 1984.

By order dated March 21, 1984, the Commission designated the Honorable John S. Marsh as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 17, 18, 26 and 27, 1984, and the referee filed his report with the Commission on June 11, 1984.

By motion dated June 13, 1984, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on June 21, 1984. Oral argument was waived. On August 21, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent was a justice of the Schroepel Town Court from January 1976 to March 1, 1984.

2. Respondent has been acquainted with Brenda Thomas and members of her family for many years. Ms. Thomas knew respondent to be a Schroepel Town Justice.

3. On February 3, 1983, Ms. Thomas, who was then 17 years old, was charged with Criminal Nuisance as the result of a fire at J. C. Birdlebough High School in Phoenix where she was a student.

4. Ms. Thomas received an appearance ticket returnable in the Schroepel Town Court on February 9, 1983. Ms. Thomas believed that she would appear before respondent.

5. During the night of February 4 through 5, 1983, respondent and Ms. Thomas met at a bar in Fulton.

6. Respondent and Ms. Thomas talked at the bar and then drove in separate cars to respondent's home.

7. Ms. Thomas told respondent that she had been in trouble at school and was scheduled to appear before him.

8. Respondent consulted his law books and advised Ms. Thomas that she would probably receive probation and community service.

9. After their conversation concerning the case, respondent and Ms. Thomas engaged in sexual relations before she left his home the next morning.

10. On February 9, 1983, Ms. Thomas appeared before respondent for arraignment. She pled not guilty. Respondent released her in her own recognizance and adjourned the case to March 1, 1983.

11. Respondent did not reveal his personal relationship with Ms. Thomas or disqualify himself from the case.

12. On or about February 17, 1983, respondent learned that the State Police were investigating allegations that he had been sexually involved with a female defendant.

13. Respondent then sent a letter dated February 17, 1983, to the Oswego County District Attorney disqualifying himself from Ms. Thomas' case.

14. On March 1, 1983, respondent transferred the case file to his co-judge.

15. Respondent and Ms. Thomas continued to have a sexual relationship until early 1984.

As to Charge II of the Formal Written Complaint:

16. Respondent failed to properly perform his administrative and judicial duties in that he:

(a) Failed to dispose of 425 cases pending in his court, some for nearly six years;

(b) failed to enter in his court dockets 429 cases pending in his court;

(c) failed to make any records for 117 cases pending in his court;

(d) failed to report to law enforcement agencies the disposition of 430 cases brought by those agencies notwithstanding that he was notified by numerous law enforcement agencies that his court had not reported the dispositions;

(e) failed to submit to the Department of Motor Vehicles certificates of conviction in 308 cases disposed of in his court;

(f) failed to return driver's licenses in 33 cases to defendants who sent in their licenses in connection with a plea of guilty to a traffic charge; and,

(g) failed to maintain case files and indices of cases for any cases in his court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2,

100.3(a)(1), 100.3(a)(5), 100.3(b)(1) and 100.3(c)(1) of the Rules Governing Judicial Conduct; Canons 1, 2, 3A(1), 3A(5), 3B(1) and 3C(1) of the Code of Judicial Conduct; Sections 107, 2019 and 2019-a of the Uniform Justice Court Act; Sections 105.1 and 105.3 of the Recordkeeping Requirements for Town and Village Courts; Section 91.12 of the Regulations of the Commissioner of the Department of Motor Vehicles; and Section 30.9 of the Uniform Justice Court Rules. Charges I and II of the Formal Written Complaint are sustained, except for that part of Charge I that alleges that respondent offered the defendant a favorable disposition in exchange for sexual favors, and respondent's misconduct is established.

Knowing a young woman was to appear before him, respondent entered into a sexual relationship with the defendant. Thereafter, he arraigned and released without bail the defendant. He did not disclose the relationship or disqualify himself for 13 days after he learned of the pending case, until he knew of a criminal investigation into his conduct. He clearly violated Section 100.3(c) of the Rules Governing Judicial Conduct which requires a judge to disqualify himself in any case in which his impartiality might reasonably be questioned.

In addition, respondent has been derelict in the performance of his administrative and judicial duties. He failed to dispose of hundreds of cases pending for as long as six years, and he failed to keep proper records of the matters before him. Such neglect of a judge's obligations is serious misconduct (see, Matter of Rogers v. State Commission on Judicial Conduct, 51 NY2d 224 [1980]; Matter of Cooley v. State Commission on Judicial Conduct, 53 NY2d 64 [1981]), and, when extended over a long period, constitutes an irreparable breach of the public's trust in a judge's performance (Matter of New, unreported [Com. on Jud. Conduct, Dec. 8, 1982]).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Judge Alexander and Judge Rubin were not present.

This determination is rendered pursuant to Section 47 of the Judiciary Law in view of respondent's resignation from the bench.

Dated: August 30, 1984

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

PAUL MOULTON,

a Justice of the Ossian Town Court,
Livingston County.

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

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

The respondent, Paul Moulton, a justice of the Ossian Town Court, Livingston County, was served with a Formal Written Complaint dated October 26, 1983, alleging that he had failed to report cases and remit moneys to the state comptroller, notwithstanding that he had been previously cautioned by the Commission concerning his recordkeeping habits. Respondent did not answer the Formal Written Complaint.

By motion dated January 13, 1984, the administrator of the Commission moved for summary determination and a finding that respondent's

misconduct was established. Respondent did not oppose the motion or file any papers in response thereto.

By determination and order dated February 9, 1984, the Commission granted the administrator's motion for summary determination, found respondent's misconduct established and set a schedule for argument as to appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent neither submitted a memorandum nor requested oral argument.

On March 8, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. On November 3, 1982, respondent was served with a letter of dismissal and caution by this Commission, advising him to adhere to ethical standards which require a judge to dispose promptly of court business.

2. Despite the Commission's caution, respondent failed between February 14, 1983, and December 30, 1983, to file reports and remit moneys to the state comptroller, as required by law.

As to Charge II of the Formal Written Complaint:

3. Respondent failed to cooperate with a Commission investigation in that he:

(a) Failed to respond to letters from the Commission dated March 23, 1983; April 15, 1983; and April 29, 1983, notwithstanding that his response was requested in the letters; and,

(b) failed to appear for the purpose of testifying before a member of the Commission on June 10, 1983; August 1, 1983; and August 24, 1983, although duly requested to appear by letters dated May 25, 1983, June 27, 1983; and August 8, 1983.

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; Canons 1, 2A and 3B(1) of the Code of Judicial Conduct; Sections 2020 and 2021(1) of the Uniform Justice Court Act; Section 27 of the Town Law, and Section 1803 of the Vehicle and Traffic Law. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent is required to report to the state comptroller all cases he handles and remit any moneys he receives in connection with those cases by the tenth day of the month following collection. Section 2021(1) of the Uniform Justice Court Act; Section 27 of the Town Law; Section 1803 of the Vehicle and Traffic Law. In eleven of the months of 1983, respondent failed to fulfill this important statutory obligation. Such neglect of administrative duties constitutes serious misconduct. Matter of Cooley, 53 NY2d 64 (1981); Matter of Petrie, 54 NY2d 807 (1981); Matter of Ralston, NYLJ, Aug. 8, 1979, p. 8, col. 5 (Com. on Jud. Conduct, July 2, 1979).

Respondent has exacerbated his negligence by ignoring a Commission caution that he improve his recordkeeping and by failing to cooperate with the Commission's investigation. His refusal to answer inquiries and to give testimony interferes with the Commission's discharge of its lawful mandate and demonstrates respondent's unfitness for judicial office. Matter of Cooley, *supra*; Matter of Osterman, 13 NY2d (a), (1) (Ct. on the Judiciary 1963); Matter of Jordan, 47 NY2d (xxx) (Ct. on the Judiciary 1979).

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

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Mr. Kovner and Judge Rubin were not present.

Dated: April 13, 1984

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

JOSEPH E. MYERS,

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

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (John J. Postel and Henry S. Stewart,
Of Counsel) for the Commission

Duncan S. MacAffer for Respondent

The respondent, Joseph E. Myers, a justice of the Norfolk Town Court, St. Lawrence County, was served with a Formal Written Complaint dated February 18, 1983, alleging, inter alia, that he displayed a dart board in his chambers and represented that it was used to determine fines. Respondent filed an answer dated March 7, 1983.

By order dated April 11, 1983, the Commission designated Martin M. Goldman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 15, 1983, and the referee filed his report with the Commission on February 3, 1984.

By motion dated March 8, 1984, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a finding that respondent be censured. Respondent opposed the motion on May 1, 1984. The administrator filed a reply dated May 3, 1984. The Commission heard oral argument on the motion on August 21, 1984, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charges I through III of the Formal Written Complaint:

1. Respondent, a part-time, non-lawyer judge who also works at an aluminum plant, was given a dart board by co-workers in 1982. The dart board, which was made by respondent's co-workers, had dollar amounts of fines substituted for the scores on a traditional dart board. The bull's eye was marked "free" or "UCD," meaning unconditional discharge.

2. Respondent hung the dart board in his chambers in late May or early June of 1982 in place of a picture of President Lincoln.

3. On June 17, 1982, Deborah MacIntire appeared in respondent's court on a charge of Speeding.

4. Ms. MacIntire was called into respondent's chambers. After some conversation, respondent indicated that the fine would be \$25.

5. While Ms. MacIntire was paying the fine, respondent offered her an opportunity to throw a dart to determine her fine. He told her that if she missed the dart board, she would be sentenced to seven days in jail.

6. Respondent showed Ms. MacIntire a printed form, which had also been made by respondent's fellow workers at the aluminum plant and given to respondent. It read:

I of my own free will would like to toss a dart at a board to decide the amount of fine which will be charged to me for my conviction of the violation which I have been charged. I do not hold the judge responsible for this opportunity to decide on the amount of fine, and I resolve [sic] all interested parties from this act, I am doing it on my own free will.

7. Ms. MacIntire declined the opportunity to throw a dart and declined to sign the form.

8. Respondent then asked Ms. MacIntire whether she would like to throw a dart to see what fine she would have received. She accepted,

threw a dart and hit a circle marked \$5. The fine was not changed by respondent.

9. Also on June 17, 1982, Mary Baxter appeared before respondent in chambers to pay a fine for her son, Dale, who had pled guilty to a charge of Trespassing.

10. Respondent told Ms. Baxter that the fine would be \$25. She paid it by check.

11. Respondent then asked Ms. Baxter whether she would like to throw a dart. She responded, "Sure, bend over."

12. Respondent indicated that the dart could affect the amount of the fine.

13. Ms. Baxter threw a dart and hit an amount higher than \$25. The fine was not changed by respondent.

14. On June 17, 1982, Ann Catherine O'Brien and Ginger Walters appeared before respondent in chambers on charges of Trespassing.

15. Respondent told Ms. O'Brien and Ms. Walters that the fine in their cases would be \$25.

16. The defendants noticed the dart board and asked respondent about it. Respondent told the defendants that if they shot a dart, they would pay the fine indicated on the board. If they missed the board, he said, they would go to jail for the weekend.

17. The defendants were not invited to use the dart board. They paid their fines and left the court.

18. On June 24, 1982, Hugh Palmer appeared before respondent in chambers on charges of Speeding, Failure To Keep Right and Driving While Intoxicated.

19. Mr. Palmer pled guilty to a reduced charge of Driving While Ability Impaired. Respondent stated that the total fine for the three offenses would be \$300, and Mr. Palmer paid the fine.

20. Afterward, Mr. Palmer noticed the dart board on the wall behind respondent's head and inquired about it. Respondent said, "Well, it could help me with hard decisions."

21. Mr. Palmer then paid his fine to the court clerk and left the court.

22. On June 24, 1982, Charles B. Nash, an assistant district attorney in St. Lawrence County, appeared before respondent on behalf of the prosecution for a preliminary hearing in a felony case.

23. After the hearing, Mr. Nash went with respondent into chambers. Mr. Nash noticed the dart board behind respondent's desk.

24. Mr. Nash said that he was good at throwing darts. Respondent said, "If you throw it and miss, you go to jail."

25. Mr. Nash felt that the presence of such a dart board in respondent's chambers "didn't look good" and reported it to the district attorney the following day.

26. The board was used as a joke and was not to be taken seriously by defendants. There was no evidence that the dart board was ever utilized to determine a fine for any defendant, or was ever intended to be so used.

27. There was no evidence that the "release" was utilized in a serious manner or was ever duplicated or that respondent had any other releases in addition to the original which he kept in his desk. The release was utilized only in the one instance cited above.

28. There is no evidence that any of the defendants were unfairly treated.

29. Respondent removed the dart board from his chambers in July 1982 when he realized that negative comments were being made about the dart board. That removal took place prior to receipt by respondent of the initial complaint from the Commission.

As to Charge IV of the Formal Written Complaint:

30. The charge is not sustained and is, therefore, dismissed.

As to Charge V of the Formal Written Complaint:

31. The charge is not sustained and is, therefore, dismissed.

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(a)(1), 100.3(a)(2) and 100.3(a)(3) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1), 3A(2) and 3A(3) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained. Charge III is sustained insofar as it alleges that respondent invited Ms. MacIntire to throw a dart and gave her a form release. Respondent's misconduct is established.

Respondent's attempt at humor was ill-founded and misplaced. By hanging a dart board in his chambers, indicating to several persons that

he used it to dispose of cases and inviting defendants to throw the darts, respondent acted in an indecorous and undignified manner. He demeaned his judicial office and the judicial system itself.

It is, however, clear that the invitations to dart-throwing and the one incident of dart-throwing itself (in the Baxter case) all took place after the fines had been set; and, in all cases but one, after the fines had already been paid. Further, it is clear that the defendants knew that the matter was one of jest and that their fines would not be changed. In fact, no fines were ever changed. The "release" form was in a drawer in respondent's desk, was shown once to one defendant and was never utilized.

The dart board remained on the wall of respondent's chambers less than two months, and respondent voluntarily removed it because he realized that it was the subject of unfavorable comments, and that its presence in his chambers was inappropriate. Importantly, the dart board was removed before respondent received his first notice of complaint from the Commission.

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

Mrs. Robb, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur, except that Judge Shea dissents as to Charge IV only and votes that the charge be sustained.

Mr. Bower and Mrs. DelBello dissent as to Charge IV and vote that the charge be sustained and dissent as to sanction and vote that respondent be censured.

Judge Alexander and Judge Rubin were not present.

Dated: October 24, 1984

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

ROBERT C. NEWMAN,

a Justice of the Arcade Town and Village
Courts, Wyoming County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

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

The respondent, Robert C. Newman, a justice of the Arcade Town Court and Arcade Village Court, Wyoming County, was served with a Formal Written Complaint dated May 18, 1984, alleging certain financial reporting, remittance and depositing improprieties. Respondent did not answer the Formal Written Complaint.

On July 25, 1984, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent did not oppose the motion or file any papers in response thereto.

By determination and order dated August 21, 1984, the Commission granted the administrator's motion for summary determination, found respondent's misconduct established and set a schedule for argument as to appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent neither submitted a memorandum nor requested oral argument.

On September 20, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent was a part-time justice of the Arcade Town Court and Arcade Village Court, Wyoming County, from May 1982 to January 1, 1984. He notified the Chief Administrator of the Courts of his resignation on or about June 13, 1984.

2. Respondent is a lawyer and holds an undergraduate degree in business administration and accounting.

3. Between June 15, 1982, and December 31, 1983, respondent failed to deposit court moneys in his village court account within 72 hours of receipt. As a result, respondent's court account was deficient in 41 of the 81 weeks during this period. For two weeks at the end of the period, the cumulative deficiency totaled \$7,382.75.

4. In 35 of the 81 weeks during this period, respondent made no deposits in his village court account, notwithstanding that he had received funds in his official capacity during each of these weeks. Several times during the period he made no deposits for several weeks and accumulated vast sums of court funds, which he kept among his court files. Specifically:

(a) Between January 25, 1983, and March 7, 1983, respondent made no deposits in his village court account, notwithstanding that he received \$170 during this period;

(b) between May 10, 1983, and June 16, 1983, respondent made no deposits in his village court account, notwithstanding that he received \$695.65 during this period;

(c) between June 28, 1983, and September 26, 1983, respondent made no deposits in his village court account, notwithstanding that he received \$2,497.10 during this period; and,

(d) between October 18, 1983, and December 27, 1983, respondent made no deposits in his village court account, notwithstanding that he received \$5,609.20 during this period.

5. As of December 14, 1983, respondent had not deposited in his village court account \$1,741.10 in cash received in his official capacity

prior to December 9, 1983, and which he kept filed among his village court receipts.

6. As of December 27, 1983, respondent had failed to deposit in his village court account \$4,889.55 in checks and money orders received in his official capacity between April 4, 1983, and December 16, 1983.

7. Respondent acknowledged, in testimony before a member of the Commission, that after a period of time in office, he developed a practice of putting court funds in his receipt book, placing it inside a bank bag and leaving them there undeposited for long periods.

8. Respondent was aware that he was obliged by law to deposit court funds in his official account, that he was not doing so promptly and that large amounts of undeposited funds were accumulating.

9. Respondent has no explanation for his failure to deposit court funds on time. Respondent testified before a member of the Commission that he was "not disciplined enough to do it."

10. From March 1983, until his resignation, respondent failed to report cases or remit funds received in his official capacity to the Department of Audit and Control, notwithstanding that his salary was stopped in June 1983, for failure to file the reports.

11. Respondent was aware that the law required him to report cases and remit funds by the tenth day of the month following their receipt.

12. Respondent has no excuse for his failure to file reports and remit moneys as required.

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; Canons 1, 2A and 3B(1) of the Code of Judicial Conduct; Sections 2020 and 2021(1) of the Uniform Justice Court Act; Section 30.7(a) of the Uniform Justice Court Rules; Section 27 of the Town Law; Section 4-410(1) of the Village Law, and Section 1803 of the Vehicle and Traffic Law. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent has displayed wanton disregard of his ethical obligations to attend to the administrative duties of his office. His accumulation of undeposited court funds and his failure to turn them over to the proper authorities constitute reckless mishandling of thousands of dollars in public moneys. See Matter of Cooley v. State Commission on Judicial Conduct, 53 NY2d 64 (1981); Matter of Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981); Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976); Matter of Dudley, unreported (Com. on Jud. Conduct, March

5, 1979); Matter of New, unreported (Com. on Jud. Conduct, Dec. 8, 1982); Matter of Hutzky, unreported (Com. on Jud. Conduct, Nov. 4, 1983).

Respondent was aware of the obligations of his office, was trained in the law and in accounting and was able to offer no excuse for this gross neglect of his duties. He has demonstrated that he is not fit for judicial office and should be barred from ever seeking judicial office in the future.

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Shea and Mr. Sheehy concur.

Judge Alexander, Judge Ostrowski and Judge Rubin were not present.

Dated: September 28, 1984

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

JAMES H. REEDY,

a Justice of the Galway Town Court and
Galway Village Court, Saratoga County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Henry S. Stewart, Of Counsel) for the
Commission

Ralph A. Nocera, Morris D. Strauss and Thomas F.
Scaringe for Respondent

The respondent, James H. Reedy, a justice of the Galway Town Court and Galway Village Court, Saratoga County, was served with a Formal Written Complaint dated April 20, 1983, alleging certain improprieties with respect to a traffic case pending against his son. Respondent filed an answer on May 13, 1983.

By order dated May 20, 1983, the Commission designated the Honorable Morris Aarons as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on September 27 and

October 19, 1983, and the referee filed his report with the Commission on February 13, 1984.

By motion dated March 20, 1984, the administrator of the Commission moved to confirm the referee's report, to adopt additional findings of fact and for a finding that respondent be removed from office. Respondent opposed the motion by cross motion on April 10, 1984. The administrator filed a reply dated April 25, 1984. The Commission heard oral argument on the motions on May 10, 1984, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Galway Town Court and Galway Village Court, Saratoga County, and was in April 1982.

2. On April 2, 1982, respondent's son, John G. Reedy, and a friend of respondent's son, Charles J. Vroman, were ticketed in the Village of Galway on charges of Speeding by Trooper Richard W. Wieland of the State Police.

3. The tickets were returnable before respondent on April 8, 1982.

4. On April 3, 1982, Trooper Wieland delivered the tickets to respondent's home. When they were delivered, the tickets read, in Trooper Wieland's hand, that each defendant was charged with a violation of Section 1180(d) of the Vehicle and Traffic Law, driving 50 miles per hour in a 35 mile-per-hour zone.

5. After receiving the tickets, respondent called Thomas J. McNamara, an assistant district attorney in Saratoga County assigned to the Town of Galway.

6. Respondent told Mr. McNamara that his son had received a ticket returnable in respondent's court. Respondent acknowledged that it would be improper for him to handle his son's case. The two men agreed that the case should be transferred to the court in the adjoining Town of Providence.

7. Respondent discussed with Mr. McNamara the possible disposition of John Reedy's case. Mr. McNamara did not consent to a reduction of the charge in respondent's court since the case was to be transferred to another court. Mr. McNamara never discussed the case with attorney Morris Strauss.

8. Respondent then called Judge Norman R. Neahr of the Providence Town Court.

9. Respondent told Judge Neahr that respondent's son and the son's friend had received tickets for Speeding returnable in respondent's

court. Respondent said that he could not handle the cases and asked whether he could transfer them to Judge Neahr.

10. Judge Neahr agreed to take the cases.

11. About a week later, respondent again called Judge Neahr. Respondent told Judge Neahr that Morris Strauss was representing the defendants and that an agreement had been made with an assistant district attorney to reduce the charges from Speeding to Illegal Parking.

12. Respondent asked Judge Neahr whether he would agree to the reduction, and Judge Neahr said that he would.

13. Respondent asked what the fine would be, and Judge Neahr responded, "\$25 each."

14. About a week after the second call from respondent, Judge Neahr called John A. Simone, Jr., an assistant district attorney in Saratoga County assigned to the Town of Providence.

15. Judge Neahr asked Mr. Simone the procedure for transferring the cases from one court to another and asked whether it was proper for him to handle a case involving another judge's son. Mr. Simone said that it was proper for Judge Neahr to hear the case if he had not prejudged it and indicated that the case should be transferred directly from one judge to another.

16. Mr. Simone did not consent to a reduction of the charges against John Reedy and Charles Vroman. He never spoke with respondent or Morris Strauss concerning the cases against John Reedy and Charles Vroman.

17. After his conversation with Mr. Simone, Judge Neahr went to respondent's home at his request to pick up the papers concerning the cases of respondent's son and Charles Vroman.

18. Judge Neahr received the papers in a large envelope. Inside the envelope, he found two simplified traffic informations, two uniform traffic tickets and \$50 cash.

19. On each of the informations, Judge Neahr found that lines indicating a violation of Section 1180(d) of the Vehicle and Traffic Law, speeding 50 miles per hour in a 35 mile-per-hour zone, had been crossed out. The line indicating the conviction had been marked "1202A1" (Illegal Parking).

20. Respondent or someone under his direction or control made the alterations on the tickets.

21. The alterations were made without the permission, consent or knowledge of Trooper Wieland.

22. On the back of the tickets, the defendants entered guilty pleas in the space provided for mail pleas and signed their names.

23. Several days after Judge Neahr had received the tickets, Trooper Wieland inquired about the cases. Judge Neahr showed the trooper the papers and told him that an assistant district attorney had agreed to a reduction of the speeding charges. Trooper Wieland did not respond.

24. On May 5, 1982, based on Trooper Wieland's silence and respondent's representations, Judge Neahr entered in his docket that John Reedy and Charles Vroman had pled guilty to Illegal Parking and paid fines of \$25 each.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(a)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established. Respondent's cross motion is denied.

Respondent properly disqualified himself from his son's case and transferred it to another judge. See, Section 100.3(c)(1) of the Rules Governing Judicial Conduct. Having done that, he should have had no contact with the case. Instead, respondent called an assistant district attorney and discussed possible plea bargains. He also called Judge Neahr, represented to him that the prosecution had agreed to a reduction of the charge, asked Judge Neahr to agree to the reduction and discussed the sentence. Respondent then altered or had altered the charging instruments to reflect a lesser charge.

In doing so, respondent sought to use his judicial position to obtain special consideration for his son. In effect, respondent disposed of the case himself and passed it to Judge Neahr only to conceal his own involvement.

Respondent's actions constitute malum in se misconduct. Matter of Byrne, 47 NY2d (b), (c) (Ct. on the Judiciary, 1978). Such misconduct has been repeatedly condemned by this Commission and the courts. Matter of Dixon v. State Commission on Judicial Conduct, 47 NY2d 523 (1979); Matter of Bulger v. State Commission on Judicial Conduct, 48 NY2d 32 (1979); Bartlett v. Enea, 45 AD2d 471 (4th Dept. 1974); Matter of LaCarrubba, 49 NY2d (p) (Ct. on the Judiciary, 1980); Matter of Lombardi, 49 NY2d (v) (Ct. on the Judiciary, 1980); Matter of Harold H. Schultz, unreported (Com. on Jud. Conduct, May 29, 1979).

Respondent's conduct in the matter before us is indefensible and warrants severe sanction. Respondent has been censured in the past by this Commission for repeated attempts to influence other judges on behalf of

defendants in their courts. Matter of Reedy, unreported (Com. on Jud. Conduct, May 29, 1979).

His refusal to abide by ethical standards in the face of previous discipline for similar conduct further demonstrates his unfitness for judicial office.

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

Mrs. Robb, Judge Alexander, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mr. Bower was not present.

Dated: June 29, 1984

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

ROBERT W. REESE,

a Justice of the Ilion Village Court,
Herkimer County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel) for the
Commission

The respondent, Robert W. Reese, a justice of the Ilion Village Court, Herkimer County, was served with a Formal Written Complaint dated December 27, 1983, alleging that he attempted to deny a trial to a defendant and failed to cooperate with a Commission investigation. Respondent did not answer the Formal Written Complaint.

By motion dated January 18, 1984, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent did not oppose the motion or file any papers in response thereto.

By determination and order dated February 9, 1984, the Commission granted the administrator's motion, found respondent's misconduct established and set a schedule for argument as to appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent neither submitted a memorandum nor requested oral argument.

On March 8, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. On June 20, 1983, Michael Ciociola received two traffic tickets returnable in respondent's court on June 29, 1983.

2. On June 29, 1983, Mr. Ciociola appeared before respondent and pled not guilty to the traffic charges.

3. Respondent threw the tickets at Mr. Ciociola and said, "I suppose you realize that this means we'll have to have a trial."

4. Respondent indicated that he would dismiss one of the charges but insisted that Mr. Ciociola plead guilty to the other.

5. Mr. Ciociola protested that he was innocent.

6. Respondent agreed to schedule a trial and asked Mr. Ciociola what day he would prefer.

7. When Mr. Ciociola said that he would be available any day but Thursday, respondent said, "I'm sorry but Thursday is the only night I have court."

8. Mr. Ciociola explained that he lived 180 miles from respondent's court and was otherwise engaged on Thursdays, but respondent scheduled the trial for Thursday, July 21, 1983.

9. Mr. Ciociola appeared in respondent's court on July 21. Neither respondent nor the arresting officers appeared, and no one else was present with court business.

10. After waiting an hour for him, Mr. Ciociola contacted respondent by telephone at his home. Respondent told Mr. Ciociola that he had a "personal problem" and could not come to court. He instructed Mr. Ciociola to return the following week.

11. On Thursday, July 28, 1983, Mr. Ciociola again made the trip to respondent's court. Neither respondent nor the arresting officers

appeared. After waiting an hour, Mr. Ciociola again attempted to reach respondent by telephone but was unable to do so.

12. Respondent never advised the arresting officers to be in court on July 28, 1983.

13. On August 8, 1983, Mr. Ciociola wrote to respondent and asked how the matter could be resolved. As of December 30, 1983, respondent had not replied.

As to Charge II of the Formal Written Complaint:

14. Respondent failed to cooperate with a Commission investigation in that he:

(a) Failed to appear for the purpose of testifying before a member of the Commission on November 22, 1983, although duly requested to appear by letter dated November 7, 1983; and,

(b) failed to appear for the purpose of testifying before a member of the Commission on November 29, 1983, although duly requested to appear by letter dated November 22, 1983.

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(a)(1), 100.3(a)(3) and 100.3(a)(5) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1), 3A(3) and 3A(5) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent denied Mr. Ciociola the right to be heard--first by insisting that he plead guilty, then by making it inconvenient for him to appear for trial and finally by refusing to be present to hear the case. In doing so, respondent abandoned his ethical obligations to remain impartial, to grant litigants a full right to be heard and to dispose promptly of court business. See, Sections 100.2 and 100.3(a)(5) of the Rules Governing Judicial Conduct; Matter of Curcio, unreported (Com. on Jud. Conduct, Mar. 1, 1983).

A judge must respect the rights of litigants who appear before him. Respondent denied Mr. Ciociola his fundamental right to be heard by a neutral and impartial judge.

Such misconduct is serious and warrants sanctioning respondent. However, respondent has exacerbated his transgression by refusing to cooperate in the Commission's investigation. Such refusal obstructs the Commission's discharge of its lawful mandate and demonstrates respondent's unfitness for judicial office. Matter of Osterman, 13 NY2d (a), (1) (Ct. on the Judiciary 1963); Matter of Jordan, 47 NY2d (xxx) (Ct. on the Judiciary 1979); Matter of Cooley, 53 NY2d 64, 66 (1981).

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

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Mr. Kovner and Judge Rubin were not present.

Dated: March 22, 1984

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

ROBERT P. REEVES,

a Judge of the Family Court, Rensselaer
County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Stephen F. Downs and Albert B. Lawrence,
Of Counsel) for the Commission

Rice and Conway (By John Carter Rice and Robert H. Bixby)
for Respondent

The respondent, Robert P. Reeves, a judge of the Family Court, Rensselaer County, was served with a Formal Written Complaint dated June 21, 1982, alleging that, over a period of years, he failed to perform properly his judicial duties and engaged in a course of conduct prejudicial to the administration of justice. The charge included 20 paragraphs and five specifications of instances of alleged misconduct. Respondent filed an answer dated July 12, 1982, denying all allegations of the charge.

By order dated August 3, 1982, the Commission designated the Honorable J. Clarence Herlihy as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on October 5, 6, 12 and 13, 1982, and the referee filed his report with the Commission on January 11, 1983.

By motion dated February 24, 1983, the administrator of the Commission moved to disaffirm the referee's report and for a finding that respondent's misconduct was established. Respondent opposed the motion by papers dated March 15, 1983, and cross-moved to confirm the referee's report and to dismiss the Formal Written Complaint. The Commission heard oral argument on the motions on March 24, 1983, at which respondent appeared with counsel. Thereafter the Commission, disaffirming the referee's report, in a determination and order dated October 14, 1983, made the findings of fact enumerated below.

With respect to appropriate sanction, the Commission received memoranda from respondent and the administrator and heard oral argument on December 16, 1983, at which respondent and his counsel again appeared. Thereafter the Commission considered the record of the proceeding and made the determination herein.

As to paragraph (a) of the charge in the Formal Written Complaint:

1. From February 1979 to March 1981, in the 26 support cases listed below, respondent failed to advise litigants properly of their right to counsel, as required by Section 433 of the Family Court Act:

- (a) H _____ v. H _____, * February 26, 1979;
- (b) Commissioner v. M _____, February 21, 1979;
- (c) S _____ v. W _____, February 28, 1979;
- (d) W _____ v. W _____, March 1, 1979;
- (e) H _____ v. H _____, March 5, 1979;
- (f) Commissioner v. A _____, March 7, 1979;
- (g) Commissioner v. B _____, March 7, 1979;
- (h) Commissioner v. R _____, March 7, 1979;
- (i) Commissioner v. B _____, March 14, 1979;
- (j) Commissioner v. H _____, March 14, 1979;

* In view of the confidential nature of proceedings in Family Court, the names of the parties have been deleted from this determination and the record.

- (k) D _____ v. G _____, March 21 and 28, 1979;
- (l) Commissioner v. W _____, March 16, April 19 and September 6, 1979, and January 31, 1980;
- (m) F _____ v. F _____, December 19, 1979;
- (n) L _____ v. L _____, January 7, 1980;
- (o) A _____ v. A _____, October 9, 1980;
- (p) Commissioner v. R _____, January 21, 1981;
- (q) Commissioner v. J _____, January 28, 1981;
- (r) P _____ v. P _____, February 2, 1981;
- (s) D _____ v. D _____, February 9, 1981;
- (t) Commissioner v. D _____, February 11, 1981;
- (u) Commissioner v. A _____, March 11, 1981;
- (v) Commissioner v. F _____, March 11, 1981;
- (w) Commissioner v. P _____, March 11, 1981;
- (x) R _____ v. R _____, March 15, 1981;
- (y) Commissioner v. B _____, March 16, 1981; and
- (z) Commissioner v. B _____, March 18, 1981.

2. From February 1979 to February 1981, in the eight paternity cases listed below, respondent failed to advise the party-respondents of their right to an adjournment to confer with counsel and the right to assigned counsel, as required by Section 262 of the Family Court Act:

- (a) L _____ v. T _____, February 15 and May 24, 1979;
- (b) W _____ v. W _____, February 15, 1979;
- (c) Commissioner v. D _____, March 14, 1979;
- (d) Commissioner v. M _____, March 21, 1979;
- (e) G _____ v. G _____, December 22, 1980;
- (f) N _____ v. N _____, January 29, 1981;
- (g) B _____ v. B _____, February 5, 1981; and
- (h) P _____ v. P _____, February 19, 1981.

3. In March 1979, in the two paternity cases listed below, respondent failed to advise the party-respondents of their right to remain silent and their right to a blood grouping test, at state expense for the indigent, as required by Sections 531 and 532 of the Family Court Act:

- (a) Commissioner v. D _____, March 14, 1979; and
- (b) Commissioner v. M _____, March 21, 1979.

As to paragraph (b) of the charge in the Formal Written Complaint:

4. From January 1979 to March 1981, in the 28 matrimonial, alimony, maintenance and support proceedings listed below, respondent failed to require sworn financial disclosure statements from the litigants appearing before him, as required by Section 424-a of the Family Court Act and Section 236 of the Domestic Relations Law:

- (a) Commissioner v. S _____, January 21, 1979;
- (b) L _____ v. T _____, February 15 and May 24, 1979;
- (c) Commissioner v. H _____, February 21, 1979;
- (d) Commissioner v. Z _____, March 2, 1979;
- (e) C _____ v. C _____, March 5, 1979;
- (f) H _____ v. H _____, March 5, 1979;
- (g) Commissioner v. A _____, March 7, 1979;
- (h) Commissioner v. B _____, March 7, 1979;
- (i) Commissioner v. R _____, March 7, 1979;
- (j) Commissioner v. A _____, March 11, 1979;
- (k) Commissioner v. B _____, March 11, 1979;
- (l) Commissioner v. P _____, March 11, 1979;
- (m) Commissioner v. D _____, March 14, 1979;
- (n) Commissioner v. H _____, March 14, 1979;
- (o) Commissioner v. M _____, March 21, 1979;
- (p) D _____ v. G _____, March 21 and 28, 1979;
- (q) L _____ v. L _____, January 7, 1980;
- (r) A _____ v. A _____, October 9, 1980;
- (s) A _____ v. A _____, January 13, 1981;
- (t) Commissioner v. J _____, January 28, 1981;
- (u) Commissioner v. D _____, February 2, 1981;
- (v) P _____ v. P _____, February 2, 1981;
- (w) B _____ v. B _____, February 5, 1981;
- (x) D _____ v. D _____, February 9, 1981;
- (y) Commissioner v. F _____, February 18, 1981;
- (z) P _____ v. P _____, February 19, 1981;
- (aa) R _____ v. R _____, March 15, 1981; and
- (bb) Commissioner v. B _____, March 16, 1981.

As to paragraph (c) of the charge in the Formal Written Complaint:

5. From March 1979 to March 1981, in the seven custody and family offenses cases listed below, respondent entered dispositional orders, notwithstanding that the court did not have jurisdiction over the party-respondents, and notwithstanding that the party-respondents did not

appear in court, contrary to Sections 427(c) and 826 of the Family Court Act and Section 75-e of the Uniform Child Custody Jurisdiction Act:

- (a) G _____ v. G _____, January 7, 1979;
- (b) S _____ v. S _____, February 26, 1979;
- (c) S _____ v. S _____, February 29, 1979;
- (d) R _____ v. R _____, January 7, 1980;
- (e) P _____ v. P _____, October 9, 1980;
- (f) E _____ v. E _____, February 11, 1981; and
- (g) Commissioner v. W _____, March 25, 1981.

As to paragraph (j) of the charge in the Formal Written Complaint:

6. In January 1979, respondent directed deputy court clerk Patricia Beeler to falsify court reports to show that approximately 60 cases had been disposed of within the time periods set in standards promulgated by the Office of Court Administration, when in fact those cases had not then been disposed of. Respondent then directed Ms. Beeler to file the falsified reports with the Office of Court Administration.

As to paragraph (n) of the charge in the Formal Written Complaint:

7. On May 9, 1979, while presiding over Matter of V R _____, respondent initiated an improper ex parte conference in chambers with a witness in the proceeding, Edward Breen of the Rensselaer County Probation Department. Respondent discussed the case with Mr. Breen during this ex parte conference, prior to deciding the case.

As to paragraph (o) of the charge in the Formal Written Complaint:

8. In April 1980, a paternity case, F _____ v. B _____, came before respondent, who ordered a blood grouping test on motion of the child's law guardian. Both the petitioner and the party-respondent failed twice to appear for the scheduled test.

9. In December 1980, respondent entered an order of filiation against the putative father, notwithstanding that the parties appeared to have abandoned the proceeding, that neither party nor the law guardian were present in court and that there was no evidence before him in the matter.

The only individual present when respondent entered the order of filiation was an attorney for the Department of Social Services.

As to paragraph (q) of the charge in the Formal Written Complaint:

10. In 1981, the Honorable Allan Dixon was the senior judge of the Family Court, Rensselaer County, whose responsibilities included administrative supervision of court personnel. Judge Dixon and respondent were the only judges of the court.

11. On January 7, 1981, Judge Dixon revoked the temporary, one-week-old assignment of a particular secretary to respondent's exclusive direction and reassigned her to the "pool" of court personnel who did work for both judges of the court. This reassignment was a regular administrative action within Judge Dixon's authority.

12. Respondent was displeased by the foregoing administrative action by Judge Dixon.

13. On the morning of January 8, 1981, respondent ordered his court officer to either transfer all his cases that day to Judge Dixon or adjourn them. Respondent then made an appointment to meet on the following day with Third Judicial District Administrative Judge Edward S. Conway. For the remainder of the day on January 8, 1981, respondent undertook no judicial activity or work. Judge Dixon heard all of respondent's cases.

14. On the morning of January 9, 1981, respondent adjourned all the cases on his calendar. At noon, he met with Judge Conway and for approximately 30 minutes discussed his grievance as to Judge Dixon. For the entire day, except for the meeting with Judge Conway, respondent undertook no judicial activity or work.

15. Respondent transferred or adjourned all his cases on January 8 and 9, 1981, notwithstanding that he was available and ready to preside, and notwithstanding that, for the entire two days, his own court officer and court reporter were available and ready to assist him.

16. On January 12, 1981, respondent and Judge Dixon met with Judge Conway and the state's Deputy Chief Administrative Judge, Robert Sise. Respondent complained that he did not have enough staff to hold

court properly. Judge Sise told respondent that as long as a court reporter was available, he had sufficient staff to hold court.

As to paragraph (s) of the charge in the Formal Written Complaint:

17. From July 1979 to March 1981, Thomas Cioffi was Judge Dixon's law clerk. He is now an attorney in private practice.

18. In September 1981, Mr. Cioffi's law firm represented Matthew Kirschner before respondent in Matter of K _____. Both Mr. Cioffi and his associate, Thomas O'Connor, were working on the case on behalf of their client.

19. When Mr. Cioffi appeared at the courthouse to proceed, without Mr. O'Connor, he was advised by respondent's law clerk that respondent did not want him in court and that respondent wanted to wait for Mr. O'Connor. Mr. Cioffi then telephoned Mr. O'Connor, who came to court. Mr. Cioffi has not appeared before respondent since the foregoing incident.

As to paragraph (t) of the charge in the Formal Written Complaint:

20. On February 15, 1979, respondent presided over the first call of O _____ v. H _____, a case in which petitioner sought to enforce a child support agreement. Both sides appeared with counsel. Respondent denied defendant's motion to dismiss, entered a temporary support order for \$50 a week and adjourned the case for "approximately 10 days," without a specific return date.

21. On March 16, 1979, respondent set trial for April 23, 1979. On April 23, trial was adjourned due to the illness of defense counsel. Respondent did not set a new trial date.

22. On June 1, 1979, the defendant protested arrearages charged by the support collection unit, because the matter had not been tried. On July 30, 1979, the parties reappeared before respondent and requested a trial date, which he set for August 8, 1979.

23. On August 8, 1979, no trial was held. On June 26, 1980, petitioner's counsel filed an affidavit stating that the trial date was cancelled at his request. The affidavit cited no grounds for the request.

24. On October 8, 1979, the defendant again protested arrearages charged by the support collection unit, because the matter had not been tried.

25. On February 21, 1980, respondent granted a payroll deduction order on a motion by petitioner with which the defendant claims never to have been served.

26. In June 1980, the defendant moved, by order to show cause, to vacate the temporary support order of February 15, 1979. Respondent denied the motion and scheduled a hearing for August 21, 1980. On August 21, 1980, the parties appeared in court and settled the case by stipulation.

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(a)(4), 100.3(a)(5), 100.3(b)(1) and 100.3(b)(2) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(4), 3A(5), 3B(1) and 3B(2) of the Code of Judicial Conduct. Paragraphs (a), (b), (c), (j), (n), (o), (q), (s) and (t) of the charge in the Formal Written Complaint are sustained and respondent's misconduct is established. Paragraphs (d), (e), (f), (g), (h), (i), (k), (l), (m), (p) and (r) of the charge in the Formal Written Complaint are not sustained and therefore are dismissed.

Respondent has engaged in a course of conduct which not only violates the relevant ethical standards but also reveals his unwillingness or inability to recognize the fundamental rights of those who appear in his court. His conduct has been prejudicial to the administration of justice.

The record of this proceeding reveals that respondent routinely failed to advise the parties before him of their right to counsel, the right to remain silent and the right to an adjournment in order to consult with counsel. He did not advise respondents in paternity matters of the right to a blood grouping test, and in matrimonial and maintenance cases he failed to require sworn financial disclosure statements as required by law. In seven cases respondent entered dispositional orders in matters over which he did not have jurisdiction and in which the party-respondents did not appear. In several other cases in this record, respondent acted with either a gross misunderstanding or knowing disregard of the proper role of a judge, e.g. entering a filiation order against a putative father in the absence of the parties and the child's law guardian, and without having received any evidence in the matter.

Respondent also directed a deputy court clerk to falsify court reports to show that he had adjudicated approximately 60 cases which in fact were still pending, and he thereafter directed the clerk to file the falsified reports with the Office of Court Administration. Such conduct by a judge is inexcusable. It shows a shocking disregard for the truth, sets a wholly inappropriate example for court personnel and undermines the integrity of the court. In his testimony before the referee, respondent did not refute the testimony of the deputy clerk whom he directed to falsify official court records, and he offered no explanation for his action.

We reject respondent's assertion that many of his errors are matters of legal interpretation and not misconduct. The Court of Appeals and this Commission have held that a pattern of denying parties their fundamental rights constitutes misconduct for which removal from office is warranted. Matter of Sardino, 58 NY2d 286 (1983); Matter of McGee, 59 NY2d 870 (1983).

Respondent also suggests that many of his difficulties stem from his unpleasant relationship with his co-judge and court staff. Personal frictions do not relieve a judge of the responsibility to administer the court properly and apply the law fairly. They do not excuse respondent's neglect of basic rights or his instruction that a clerk make and file falsified reports.

By the totality of his conduct, respondent has demonstrated himself to be unfit for judicial office.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

Judge Alexander, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Shea and Mr. Sheehy concur.

Mrs. Robb, Mr. Bower, Mr. Cleary and Judge Ostrowski dissent as to sanction and vote that the appropriate sanction is censure.

Judge Rubin was not present.

Dated: April 9, 1984

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

WILLIAM W. SEIFFERT,

a Judge of the District Court,
Nassau County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the
Commission

Stephen P. Scaring, P.C. (Richard P. Broder, Of Counsel)
for Respondent

The respondent, William W. Seiffert, a judge of the District Court, Nassau County, was served with a Formal Written Complaint dated November 30, 1983, alleging that he sought special consideration on behalf of three defendants. Respondent filed an answer dated December 19, 1983.

By order dated January 9, 1984, the Commission designated Gilbert A. Holmes, Esq., as referee to hear and report proposed findings of fact

and conclusions of law. A hearing was held on March 12, 13 and 14, 1984, and the referee filed his report with the Commission on July 2, 1984.

By motion dated August 7, 1984, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a finding that respondent be removed from office. Respondent opposed the motion on August 28, 1984. The administrator filed a reply on August 30, 1984.

On September 20, 1984, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent, an attorney, is a full-time judge of the District Court, Nassau County, and has been for eleven years.

2. In December 1982 or January 1983, respondent met Peter Lucey, an assistant superintendent at Belmont State Park. Respondent had experienced trouble with some wood he was carrying on top of his car and pulled into the park, where Mr. Lucey came to his aid. Mr. Lucey stored the wood for respondent and later delivered it to respondent's home.

3. During a later contact with respondent, Mr. Lucey learned that respondent is a judge.

4. In appreciation of his assistance, respondent told Mr. Lucey, "If you ever have a problem, come to me. If you ever have a problem, and I can give you a hand with anything, give me a call."

5. Mr. Lucey told respondent that he had two outstanding traffic tickets. Respondent said that perhaps he could help Mr. Lucey with the tickets and suggested that Mr. Lucey call him at a later time.

6. Mr. Lucey had received two tickets on October 2, 1982, for Speeding and Driving With A Suspended License.

7. On March 1, 1983, Mr. Lucey called respondent, and respondent told him to come to court the following day. Respondent told Mr. Lucey to see him and not to go to the traffic part.

8. Mr. Lucey indicated during the telephone conversation that he had not been speeding as alleged.

9. Respondent then obtained a computer print-out of Mr. Lucey's driving record.

10. Respondent approached Stuart Birk, a paralegal for the Nassau County District Attorney's Office who conferences cases in the traffic part.

11. Respondent told Mr. Birk of the charges against Mr. Lucey and asked Mr. Birk what disposition of the matter the District Attorney's Office would offer.

12. Mr. Birk told respondent that he would discuss a possible disposition when the case came up on the court calendar.

13. On March 2, 1983, Mr. Lucey came to respondent's courtroom, where respondent was assigned to criminal cases.

14. During a break in the courtroom proceedings, respondent met with Mr. Lucey in chambers.

15. Respondent approached Robert DeHaven, another paralegal in the District Attorney's Office.

16. Respondent showed Mr. DeHaven the computer print-out and Mr. Lucey's copies of the traffic tickets. Mr. DeHaven indicated that the Driving With A Suspended License charge could be reduced to a traffic infraction and that the Speeding charge could be reduced to Tailgating, which carries three points on a driver's license.

17. Respondent told Mr. DeHaven that Mr. Birk had offered to reduce the Speeding charge, which also carries three points, to Failure To Obey A Stop Sign, a two-point violation. Respondent also indicated that Mr. Lucey had a clean driving record.

18. Mr. DeHaven insisted that he could offer a reduction of the charge only to Tailgating.

19. Respondent repeated that he wanted a reduction to a two-point violation.

20. Respondent then spoke in chambers to Perri Fitterman, an assistant district attorney in Nassau County. A court stenographer and other court personnel were also present.

21. Respondent indicated that he was going to dispose of Mr. Lucey's cases. He said that the Speeding charge was to be reduced to a two-point violation.

22. Ms. Fitterman said that she could not consent to such a reduction because it was beyond the guidelines established by her office and would have to consult with her bureau chief.

23. Respondent said, "What do you mean we can't do this disposition," and ordered everyone but Ms. Fitterman out of chambers. They continued to argue for several minutes about the disposition of the case.

24. Respondent then told Mr. Lucey that the Speeding charge could be reduced only to Tailgating and asked whether he would accept it.

25. Mr. Lucey accepted the offer and pled guilty in open court before respondent to Driving Without License and Tailgating. Respondent fined Mr. Lucey \$25 on the first charge and gave him an unconditional discharge on the Tailgating charge.

26. Respondent told Mr. Lucey that he was giving him a "break."

27. Respondent acknowledged that he handled the case as "a courtesy" to Mr. Lucey in order to expedite the matter. He acknowledged that in doing so, he created the appearance that he was seeking special consideration for Mr. Lucey.

As to Charge II of the Formal Written Complaint:

28. On November 30, 1979, respondent's stepson, Russell Miller, was ticketed on a charge of Speeding.

29. Mr. Miller called respondent, told him about the ticket and asked for help. Respondent told his stepson to come to his court.

30. Mr. Miller went to respondent's chambers. Respondent said that he would discuss a reduction of the charge with the District Attorney's Office.

31. Respondent and Mr. Miller went to a courtroom and approached Assistant District Attorney Susan Katz Richman, who was assigned to the traffic part of the District Court.

32. Respondent asked Ms. Richman about a reduction in his stepson's case.

33. Ms. Richman offered to reduce the charge to Tailgating.

34. Respondent asked for a reduction to a two-point violation.

35. Ms. Richman refused to offer such a reduction on the grounds that it was beyond the guidelines established by the District Attorney's Office.

36. Respondent and Ms. Richman argued over the disposition of the case. Respondent told Ms. Richman, "If you won't do it, I will get

somebody else, another assistant D.A., who will." Ms. Richman responded, "No, you won't," and left the courtroom.

37. On July 28, 1980, Mr. Miller pleaded guilty before another judge to Tailgating, a three-point violation.

38. Respondent acknowledged that by seeking a reduction from Ms. Richman, he created the appearance that he was seeking special consideration for his stepson.

As to Charge III of the Formal Written Complaint:

39. On May 11, 1983, John H_____ appeared in District Court, Nassau County, with his son, James, who had been charged with a criminal violation of the Civil Rights Act.

40. The elder Mr. H_____ met respondent in a courthouse hallway. Respondent and Mr. H_____ were acquainted through a fire company in which both men were volunteers. Respondent had also done legal work for Mr. H_____ before taking the bench.

41. Mr. H_____ approached respondent at the courthouse and asked for help in finding an assistant district attorney he was to see regarding his son's case.

42. Respondent was with his son, Robert Seiffert, who is an attorney.

43. Respondent and his son went to the office of Thomas Egan, an assistant district attorney in Nassau County. Respondent asked Mr. Egan what could be done about the H_____ case.

44. Respondent made light of the accusation against James H_____, who had been accused of making an ethnic slur. Respondent questioned the character of the complaining witness.

45. Mr. Egan referred respondent to Samuel Rieff, the Chief of the Civil Rights Unit in the District Attorney's Office.

46. Respondent told Mr. Rieff that he was acquainted with Mr. H_____ and indicated that the crime with which James H_____ was charged was not serious. Respondent said, "What are you going to do? String him up?"

47. Respondent's son then asked Mr. Rieff whether he would offer to reduce the charge. Mr. Rieff said no offer would be made.

48. Respondent's son was subsequently retained to represent James H_____. The case was tried before another judge, and the defendant was convicted.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(a) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent intervened on three occasions in matters not before him to seek special consideration for defendants with whom he had personal relationships.

In two cases, he went to extraordinary lengths to pressure prosecutors to agree to charge reductions not available to other defendants, in one case on behalf of his stepson and in the second on behalf of an acquaintance who had done respondent a favor that he had promised to return. Respondent acted as an adversary in these matters, proposing dispositions to the prosecutors, persisting when they refused his suggestions and exhibiting impatience when they refused to yield.

Such requests for favoritism constitute malum in se misconduct (Matter of Byrne, 47 NY2d (b)(Ct. on the Judiciary [1979]) and have long been condemned by the courts and this Commission. Matter of Dixon v. State Commission on Judicial Conduct, 47 NY2d 523 (1979); Matter of Bulger v. State Commission on Judicial Conduct, 48 NY2d 32 (1979); "Ticket-Fixing: The Assertion of Influence in Traffic Cases," Interim Report by the State Commission on Judicial Conduct (June 20, 1977).

In the Lucey matter, respondent's misconduct was exacerbated by the fact that he reached out to another part of the court to bring the case before him and, after bargaining on behalf of the defendant, disposed of the matter himself.

Although less serious, respondent's discussion with the prosecutors about the merits of the James H. _____ case was also improper. See Matter of Montaneli, unreported (Com. on Jud. Conduct, Sept. 10, 1982); Matter of Calabretta, unreported (Com. on Jud. Conduct, April 11, 1984); Matter of Hansel L. McGee, unreported (Com. on Jud. Conduct, April 12, 1984).

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur, except that

Mr. Cleary, Judge Ostrowski and Mr. Sheehy dissent as to Charge III only and vote that the charge be dismissed.

Judge Alexander and Judge Rubin were not present.

Dated: October 26, 1984

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

STEVE A. SKRAMKO,

a Justice of the Warren Town Court,
Herkimer County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel) for the
Commission

Scalise and Cooley (By Carl G. Scalise) for Respondent

The respondent, Steve A. Skramko, a justice of the Warren Town Court, Herkimer County, was served with a Formal Written Complaint dated January 25, 1984, alleging that he requested special consideration for two defendants appearing in other courts. Respondent filed an answer dated February 13, 1984.

By order dated March 1, 1984, the Commission designated H. Wayne Judge, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 26, 1984, and the referee filed his report with the Commission on May 31, 1984.

By motion dated June 20, 1984, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be removed from office. Respondent did not file any papers in response thereto. Oral argument was waived. On August 21, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

Preliminary findings:

1. Respondent was a justice of the Warren Town Court, Herkimer County, for 16 years. He resigned effective May 1, 1984.

2. On May 20, 1980, the Commission determined that respondent be censured for five instances of seeking special consideration for defendants in other courts and for one instance of granting special consideration at the request of another judge.

As to Charge I of the Formal Written Complaint:

3. On June 4, 1983, Trooper Eileen B. Waterman of the New York State Police ticketed Rodger A. Quaif for Speeding in the Town of Otsego. The ticket was returnable on June 13, 1983, before the Honorable Donald Davis of the Otsego Town Court.

4. Mr. Quaif is a neighbor of respondent. Respondent uses without charge a field on the Quaif property to exercise horses. He is also permitted to take wood from the Quaif property without charge.

5. A couple of days after Mr. Quaif received the traffic ticket, his mother went to respondent's home. Mrs. Quaif showed respondent her son's ticket and asked him what her son should do. Respondent recommended that she retain an attorney, Cecilia Fagan-Celi. Mrs. Quaif called Ms. Fagan-Celi from respondent's home and retained her to represent Mr. Quaif.

6. From reading the ticket, respondent learned that it was returnable before Judge Davis.

7. On or about June 8, 1983, respondent went to Judge Davis' office. Respondent told Judge Davis that a friend, Mr. Quaif, had received a traffic ticket and suggested that the matter be "settled" by reducing the charge to one that carries no points on a driver's license and imposing a \$50 fine.

8. Judge Davis told respondent, "I refuse to have anything to do with it because I don't do business that way."

9. Respondent told Judge Davis, "Us judges do that all the while." When Judge Davis again rebuffed respondent's request, respondent said, "If you won't do me a favor, I will turn it over to my lawyer."

10. Respondent acknowledged that in speaking to Judge Davis he was attempting to "help" the Quaifs because they were "great neighbors."

11. Respondent then spoke to Trooper Waterman. He told her that Mr. Quaif was a friend who had recently obtained his driver's license. Respondent asked the trooper to talk to Judge Davis and "take care of the matter."

12. Trooper Waterman responded, "I don't care. Talk to the judge."

13. Respondent acknowledged that in speaking to Trooper Waterman he was trying to obtain a reduction in the charge to one that carries two points on a driver's license.

14. On July 14, 1983, Judge Davis reduced the charge against Mr. Quaif with the consent of Trooper Waterman and Ms. Fagan-Celi. Mr. Quaif was fined \$50.

As to Charge II of the Formal Written Complaint:

15. On May 23, 1983, Deputy Sheriff George T. Zeller of the Otsego County Sheriff's Department ticketed Ignazio Restivo for Speeding in the Town of Laurens. The ticket was returnable on June 9, 1983, in the Laurens Town Court.

16. Mr. Restivo had appeared before respondent in response to a previous traffic ticket. About three days after he received the ticket in the Town of Laurens, Mr. Restivo spoke to respondent and asked for help with the ticket.

17. Respondent then approached Deputy Sheriff Glenn M. Davis of the Otsego County Sheriff's Department and asked him whether he could "take care of" Mr. Restivo's ticket. Respondent told the deputy that Mr. Restivo was a friend and that respondent did business with him.

18. Deputy Davis told respondent that he was not the issuing officer. Respondent asked Deputy Davis to take the ticket to the issuing officer and tell him that respondent would "appreciate" anything that could be done.

19. Respondent then approached Undersheriff Orrin D. Higgins of the Otsego County Sheriff's Department. Respondent told the undersheriff that one of his men had ticketed Mr. Restivo and asked what he could do. The undersheriff replied, "Nothing."

20. At the time respondent spoke to Deputy Davis and the undersheriff, the case was pending in the Laurens Town Court.

21. The charge against Mr. Restivo was subsequently reduced in the Laurens Town Court to Failure To Obey A Traffic-Control Device.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Requests for favoritism made by judges cannot be tolerated and have been condemned by the courts and this Commission. Matter of Dixon v. State Commission on Judicial Conduct, 47 NY2d 523 (1979); Matter of Bulger v. State Commission on Judicial Conduct, 48 NY2d 32 (1979); Bartlett v. Enea, 45 AD2d 471 (4th Dept. 1974); Matter of Byrne, 47 NY2d (b) (Ct. on the Judiciary, 1979); Matter of Montaneli, unreported (Com. on Jud. Conduct, Sept. 10, 1982).

Judge Davis and the law enforcement officers commendably rejected respondent's outrageous requests.

Respondent himself has been censured for similar attempts to use his judicial office to influence the outcome of cases. Matter of Skramko, unreported (Com. on Jud. Conduct, May 20, 1980). His refusal to abide by ethical standards in the face of previous discipline for similar conduct demonstrates his unfitness for judicial office.

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

Mrs. Robb, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Sheehy concur.

Judge Alexander and Judge Rubin were not present.

This determination is rendered pursuant to Section 47 of the Judiciary Law in view of respondent's resignation from the bench.

Dated: August 23, 1984

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

CHARLES D. WANGLER,

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

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern, (Henry S. Stewart, Of Counsel) for the
Commission

Clements & Ducharme, P.C. (Jerome J. Richards, Of
Counsel) for Respondent

The respondent, Charles D. Wangler, a justice of the Oswegatchie Town Court, St. Lawrence County, was served with a Formal Written Complaint dated June 27, 1984, alleging certain financial depositing, reporting and remitting failures and alleging that he twice appeared to perform his judicial duties in an intoxicated condition. Respondent did not answer the Formal Written Complaint.

By motion dated July 25, 1984, the administrator of the Commission moved for summary determination and for a finding that

respondent's misconduct be found established. Respondent did not oppose the motion or file any papers in response thereto.

By order dated August 21, 1984, the Commission granted the administrator's motion, found respondent's misconduct established and set a schedule for oral argument as to sanction. The administrator submitted a memorandum as to sanction dated September 11, 1984. Respondent submitted a memorandum as to sanction on September 13, 1984. Respondent requested oral argument but did not appear at the scheduled time. On September 21, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. From March 1981 until April 1984, respondent failed to promptly deposit court funds into his official account, with the result that his court account was continuously deficient for 39 months. At one point, his account was deficient by \$2,733.80, and had been deficient by more than \$1,000 for the preceding eight months.

As to Charge II of the Formal Written Complaint:

2. From February 1981 until April 1984, respondent was late in remitting funds and filing reports to the Department of Audit and Control in 33 of the 39 months during the period. Respondent's reports were late by an average of 23 days and on some occasions were late by more than two months.

As to Charge III of the Formal Written Complaint:

3. In or about March 1982, in connection with certain alleged irregularities in his court account, respondent appeared at a meeting with representatives of the Department of Audit and Control in an intoxicated condition and acted in a rude, angry and uncooperative manner.

As to Charge IV of the Formal Written Complaint:

4. On or about March 28, 1984, respondent appeared in his court in an intoxicated condition. He was unsteady on his feet; his eyes were bloodshot; his breath smelled of alcohol, and his speech was slurred.

5. Respondent's co-judge, Robert Morrow, told respondent that he was in no condition to hold court and should go home.

6. Respondent argued with Judge Morrow and insisted that he was able to hold court. Respondent became belligerent and asked Judge Morrow what right he had to tell respondent to go home.

7. Respondent eventually left the court. Judge Morrow presided over respondent's court in his place.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 and 100.3(a)(1) of the Rules Governing Judicial Conduct; Canons 1, 2 and 3A(1) of the Code of Judicial Conduct; Sections 2020 and 2021(1) of the Uniform Justice Court Act; Section 30.7(a) of the Uniform Justice Court Rules; Section 1803 of the Vehicle and Traffic Law, and Section 27(1) of the Town Law. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Over a period of three years, respondent made little effort to fulfill the administrative duties of his office. He kept undeposited court funds in his personal possession and consistently failed to turn them over to the proper authority. Such misconduct breaches the public's trust. Matter of Cooley v. State Commission on Judicial Conduct, 53 NY2d 64 (1981); Matter of Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981); Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976).

In addition, respondent has undermined the public's confidence in the integrity of the judiciary by appearing in an intoxicated condition on two occasions to perform his judicial duties. See Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465 (1980); Matter of Quinn v. State Commission on Judicial Conduct, 54 NY2d 386 (1981); Matter of Aldrich v. State Commission on Judicial Conduct, 58 NY2d 279 (1983); Matter of Mahar unreported (Com. on Jud. Conduct, June 10, 1982).

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

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

Mrs. DelBello was not present.

Dated: September 28, 1984

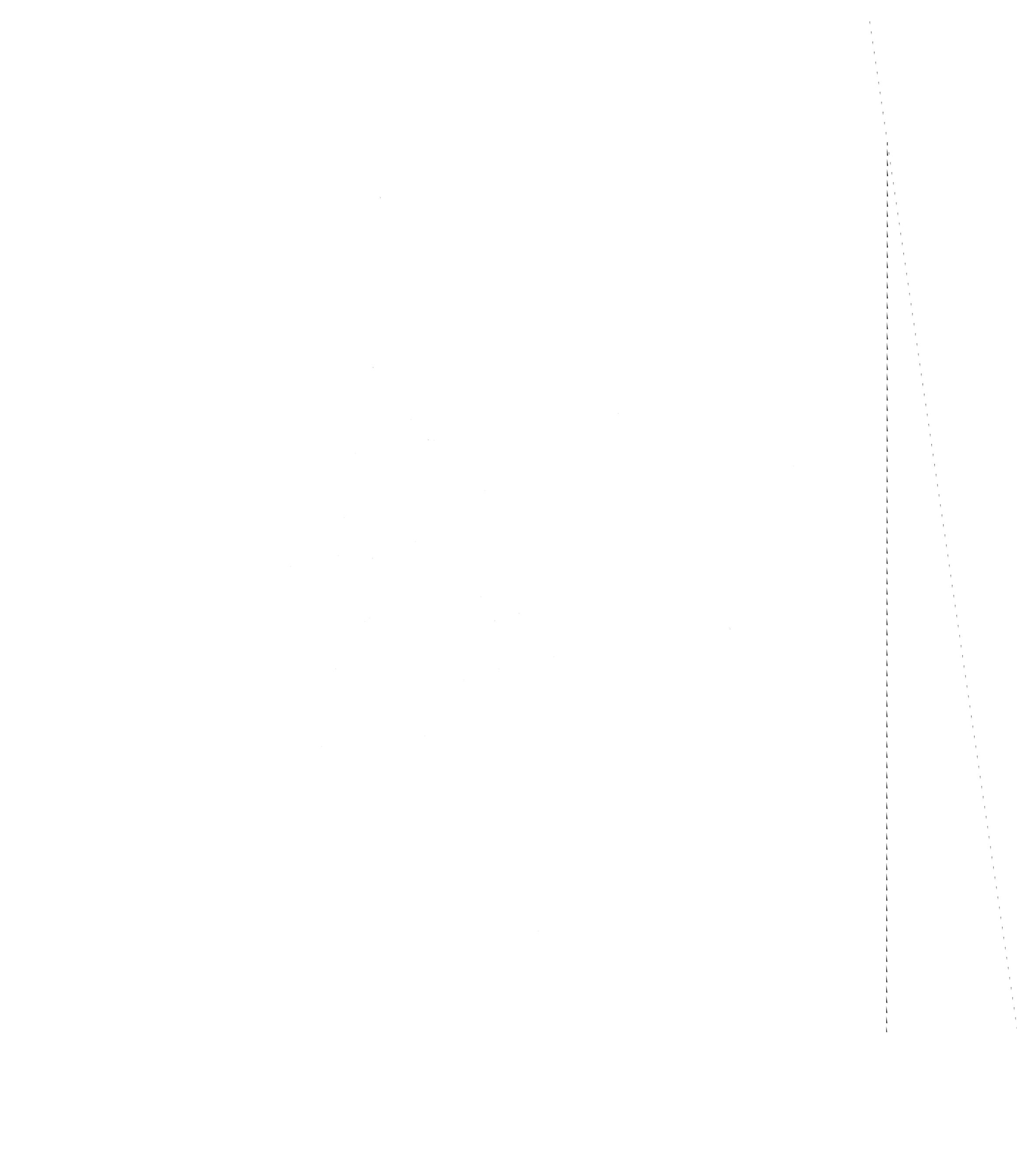


TABLE OF CASES PENDING AS OF DECEMBER 31, 1983.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>								
<i>Non-Judges</i>								
<i>Demeanor</i>		13	15	14	4	9	11	66
<i>Delays</i>		1	1					2
<i>Confl./Interest</i>		8	9	5	1	0	9	32
<i>Bias</i>			2				1	3
<i>Corruption</i>			2					2
<i>Intoxication</i>		1						1
<i>Disable/Qualif.</i>					1			1
<i>Political Activ.</i>			8	12				20
<i>Finances, Records, Training</i>		6	1	6	4	8	6	31
<i>Ticket-Fixing</i>			1				1	2
<i>Miscellaneous</i>		9	8	8		2	4	31
TOTALS		38	47	45	10	19	32	191

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

TABLE OF NEW CASES CONSIDERED BY THE COMMISSION IN 1984.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>	247							247
<i>Non-Judges</i>	73							73
<i>Dememeanor</i>	70	52	27	6	1	2		158
<i>Delays</i>	20	8	2			1		31
<i>Confl./Interest</i>	11	6	3					20
<i>Bias</i>	37	18	9					64
<i>Corruption</i>	2	2						4
<i>Intoxication</i>	2	3				1		6
<i>Disable/Qualif.</i>	2	2						4
<i>Political Activ.</i>	6	4	2					12
<i>Finances, Records, Training</i>	1	14	1	1	3	4		24
<i>Ticket-Fixing</i>		3	1					4
<i>Miscellaneous</i>	10	5	3	1		1		20
TOTALS	481	117	48	8	4	9		667

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>	247							247
<i>Non-Judges</i>	73							73
<i>Dememeanor</i>	70	65	42	20	5	11	11	224
<i>Delays</i>	20	9	3			1		33
<i>Confl./Interest</i>	11	14	12	5	1	0	9	52
<i>Bias</i>	37	18	11				1	67
<i>Corruption</i>	2	2	2					6
<i>Intoxication</i>	2	4						6
<i>Disable/Qualif.</i>	2	2			1	1		6
<i>Political Activ.</i>	6	4	10	12				32
<i>Finances, Records, Training</i>	1	20	2	7	7	12	6	55
<i>Ticket-Fixing</i>		3	2				1	6
<i>Miscellaneous</i>	10	14	11	9		3	4	51
TOTALS	481	155	95	53	14	28	32	858

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

ALL CASES SINCE THE INCEPTION OF THE TEMPORARY COMMISSION (JANUARY 1975).

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>	2940							2940
<i>Non-Judges</i>	342							342
<i>Demeanor</i>	457	65	377	67	25	26	92	1109
<i>Delays</i>	206	9	35	10	3	1	7	271
<i>Confl./Interest</i>	140	14	208	52	23	7	67	511
<i>Bias</i>	193	18	43	1	3		3	261
<i>Corruption</i>	51	2	35		7	2	6	103
<i>Intoxication</i>	8	4	15		2		10	39
<i>Disable/Qualif.</i>	21	2	17	1	10	4	6	61
<i>Political Activ.</i>	59	4	41	64	3	2	6	179
<i>Finances, Records, Training</i>	99	20	65	33	40	41	39	337
<i>Ticket-Fixing</i>	15	3	55	149	33	56	155	466
<i>Miscellaneous</i>	73	14	58	24	4	8	12	193
TOTALS	4604	155	949	401	153	147	403	6812

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.