STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

JEROME C. ELLIS,

a Justice of the Leon Town Court,
Cattaraugus County.

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THE COMMISSION:

Raoul Lionel Felder, Esq., Chair
Honorable Thomas A. Klonick, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and Stephanie A. Fix, Of Counsel)
for the Commission

Weyand and Weyand, LLP (by Fredric F. Weyand) for the Respondent

The respondent, Jerome C. Ellis, a Justice of the Leon Town Court, Cattaraugus County, was served with a Formal Written Complaint dated September 19,

2006, containing one charge. The Formal Written Complaint alleged that in connection with an eviction proceeding, respondent: (i) presided notwithstanding that he was biased; (ii) failed to follow the law; and (iii) made a derogatory comment about Jewish people. Respondent filed an Answer dated November 14, 2006.

By order dated November 28, 2006, the Commission designated James C. Moore, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 29, 2007, in Rochester; on February 20, 2007, in Little Valley; and on March 12, 2007, in Rochester. The referee filed a report dated May 15, 2007.

Commission counsel filed a brief with respect to the referee's report and recommended the sanction of removal. Respondent filed no papers with the Commission. On July 11, 2007, the Commission heard oral argument by Commission counsel; respondent did not appear. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact.

1. Since 1990, respondent has been and continues to be a Justice in the Town of Leon, Cattaraugus County. He is the only Justice for the Town. Respondent has attended the required training sessions for town justices. He is not an attorney.

2. Periodically, respondent is assisted in performing his duties as Town Justice by his brother's former wife, Diane Ellis.

3. In 2004, Diane Ellis' daughter, Rhoda Ellis, was living with Terry Snyder, and they had two children together. This fact was known to respondent.

4. Pursuant to an installment land contract executed in 2003, Allen and Lori A. Haskins agreed to purchase certain real property from Terry Snyder and Douglas Corkwell for the sum of $12,000; the agreement provided that Mr. and Ms. Haskins would make an initial payment of $500 towards the purchase price and, thereafter, monthly payments of $350, together with insurance, sewer, water rents, taxes and assessments.

5. In June 2004, after learning that taxes on the property had not been paid for the fiscal year 2002, Mr. and Ms. Haskins stopped making payments under the contract.

6. In August 2004, Mr. Snyder approached respondent in court complaining about the Haskins and indicating that he wanted them removed from the property. On August 2, 2004, based upon information provided to him by Mr. Snyder, respondent prepared a Notice to Objectionable Tenant, directed to Laurie (sic) and Allen Haskins, which stated that the landlord had elected to terminate their tenancy as of September 22, 2004. Respondent signed the form as "Judge Ellis" on the line marked "Landlord." Respondent was not the landlord of the subject property. Respondent gave the notice to Mr. Snyder.

7. At the time of completing and signing the Notice to Objectionable Tenant, respondent was aware of the terms of the installment land contract, and respondent knew that Mr. and Ms. Haskins were not parties to a lease with Mr. Snyder and Mr. Corkwell.

8. Prior to August 2004, Mr. and Ms. Haskins had appeared as defendants in cases before respondent, and respondent had heard negative comments about the Haskins, which caused him to have a negative opinion about them.

9. On October 24, 2004, based upon information provided by Terry Snyder, respondent completed and signed a Justice Court Summons directing Lori Haskins to appear in the Leon Town Court on October 27, 2004, and stating that upon her failure to appear on that date, a judgment would be taken against her in the sum of $3,100 by reason of "failure to pay rent and taxes." No summons was issued to Allen Haskins.

10. The summons issued by respondent requiring Ms. Haskins' appearance in three days provided less than the 22 days' notice required for a small claims hearing (*see* 22 NYCRR §214.10[d]).

11. On October 27, 2004, the parties appeared without counsel before respondent in the Leon Town Court. Respondent's niece, Rhoda Ellis, was also present. Mr. and Ms. Haskins requested an adjournment so that they could consult with an attorney, and respondent granted the adjournment.

12. On October 27, 2004, immediately after the court appearance, Douglas Corkwell told respondent that Mr. and Ms. Haskins had been lying. Respondent then prepared a warrant directed to the County Sheriff instructing that Lori and Allen Haskins be removed from the property that was the subject of the installment land contract.

13. The warrant prepared by respondent stated inaccurately that a

petition and notice of petition had been served on the Haskins and that a judgment had been entered. The warrant was filed in the County Sheriff's office on October 28, 2004.

14. On November 1, 2004, Deputy Stevens delivered a 72-hour notice to Lori and Allen Haskins instructing them to vacate the subject premises by November 4, 2004. Thereafter, the Haskins' attorney, Amy Jacobson, contacted respondent, who adjourned the matter to November 10, 2004.

15. On November 10, 2004, Mr. and Ms. Haskins, Terry Snyder, Rhoda Ellis and the parties' attorneys appeared before respondent.

16. As a result of negotiations conducted on that date, the parties agreed to settle the matter with the understanding that Mr. and Ms. Haskins would vacate the property within 60 days. Mr. Snyder executed a general release to Mr. and Ms. Haskins, and Mr. and Ms. Haskins executed a general release to Mr. Snyder.

17. After the terms of the settlement were placed upon the record, respondent turned off the recording equipment.

18. In a belligerent manner, respondent then stated in words or substance to Mr. and Ms. Haskins that they should "stop jewing other landlords."

19. Respondent testified in the Commission proceeding that the term "jewing" is "a slang word to me for swindling or cheating people out of money or not paying your bill, just out and out stealing."

20. Respondent also testified that his comment was based in part on negative information he had heard about the Haskins outside of court.

21. On January 12, 2005, respondent completed and signed a small claims notice to Lori and Allen Haskins to appear in the Town Court of Leon in response to a claim by Terry Snyder for $2,500 for alleged damage to the "tenant house." No hearing with respect to the claim was ever held.

22. In his testimony before the referee at the Commission hearing and in his letter to the Commission dated March 26, 2007, respondent acknowledged the inappropriateness of his actions and apologized for them. He also testified, "[B]ut as far as kicking the Haskins out of town, I am not sorry."

23. Respondent testified that prior to the *Haskins* matter, he had no experience as a Town Justice in handling cases involving defaults under installment land contracts or in connection with landlord/tenant eviction proceedings.

24. Respondent knew that, as a Town Justice, he was required to avoid the appearance of impropriety by avoiding handling cases in which he had a family interest. Respondent was also aware of the impropriety of engaging in *ex parte* communications with respect to a matter pending before him.

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), 100.3(B)(1), 100.3(B)(3), 100.3(B)(4), 100.3(B)(6), 100.3(E)(1) and 100.3(E)(1)(a)(i) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is

sustained, and respondent's misconduct is established.

Respondent abused his judicial authority in a property dispute, presided over the matter notwithstanding his bias against the defendants, used his judicial power to benefit his relative's interests, and berated the defendants using a repugnant religious and ethnic slur. Such a record amply demonstrates that respondent lacks the requisite fitness to serve as a judge.

From the outset, respondent's handling of the dispute involving an installment land contract was a travesty. With no due process, based on the sellers' *ex parte* representations that the purchasers, Allen and Lori Haskins, had failed to make the required payments, respondent issued a notice to the Haskins terminating their tenancy. The notice issued by respondent not only referred to the terms of a non-existent "lease," but, inexplicably, was signed by respondent on the line marked "Landlord," thereby indicating to the Haskins that "the Landlord [who] elects to terminate your tenancy" was none other than the judge himself. By issuing such a notice, respondent abused the authority of his judicial office and aligned himself with the sellers' private interests.

Some two months later, based on additional information provided by the seller, respondent issued a summons to Ms. Haskins for $3,100 in money damages for "failure to pay rent and taxes." The summons required her appearance in three days to avoid default, which was significantly less than the 22 days' notice required for a small claims hearing (*see* 22 NYCRR §214.10[d]). Finally, after another *ex parte* discussion with the seller, respondent issued a warrant of eviction one day after he had adjourned the

case for a week so the Haskins could get an attorney. The warrant, directed to the County Sheriff, stated inaccurately that a petition and notice of petition had been served on the Haskins and that a judgment had been entered. Only the intervention of the Haskins' attorney prevented them from being summarily evicted from the property where they resided.

Respondent's mishandling of the entire matter violated the law and compromised his impartiality and integrity. *See, e.g., Matter of Holmes*, 1998 Annual Report 139 (Comm. on Jud. Conduct) (judge issued a warrant of eviction based on an *ex parte* request, with no due process); *Matter of Little*, 1988 Annual Report 191 (Comm. on Jud. Conduct) (in a summary proceeding to recover possession of real property for nonpayment of rent, judge signed a warrant of eviction notwithstanding that no hearing had taken place and no judgment had been entered as required by law).

It is no excuse that respondent, who has served as a judge since 1990, maintains that he had never previously handled a case involving an eviction or installment land contract and that he was unfamiliar with the appropriate procedures. Every judge, lawyer or non-lawyer, is required to maintain professional competence in the law (Rules, §100.3[B][1]; *see, Matter of VonderHeide*, 72 NY2d 658 [1988]; *Matter of Feinberg*, 5 NY3d 206 [2005]). Moreover, assistance in such circumstances is available to local justices from the Justice Court Resource Center, under the auspices of the Office of Court Administration; indeed, in his testimony respondent acknowledged that as part of his judicial training he had received information about where to call for assistance (Tr. 147-

49). As the Court of Appeals has stated, "[i]gnorance and lack of competence do not excuse violations of ethical standards" (*Matter of VonderHeide*, *supra*, 72 NY2d at 660).

Respondent's handling of the *Haskins* matter was tainted both by his acknowledged animosity towards the defendants and by his connection with one of the sellers, Terry Snyder, the live-in boyfriend of respondent's niece and the father of her two children. Respondent's niece, whose mother works as respondent's part-time court assistant, was present in court with her boyfriend during the proceedings on October 27th and November 10th.

A judge's disqualification is required in a proceeding in which the judge's impartiality might reasonably be questioned (Rules, §100.3[E][1]). *See*, *Matter of Ross*, 1990 Annual Report 153 (Comm. on Jud. Conduct); *see also*, *Matter of Merkel*, 1989 Annual Report 111 (Comm. on Jud. Conduct) (town justice issued a warrant in a Bad Check case in which her court clerk was the complaining witness, then granted an adjournment in contemplation of dismissal without disclosing the relationship). In *Merkel*, the Commission found that even if the judge's disqualification was not mandated by the ethical standards, the judge "should have at least disclosed the relationship and given the parties the opportunity to be heard on the issue before proceeding." The Commission stated:

> A reasonable person might question whether the judge could handle fairly a matter involving someone with whom she has such frequent contact and a presumed relationship of trust. Judicial discretion was required in making determinations regarding the warrant, bail and disposition, and it was imperative that they be made in a manner that appears

impartial.

Here, respondent's actions throughout the *Haskins* matter conveyed the appearance that he was using his judicial power to benefit his relative's personal and financial interests.

Ethnic or religious slurs, offensive to decorum and decency under ordinary circumstances, are particularly intolerable when used by a judge in court. *See*, *Matter of Mulroy*, 94 NY2d 652 (2000); *Matter of Agresta*, 64 NY2d 327 (1985); *Matter of Bloodgood*, 1982 Annual Report 69 (Comm. on Jud. Conduct). Respondent's use of the term "jewing" – which he defined as synonymous with "swindling or cheating" – seriously compromises public confidence in the administration of justice in his court and adversely affects his impartiality and the appearance of impartiality. Significantly, respondent turned off his court tape recorder before berating the Haskins, which suggests that he was well aware that his language would be offensive. Moreover, the fact that respondent directed the term toward the Haskins, based in part on unsubstantiated information he had heard about their behavior, underscores his bias against them, which required his recusal, and suggests that he fails to understand basic concepts of fairness, impartiality and due process.

The purpose of discipline is to safeguard the bench and the public from unfit incumbents (*see*, *Matter of Reeves*, 63 NY2d 105, 111 [1984], quoting *Matter of Waltemade*, 37 NY2d [a], [lll] [Ct. on the Judiciary]). Whether respondent's conduct was the result of incompetence or a deliberate intent to benefit his relative's interests, the record in its totality demonstrates conclusively that he is unfit to serve as a judge and that

his continued retention on the bench is inconsistent with the fair and proper administration of justice in his court.

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

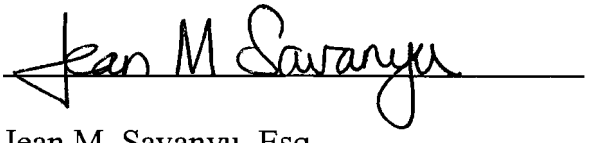
Judge Klonick, Mr. Coffey, Mr. Emery, Mr. Harding, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

Mr. Felder and Ms. DiPirro were not present.

CERTIFICATION

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

Dated: July 24, 2007



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Clerk of the Commission
New York State
Commission on Judicial Conduct