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

BRYAN R. HEDGES,

a Judge of the Family Court,
Onondaga County.

- -

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David Duguay, Of Counsel)
for the Commission

Robert F. Julian, P.C. for the Respondent

The respondent, Bryan R. Hedges, a Judge of the Family Court, Onondaga County, was served with a Formal Written Complaint dated May 3, 2012, containing one

charge. The Formal Written Complaint alleged that in or about 1972 respondent engaged in a sexual act with his five-year-old niece. Respondent filed a verified answer dated May 23, 2012, in which he admitted that in or about 1972 his five-year-old niece touched his hand while he was stroking his penis; he denied that his actions violated the cited ethical rules, and, as an affirmative defense, alleged that the Commission lacks jurisdiction because the incident predated his service as a judge by approximately thirteen years.

By Order dated May 24, 2012, the Commission designated William T. Easton, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 20 and 25, 2012, in Syracuse. The referee filed a report dated July 23, 2012, in which he sustained the charge of misconduct.

The parties submitted briefs and replies with respect to the referee's report and the issue of sanctions. Counsel to the Commission recommended the sanction of removal, and respondent's counsel recommended that the charge be dismissed. On August 8, 2012, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent was a Judge of the Family Court, Onondaga County, from January 1, 1985 until his resignation on April 5, 2012, effective April 25, 2012.

2. Respondent was admitted to the bar in New York State in 1973. From 1975 to 1979 respondent was an Assistant District Attorney in Onondaga County.

3. E___ ("E.") was born in 1967. Her father's sister married

respondent in 1971.

4. At age three, E. was diagnosed as being profoundly deaf. At age five, she had an extremely limited vocabulary and had not yet begun learning to communicate with sign language.

5. In 1972, when she was approximately five years old, E. and her family visited her grandmother's home in Albany. On that occasion, as she was wandering around the house that morning, E. walked upstairs and through the open door to a third-floor bedroom, where respondent was lying on the bed. Respondent was masturbating on the bed.

6. E. entered the room, got onto the bed and knelt next to respondent. As respondent has acknowledged, E. touched his hand which was on his exposed penis. As he has further acknowledged, respondent continued to masturbate for two to four seconds, with E.'s hand on top of his hand, before he stopped.

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 ("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 is sustained[1], and respondent's misconduct is established.

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[1] Charge I was amended at the hearing to strike the second sentence of par. 8, alleging that at the time of the incident, E__ and her parents were overnight guests at the house (Transcript 6/20/12, p. A1).

Respondent's admissions, as reflected in the above findings of fact, establish that in or about 1972 he engaged in an act of moral turpitude involving his five-year-old, deaf niece.[2] There can be no dispute that it would be intolerable for a person holding a position of public trust to engage in such behavior. *See Matter of Benjamin,* 77 NY2d 296, 298 (1991) (judge "physically forced himself on an unwilling victim"); *Matter of Stiggins,* 2001 Annual Report 123 (judge was convicted of assaulting a patient in a nursing facility).

The nature of respondent's conduct involving an admitted sexual act with a defenseless child is abhorrent and not attenuated by the passage of time. It thus reflects adversely on his fitness to perform the duties of a judge and is prejudicial to the administration of justice notwithstanding that it predates his ascension to the bench (*see* NY Const Art 6 §22[a] [empowering the Commission to consider complaints with respect to "fitness to perform" judicial duties and to discipline a judge "for cause, including, but not limited to,... conduct, on or off the bench, prejudicial to the administration of justice"; *see also Matter of Pfingst*, 33 NY2d [a], 409 NYS2d 986, 988 [Ct on the Jud 1973]). The term "for cause" has been interpreted to include conduct that occurs "prior to the taking

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[2] The record before us contains two renditions of what occurred. E. recalls that respondent encouraged her to enter the room and placed her hand on his penis. Respondent denies that he encouraged her to enter the room or guided her hand, and he states that she touched his hand. The events in question occurred 40 years ago, when E. was five years old. Obviously, she recalled a traumatic event. Although the referee found E.'s testimony to be credible, it is sufficient for our purposes to conclude that even if the facts are as respondent has testified, his actions are indefensible (as he acknowledges) and are a sufficient basis upon which to render this determination.

of judicial office" (*Matter of Sarisohn*, 26 AD2d 388, 390 [2d Dept 1966]).

Since respondent's resignation from the bench leaves us with only two options – closing the matter without action or issuing a determination of removal, which renders him ineligible for judicial office in the future (*see* NY Const Art 6 §22[h]; Jud Law §47) – we determine that the sanction of removal is warranted. (*See Matter of Backal*, 87 NY2d 1 [1995].)

While it would be rare indeed for conduct so remote in time to disqualify a person from serving as a judge, we find that under the unique circumstances in this case, respondent's misconduct is of sufficient gravity as to render him unfit for judicial office. We thus conclude, contrary to the dissent, that the record before us requires the extraordinary sanction of removal notwithstanding respondent's resignation, consistent with our obligation to the public and to the judiciary as a whole.

This determination is rendered pursuant to Judiciary Law Section 47 in view of respondent's resignation from the bench.

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Emery, Judge Peters and Mr. Stoloff concur. Mr. Belluck files an opinion, which Mr. Emery joins.

Mr. Cohen and Mr. Harding concur as to misconduct, dissent as to the sanction and vote to close the matter in view of respondent's resignation. Mr. Cohen files

an opinion which Mr. Harding joins.

Ms. Moore did not participate.

CERTIFICATION

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

Dated: August 17, 2012

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

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CONCURRING OPINION
BY MR. BELLUCK,
WHICH MR. EMERY
JOINS

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I concur that respondent should be removed based on the circumstances of this case and the totality of the record before us. I want to underscore that this is an extreme remedy for an extreme set of facts, involving admitted sexual contact with a defenseless, particularly vulnerable child and a respondent who, for decades, failed to take full responsibility for his conduct and appears to have continued to obfuscate the truth. I certainly do not believe that the same high standards of off-the-bench behavior that are rightly required of current judges can be applied retroactively to every act in a judge's lifetime that occurred years or even decades before he or she became a judge. People make mistakes and can redeem themselves for their behavior. Despite indiscretions, they can be productive and significant members of society, the bar and bench. It is my firm belief that if you carefully examined any person's background you would find mistakes, ethical lapses and misjudgments. A person should not be disqualified from being a judge because of remote or minor indiscretions. This case does

not involve a mistake or minor indiscretion, and respondent has done little to atone for his admitted conduct. Therefore, I support removal in this unfortunate circumstance.

Dated: August 17, 2012

Joseph W. Belluck, Esq., Member
New York State
Commission on Judicial Conduct

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OPINION BY MR. COHEN, WHICH MR. HARDING JOINS, CONCURRING IN PART AND DISSENTING IN PART

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In 1972, 40 years ago, when respondent was 25 years old, not yet admitted to the Bar, he committed an horrific act in Albany County, New York against the then five year old girl. It was horrific whether one accepts her version of the events or the one respondent now tells (or has chosen to remember). Having reviewed the record, and in particular having listened to his surreptitiously recorded admissions in which he apologized for his offense, albeit in an icily, matter-of-fact narration, I concur that respondent's admissions, standing alone, establish that misconduct occurred.

Succinctly stated, it is inconceivable to me that respondent, now 65 years old, should remain on the bench, particularly in the position of a Family Court Judge. This, even though the conduct occurred 13 years before he became a Judge, and without any proof or allegation that respondent has replicated any such conduct within the last 40 years – and the Commission is unaware of any. Indeed, when the Commission informed respondent in early April 2012 that it would investigate this 40 year old event, he

resigned his judgeship immediately. Most importantly, then: respondent is no longer a judge.

One may therefore wonder why any proceeding is underway at all. Put simply, now a grownup, the victim, still emotionally troubled by the horrible incident and seeking a measure of justice, approached the District Attorney of Onondaga County, where respondent sat as a judge. One can easily understand her motivation in doing so. The District Attorney immediately took the unusual step of arranging for the victim's mother to "wear a wire" against respondent in Boulder, Colorado during a visit to her, in order to gain taped admission of his wrongdoing.[1] Having obtained the admission, however, and recognizing that the statute of limitations over the offense had expired 22 years earlier, the District Attorney promptly referred the matter to this Commission for appropriate action. Having received the complaint, the Commission authorized an investigation and contacted the judge to schedule his testimony. Respondent resigned immediately.

The Commission, however, was unsatisfied with the formal resignation. As reflected in the Determination, the Commission does indeed retain the power to "remove" a judge even after he resigns – to enable the Commission to assure itself that a respondent who has resigned while under investigation cannot later be elected or appointed to judicial office in New York State. Meaning, if "removed," he will be barred from judicial office in New York during the remainder of his lifetime.

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[1] Parenthetically, neither the District Attorney nor grand jury in Onondaga County had any criminal jurisdiction over the alleged offense.

I am not unmindful that, particularly in the wake of the sexual abuse scandals at Penn State and Syracuse University (in Onondaga County), no public official or body wants to appear to have shown any leniency whatsoever to an alleged sex offender – even one whose offending act occurred so much earlier (longer in time than the lifetimes of many great and accomplished figures in history).

And so, the Commission instituted formal proceeding against respondent. The result is obvious: although respondent is a grossly unsympathetic figure given his conduct herein, the publication of the Determination herein will, even at this late date, publicly and permanently stigmatize him. Indeed, the staff's brief argues that unless the Commission does just that, it essentially becomes an enabler, *i.e.*, it "assist[s] the judge in concealing that conduct," if it simply allows him to "strategically" resign (Comm. br., at 20).

I do believe, and have previously written on this subject (*Matter of Feeder*, 2012 WL 447939 at *12), that in certain circumstances a judge should in fact be removed even after a resignation, both as a deterrent to himself and to others. Those circumstances are not present here. No judge (or would-be judge) will be deterred from committing an act of child molestation because he believes that some day he might be removed as a judge. Deterrence, instead, will result from criminal enforcement and civil lawsuits instituted by victims, where possible, or potential internet reportage of offending conduct, not the potentiality of disciplinary proceedings.

Moreover, there is no need to seek to deter respondent from similar misconduct while a judge. Clearly, he will never again become a judge, fully aware that

he would surely face a renewed – likely, and properly so, even more vigorous -- effort by this Commission to remove him.

To address the Commission's concern that respondent might seek, once again, to become a judge or serve in another position of public trust, during oral argument I asked respondent if he would agree unequivocally to waive the confidentiality of these proceedings if he were ever to be elected or appointed to serve as a judge, judicial hearing officer, law guardian or in any other position of public responsibility. He unhesitatingly stipulated on the record that he would do so (Oral argument, pp. 62-63).[2] Given, too, the alacrity with which he resigned his judgeship when he was first apprised of the Commission investigation, it is inconceivable that he will allow himself to face any publicity over this sordid matter.

Indeed, no statute of limitation applies to discipline proceedings against judges in this state, and respondent should never again be a judge, despite how long ago the offending conduct occurred. Still, he has removed himself from his judgeship that, honesty compels one to conclude, he will never again seek or accept. Since "the purpose of judicial disciplinary proceedings is 'not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents'" (*Matter of Reeves*, 63 NY2d 105, 111 [1984], quoting *Matter of Waltemade*, 37 NY2d [a], [lll] [Ct on the Jud 1973]), we should be comforted by his prompt resignation – whatever its speculated motivation – not further punish that resignation by basically rejecting it. In this regard, it is worth noting that the District Attorney stated in his complaint letter to the Commission

[2]A respondent judge may waive confidentiality of a Commission proceeding (Jud Law §44[4]).

dated March 28, 2012, that, with the victim's support, he was "asking…the Commission …to reap a small measure of justice for the terrible thing that was done to her and offer Judge Hedges the option to resign as quickly as possible" (Ex. B, pp. 2-3). A week later, the judge filed his resignation.

Beyond that, we should want to encourage judges, directly confronted with the error of their ways, as here, to quickly and unqualifiedly resign in the face of egregious allegations of wrongdoing of which they are clearly guilty. We should not, except in an appropriate case which this is not, require a formal, post-resignation removal simply for a disciplinary authority to gain a very public pound of flesh, fearful of criticism for supposed leniency if it does not demand removal.

Stated most directly – the horrific conduct of respondent, who has now descended from the bench leaving his robes and gavel behind, occurred 40 years ago. It is now time to close this book.

I dissent.

Dated: August 17, 2012

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