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

MORRIS H. LEW,

a Justice of the Farmington Town
Court, Ontario 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

Honorable Morris H. Lew, *pro se*

The respondent, Morris H. Lew, a Justice of the Farmington Town Court, Ontario County, was served with a Formal Written Complaint dated December 6, 2006,

containing one charge. The Formal Written Complaint alleged that respondent granted special consideration to a defendant in a Speeding case based on *ex parte* communications from a friend. Respondent filed an Answer dated December 26, 2006.

By Order dated January 3, 2007, the Commission designated Sherman F. Levey, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on March 6, 2007, in Rochester. The referee filed a report dated November 29, 2007.

The parties submitted briefs with respect to the referee's report. On January 30, 2008, the Commission heard oral argument by Commission counsel; respondent waived oral argument and was not present. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Farmington Town Court, Ontario County, since 2003. He is not an attorney.

2. Respondent regularly presides on Wednesday night, and his co-justice presides on Monday night. Respondent's co-justice in 2005 was Charles R. Cooksey.

3. On August 19, 2005, in the Town of Farmington, Lori Gilmore was charged with Speeding for driving 80 mph in a 65 mph zone, in violation of Section 1180(d) of the Vehicle and Traffic Law. The ticket, issued by State Trooper Paul A. O'Bine, was returnable on Monday, September 26, 2005, in the Farmington Town Court.

4. Ms. Gilmore contacted her husband, Martin Gilmore, who was then

serving in the U.S. Army in Iraq, and told him about the ticket. Mr. Gilmore asked his wife to scan the ticket and e-mail it to him, and she did so.

5. After reviewing the ticket, Mr. Gilmore searched on the Internet for the Farmington Town Court website, and on or about August 29, 2005, he contacted the court by e-mail regarding his wife's ticket.

6. Mr. Gilmore had previously served in the U.S. Army or Army Reserves with respondent. As a result of that service, Mr. Gilmore and respondent became and remain friends.

7. Between August 29 and August 31, 2005, Mr. Gilmore and respondent exchanged a series of e-mails regarding Ms. Gilmore's Speeding charge. In one e-mail, referring to the ticket issued to Ms. Gilmore, Mr. Gilmore stated, "I was wondering what could be done."

8. By e-mail on August 30, 2005, respondent asked Mr. Gilmore for the ticket number, the officer's name and where the ticket was returnable. Respondent told Mr. Gilmore, "Get me that info and I will work the issue."

9. Mr. Gilmore sent respondent by e-mail a copy of Ms. Gilmore's ticket. On August 31, 2005, respondent replied by e-mail stating:

> "It is not written to me but the other judge in town, which makes it a little harder, but I will see what I can do. I know the trooper well and I am pretty sure worst case will be a reduction to a broken speedometer which is no points and a lower fine. I will get back to you."

10. Shortly thereafter, respondent sent an e-mail to his court clerk,

Claudia Seehoffer, asking that Ms. Gilmore's case be transferred to him from Judge Cooksey. Respondent's e-mail stated:

> "Claudia, please talk with Linda, I need a favor. I would like to have traffic ticket (speeding) transferred from Dick's court to mine. Ticket LV1296260 to Lori Gilmore written by Officer O'Bine. Scheduled for 9/26/05. Will she transfer it for me? Thanks, Morris."

11. After receiving respondent's e-mail, Ms. Seehoffer asked Linda Ingram, Judge Cooksey's court clerk, to transfer the case from Judge Cooksey's docket to respondent's docket. Ms. Ingram arranged for the transfer of the case, and Ms. Seehoffer placed it on respondent's calendar for that night, August 31, 2005.

12. No notice was given to Ms. Gilmore or Officer O'Bine that the *Gilmore* case had been placed on respondent's calendar for August 31, 2005.

13. Respondent never contacted Judge Cooksey about transferring the case. Judge Cooksey, upon learning of the transfer, filed a complaint against respondent with the Commission.

14. On August 31, 2005, Officer O'Bine appeared before respondent in connection with another case, *People v. Benante*, which was scheduled for trial that night.

15. After the completion of the *Benante* case, while Officer O'Bine was at the bench, respondent initiated a conversation with the trooper regarding the *Gilmore* case.

16. Officer O'Bine testified that respondent told him that respondent was going to dismiss the charge against Ms. Gilmore unless the officer objected, and that

respondent did not ask for his recommendation as to the disposition. Respondent testified that, after disclosing the e-mail communications from Mr. Gilmore, he asked the officer, consistent with his usual practice, "Is there an offer?", and that the officer responded, "It is up to you," after which the officer waved his hand and said, "Dismiss the ticket."

17. Respondent dismissed the Speeding charge against Ms. Gilmore in the interest of justice under Section 170.40(2) of the Criminal Procedure Law. Respondent did not set forth in court records the basis for the dismissal, as required by the statute.

18. The next day, respondent sent Mr. Gilmore an e-mail message stating in part:

> "The ticket has been dismissed. Please consider it a very small token of thanks for your efforts in uniform."

19. Ms. Gilmore never entered a plea with respect to the Speeding charge and never appeared in court in connection with the case.

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(C), 100.3(B)(1), 100.3(B)(6) and 100.3(E)(1) 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 insofar as it is consistent with the above findings and conclusions, and respondent's misconduct is established.

It was egregious misconduct for respondent to dismiss the Speeding charge in the *Gilmore* case based upon *ex parte* communications with his friend, the defendant's husband. Such conduct constitutes ticket-fixing, which is a form of favoritism that has long been condemned. In *Matter of Byrne*, 47 NY2d (b), (c) (1979), the Court on the Judiciary declared that "a judicial officer who accords or requests special treatment or favoritism to a defendant...is guilty of *malum in se* misconduct constituting cause for discipline"; such conduct, the Court stated, "is wrong, and has always been wrong." *See also, e.g., Matter of Bulger*, 48 NY2d 32 (1979). By granting such special consideration, respondent engaged in conduct that subverts the entire system of justice, which is based on the impartiality and independence of the judiciary, and that undermines respect for the judiciary as a whole.

In the late 1970s, the Commission uncovered a widespread pattern of ticket-fixing in New York State. As the Commission stated in a special report about the assertion of influence in traffic cases, ticket-fixing results in "two systems of justice, one for the average citizen and another for people with influence." The report noted: "While most people charged with traffic offenses accept the consequences, including the full penalties of the law ... some are treated more favorably simply because they are able to make the right 'connections'" ("*Ticket-Fixing: The Assertion of Influence in Traffic Cases*," Interim Report, June 20, 1977, p. 16). By the early 1980s, the Commission had publicly disciplined over 140 judges for the practice of ticket-fixing. With the benefit of a significant body of case law, every judge should be well aware that such conduct is

prohibited.

Here, the record establishes that respondent circumvented the normal judicial process in order to grant special consideration to the defendant, the wife of his friend and former military colleague. After Mr. Gilmore contacted him by e-mail about his wife's Speeding ticket, respondent reached out to take jurisdiction of the case from his co-justice, re-scheduled the case without notice to the trooper or the defendant, and then dismissed the charge after a brief conversation with the trooper, who happened to be in court that night on another case. While the substance of their conversation is somewhat unclear, Officer O'Bine's testimony strongly suggests that he acquiesced to the dismissal only after respondent made clear that he wanted that disposition. Moreover, the record indicates that respondent did not fully disclose to the trooper his relationship with the defendant's husband or the e-mail messages he had received, and he did not set forth in court records the basis for the dismissal as required by law (Crim Proc Law §170.40[2]). It is clear from this record that the extremely lenient disposition accorded to this defendant – outright dismissal of the Speeding charge, without even the necessity of entering a plea or appearing in court – was based not on the merits of her case, but on having the right "connections." This constitutes favoritism, and it is profoundly wrong.

The Court of Appeals has stated that even a single incident of ticket-fixing "is misconduct of such gravity as to warrant removal" (*Matter of Reedy v. Comm on Judicial Conduct*, 64 NY2d 299, 302 [1985]), although mitigating factors may warrant a reduced sanction (*see*, *Matter of Edwards*, 67 NY2d 153 [1986] [censure]; *see also*, *e.g.*,

Matter of Cook, 2006 Annual Report 119, and *Matter of Bowers*, 2005 Annual Report 125 [Comm on Judicial Conduct] [censure in both cases based on a joint recommendation]).

Several factors in this case indicate that censure, rather than removal, is appropriate. It is apparent that respondent was motivated in significant part by the desire to provide "a very small token of thanks" to an acquaintance in the military who was then serving in Iraq. While this does not excuse respondent's actions, it appears that his judgment was clouded by that fact and by his desire to make what he viewed as a patriotic gesture. We also note that respondent has an otherwise unblemished record in five years as a town justice. Thus, after a careful review of the facts, we conclude that this episode warrants censure, rather than removal from office. We continue to regard ticket-fixing as extremely serious misconduct and underscore that such conduct will be condemned with strong measures.

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

Judge Klonick, Mr. Coffey, Ms. DiPirro, Mr. Harding, Judge Peters and Judge Ruderman concur.

Mr. Emery and Judge Konviser dissent only as to the sanction and vote that respondent be removed.

Mr. Felder and Mr. Jacob were not present.

CERTIFICATION

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

Dated: March 26, 2008

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

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DISSENTING OPINION
BY MR. EMERY

Judge Lew fixed a ticket for the wife of a friend. No more should need to be said to remove him from the bench. This is a category of misconduct that strikes at the heart of our justice system, and removal is the only sanction that is commensurate with the corrosive effect of judicial decision-making perverted by a judge's personal interests. *See*, *Matter of Cook*, 2006 Annual Report 119 (Comm on Judicial Conduct) (Emery Dissent); *see also, Matter of Reedy v. Comm on Judicial Conduct*, 64 NY2d 299, 302 (1985) (even a single incident of ticket-fixing "is misconduct of such gravity as to warrant removal").

When removal is called for by the judge's conduct, the only remaining issue is whether there are any circumstances, such as remorse, that should permit the judge to remain on the bench. *Matter of Edwards v. Comm on Judicial Conduct*, 67 NY2d 153, 155 (1986). Here, no such circumstances exist. Indeed, there are significant exacerbating circumstances that underscore why the sanction of removal is required.

First, the judge's testimony as to the circumstances surrounding his dismissal of Mrs. Gilmore's ticket was sharply at odds with that of the trooper, who happened to be present that night on another case. In his sworn testimony, the judge all but blamed the trooper for the lenient disposition, repeatedly claiming that the trooper had urged that the ticket be dismissed, while the trooper insisted that the judge had announced that disposition as a *fait accompli*. The judge's strenuous efforts to foist responsibility for the lenient disposition on the trooper are astounding, given the judge's *ex parte* emails with the defendant's husband in which he had promised, "I will work the issue" and "I will see what I can do" (Ex. 6). The testimonial discrepancies, which regrettably the referee deemed insignificant, suggest the strong possibility that the judge lied under oath in an attempt to deflect responsibility for his malfeasance.

Second, the judge clearly fails to recognize that even if the trooper *had* suggested a lenient disposition, the judge should never have disposed of his friend's wife's case. Incredibly, the judge maintained that because of his relationship with the defendant's husband he would not have sat on the case had it gone to trial, yet he saw nothing wrong with dismissing his friend's wife's ticket because, he claims, the trooper supported the disposition. Even under the judge's distorted view of these events, this suggests that he completely fails to recognize that he did anything wrong, and thus is apt to repeat the misconduct.

Finally, the record is clear that the judge viewed his choice to honor his friend's service in Iraq by dismissing a speeding ticket for his friend's wife as a supervening duty that obviates his obligation to apply law evenhandedly. In advising his

friend of the favor he had granted, the judge sanctimoniously attributed the disposition to his personal version of patriotism: "The ticket has been dismissed. Please consider it a very small token of thanks for your efforts in uniform" (Ex. 6). While the majority apparently regards this as mitigating factor (Determination, p. 8), I reach a contrary conclusion. What Judge Lew forgot to consider is that his friend in Iraq, as well as many in the armed services, likely believe they are fighting to protect their country and the freedom guaranteed to each of its citizens by the Constitution of the United States. By intentionally violating the basic precepts of due process and equal protection, the judge may have done a favor that even his distorted vision of patriotism should abhor. Under these circumstances, I do not see how this Commission can subject the public to Judge Lew, who promises to wield his authority in violation of his oath of office when he believes his brand of patriotism demands it.

And there is more that renders Judge Lew not qualified for duty. Though pretending to stand on the high moral ground of what he calls patriotism, he tried to have it both ways in defending himself. On the one hand, he justifies his behavior as a patriotic act. On the other, he asserts that he did nothing out of the ordinary because speeding tickets are regularly accorded lenient dispositions under similar circumstances. When confronted with the proof by Commission staff, however, Judge Lew could not adequately explain the uncontroverted facts: that he had to arrange for transfer of Mrs. Gilmore's case from his co-judge's calendar to his own without his co-judge's knowledge; that Mrs. Gilmore had not been notified and had not appeared; that the prosecuting officer had no notice of the case; and that, as even the judge was forced to

concede, the usual disposition in such cases – *had the defendant appeared* – was a plea to an equipment violation, not outright dismissal. His expedient excuses to counter his blatant violations of simple basic due process and respect for the trooper who regularly appears before him belie his posture of moral rectitude.

As Jack Nicholson's military command character in "A Few Good Men" said under withering cross-examination, "You can't handle the truth." Nor can Judge Lew. The truth is that Judge Lew is guilty of ticket-fixing and much more: his mendacious defense of patriotism and propriety clash and conflict, revealing a judge who is a danger to a public that he will serve only when it is convenient for him to follow the law. He should be removed.

Dated: March 26, 2008

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