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

RICHARD H. MILLER, II,

a Justice of the Union Town Court,
Broome County.

DETERMINATION

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

Hinman, Howard & Kattell, LLP (by Richard C. Lewis) for Respondent

The respondent, Richard H. Miller, II, a Justice of the Union Town Court, Broome County, was served with a Formal Written Complaint dated May 23, 2001, containing four charges. Respondent filed an answer dated July 9, 2001.

By Order dated July 18, 2001, the Commission designated Philip C. Pinsky, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 16 and 17 and February 14 and 28, 2002, in Syracuse, New York, on March 4, April 4 and 5, 2002, in Albany, New York, and on May 30, 2002, in Binghamton, New York. The referee filed his report dated October 17, 2002, with the Commission.

On October 30, 2002, the Administrator of the Commission, respondent's counsel and respondent entered into a Stipulation, agreeing that the Commission make its determination based upon the referee's findings of fact and conclusions of law, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On November 8, 2002, the Commission approved the Stipulation and made the following determination.

1. Respondent has been a justice of the Union Town Court, Broome County, since April 1996 and a justice of the Johnson City Village Court since January 2002.

2. Respondent is an attorney admitted to practice law in 1994. Since April 1996, he has practiced as a sole practitioner and, since 1997, has had one full-time secretary, Terri Hoosier.

As to Charge I of the Formal Written Complaint:

3. Respondent presided over two cases in which a party or a member of the party's immediate family was a client of respondent's law firm. In six additional proceedings, respondent engaged in conduct that conveyed an erroneous impression that he was presiding over a client's matters, thereby creating an appearance of impropriety. Specifications to Charge I are set forth in Appendix A.

As to Charge II of the Formal Written Complaint:

4. In three cases, respondent represented the defendants notwithstanding that the charges originated in the Union Town Court. Specifications to Charge II are set forth in Appendix B.

As to Charge III of the Formal Written Complaint:

5. In one case, respondent acted as an attorney in a proceeding in his own court. Specifications to Charge III are set forth in Appendix C.

As to Charge IV of the Formal Written Complaint:

6. In a small claims action in 2000, after respondent had issued a judgment against the defendant and the plaintiff notified the court that the defendant had not paid, respondent's court clerk issued four notices to the defendant, over respondent's signature, which stated that a warrant would be issued for the defendant's arrest if he did not appear in court to pay the judgment. Specifications to Charge IV are set forth in Appendix D.

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(C)(1), 100.3(C)(2), 100.3(E)(1), 100.4(A), 100.4(D)(1)(c) and 100.6(B)(2) of the Rules Governing Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained insofar as they are consistent with the above findings, and respondent's misconduct is established.

A part-time judge may practice law, subject to certain restrictions designed to eliminate conflict and the appearance of any conflict between the exercise of judicial duties and the private practice of law. *Matter of Bruhn*, 1988 Ann Rep 133 (Commn on Jud Conduct, Dec 24, 1987); *Matter of Feeney*, 1988 Ann Rep 159 (Commn on Jud Conduct, Dec 24, 1987). Every lawyer-judge must scrupulously observe the applicable restrictions in order to avoid conduct that may create an appearance of impropriety and impugn the integrity of judicial office.

It is well-established that a judge may not take action in any case involving a client or former client of the judge's law practice. *Matter of Filipowicz*, 54 AD2d 348 (2d Dept 1976). Such conduct violates Section 100.3(C)(1) of the Rules Governing Judicial Conduct, which requires disqualification in a proceeding in which the judge's impartiality might reasonably be questioned. By presiding over one case in which he had an attorney-client relationship with the defendant and another case in which the defendant was the spouse of a client, respondent violated that standard. Respondent's conduct in *Barvainis v. Connelly* was especially egregious: by vacating a default judgment against his client's spouse based solely on his client's *ex parte*, unsworn communication,

respondent created an appearance of partiality and favoritism. In six additional cases, as found by the referee, respondent's conduct conveyed an erroneous impression that he was presiding over a client's matters, thereby creating an appearance of impropriety that undermines public confidence in the impartiality of the judiciary.

The ethical standards clearly prohibit a lawyer-judge from practicing law in the judge's own court (Jud Law §16; Rules Governing Judicial Conduct §100.6[B][2]). In *People v. Shepardson*, respondent acted as the attorney for the defendant by approving a settlement that included a favorable disposition of the harassment charge in the Union Town Court and by preparing an Affidavit of Non-Prosecution which the complainant signed and filed with the Union Town Court. Although respondent did not physically appear in the court in connection with the case, his actions violated the ethical prohibitions and constituted an impermissible intermingling of his roles as a lawyer and judge.

Section 16 of the Judiciary Law further prohibits a judge from practicing law "in an action, claim, matter, motion or proceeding originating in [the judge's] court." In three cases that originated in his court, respondent violated the statute by appearing on behalf of a party in another court.

It was also improper to issue notices to a small claims defendant which stated that a warrant would be issued for the defendant's arrest if he did not appear in court to pay the judgment. Such a warning conveys the false impression that non-payment of a judgment is a criminal matter. Although the notices were issued by

respondent's clerk over his stamped signature, respondent was required to exercise supervisory vigilance to ensure the proper performance of the clerical functions. Respondent's supervision was inadequate, as indicated by the blatantly erroneous contents of the notices that were sent over his signature.

In its totality, respondent's conduct showed insensitivity and inattention to his ethical responsibilities and, in particular, to the special ethical obligations of judges who are permitted to practice law. In mitigation, we note that respondent was candid, cooperative and contrite at the hearing and that he has acknowledged his misconduct.

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters and Judge Ruderman concur.

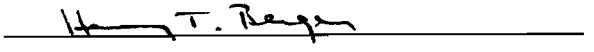
Mr. Pope did not participate.

Ms. Moore was not present.

CERTIFICATION

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

Dated: December 30, 2002



Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct

APPENDIX A

1. *Barvainis v. Mark Connelly*

A. On February 25, 1997, in *Barvainis v. Mark Connelly*, a small claims action in the Union Town Court commenced on January 29, 1997, respondent granted a default judgment to the plaintiff for $510. The defendant, Mark Connelly, was the spouse of Amy Connelly, who was respondent's client in a pending Family Court matter that concluded on March 19, 1997.

B. Subsequently, at a time when Amy Connelly was still respondent's client, respondent received an *ex parte* telephone call from Ms. Connelly. Ms. Connelly told respondent that her husband was in North Carolina, did not receive notice of the proceeding and wanted an opportunity to contest the matter. Respondent issued a letter written by his clerk dated March 17, 1997, "withdrawing the default judgment," which was tantamount to an order vacating the judgment. At the hearing, respondent acknowledged that he should have transferred the case to his co-judge without re-opening it.

C. After the plaintiff appealed respondent's order withdrawing the default judgment and the County Court issued a decision and order vacating respondent's order and reinstating the default judgment, respondent signed a "Reinstatement of Notice of Default Judgment" dated March 11, 1998. Respondent signed another such Reinstatement in October 1998, apparently intended to be a certified copy of the March 1998 Reinstatement, after being directed to personally sign the March 1998

Reinstatement by a clerk of the County Court in response to a request by the plaintiff's attorney.

D. A letter dated April 4, 1997, was issued over respondent's signature, without respondent's authorization, adjourning the matter until further notice.

2. *People v. Allen Dittman*

A. This specification is not sustained and is, therefore, dismissed.

3. *People v. Robert Holcomb*

A. In October 1999 respondent sentenced Robert Holcomb to six months of "work-weekend" jail attendance. In December 1999 respondent presided over the matter of sentence adjustments of Robert Holcomb and excused Mr. Holcomb's attendance on two December weekends due to the death of the defendant's father and the defendant's medical problems. On January 12, 2000, respondent directed that a Notice to Appear be sent to Mr. Holcomb, returnable January 24, 2000. Mr. Holcomb appeared before respondent on that date, and at that time respondent placed a telephone call from his court office to the Tully Town Court, Onondaga County, to verify representations that had been made by Mr. Holcomb during the presentence investigation.

B. Although Mr. Holcomb was never respondent's client, respondent created an appearance of impropriety with respect to his apparent undertaking to represent Mr. Holcomb in and after December 1999, as set forth below.

C. On November 3, 1999, Mr. Holcomb and Frederick Lurenz were

charged in the Town of Triangle with transporting waste tires without a permit, a violation of the Environmental Conservation Law ("ECL"). On November 28 or 29, 1999, Mr. Holcomb and Mr. Lurenz came to respondent's law office seeking to have respondent represent them with respect to the charges. Respondent informed Mr. Holcomb that he could not represent him and agreed to represent Mr. Lurenz.

D. Respondent's secretary, Terri Hoosier, prepared a letter to the Triangle Town Court dated November 29, 1999, with a copy to the district attorney's office, stating erroneously that respondent had been retained to represent Mr. Holcomb with regard to the ECL charge. The letter was generated from a computer form and was prepared in error. Respondent signed the letter in error and did not review the letter prior to signing it. By letter dated December 8, 1999, the Triangle Town Court acknowledged respondent's letter concerning his representation of Mr. Holcomb to the Triangle Town Court, which stated erroneously that he was representing Mr. Holcomb.

E. When respondent received the district attorney's pretrial notice from the court on or about December 9, 1999, he realized that there was a mistake about whom he represented in Triangle. Respondent called the Triangle Town Court and informed the clerk that the letter had been sent in error and that he represented Mr. Lurenz, not Mr. Holcomb. Respondent wrote a letter dated December 13, 1999, to the Triangle Town Court confirming his representation of Mr. Lurenz, but did not send to the court or the district attorney's office written confirmation of his telephone notification to the court that he did not represent Mr. Holcomb, thereby compounding the appearance of

impropriety created by the erroneous November 29, 1999, letter.

F. Mr. Holcomb entered a guilty plea to the ECL violation in the Triangle Town Court on December 16, 1999, and paid a fine in November 2000. Mr. Holcomb never personally appeared in that court.

G. Respondent never billed or received a fee from Mr. Holcomb regarding the ECL charge.

4. *People v. Sheila Johnson-Pish*

A. Respondent presided over two Vehicle and Traffic Law charges against Sheila Johnson-Pish. Respondent's clerk issued, over respondent's signature stamp, a letter dated May 10, 1999, ordering a supporting deposition from the arresting officer and a notice dated May 10, 1999, scheduling a pretrial conference for June 3, 1999. Respondent did not contend that those documents were issued without his authority. On or shortly after June 3, 1999, respondent approved a plea agreement that Ms. Johnson-Pish had made with the district attorney's office; Ms. Johnson-Pish did not personally appear before respondent to enter the plea. Respondent testified that a negotiated reduction in the charge would be marked on the ticket and that a judge would then set the fine; it was respondent who did so. The court record shows that respondent was responsible for the fine, and the fine was included in respondent's report to the State Comptroller.

B. Although they did not have a formal written agreement, respondent commenced an attorney-client relationship with Ms. Johnson-Pish in April 1999 which

continued at all relevant times subsequent thereto. Respondent consulted with Ms. Johnson-Pish concerning Family Court matters on April 15 and April 27, 1999, and billed her $125 for each such consultation. Ms. Johnson-Pish paid respondent $125 for the April 27 meeting on that date. Without another intervening communication or meeting with Ms. Johnson-Pish, respondent, on June 14, 1999, mailed to her Family Court petitions for custody and support and a financial affidavit, which were requested at the April 27 conference.

5. *People v. Ronald Jones*

A. This specification is not sustained and is, therefore, dismissed.

6. Summary Eviction Proceedings commenced by John Kuzel

A. Respondent presided over five summary eviction proceedings commenced by John Kuzel in the Union Town Court: *Kuzel v. Milot* (filed April 9, 1999); *Kuzel v. Waterhouse* (filed April 27, 1999); *Kuzel v. Weaver* (filed November 15, 1999); *Kuzel v. Nemire* (filed January 10, 2000); and *Kuzel v. Sutten* (filed January 10, 2000). Although it was not established that Mr. Kuzel was respondent's client or that respondent performed or authorized the performance of legal services on behalf of Mr. Kuzel, respondent's signature as an attorney on two Notices of Petition in other eviction proceedings by Mr. Kuzel in the Binghamton City Court created an appearance of impropriety by conveying an erroneous impression that respondent was presiding over a recent former client's matters, as set forth below.

B. Respondent's legal secretary, Terri Hoosier, prepared the paper work in Mr. Kuzel's eviction proceedings without any authority from respondent and without his knowledge. Ms. Hoosier prepared the eviction papers at her home or at another location when she met with Mr. Kuzel, a practice she had begun when she worked for two previous attorneys. Mr. Kuzel never discussed any of his evictions with respondent, never employed or consulted with respondent as an attorney and never paid or was billed by respondent in connection with the proceedings. Respondent's name does not appear on any of the petitioner's papers in the eviction proceedings. In *Weaver*, the petition shows Mr. Kuzel as "petitioner *pro se*."

C. The petitions and certain other documents in the five eviction proceedings were notarized by Ms. Hoosier, who frequently notarized signatures for people in the geographic area who would stop by the law office to have her notarize a signature, whether or not they knew respondent. Thus, seeing Ms. Hoosier's notary stamp on eviction papers in proceedings, such as the *Kuzel* proceedings, coming before respondent did not concern respondent because he knew that his secretary frequently notarized signatures for litigants, including those appearing in the Union Town Court, even though he did not represent them. Respondent did not, at the time, consider that Ms. Hoosier's notarization of eviction petitions coming before him created an appearance of impropriety.

D. In four other eviction proceedings commenced by John Kuzel in the Binghamton City Court in June 1999, August 1999, April 2000 and May 2000, in which

Mr. Kuzel is listed as "petitioner *pro se*," respondent signed the Notice of Petition form on the line provided for the signature of the "clerk." (The latter two forms were signed by respondent after he last presided over any of Mr. Kuzel's eviction proceedings in the Union Town Court.) According to respondent, it was the practice in the Binghamton City Court that if an attorney signed a notice of eviction, the petitioner did not have to pay a filing fee at the time the eviction papers were filed. Ms. Hoosier was aware of that practice and had respondent sign the Binghamton eviction papers in order to obtain that benefit for Mr. Kuzel. By signing such papers as an attorney, respondent created an appearance of impropriety, *i.e.,* an appearance that he presided over three eviction proceedings of Mr. Kuzel after respondent had afforded a benefit to Mr. Kuzel in the Binghamton City Court by signing two of his Notices of Petition in that court. Such appearance is improper even though the eviction papers in the Binghamton City Court showed Mr. Kuzel as petitioner *pro se* and did not clearly indicate the purpose for respondent's signature on the line designated for signature by a "clerk." As to one of the Binghamton eviction papers signed by respondent, he testified that he "erred" by signing it.

E. Respondent had no actual knowledge of the preparation of the legal documents by his legal secretary or of her arrangement with Mr. Kuzel to prepare such documents, and no such knowledge can be imputed to respondent. Ms. Hoosier's notarization of eviction papers did not, under the circumstances, impose upon respondent a duty to investigate further into the circumstances of the preparation of those petitions.

F. There was no implicit or explicit undertaking by respondent to represent John Kuzel in any eviction proceeding. There is no evidence that Mr. Kuzel believed, reasonably or otherwise, that Ms. Hoosier was acting on behalf of respondent. No fee was paid, and no benefit was received by respondent. Ms. Hoosier did not have apparent authority to enter into an attorney-client relationship for respondent; nor did respondent provide her with apparent authority or an ostensible agency to act on his behalf with respect to Mr. Kuzel. Ms. Hoosier acted with no intention or motive of benefiting respondent, was not acting on his behalf, and was not acting, even in part, to further respondent's interest, and she had no such motive.

APPENDIX B

1. *People v. Ronald Jones*

A. Between April 28, 1999, and February 15, 2000, respondent represented Ronald Jones in the Broome County Court in connection with a felony Driving While Intoxicated ("DWI") charge. He appeared in the County Court on December 13, 15 and 16, 1999. On December 16, 1999, Mr. Jones pleaded guilty. The probation report dated January 26, 2000, accurately noted the pendency of a Violation of Probation charge in the Union Town Court, based upon the DWI arrest, that respondent had imposed the probation sentence, and that respondent was representing Mr. Jones on the felony DWI charge. At the sentencing proceeding in County Court on February 15, 2000, the County Court judge, based upon the sentence in the probation report, disqualified respondent from representing Mr. Jones and directed any retainer to be refunded. While representing Mr. Jones in County Court, respondent had ample time and opportunity to learn that the Violation of Probation charge was pending in the Union Town Court.

2. *People v. Marino Panaro*

A. On August 25, 1999, Marino Panaro received tickets for four violations, one misdemeanor and two felonies (DWI and aggravated unlicensed operation of a vehicle). Respondent's co-justice suspended the defendant's driver's license on September 21, 1999, and later transferred the matter to County Court in response to an

indictment of the defendant in January 2000. The defendant was directed to appear in the Broome County Court on January 26, 2000.

B. On the morning of the scheduled arraignment, the defendant's father called respondent and asked him to appear with the defendant in County Court. Respondent represented the defendant at the arraignment in County Court that morning. A conference was set for January 28, 2000, at respondent's request but was not held. After respondent left the courtroom following the arraignment, he read the indictment and noted that it involved a Town of Union matter. He spoke with the County Court judge and terminated his representation. Sometime prior to February 9, 2000, the County Court judge assigned a new attorney to represent the defendant.

3. *Greg Gilbert v. Jennifer Goss*

A. This specification is not sustained and is, therefore, dismissed.

4. *Rachel Braden v. Douglas Shepardson*

A. Rachel Braden filed two criminal informations against Douglas Shepardson, the father of her infant son. The information filed in the Town of Union alleged harassment committed on August 17, 1999, and was signed and filed on that date; the information filed in the Town of Maine (also in Broome County) alleged aggravated harassment committed on August 31, 1999. Ms. Braden also filed a family offense petition against Mr. Shepardson in Family Court, Broome County, on September 1, 1999. The Family Court and the local criminal court had concurrent jurisdiction over these types

of family offenses.

B. Respondent represented Mr. Shepardson as the respondent and cross-petitioner in the Family Court offense proceeding (and related custody and visitation proceedings) commenced by Ms. Braden which were concluded at a court appearance on November 30, 1999, with the stipulated issuance of an order of protection issued by that court against Mr. Shepardson and other relief. All proceedings in the Union Town Court on the harassment violation were presided over by respondent's co-justice, who issued an adjournment in contemplation of dismissal on March 21, 2000.

C. The family offense petition in the Family Court alleged harassment or other acts by Mr. Shepardson that occurred on seven different dates specified in the petition, one of which was August 17, 1999. The Harassment, Second Degree information filed in the Town of Union alleged harassment or other acts by Mr. Shepardson against Ms. Braden on the same date.

APPENDIX C

1. *Barvainis v. Mark Connelly*

A. This specification is not sustained and is, therefore, dismissed.

2. *People v. Douglas Shepardson*

A. Respondent acted as the attorney for Douglas Shepardson in two respects in relation to the Union harassment charge described in Appendix B, paragraph 4, even though he never appeared in the Union Town Court in connection with that charge. Respondent, on behalf of his client, approved a settlement of the Family Court proceeding that included a favorable disposition of the Union harassment charge; respondent also prepared an Affidavit of Non-Prosecution for signature by the complainant, Rachel Braden, which she signed and filed with the Union Town Court.

B. Respondent prepared without charge and at the request of Ms. Braden's attorney Affidavits of Non-Prosecution for both the Town of Maine and the Town of Union. He did not stop to think that his preparation of the affidavit might constitute the practice of law in his own court. Respondent sent those Affidavits of Non-Prosecution for signature by Ms. Braden, to her attorney, Terrance Dugan, under cover of a letter dated January 12, 2000. Respondent's letter requested that the signed affidavits be returned to him. Mr. Dugan forwarded those affidavits to Ms. Braden under cover of his letter dated January 21, 2000. Mr. Dugan's letter informed his client that if she signed the affidavits, she "may then forward them directly to Mr. Miller per his request."

C. On February 3, 2000, Ms. Braden signed the Affidavit of Non-Prosecution for the Union harassment charge, and she delivered that affidavit on the same date to the Union Town Court.

D. On February 28, 2000, Ms. Braden signed an additional copy of the Affidavit of Non-Prosecution for the Union harassment charge at the same time that she executed a second copy of the affidavit for the Town of Maine charge. This additional copy of the Union affidavit contains a hand-written notation dated March 6, 2000, reading: "RHM gave this to Eliza to put in file." This second affidavit was superfluous as to the Union charge since the first affidavit had been filed on February 3, 2000, and was never lost or misplaced.

E. On March 21, 2000, respondent's co-justice issued an adjournment in contemplation of dismissal for the Union harassment charge.

3. Summary Eviction Proceedings commenced by John Kuzel (*Kuzel v. Milot, Kuzel v. Nemire, Kuzel v. Sutten, Kuzel v. Waterhouse, Kuzel v. Weaver*)

A. These specifications are not sustained and are, therefore, dismissed.

4. Additional Eviction Proceedings (*Carpentieri v. Castelli, Johnson v. Polite and Backus, Nasiatka v. Hoyt, Suer v. Kistadet and Limonti, Korba v. Lysak and Welch*)

A. These specifications are not sustained and are, therefore, dismissed.

APPENDIX D

1. Richard Santucci brought a small claims action against Michael Mitchell for $235 in the Union Town Court. On March 27, 2000, both parties appeared before respondent. Mr. Mitchell stipulated that he owed the money, and judgment was entered.

2. On April 20, 2000, Mr. Santucci called respondent's court clerk, Ingeborg Nytch. Mr. Santucci told her that respondent had told him that if Mr. Santucci did not get paid, he should call the court and respondent would schedule an appearance for Mr. Mitchell to come in. The clerk told Mr. Santucci to call her at the beginning of May if he had not received his money. Mr. Santucci did not speak with respondent on that date.

3. On May 8, 2000, Mr. Santucci came to court and informed the clerk that Mr. Mitchell had failed to pay the $235. The next day, respondent, upon being informed of Mr. Santucci's allegations, directed his clerk, Ms. Nytch, to notify Mr. Mitchell to appear on May 15, 2000. Mr. Santucci was orally notified.

4. Mr. Mitchell received a Notice to Appear from the court, over respondent's stamped signature, dated May 9, 2000, scheduling a May 15 court appearance. That document included a printed notice, in capital letters, stating: "IF YOU FAIL TO APPEAR ON THE DATE AND TIME DESIGNATED, A WARRANT WILL BE ISSUED FOR YOUR ARREST. PLEASE DO NOT IGNORE THIS NOTICE !!!!!" (Emphasis in original). The form was captioned "People of the State of New York vs.

Richard Santucci."

5. On May 15, 2000, both parties appeared before respondent, and Mr. Mitchell agreed to start making partial payments of $40 per week on May 19, directly to Mr. Santucci.

6. On June 20, 2000, Mr. Santucci called the court clerk and said he had not been receiving payments. He requested that the defendant "pay through the court." Mr. Mitchell had made one $40 payment and the June 22 court record made by Ms. Nytch showed a balance on the judgment of $195.

7. The court clerk sent Mr. Mitchell a second Notice to Appear dated June 20, 2000, which included the same printed notice and warning of arrest and the same erroneous caption. This Notice was issued over respondent's stamped signature and scheduled a June 26 court appearance.

8. On June 22, 2000, Mr. Mitchell called the clerk who, with the concurrence of respondent, approved the parties' agreement that Mr. Mitchell should make weekly payments to the court of $25. The payments were to be made on June 23, June 30, July 7, July 14, July 21, July 28 and August 4, with the final payment of $20 on August 11, 2000. Mr. Mitchell testified that he had requested the payments to be made to the court. He made the first $25 payment on June 26. Apparently the court appearance on June 26 was not held.

9. Mr. Mitchell did not pay any of the next three installment payments at or about the dates they were due. On July 17, 2000, the court clerk issued a third

Notice to Appear, dated July 17, 2000, over respondent's stamped signature, containing the same erroneous caption and printed warning as the two prior Notices. This Notice was returnable July 24. It is not clear from any court record whether the court appearance scheduled for July 24 was held.

10. A fourth Notice to Appear, dated August 2, 2000, was issued over respondent's stamped signature, addressed to Mr. Santucci and referencing "Santucci vs. Mitchel." The caption on the notice was "People of the State of New York vs. Mickel T. Mitchel." This Notice, returnable September 11, contained the same printed warning as the prior three Notices. Mr. Mitchell paid $50 on or about September 8, 2000, and the court appearance scheduled for September 11 was not held.

11. Respondent testified that his signature stamp was used on all four Notices to Appear. The second, third and fourth Notices to Appear, described above, clearly were stamped with respondent's signature by the court clerk; the signature on the first Notice to Appear, dated May 9, seems to have been affixed by a different signature stamp. In any event, respondent is responsible for the issuance of all four Notices to Appear.

12. It appears that Mr. Mitchell was never served with any of the documents required to hold a judgment debtor in contempt for failure to respond to an information subpoena.

13. Respondent showed poor judgment in allowing his clerk to use his signature stamp on the court notices without his personally having reviewed the blatantly

erroneous content of those notices, as completed by his clerk, prior to their issuance.

14. When Mr. Mitchell appeared before respondent on May 15, 2000, and July 24, 2000, respondent should have observed the erroneous and improper file copy of the Notice to Appear. Respondent admitted in his testimony that he saw the Notices to Appear the last time the parties came in.

15. With respect to respondent's contention that his court clerk had received direction from the Chief Court Clerk as to the form of a Notice to Appear to be used, any such advice should not have been substituted for respondent's direct oversight of his own clerk.