

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

NANCY E. SMITH,

**AGREED
STATEMENT OF FACTS**

a Justice of the Appellate Division,
Fourth Department.

Subject to the approval of the Commission on Judicial Conduct

("Commission"):

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, and Honorable Nancy E. Smith ("Respondent"), who is represented in this proceeding by David Rothenberg, Esq., Geiger and Rothenberg, LLP, that further proceedings are waived and that the Commission shall make its determination upon the following facts, which shall constitute the entire record in lieu of a hearing.

1. Respondent was admitted to the practice of law in New York in 1982. She has been a Justice of the Supreme Court, Monroe County, since 1997, and has been sitting as a Justice of the Appellate Division, Fourth Department, since 2004. She previously served as a Justice of the Appellate Division, Second Department, from 1999 to 2004, and a Judge of the Monroe County Court from 1993 to 1997. Her current term expires on December 31, 2025.

2. Respondent was served with a Formal Written Complaint dated March 12, 2013. She enters into this Agreed Statement of Facts in lieu of filing an Answer.

As to Charge I

3. Craig Cordes was sentenced to state prison on May 14, 2008, after being convicted for vehicular manslaughter, first degree (a class C felony), for driving a boat into another boat on Skaneateles Lake, resulting in the death of two people. Mr. Cordes was then a law student who had recently completed his second year of law school. His maximum sentence expiration date is April 21, 2018. His conditional release date is December 21, 2014. He became eligible for parole on August 21, 2011. Mr. Cordes filed an initial request for parole, and a hearing was scheduled for April 19, 2011.

4. Respondent has never met Mr. Cordes. She played no role in his criminal case. She became acquainted with his situation after his incarceration, through her brother-in-law's sister, who is a friend of Mr. Cordes's mother. Respondent spoke with Mr. Cordes's mother about Mr. Cordes's case and incarceration.

5. Respondent began communicating with Mr. Cordes by letter and, over time, formed the opinion that Mr. Cordes recognized the gravity of his crime, had gained insight as to the harm he had caused, and was genuinely contrite. At the request of his mother, Respondent agreed to write to the New York State Division of Parole on Mr. Cordes's behalf.

6. On January 27, 2011, Respondent signed and sent a letter on her judicial stationery to the Division of Parole on behalf of Mr. Cordes, in which *inter alia* she identified herself as a judge, stated that Mr. Cordes was her "friend" but did not disclose

that she had never met him, expressed her support for Mr. Cordes's release on parole, and set forth factors that she believed demonstrated Mr. Cordes's rehabilitation. A copy of Respondent's letter is attached as Exhibit 1.

7. Respondent took no other action on behalf of Mr. Cordes. Respondent did not contact or speak with any attorney representing Mr. Cordes. Respondent did not appear at Mr. Cordes's parole hearing. Respondent did not speak about Mr. Cordes with any member of the Division of Parole.

8. As part of her official duties, Respondent had previously sent many letters in response to direct inquiries by the Division of Parole in which she offered her opinion for consideration at parole hearings involving inmates over whose trials she had presided and/or whom she had sentenced to prison. Respondent was aware that the Rules Governing Judicial Conduct, and applicable opinions of the Advisory Committee on Judicial Ethics, permit such responses to inquiries from the Division of Parole.

9. Respondent acknowledges that she should have been aware that the Rules Governing Judicial Conduct, and applicable opinions of the Advisory Committee on Judicial Ethics, prohibited her from writing to the Division of Parole on Mr. Cordes's behalf voluntarily, at his request, or at the request of someone on his behalf. She pledges that she will refrain from such conduct in the future.

10. Mr. Cordes's request for parole was denied.

11. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and

independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; and failed to avoid impropriety and the appearance of impropriety, in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules, allowed a social relationship to influence her judgment, in violation of Section 100.2(B) of the Rules, and lent the prestige of judicial office to advance the private interest of another, and conveyed the impression that an individual was in a special position to influence her, in violation of Section 100.2(C) of the Rules.

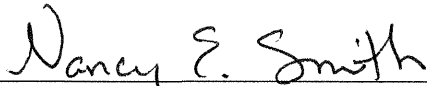
Additional Factor

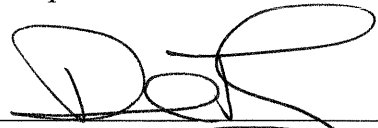
12. Respondent has never previously been the subject of discipline by the Commission.

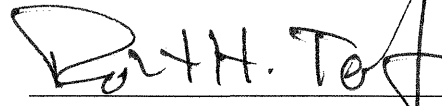
IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Admonition based upon the judicial misconduct set forth above.

IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Admonition without further submission of the parties, based solely upon this Agreed Statement. If the Commission

rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the Respondent or the Administrator and Counsel to the Commission.

Dated: 4/26/13 
Honorable Nancy E. Smith
Respondent

Dated: 4/26/13 
David Rothenberg, Esq.
Geiger and Rothenberg, LLP

Dated: 5/9/2013 
Robert H. Tembeckjian, Esq.
Administrator & Counsel to the Commission
(**John J. Postel**, Of Counsel)



Nancy E. Smith
Associate Justice

*New York State Supreme Court
Appellate Division, Fourth Department*

M. Dolores Denmarz Courthouse

50 East Avenue

Rochester, New York 14604

585-530-3280

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January 27, 2011

NYS Division of Parole
Cayuga Correctional Facility
Moravia, NY 13118

Re: Craig Cordes

Dear Honorable Members of the Parole Board:

I am the Senior Associate Justice of the New York State Appellate Division, Fourth Department. I am writing on behalf of my friend, Craig Cordes, and in support of his release on parole after his upcoming hearing before you.

As a former prosecutor and Monroe County Court Judge, I know first hand the struggles and heartaches of all involved in the criminal justice system. While Craig certainly made a terrible and tragic mistake, he has taken responsibility for his actions. While he can never make things right, he has taken positive steps while in prison and has used the time for self-reflection and growth. He has taken advantage of any self-help or educational program offered to him and has even succeeded in being allowed to participate in programs which initially were denied to him due to his extensive education. He also has expressed his desire to better the lives of those around him. Craig has spent much time while incarcerated mentoring and teaching English as a Second Language student inmates to help prepare them to successfully take the GED exam. He still maintains his enthusiasm and healthy respect for life as well as for the criminal justice system.

I am sure that you are aware that Craig was attending law school when this tragic event occurred. He has recently been advised of his readmission pending the result of his upcoming parole hearing. He would be a great asset to

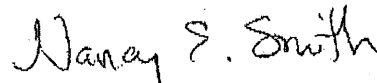
EXHIBIT 1

the legal community and certainly would have an expanded perspective of many legal issues. Hopefully he will have the opportunity to finish his legal education.

Craig Cordes is a good person who did a bad thing. He has taken responsibility and has reflected on his actions and the consequences of his behavior. His insight, talent and drive will be invaluable assets as he reenters society. I am confident that Craig will spend the rest of his life atoning for his actions in this tragedy and will continue to give back to society.

Thank you for your consideration in this matter. Please contact me if you have any questions or need further information.

Very truly yours,

A handwritten signature in cursive script that reads "Nancy E. Smith".

Nancy E. Smith
Senior Associate Justice