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

EDWARD J. WILLIAMS,

a Justice of the Kinderhook Town and
Valatie Village Courts, Columbia County.

DETERMINATION

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frederick M. Marshall, Vice 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

Gerstenzang, O'Hern, Hickey & Gerstenzang (By Thomas J. O'Hern)
for Respondent

The respondent, Edward J. Williams, a justice of the Kinderhook Town and Valatie Village Courts, Columbia County, was served with a Formal Written Complaint

dated November 13, 2001, containing one charge. Respondent filed an answer dated December 14, 2001.

On March 6, 2002, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On May 9, 2002, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a Justice of the Valatie Village Court since 1982 and a justice of the Kinderhook Town Court since 1984. He is not a lawyer. He has attended and successfully completed all required training sessions for judges.

2. On or about December 14, 2000, David St. Onge was arrested on the complaint of the state police and his wife, Barbara Novak, and charged in the Stuyvesant Town Court with Assault, 2nd Degree and Menacing, 2nd Degree, after Ms. Novak alleged that Mr. St. Onge had threatened and assaulted her with a rifle. Mr. St. Onge was arraigned by Stuyvesant Town Justice John A. Dorsey, who set bail and issued an Order of Protection, requiring Mr. St. Onge to stay away from Ms. Novak.

3. A few days after the arraignment, Ms. Novak and Mr. St. Onge reconciled and Mr. St. Onge moved back into the marital residence. Ms. Novak went to court and requested that Judge Dorsey vacate the Order of Protection, but Judge Dorsey refused and referred Ms. Novak to the district attorney.

4. On or about December 20, 2000, prior to the next court appearance, Mr. St. Onge and Ms. Novak, who were acquainted with respondent, went to respondent's home, without notice to or the consent of the prosecution, and requested that respondent vacate the Order of Protection. Respondent said that he could not do so and offered to speak with Judge Dorsey. Respondent then telephoned Judge Dorsey, using Judge Dorsey's unlisted telephone number, and requested that he rescind the Order of Protection he had issued against Mr. St. Onge. Respondent told Judge Dorsey that Mr. St. Onge and his wife were friends of respondent.

5. When Judge Dorsey replied that it was improper for respondent to make such a request and that Judge Dorsey would not vacate the Order of Protection without hearing from the prosecution, respondent argued with him and stated that Judge Dorsey could act without giving the prosecution an opportunity to be heard. In attempting to convince Judge Dorsey that he had the authority to vacate the Order of Protection, respondent said to Judge Dorsey that respondent had vacated orders of protection without notice to the district attorney. Respondent told Judge Dorsey that "The

D.A. isn't God." Judge Dorsey refused to rescind the Order of Protection, and Mr. St. Onge later pleaded guilty to a reduced Assault charge.

6. Respondent now recognizes that his telephone call to Judge Dorsey was improper, that Judge Dorsey was correct in advising him that Judge Dorsey had to give the district attorney an opportunity to be heard and that it would be improper for a judge to vacate an Order of Protection upon an *ex parte* request.

7. Respondent agrees that he will not make *ex parte* calls to judges on behalf of parties in any court proceeding, that he will not lend the prestige of office to advance private interests, that he will give the district attorney notice and a right to be heard when the law calls for such a procedure, and that he will pay greater attention to the Rules Governing Judicial Conduct.

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) and 100.3(B)(6) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

By contacting another judge on behalf of a friend and asking the judge to vacate an Order of Protection he had issued, respondent intervened in a pending proceeding and used the prestige of judicial office in an attempt to advance his friend's private interests. Such conduct constitutes an improper assertion of influence as well as

an unauthorized *ex parte* communication (Sections 100.2[C] and 100.3[B][6] of the Rules Governing Judicial Conduct). As the Court of Appeals stated in Matter of Lonschein (50 NY2d 569, 571-72):

> No judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. Members of the judiciary should be acutely aware that any action they take, whether or on off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.

The Court on the Judiciary described the solicitation of special consideration as favoritism, which "is wrong, and always has been wrong." Matter of Byrne, 420 NYS2d 70, 71 (Ct on the Jud 1979); *see also* Matter of Young, 2001 Ann Report of NY Comm on Jud Conduct 129; Matter of DeLuca, 1985 Ann Report of NY Comm on Jud Conduct 119. As a judge since 1982, respondent should have recognized that such communications seriously undermine the fair administration of justice and are strictly prohibited.

Even after the presiding judge refused respondent's request, stated that he would not vacate the order without hearing from the prosecution and reminded respondent that the request was improper, respondent, who had described the defendant and his wife as respondent's friends, persisted in his impermissible, heavy-handed advocacy. Arguing with the presiding judge, respondent told the presiding judge that respondent himself had vacated orders of protection without notice to the prosecution and

commented, "The D.A. isn't God." Respondent's conduct showed remarkable insensitivity to the special ethical obligations of judges.

In imposing sanction, we note respondent's previous discipline for engaging in improper political activity, excluding an attorney from his courtroom, berating an assistant district attorney and failing to administer an oath to witnesses (Matter of Williams, 2002 Ann Rep of NY Commn on Jud Conduct __). Respondent's misconduct in the instant case occurred approximately three months after respondent was served with a Formal Written Complaint in the previous matter. We also note that in 1993 respondent was issued a confidential letter of dismissal and caution upon a determination of misconduct for being discourteous to an attorney.

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, Ms. Moore, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Marshall was not present.

CERTIFICATION

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

Dated: May 17, 2002

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