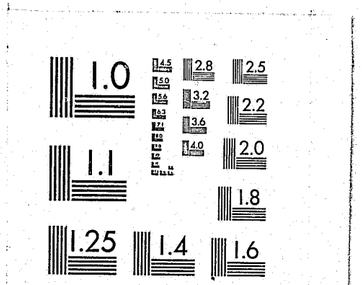

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ANNUAL REPORT

March 1980

New York State Commission on Judicial Conduct

EXCELSIOR

1980 ANNUAL REPORT
OF THE
NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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GERALD STERN
ADMINISTRATOR

To the Governor, the Chief Judge of the Court of Appeals and the Legislature of the State of New York:

Pursuant to Article 2-A of the Judiciary Law of the State of New York, the New York State Commission on Judicial Conduct respectfully submits this annual report of its activities. The report covers the period from January 1, 1979, through December 31, 1979.

Respectfully submitted,

Mrs. Gene Robb, Chairwoman,
On Behalf of the Commission

March 1, 1980
New York, New York

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INTRODUCTION

The New York State Commission on Judicial Conduct was created to provide a fair disciplinary system to review complaints of judicial misconduct without encroachment on the principle of judicial independence. While the right of a judge to exercise discretion must be safeguarded, the obligation to observe high standards of conduct must also be met.

The Commission offers a forum for citizens with conduct-related complaints and helps to insure compliance with established standards of ethical judicial behavior, thereby promoting public confidence in the integrity and honor of the judiciary. The Commission does not act as an appellate court, make judgments as to the merits of a judicial decision or ruling, or investigate complaints that judges are either too lenient or too severe toward defendants accused or convicted of crimes.

New York is among 49 states (and the District of Columbia) to have adopted a commission system to meet these goals.

TEMPORARY STATE COMMISSION ON JUDICIAL CONDUCT

The Temporary State Commission on Judicial Conduct commenced operations in January 1975. The temporary Commission had the authority to investigate allegations of misconduct against judges in the state unified court system, make confidential suggestions and recommendations in the nature of admonitions to judges when appropriate, and, in more serious cases, recommend that formal disciplinary proceedings be commenced in the Court on the Judiciary or the Appellate Division. All proceedings in the Court on the Judiciary and most proceedings in the Appellate Division were public.

The temporary Commission was composed of two judges, five lawyers and two lay persons. It functioned through August 31, 1976, when it was succeeded by a permanent commission created by amendment to the State Constitution.

The temporary Commission received 724 complaints, dismissed 441 upon initial review and commenced 283 investigations during its tenure. It admonished 19 judges and initiated formal disciplinary proceedings against eight judges, in either the Appellate Division or the Court on the Judiciary. One of these judges was removed from office and one was censured. The remaining six matters were pending when the temporary Commission was superseded by its successor Commission.

Five judges resigned while under investigation.*

* A full account of the temporary Commission's activity is available in the Final Report of the Temporary State Commission on Judicial Conduct, dated August 31, 1976.

FORMER STATE COMMISSION ON JUDICIAL CONDUCT

The temporary Commission was succeeded on September 1, 1976, by the State Commission on Judicial Conduct, established by a constitutional amendment overwhelmingly approved by the New York State electorate and supplemented by legislative enactment (Article 2-A of the Judiciary Law). The Commission's tenure lasted through March 31, 1978, when it was replaced by the present Commission. (For the purpose of clarity, the Commission which operated from September 1, 1976, through March 31, 1978, will henceforth be referred to as the "former" Commission.)

The former Commission was empowered to investigate allegations of misconduct against judges, impose certain disciplinary sanctions* and, when appropriate, initiate formal disciplinary proceedings in the Court on the Judiciary, which, by the same constitutional amendment, had been given jurisdiction over all 3,500 judges in the unified court system.

* The sanctions that could be imposed by the former Commission were: private admonition, public censure, suspension without pay for up to six months, and retirement for physical or mental disability. Censure, suspension and retirement actions could not be imposed until the judge had been afforded an opportunity for a full adversary hearing; these Commission sanctions were also subject to a de novo hearing in the Court on the Judiciary at the request of the judge.

The former Commission, like the temporary Commission, was composed of two judges, five lawyers and two lay persons, and its jurisdiction extended to judges within the state unified court system. The former Commission was authorized to continue all matters left pending by the temporary Commission.

The former Commission considered 1,418 complaints, dismissed 629 upon initial review, authorized 789 investigations and continued 162 investigations left pending by the temporary Commission.

During its tenure, the former Commission took action which resulted in the following:

-- 15 judges were publicly censured;
-- 40 judges were privately admonished;
-- 17 judges were issued confidential letters of suggestion and recommendation.

The former Commission also initiated formal disciplinary proceedings in the Court on the Judiciary against 45 judges and continued six proceedings left pending by the temporary Commission.

Those proceedings resulted in the following:

-- 1 removal
-- 2 suspensions
-- 3 censures
-- 10 cases closed upon resignation by judge
-- 2 cases closed upon expiration of judge's term
-- 1 proceeding closed with instruction by the Court on the Judiciary that the matter be deemed confidential.

The remaining 32 proceedings were pending when the former Commission expired. They were continued by the current Commission.

In addition to the ten judges who resigned after proceedings had been commenced in the Court on the Judiciary, 28 other judges resigned while under investigation by the former Commission.

CONTINUATION IN 1978 OF FORMAL PROCEEDINGS COMMENCED BY THE TEMPORARY AND FORMER COMMISSIONS

Thirty-two formal disciplinary proceedings which had been initiated in the Court on the Judiciary by either the temporary or former Commission were pending when the former Commission was superseded on April 1, 1978, and were continued without interruption by the current Commission.

Thirteen of these 32 proceedings were concluded in 1978, with the following results, reported in greater detail in the Commission's 1979 annual report:

-- 10 judges were censured;
-- 1 judge was directed to reform his conduct consistent with the Court's opinion;
-- 1 judge was barred from holding future judicial office after he resigned; and
-- 1 judge died before the matter was concluded.

The remaining 19 cases were pending as of December 31, 1978.

STATE COMMISSION ON JUDICIAL CONDUCT

The current Commission was created by amendment to the State Constitution, effective April 1, 1978. The amendment created an 11-member Commission (superseding the nine-member former Commission), broadened the scope of the Commission's authority and streamlined the procedure for disciplining judges within the state unified court system. Courts on the Judiciary were abolished, except for those created prior to April 1, 1978. All formal disciplinary hearings under the new amendment are conducted by the Commission.

Subsequently, the State Legislature amended Article 2-A of the Judiciary Law, the Commission's governing statute, to implement the new provisions of the constitutional amendment.

Authority

The State Commission on Judicial Conduct has the authority to receive and review written complaints of misconduct against judges, initiate complaints on its own motion, conduct investigations, file Formal Written Complaints and conduct formal hearings thereon, subpoena witnesses and documents, and make appropriate determinations as to dismissing complaints or disciplining judges within the state unified court system. This authority is derived from Article VI, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law of the State of New York.

The Commission does not act as an appellate court, nor does it review judicial decisions or alleged errors of law. It does not issue advisory opinions, give legal advice or represent litigants. When appropriate, it refers complaints to other agencies.

By provision of the State Constitution (Article VI, Section 22), the Commission "shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system...." The Commission may determine that a judge or justice be disciplined "for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct, on or off the bench, prejudicial to the administration of justice...." The Constitution also provides that the Commission may determine that a judge "be retired for mental or physical disability preventing the proper performance of his judicial duties."

The types of complaints that may be investigated by the Commission include improper demeanor, conflicts of interest, intoxication, bias, prejudice, favoritism, corruption, certain prohibited political activity and other misconduct on or off the bench.

Standards of conduct are outlined primarily by the Rules Governing Judicial Conduct (originally promulgated by the Administrative Board of the Judicial Conference and subsequently adopted by the Chief Administrator of the Courts), and the Code of Judicial Conduct (adopted by the New York State Bar Association).

If the Commission determines in accordance with due process that disciplinary action is warranted, it may render a determination to impose one of four sanctions, which are final, subject to review by the Court of Appeals upon timely request by the respondent-judge. The Commission may render determinations to:

-- admonish a judge publicly;
-- censure a judge publicly;
-- remove a judge from office;
-- retire a judge for disability.

In accordance with its rules, the Commission may also issue a confidential letter of dismissal and caution to a judge, despite a dismissal of the complaint, when it determines that the circumstances warrant comment.

Procedures

The Commission convenes at least once a month. At each meeting, the Commission reviews each new complaint of misconduct and makes an initial decision whether to conduct an investigation or dismiss the complaint. It also reviews

staff reports on ongoing matters, makes final determinations on completed proceedings, considers motions and entertains oral arguments pertaining to cases in which judges have been served with formal charges, and conducts other business.

No investigation may be commenced by staff without prior authorization by the Commission. Similarly, the filing of formal charges must be authorized by the Commission.

After the Commission authorizes an investigation, the complaint is assigned to a staff attorney, who is responsible for conducting the inquiry and supervising the investigative staff. If appropriate, witnesses are interviewed and court records are examined. The judge may be asked to respond in writing to the allegations. In some instances the Commission requires the appearance of the judge to testify during the course of the investigation. Such appearances are under oath and are conducted in the presence of at least one Commission member. Although an investigative appearance is not an adversary hearing, the judge is entitled to be represented by counsel who may advise the judge during the testimony. The judge may also submit evidentiary data and materials for the Commission's consideration.

If the Commission finds after an investigation that the circumstances so warrant, it will direct the administrator to serve upon the judge a Formal Written Complaint containing specific charges of misconduct. The Formal

Written Complaint institutes the adversary disciplinary proceeding. After receiving the judge's answer, the Commission may, if it determines there are no disputed issues of fact, grant a motion for summary determination. It may also accept an agreed statement of facts submitted by the administrator and the respondent-judge. Where there are factual disputes that are not resolved by an agreed statement of facts, the Commission appoints a referee to conduct a hearing and report to the Commission. Referees are designated by the Commission from a panel of attorneys and former judges. Following receipt of the referee's report, on a motion to confirm or disaffirm the report, both the administrator and respondent may submit legal memoranda and present oral arguments on issues of misconduct and sanction. The judge may appear and be heard at oral argument.

In deciding motions, considering proposed agreed statements of fact and making determinations with respect to misconduct and sanction, and in considering other matters of an adversarial nature in cases in which formal written complaints have been served and proceedings are pending before it, the Commission deliberates in executive session, without the presence or assistance of its administrator or regular staff. The clerk of the Commission assists the Commission in executive session but does not participate in either an investigative or adversarial capacity in any cases pending before the Commission.

The Commission may dismiss a complaint at any stage during the investigatory or adjudicative proceedings.

When the Commission determines that a judge should be admonished, censured, removed or retired, its written determination is forwarded to the Chief Judge of the Court of Appeals, who in turn transmits it to the respondent. Upon completion of the transmittal, the Commission's determination and the record of its proceedings become public. (Prior to this point, by operation of the strict confidentiality provisions in Article 2-A of the Judiciary Law, all proceedings and records are private.) The respondent-judge has 30 days to request review of the Commission's determination by the Court of Appeals. The Court may accept or reject the determined sanction, impose a different sanction, or impose no sanction. If no request for review is made within 30 days, the sanction determined by the Commission becomes effective.

The Commission's rules and a flow chart depicting the complaint and investigation process are appended.

Membership and Staff

The Commission is composed of 11 members serving initial terms from one to four years, after which all appointments are for four years. Four members are appointed by the Governor, three by the Chief Judge of the Court of Appeals, and one each by the four leaders of the Legislature. The

Constitution requires that four members be judges, at least one be an attorney, and at least two be lay persons. The Commission elects one of its members to be chairperson and appoints an administrator and a clerk. The administrator is responsible for hiring staff and supervising staff activities subject to the Commission's direction and policies.

The chairwoman of the Commission is Mrs. Gene Robb of Newtonville. The other members are: Honorable Fritz W. Alexander, II, of New York City, Justice of the Supreme Court, First Judicial District (New York County); David Bromberg, Esq., of New Rochelle; Honorable Richard J. Cardamone of Utica, Associate Justice of the Appellate Division, Fourth Judicial Department; Dolores DelBello of Hastings-on-Hudson; Michael M. Kirsch, Esq., of Brooklyn; Victor A. Kovner, Esq., of New York City; William V. Maggipinto, Esq., of Southampton; Honorable Felice K. Shea of New York City, Judge of the Civil Court of the City of New York; Honorable Isaac Rubin of Rye, Justice of the Supreme Court, Ninth Judicial District (Westchester County); and Carroll L. Wainwright, Jr., Esq., of New York City.* The Administrator of the Commission is Gerald Stern, Esq. The Clerk of the Commission is Robert H. Tembeckjian.

* Biographies of the members are appended.

The Commission has 54 full-time staff employees, including 17 attorneys. During the summer of 1979, nine student interns, mostly law students, were hired for a three-month period. Several law students are also employed throughout the year on a part-time basis.

The Commission's principal office is in New York City. Offices are also maintained in Albany and Buffalo.

Meetings with Judges' Associations

Throughout the past year and throughout its five years of operation, the Commission has invited representatives of various judicial associations to meet with the Commission. Such meetings have provided an opportunity for an exchange of views on the Commission's work and procedures. In recent months the Commission has met with representatives of the following organizations:

-- Association of Justices of the Supreme Court of the State of New York;

-- Association of Judges of the Family Court of the State of New York;

-- Surrogates Association of the State of New York;

-- County Judges Association of the State of New York;

-- New York Association of City Court Judges;

-- New York State Association of Magistrates;

-- Association of Criminal Court Judges of the City of New York; and

-- Board of Judges of the Civil Court of the City of New York.

In addition, Commission representatives have been invited to address meetings of various judicial, civic and professional organizations to discuss judicial discipline and related topics.

COMPLAINTS AND INVESTIGATIONS IN 1979

In 1979, 613 new complaints were reviewed. Of these, 460 were dismissed upon initial review, and 153 investigations were authorized and commenced.* As in previous years, the majority of complaints were submitted by civil litigants and complainants and defendants in criminal cases. Other complaints were received from attorneys, judges, law enforcement officers, civic organizations and concerned citizens not involved in any particular court action. Among the new complaints were 33 which the Commission initiated on its own motion.

The Commission continued 324 investigations pending as of December 31, 1978.

Some of the 460 new complaints dismissed upon initial review were frivolous or outside the Commission's jurisdiction (such as complaints against attorneys or judges not within the state unified court system). Many were from litigants who were complaining about a particular ruling or decision made by a judge in the course of a proceeding. Absent any underlying misconduct, such as demonstrated prejudice, intemperance or conflict of interest, the Commission does not investigate such matters, which belong in the appellate courts. Judges must be free to act, in good faith, without the fear of being investigated for their rulings or decisions.

* The statistical period in this report is January 1, 1979, through December 31, 1979. Statistical analysis of all the matters considered by the temporary, former and current Commissions is appended in chart form.

Of the combined total of 477 investigations conducted by the Commission in 1979 (324 continued from 1978 and 153 authorized in 1979), the Commission considered and dismissed outright 89 complaints after investigations were completed. Investigation of 62 complaints resulted in a sanction, 78 resulted in a cautionary reminder to the judge, and 22 were closed upon resignation of the judge from office.

Twelve investigations were closed upon vacancy of office due to the judge's retirement or failure to win re-election.

Two hundred fourteen investigations were pending at the end of the year.

ACTION TAKEN IN 1979

Formal Proceedings

No disciplinary sanction may be imposed by the Commission unless a Formal Written Complaint, containing detailed charges of misconduct, has been served upon the respondent-judge, and unless the respondent has been afforded an opportunity for an adversary hearing. These proceedings fall within the confidentiality provisions of the Judiciary Law and are not public.

In 1979, the Commission authorized Formal Written Complaints against 77 judges.

The confidentiality provisions of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibit public disclosure by the Commission with respect to charges served, hearings commenced or any other matter until a case has been concluded and a final determination has been filed with the Chief Judge of the Court of Appeals and forwarded to the respondent-judge. Following are summaries of those matters which were completed during 1979 and made public pursuant to the applicable provisions of the Judiciary Law.

Determinations of Removal

The Commission completed nine formal disciplinary proceedings in 1979 in which it determined that the judge involved should be removed from office.

Matter of John H. Dudley

John H. Dudley was a justice of the Village Court of Cato in Cayuga County. He was served with a Formal Written Complaint dated October 31, 1978, alleging that he had failed over a ten-year period to comply with various financial reporting and record keeping requirements and failed to cooperate with the Commission, as noted below:

-- failed over a ten-year period to report his judicial activities and remit sums received in his official capacity to the State Comptroller in a timely manner as required by law;
-- recorded official liabilities exceeding official assets during certain periods;
-- failed over a five-year period to dispose of more than 50 traffic cases;
-- failed to maintain required records such as a cashbook itemizing receipts and disbursements and dockets of the proceedings before him; and
-- failed to cooperate with the Commission during its investigation of these allegations by not responding to written inquiries sent to him by the Commission.

Judge Dudley did not answer the Formal Written Complaint. The Commission granted the administrator's motion for summary determination on February 1, 1979, sustained the formal charges and made a finding of misconduct. The judge did not oppose the motion. Opportunity was provided for Judge Dudley to submit a memorandum and appear for oral argument with respect to sanction, and he declined.

The Commission filed with the Chief Judge of the Court of Appeals its determination, dated March 5, 1979, that Judge Dudley should be removed from office. The determination reads in part as follows.

> Respondent's behavior clearly was improper, constituting at least negligence and bordering on wanton disregard for the legal and ethical constraints upon him. Similar, though less egregious, conduct has been found [by the courts] to constitute "gross neglect" and to justify removal.

Judge Dudley did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on April 16, 1979. A copy of the determination is appended.

Matter of James O. Kane

James O. Kane was a justice of the Village Court of Unadilla in Otsego County. He was served with a Formal Written Complaint dated August 7, 1978, alleging that over a four-year period he had failed to comply with various financial reporting requirements and in some instances entered false information on required reports of his judicial activities, as noted below:

-- failed over a four-year period to report and remit to the State Comptroller amounts totalling more than $2,600 received in his judicial capacity;

-- falsely certified cases to the State Comptroller;
-- made false entries on his motor vehicle dockets; and
-- failed to make timely deposits of funds received in his judicial capacity and failed to maintain required records or a cashbook of such receipts.

Judge Kane denied the material allegations in the Formal Written Complaint, and a hearing was held before a referee, James A. O'Connor, Esq. The referee's report in substance found the facts as alleged in the formal charges. Opportunity was provided for Judge Kane to submit a memorandum and appear for oral argument with respect to the report, and he declined.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated March 5, 1979, that Judge Kane should be removed from office. The determination reads in part as follows.

> In determining the sanction to be imposed upon respondent, the Commission has considered the nature of the charges... and the repeated and gross violations by respondent of the legal, administrative and ethical duties imposed upon him. Respondent's behavior, especially with respect to false certification as to the monies received by him in his official capacity and his maintenance of personal control of those monies for an extended period of time, is unacceptable.

Judge Kane did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on April 16, 1979. A copy of the determination is appended.

Matter of Frank Manion

Frank Manion was a justice of the Village Court of Ilion in Herkimer County. He was served with a Formal Written Complaint dated November 30, 1978, alleging that he had failed over a 20-month period to report and remit to the State Comptroller nearly $9,000 received in his judicial capacity, and that his official court bank accounts were deficient in the same amount.

Judge Manion and the Commission's administrator entered into an agreed statement of facts on February 7, 1979, stipulating to the facts as alleged in the formal charges and that the court accounts had been recently corrected by the judge's deposit of the deficient amount. The Commission approved the agreed statement and provided Judge Manion the opportunity to submit a memorandum and appear for oral argument with respect to the issues of misconduct and sanction, and he declined.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated March 28, 1979, that Judge Manion should be removed from office. Judge Manion did not request review of the Commission's action, and the Court of Appeals ordered his removal from office on May 10, 1979. A copy of the determination is appended.

Matter of Harold H. Schultz

Harold H. Schultz was a justice of the Town Court of New Scotland in Albany County. He was served with a Formal Written Complaint dated December 1, 1978, alleging that he:

-- presided contrary to law over a traffic case on August 3, 1978, in which his son was the defendant;
-- granted special consideration to his son by interviewing the arresting officer and reducing the charge from speeding to driving with an unsafe tire; and
-- failed to make a record of the case or report it as required to the State Comptroller.

Judge Schultz denied that he had afforded his son special consideration, and a hearing was held before a referee, the Honorable Simon J. Liebowitz. The referee's report, in substance, found the facts as alleged in the charges and concluded that the judge's failure to make a proper record and report the matter to the State Comptroller was "based on his intention to avoid discovery of his action."

The record of the hearing included reference to the fact that Judge Schultz had been censured only four months earlier by the Commission for asserting or acceding to special influence in 19 separate traffic cases.

Opportunity was provided for Judge Schultz to submit a memorandum and appear for oral argument with respect to the referee's report; he submitted a letter and waived oral argument.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated May 29, 1979, that Judge Schultz should be removed from office. The determination reads in part as follows.

> It is improper for a judge to render a decision in a judicial proceeding on the basis of a personal, and in this case a familial, relationship with the defendant. Both the Judiciary Law and the Rules Governing Judicial Conduct prohibit a judge from presiding over a case if he is related within the sixth degree of consanguinity to one of the parties.... By presiding over a case in which his son was the defendant, respondent clearly violated both the law and the applicable ethical standards.
>
> * * *
>
> Respondent's misconduct in this matter is exacerbated by the fact that he had been censured previously for similar misconduct.... Despite the censure in March 1978, respondent repeated the improper practice of ticket-fixing...in August 1978, compounding the impropriety with a violation of the Judiciary Law by presiding over a matter involving his son. Such conduct is inexcusable.

Judge Schultz did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on July 18, 1979. A copy of the determination is appended.

Matter of Francis R. Sobeck

Francis R. Sobeck was a justice of the Town Court of Wellsville in Allegany County. He was served with a Formal Written Complaint dated October 24, 1978, alleging that he permitted the Wellsville Medical Group to use his

name, judicial title and court address, in dunning letters which appeared threatening and were sent to more than 340 delinquent accounts, and that he accepted financial consideration therefor.

Judge Sobeck admitted the material allegations and entered into an agreed statement of facts dated January 25, 1979, with the Commission's administrator, stipulating to the facts as alleged in the formal charges. The Commission approved the agreed statement and provided Judge Sobeck the opportunity to submit a memorandum and appear for oral argument with respect to the issues of misconduct and sanction; he submitted memoranda and waived oral argument.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated July 2, 1979, that Judge Sobeck should be removed from office. The determination reads in part as follows.

> In allowing his judicial office to be used by a private medical group for debt-collecting purposes for more than two years, and by accepting a payment and credits for his acts, respondent's conduct both was improper and appeared to be improper and thereby undermined public confidence in the integrity and impartiality of the judiciary. At the least, the reasonable inference to be drawn from respondent's letters is that a judge of the court in which a debtor could be sued was playing an active role on behalf of a party to the dispute.
>
> Even if there were no question that the debtors would not be brought before respondent's court, respondent's conduct was improper. Judicial office is a position of honor which must be held only by those who will preserve and protect its independence and integrity; it is not to be lent to a private interest seeking to

> collect a private debt. The applicable principle is expressed in Section 33.2(c) of the Rules Governing Judicial Conduct: "No judge shall lend the prestige of his office to advance the private interests of others; nor shall any judge convey or permit others to convey the impression that they are in a special position to influence him...." Respondent's actions violate this standard.

Judge Sobeck did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on August 15, 1979. A copy of the determination is appended.

Matter of Richard Ralston

Richard Ralston was a justice of the Village Court of Schaghticoke in Albany County. He was served with a Formal Written Complaint dated February 28, 1979, alleging numerous acts of misconduct over a three and a half year period relating primarily to his failure to file prompt reports to the State Comptroller and dispose of official funds as required by law. Judge Ralston was also charged with failing to cooperate with the Commission and the State Department of Audit and Control in that he:

-- failed to respond to three written inquiries from the Commission during the investigation of these allegations;
-- failed twice to appear for testimony before the Commission as required by law during the investigation; and

-- failed to respond to ten written inquiries from the State Department of Audit and Control for required reports of his judicial accounts and activities.

Judge Ralston did not answer the Formal Written Complaint. The Commission thereafter granted the administrator's unopposed motion for summary determination on April 26, 1979, sustaining the formal charges and finding respondent's misconduct established. Opportunity was provided for Judge Ralston to submit a memorandum and appear for oral argument with respect to sanction, and he declined.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated July 2, 1979, that Judge Ralston should be removed from office. The determination reads in part as follows.

> The duty of a judge to report and remit promptly moneys collected in his judicial capacity must not be neglected, and the damage to public confidence in the judiciary resulting from a failure to so report is serious. His failure (i) to reply to ten requests by the Department of Audit and Control for reports and remittances, and (ii) to reply to five inquiries from this Commission in the course of a duly authorized investigation, compounds the initial misconduct and demonstrates a total disregard of the obligations of judicial office.

Judge Ralston requested review by the Court of Appeals of the Commission's determination. [On January 7, 1980, the requested review was dismissed for Judge Ralston's failure to perfect his appeal, and the Court ordered his removal from office on January 14, 1980. Judge Ralston moved to vacate the order dismissing his requested review. The Court denied the motion on February 5, 1980.]

Matter of Norman E. Kuehnel

Norman E. Kuehnel is a justice of the Town Court of Hamburg and the Village Court of Blasdell in Erie County. He was served with a Formal Written Complaint dated November 13, 1978, alleging misconduct with respect to his

-- engaging in an altercation with four youths in a grocery store parking lot in Blasdell;

-- striking one of the youths, a 13-year old boy, at the grocery store;

-- addressing taunting, derogatory comments and racial epithets toward the youths in the local police station after having them arrested; and

-- striking a second of the youths, a 15-year old boy, in police custody at the local police station.

Judge Kuehnel denied the material allegations, and a hearing was held before a referee, the Honorable Harold A. Felix. The referee's report in substance found the facts as alleged in the formal charges. Opportunity was provided for Judge Kuehnel to submit a memorandum and appear for oral argument with respect to the referee's report; he did not submit a memorandum but appeared by his attorney for oral argument.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated September 6, 1979, that Judge Kuehnel should be removed from office. A copy of the determination is appended. The determination reads in part as follows.

It was improper for respondent to have engaged in an angry verbal confrontation with the four youths on the evening of May 5, 1978, in the vicinity of Carlin's Grocery-Delicatessen. It was wrong for him to have struck in anger one of those youths, a 13-year old boy. It was improper for respondent to have taunted the four youths subsequently when they were in police custody at the Blasdell Police Station. It was wrong for respondent to have intentionally struck a second of the youths, a 15-year old boy in police custody in the Blasdell Police Station. Whatever verbal insolence by the youths may have motivated his acts, respondent's conduct far exceeded the provocation.

At the least, it is unseemly and injudicious for a judge to engage in such a fray with juveniles and to assault two of them physically. Indeed, having been recognized by the youths to be a judge and further having identified himself as a judge, respondent was obligated to set a dignified example for these youths and the community. Instead, his conduct diminished confidence in and respect for the judiciary and violated the applicable sections of the Rules Governing Judicial Conduct which require a judge to "himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved" (Section 33.1 of the Rules).

> Even were the Commission to attribute respondent's conduct at Carlin's to a reflexive, spur-of-the-moment confrontation, no such explanation would apply to respondent's subsequent conduct at the police station. In resuming the confrontation by taunting the youths at the police station, after some time had elapsed and after having had ample opportunity to reflect on his conduct at Carlin's and to temper his emotions, respondent exhibited exceedingly poor judgment.
>
> In any event, respondent's striking of the two youths is indefensible....

Judge Kuehnel requested review by the Court of Appeals of the Commission's determination. As of December 31, 1979, the matter was pending in the Court.

Matter of Harold Sashin

Harold Sashin is a justice of the Town Court of Wawarsing in Ulster County. He was served with a Formal Written Complaint dated August 3, 1979, alleging that he had failed to cooperate with an inquiry of the Ulster County Grand Jury in April and May 1979 and was subsequently convicted of perjury.

Judge Sashin admitted in part and denied in part the allegations, and a hearing was held before a referee, the Honorable Harold A. Felix. The referee's report in substance found the facts as alleged in the formal charges. Opportunity was provided for Judge Sashin to submit a memorandum and appear for oral argument with respect to the referee's report; he submitted a memorandum in lieu of oral argument.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated November 20, 1979, that Judge Sashin should be removed from office. A copy of the determination is appended. It reads in part as follows.

> There is no dispute in this case that portions of respondent's Grand Jury testimony were false....
>
> * * *
>
> Respondent failed to cooperate with a grand jury, and testified falsely while under oath before the grand jury.... Even in the absence of promulgated ethical standards, a judge would have an obligation to be truthful under oath. The very essence of judicial office in the administration of justice is corrupted by a judge who lies under oath. The consequent ebb of public confidence in the integrity of the judicial system is immeasurable...

Judge Sashin requested review of the Commission's determination by the Court of Appeals. As of December 31, 1979, the matter was pending in the Court.

Matter of James L. Kane

James L. Kane is a justice of the Supreme Court, Eighth Judicial District (Erie County). He was served with a Formal Written Complaint dated September 27, 1978, alleging that while a judge of the Erie County Court he:

-- appointed his son as referee in four mortgage foreclosure matters and ratified and confirmed his son's reports in four such cases;

-- appointed his son's law partner as receiver in two mortgage foreclosure matters in which fees in excess of $50,000 were allowed to the partner and shared by the judge's son; and

-- appointed the brother of Erie County Court Judge William G. Heffron as referee 33 times in mortgage foreclosure matters, knowing that Judge Heffron was contemporaneously appointing Judge Kane's son as referee 25 times in similar matters.

Judge Kane admitted in part and denied in part the allegations, and a hearing was held before a referee, the Honorable Harold A. Felix. The referee's report in substance found the facts as alleged in the formal charges. Judge Kane submitted a memorandum and appeared with counsel before the Commission for oral argument with respect to the referee's report.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated December 12, 1979, that Judge Kane should be removed from office. A copy of the Commission's determination is appended. It reads in part as follows.

> By appointing his son as a referee on four occasions, respondent engaged in conduct which the Rules Governing Judicial Conduct specifically prohibit....
>
> By ratifying and confirming the reports of his son as referee in four cases, respondent created the appearance of impropriety and failed to comply with that provision of the Rules which requires a judge to disqualify himself in a proceeding in which a person within the sixth degree of relationship to him is acting as a lawyer in the proceeding....
>
> By appointing his son's law partner...as a receiver in two cases...respondent violated that provision of the Rules which requires a judge to disqualify himself in a proceeding in which a person within the sixth degree of relationship to him "is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding"....
>
> By making 33 judicial appointments to the brother of another judge of the same court during the same 19-month period that the other judge was making 25 judicial appointments of a similar nature to respondent's son, with knowledge that the appointments at issue were being made contemporaneously, respondent created the appearance of serious impropriety and evinced an intention to circumvent the outright prohibition against nepotism with a disguised alternative....
>
> Even in the absence of a specific rule prohibiting nepotism, a judge should know that nepotism is wrong....

* * *

> Respondent's misconduct is so prejudicial to the administration of justice that the Commission concludes that respondent lacks the requisite fitness to serve and does not possess the moral qualities required of a judicial officer. His conduct and insensitivity to the egregiousness of his transgressions strike at the very heart of his fitness for high judicial office and require his removal.

Judge Kane requested review by the Court of Appeals of the Commission's determination. As of December 31, 1979, the matter was pending in the Court.

Determinations of Censure

Thirty-seven determinations of censure were rendered by the Commission in 1979. Thirty-two of these were with respect to ticket-fixing cases and are discussed in a separate section on ticket-fixing in this report. The remaining censures are discussed below.

Matter of Edward U. Green, Jr.

Edward U. Green, Jr., is a judge of the Suffolk County District Court. He was served with a Formal Written Complaint dated September 25, 1978, alleging misconduct with respect to his participation in a proceeding in the office of the Suffolk County police commissioner.

Judge Green and the Commission's administrator entered into an agreed statement of facts on February 9, 1979, stipulating to the facts as alleged in the formal charges. The Commission approved the agreed statement. Judge Green availed himself of the opportunity to both submit a memorandum and appear with counsel for oral argument with respect to the issues of misconduct and sanction.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated April 26, 1979, that Judge Green should be censured. The Commission found

that Judge Green was aware of a controversy which existed between the Suffolk County district attorney and police commissioner. By conducting what "purported to be a 'legal proceeding' in the office of the Suffolk County Police Commissioner concerning an individual in police custody" in which the individual was deliberately not advised of his constitutional rights and of which the district attorney had not been notified, Judge Green permitted his office to be used by the police commissioner in his dispute with the district attorney. The Commission deemed the judge's conduct "contrary to the interests of an independent judiciary."

Judge Green requested review by the Court of Appeals of the Commission's determination, but failed to perfect his appeal. The request for review was dismissed by the Court, and the Commission's determination was thereupon deemed final. A copy of the determination is appended.

Matter of Warren DeLollo

Warren C. DeLollo is a judge of the City Court of Watervliet in Albany County. Judge DeLollo serves as a judge part-time and is a practicing attorney. He was served with a Formal Written Complaint dated January 5, 1979, alleging that he had violated the applicable provisions of the Rules Governing Judicial Conduct which regulate the practice of law by part-time judges. In another instance,

Judge DeLollo was charged with misconduct for appearing as a lawyer in a case presided over by his brother, who was also a judge.

Judge DeLollo admitted the facts as alleged in the formal charges, and the Commission thereafter granted the administrator's unopposed motion for summary determination, sustaining the formal charges and finding the judge's misconduct established. Opportunity was provided for Judge DeLollo to submit a memorandum and appear for oral argument on sanction; he submitted a memorandum in lieu of oral argument.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated July 3, 1979, that Judge DeLollo should be censured. The determination reads in part as follows.

> It is improper for a part-time lawyer-judge in one county to practice law before another part-time lawyer-judge from the same county. In the Third Judicial Department, where these matters under consideration occurred, by Appellate Division rule it is impermissible for a part-time lawyer-judge in one county to practice criminal law in any other court in that county, whether or not the presiding judge is permitted to practice law. By writing letters to two other part-time lawyer-judges in Albany County, seeking favorable dispositions for the defendants in two traffic cases, respondent practiced law before other part-time lawyer-judges in Albany County and thereby violated the applicable ethical standards and rules cited above. His misconduct is compounded by the fact that, as a judge, respondent is subject as well to promulgated standards which require judges to promote the integrity and impartiality of the judiciary.

* * *

> With respect to respondent's practicing law in a case presided over by his brother, it was clearly improper for him to have done so. Such a practice can only undermine public confidence in the impartiality of the judiciary, and it thereby reflects poorly on the entire judicial system. Even in the absence of specific ethical standards regarding such conduct, respondent should have known better, particularly since he had served as a judge before as well as shortly after this incident, and is thereby presumed to have been acquainted with the ethical standards relevant to judicial proceedings.

Judge DeLollo did not request review by the Court of Appeals, and the Commission's determination therefore was deemed final. A copy of the determination is appended.

Matter of J. Douglas Trost

J. Douglas Trost is a judge of the Family Court in Erie County. He was served with a Formal Written Complaint dated August 10, 1978, alleging that (i) he was intemperate, injudicious and discourteous in five separate Family Court proceedings between 1974 and 1976 and (ii) he signed a false order based on a fictitious proceeding in order to allow a newspaper reporter to enter a correctional facility incognito to write a story.

Judge Trost answered the charges and a hearing was held before a referee, the Honorable Carman F. Ball. Upon consideration of the referee's report and both written and oral argument by Judge Trost and his attorney, the Commission sustained four of the five demeanor charges and the false order charge, and found the judge's misconduct established.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated August 13, 1979, that Judge Trost should be censured. The determination reads in part as follows.

> It is improper for a judge to speak to litigants in the injudicious, intemperate and discourteous manner respondent did in the cases cited....
>
> There is no justification for a judge to tell the people before him, as respondent did, to "get shotguns...and kill each other," or to call someone "a pain in the ass" in open court, or to advise one party "to hit [the other party] over the head with an axe." Such conduct demeans the judiciary and diminishes public confidence in the integrity of the legal system. It aggravates heightened emotions and issues in a judicial forum where emotions should be tempered and issues resolved.
>
> * * *
>
> The Commission rejects respondent's explanation that it is "effective at times [for a judge] to meet people at their own level and to use language and convey ideas that they would not understand if presented in any other fashion."

> Although respondent describes the setting of his court as "informal," his conduct fails to comport with reasonable standards of decorum and taste, appropriate even to an informal setting. He appears to have used the informality of his court to justify the denigration of those who appear in that court.

Judge Trost did not request review by the Court of Appeals, and the Commission's determination therefore was deemed final. A copy of the determination is appended.

Matter of Antonio S. Figueroa

Antonio S. Figueroa was a judge of the New York City Criminal Court. He was served with a Formal Written Complaint dated June 20, 1978, alleging that he improperly intervened in a felony proceeding in which the defendant was his great grandnephew.

Judge Figueroa answered the charges and a hearing was held before a referee, Henry D. Smith, Esq. The referee found, in substance, that Judge Figueroa had privately telephoned the judge who was presiding over his relative's case, to talk about the case in the hope that the call "might result in some advantage toward the disposition of the case." The referee also found that Judge Figueroa had testified falsely, while under oath, during the proceeding before the Commission.

Judge Figueroa submitted memoranda and appeared with counsel for oral argument with respect to the referee's report.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated November 1, 1979, that Judge Figueroa should be censured, noting that the judge was scheduled to retire on December 31, 1979. The determination reads in part as follows:

> While respondent was obviously motivated by an understandable concern for the plight of his great grandnephew, it was clearly improper for him to have called [the presiding judge], ex parte, in what amounted to an assertion of special influence.... While respondent's telephone call to [the presiding judge] may be attributed to a lapse of good judgment engendered by concern for the plight of his great grandnephew, no such inference may be made with respect to false testimony in the course of a disciplinary proceeding conducted well after [the great grandnephew's] case had been concluded in the courts. The defendant's plight was no longer at issue when respondent appeared before the Commission.

Judge Figueroa requested review by the Court of Appeals but failed to perfect his appeal. The request for review was dismissed by the Court, and the Commission's determination was thereupon deemed final. A copy of the determination is appended.

Matter of Arthur W. Lonschein

Arthur W. Lonschein is a justice of the Supreme Court, Eleventh Judicial District (Queens County). He was served with a Formal Written Complaint dated October 26, 1978, alleging that in three instances, while he was a judge of the New York City Civil Court, he improperly used the prestige of his office on behalf of a personal friend who had applied for a lease and licenses from various New York City government authorities.

Judge Lonschein denied the material allegations, and a hearing was held before a referee, the Honorable Bertram Harnett. Upon consideration of the referee's report and both written and oral argument by Judge Lonschein and his attorney, the Commission sustained one charge and two of three subdivisions of a second charge, and found the judge's misconduct established. The Commission found that Judge Lonschein had communicated with a New York City Councilman in 1975 and the then Deputy Commissioner of the New York City Taxi and Limousine Commission in order to request expedited service of his friend's applications.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated December 28, 1979, that Judge Lonschein should be censured. A copy of the determination is appended. It reads in part as follows.

A judge is required by the Rules Governing Judicial Conduct to conduct himself "at all times" in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Section 33.2[a]). His obligation to observe the applicable ethical standards may not be left behind in the robing room. Indeed, the very manner in which jurists are addressed as "Judge" and "Your Honor", off the bench as well as on, in private as well as in public, bespeaks of the public's perception of their high position and requires that judges be ever mindful of the manner in which their actions may be viewed. They must assiduously avoid conduct that may create even the appearance of impropriety. While this may often seem a difficult and burdensome responsibility, its faithful discharge is indispensable to the promotion of public confidence in the integrity and impartiality of the judiciary. The diligence required to discharge that responsibility cannot be relaxed.

In the instant matter, respondent sought from two public officials what amounted to special consideration on behalf of a close personal friend. Although respondent never expressly asserted his judicial office in seeking special consideration, the two public officials in fact knew him to be a judge, and his requests were undeniably accorded greater weight than they would have been had respondent not been a judge. Respondent knew or should have known that such would be the case.

The...Rules Governing Judicial Conduct specifically prohibit a judge from "allow[ing] his family, social, or other relationships to influence his judicial conduct or judgment...." The Rules also prohibit a judge from "lend[ing] the prestige of his office to advance the private interests of others...." Respondent's conduct in the instant matter violated the applicable standards.

Judge Lonschein requested review by the Court of Appeals. As of December 31, 1979, the matter was pending in the Court.

Determinations of Admonition

Thirteen determinations of admonition were rendered by the Commission in 1979. Nine of these were with respect to ticket-fixing cases and are discussed in a separate section in this report on ticket-fixing. The remaining admonitions are discussed below.

Matter of Walter C. Dunbar

Walter C. Dunbar is a justice of the Village Court of Watkins Glen in Schuyler County. He was served with a Formal Written Complaint dated December 11, 1978, alleging misconduct in that (i) he directed the defendants in six cases to make contributions to charities he identified, as a condition to discharging those six cases, and (ii) he failed to disqualify himself in one of those six cases despite having participated in the investigation and otherwise having personal knowledge of the facts and disputed issues.

Judge Dunbar and the Commission's administrator entered into an agreed statement of facts on March 14, 1979, stipulating in substance to the facts as alleged in the formal charges. The Commission approved the agreed statement and provided Judge Dunbar the opportunity to submit a memorandum and appear for oral argument with respect to the issues of misconduct and sanction; he submitted a memorandum in lieu of oral argument.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated July 3, 1979, that Judge Dunbar should be admonished. The determination reads in part as follows.

> It is improper for a judge to request or require a defendant to make a contribution to a charity in lieu of a fine. In Matter of Richter, 42 N.Y.2d(aa) (Ct. on the Judiciary 1977), the court declared that discharges conditioned on contributions by the defendant to charities, "[t]hough well-intentioned...[are] completely improper. A Judge is forbidden to solicit for charity; a fortiori, he may not direct contributions to charities, particularly where the recipient is specified." Id., 42 N.Y.2d at (hh).
>
> In the instant matter, respondent's misconduct rises to the level of that identified as improper by the court in Richter, in that he granted discharges conditioned on the defendants making charitable contributions. As a judge is prohibited by the Rules Governing Judicial Conduct from soliciting funds for a charitable organization (Section 33.5[f] of the Rules), so is he prohibited from using the power of his office to compel contributions to charities.
>
> With respect to Charge VI of the Formal Written Complaint, involving People v. Marty Butler and People v. Keith Paddock, respondent presided over both matters despite his participation in preparing the prosecution's case in both matters, and despite his admittedly being "upset" by the pre-trial conduct of one of the defendants. By so presiding over these matters, respondent violated Section 33.3(c)(1)(i) of the Rules Governing Judicial Conduct, which requires a judge to "disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including...instances where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."

Judge Dunbar did not request review by the Court of Appeals, and the Commission's determination therefore was deemed final. A copy of the determination is appended.

Matter of John D. D'Apice

John D. D'Apice is a judge of the City Court of Yonkers in Westchester County. He was served with a Formal Written Complaint dated October 26, 1978, alleging that (i) he improperly used stationery identifying him as a judge in a private dispute with an attorney and (ii) he improperly threatened the attorney with filing a professional grievance if the dispute were not resolved in the judge's favor.

Judge D'Apice denied the material allegations, and a hearing was held before a referee, Michael A. Cardozo, Esq. The referee concluded, in substance, that the burden of proof had not been met on the "stationery" charge and had been met on the "professional grievance" charge. Judge D'Apice submitted a memorandum and appeared by his attorney for oral argument with respect to the referee's report.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated July 3, 1979, that Judge D'Apice should be admonished. The determination reads in part as follows.

> Respondent's attempt to coerce Mr. Mangiatordi to pay the disputed claim, by threatening to file a professional grievance against him, was improper. Grievance proceedings are to determine matters of alleged professional misconduct and are not meant to be used as leverage by one party over another in a private dispute. Indeed, if respondent in fact believed Mr. Mangiatordi was guilty of professional misconduct...then he was under an obligation to report this fact to an appropriate disciplinary panel, whether or not the disputed amount was paid. For respondent to have acted otherwise would have meant that if a settlement had been reached, a matter of professional misconduct would have remained unreported and unexamined....

Judge D'Apice did not request review by the Court of Appeals, and the Commission's determination therefore was deemed final. A copy of the determination is appended.

Matter of Louis I. Kaplan

Louis I. Kaplan is a judge of the Civil Court of the City of New York and an acting Supreme Court Justice in New York County. He was served with a Formal Written Complaint dated November 27, 1978, alleging 17 charges of misconduct in that in 1975 he used intemperate and otherwise injudicious language, including profanities, toward defense counsel in open court, while presiding over a particular case.

Judge Kaplan and the Commission's administrator entered into an agreed statement of facts in February 1979, stipulating to the facts as alleged in the charges. The

Commission approved the agreed statement and provided Judge Kaplan the opportunity to submit a memorandum and appear for oral argument with respect to the issues of misconduct and sanction; he appeared by his attorney for argument.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated July 3, 1979, that Judge Kaplan should be admonished, noting in mitigation that Judge Kaplan had addressed a letter of apology to defendant's counsel. The judge did not request review by the Court of Appeals, and the Commission's determination therefore was deemed final. A copy of the determination is appended.

Matter of Anthony J. DeRose

Anthony J. DeRose is a judge of the City Court of Olean in Cattaraugus County. He was served with a Formal Written Complaint dated August 7, 1978, alleging that he had decided in advance to dismiss the first case he would hear as a new judge before even knowing what that case would be.

Judge DeRose answered the formal charges and a hearing was held before a referee, George M. Zimmermann, Esq. Upon consideration of the referee's report and written argument by Judge DeRose, who waived oral argument, the Commission sustained the formal charges and found the judge's misconduct established.

The Commission filed with the Chief Judge of the Court of Appeals its determination dated November 13, 1979, that Judge DeRose should be admonished. The determination reads in part as follows.

> Respondent's discretion to dismiss the charges in People v. George K. Leonard, or render any other disposition consistent with law, is not at issue. Respondent's conduct, however, violated the applicable ethical standards.... His decision, made in advance, to dismiss the first case to come before him upon his ascending the bench, before he even knew the nature and merits of that case, was improper.... Furthermore, respondent's public declarations to the defendant and several witnesses that the defendant had "hit the jackpot" were ill-considered and inappropriate. Such remarks diminish public confidence in the integrity and impartiality of the judiciary.

Judge DeRose did not request review by the Court of Appeals, and the Commission's determination therefore was deemed final. A copy of the determination is appended.

Letters of Dismissal and Caution

Pursuant to a rule of the Commission, 22 NYCRR 7000.1(1), a "letter of dismissal and caution" constitutes the Commission's written confidential suggestions and recommendations to a judge.

By issuing a letter of dismissal and caution upon dismissing a complaint in which the allegations did not rise to the level of sanctionable misconduct, the Commission can thus privately call a judge's attention to technical and other violations of ethical standards which should be avoided in the future. The confidential nature of the communication is particularly valuable since it is the only method by which the Commission may caution a judge as to his conduct without making the matter public.

Should the conduct addressed by the letter of dismissal and caution continue unabated or be repeated, the Commission may authorize an investigation which may lead to a Formal Written Complaint and further disciplinary proceedings.

In 1979, 78 letters of dismissal and caution were issued by the Commission, 52 of which were related to ticket-fixing. In sum total, the Commission has issued 187 letters of dismissal and caution since its inception on April 1, 1978. Of these, four were issued after formal charges had been sustained and determinations made that the judges had been guilty of misconduct.

Resignations Attributable to Commission Action

Eighteen judges resigned in 1979 while under investigation or under formal charges by the Commission.

Since 1975, a total of 79 judges have resigned while under investigation or charges by the temporary, former or current Commission.

The jurisdiction of the temporary and former Commissions was limited to incumbent judges. An inquiry was therefore terminated if the judge resigned and the matter could not be made public. The current Commission may retain jurisdiction over a judge for 120 days following a resignation. The Commission may proceed within this 120-day period, but only a determination of removal may be filed. (When rendered final by the Court of Appeals, the "removal" automatically bars the judge from holding judicial office in the future.) Thus, no action may be taken if the Commission decides within that 120-day period following a resignation that the judge should be admonished or censured.

Ticket-Fixing Proceedings

In June 1977, the former Commission issued a report on its investigation of a widespread practice which had been identified as ticket-fixing, that is, the assertion of influence to affect decisions in traffic cases, such as a judge making a request of another judge for favorable treatment on behalf of a defendant, or acceding to such a request from judges and others with influence. A "typical" favor involved one judge acceding to another's request to change a speeding charge to a parking violation, or a driving-while-intoxicated misdemeanor charge to a moving or non-moving violation (such as unsafe tire or faulty muffler) on the basis of favoritism.

The Commission has pursued these matters, many of which resulted in formal disciplinary proceedings being commenced and a number of judges disciplined.

In 1979, 139 ticket-fixing matters were concluded, resulting in the following:

-- 2 removals for improprieties in addition to ticket-fixing, one by the Commission (Matter of Schultz, above) and one by the Court on the Judiciary (Matter of Jones, below);

-- 2 suspensions for four months without pay by the Court, for improprieties additional to ticket-fixing (Matter of Jordan and Matter of Maidman, below);

-- 43 censures, 32 by the Commission and 11 by the Court on the Judiciary;

-- 9 admonitions by the Commission;

-- 52 letters of dismissal and caution by the Commission;

-- 13 matters closed upon the judge vacating office; and

-- 18 dismissed without action by the Commission.

These matters are set forth in greater detail below.

Determinations of Censure. The Commission rendered determinations of censure with respect to the following 32 judges upon completion of formal disciplinary proceedings:

George Baroody, a Justice of the Town Court of Manchester, Ontario County;

Andre Bergeron, a Justice of the Town Court of Lewis, Essex County;

Allan Brown, a Justice of the Town Court of Halfmoon, Saratoga County;

Roy J. Burley, a Justice of the Town Court of Ogden, Monroe County;

Carlton Chase, a Justice of the Village Court of Chittenango, Madison County;

John G. Dier, a Judge of the County Court, Warren County;

Philip Drollette, a Justice of the Town Court of Plattsburgh, Clinton County;

Rollin Fancher, a Justice of the Town Court of Dunkirk, Chautauqua County;

William Farr, a Justice of the Town and Village Courts of Avon, Livingston County;

Richard Folmsbee, a Justice of the Town Court of Princeton, Schenectady County;

Robert Forsythe, a Justice of the Town Court of Vernon, Oneida County;

Raymond Galarneau, a Justice of the Town Court of Waterford, Saratoga County;

Karl Griebsch, a Justice of the Town Court of Harrietstown, Franklin County;

Thomas Haberneck, a Justice of the Town Court of Newstead, Erie County;

Franklin Hallock, a Justice of the Town Court of East Fishkill, Dutchess County;

Willis Hammond, a Justice of the Town Court of Brutus, Cayuga County;

Harold Hennessy, a Justice of the Town and Village Courts of Lima, Livingston County;

James Jerome, a Justice of the Town Court of Geddes, Onondaga County;

Andrew Lang, a Justice of the Town Court of Pembroke, Genesee County;

Jack Levine, a Justice of the Town Court of Liberty, Sullivan County;

Patrick Maney, a Justice of the Town Court of East Greenbush, Rensselaer County;

Frank McDonald, a Justice of the Village Court of Catskill, Greene County;

John Modder, a Justice of the Town Court of Tuxedo, Orange County;

John O'Connor, a Justice of the Town Court of Wawayanda, Orange County;

Michael A. Pascale, a Justice of the Town Court of Marlborough, Ulster County;

James Reedy, a Justice of the Town Court of Galway, Saratoga County;

Edwin Sanford, a Justice of the Village Court of Altamont, Albany County;

Horace Sawyer, a Justice of the Village Court of Goshen, Orange County;

Vincent Scholl, a Justice of the Town Court of Kirkland, Oneida County;

Vernon Williams, a Justice of the Town Court of Palatine, Montgomery County;

Stanley Wolanin, a Justice of the Town Court of Whitestone, Oneida County; and

Theodore Wordon, a Justice of the Town Court of Durham, Greene County.

Judge Dier requested review of the Commission's determination in his case, and the Court of Appeals upheld the Commission's action. The other judges listed above did not request review, and the Commission's determinations therefore were deemed final.

Determinations of Admonition. The Commission rendered determinations of admonition with respect to the following nine judges upon completion of formal disciplinary proceedings, none of whom requested review by the Court of Appeals:

Charles Barrett, a Justice of the Town Court of Batavia, Genesee County;

Henry Burke, a Judge of the City Court of Hornell, Steuben County;

Walter Cmaylo, a Justice of the Town Court of Verona, Oneida County;

Joseph Johnson, a Justice of the Town Court of North Hudson, Essex County;

Isaac Kantrowitz, a Justice of the Village Court of Woodridge, Sullivan County;

Robert Keddie, a Justice of the Town Court of Sheridan, Chautauqua County;

Donald Reed, a Justice of the Town Court of Malta, Saratoga County;

Joseph Reich, a Justice of the Town Court of Tannersville, Greene County; and

Joseph Schwertfeger, a Justice of the Town Court of Floyd, Oneida County.

Court on the Judiciary Proceedings. Fourteen of the 19 matters pending in the Court on the Judiciary were concluded in 1979. The Court censured the following 11 judges for ticket-fixing:

Thomas Byrne, a Justice of the Town Court of Newburgh, Orange County;

George E. Carl, a Justice of the Town Court of Catskill, Greene County;

Charles Crommie, a Justice of the Town Court of Catskill, Greene County;

Joseph Geiger, a Justice of the Town Court of Waterford, Saratoga County;

Richard S. Hering, a Justice of the Town Court of Liberty, Sullivan County;

Richard Lips, a Justice of the Town Court of Clifton Park, Saratoga County;

Patrick Mataraza, a Justice of the Town Court of Clarkstown, Rockland County;

James M. McMahon, a Justice of the Town Court of Wallkill, Orange County;

Joseph Owen, a Justice of the Town Court of Wallkill, Orange County;

Vincent Pickett, a Judge of the City Court of Mechanicville, Saratoga County; and

Lawrence H. Schultz, Jr., a Judge of the City Court of Batavia, Genesee County.

The Court rendered more severe penalties in three cases, removing one judge and suspending two others without pay for four months, for improprieties in addition to ticket-fixing.

Justice Edward F. Jones, a justice of the Town Court of Coeymans in Albany County, was removed from office by the Court on the Judiciary. In addition to finding the judge guilty of misconduct for 14 ticket-fixing incidents, the Court sustained charges that Judge Jones had directed and encouraged the alteration of public court records by his court personnel in order to conceal evidence of ticket-fixing and thereby obstruct the Commission's investigation. The evidence before the Court established that, under the judge's direction, correspondence in his files and notations on traffic tickets and dockets, tending to show evidence of ticket-fixing, were removed, erased or obliterated before being made available to Commission investigators. The Court stated that Judge Jones'

> offenses are crimes...and they are specially subject to condemnation when performed by a public official engaged in obstructing an investigation into his own misconduct. A judicial officer responsible for such acts should not be permitted to retain his office.

Justice Robert W. Jordan, a justice of the Town Court of Esopus in Ulster County, was suspended from office by the Court on the Judiciary for four months without pay. In addition to sustaining one charge of ticket-fixing, the Court found that Judge Jordan had failed to cooperate with the Commission while it was conducting its investigation, that for seven months he denied Commission investigators access to public court records, and he twice failed to appear

before the Commission to testify despite having been required to do so pursuant to the Judiciary Law and despite having been advised to cooperate by the Chief Administrative Judge of the State of New York. The Court stated that the judge's misconduct was not

> excused by the fact that he eventually relented and furnished the records. It is one thing to resist the Commission's inquiries by colorable legal claims.... It is quite another to attempt to frustrate a valid investigation by untenable contentions, and grudging acquiescence. Respondent's conduct amounted to a wilfull refusal to cooperate.... Accordingly, respondent should be suspended....

Justice Robert Maidman, a justice of the Town Court of Clarkstown in Rockland County, was suspended from office by the Court on the Judiciary for four months without pay. The Court sustained 12 charges of ticket-fixing against Judge Maidman and, in determining the appropriate sanction, considered that the judge had been censured six years earlier by the Appellate Division, Second Department, for interceding on behalf of a village justice to have a petit larceny charge withdrawn. Although Judge Maidman argued "that his prior censure should not serve to increase the penalty which would otherwise be appropriate" in the instant case, the Court disagreed, noting that none of the other judges it had censured for ticket-fixing "had ever before been subject to judicial discipline." The Court stated:

> We feel that a more severe sanction is indicated in this case... [since] a judge's official conduct should be free from even the appearance of impropriety... [and respondent] had been previously publicly censured for a "lack of proper sensitivity, if not a disregard, for the appearance of judicial propriety."

Pending Court on the Judiciary Cases. As of December 31, 1979, five public proceedings in ticket-fixing and related matters were pending in the Court on the Judiciary, involving:

> Michael D. Altman, a Justice of the Town Court of Fallsburgh, Sullivan County;
>
> Murry Gaiman, a Justice of the Town Court of Fallsburgh, Sullivan County;
>
> Gioanna LaCarrubba, a Judge of the District Court, Suffolk County;
>
> Sebastian Lombardi, a Justice of the Town Court of Lewiston, Niagara County; and
>
> Wayne Smith, a Justice of the Town Court of Plattekill, Ulster County.

Summary of Ticket-Fixing Cases

From the beginning of the Commission's inquiry into ticket-fixing through 1979, actions taken with respect to ticket-fixing account for the following totals:

-- 2 removals;

-- 2 suspensions;

-- 74 censures;

-- 10 admonitions;

-- 133 letters of dismissal and caution;

-- 32 cases closed upon resignation by the judge;

-- 55 cases closed upon vacancy of office other than by resignation; and

-- 68 dismissals without action.

SUMMARY OF COMPLAINTS CONSIDERED BY THE TEMPORARY, FORMER AND CURRENT COMMISSIONS

Since January 1975, when the temporary Commission commenced operations, 3352 complaints of judicial misconduct against 1734 different judges have been considered by the temporary, former and current Commissions. (Two hundred seventy-nine of the 3352 complaints either did not name a judge or alleged misconduct against someone not within the Commission's jurisdiction.)

Of the 3352 complaints received since 1975, the following dispositions have been made:

-- 1987 dismissed upon initial review;

-- 1365 investigations authorized;

-- 559 dismissed without action after investigation;

-- 207 dismissed with caution or suggestions and recommendations to the judge;

-- 94 closed upon resignation of the judge;

-- 76 closed upon vacancy of office by the judge other than by resignation; and

-- 215 resulted in disciplinary action.

Of the 215 disciplinary matters above, the following actions have been recorded since 1975 in matters initiated

by the temporary, former or current Commissions.*

-- 10 judges were removed from office (two by the Appellate Division, one by the Court on the Judiciary and seven by the Court of Appeals after determination by the current Commission);

-- 3 determinations of removal rendered by the Commission were before the Court of Appeals on review as of December 31, 1979;

-- 2 judges were suspended without pay for six months (one by the former Commission, one by the Court on the Judiciary);

-- 2 judges were suspended without pay for four months (by the Court on the Judiciary);

-- 85 judges have been the subject of a determination of public censure (60 by the temporary, former or current Commission**, 23 by the Court on the Judiciary, two by the Appellate Division);

-- 13 judges have been the subject of a determination of public admonition by the Commission;

-- 59 judges have been privately admonished by the temporary or former Commission; and

-- 79 judges resigned during an investigation, upon the commencement of disciplinary hearings or during the hearings themselves. (The Court on the Judiciary entered an order barring one of these judges from holding future judicial office.)

* It should be noted that several complaints against a single judge may be disposed of in a single action. Thus, there is a slight discrepancy between the number of complaints which resulted in action and the number of judges disciplined.

** The Court of Appeals modified one determination of public censure to public admonition.

REVIEW OF COMMISSION DETERMINATIONS BY THE COURT OF APPEALS

Determinations rendered by the Commission are filed with the Court of Appeals and served upon the respondent-judge. The Judiciary Law provides that the judge has 30 days within which to request review of the Commission's determination by the Court of Appeals. If review is waived or not requested within 30 days, the Commission's determination becomes final.

Ten judges have requested review of Commission determinations. Three did not perfect their appeals and, in accordance with the rules of the Court of Appeals, their requests were dismissed.

Four reviews were concluded in 1979, as follows:

Matter of Morris Spector

The Court of Appeals rendered its first decision upon review of a Commission determination on June 5, 1979, in Matter of Morris Spector, 47 NY2d 462 (1979).

Morris Spector was a justice of the Supreme Court, First Judicial District. The Commission determined that he should be admonished for creating the appearance of impropriety in awarding judicial appointments, such as guardianships and receiverships, to the sons of two judges who he knew were awarding similar appointments to his son during the same period. The Commission confirmed the finding of the referee,

made after a hearing, that these cross-appointments were not made "with a view solely to [the appointees'] character and fitness," as required by the applicable canons and rules governing judicial conduct. The Commission also confirmed the referee's conclusion that the conduct of the judges in making these cross-appointments "suggest that appointments of each other's son were being made to avoid a charge of nepotism."

The Court of Appeals, in a per curiam opinion upholding the Commission's determination, criticized Judge Spector's conduct, and articulated the ethical standard for judges exercising powers of appointment:

> First, nepotism is to be condemned, and disguised nepotism imports an additional component of evil because, implicitly conceding that evident nepotism would be unacceptable, the actor seeks to conceal what he is really accomplishing. Second, and this is peculiar to the judiciary, even if it cannot be said that there is proof of the fact of disguised nepotism, an appearance of such impropriety is no less to be condemned than is the impropriety itself.

The Court noted the traditional disapproval of nepotism and explicitly condemned appointment practices which indirectly violate prohibitions against nepotism:

> Concededly this case does not present an instance of open nepotism. The appointment of his son by any judge would be both unthinkable and intolerable whatever might be the son's character and fitness or his father's peculiar qualification in the circumstances to assess such character and fitness. The

> enlarged evil in this instance is that an arrangement for cross-appointments would not only offend the anti-nepotism principle; it would go a step further, seeking to accomplish the objectives of nepotism while obscuring the fact thereof.

The opinion confirmed that judges are held to a stringent standard of ethics:

> As Chief Judge Cardozo wrote in Meinhard v. Salmon (249 NY 458, 464): "A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior." And there is no higher order of fiduciary responsibility than that assumed by a judge. It would ill befit the courts and the members of the judiciary to suggest that judges are to be measured against no higher norm of conduct than may at times and in some places unhappily have been perceived as reflecting the mores of a judicial marketplace.

A judge who knowingly creates a "circumstantial appearance of impropriety" is guilty of misconduct, the Court held, even in the absence of proof of any actual or intended impropriety.

The Court specifically rejected the defenses raised by Judge Spector in his request for review. For example, the Court held that the suggestion of a modus operandi in the courts which condoned Judge Spector's appointment practices was no excuse for his conduct. The Court stated: "To the extent that such a practice may have existed in certain areas, it has been aberrant; certainly it has had the support and approval only of its practitioners."

The Court also rejected the assertion that if the appointee is otherwise fully qualified to receive the appointment, his filial relationship with a member of the judiciary can be ignored. Such a relationship can be ignored only in "special circumstances," the Court stated, when the appointee is "uniquely qualified" and if the parties consent in open court. The Court also rejected the suggestion that it condemn only on a prospective basis the appearance of impropriety created by cross-appointments.

The vote of the Court was 5 to 1. Judge Fuchsberg dissented. Judge Meyer did not participate.

Matter of George C. Dixon

George C. Dixon is a justice of the Town Court of Ghent and the Village Court of Chatham in Columbia County. The Commission determined that he should be censured for having requested favorable consideration of two other judges on behalf of the defendants in two traffic cases.

The Court of Appeals, in an opinion dated July 3, 1979, accepted the Commission's finding that Judge Dixon's actions constituted judicial misconduct in that they created an appearance of impropriety. Matter of Dixon, 47 NY2d 523 (1979). The Court stated:

> Communications from one judge to another requesting, or appearing to request, special consideration for a defendant indicate a lack of impartiality and constitute misconduct within the meaning of the Code [of Judicial Conduct]. The record supports the Commission's finding that [Judge Dixon] engaged in such misconduct.

The Court, however, decided that upon the facts in the case, admonition was a more appropriate sanction than censure. The Court noted that Judge Dixon neither sought nor obtained personal benefit.

The vote of the Court was 4 to 2. Chief Judge Cooke and Judge Jasen dissented and voted to affirm the Commission's determination to censure Judge Dixon. Judge Meyer did not participate.

Matter of William J. Bulger

William J. Bulger is a justice of the Town Court of Wappinger in Dutchess County. The Commission determined that he should be censured for showing and seeking favoritism on behalf of the defendants in the disposition of 14 traffic cases.

The Court of Appeals, in a unanimous opinion dated September 18, 1979, sustained ten of the Commission's 14 charges and upheld the Commission's determination of censure, noting that Judge Bulger did not dispute the factual findings made by the Commission. The Court dismissed Judge Bulger's

contentions (i) that the Commission had not observed statutory procedural requirements and (ii) that he should not be censured because he is not a lawyer. Matter of Bulger, 48 NY2d 32 (1979).

Matter of John G. Dier

John G. Dier is a justice of the Supreme Court, Fourth Judicial District (Warren County). During the period involved in the Commission's determination, he was a judge of the County Court, Warren County.

The Commission determined that he should be censured for seeking favorable dispositions for the defendants in two traffic cases pending before other judges.

The Court of Appeals, in a unanimous opinion dated November 29, 1979, sustained the two charges and upheld the Commission's determination of censure. The Court dismissed Judge Dier's assertion that the Commission's factual findings did not afford an adequate basis for appellate review. Matter of Dier, 48 NY2d 874 (1979).

CHALLENGES TO COMMISSION PROCEDURES

In its last annual report, the Commission reported that a total of 77 challenges to its jurisdiction and procedures had been filed in the courts and in each of them the Commission's jurisdiction and procedures were upheld. These court decisions upheld Commission procedures concerning: the Commission's jurisdiction and scope of its authority and powers, the discretion to consider complaints and determine what to investigate, the fairness of the written notice given to judges of allegations of misconduct before they reply to the initial complaints, the fairness of charges filed, "discovery" (i.e. the records and statements given prior to hearings) and related subjects.

As of December 31, 1979, two challenges to the Commission's procedures were pending. Both pertained to the scope of the investigations the Commission may commence on its own motion. One was before the Court of Appeals and the other was before the Appellate Division, First Judicial Department.

The two cases pending are:

Matter of Nicholson and Lambert v. State Commission on Judicial Conduct, 72 AD2d 48 (1st Dept 1979), currently pending in the Court of Appeals; and

Matter of Darrigo v. State Commission on Judicial Conduct, NYLJ June 7, 1979, p.10, col. 3 (Sup Ct. 1st Dist, May 24, 1979), currently pending in the Appellate Division, First Department.

SPECIFIC PROBLEMS IDENTIFIED BY THE COMMISSION

In the course of its inquiries into individual complaints of misconduct, the Commission has identified certain types of misconduct which appear not to be isolated. Ticket-fixing, which has been discussed at length in previous Commission reports, is one example. Evidence of favoritism in appointments, improper financial management, poor record keeping and improper participation in political activities also has repeatedly come to the Commission's attention and deserves special comment in this report.

Nepotism and Favoritism in Appointments

The Code of Judicial Conduct, promulgated by the New York State and American Bar Associations, prohibits "nepotism and favoritism" in making judicial appointments, such as referees, receivers and guardians ad litem. The Rules Governing Judicial Conduct specifically restrict the appointment of relatives, directing that a "judge shall exercise his power of appointment only on the basis of merit, avoiding favoritism. A judge shall not appoint...any person...as an appointee in a judicial proceeding who is a relative within the sixth degree of relationship of either the judge or the judge's spouse." (Section 33.3[b][4].)

Two proceedings with respect to favoritism and nepotism in appointments have been completed and made public. A number are pending or were closed upon the resignation or retirement of the judge involved. One proceeding was dismissed and consequently not made public.

As reported at page 63, the Court of Appeals upheld the Commission's determination to admonish Supreme Court Justice Morris Spector for the appearance of impropriety created by his appointing the sons of other judges who contemporaneously were appointing his son in similar matters. As also noted at page 31, the Commission filed a determination of removal from office with respect to Supreme Court Justice James L. Kane. This case is before the Court of Appeals on review.

Political Activity

Since most judicial offices in New York State are filled by election, it is not unexpected that violations of various campaign-related rules would be alleged in complaints to the Commission.

Both the Rules Governing Judicial Conduct and the Code of Judicial Conduct set forth specific guidelines

limiting certain political activity by judicial candidates, implicitly obliging a judge or judicial candidate to avoid potential conflicts of interest that may later arise. As the Commission has observed in previous reports, the intent of the relevant laws, rules, ethical codes and opinions is to avoid the impression that, if elected, a judge will administer his office with a bias toward those who supported his candidacy. There is a particular vulnerability to such appearances with respect to a judicial candidate's more generous financial supporters, for example, and others who were contributors or were particularly active in the campaign. The applicable standards are described below.

A candidate for judicial office, including an incumbent running for re-election, should not "solicit or accept campaign funds or solicit publicly stated support" (Canon 7B[2] of the Code). A judicial candidate should create a committee to manage the financial activities of the campaign, so that the candidate is not involved in such activities.

The New York Election Law (Section 14-102) requires a public filing of a list of campaign contributors, presumably based on the theory that potential conflicts of interest may be avoided by a judge or challenged by an adversary more readily if the identities of a judge's contributors are public.

A judicial candidate for judicial office should, during the campaign, "maintain the dignity appropriate to judicial office" (Canon 7B[1][a] of the Code of Judicial Conduct). The Code suggests that the candidate

> should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position or other fact. (Canon 7B[1][c])

The purchase of tickets for politically-sponsored events, and attendance at those events, are addressed in the Rules Governing Judicial Conduct. A judicial candidate may attend politically-sponsored dinners or other affairs if such attendance is in accord with the detailed time requirements set forth in Section 33.7(a)(1) of the Rules.

Once in office, a judge is prohibited from making contributions, directly or indirectly, to a political campaign for any office or to any other political activity (Section 33.7[b] of the Rules). Participation in any campaign, other than his own, is clearly prohibited by Section 33.7(c) of the Rules. A judge therefore should not make speeches for a political organization or candidate, or publicly endorse a candidate. (Public endorsement does not include having one's name on the same ticket with another candidate.)

A judge must not, during his term of office, hold any office in a political party, club or organization (Section 33.7 of the Rules). Membership in political clubs is permitted but the Rules clearly state that such membership is not encouraged (Section 33.7[d]). In a generally-worded provision, the Rules prohibit any other activity of a partisan political nature (Section 33.7[e]).

The New York State Constitution prohibits incumbent judges from running for non-judicial office, and the Code affirmatively states that a judge should resign upon becoming a candidate in a primary or general election for non-judicial office.

The Commission recommends that the Rules be amended to advise all judges whether they may attend their own fundraisers (in which event they would meet their contributors). The Commission recommends further that judges be <u>specifically</u> advised by Section 33.7(a)(2) of the Rules whether the purchase of a ticket to a political dinner at a cost that exceeds the cost of the dinner constitutes an improper contribution. Although this is suggested by the Rules, there have been sufficient doubts expressed by judicial candidates to warrant clarification of the applicable rule.

In 1979 the Commission considered a number of complaints in which these and other rules pertaining to political activity were allegedly violated. In a number of these cases, the complaints were dismissed with a caution to the judge to adhere more carefully to the technical requirements of the Rules.

In two cases in which the activities of the particular judges were considered more than technical violations, Formal Written Complaints were served and formal disciplinary proceedings thereby commenced. In each case, consideration of the charges resulted in a finding by the Commission of misconduct. The Commission thereafter determined that a public sanction was not warranted in either of these cases and that a letter of dismissal and caution was appropriate.

The necessities of raising funds and assembling a campaign organization may raise problems in adhering to the applicable Rules. Yet the necessity to preserve and foster public confidence in the integrity and impartiality of the judiciary requires no less than strict adherence to the Rules so as to dispel any impression of a judiciary too oriented toward politics to administer justice evenly and properly.

Improper Financial Management and Record Keeping

In the course of its investigations, which often require review of court files and records, and from regular reports forwarded to the Commission by the Office of the State Comptroller, Department of Audit and Control, the Commission has identified some particularly disturbing problems, especially in the local town and village courts, involving monetary deficiencies in official court accounts and poor record keeping in other areas.

Financial Shortages

Monies collected by a local court from fines, fees, bail and other sources are required by law to be deposited promptly in official court bank accounts, recorded promptly in court record books and reported promptly to the State Comptroller. In 1979, several cases involving violations of these procedures were completed by the Commission. As noted earlier in specific summaries, the Commission determined that four judges should be removed from office for serious financial shortages and related irregularities over long periods of time. (See Matter of John H. Dudley, Matter of James O. Kane, Matter of Frank Manion and Matter of Richard Ralston, above. Judges Dudley, Kane, Manion and Ralston were in fact removed.) Commission investigations and proceedings in a number of other audit and control related matters are continuing.

Record Keeping

Inadequate record keeping is not limited to financial matters. The Commission has identified other common examples of poor record keeping, such as a failure to keep dockets, indices of the cases on a court calendar and other records required by law. In a few instances, Commission staff has found money attached to docket books or kept for long periods of time in desk drawers and other containers. Posting of records is sometimes delayed for years. Records sometimes are illegible. At other times, certain records are not maintained at all.

Improper or non-existent record keeping practices not only make it difficult to assess the status of particular cases, they inevitably lead to suspicions of impropriety, and the Commission in fact found this to be so in a number of cases concluded in 1979. Village Court Justice James O. Kane of Unadilla, for example, who was removed, was found to have falsely certified cases to the State Comptroller and to have made false entries on his motor vehicle docket. (See Matter of James O. Kane above.) Town Court Justice Harold H. Schultz of New Scotland, who was removed, was found to have failed intentionally to make a record of a case in which the defendant was his son and in which he had granted special consideration. (See Matter of Harold H. Schultz above.) Village Court Justice John H. Dudley of Cato, who

was removed, was found to have failed to keep certain required records, such as a docket of cases, and to have failed to dispose of more than 50 traffic cases over a five-year period. (See Matter of John H. Dudley above.)

The problem of poor record keeping is not limited to a particular part of the state. In part, the problems stem from the failure of some towns and villages to provide adequate financial resources and clerical assistance to the local courts where records problems most often arise. Training programs should be developed to better acquaint judges with the appropriate requirements and the techniques to meet them. Furthermore, throughout the year, administrative judges should make greater efforts to instruct, supervise and monitor the progress of town and village justices in this regard. Such supervision does not exist in many parts of the state.

Debt Collecting

In its previous annual report, the Commission reported on several cases involving allegations that some judges were using the prestige of judicial office to enforce the payment of debts owed to the judges themselves or others.

In 1979, Town Court Justice Francis R. Sobeck of Wellsville was found to have permitted a private medical group to use his name, judicial title and court address, in letters which appeared threatening, to collect over 340 delinquent accounts, and he accepted financial consideration for this improper use of his judicial position. (See Matter of Francis R. Sobeck above.) Judge Sobeck was removed from office.

The misuse of judicial office need not be so blatant as in Matter of Sobeck in order to create an appearance of impropriety and constitute misconduct. Many part-time judges seem to believe it is their function to assist in the collection of allegedly outstanding debts. They have undertaken the role of a collection agency, for no fee or other benefit, on the apparent premise that they are "settling" cases and avoiding litigated cases. They seem to be acting in this regard with good intentions, but their conduct nevertheless is improper.

Part-time judges who operate businesses, for example, have a special obligation to avoid the impropriety of using their judicial office to advance their personal and business interests. One part-time judge used his stationery to collect an amount due to his retail business. Even writing relatively innocuous business letters on court stationery, as a number of judges have done, may be an improper use of the prestige of the court. Full-time judges as well have used their stationery for business and debt collection purposes. (See Mattei of D'Apice above.)

Failure To Cooperate with the Commission

As reported in its previous two annual reports, the Commission has encountered several situations in which judges under investigation have failed to cooperate with the Commission during its inquiries. Records which by law are public have sometimes been withheld from Commission investigators. Despite follow-up letters, correspondence from the Commission has sometimes gone unanswered, and on at least one occasion, court records which the Commission had requested were actually destroyed at a judge's direction.

The Commission and the courts have dealt severely with judges who have so obstructed proceedings duly authorized in law. The Court on the Judiciary removed Town Justice Edward F. Jones of Coeymans for directing the alteration of public court records (including the erasure, obliteration and removal of certain portions of those records) by his court personnel in order to conceal evidence of ticket-fixing and thereby obstruct a Commission investigation. (See Matter of Edward F. Jones above.)

The Court suspended Town Court Justice Robert W. Jordan of Esopus for four months without pay for his denial of access to public records by Commission staff over a seven-month period and for his failure to appear before the Commission to testify despite having been required by law to do so. (See Matter of Robert W. Jordan above.)

The Commission, in Matter of Dudley, above, determined to remove the judge, inter alia, for his failure to respond to inquiries from the Commission. In Matter of Ralston, above, the Commission also determined to remove the judge, inter alia, for his failure to appear before the Commission to testify and for his failure to respond to three written inquiries from the Commission and ten from the State Department of Audit and Control.

Clearly, a judge who denies access to his court files by Commission investigators is acting outside the law and may be engaging in an act of misconduct independent of the allegations underlying the investigation. As section 2019-a of the Uniform Justice Court Act states:

> Any such justice who shall willfully fail to...exhibit such records and docket when reasonably required...shall be guilty of a misdemeanor and shall, upon conviction, in addition to the punishment provided by law for a misdemeanor, forfeit his office.

It should not be necessary, as it has been in the past, for the Commission to subpoena public court records because a judge refused to make them available, or rummage through cartons of public court records kept in inaccessible places to review public documents. It shall continue to be the Commission's policy to consider as misconduct any action by a judge which denies the Commission staff access to court records or which otherwise unreasonably interferes in the discharge of Commission investigations and proceedings.

Improper Delegation of Authority

The Commission has become aware of a number of judges who have delegated judicial duties improperly to their clerks, or have failed to supervise adequately court employees who, in effect, have been adjudicating undelegable matters assigned by law to the judge. Several judges, appearing before the Commission in connection with other matters, have testified as to specific instances of such improper procedures.

One judge, for example, acknowledged that he permitted his clerk not only to accept guilty pleas from first offenders in traffic cases but also to impose fines at her discretion. The judge testified that "...the case is handled by her [his clerk] and I never know anything about it...." The judge said it was his practice to sign the dockets, routinely filled in by his clerk, without reading them. He testified, that, in so doing, he assumed his clerk had handled the cases properly.

Another judge acknowledged that he allows his clerk discretion to grant unconditional discharges and levy fines up to ten dollars in certain traffic cases, such as driving without proof of insurance.

A third judge testified that his court clerk, who happens to be his daughter, may have signed the judge's name to letters on official court stationery without his knowledge.

Such delegations of judicial authority and failure to properly supervise court personnel, as illustrated above, are without authority in law and are contrary to the applicable provisions of the Rules Governing Judicial Conduct, which require judges to discharge their responsibilities diligently and to oversee the activities of their staffs and court officials. Court clerks do not have the authority to adjudicate disputes, no matter how simple the matters may appear, and judges have an obligation to ensure that any responsibility that is delegated may lawfully be delegated, subject to careful supervision.

The Need for Better Training and Continuing Supervision

The Commission has reported in previous annual reports that some judges testifying before the Commission have professed ignorance of the standards and rules of judicial conduct. While New York law requires training for all non-lawyer town and village court justices, ignorance of judicial ethics is not limited to either lay or part-time judges. Many of the problems identified in this report should be addressed in training programs presently conducted by the Office of Court Administration for non-lawyer judges in part-time courts, and included in training programs which should be instituted for part-time lawyer-judges and the full-time judiciary as well.

Ethical Standards. It is important to review with all judges as they enter office the high standards expected of them and to familiarize them with relevant court opinions, advisory opinions and related materials.

The Commission recommends as it has in previous years that judicial training programs include a more intensive review of judicial ethical standards for the entire judiciary.

Administrative Training. It cannot be assumed that a judge will be adequately versed in the techniques of record keeping and judicial administration in general. As noted

previously, the Commission has been made aware repeatedly of the woeful conditions in which many local judges keep their records, including accounts of money received in their official capacity. Obviously, the training that is offered to meet these administrative responsibilities has not been successful. The part-time judiciary, including both lay and lawyer judges, for the most part, do not enjoy the professional administrative support made available to the full-time judiciary. Practical training for these judges should be improved and the importance of proper record keeping and administration stressed. The serious nature of certain inadequate practices could result in removal from office. Court administrators and administrative judges should strive to improve further judicial training programs and their own supervisory techniques, to ensure that adequate standards are not only taught but observed.

CONCLUSION

An honorable judiciary worthy of the people's confidence is essential to the fair and proper administration of justice. As members of the State Commission on Judicial Conduct, we believe that the Commission's efforts contribute to that goal. We believe that the highest interests of the judiciary and the public are best served by inquiring into allegations of judicial misconduct. Investigations are not undertaken to establish that judges have engaged in misconduct; rather, they are intended to ascertain whether there has been misconduct. We have adopted procedures which are fair and workable. We have attempted in our determinations to protect equally the rights of the public and the independence of the judiciary.

Respectfully submitted,

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Members of the State Commission
on Judicial Conduct

CONTINUED

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APPENDIX A

BIOGRAPHIES OF COMMISSION MEMBERS

HONORABLE FRITZ W. ALEXANDER, II, is a graduate of Dartmouth College and New York University School of Law. He was appointed a Justice of the Supreme Court for the First Judicial District by Governor Hugh L. Carey in September 1976 and elected to that office in November 1976. He was a Judge of the Civil Court of the City of New York from 1970 to 1976. He previously was senior partner in the law firm of Dyett, Alexander & Dinkins and was Executive Vice President and General Counsel of United Mutual Life Insurance Company. Judge Alexander is a former Adjunct Professor of Cornell Law School, and he currently is a Trustee of the Law Center Foundation of New York University Law School and a Director of the New York Society for the Prevention of Cruelty to Children. He is a member and past President of the Harlem Lawyers Association, a member of the Association of the Bar of the City of New York and the National Bar Association, and he serves as a member of the Executive Committee of the Judicial Council of the National Bar Association. Judge Alexander is a member and founder of 100 Black Men, Inc., and founder and past President of the Dartmouth Black Alumni Association.

DAVID BROMBERG, ESQ., is a graduate of Townsend Harris High School, City College of New York and Yale Law School. He is a member of the firm of Bromberg, Gloger, Lifschultz & Marks. Mr. Bromberg served as counsel to the New York State Committee on Mental Hygiene from 1965 through 1966. He was elected a delegate to the New York State Constitutional Convention of 1967, where he was secretary of the Committee on the Bill of Rights and Suffrage and a member of the Committee on State Finances, Taxation and Expenditures. He serves, by appointment, on the Westchester County Planning Board. He is a member of the Association of the Bar of the City of New York and has served on its Committee on Municipal Affairs. He is a member of the New York State Bar Association and is presently serving on its Committee on the New York State Constitution. He serves on the National Panel of Arbitrators of the American Arbitration Association.

HONORABLE RICHARD J. CARDAMONE is a graduate of Harvard College and the Syracuse University School of Law. He was appointed in January 1963 as a Justice of the Supreme Court for the Fifth Judicial District of New York by the late Governor Nelson A. Rockefeller and was elected to that position in November 1963. In January 1971 he was designated to serve on the Appellate Division, Fourth Department. He was later re-designated to a permanent seat on the Appellate Division by Governor Hugh L. Carey and is presently serving as the Senior Associate Justice. Judge Cardamone has served by appointment of the Chief Judge of the Court of Appeals on a number of specially convened Courts on the Judiciary to hear and determine issues regarding judicial conduct. He is a past President of the New York State Supreme Court Justices Association and presently serves as a member of its Executive Committee.

DOLORES DEL BELLO received a baccalaureate degree from the College of New Rochelle and a masters degree from Seton Hall University. She is presently Director of University Information/Westchester for Pace University, host of a live radio interview program in White Plains, and Arts Coordinator for the Westchester County government's Art in Public Places Program. Mrs. DelBello is a member of the League of Women Voters, the Board of Directors and Executive Board of the Westchester Council for the Arts, the Board of Directors for Clearview School, Hadassah, and a member of Alpha Delta Kappa, international honorary society for women educators.

MICHAEL M. KIRSCH, ESQ., a graduate of Washington Square College of New York University and its law school, is a member of the firm of Goodman & Mabel & Kirsch. He is a member of the Trustees Council and former President of the Brooklyn Bar Association (1971-1972) and was a member of the House of Delegates of the New York State Bar Association (1972-1978). He is a member of the American Bar Association, the American Judicature Society, and the International Association of Jewish Lawyers and Jurists. He is also a member of the Committee on the Jury System of the Advisory Committees on Court Administration of the First and Second Judicial Departments, and a former member of the Judiciary Relations Committee for the Second and Eleventh Judicial Districts. Mr. Kirsch has been a member of this Commission since its inception.

VICTOR A. KOVNER, ESQ., is a graduate of Yale College and the Columbia Law School. He is a partner in the firm of Lankenau Kovner & Bickford. Mr. Kovner has been a member of the Mayor's Committee on the Judiciary since 1969. He was a member of the Governor's Court Reform Task Force and now serves on the board of directors of the Committee for Modern Courts. Mr. Kovner is a member of the Association of the Bar of the City of New York, and serves as a member of its Special Committee on Communications Law. He is also a member of the advisory board of the Media Law Reporter. He formerly served as President of Planned Parenthood of New York City.

WILLIAM V. MAGGIPINTO, ESQ., is a graduate of Columbia College and Columbia Law School. He is a senior partner with Anderson, Maggipinto, Vaughn & O'Brien in Sag Harbor (N.Y.), and a trustee of Sag Harbor Savings Bank. Mr. Maggipinto is a past President of the Suffolk County Bar Association, and Vice President and a Director of the Legal Aid Society of Suffolk County. He serves on the Committee on Judicial Selection of the New York State Bar Association, and was, for three years, Chairman of the Suffolk County Bar Association Judiciary Committee. He has also served as a Town Attorney for the Town of Southampton, and as a Village Attorney for the Village of Sag Harbor. Mr. Maggipinto has been a member of the Commission since its inception.

MRS. GENE ROBB is a graduate of the University of Nebraska. She is a former President of the Women's Council of the Albany Institute of History and Art and served on its Board. She also served on the Chancellor's Panel of University Purposes under Chancellor Boyer, later serving on the Executive Committee of that Panel. She served on the Temporary Hudson River Valley Commission and later the permanent Hudson River Valley Commission. She serves on the National Advisory Council of the Salvation Army and is a member of the Board of the Salvation Army Executive Committee for the New York State Plan. She is on the Board of the Saratoga Performing Arts Center, the Board of the Albany Medical College and the Board of Trustees of Siena College. Mrs. Robb has been a member of the Commission since its inception.

HONORABLE ISAAC RUBIN is a graduate of New York University, the New York University Law School (J.D.) and St. John's Law School (J.S.D.). He is presently a Justice of the Supreme Court, Ninth Judicial District, and Deputy Administrative Judge of the County Courts and superior criminal courts, Ninth Judicial District. Judge Rubin previously served as a County Court Judge in Westchester County, and as a Judge of the City Court of Rye, New York. He is a director and former president of the Westchester County Bar Association. He has also served as a member of the Committee on Character and Fitness of the Second Judicial Department, and as a member of the Nominating Committee and the House of Delegates of the New York State Bar Association.

HONORABLE FELICE K. SHEA is a graduate of Swarthmore College and Columbia Law School. She is a Judge of the Civil Court of the City of New York, presently serving as an Acting Justice of the Supreme Court, New York County. Judge Shea is a Fellow of the American Bar Foundation, a Fellow of the American Academy of Matrimonial Lawyers, a member of the Special Committee of the American Bar Association on the Resolution of Minor Disputes and a director of the New York Women's Bar Association. She is also a member of the Association of the Bar of the City of New York and serves on its Special Committee on Consumer Affairs.

CARROLL L. WAINWRIGHT, JR., ESQ., is a graduate of Yale University and the Harvard Law School and is a member of the firm of Milbank, Tweed, Hadley & McCloy. He served as Assistant Counsel to Governor Rockefeller, 1959-1960, and presently is a Trustee of The American Museum of Natural History, The Boys' Club of New York, and The Cooper Union for the Advancement of Science and Art. He is a member of the Church Pension Fund of the Episcopal Church and a member of the Yale University Council. He is a former Vice President of the Assocation of the Bar of the City of New York and is a member of the American Bar Association, the New York State Bar Association and the American College of Probate Counsel. Mr. Wainwright has been a member of the Commission since its inception.

COMMISSION ADMINISTRATOR

GERALD STERN, ESQ., is a graduate of Brooklyn College, the Syracuse University College of Law and the New York University School of Law, where he received an LL.M. in Criminal Justice. Mr. Stern has been Administrator of the Commission since its inception. He previously served as Director of Administration of the Courts, First Judicial Department, Assistant Corporation Counsel for New York City, Staff Attorney on the President's Commission on Law Enforcement and the Administration of Justice, Legal Director of a legal service unit in Syracuse, and Assistant District Attorney in New York County.

APPENDIX B

OPERATING PROCEDURES AND RULES
OF THE STATE COMMISSION ON JUDICIAL CONDUCT

Section 7000.1 Definitions.

For the purpose of this Part, the following terms have the meaning indicated below:

(a) Administrator means the person appointed by the commission as administrator.

(b) Administrator's Complaint means a complaint signed by the administrator at the direction of the commission, which is filed as part of the commission's records.

(c) Answer means a verified response in writing to a formal written complaint.

(d) Complaint means a written communication to the commission signed by the complainant, making allegations against a judge as to his qualifications, conduct, fitness to perform or the performance of his official duties, or an administrator's complaint.

(e) Commission means the State Commission on Judicial Conduct.

(f) Dismissal means a decision at any stage not to proceed further.

(g) Formal Written Complaint means a writing, signed and verified by the administrator of the commission, containing allegations of judicial misconduct against a judge for determination at a hearing.

(h) Hearing means an adversary proceeding at which testimony of witnesses may be taken and evidentiary data and material relevant to the Formal Written Complaint may be received and at which the respondent judge is entitled to call and cross-examine witnesses and present evidentiary data and material relevant to the Formal Written Complaint.

(i) Initial Review and Inquiry means the preliminary analysis and clarification of the matters set forth in a complaint and the preliminary fact-finding activities of commission staff intended to aid the commission in determining whether or not to authorize an investigation with respect to such complaint.

(j) Investigation, which may be undertaken only at the direction of the commission, means the activities of the commission or its staff intended to ascertain facts relating to the accuracy, truthfulness or reliability of the matters alleged in a complaint. An investigation includes the examination of witnesses under oath or affirmation, requiring the production of books, records, documents or other evidence that the commission or its staff may deem relevant or material to an investigation, and the examination under oath or affirmation of the judge involved before the commission or any of its members.

(k) Judge means a judge or justice of any court in the unified court system of the State of New York.

(l) Letter of Dismissal and Caution means the written confidential suggestions and recommendations referred to in section 7000.3, subdivision (c) of these rules.

(m) Retirement means a retirement for physical or mental disability preventing the proper performance of judicial duties.

(n) Referee means any person designated by the commission pursuant to section 43, subdivision 2, of the Judiciary Law to hear and report on any matter in accordance with the provisions of section 44, subdivision 4, of the Judiciary Law.

Section 7000.2 Complaints.

The commission shall receive, initiate, investigate and hear complaints against any judge with respect to his qualifications, conduct, fitness to perform, or the performance of his official duties. Prior to commencing an investigation of a complaint initiated by the commission, the commission shall file as part of its records an administrator's complaint.

Section 7000.3 Investigations and Dispositions.

(a) When a complaint is received or when the administrator's complaint is filed, an initial review and inquiry may be undertaken.

(b) Upon receipt of a complaint, or after an initial review and inquiry, the complaint may be dismissed by the commission, or when authorized by the commission, an investigation may be undertaken.

(c) During the course of or after an investigation, the commission may dismiss the complaint, direct further investigation, request a written response from the judge who is the subject of the complaint, direct the filing of a Formal Written Complaint or take any other action authorized by section 22 of article 6 of the Constitution or article 2-A of the Judiciary Law. Notwithstanding the dismissal of a complaint, the commisison, in connection with such dismissal, may issue to the judge a letter of dismissal and caution containing confidential suggestions and recommendations with respect to the complaint, the commission's initial review and inquiry, or the commission's investigation as they pertain to the judge.

(d) Any member of the commission, or the administrator, may administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation, and require the production of any books, records, documents or other evidence that may be deemed relevant or material to an investigation. The commission may, by resolution, delegate to staff attorneys and other employees designated by the commission the power to administer oaths and take testimony during investigations authorized by the commission. If testimony is taken of a judge under investigation, during the course of an investigation authorized by the commission, at least one member of the commission shall be present.

(e) In the course of the investigation, the commission may require the appearance of the judge involved before the commission, or any of its members, in which event the judge shall be notified in writing of his required appearance either personally, at least three days prior to such appearance, or by certified mail, return receipt requested, at least five days prior to such appearance. A copy of the complaint shall be served upon the judge at the time of such notification.

(f) The judge shall have the right to be represented by counsel during any and all stages of the investigation at which his appearance is required and to present evidentiary data and material relevant to the complaint by submitting such data and material, including a written statement, or by making an oral statement which shall be transcribed. Counsel for the judge shall be permitted to advise him of his rights and otherwise confer with him subject to reasonable limitations to prevent obstruction of or interference with the orderly conduct of the investigatory proceeding. A transcript of the judge's testimony shall be made available to the judge without cost.

(g) A non-judicial witness required to appear before the commission shall have the right to be represented by his or her counsel who may be present with the witness and may advise the witness, but may not otherwise take any part in the proceeding.

Section 7000.4 Use of Letter of Dismissal and Caution in Subsequent Proceedings.

A letter of dismissal and caution may be used in subsequent proceedings only as follows:

(a) The fact that a judge had received a letter of dismissal and caution may not be used to establish the misconduct alleged in a subsequent proceeding. However, the underlying conduct described in the letter of dismissal and caution may be charged in a subsequent Formal Written Complaint, and evidence in support thereof may be presented at the hearing.

(b) A judge may be questioned with respect to receipt of a prior letter of dismissal and caution where its subject matter is related to the misconduct alleged in a subsequent Formal Written Complaint.

(c) Upon a finding by the commission of a judge's misconduct, a letter of dismissal and caution may be considered by the commission in determining the sanction to be imposed.

Section 7000.5 Use of Letter of Suggestions and Recommendations of Former State Commission on Judicial Conduct and Temporary State Commission on Judicial Conduct.

A letter of suggestions and recommendations sent to a judge by the former State Commission on Judicial Conduct or the Temporary State Commission on Judicial Conduct may be used in the same manner and for the same purposes in subsequent proceedings as a letter of dismissal and caution may be used as indicated in section 7000.4 of these rules.

Section 7000.6 Procedure Upon a Formal Written Complaint.

(a) Applicable Law

If the commission determines that a hearing is warranted, the procedures to be followed are those set forth in section 44, subdivision 4, of the Judiciary Law.

(b) Answer

A judge who is served with a Formal Written Complaint shall serve his answer verified by him within twenty (20) days of service of the Formal Written Complaint. The answer shall contain denials of those factual allegations known or believed to be untrue. The answer shall also specify those factual allegations as to the truth of which the judge lacks knowledge or information sufficient to form a belief, and this shall have the effect of a denial. All other factual allegations in the charges are deemed admitted. The answer may also contain affirmative and other defenses, and may assert that the specified conduct alleged in the Formal Written Complaint is not improper or unethical. Failure to answer the Formal Written Complaint shall be deemed an admission of its allegations.

(c) Summary Determination

Either party may move before the commission for a summary determination upon all or any part of the issues being adjudicated, if the pleadings, and any supplementary materials, show that there is no genuine issue as to any material fact and that the moving party is entitled to such decision as a matter of law. If a summary determination is granted, the commission shall provide reasonable opportunity for the submission of briefs and oral argument with respect to possible sanctions.

(d) Agreed Statement of Facts

Subject to the approval of the commission, the administrator and the respondent may agree on a statement of facts and may stipulate in writing that the hearing shall be waived. In such a case, the commission shall make its determination upon the pleadings and the agreed statement of facts.

(e) Subpoenas

The judge who is the subject of a Formal Written Complaint may request the referee designated by the commission to issue subpoenas on the judge's behalf. The referee shall grant reasonable requests for subpoenas.

(f) Motions

The referee shall regulate the course of a hearing, make appropriate rulings, set the time and place for adjourned or continued hearings, fix the time for filing briefs and other documents, and shall have such other authority as specified by the commission, not inconsistent with the provisions of article 2-A of the Judiciary Law.

The commission shall decide the following motions:

(1) a motion for summary determination;

(2) a motion to dismiss;

(3) a motion to confirm or disaffirm the findings of the referee;

(4) a motion made prior to the appointment of the referee, except that the commission may refer such motion to the referee when such referral is not inconsistent with the other provisions of this section.

The referee designated by the commission shall decide all other motions.

In deciding a motion, the commission members shall not have the aid or advice of the administrator or commission staff who has been or is engaged in the investigative or prosecutive functions in connection with the case under consideration or a factually related case.

(g) Discovery

Upon the written request of the respondent, the commission shall, at least five days prior to the hearing or any adjourned date thereof, make available to the respondent without cost copies of all documents which the commission intends to present at such hearing and any written statements made by witnesses who will be called to give testimony by the commission. The commission shall, in any case, make available to the respondent at least five days prior to the hearing or any adjourned date thereof any exculpatory evidentiary data and material relevant to the Formal Written Complaint. The failure of the commission to furnish timely any documents, statements and/or exculpatory evidentiary data and material provided for herein shall not affect the validity of any proceedings before the commission provided that such failure is not substantially prejudicial to the judge.

(h) Burden of Proof and Rules of Evidence at Hearing

(1) The attorney for the commission has the burden of proving by a preponderance of the evidence the facts justifying a finding of misconduct.

(2) At the hearing, the testimony of witnesses may be taken and evidentiary data and material relevant to the Formal Written Complaint may be received. The rules of evidence applicable to non-jury trials shall be followed.

(i) Post-Hearing Procedures

Within a reasonable time following a hearing, the commission shall furnish the respondent, at no cost to him or her, a copy of the transcript of the hearing

(j) The respondent who is the subject of the hearing shall be afforded a reasonable opportunity to present to the referee written argument on issues of law and fact.

(k) The referee shall submit a report to the commission with proposed findings of fact and conclusions of law. No recommendation shall be made with respect to a sanction to be imposed by the commission. A copy of the referee's report shall be sent to the respondent.

Section 7000.7 Procedure for Consideration of Referee's Report or Agreed Statement of Facts.

(a) The commission shall consider the referee's report or agreed statement of facts and shall provide reasonable opportunity for the submission of briefs and oral argument with respect to such report or agreed statement of facts and with respect to possible sanctions. The respondent judge shall file an original and ten copies of any brief submitted to the commission.

(b) In making a determination following receipt of a referee's report or agreed statement of facts, the commission members shall not have the aid or advice of the administrator or commission staff who has been or is engaged in the investigative or prosecutive functions in connection with the case under consideration or a factually related case.

(c) After a hearing, if the commission determines that no further action is necessary, the Formal Written Complaint shall be dismissed and the complainant and the judge shall be so notified in writing.

(d) If the commission determines that a judge who is the subject of a hearing shall be admonished, censured, removed or retired, the commission shall transmit its written determination, together with its findings of fact and conclusions of law and the record of the proceedings upon which the determination is based, to the Chief Judge of the Court of Appeals.

(e) The commission shall notify the complainant of its disposition of the complaint.

Section 7000.8 Confidentiality of Records.

The confidentiality of the commission's records shall be governed by section 45 of the Judiciary Law. Disciplining staff for breaches of confidentiality shall be governed by procedures set forth in section 46 of the Judiciary Law.

Section 7000.9 Standards of Conduct.

(a) A judge may be admonished, censured or removed for cause, including but not limited to misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct on or off the bench prejudicial to the administration of justice; or retired for mental or physical disability preventing the proper performance of his judicial duties.

(b) In evaluating the conduct of judges, the commission shall be guided by:

(1) the requirement that judges uphold and abide by the Constitution and laws of the United States and the State of New York;

(2) the requirement that judges abide by the Code of Judicial Conduct, the rules of the Chief Administrator and the rules of the respective Appellate Divisions governing judicial conduct.

Section 7000.10 Amending Rules.

The rules of the commission may be amended with the concurrence of at least six members.

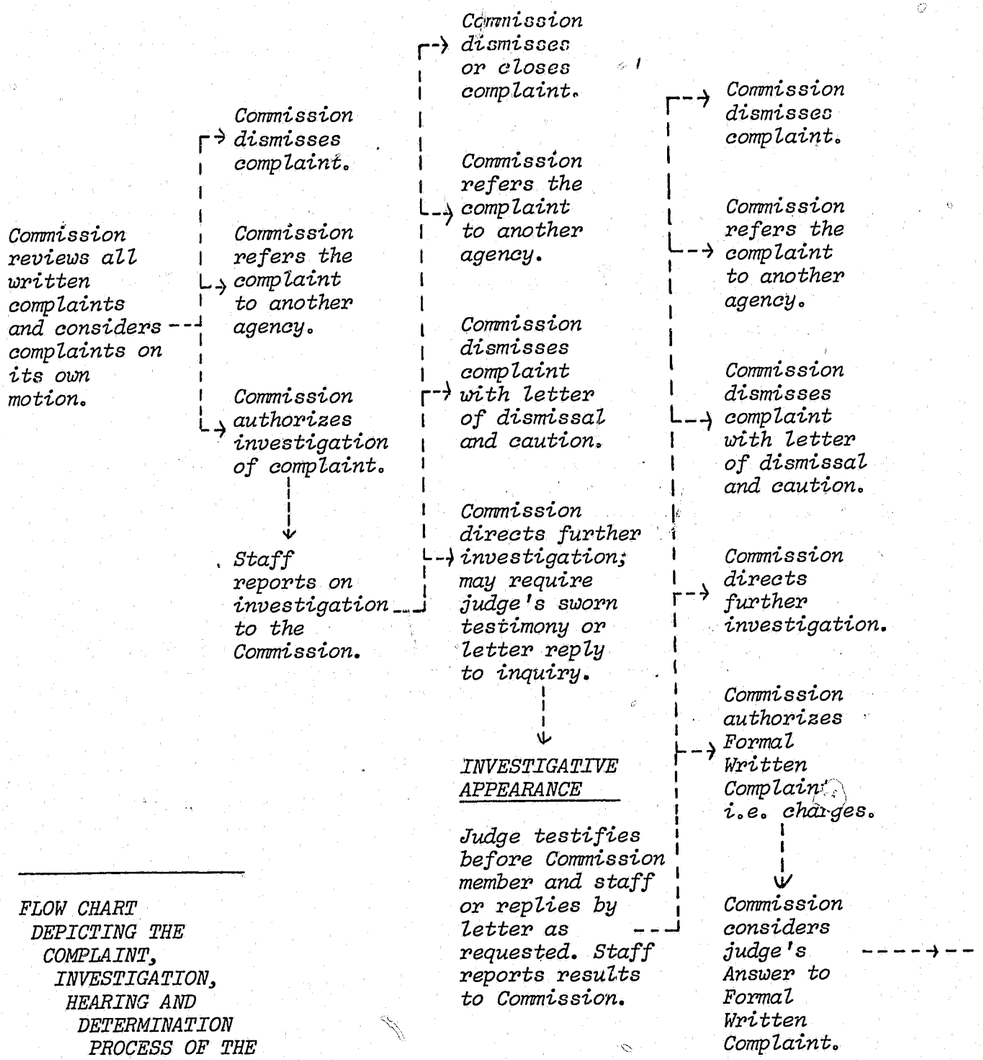
Section 7000.11 Quorum.

(a) Six members of the commission shall constitute a quorum of the commission except for any action taken pursuant to section 43, subdivision 2, and section 44, subdivisions 4 through 8, of the Judiciary Law, in which case eight members shall constitute a quorum. A member who abstains from, or does not participate in, voting shall be considered to be present for purposes of quorum.

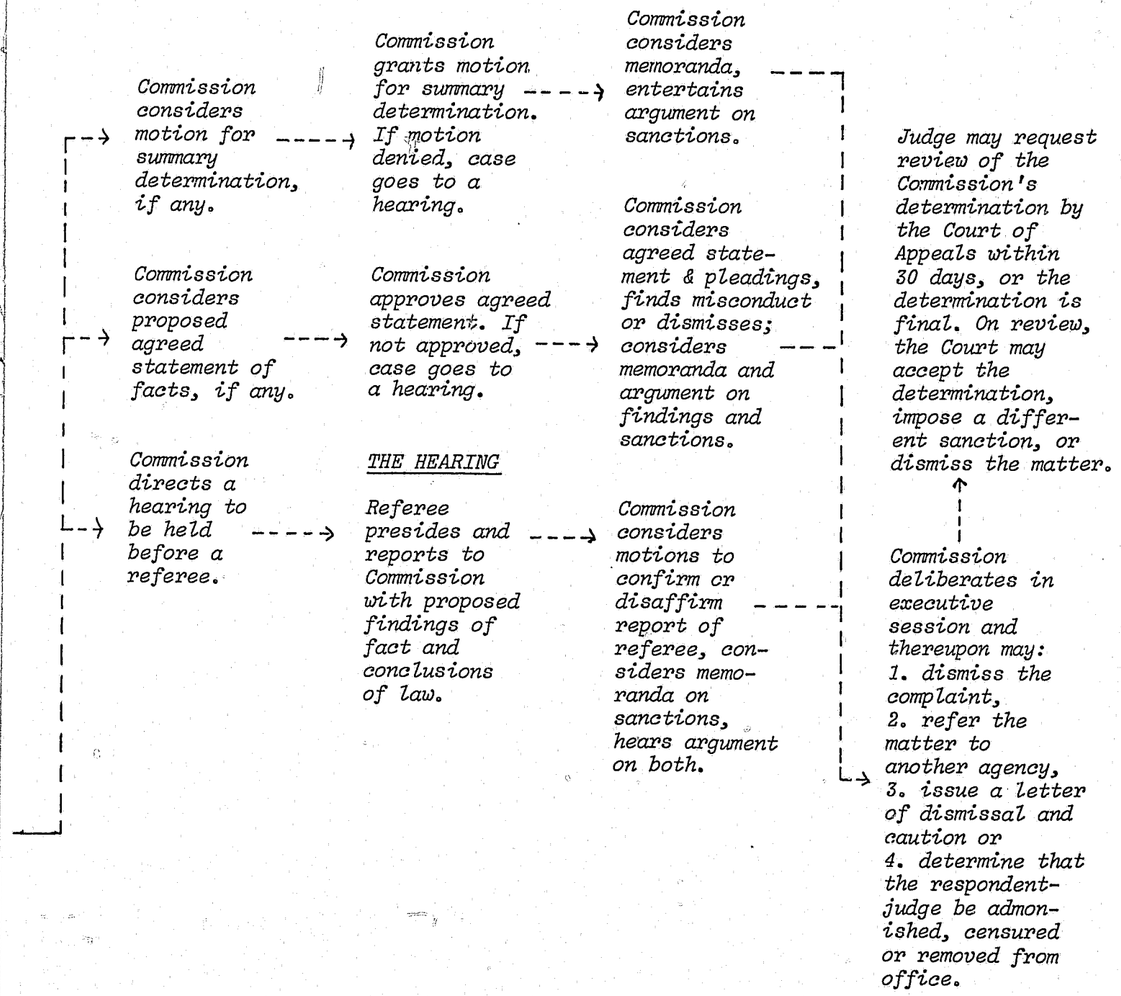
(b) For any action taken by the commission pursuant to its statutory functions, powers or duties, the concurrence of six members shall be necessary; except any action taken pursuant to section 44, subdivision 1, 2 or 3 of the Judiciary Law, and any designation of a panel provided for in section 43, subdivision 1 of the Judiciary Law shall require the concurrence of a majority of those members present.

Section 7000.12 Commission's Principal Office.

The Commission's principal office shall be its New York City office.



FLOW CHART DEPICTING THE COMPLAINT, INVESTIGATION, HEARING AND DETERMINATION PROCESS OF THE COMMISSION.



State of New York
Commission on Judicial Conduct

APPENDIX C

DETERMINATIONS
RENDERED IN 1979

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to

JOHN H. DUDLEY,

a Justice of the Village Court of Cato, Cayuga County.

Determination

PRESENT: Mrs. Gene Robb, Chairwoman
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, John H. Dudley, a Justice of the Village Court of Cato, Cayuga County, was served with a Formal Written Complaint, dated October 31, 1978, alleging numerous acts of misconduct over a ten year period relating primarily to his failure to keep records, file reports and dispose of official funds as required by law.

The allegations of misconduct were embodied in 16 separate charges against him, all of which were admitted by respondent by reason of his failure to answer the Formal Written Complaint. See, Operating Rules of the State Commission on Judicial Conduct ("Commission Rules"), §7000.6(b), 22 NYCRR §7000.6(b).

The Administrator of the Commission on Judicial Conduct ("Administrator") moved for summary determination on January 10, 1979. Respondent did not oppose the motion, and since there was present no genuine issue of material fact, a hearing on the issue of misconduct was unnecessary. The Commission therefore granted summary determination on the pleadings on February 1, 1979, and set the matter down for a hearing on the issue of a sanction on February 27, 1979. Both the Administrator and respondent were afforded the opportunity to appear or submit a memorandum on the sanction issue. The Administrator submitted such a memorandum, but respondent declined either to appear or submit a memorandum.

Upon the record before us the Commission finds as follows:

1. For 119 of the 125 months between April 1, 1968, and September 10, 1978, respondent failed to report his judicial activities and to remit to the State Comptroller within the first ten days of the succeeding month monies he had received in his judicial capacity.

2. From April 1968 to the present, respondent has failed to make timely deposits in his official bank account of monies he has received in his judicial capacity. In three separate instances such deposits were made only following advice to respondent by State auditors that such monies were undeposited.

3. Respondent failed to report and remit to the State Comptroller various sums which he received in his judicial capacity until his failure to do so was brought to his attention by State auditors, as follows: from January 1969 through December 10, 1971, $662.00; from April 1972 through October 10, 1974, $842.00; from June 1976 through April 10, 1977, $157.00.

4. During two separate periods -- from June 1, 1968, to December 29, 1971, and from January 7, 1972, to October 9, 1974 -- respondent's official bank account plus undeposited cash, were less than respondent's official liabilities by $282.00 and $63.00, respectively.

5. From June 1, 1968, to the present, respondent has failed to issue proper receipts for all fines and bails received by him in his judicial capacity.

6. From July 1, 1974, to the present, respondent has failed to maintain a cashbook chronologically itemizing all monies received and disbursed in his judicial capacity.

7. Respondent has failed to properly dispose of $270.00 representing bails posted from July 1967 to April 1975.

8. Respondent failed to properly dispose of $36.60 in filing, jury, and service of process fees, collected from October 1973 to September 1974.

9. Respondent failed to cooperate with the Commission's investigation by failing to respond to written inquiries sent to him by the Commission on January 16 and January 25, 1978.

10. During the periods (i) from January 1973 to September 1978 and (ii) from October 1974 to September 1978, respondent failed to maintain and preserve dockets of (i) motor vehicle proceedings and (ii) all civil and criminal proceedings, respectively, held before him.

11. Respondent has failed to dispose of 53 motor vehicle cases, involving 47 defendants, which were brought before him during the period from June 1971 to June 1976.

12. From December 1971 to November 1976, respondent failed to certify to the Department of Motor Vehicles convictions in all traffic cases.

13. In five separate instances since 1971, respondent has failed to dispose of motor vehicle cases pending before him for a number of years and has failed to keep the requisite records and to take the requisite administrative steps in connection with such cases.

14. From April 1968 to the present, respondent has failed to establish or maintain a small claims part and has failed to schedule at least one session of court every other week for the hearing of small claims.

By reason of the foregoing, we conclude that respondent violated the statutory provisions, rules and canons set forth in Charges I through XVI* of the Formal Written Complaint.

Respondent's behavior clearly was improper, constituting at least negligence and bordering on wanton disregard for the legal and ethical constraints upon him. Similar, though less egregious, conduct has been found to constitute "gross neglect" and to justify removal. Bartlett v. Flynn, 50 AD2d 401, 378 NYS2d 145 (4th Dept. 1976), app. dism., 39 NY2d 942, 386 NYS2d 1029.

Having found that respondent repeatedly violated provisions of the General Municipal Law, Uniform Justice Court Act, Vehicle and Traffic Law and Village Law; sections of the Rules Governing Judicial Conduct (22 NYCRR §33.1 et seq.); and canons of the Code of Judicial Conduct and Canons of Judicial Ethics, the Commission hereby determines that the appropriate sanction is removal.

The foregoing constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: March 5, 1979
Albany, New York

*The reference in Charge VII of the Formal Written Complaint to Section 20.9 of the Uniform Justice Court Rules appears inadvertent. The correct reference is to Section 30.9.

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

JAMES O. KANE,

a Justice of the Unadilla Village Court, Otsego County.

Determination

PRESENT: Mrs. Gene Robb, Chairwoman
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, James O. Kane, the Justice of the Village Court of Unadilla, Otsego County, was served with a Formal Written Complaint, dated August 7, 1978, alleging 11 charges of misconduct over a 4-year period relating to the failure to keep proper records of proceedings before him, file reports thereof and dispose of official funds as required by law.

In his Verified Answer, dated September 13, 1978, respondent denied all of the substantive factual allegations contained in the Complaint. Pursuant to an order of the Commission dated September 26, 1978, James A. O'Connor, Esq., was appointed as Referee to hear and report to the Commission with respect to the factual issues raised by the pleadings. After hearings held on October 10 and November 10, 1978, the Referee submitted his Report, dated January 22, 1979, which concluded that Charges I, III, IV-A, V, IX and XI had been substantiated in toto; and that Charges II and IV had been substantiated in part. The Referee made no determination with respect to Charges VI, VII, VIII and X, which were withdrawn by the Administrator of the State Commission on Judicial Conduct ("Administrator").

On February 27, 1979, the Administrator moved for an Order (i) confirming the findings of fact set forth in the Referee's Report and (ii) rendering a determination pursuant to Section 44, subdivision 7, of the Judiciary Law. Respondent, through his counsel, declined to submit a memorandum in opposition to the motion or to argue orally in opposition, although afforded the opportunity to do both.

Upon the record before us, the Commission finds that the Referee's findings of fact are fully supported by the evidence. More specifically, with respect to the various charges against respondent, the Commission finds as follows:

1. During a two and one-half year period ending November 30, 1976, respondent failed to report and remit to the State Comptroller the sum of $1,140.54 which he had received in his official capacity as a judicial officer, and only after such deficiency had been cited by State auditors did he deposit the monies and report and remit the funds owed to the State Comptroller. During the period from January, 1973 to December 1976: respondent failed to report and to remit to the State Comptroller an additional $1,010.00 which he received in 70 other traffic cases involving 57 separate defendants; respondent failed to report and remit an additional $130.00 which he received in six other criminal proceedings; and respondent failed to maintain and preserve dockets of numerous criminal proceedings held before him and failed to report and remit an additional $225.00 which he received from some of the defendants in cases in which no dockets were maintained.

2. Respondent falsely certified in a January, 1977 report to the New York State Department of Audit and Control ("Department of Audit and Control") that he had received no money from two youthful offenders, notwithstanding that the defendants each had paid fines of $150.00 in August, 1976, which respondent failed to report and remit to the State Comptroller.

3. Respondent falsely certified in May, 1976 and January, 1977 reports to the Department of Audit and Control that he received only $35 in fines from a defendant and granted youthful offender treatment for a charge of operating an uninsured vehicle, when that defendant actually had paid a fine of $100 on May 9, 1976, for operating an uninsured vehicle. Respondent also made a false entry on a motor vehicle docket that the charge had been dismissed.

4. In a March, 1976 report to the Department of Audit and Control, respondent falsely certified that he had sentenced a defendant to a conditional discharge. The defendant in fact paid a fine of $50 on the charge on or about May 5, 1976, which fine was not reported, nor was it remitted to the State Comptroller.

5. During the period from December, 1972 to December, 1976, respondent: (a) failed to deposit on a timely basis monies received in his judicial capacity; (b) maintained personal control over such monies for months at a time; (c) failed to remit to the State Comptroller on a timely basis fines, fees and penalties received by him; (d) failed to record in his official justice court cashbook the receipt of various bail and fine monies received by him in his judicial capacity.

By reason of the foregoing, we conclude that respondent violated the statutory provisions, rules and canons set forth in Charges I, II, III, IV, IV-A, V, IX and XI of the Formal Written Complaint.

In determining the sanction to be imposed upon respondent, the Commission has considered the nature of the charges made against respondent and the repeated and gross violations by respondent of the legal, administrative and ethical duties imposed upon him. Respondent's behavior, especially with respect to false certification as to the monies received by him in his official capacity and his maintenance of personal control of those monies for an extended period of time, is unacceptable. Moreover, we are not persuaded by the fact that respondent eventually repaid certain of the sums in question. See, Becher v. Case, 277 N.Y.S. 733, 243 App. Div. 375 (2nd Dept. 1935); see also, Bartlett v. Flynn, 50 A.D. 2nd 401, 378 N.Y.S.2d 145 (4th Dept. 1976), app. dismissed 39 N.Y.2d 142, 386 N.Y.S.2d 1029.

Having found that respondent repeatedly violated provisions of the Uniform Justice Court Act, Vehicle and Traffic Law, and Village Law; sections of the Uniform Justice Court Rules (22 NYCRR §30.1 et. seq.); sections of the Rules Governing Judicial Conduct (22 NYCRR §33.1 et seq.); and Canons of the Code of Judicial Conduct and Canons of Judicial Ethics, the Commission hereby determines that the appropriate sanction is removal. This determination is made notwithstanding respondent's resignation, in view of respondent's acknowledgment on October 30, 1978, that such resignation had not been submitted to the Chief Administrator of the Courts, as required by Section 31(1)(d) of the Public Officers Law, and so is ineffective. Furthermore, respondent waived on that date the time limitations imposed by Section 47 of the Judiciary Law.

The foregoing constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: March 5, 1979
Albany, New York

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

FRANK MANION,

a Justice of the Village Court of Ilion, Herkimer County.

Determination

PRESENT: Mrs. Gene Robb, Chairwoman
David Bromberg
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea

The respondent, Frank Manion, a justice of the Village Court of Ilion, Herkimer County, was served with a Formal Written Complaint, dated November 30, 1978, alleging that, during the period from April 1, 1976, through December 30, 1977, respondent's official assets, consisting of monies on deposit in his official bank account plus undeposited cash, were less than respondent's official liabilities by the amount of $8,819.50, which liabilities included $7,643 in traffic fines and $1,111 in parking fines which respondent had failed to report and remit to the State Comptroller.

It was further alleged that respondent has failed to provide satisfactory reasons for the shortage of the $8,819.50 in his official village account and for neglecting to deposit on a timely basis all monies received.

In a stipulation dated February 7, 1979, respondent and the administrator of the State Commission on Judicial Conduct stipulated to the foregoing facts and to the fact that all the monies subsequently had been deposited by respondent. Pursuant to the terms of the stipulation, respondent also agreed to withdraw all denials in his answer, dated December 12, 1978, inconsistent with said stipulation, and to withdraw all factual issues asserted in the affirmative defense contained in the answer. Pursuant to Section 7000.6(d) of its Operating Procedures and Rules, 22 NYCRR §7000.6(d), the Commission thus makes its determination based on the stipulation and the pleadings as amended thereby.

Upon the record before us, we conclude that respondent violated: Section 2021(1) of the Uniform Justice Court Act; Section 4-410(1)(d) of the Village Law; Section 30.7(a) of the Uniform Justice Court Rules (22 NYCRR §30.7[a]); Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct (22 NYCRR §§33.1, 33.2[a] and 33.3[b][1], respectively); and Canons 1, 2(A) and 3(B)(1) of the Code of Judicial Conduct.

In determining the sanction to be imposed upon respondent, the Commission has considered the nature of the charge made against respondent, the extensive period during which respondent's legal and ethical violations persisted, and the magnitude of the violations. Respondent's behavior in failing to report and remit such a sum is unacceptable. Moreover, the fact that respondent subsequently deposited the sums in question is no defense to the misconduct. See, Becher v. Case, 277 NYS 733, 243 AD 375 (2d Dept. 1935); see also, Bartlett v. Flynn, 58 AD2d 401, 378 NYS2d 145 (4th Dept. 1976), app. dism., 39 NY2d 942, 386 NYS2d 1029.

Having found that respondent violated the statutory, administrative and ethical obligations upon him, the Commission hereby determines that the appropriate sanction is removal.

This determination is made pursuant to Section 47 of the Judiciary Law since respondent resigned as village justice effective January 31, 1979.

The foregoing constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: March 28, 1979
Albany, New York

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

HAROLD H. SCHULTZ,

a Justice of the New Scotland Town Court, Albany County.

Determination

PRESENT: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Harold H. Schultz, a justice of the Town Court of New Scotland, Albany County, was served with a Formal Written Complaint dated December 1, 1978, setting forth one charge of misconduct relating to the improper assertion of influence in a traffic case over which he presided and in which the defendant was his son. In his answer, filed with the Commission on December 26, 1978, respondent admitted the factual allegations set forth in the Formal Written Complaint but denied having granted special consideration to the defendant.

On January 30, 1979, the Commission appointed the Honorable Simon J. Liebowitz as referee to hear and report to the Commission with respect to this matter. A hearing was conducted on March 5, 1979, and the report of the referee was filed with the Commission on March 12, 1979.

The administrator of the Commission moved on March 13, 1979, to confirm the findings of the referee. Respondent submitted a letter in response to the administrator's motion.

The Commission considered the record in this matter on April 17, 1979, and upon that record concludes as follows:

1. On or about August 3, 1978, in connection with People v. Glenn T.Schultz, a case then pending in the Town Court of New Scotland, respondent:

a. failed to disqualify himself from the case, notwithstanding that the defendant was his son, in violation of Section 14 of the Judiciary Law;

b. granted special consideration to the defendant by interviewing the arresting officer and reducing the charge of speeding to unsafe tire a week before the return date;

c. failed as of October 26, 1978, to make any record of the case in the town court docket; and

d. failed as of October 26, 1978, to report the disposition of the case to the State Comptroller, as required by law.

2. Respondent's failure (i) to make a proper record of the case and (ii) to report the disposition as required by law was based on his intention to avoid discovery of his action, and as such constitutes an inexcusable irregularity in the proper performance of his administrative responsibilities.

3. By reason of the foregoing, respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3B(1) and 3C(1)(d)(i) of the Code of Judicial Conduct.

It is improper for a judge to render a decision in any judicial proceeding on the basis of a personal, and in this case a familial, relationship with the defendant. Both the Judiciary Law and the Rules Governing Judicial Conduct prohibit a judge from presiding over a case if he is related within the sixth degree of consanguinity to one of the parties. (Jud.L.§14; Rules §33.3[c][1][iv][a].) By presiding over a case in which his son was the defendant, respondent clearly violated both the law and the applicable ethical standards.

Having found that respondent violated the statutory, administrative and ethical obligations upon him and is thereby guilty of judicial misconduct, the Commission now considers the appropriate sanction.

Respondent's misconduct, standing alone, is serious. In Matter of Byrne, N.Y.L.J., April 20, 1979, vol. 179, p. 5, the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." The court said such conduct was "wrong and has always been wrong." Id.

Respondent's misconduct in this matter is exacerbated by the fact that he had been censured previously for similar misconduct. On March 31, 1978, only four months before his misconduct in People v. Glenn T. Schultz, respondent was publicly censured by the former State Commission on Judicial Conduct for asserting or acceding to special influence in a total of 19 separate traffic cases.

Despite the censure in March 1978, respondent repeated the improper practice of ticket-fixing in the Schultz case in August 1978, compounding the impropriety with a violation of the Judiciary Law by presiding over a matter involving his son. Such conduct is inexcusable.

The Commission hereby determines that the appropriate sanction is removal from office. This determination is made pursuant to Section 47 of the Judiciary Law, since respondent resigned as town justice effective March 1, 1979.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: May 29, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- X

In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to : DETERMINATION

FRANCIS R. SOBECK, :

a Justice of the Town of Wellsville, :
Allegany County.

- X

PRESENT: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Francis R. Sobeck, a justice of the Town Court of Wellsville, Allegany County, was served with a Formal Written Complaint dated October 24, 1978, setting forth four charges of misconduct alleging that respondent permitted the Wellsville Medical Group to use his name, judicial title and court address to collect delinquent accounts, and that respondent accepted a check and two credits to his account totaling $599.41 from the Wellsville Medical Group for the use of his judicial position in the collection of these accounts. In his answer, dated December 23, 1978, respondent admitted the factual allegations set forth in the Formal Written Complaint but denied that the admitted acts constituted judicial misconduct.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. In the agreed statement, respondent acknowledged (i) approving the content and form of the letters sent by the Wellsville Medical Group to its delinquent debtors, as appended to the Formal Written Complaint, (ii) permitting the use of a rubber stamp of his signature and later signing a blank

copy of the letters and (iii) permitting the Wellsville Medical Group to use photocopies of the signed, blank copy. Respondent also acknowledged that he knew that these letters had been sent to at least 340 persons, some of whom he acknowledged received more than one letter.

The Commission approved the agreed statement, as submitted, on January 25, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on May 22, 1979, and upon that record finds the following facts:

1. From January 1976 to July 1978, respondent permitted the Wellsville Medical Group to use his name, judicial title and court address in three different form letters, escalating in tone so as to appear threatening, which the Group used to collect delinquent accounts. Respondent permitted the Group to use a rubber stamp facsimile of his signature and to photocopy unaddressed copies of letters, previously signed by him, which he permitted the Group to use for collecting delinquent accounts.

2. Respondent was aware that letters with his signature were sent by the Wellsville Medical Group to more than 340 individuals in the collection of delinquent accounts, and that the Group collected a total of $5,630.63 between January 1, 1978, and November 30, 1978, through the use of respondent's letters.

3. Although respondent did not request payment from the Wellsville Medical Group for the use of his name, judicial title and court address in the collection of delinquent accounts, respondent accepted the following credits to his account and payment from the Group:

(a) Between January 24, 1977, and December 30, 1977, respondent received approximately 11 monthly statements of his account with the Wellsville Medical Group, each of which showed a credit to his account of $202.97 from the statement of January 24, 1977.

(b) Between June 5, 1978, and August 30, 1978, respondent received approximately two monthly statements of his account with the Wellsville Medical Group, each of which showed a credit to his account of $196.44 from the statement of June 5, 1978.

(c) On June 5, 1978, respondent's wife received a check by mail from the Wellsville Medical Group, payable to respondent in the amount of $200.00.

Attached to the check was the tear-off stub bearing the following typewritten notation: "Services of collecting past due accounts." Respondent's wife showed the check stub to respondent and discussed it with him, whereupon the check was deposited in a bank account registered jointly in the name of respondent and his wife. Respondent was aware the check was so deposited.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(4), 33.5(a)(1), 33.5(c)(1) and 33.5(c)(3) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(4), 5C(1) and 5C(3) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

The obligation to avoid both impropriety and the appearance of impropriety is fundamental to the fair and proper administration of justice. In allowing his judicial office to be used by a private medical group for debt-collecting purposes for more than two years, and by accepting a payment and credits for his acts, respondent's conduct both was improper and appeared to be improper and thereby undermined public confidence in the integrity and impartiality of the judiciary. At the least, the reasonable inference to be drawn from respondent's letters is that a judge of the court in which a debtor could be sued was playing an active role on behalf of a party to the dispute.

Even if there were no question that the debtors would not be brought before respondent's court, respondent's conduct was improper. Judicial office is a position of honor which must be held only by those who will preserve and protect its independence and integrity; it is not to be lent to a private interest seeking to collect a private debt. The applicable principle is expressed in Section 33.2(c) of the Rules Governing Judicial Conduct: "No judge shall lend the prestige of his office to advance the private interests of others; nor shall any judge convey or permit others to convey the impression that they are in a special position to influence him...." Respondent's actions violate this standard.

The Commission has given consideration to the matter addressed in respondent's memoranda with respect to whether respondent's misconduct was deliberate or unintentional. Respondent asserts that his lack of wrongful intent should be considered in mitigation of his admitted acts. Whatever motive underlay his acts, respondent's misconduct was such that a severe sanction is appropriate. Respondent has violated basic ethical standards. Neither a deliberate nor an unintentional disregard of so fundamental a responsibility would mitigate the detrimental effect on the judiciary which resulted from respondent's acts.

The Commission has also given consideration to the argument in respondent's memoranda that, by the standards of the community in which he

sits, respondent's actions were not so improper as to merit the serious sanction of removal. Respondent asserts that he is "ultimately answerable to the community which this Commission seeks to protect." (Respondent's Memorandum on Sanction at 14.)

The standard to which this Commission must hold respondent is not one to be defined by the community in which he sits. The Rules Governing Judicial Conduct are a statewide standard, promulgated by a statewide chief administrator of the courts with the approval of the Court of Appeals and applied in matters of judicial discipline by a statewide commission on judicial conduct. Those standards were not meant to be interpreted and applied unevenly throughout the state by this Commission or individual communities. Public faith in our legal system requires that there be one set of standards of judicial conduct, and that those standards be of the highest order.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office. All concur except that Judge Cardamone, Judge Rubin and Mr. Wainwright vote that the appropriate sanction is censure.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: July 2, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- X

In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to : DETERMINATION

RICHARD RALSTON, :

a Justice of the Village Court of :
Schaghticoke, Rensselaer County.

- X

PRESENT: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Richard Ralston, a justice of the Village Court of Schaghticoke, Rensselaer County, was served with a Formal Written Complaint dated February 28, 1979, alleging numerous acts of misconduct over a three and a half year period relating primarily to his failure to file prompt reports to the State Comptroller and dispose of official funds as required by law. Respondent was also charged in the Formal Written Complaint with failing to cooperate with an investigation being conducted by this Commission.

The administrator of the Commission moved for summary determination on April 16, 1979, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). Respondent did not submit papers in opposition to the motion. The Commission granted the motion in a determination dated April 26, 1979, finding respondent guilty of judicial misconduct and setting a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum.

The Commission considered the record in this proceeding on May 22, 1979, and upon that record finds the following facts:

1. Between April 1, 1978, and November 1, 1978, respondent received in his judicial capacity at least $310.00 in fines upon disposing of at least 36 traffic tickets written by the Village of Schaghticoke police. Nevertheless, between April 1, 1978, and February 28, 1979, respondent failed to report or remit to the State Comptroller any of said monies he received, contrary to the requirements of Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 4-410 of the Village Law and Section 1803 of the Vehicle and Traffic Law.

2. From April 1978 to October 1978, respondent made only one deposit into his official justice court bank account, in the amount of $515.00 on August 3, 1978, notwithstanding that he received monies in his official capacity in each month during this period. Respondent's failure to make timely deposits each month was contrary to the requirements of Section 30.7 of the Uniform Justice Court Rules promulgated by the Chief Administrator of the Courts, which requires the deposit of all official funds within 72 hours of receipt.

3. Between January 1, 1975, and December 31, 1977, respondent failed to report and remit monies he had received in his judicial capacity to the State Comptroller within the first ten days of the month succeeding his receipt of those monies, as specified in the subparagraphs below, despite ten written requests from the State Department of Audit and Control; respondent's failure to report and remit monies promptly was contrary to the requirements of Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 4-410 of the Village Law and Section 1803 of the Vehicle and Traffic Law.

(a) Respondent's report of activities of May 1975 was filed July 30, 1975.

(b) Activities for June 1975 were reported July 30, 1975.

(c) Activities for July 1975 were reported August 29, 1975.

(d) Activities for August 1975 were reported September 30, 1975.

(e) Activities for September 1975 were reported October 29, 1975.

(f) Activities for October 1975 were reported December 8, 1975.

(g) Activities for December 1975 were reported March 21, 1976.

(h) Activities for June 1976 were reported August 8, 1976.

(i) Activities for August 1976 were reported October 18, 1976.

(j) Activities for September 1976 were reported October 18, 1976.

(k) Activities for November 1976 were reported December 23, 1976.

(l) Activities for December 1976 were reported January 21, 1977.

(m) Activities for January 1977 were reported April 4, 1977.

(n) Activities for February 1977 were reported April 4, 1977.

(o) Activities for April 1977 were reported June 7, 1977.

(p) Activities for June 1977 were reported July 28, 1977.

(q) Activities for July 1977 were reported September 2, 1977.

(r) Activities for August 1977 were reported October 18, 1977.

(s) Activities for October 1977 were reported January 11, 1978.

(t) Activities for November 1977 were reported January 11, 1978.

(u) Activities for December 1977 were reported January 11, 1978.

4. From October 1978 through January 1979, respondent failed to cooperate with an investigation being conducted by the State Commission on Judicial Conduct, in that he (i) failed to respond to written inquiries, dated October 31, 1978, November 14, 1978, and November 30, 1978, sent by the Commission to respondent pursuant to Section 42, subdivision 3, of the Judiciary Law and (ii) failed to appear before a member of the Commission on January 4, 1979, and again on January 19, 1979, after having been duly requested by the Commission to so appear, pursuant to Section 44, subdivision 3, of the Judiciary Law in letters dated December 19, 1978, and January 11, 1979, respectively.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct, and Canons 1, 2A and 3A(1) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

Having found the respondent guilty of misconduct, the Commission now considers the appropriate sanction.

The duty of a judge to report and remit promptly monies collected in his judicial capacity must not be neglected, and the damage to public confidence in the judiciary resulting from a failure to so report is serious. His failure (i) to reply to ten requests by the Department of Audit and Control for reports and remittances, and (ii) to reply to five inquiries from this Commission in the course of a duly authorized investigation, compounds the initial misconduct and demonstrates a total disregard of the obligations of judicial office.

By reason of the foregoing, the Commission hereby determines that the appropriate sanction is removal from office.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 2, 1979
Albany, New York

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

NORMAN E. KUEHNEL,

a Justice of the Village Court of Blasdell and the Town Court of Hamburg, Erie County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Norman E. Kuehnel, a justice of the Village Court of Blasdell and the Town Court of Hamburg, Erie County, was served with a Formal Written Complaint dated November 13, 1978. Respondent filed an answer dated December 8, 1978.

By order dated December 14, 1978, the Commission appointed the Honorable Harold A. Felix as referee to hear and report with respect to the issues herein. The referee conducted a hearing on February 28, 1979, and thereafter filed his report with the Commission.

Counsel for the Commission moved on June 28, 1979, to confirm the referee's report and to render a determination. The Commission heard oral argument on the motion on July 20, 1979, and thereafter, in executive session, considered the record in this proceeding, and upon that record finds the following facts.

1. On the night of May 5, 1978, as the respondent was leaving a tavern in the Village of Blasdell between the hours of 10 and 11 o'clock, he saw four youths, Steven Lewis, age 14, Patti Kolodziejczak, age 14, Patrick Michael Burke, age 13, and Richard Harmon, age 15, crossing the parking lot of Carlin's Grocery-Delicatessen Store, located at 107 Lake Avenue, Blasdell, New York. Respondent called upon them to stop, which they did. Respondent walked over from the tavern parking lot and asked which one of them had just broken glass or a glass bottle. The youths denied the accusation and, except for one of the youths, refused to reveal their identities. Respondent thereupon ordered them into the store. Although respondent did not identify himself as a judge, the youths recognized respondent and knew him to be justice of the Village Court of Blasdell.

2. As he ushered the youths through the outer and inner doors of the vestibule leading into the store, respondent struck one of the youths, Michael Burke, on the back of the head, causing the youth to fall forward and hit his head on a door frame ahead of him.

3. Respondent telephoned the police, and a Blasdell Village Police Patrolman, Lindsay Dunne, arrived shortly thereafter in a patrol car. Respondent told Officer Dunne that he had caught the four youths breaking glass in the parking lot at Carlin's and he requested that the officer take the youths to the Blasdell Village Police Station so that he could file a complaint against them. There was testimony at the hearing by Officer Dunne that he detected alcohol on respondent's breath, that respondent's speech was slurred and that in his opinion respondent was under the influence of alcohol, which observations were entered in his police log and report; respondent himself testified to having had "one or two" glasses of beer prior to entering the parking lot at Carlin's (Tr. 219).*

4. Prior to escorting the youths to the police station, Officer Dunne searched the lot with his flashlight at the direction of respondent, but found no evidence of broken glass. In the patrol car the officer asked the youths what they had done and their response was that they had done nothing.

5. Officer Dunne drove all four youths to the local police station. Respondent walked the short distance from Carlin's to the police station.

6. At the police station, the four youths were at a bench opposite the counter. Respondent, on his arrival, walked behind the counter to the office of Lt. Eugene Carberry to speak to that officer.

*"Tr." refers to the transcript of the hearing before the referee.

7. Respondent, upon leaving Lt. Carberry's office, stood behind the counter with Officer Dunne while that officer was in the process of obtaining information from the youths. Respondent then spoke to the youths in a hostile, taunting and derogatory manner, equating them to "black hoodlums" and "niggers" (Tr. 95, 126-27, 189). In his testimony at the hearing, respondent did not deny using the word "nigger." He stated "I don't think I did. I don't usually use that word" (Tr. 235-36).

8. At the police station, respondent identified himself as a judge to the youths.

9. On his way out of the police station, and as he passed in front of the youths, respondent intentionally struck Richard Harmon on the right side of his face, causing Mr. Harmon's nose to bleed. Respondent stated that the youth had stuck his tongue out at him.

10. Following the striking, respondent proceeded to leave the police station without reporting the incident at that time or at any time thereafter.

11. Officer Dunne did not see respondent strike Richard Harmon but heard the sound of the striking, saw Richard Harmon's nose bleed, saw Mr. Harmon's reaction to the blow and heard respondent say: "That's for sticking out your tongue at me" (Tr. 157).

12. Approximately two or three weeks thereafter, Richard Harmon's father, H. Leroy Harmon, met with respondent at the Village Hall. The two men planned a second meeting at which Richard Harmon would be present. At the second meeting, respondent, addressing the matter of his having struck Richard Harmon at the police station, stated that he believed he had been tripped and that the striking had been accidental. He apologized to Richard Harmon and offered to allow Richard to punch him. Respondent proposed that the three parties enter into a general release, and the Harmons agreed to accept the sum of $100 in consideration for the release.

13. Respondent prepared the release, and on June 2, 1978, at a bank in the Village of Blasdell, respondent paid Richard Harmon $100 in cash, and Richard Harmon and his father signed the general release before a notary public, purportedly relieving respondent both individually and as a village justice from any liability arising out of the incident in the Blasdell Village Police Station on May 5, 1978. The release alleged that respondent accidentally struck Richard N. Harmon after having been tripped.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1 and 33.2(a) of the Rules Governing Judicial Conduct and Canons 1 and 2A of the Code of Judicial Conduct. The report of the referee is confirmed. The charge set forth in the Formal Wirtten Complaint is sustained, and respondent is therefore guilty of misconduct.

A judge's obligation to avoid both impropriety and the appearance of impropriety is fundamental to the fair and proper administration of justice. Respondent's conduct in the instant matter was both improper and appeared to be improper and as such undermined the integrity of the judiciary.

It was improper for respondent to have engaged in an angry verbal confrontation with the four youths on the evening of May 5, 1978, in the vicinity of Carlin's Grocery-Delicatessen. It was wrong for him to have struck in anger one of those youths, a 13-year old boy. It was improper for respondent to have taunted the four youths subsequently with derogatory and offensive remarks when they were in police custody at the Blasdell Police Station. It was wrong for respondent to have intentionally struck a second of the youths, a 15-year old boy in police custody in the Blasdell Police Station. Whatever verbal insolence by the youths may have motivated his acts, respondent's conduct far exceeded the provocation.

At the least, it is unseemly and injudicious for a judge to engage in such a fray with juveniles and to assault two of them physically. Indeed, having been recognized by the youths to be a judge and further having identified himself as a judge, respondent was obligated to set a dignified example for these youths and the community. Instead, his conduct diminished confidence in and respect for the judiciary and violated the applicable sections of the Rules Governing Judicial Conduct which require a judge to "himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved" (Section 33.1 of the Rules).

Even were the Commission to attribute respondent's conduct at Carlin's to a reflexive, spur-of-the-moment confrontation, no such explanation would apply to respondent's subsequent conduct at the police station. In resuming the confrontation by taunting the youths at the police station, after some time had elapsed and after having had ample opportunity to reflect on his conduct at Carlin's and to temper his emotions, respondent exhibited exceedingly poor judgment.

In any event, respondent's striking of the two youths is indefensible. His offer several weeks later to allow one of the youths to punch him in retaliation was irresponsible and unworthy of a judge.

Respondent's conduct is not mitigated by the argument that he was not on the bench at the time of the incidents and was acting in a private capacity. As expressed by the learned referee, himself a former judge of the Family Court, "respondent although off the bench remained cloaked figuratively, with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others. Public confidence in the judiciary is diminished by actions that are suggestive of impropriety and resort to abusive language whether in or out of the courtroom, may well demonstrate a lack of judicial temperament prejudicial to the administration of justice." Indeed, respondent himself appears to have recognized this concept, inasmuch as the general release he drew for signature by the Harmons sought to relieve him of liability not only as an individual but also as village justice of Blasdell.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office.

Judge Alexander, Mr. Bromberg, Mrs. DelBello, Mr. Kirsch, Mr. Kovner, Mr. Maggipinto, Mrs. Robb and Judge Shea concur.

Judge Cardamone, Judge Rubin and Mr. Wainwright concur in the views expressed herein and dissent only with respect to the determined sanction, noting that respondent's lengthy tenure of 22 years on the bench would make censure a more appropriate sanction.

Dated: September 6, 1979
Albany, New York

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

HAROLD SASHIN,

a Justice of the Town Court of Wawarsing, Ulster County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Harold Sashin, was a justice of the Town Court of Wawarsing, Ulster County. He was served with a Formal Written Complaint dated August 3, 1979, alleging in two charges of misconduct that respondent failed to cooperate with an inquiry of the Ulster County Grand Jury in April and May 1979 and was subsequently convicted of perjury. Respondent admitted in part and denied in part the allegations in his answer dated August 29, 1979.

By order dated September 10, 1979, the Commission appointed the Honorable Harold A. Felix as referee to hear and report to the Commission with respect to the issues herein. A hearing was conducted on October 10, 1979, and the referee filed his report dated October 27, 1979.

By notice dated October 30, 1979, the administrator of the Commission moved for a determination that the referee's report be confirmed and that respondent be removed from office. Respondent opposed the motion in papers dated November 6, 1979, and waived oral argument before the Commission.

On November 14, 1979, the Commission considered the record in this proceeding, and upon that record makes the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent, a part-time justice of the Town Court of Wawarsing, is a poultry farmer.

2. For approximately a two-year period ending in October 1978, respondent purchased substantial quantities of eggs for resale from William Palomaki of Van Etten, New York (Chemung County).

3. In October 1978, respondent owed Mr. Palomaki approximately $29,000 for eggs and for dishonored checks in the amount of $8,800.

4. On October 26, 1978, respondent met with Mr. Palomaki and gave him a list of respondent's accounts receivable. The list included 11 institutions or businesses which were listed as owing respondent $8,000 to $10,000. In truth, however, these institutions and businesses owed respondent $1,100 to $1,200.

5. Respondent told Mr. Palomaki that he would pay him the amounts received from the accounts receivable.

6. On April 10, 1979, respondent appeared before the April 1979 term of the Ulster County Grand Jury and testified (i) that the list he had given Mr. Palomaki represented a list of accounts receivable due Sashin Poultry Farm, (ii) that Sashin Poultry Farm was owed between $17,000 and $20,000 on October 26, 1978, and (iii) that the 11 institutions and businesses listed on the bottom of that list collectively owed him $8,000 to $10,000 on October 26, 1978. In fact, respondent knew such statements to be false. Respondent thereby failed to cooperate with the Grand Jury.

7. In his appearance before the Grand Jury on April 10, 1979, respondent further testified that he had informed Mr. Palomaki of his accounts receivable so that the latter would continue to deliver eggs to him.

8. On June 20, 1979, after a jury trial in County Court, Ulster County, respondent was convicted of one count of perjury in the third degree (Penal Law Section 210.05) for making the statements referred to in paragraph 6 above.

As to Charge II of the Formal Written Complaint:

9. On May 3, 1979, at a second appearance before the Grand Jury, respondent testified that when he gave Mr. Palomaki the list on October 26, 1978, he never stated that it was a list of monies owed to him. Respondent testified that he had told Mr. Palomaki the list was a "customer list."

10. On May 3, 1979, respondent further testified before the Grand Jury that he had not informed Mr. Palomaki that the 11 institutions and businesses listed on the bottom of the document on October 26, 1978, owed him between $8,000 and $10,000.

11. On June 20, 1979, after a jury trial in County Court, Ulster County, respondent was convicted of one count of perjury in the third degree (Penal Law Section 210.05) for giving inconsistent statements which he knew to be false to the Grand Jury of Ulster County on April 10, 1979, and May 3, 1979.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2 and 33.3(a)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

There is no dispute in this case that portions of respondent's Grand Jury testimony were false. At the hearing before the referee appointed by the Commission, respondent was read portions of his testimony of April 10, 1979, and when asked if that testimony had been correct or false, replied: "Part of it was right and part of it was false. That's the reason I went back in May" (Tr. 54). The colloquy continued as follows:

Q. Was it false that the eleven businesses listed on the bottom of the list owed you eight to ten thousand dollars? Was that false or correct?

A. That was false.

Q. Was it false when you said that you represented to Mr. Palomaki that fact?

A. I never represented that to Mr. Palomaki.

Q. Was it false when you said you represented it to Mr. Palomaki at the grand jury?

A. You want to repeat that again?

Q. Let me read you the question, lines 11 and 12, page 20 from that transcript. "Question: And you represented to Mr. Palomaki that fact, right? Answer: Right."

A. That was wrong [Tr. 54].

Respondent failed to cooperate with a grand jury, and testified falsely while under oath before the grand jury. Such conduct violates his obligations to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety, and to be faithful to the law (Sections 33.1, 33.2 and 33.3[a][1] of the Rules Governing Judicial Conduct). Even in the absence of promulgated ethical standards, a judge would have an obligation to be truthful under oath. The very essence of judicial office in the administration of justice is corrupted by a judge who lies under oath. The consequent ebb of public confidence in the integrity of the judicial system is immeasurable. As the Appellate Division held in Matter of Perry:

> [T]he giving of false testimony, particularly by a member of the judiciary, is inexcusable. Such conduct on the part of a judicial officer, whose responsibility is to seek out the truth and evaluate the credibility of those who appear before him is not conducive to the efficacy of our judicial process and is destructive of his usefulness on the bench. Matter of Perry, 53 AD 2d 882 (2d Dept. 1976).

The Commission makes its determination upon the found misconduct, independent of respondent's two convictions for perjury.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office. This determination is filed pursuant to Section 47 of the Judiciary Law, in view of respondent's resignation from judicial office effective July 31, 1979.

All concur.

Dated: November 20, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- X

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to

JAMES L. KANE,

a Justice of the Supreme Court, Erie County.

- X

DETERMINATION

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea

The respondent, James L. Kane, a justice of the Supreme Court, Eighth Judicial District (Erie County), was served with a Formal Written Complaint dated September 27, 1978, setting forth ten charges of misconduct arising from certain activities during the period respondent was a judge of the County Court, Erie County. The charges alleged misconduct in that respondent (i) appointed his son Timothy J. Kane, Esq., as a referee in three cases, (ii) appointed two attorneys, associated in the practice of law with his son Timothy J. Kane, as a referee or receiver in four cases, (iii) appointed John J. Heffron, Esq., the brother of another judge of the Erie County Court, Judge William G. Heffron, as a referee or guardian ad litem in 19 cases, during a period that Judge Heffron appointed respondent's son Timothy J. Kane as a referee in 16 cases and (iv) improperly participated in several cases in that he confirmed and ratified the reports as referee, receiver or guardian filed by his son Timothy J. Kane, the associates of Timothy J. Kane, and Mr. Heffron.

Respondent filed an answer dated November 16, 1978, admitting in part and denying in part the allegations set forth in the Formal Written Complaint.

By order dated February 28, 1979, the Commission appointed the Honorable Harold A. Felix as referee to hear and report with respect to the facts herein. Hearings were conducted on March 14, 1979, and May 8, 1979, and the report of the referee dated July 13, 1979, was filed with the Commission.

By notice dated August 23, 1979, the administrator of the Commission moved for a determination that the referee's report be confirmed and respondent be removed from office. Respondent filed papers dated October 11, 1979, which opposed the motion, and the administrator filed a reply dated October 18, 1979.

Oral argument was heard on October 25, 1979.

Preliminarily, the Commission finds that respondent is presently a justice of the Supreme Court, and that the actions herein occurred while respondent was a judge of the County Court, Erie County.

As to Charges I through IV of the Formal Written Complaint, the Commission makes the following findings of fact.

1. On June 5, 1974, respondent appointed his son Timothy J. Kane as referee to compute in Buffalo Savings Bank v. Foley, an action to foreclose a mortgage on real property.

2. On June 13, 1974, respondent ratified and confirmed the report of his son Timothy J. Kane as referee to compute in Buffalo Savings Bank v. Foley, and, on the same date, appointed Timothy J. Kane as referee to sell the foreclosed premises in the same case.

3. On March 24, 1977, respondent ratified and confirmed the report of his son Timothy J. Kane as referee to compute in Niagara Permanent Savings & Loan Association v. Greco, an action to foreclose a mortgage on real property, and, on the same date, appointed Timothy J. Kane as referee to sell the foreclosed premises in the same case.

4. On June 2, 1977, respondent ratified and confirmed the report of his son Timothy J. Kane as referee to compute in Buffalo Savings Bank v. McCrary, an action to foreclose a mortgage on real property, and, on the same date, appointed Timothy J. Kane as referee to sell the foreclosed premises in the same case.

5. On February 28, 1977, respondent ratified and confirmed the report of his son Timothy J. Kane as referee to compute in Izzo v. Manlil Management Corp., an action to foreclose a mortgage on real property.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(b)(4) and 33.3(c)(1) of the Rules Governing Judicial Conduct, and Canons 1, 2, 3A(1), 3B(4) and 3C(1) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

As to Charges V and VI of the Formal Written Complaint, the Commission makes the following findings of fact.

6. On January 1, 1975, respondent's son Timothy J. Kane became a partner of Charles E. Weston, Jr., Esq., engaged in the practice of law under the firm name of Weber, Weston & Kane, and continued as a partner with Mr. Weston until the latter's death on March 12, 1978.

7. On June 16, 1975, respondent appointed Charles E. Weston, Jr., as receiver in Liechtung v. Colonie Apartments of Amherst, Inc., an action to foreclose a mortgage on real property, after having declined to appoint a person recommended by the plaintiff in that action.

8. For his services as receiver in the Liechtung case, Mr. Weston was allowed fees of $17,218.68 in 1976 and $33,638.27 in 1977, which were deposited in the account and general funds of the law firm of Weber, Weston & Kane. Pursuant to the partnership agreements of Weber, Weston & Kane, respondent's son Timothy J. Kane received 37.5% of the net profits of the law firm including the 1976 fee and 40% of the net profits of the firm including the 1977 fee.

9. On July 24, 1975, respondent appointed Charles E. Weston, Jr., as receiver in Stewart v. Swiss Estates, Inc., an action to foreclose a mortgage on real property.

10. On November 26, 1975, respondent settled, approved and confirmed the report of Charles E. Weston, Jr., as receiver in the Stewart case, allowed him a fee of $842.25 in the matter and discharged him as receiver.

11. Pursuant to the partnership agreement of Weber, Weston & Kane, respondent's son Timothy J. Kane received 35% of the net profits from the fee in the Stewart case.

12. At the time respondent made the appointments in the Liechtung and Stewart cases, he knew that his son Timothy J. Kane was associated in the practice of law with Charles E. Weston, Jr., and knew, or should have known, that his son and Weston were, in fact, partners practicing law under the firm name of Weber, Weston & Kane.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(b)(4) and 33.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3B(4) and 3C(1) of the Code of Judicial Conduct. Charges V and VI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Charges VII and VIII of the Formal Written Complaint are not sustained and therefore are dismissed.

As to Charges IX and X, the Commission makes the following findings of fact.

13. From November 17, 1975, through June 23, 1977, while respondent was a judge of the County Court, Erie County, Judge William G. Heffron was also a judge of that court.

14. John J. Heffron, Esq., is the brother of Judge William G. Heffron. Judge Heffron is now retired.

15. From November 17, 1975, through June 23, 1977, in the 18 cases and on the dates listed below, respondent appointed John J. Heffron as referee to compute in actions to foreclose mortgages on real property.

(a) The Western New York Savings Bank v. Collins, November 17, 1975;

(b) Josephine DiMaria v. Thomas R. Answeeney, January 8, 1976;

(c) Joseph B. Gladysz v. Myron Rose, January 14, 1976;

(d) Liberty National Bank and Trust Corporation v. Moran, November 19, 1976;

(e) The Niagara Permanent Savings and Loan Association v. Kuhlmey, January 27, 1976;

(f) Buffalo Savings Bank v. Motif Construction Corporation, January 30, 1976;

(g) Buffalo Savings Bank v. Santarsiero, April 13, 1976;

(h) Liebeskind v. Abco Realty, Inc., June 29, 1976;

(i) Erie County Savings Bank v. Kearney, November 5, 1976;

(j) Buffalo Savings Bank v. Vinson, November 8, 1976;

(k) The Home Purchasing Corp. v. Burroughs, November 8, 1976;

(l) Hamburg Savings and Loan Association v. Lauricella, December 3, 1976;

(m) John Hancock Mutual Life Insurance Company v. Seventeenth Colonie Corp., January 6, 1977;

(n) Buffalo Savings Bank v. Johnson, March 2, 1977;

(o) Manufacturers and Traders Trust Company v. Swartwood, April 1, 1977;

(p) The Western New York Savings Bank v. Ludwig, June 6, 1977;

(q) The Western New York Savings Bank v. Misnik, June 14, 1977; and

(r) The Western New York Savings Bank v. Garmian Farms Ltd., June 23, 1977.

16. From January 20, 1976, through May 18, 1977, in the 14 cases and on the dates listed below, respondent (i) confirmed and ratified the reports of John J. Heffron as referee to compute in actions to foreclose mortgages on real property and (ii) appointed Mr. Heffron as referee to sell the foreclosed premises.

(a) Joseph B. Gladysz v. Myron Rose, January 20, 1976;

(b) Josephine DiMaria v. Thomas E. Answeeney, February 6, 1976;

(c) Liberty National Bank and Trust Company v. Paul T. Moran, February 9, 1976;

(d) The Niagara Permanent Savings and Loan Association v. Kuhlmey, February 24, 1976;

(e) Buffalo Savings Bank v. Santarsiero, April 26, 1976;

(f) Liebeskind v. Abco Realty, Inc., July 9, 1976;

(g) Erie County Savings Bank v. Kearney, November 22, 1976;

(h) Buffalo Savings Bank v. Vinson, December 1, 1976;

(i) John Hancock Mutual Life Insurance Company v. Seventeenth Colonie Corporation, January 7, 1977;

(j) The Home Purchasing Corporation v. Burroughs, March 2, 1977;

(k) Hamburg Savings and Loan Association v. Lauricella, March 4, 1977;

(l) Buffalo Savings Bank v. Johnson, March 16, 1977;

(m) The Western New York Savings Bank v. Misnik, June 10, 1977; and

(n) The Western New York Savings Bank v. Ludwig, June 23, 1977.

17. On April 6, 1976, respondent appointed John J. Heffron as guardian ad litem in Matter of Walz.

18. The total number of appointments by respondent of Mr. Heffron from November 17, 1975, through June 23, 1977, was 33.

19. From November 20, 1975, through May 18, 1977, in the 16 cases and on the dates listed below, Judge Heffron appointed respondent's son Timothy J. Kane as referee to compute in actions to foreclose mortgages on real property.

(a) Homestead Savings and Loan Association v. Kenneth D. Swan Demolition and Excavating, Inc., November 20, 1975;

(b) Erie County Savings Bank v. Hiller, February 11, 1976;

(c) Martin v. Martin, February 19, 1976;

(d) Niagara First Savings and Loan Association v. Tudor, February 23, 1976;

(e) Niagara Permanent Savings and Loan Association v. Country Estate Builders, Inc., February 24, 1976;

(f) Buffalo Savings Bank v. Lenahan, April 19, 1976;

(g) Beckley v. Anzalone, June 8, 1976;

(h) Western New York Savings Bank v. Land Girth Corp., June 23, 1976;

(i) Niagara Permanent Savings and Loan Association v. S.H.C. Construction Co., Inc., December 14, 1976;

(j) Izzo v. Manlil Management Corp., January 7, 1977;

(k) Niagara Permanent Savings and Loan Association v. Greco, February 10, 1977;

(l) Buffalo Savings Bank v. Dillon, February 18, 1977;

(m) Buffalo Savings Bank v. Hughes, February 22, 1977;

(n) Niagara First Savings and Loan Association v. Moore, April 19, 1977;

(o) Buffalo Savings Bank v. Davis, May 9, 1977; and

(p) Buffalo Savings Bank v. McCrary, May 18, 1977.

20. From December 8, 1975, through May 18, 1977, in the nine cases and on the dates listed below, Judge Heffron (i) confirmed and ratified the reports of respondent's son Timothy J. Kane as referee to compute in actions to foreclose mortgages on real property and (ii) appointed Mr. Kane as referee to sell the foreclosed premises.

(a) Homestead Savings Bank and Loan Association v. Kenneth D. Swan Demolition and Excavating, Inc., December 8, 1975;

(b) Niagara First Savings and Loan Association v. Tudor, February 27, 1976;

(c) Western New York Savings Bank v. Land Girth Corp., June 28, 1976;

(d) Niagara Permanent Savings and Loan Association v. S.H.C. Construction Co., Inc., December 16, 1976;

(e) Izzo v. Manlil Management Corp., January 19, 1977;

(f) Buffalo Savings Bank v. Dillon, March 14, 1977;

(g) Buffalo Savings Bank v. Hughes, March 15, 1977;

(h) Niagara First Savings and Loan Association v. Moore, April 20, 1977; and

(i) Buffalo Savings Bank v. Davis, May 18, 1977.

21. The total number of appointments awarded by Judge Heffron to respondent's son Timothy J. Kane from November 20, 1975, through May 18, 1977, was 25.

22. At the time respondent was making the 33 appointments of John J. Heffron listed above, he was aware that Judge Heffron was contemporaneously appointing his son Timothy J. Kane in similar proceedings.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(b)(4) and 33.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3B(4) and 3C(1) of the Code of Judicial Conduct. Charges IX and X of the Formal Written Complaint are sustained and respondent's misconduct is established.

Respondent's judicial appointments in this matter fall into three categories: (i) the appointments of his son, (ii) the appointments of his son's law partner and (iii) the appointments of the brother of another County Court judge while respondent was aware that the same judge was contemporaneously appointing respondent's son.

By appointing his son as a referee on four occasions, respondent engaged in conduct which the Rules Governing Judicial Conduct specifically prohibit. Section 33.3(b)(4) of the Rules Governing Judicial Conduct states that a "judge shall not appoint or vote for the appointment of any person...as an appointee in a judicial proceeding, who is within the sixth degree of relationship of either the judge or the judge's spouse."

By ratifying and confirming the reports of his son as referee in four cases, respondent created the appearance of impropriety and failed to comply with that provision of the Rules which requires a judge to disqualify himself in a proceeding in which a person within the sixth degree of relationship to him is acting as a lawyer in the proceeding (Section 33.3[c][1][iv][b]).

By appointing his son's law partner, Mr. Weston, as a receiver in two cases, with knowledge that his son and Mr. Weston were partners in the same law firm, respondent violated that provision of the Rules which requires a judge to disqualify himself in a proceeding in which a person within the sixth degree of relationship to him "is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding" (Section 33.3[c][1][iv][c]). The fees awarded to Mr. Weston, amounting to $50,000, were shared according to partnership percentages by respondent's son in these two cases. Clearly the fees involved are substantial interests

within the meaning of the Rules. Yet had the fees in these cases been nominal, the fact that respondent appointed his son's law partner was improper, since it violated the applicable Rules Governing Judicial Conduct with respect to a judge's obligation to promote public confidence in the integrity and impartiality of the judiciary and not to permit family, social and other relationships to influence his judicial conduct or judgment (Section 33.2).

By making 33 judicial appointments to the brother of another judge of the same court during the same 19-month period that the other judge was making 25 judicial appointments of a similar nature to respondent's son, with knowledge that the appointments at issue were being made contemporaneously, respondent created the appearance of serious impropriety and evinced an intention to circumvent the outright prohibition against nepotism with a disguised alternative. Respondent's conduct in making these cross appointments was improper.

The issues in the instant matter were addressed by the Court of Appeals in Spector v. State Commission on Judicial Conduct, 47 NY2d 462 (1979):

> First, nepotism is to be condemned, and disguised nepotism imports an additional component of evil because, implicitly conceding that evident nepotism would be unacceptable, the actor seeks to conceal what he is really accomplishing. Second, and this is peculiar to the judiciary, even if it cannot be said that there is proof of the fact of disguised nepotism, an appearance of such impropriety is no less to be condemned than is the impropriety itself. [Id., at 466.]
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> The appointment of his son by any Judge would be both unthinkable and intolerable whatever might be the son's character and fitness or his father's peculiar qualification in the circumstances to assess such character and fitness. The enlarged evil in this instance is that an arrangement for cross appointments would not only offend the antinepotism principle; it would go a step further, seeking to accomplish the objectives of nepotism while obscuring the fact thereof. [Id., at 467-68.]

With respect to the cases involving the appointments of respondent's son, the Commission has considered respondent's argument that "[n]epotism, at the time of the events in question, was not considered in the same light as it is now regarded" (Resp. 9).* The Commission has also considered respondent's arguments that he was unaware of the promulgated rules prohibiting nepotism at the time of one of the appointments at issue (Resp. 3), that the signing of appointment orders was "ministerial in nature" (Resp. 4) and that some of his awards of appointments followed a "uniform practice" of the County Court "to uniformly appoint as Referee to sell the same individual as appointed to compute" (Resp. 3).

The Commission rejects these arguments as in any way excusing or mitigating respondent's conduct.

Even in the absence of a specific rule prohibiting nepotism, a judge should know that nepotism is wrong. Indeed, as the Court noted in Spector, the practice of nepotism in the western world has been "repeatedly condemned" since the eighth century, and is "regarded as a form of misuse of authority, associated with corruption." Spector, supra, n.2 at 466-67. Respondent's alleged unfamiliarity with the specific rule is not persuasive. The first Canons of Judicial Ethics, adopted in 1909 by the New York Bar Association, more than 70 years ago, outrightly condemned nepotism. Respondent was obliged to know that nepotism is wrong.

In reaching its determination, the Commission has not overlooked the fact that respondent is currently an elected justice of the Supreme Court and that the conduct condemned herein occurred while he held a different judicial office. A judge may be removed from office, for cause, for misconduct prejudicial to the administration of justice (N.Y. State Const. Art. VI, Sec. 22, subd. a; Jud. Law, Sec. 44, subd. 1). Cause has been defined as an "inclusive, not a narrowly limited term" (Matter of Osterman, 13 NY2d [a], [p], cert. den. 376 U.S. 914), and the fact that respondent's misconduct in this matter occurred before he assumed his present judicial office is of no moment. "It matters not that the misconduct charge occurred prior to the Judge's ascension to the Bench. (See Matter of Sarisohn, 26 AD2d 388, 389, mot. for lv. to app. den. 19 NY2d 689, cert. den. 393 U.S. 1116, supra; see, also, Friedman v. State of New York, 24 NY2d 528, 539, supra; State v. Redman, 183 Ind. 332, 339-340; Ann., 42 ALR3d 691, 712-719, supra.) 'A judicial officer is nonetheless unfit to hold office and the interests of the public are nonetheless injuriously affected,' the court wrote in the Sarisohn case (26 AD2d, at p. 389), 'even if the misdeeds which portray his unfitness occurred prior to assuming such office'" (Matter of Pfingst, 33 NY2d [a], [kk]).

Respondent's misconduct is so prejudicial to the administration of justice that the Commission concludes that respondent lacks the requisite fitness to serve and does not possess the moral qualities required of a judicial officer. His conduct and insensitivity to the egregiousness of his transgressions strike at the very heart of his fitness for high judicial office and require his removal.

*"Resp." refers to the appropriate page in respondent's brief to the Commission.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office.

All concur.

Dated: December 12, 1979
Albany, New York

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 U. GREEN, JR.

a Judge of the District Court,
County of Suffolk.

Determination

PRESENT: Mrs. Gene Robb, Chairwoman
David Bromberg
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea

The respondent, Edward U. Green, Jr., a judge of the Suffolk County District Court, was served with a Formal Written Complaint on September 25, 1978. The complaint alleged misconduct in connection with respondent's participation in an August 30, 1975, proceeding in the office of the Suffolk County Police Commissioner.

The allegations of the complaint were denied by respondent in his verified answer, dated October 11, 1978.

On February 9, 1979, the Administrator of the State Commission on Judicial Conduct ("Administrator"), respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 7000.6(d) of the Operating Procedures and Rules of the State Commission on Judicial Conduct (22 NYCRR §7000.6[d]), approved by the Commission on February 27, 1979, pursuant to Section 44, subdivision 4 of the Judiciary Law. On March 21, 1979, the Administrator, respondent and his counsel appeared before the Commission for the purpose of presenting oral argument on the issues of misconduct and sanctions, if any.

The Commission finds as follows: On the evening of August 30, 1975, respondent, a Suffolk County District Court judge, without authority, improperly conducted what purported to be a "legal proceeding", in the office of the Suffolk County Police Commissioner concerning an individual who was being held in police custody under a County Court arrest warrant.

During the course of the "proceeding" respondent failed to notify the individual of his right to an attorney or to provide otherwise for the presence of an attorney to represent him; nor was the District's Attorney's office or the office of the Special Prosecutor appointed for Suffolk County notified to be present. Respondent also advised the said individual that he deliberately was failing to inform the individual of his constitutional rights in order that any admission the individual made could not be used against him.

The Commission further finds that respondent knew of the controversy which existed between the Suffolk County District Attorney and the Suffolk County Police Commissioner; and that respondent knew that the reason he was asked to be present in the County Police Commissioner's office on August 30, 1975, was related to that controversy. The Commission concludes that respondent either knew or should have known that it was inappropriate for him to participate in that proceeding.

By reason of the foregoing, respondent violated Sections 33.1 and 33.2(a) and 32.2(c) of the Rules Governing Judicial Conduct (22 NYCRR §33.1, 33.2[a] and 33.2[c]) and Canons 1 and 2 of the Code of Judicial Conduct. Whether knowingly or not, respondent's conduct was contrary to the interests of an independent judiciary. At the least he permitted his office to be used by the Suffolk County Police Commissioner in the latter's public dispute with the Suffolk County District Attorney. Respondent's participation in this matter violates his obligation to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The Commission considers by way of mitigation the fact that respondent did attempt to extricate himself from more extensive participation than actually occurred. It is also mindful that the incident was a single instance of misconduct on respondent's otherwise good record. The Commission hereby determines that the appropriate sanction is censure.

The foregoing constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: April 26, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- X

In the Matter of the Proceeding : DETERMINATION
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to :

WARREN C. DeLOLLO, :

a Judge of the Watervliet City :
Court, Albany County.

- X

PRESENT: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Warren C. DeLollo, a judge of the Watervliet City Court, Albany County, who serves in that capacity part-time and is permitted to practice law ("part-time lawyer-judge"), was served with a Formal Written Complaint dated January 5, 1979, setting forth three charges of misconduct pertaining to (i) respondent's practice of law in cases presided over by his brother or other judges permitted to practice law in the same county in which respondent sits as a judge and (ii) the improper assertion of influence in traffic cases. In his answer and amended answer, respondent admitted all the factual allegations set forth in the charges, admitted violating the ethical standards enumerated in Charges I and III, and denied that the facts admitted with respect to Charge II constituted violations of the ethical standards cited in Charge II. At the same time, respondent alleged certain facts in mitigation of his admitted acts.

The administrator of the Commission moved for summary determination on April 16, 1979, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). The Commission granted the motion on April 17, 1979, finding respondent guilty of judicial misconduct with respect to all three charges, and setting a date for oral argument on the issue of an appropriate sanction. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on May 22, 1979, and upon that record finds the following facts:

1. On December 3, 1973, respondent, an attorney scheduled to assume his current judicial office on January 1, 1974, practiced law before Colonie Town Court Justice Guy DeLollo in connection with People v. Michael Fera, a traffic case then pending before Judge Guy DeLollo, notwithstanding that respondent and Judge Guy DeLollo were brothers.

2. On November 23, 1976, respondent, a judge in Albany County who is also permitted to practice law, sent a letter to another judge in Albany County who is permitted to practice law, Judge John E. Holt-Harris of the Albany City Traffic Court, seeking special consideration on behalf of the defendant in People v. Julie F. Lombardo, a traffic case then pending before Judge Holt-Harris.

3. On January 27, 1977, respondent, a judge in Albany County permitted to practice law, sent a letter to another judge in Albany County who is permitted to practice law, Justice Philip Caponera of the Colonie Town Court, seeking special consideration on behalf of the defendant in People v. Terrence C. Lynch, a traffic case then pending before Judge Caponera.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 1, 7 and 9 of the Code of Professional Responsibility, Section 20.18 of the General Rules of the Administrative Board of the Judicial Conference, Sections 33.1, 33.2, 33.3(a)(1), 33.3(a) (4) and 33.5(f) of the Rules Governing Judicial Conduct, Canons 1, 2 and 3 of the Code of Judicial Conduct and Section 839.5 of the Rules of the Appellate Division, Third Judicial Department. Charges I through III of the Formal Written Complaint are sustained and respondent is thereby guilty of misconduct.

It is improper for a part-time lawyer-judge in one county to practice law before another part-time lawyer-judge from the same county. In the Third Judicial Department, where these matters under consideration occurred, by Appellate Division rule, it is impermissible for a part-time lawyer-judge in one county to practice criminal law in any other court in that county, whether or not the presiding judge is permitted to practice law. By writing letters to two other part-time lawyer-judges in Albany County, seeking favorable dispositions for the defendants in two traffic cases, respondent practiced law before other part-time lawyer-judges in Albany County and thereby violated the applicable ethical standards and rules cited above. His misconduct is compounded by the fact that, as a judge, respondent is subject as well to promulgated standards which require judges to promote the integrity and impartiality of the judiciary. It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. By making ex parte requests of other judges for favorable dispositions for

the defendants in these two traffic cases, respondent not only improperly practiced law, he violated the applicable Rules Governing Judicial Conduct.

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In Matter of Byrne, N.Y.L.J. April 20, 1978, vol. 179, p. 5 (Ct. on the Judiciary), the Court on the Judiciary declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." Id.

With respect to respondent's practicing law in a case presided over by his brother, it was clearly improper for him to have done so. Such a practice can only undermine public confidence in the impartiality of the judiciary, and it thereby reflects poorly on the entire judicial system. Even in the absence of specific ethical standards regarding such conduct, respondent should have known better, particularly since he had served as a judge before as well as shortly after this incident, and is thereby presumed to have been acquainted with the ethical standards relevant to judicial proceedings.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure. All concur, except Mrs. Robb, who votes that the appropriate sanction is admonition.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: July 3, 1979
Albany, New York

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

J. DOUGLAS TROST,

a Judge of the Family Court,
Erie County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, J. Douglas Trost, a judge of the Family Court, Erie County, was served with a Formal Written Complaint dated August 10, 1978, alleging that (i) respondent's conduct was injudicious, intemperate and discourteous in five separate Family Court proceedings between 1974 and 1976, and (ii) respondent signed an order in May 1975, committing an individual to the Erie County Correctional Facility, knowing that the information in the order was false and that the proceeding upon which it was based was fictitious. Respondent filed an answer dated September 15, 1978.

By order dated November 16, 1978, the Commission appointed the Honorable Carman F. Ball as referee to hear and report to the Commission with respect to the issues herein. A hearing was conducted before the referee on December 5, 1978, and December 21, 1978, and the referee's report, dated March 16, 1979, was filed with the Commission.

The administrator of the Commission moved on April 23, 1979, to confirm in part and disaffirm in part the report of the referee, and for a determination that respondent be removed from office. Respondent opposed the administrator's motion and cross-moved to confirm in part and disaffirm in part the report of the referee and to dismiss the Formal Written Complaint.

The Commission heard oral argument by the administrator, respondent and respondent's counsel on June 21, 1979, thereafter considered the record in this proceeding and upon that record makes the findings of fact and conclusions of law set forth below.

Charge I of the Formal Written Complaint is not sustained and therefore is dismissed.

With respect to Charges II through V of the Formal Written Complaint, the Commission finds as follows:

1. On January 31, 1975, in an Erie County Family Court proceeding entitled D_____ v. D_____,* respondent was injudicious, intemperate and discourteous, in that he made the following remarks from the b

(a) The Court: [Referring to the litigants] As a matter of fact, these two people ought to get shotguns and get themselves in a room and kill each other. They are doing it and wasting everybody's time doing it. They are wasting the Court's and everybody's. (Tr. 5).**

(b) The Court: [Speaking to Mr. D] But let me say this to you, [witness' first name], you know I'm not going to let you off the hook, honest, I am not... Look, your wife is a pain in the butt to me. All right. But she -- look, you didn't ask me whether you should marry her or not. She was your choice, right? Right.... So you're stuck with her. (Tr. 8).

Mr. D: Ten years ago she threw me out.

The Court: Wait a minute -- you should have bounced out.

*In view of the confidential nature of proceedings in Family Court, the names of the parties have been deleted from this determination and record.

**"Tr." refers to the appropriate page in the transcript of the proceeding in Family Court.

(c) The Court: [Referring to amount of support payments] But, Counsel, Let me say this: A reasonable figure that we should talk about here is me putting back to forty-five. [Witness' first name] -- he's just one of those stubborn Italian guys, he is not going to give up. He is not going to give up. (Tr. 9).

Mr. D: I don't have the money to pay it. (Tr. 9)

The Court: Wait a minute, wait a minute. You had plenty of money to pay her. (Tr. 9-10).

Mr. D: I spent it. (Tr. 10).

The Court: Certainly you did. Why the hell didn't you save it? You knew you had an order here, didn't you? You didn't spend it, either. You know as well as I do you've got it tucked away. You know, you don't change your life style overnight, [witness' first name]. You never spent $4,000.00 in eighteen months in your life time -- period... I should put you in jail for lying, you know what. I should get your brother, put him in jail too for lying. (Tr. 10).

(d) The Court: [Referring to Mrs. D] Why don't you divorce this guy and get yourself a man? (Tr. 12).

(e) The Court: And again, you know, [witness' first name] is a pain in the butt to me -- put it on the record -- okay? ... You are a pain in the ass to me, [witness' first name]. That is what you are. (Tr. 13).

2. On November 3, 1975, in an Erie County Family Court support proceeding entitled P_____ v. P_____, the respondent was injudicious, intemperate and discourteous, in that he made the following remarks from the bench:

(a) The Court: [Speaking to Mrs. P] I'm going to make some allowance for this man today. I'm not going to let it go. You've got two big lummoxes living there, and twenty bucks a week is not enough, no question about it. (Tr. 5-6).

(b) The Court: [Speaking to Mrs. P] Well, some night you ought to hit him on the head with an axe and it will be all over. (Tr. 8).

3. On April 4, 1976, in an Erie County Family Court support proceeding entitled H_____ v. H_____, respondent was injudicious, intemperate and discourteous, in that he made the following remarks from the bench:

(a) The Court: [Speaking to Mr. H] Well, why don't you do that until you get squared around. Because, [witness' first name], I don't want to bend you out of shape. (Tr. 4).

(b) The Court: [Speaking to Mr. H] The fairness is, you pay according to the Order, now, whether you steal it or whatever you do with it. (Tr. 5).

4. On April 9, 1976, in an Erie County Family Court support proceeding entitled S_____ v. J_____, respondent was injudicious, intemperate and discourteous, in that he made the following remarks from the bench:

(a) The Court: [Speaking to counsel for petitioner] Why don't you give each of them a gun?

[Counsel]: Each had a gun.

The Court: Let them use it. (Tr. 5).

(b) The Court: [Speaking to Mr. J] Don't you understand something? You're still fighting; why the hell don't you give up? Don't you know when you're beat? ... You're a man, aren't you? ... Why don't you just lie back and forget about it, instead of pushing. Come on -- I'm giving you good advice ... Not that I agree with the law -- don't get me wrong. (Tr. 9-10).

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1 and 33.3(a)(3) of the Rules Governing Judicial Conduct and Canons 1 and 3A(3) of the Code of Judicial Conduct. Charges II through V of the Formal Written Complaint are sustained and respondent is thereby guilty of misconduct.

With respect to Charge VI of the Formal Written Complaint, the Commission finds as follows:

5. In May 1975, Raymond C. Hill, a reporter for the Buffalo Evening News, was preparing a series of news articles on the effectiveness of sentencing convicted defendants to serve their jail terms on weekends only. Without respondent's knowledge, Mr. Hill requested permission of the administrative judge of the eighth judicial district to do a weekend term in the Erie County Correctional Facility, and was refused. Mr. Hill then sought respondent's assistance. Mr. Hill and respondent are friends.

6. Respondent introduced Mr. Hill to Frank Festa, superintendent of the Erie County Correctional Facility. Respondent thereafter had an order prepared, committing Mr. Hill to the correctional facility so that Mr. Hill might pursue his news story without it being disclosed to the inmates that he was a reporter. Respondent signed the order in his capacity as a judge of the Family Court and caused the court's seal to be affixed thereto, with knowledge that there had been no legal proceedings upon which to base the order and that the information thereon was false. Such order was signed without authority in law or basis in fact.

7. On May 16, 1975, Mr. Hill surrendered himself at the Erie County Correctional Facility. The commitment order signed by respondent was entered as a public record; Mr. Hill was fingerprinted and committed to the facility, and he thereby received a criminal history record.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1 and 33.2(a), (b) and (c) of the Rules Governing Judicial Conduct, and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charge VI of the Formal Written Complaint is sustained and respondent is thereby guilty of misconduct.

It is improper for a judge to speak to litigants in the injudicious, intemperate and discourteous manner respondent did in the cases cited in paragraphs 1 through 4 above. Section 33.3(a)(3) of the Rules Governing Judicial Conduct requires a judge to be "patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity...."

There is no justification for a judge to tell the people before him, as respondent did, to "get shotguns ... and kill each other," or to call someone "a pain in the ass" in open court, or to advise one party "to hit [the other party] over the head with an axe." Such conduct demeans the judiciary and diminishes public confidence in the integrity of the legal system. It aggravates heightened emotions and issues in a judicial forum where emotions should be tempered and issues resolved.

"Breaches of judicial temperament are of the utmost gravity," as noted by the Appellate Division, "[and] impair the public's image of the dignity and impartiality of courts, which is essential to ... the court's role in society." Matter of Mertens, 56 A.D.2d 456 (1st Dept. 1977).

The Commission rejects respondent's explanation that it is "effective at times [for a judge] to meet people at their own level and to use language and convey ideas that they would not understand if presented in any other fashion" (Hr. 27).* Although respondent describes the setting of his court as "informal" (Hr. 28), his conduct fails to comport with reasonable standards of decorum and taste, appropriate even to an informal setting. He appears to have used the informality of his court to justify the denigration of those who appear in that court.

With respect to his signing of the false commitment order without authorization in law, so that a friend could write a news story, respondent violated those standards of conduct which require a judge to "respect and comply with the law" and which prohibit a judge from "allow[ing] his family, social, or other relationships to influence his judicial conduct or judgment" (Sections 33.2[a] and [b] of the Rules Governing Judicial Conduct). Regardless of the ultimate purpose, judicial office should not be used to advance a private interest (Section 33.2[c] of the Rules).

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

Judge Alexander and Mr. Bromberg dissent with respect to Charge I and vote to sustain the charge.

Mr. Kirsch dissents with respect to Charge II and votes to dismiss the charge.

Mr. Wainwright abstains with respect to Charge II.

Mr. Kirsch and Mr. Wainwright dissent with respect to Charges III, IV and V and vote to dismiss the charges.

Mrs. Robb and Mr. Kovner dissent with respect to Charge VI and vote to dismiss the charge.

Dated: August 13, 1979
Albany, New York

*"Hr." refers to the appropriate page in the transcript of the hearing before the referee.

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

ANTONIO S. FIGUEROA,

a Judge of the Criminal Court of the City of New York, New York County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Antonio S. Figueroa, a judge of the Criminal Court of the City of New York, was served with a Formal Written Complaint dated June 20, 1978, alleging in two charges of misconduct that respondent improperly intervened in a felony proceeding in which the defendant was his great grandnephew. Respondent filed an answer dated September 12, 1978, denying in substantial part the material allegations.

By order dated November 16, 1978, the Commission appointed Henry J. Smith, Esq., as referee to hear and report to the Commission with respect to the issues herein. A hearing was conducted on February 21 and 22, 1979, and the referee's report dated July 25, 1979, was filed with the Commission. The referee, inter alia, recommended dismissing Charge I of the Formal Written Complaint and sustaining Charge II. The referee also reached conclusions with respect to the veracity of respondent's testimony.

By notice dated August 27, 1979, the administrator of the Commission moved to disaffirm the referee's report as to Charge I, to confirm as to Charge II, and to render a determination that respondent be censured. Respondent opposed the administrator's motion and moved to confirm the referee's report as to Charge I, to disaffirm as to Charge II, and to dismiss the Formal Written Complaint.

The Commission received memoranda and entertained oral argument with respect to these motions on September 26, 1979, thereafter considered the record of this proceeding, and upon that record makes the findings and conclusions below.

Charge I is not sustained and therefore is dismissed.

With respect to Charge II, the Commission finds the following facts.

1. On February 25, 1977, the grand jury of New York County indicted Frank Acosta on the felony charge of criminal possession of a weapon.

2. Frank Acosta and respondent are related by consanguinity in that Mr. Acosta is respondent's great grandnephew.

3. On March 24, 1977, Mr. Acosta was arraigned in Supreme Court and entered a plea of not guilty. People v. Frank Acosta was thereupon assigned to the Honorable E. Leo Milonas, then a judge of the New York City Criminal Court assigned to Supreme Court, and the case was adjourned to April 5, 1977.

4. On April 5, 1977, after Judge Milonas, defendant's counsel and an assistant district attorney discussed a possible reduction of the charge to a misdemeanor, the assistant district attorney advised Judge Milonas that such a plea was not satisfactory. The case was then adjourned to April 12, 1977.

5. Respondent knew that the Acosta case was before Judge Milonas.

6. On April 10, 1977, respondent initiated an ex parte telephone conversation with Judge Milonas, with whom he was acquainted, and spoke to him about the Acosta case. Respondent told Judge Milonas that the defendant was his nephew, a college student and of good character who had done "something stupid" in carrying a gun (Ref. 43).*

7. At the close of his telephone conversation with respondent, Judge Milonas concluded (i) that respondent's call had been "improper" and (ii) that he must disqualify himself from presiding further in the Acosta case (Ref. 44).

8. On April 12, 1977, at the call of the court calendar, Judge Milonas announced the transfer of People v. Frank Acosta to another judge.

*"Ref." notations refer to the appropriate page in the referee's report.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.2(b), 33.2(c) and 33.3(a)(4) of the Rules Governing Judicial Conduct. Charge II is sustained and respondent's misconduct is established.

The referee has reported, and the Commission so concludes, that upon learning that the Acosta case was before Judge Milonas, with whom he had previously served as a New York City Criminal Court judge, respondent "decided to call Judge Milonas...in the hope that his formerly close relationship with Judge Milonas might result in some advantage toward the disposition of the case" (Ref. 46).

While respondent was obviously motivated by an understandable concern for the plight of his great grandnephew, it was clearly improper for him to have telephoned Judge Milonas, ex parte, in what amounted to an assertion of special influence. In so doing, respondent violated the applicable sections of the Rules Governing Judicial Conduct, which require a judge to "conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (Section 33.2), and which prohibit a judge from allowing a family relationship to influence his judicial conduct or judgment (Section 33.2[b]), lending the prestige of his office to advance the private interests of others (Section 33.2[c]) and initiating ex parte or other communications in a pending proceeding, except as authorized by law (Section 33.3[a][4]).

While respondent's misconduct in this regard, standing alone, is serious and would in any event require public discipline, the Commission considered respondent's motivation in mitigation of his misconduct, with respect to determining the appropriate sanction. Although high standards of conduct are expected and required of all judges because of their special place in this society, those who hold judicial office are subject to the same fallibilities of human nature as anyone else. It is not difficult for the Commission to understand how deep concern for a troubled member of his family may have affected respondent's judgment as to the impropriety of calling Judge Milonas to assert special influence. Judge Milonas properly did not accede to the influence and conducted himself with propriety and decorum.

Respondent's misconduct in this case is exacerbated by his conduct during the proceedings before the Commission. The referee has found, and the Commission concludes, that "respondent testified falsely in all important respects as to Charge II" (Ref. 42). Specifically, the Commission concludes that (i) at the hearing, respondent testified falsely with respect to his intention in placing the telephone call to Judge Milonas (Ref. 45-47) and (ii) in testimony before the Commission on October 12, 1977 (Hearing Exhibit 5), respondent testified falsely in denying that he spoke to any judge with respect to the Acosta case and specifically denying recollection of speaking to Judge Milonas about it (Ref. 48-50).

While respondent's telephone call to Judge Milonas may be attributed to a lapse of good judgment engendered by concern for the plight of his great grandnephew, no such inference may be made with respect to false testimony in the course of a disciplinary proceeding conducted well after the Acosta case had been concluded in the courts. The defendant's plight was no longer at issue when respondent appeared before the Commission. In Matter of Perry, the court held that "the giving of false testimony, particularly by a member of the judiciary, is inexcusable. Such conduct on the part of a judicial officer, whose responsibility is to seek out the truth and evaluate the credibility of those who appear before him is not conducive to the efficacy of our judicial process and is destructive of his usefulness on the bench." Matter of Perry, 53 AD2d 882 (2d Dept. 1976; judge removed from office).

In consideration of the appropriate sanction, the Commission notes that respondent is scheduled to retire from the bench on December 31, 1979.

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

All concur, except for Judge Rubin, who dissents only with respect to sanction, and votes that the appropriate sanction is admonition.

Dated: November 1, 1979

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- X

In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4, DETERMINATION
of the Judiciary Law in Relation to :

ARTHUR W. LONSCHEIN, :

a Justice of the Supreme Court, :
Queens County.

- X

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Arthur W. Lonschein, a justice of the Supreme Court, Eleventh Judicial District (Queens County), was served with a Formal Written Complaint dated October 26, 1978, alleging misconduct in that in three instances respondent improperly used the prestige of his office on behalf of a personal friend who had applied for a lease and licenses from various New York City government authorities. Respondent filed an answer dated November 27, 1978, denying the material allegations.

By order dated January 30, 1979, the Commission appointed the Honorable Bertram Harnett as referee to hear and report to the Commission with respect to the facts herein. Hearings were held on April 9, 10, 11 and 19, 1979, and the report of the referee, dated August 31, 1979, was filed with the Commission.

By notice dated September 28, 1979, the administrator of the Commission moved to confirm the report of the referee, determine misconduct and render a sanction. By notice dated October 16, 1979, respondent cross-moved to confirm in part and disaffirm in part the report of the referee and to dismiss the Formal Written Complaint. The administrator filed a reply dated October 18, 1979.

The Commission heard oral argument with respect to the motions on October 26, 1979, thereafter considered the record in this proceeding, and upon that record makes the findings and conclusions below.

With respect to Charge I of the Formal Written Complaint, the Commission makes the following findings of fact.

1. Respondent was a judge of the Civil Court of the City of New York in 1975.

2. John Mazzuka was a principal of a private car service named KOOP City Private Car Service in 1975 (hereinafter "KOOP City").

3. Respondent and John Mazzuka are intimate personal friends who have known each other for at least 20 years, who consider themselves as brothers, and whose families are also intimate.

4. In the spring of 1975, Mr. Mazzuka told respondent he was having a problem with respect to an application by KOOP City to the New York City Department of Real Estate to lease a limousine base station under the Pelham Bay Park subway station.

5. Respondent suggested to Mr. Mazzuka that the latter speak to New York City Councilman Matthew Troy for assistance in resolving the problem. Mr. Mazzuka was a constituent of Mr. Troy.

6. Mr. Mazzuka asked respondent to speak to Mr. Troy on his behalf, and asked respondent to arrange a meeting between him and Mr. Troy.

7. Respondent has known Matthew Troy for approximately 20 years, as a fellow lawyer, through various political activities and affiliations, and as a personal friend. Mr. Troy was a political sponsor of respondent for election to the Civil Court in 1975 and in fact knew respondent to be a judge of the Civil Court in 1975.

8. On an unspecified date in April 1975, respondent spoke in person to Mr. Troy on behalf of Mr. Mazzuka. Respondent referred to Mr. Mazzuka as a friend, acquainted Mr. Troy with KOOP City's lease application and asked Mr. Troy to meet with Mr. Mazzuka.

9. The foregoing conversation constituted a request by respondent that Mr. Troy assist Mr. Mazzuka as a favor to respondent.

10. As a favor to respondent, Mr. Troy thereafter met Mr. Mazzuka in the former's office in April 1975, and Mr. Troy wrote on Mr. Mazzuka's behalf to the Commissioner of the New York City Department of Real Estate and to the Metropolitan Transportation Authority.

11. KOOP City subsequently entered into the sought-after lease. There is no evidence of any causal connection between the foregoing conduct and the actual granting of the lease.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.2(c) of the Rules Governing Judicial Conduct and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

With respect to Charge II, subdivisions (a) and (b), of the Formal Written Complaint, the Commission makes the following findings of fact.

12. In June 1975, Stanley Katz was Deputy Commissioner and General Counsel of the New York City Taxi and Limousine Commission.

13. Respondent and Mr. Katz were longstanding acquaintances but it does not appear their relationship was close. Mr. Katz knew respondent to be a judge of the Civil Court, and respondent knew Mr. Katz to be Deputy Commissioner and General Counsel of the Taxi and Limousine Commission.

14. On an unspecified date between June 1, 1975, and June 19, 1975, Mr. Mazzuka and his partner, Louis Moyett, spoke with Mr. Katz at the latter's New York City office with respect to certain vehicle license applications filed by KOOP City with the Taxi and Limousine Commission.

15. Mr. Katz referred Mr. Mazzuka and Mr. Moyett to Rose Nikas, a clerk responsible for processing license applications. Mr. Mazzuka and Mr. Moyett met with Ms. Nikas and her supervisor, Jose Basora, then Deputy Director of Licensing. The applicants expressed a need for immediate licensing. Mr. Basora advised the applicants that their license applications required two to four weeks for processing.

16. On June 20, 1975, Mr. Mazzuka and Mr. Moyett returned to Mr. Basora's office and advised him that they had obtained a contract from the Veterans Administration and required vehicle licensing from the Taxi and Limousine Commission in connection therewith.

17. Thereafter, Mr. Mazzuka discussed his Veterans Administration contract with respondent and told respondent of his belief that the Taxi and Limousine Commission was unduly delaying KOOP City's licensing application. Mr. Mazzuka also advised respondent of the monetary importance of the Veterans Administration contract and stated that he would lose that contract unless the Taxi and Limousine Commission licenses were granted expeditiously. Mr. Mazzuka told respondent that he had spoken to Mr. Katz.

18. On an unspecified date between June 20, 1975, and June 24, 1975, respondent telephoned Mr. Katz and asked him to assist in expediting the matter of KOOP City's licensing.

19. On June 25, 1975, while driving his car, respondent observed Mr. Katz driving alongside in a separate vehicle. He attracted Mr. Katz's attention by signaling several times with his horn and motioned Mr. Katz to stop. Both thereupon parked their cars on the shoulder of the road and got out of their cars.

20. Respondent then initiated a conversation to the effect that Mr. Mazzuka was still troubled about delay in processing his licensing application. Respondent told Mr. Katz that both Mr. Mazzuka and Mr. Moyett were friends and former clients of his and that he considered the requests of Mr. Mazzuka and Mr. Moyett to be meritorious, and he asked Mr. Katz to inquire into the matter.

21. Respondent's conversation with Mr. Katz on June 25, 1975, was motivated by a desire to help Mr. Mazzuka and to expedite KOOP City's licensing application. Respondent conveyed to Mr. Katz his desire for Mr. Katz to help Mr. Mazzuka. Respondent knew or should have known that his judicial position would affect Mr. Katz's conduct.

22. Thereafter Mr. Mazzuka visited Mr. Katz again and was introduced by him to First Deputy Commissioner Joseph Cerbone, who summoned Mr. Basora to join them. Mr. Katz suggested that "conditional licenses" be issued to KOOP City.

23. On June 27, 1975, the requested licenses were in fact issued to KOOP City.

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.2(c) of the Rules Governing Judicial Conduct and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charge II, subdivisions (a) and (b), of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Charge II, subdivision (c), is not sustained and therefore is dismissed.

A judge is required by the Rules Governing Judicial Conduct to conduct himself "at all times" in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Section 33.2[a]). His obligation to observe the applicable ethical standards may not be left behind in the robing room. Indeed, the very manner in which jurists are addressed as "Judge" and "Your Honor", off the bench as well as on, in private as well as in public, bespeaks of the public's perception of their high position and requires that judges be ever mindful of the manner in which their actions may be viewed. They must assiduously avoid conduct that may create even the appearance of impropriety. While this may often seem a difficult and burdensome responsibility, its faithful discharge is indispensable to the promotion of public confidence in the integrity and impartiality of the judiciary. The diligence required to discharge that responsibility cannot be relaxed.

In the instant matter, respondent sought from two public officials what amounted to special consideration on behalf of a close personal friend. Although respondent never expressly asserted his judicial office in seeking special consideration, the two public officials in fact knew him to be a judge, and his requests were undeniably accorded greater weight than they would have been had respondent not been a judge. Respondent knew or should have known that such would be the case.

The Rules Governing Judicial Conduct specifically prohibit a judge from "allow[ing] his family, social, or other relationships to influence his judicial conduct or judgment" (Section 33.2[b]). The Rules also prohibit a judge from "lend[ing] the prestige of his office to advance the private interests of others..." (Section 33.2[c]). Respondent's conduct in the instant matter violated the applicable standards.

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

Mr. Kirsch, Judge Rubin, Judge Shea and Mr. Wainwright dissent only with respect to sanction and vote that the appropriate sanction is admonition.

Dated: December 28, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- X

In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to : DETERMINATION

WALTER C. DUNBAR, :

a Justice of the Village Court of :
Watkins Glen, Schuyler County.

- X

PRESENT: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Walter C. Dunbar, a justice of the Village Court of Watkins Glen, Schuyler County, was served with a Formal Written Complaint dated December 11, 1978, setting forth six charges of misconduct with respect to (i) respondent's directing the defendants in six cases to make contributions to charities, identified by respondent, as a condition to discharging those six cases, and (ii) respondent's failure to disqualify himself in one of those six cases despite having participated in the investigation of the charge in that case and otherwise having personal knowledge of the facts and disputed issues.

In his answer, respondent admitted the factual allegations contained in five of the six charges in the Formal Written Complaint, and admitted in part and denied in part the factual allegations contained in the sixth charge.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on March 14, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings

and the facts as agreed upon, including respondent's admission of Charges I through V.

The Commission approved the agreed statement, as submitted, on March 21, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on May 22, 1979.

With respect to Charges I through V of the Formal Written Complaint, the Commission finds the following facts:

1. On December 11, 1976, in connection with the case of People v. Robert M. Hooper, respondent imposed a conditional discharge which required the defendant to make a payment of $50 to a charity known as the "Seneca Santa."

2. On December 23, 1976, in connection with the case of People v. David Johnson, respondent imposed a conditional discharge which required the defendant to make a payment of $20 to a charity known as the United Fund.

3. On December 18, 1976, in connection with the case of People v. Jeffry S. Bolt, respondent imposed a conditional discharge which required the defendant to make a payment of $50 to a charity known as the United Fund.

4. On December 18, 1976, in connection with the case of People v. William T. Peterson, respondent imposed a conditional discharge which required the defendant to make a payment of $50 to a charity known as the United Fund.

5. On December 18, 1976, in connection with the case of People v. Martin G. Tipaldos, respondent imposed a conditional discharge which required the defendant to make a payment of $40 to a charity known as the United Fund.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2 and 33.5(b)(2) of the Rules Governing Judicial Conduct and Canon 5B(2) of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained, and respondent is thereby guilty of judicial misconduct.

With respect to Charge VI of the Formal Written Complaint, the Commission finds the following facts:

6. On December 23, 1976, in connection with People v. Marty Butler, in which the defendant was charged with driving with an overloaded axle on December 8, 1976, respondent:

(a) imposed a conditional discharge which required the defendant to make a payment of $260 to a charity known as the United Fund in lieu of a fine; and

(b) with the maker's permission, typed in "Schuyler County United Fund" and the amount of "$260" on a blank check signed to respondent by the defendant's employer, Keith Paddock, and sent the check to the Schuyler County United Fund.

7. Between January 7, 1977, and January 20, 1977, because respondent was upset that Keith Paddock (i) had stopped payment without notification or explanation on the $260 check to the United Fund in connection with People v. Marty Butler, and (ii) would not return respondent's calls, respondent directed that the driving record of the defendant be investigated. Upon learning that Mr. Butler's driving license had been suspended on December 8, 1976, he reported this to Patrolman Richard Pierce, who in turn reported it to Trooper John Halstead.

8. Thereafter, respondent:

(a) reopened People v. Marty Butler;

(b) prepared an information for the signature of Trooper John Halstead, charging Mr. Butler with driving with an overloaded axle on December 8, 1976, for the purpose of issuing a warrant for the arrest of Mr. Butler;

(c) requested Trooper Halstead to sign the information;

(d) issued a warrant for the arrest of Mr. Butler on the basis of the signed information;

(e) rejected an offer by the defendant's counsel on January 20, 1977, to pay $260 to the court as a fine; at the time of the defendant's offer, before the above-mentioned warrant had been executed and before the appearance of the parties in court on the new charges, respondent insisted that the defendant make good a $260 contribution to the United Fund; and

(f) refused to consider the acceptance of a $260 payment as a fine on January 22, 1977, when the

defendant, with counsel, appeared before him and entered a plea of not guilty to all the charges.

9. Respondent's report to Patrolman Pierce that Mr. Butler's license had been suspended resulted in Patrolman Pierce charging Mr. Butler with operating while license suspended. Respondent presided over the matter to the extent of arraigning Mr. Butler on January 22, 1977, ordering discovery and adjourning the case first to January 29, 1977, then to February 5, 1977, and then to March 9, 1977.

10. On March 9, 1977, respondent set the trial date in People v. Marty Butler as April 9, 1977, a day when the acting village court justice of Watkins Glen was scheduled to be sitting. Thereafter, the acting village court justice presided over the case and disposed of it.

11. Respondent's report to Patrolman Pierce that Mr. Butler's license had been suspended resulted in Trooper Halstead charging Mr. Paddock, Mr. Butler's employer, with permitting Mr. Butler to operate with a suspended license. Respondent presided over this case to the extent of issuing a warrant for the arrest of Mr. Paddock, arraigning Mr. Paddock on January 22, 1977, ordering discovery and adjourning the case first to January 29, 1977, then to February 5, 1977, and then to March 9, 1977.

12. On March 9, 1977, respondent set the trial date in People v. Keith Paddock as April 9, 1977, a day when the acting village court justice of Watkins Glen was scheduled to be sitting. Thereafter, the acting village court justice presided over the case and disposed of it.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.2(c), 33.3(a)(4), 33.3(c)(1) and 33.5(b)(2) of the Rules Governing Judicial Conduct and Canons 1, 2, 3C(1) and 5B(2) of the Code of Judicial Conduct. Charge VI of the Formal Written Complaint is sustained and respondent is thereby guilty of misconduct.

It is improper for a judge to request or require a defendant to make a contribution to a charity in lieu of a fine. In Matter of Richter, 42 N.Y.2d(aa) (Ct. on the Judiciary 1977), the court declared that discharges conditioned on contributions by the defendant to charities, "[t]hough well-intentioned...[are] completely improper. A Judge is forbidden to solicit for charity; a fortiori, he may not direct contributions to charities, particularily where the recipient is specified." Id., 42 N.Y.2d at (hh).

In the instant matter, respondent's misconduct rises to the level of that identified as improper by the court in Richter, in that he granted discharges conditioned on the defendants making charitable contributions. As a judge is prohibited by the Rules Governing Judicial Conduct from soliciting funds for a charitable organization (Section 33.5[f] of the

Rules), so is he prohibited from using the power of his office to compel contributions to charities.

With respect to Charge VI of the Formal Written Complaint, involving People v. Marty Butler and People v. Keith Paddock, respondent presided over both matters despite his participation in preparing the prosecution's case in both matters, and despite his admittedly being "upset" by the pre-trial conduct of one of the defendants. By so presiding over these matters, respondent violated Section 33.3(c)(1)(i) of the Rules Governing Judicial Conduct, which requires a judge to "disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including... instances where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."

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

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 3, 1979
Albany, New York

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- X

In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to : DETERMINATION

JOHN D. D'APICE, :

a Judge of the City Court of :
Yonkers, Westchester County.

- X

PRESENT: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.
Dolores DelBello -- Not Participating

The respondent, John D. D'Apice, a judge of the City Court of Yonkers, Westchester County, was served with a Formal Written Complaint dated October 26, 1978, alleging in two charges of misconduct that respondent (i) improperly used stationery identifying him as a judge in a private dispute with an attorney and (ii) improperly threatened the attorney with filing a professional grievance against him if the dispute were not resolved by the attorney in respondent's favor. In his answer, dated November 18, 1979, respondent denied the material allegations set forth in the Formal Written Complaint, asserted certain affirmative defenses and moved for dismissal of the Formal Written Complaint.

On December 14, 1978, the Commission denied respondent's motion to dismiss the Formal Written Complaint, with a determination dated January 3, 1979, and appointed Michael A. Cardozo, Esq., as referee to hear and report to the Commission with respect to the issues herein. A hearing was conducted before the referee on February 15, 1979, and the referee's report, dated April 17, 1979, was filed with the Commission on April 18, 1979.

The administrator of the Commission moved on May 15, 1979, to confirm in part and disaffirm in part the report of the referee, and for a determination that respondent be censured. Respondent submitted a memorandum in opposition to the administrator's motion on May 14, 1979.

The Commission heard oral argument by the administrator and respondent's counsel on May 22, 1979, thereafter considered the record in this proceeding and makes the findings and conclusions set forth below.

Charge I of the Formal Written Complaint is dismissed.

With respect to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact:

1. There was a private dispute between respondent and Frank Mangiatordi, Esq., concerning the amount of attorney's fees allegedly owed to respondent by Mr. Mangiatordi, for legal services rendered by respondent in Palumberi v. Shayne, prior to respondent's becoming a judge.

2. Respondent, in an effort to coerce Mr. Mangiatordi to pay him the amount of the aforesaid disputed claim, stated in his letter of December 29, 1976, to Mr. Mangiatordi that he would file a grievance against Mr. Mangiatordi with the Judicial Conference [sic] and would request that he be censured for professional misconduct unless Mr. Mangiatordi fulfilled the alleged financial obligation he owed respondent by January 10, 1977.

Based upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.5(c)(1) of the Rules Governing Judicial Conduct, Canons 1, 2A and 5C of the Code of Judicial Conduct, and DR1-103(A) of the Code of Professional Responsibility. Accordingly, Charge II is sustained and respondent is thereby guilty of misconduct.

Respondent's attempt to coerce Mr. Mangiatordi to pay the disputed claim, by threatening to file a professional grievance against him, was improper. Grievance proceedings are to determine matters of alleged professional misconduct and are not meant to be used as leverage by one party over another in a private dispute. Indeed, if respondent in fact believed Mr. Mangiatordi was guilty of professional misconduct, as he stated in his letter of December 29, 1976, then he was under an obligation to report this fact to an appropriate disciplinary panel, whether or not the disputed amount was paid. For respondent to have acted otherwise would have meant that if a settlement had been reached, a matter of professional misconduct would have remained unreported and unexamined. As noted by the referee, respondent's contention that, since his letter of complaint is dated January 7, 1977, he would have reported Mr. Mangiatordi's conduct whether or not the disputed amount had been paid, is not supported by the evidence. While respondent's letter is dated January 7, it was not sent until January 11, one day after the expiration of the deadline set by respondent in his letter of December 29.

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

Mrs. Robb and Mr. Maggipinto dissent with respect to Charge I and vote to sustain the charge.

Judge Rubin and Judge Shea dissent with respect to Charge II and vote to dismiss the charge and impose no sanction.

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: July 3, 1979
Albany, New York

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

LOUIS I. KAPLAN,

a Judge of the Civil Court of the City of New York, New York County.

Determination

PRESENT: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Dolores DelBello
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Louis I. Kaplan, a judge of the Civil Court of the City of New York, New York County, was served with a Formal Written Complaint dated November 27, 1978, setting forth 17 charges of misconduct relating to respondent's intemperate and otherwise improper demeanor while presiding over Millington v. New York City Transit Authority between April 21, 1975, and May 20, 1975.

In lieu of submitting an answer to the Formal Written Complaint, respondent and his counsel entered into an agreed statement of facts with the administrator of the Commission in February 1979, pursuant to Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement, as submitted, on March 22, 1979, determined that no outstanding issue of fact remained, and set a date for oral argument to determine (i) whether to make a finding of misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum prior to oral argument. Respondent did not submit a memorandum and appeared through his attorney for oral argument.

On May 22, 1979, the Commission considered the record in this proceeding with respect to Millington v. New York City Transit Authority, a 1975 jury trial over which respondent presided, and upon that record makes the following finding of fact: On ten separate dates, to wit, April 24,

28, 29 and 30, and May 1, 2, 6, 13, 14 and 20, 1975, respondent used intemperate and injudicious language, as set forth in the agreed statement of facts, directed toward defense counsel while presiding in the Millington case.

Based upon the foregoing finding of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.3(a)(2) and 33.3(a)(3) of the Rules Governing Judicial Conduct, Canons 1, 2A, 3A(2) and 3A(3) of the Code of Judicial Conduct, and Sections 604.1(e)(1) and 604.1(e)(5) of the Rules of the Appellate Division, First Judicial Department. Charges I through XVII of the Formal Written Complaint are sustained, and respondent is thereby guilty of misconduct.

The Rules Governing Judicial Conduct require a judge to be "patient, dignified and courteous" to all who appear before him and to "conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (Sections 33.3[a][3] and 33.2[a]). Section 604.1(e)(5) of the Appellate Division Rules (First Department), where the matter under consideration occurred, requires a judge to be the "exemplar of dignity and impartiality" and to "suppress his personal predilections...[and] control his temper and emotions." Respondent's intemperate conduct throughout the Millington trial was unbecoming a judge and fell far short of the applicable standards noted above.

The Commission notes in mitigation that, subsequent to the commencement of the instant proceeding, respondent acknowledged that his conduct toward defense counsel in Millington had been discourteous and addressed a letter of apology to defense counsel.

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

This determination constitutes the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

All concur.

Dated: July 3, 1979

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

ANTHONY J. DE ROSE,

a Judge of the Olean City Court, Cattaraugus County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Anthony J. DeRose, a judge of the City Court of Olean, Cattaraugus County, was served with a Formal Written Complaint dated August 7, 1978, alleging violations of enumerated ethical standards with respect to his conduct in People v. George K. Leonard, a case over which he presided on January 3, 1978. Respondent filed an answer dated August 31, 1978.

By order dated November 20, 1978, the Commission appointed George M. Zimmermann, Esq., as referee to hear and report with respect to the issues herein. A hearing was held before the referee on January 29, 1979, and his report dated June 18, 1979, was filed with the Commission.

By notice dated August 29, 1979, the administrator of the Commission moved to confirm the referee's findings of fact and to render a determination of censure. Respondent opposed the motion by memorandum filed September 10, 1979. The administrator replied by memorandum dated September 13, 1979. The parties waived oral argument on the motion.

The Commission considered the record in this proceeding on September 27, 1979, and upon that record finds the following facts.

1. Respondent, an attorney, assumed judicial office for the first time on January 1, 1978, upon becoming a judge of the City Court of Olean.

2. Testimony and evidence adduced at the hearing established by a preponderance of the evidence that, prior to assuming the bench, respondent had decided to dismiss the first case over which he would preside.

3. Respondent held court for the first time on January 3, 1978. The only case to come before him was People v. George K. Leonard. The defendant was charged with speeding (a violation), driving while intoxicated ("DWI" -- a misdemeanor) and unlawful possession of marijuana (a misdemeanor).

4. In connection with the Leonard case, respondent had before him

a. a simplified traffic information and copy of the police blotter in the speeding matter;

b. a simplified traffic information, a copy of the police blotter and a "breathalyzer" report in the DWI matter; and

c. an information/complaint and a copy of the police blotter in the marijuana matter.

5. At his arraignment, the defendant pled guilty to the speeding and marijuana charges and not guilty to the DWI charge.

6. Respondent told the defendant in open court that he had decided to dismiss the first case he would hear. Respondent thereafter dismissed the charges and told the defendant in open court that he had "hit the jackpot." No trial was held and there was no consent to the dismissal by the prosecutor. In granting this dismissal, respondent did not comply with the requirements of sections170.40 and 210.45 of the Criminal Procedure Law, which require (i) disclosure on the record by the court of "compelling" circumstances requiring dismissal in the interest of justice and (ii) reasonable written notice to the prosecution to afford it an opportunity to file a response.

7. Respondent thereupon wrote notes on the three police blotters, recording the defendant's pleas to the three charges and noting "Dismissed On Judge's Motion" on each blotter.

8. Respondent subsequently repeated to a newspaper reporter his remark that the defendant had "hit the jackpot."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated sections 33.1, 33.2(a), 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained and respondent's misconduct is therefore established.

Respondent's discretion to dismiss the charges in People v. George K. Leonard, or render any other disposition consistent with law, is not at issue. Respondent's conduct, however, violated applicable ethical standards cited above. His decision, made in advance, to dismiss the first case to come before him upon his ascending the bench, before he even knew the nature and merits of that case, was improper. In failing to comply with the appropriate sections of the CPL, he violated his duty to "be faithful to the law" and to "accord to every person who is legally interested in a proceeding...full right to be heard according to law..." (sections 33.3[a][1] and [4] of the Rules Governing Judicial Conduct). Furthermore, respondent's public declarations to the defendant and several witnesses that the defendant had "hit the jackpot" were ill-considered and inappropriate. Such remarks diminish public confidence in the integrity and impartiality of the judiciary.

The Commission considers by way of mitigation respondent's acknowledgement that his conduct was wrong and his assurances that "it will not occur again."

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

All concur.

Dated: November 13, 1979
New York, New York

CONTINUED

2 OF 3

APPENDIX D

JUDICIAL DISCIPLINARY CITATIONS

Following are the citations to those determinations by the Commission which have been reported, as well as to those disciplinary matters commenced by the Commission in the Appellate Division or Court on the Judiciary.

Matter of William Perry, 53 AD2d 882 (2d Dept 1976; removal)

Matter of Robert Feinberg, 39 NY2d (a), (u) (Ct. on the Judiciary 1976; censure)

Matter of Edward J. Filipowicz, 54 AD2d 348 (2d Dept 1976; censure)

Matter of Albert S. MacDowell, 57 AD2d 169 (2d Dept 1977; removal)

Matter of Frank Vaccaro, 42 NY2d (a) (Ct. on the Judiciary 1977; suspended 6 months without pay)

Matter of William Mertens, 56 AD2d 456 (1st Dept 1977; censure)

Matter of Hubert Richter, 42 NY2d (aa) (Ct. on the Judiciary 1978; censure)

Matter of Leon Schwerzmann, 44 NY2d (a) (Ct. on the Judiciary 1978; judge instructed to reform his conduct)

Matter of Kuehnel et. al, 45 NY2d (y) (Ct. on the Judiciary 1978; censure)

Matter of Paul Adams, NYLJ Jan. 19, 1979, p. 1, col. 1 (Com. Jud. Conduct; removal)

Matter of Duane Algire, inter alia, NYLJ Feb. 20, 1979, p. 14, col. 1 (Com. Jud. Conduct; censure)

Matter of William J. Bulger, NYLJ Feb. 20, 1979, p. 14, col. 4 (Com. Jud. Conduct; censure), aff'd 48 NY2d 32 (1979)

Matter of George C. Dixon, 47 NY2d 523 (1979; admonition)

Matter of Morris Spector, NYLJ Jan. 17, 1979, p. 28, col. 1 (Com. Jud. Conduct; admonition), aff'd 47 NY2d 462 (1979)

Matter of James O. Kane, NYLJ Mar. 16, 1979, p. 6, col. 1 (Com. Jud. Conduct; removal)

Matter of John H. Dudley, NYLJ Mar. 17, 1979, p. 6, col. 1 (Com. Jud. Conduct; removal)

Matter of Frank Manion, NYLJ May 17, 1979, p. 6, col. 1 (Com. Jud. Conduct; removal)

Matter of Edward U. Green, Jr., NYLJ May 25, 1979, p. 6, col. 1 (Com. Jud. Conduct; censure)

Matter of Harold Schultz, NYLJ June 8, 1979, p. 1, col. 2 (Com. Jud. Conduct; removal)

Matter of Francis R. Sobeck, NYLJ Aug. 8, 1979, p. 8, col. 5 (Com. Jud. Conduct; removal)

Matter of Richard Ralston, NYLJ Aug. 8, 1979, p. 8, col. 5 (Com. Jud. Conduct; removal)

Matter of Walter C. Dunbar, NYLJ Aug. 2, 1979, p. 5, col. 1 (Com. Jud. Conduct; admonition)

Matter of John D. D'Apice, NYLJ Aug. 8, 1979, p. 8, col. 5 (Com. Jud. Conduct; admonition)

Matter of Edward F. Jones, 47 NY2d (mmm) (Ct. on the Judiciary; removal)

Matter of Robert W. Jordan, 47 NY2d (xxx) (Ct. on the Judiciary 1979; suspended 4 months without pay)

Matter of Robert M. Maidman, 47 NY2d (cccc) (Ct. on the Judiciary 1979; suspended 4 months without pay)

Matter of Warren DeLollo, NYLJ Aug. 9, 1979, p. 5, col. 2 (Com. Jud. Conduct; censure)

Matter of Louis I. Kaplan, NYLJ Sep. 7, 1979, p. 5, col. 4 (Com. Jud. Conduct; admonition)

Matter of John G. Dier, NYLJ Aug. 8, 1979, p. 8, col. 5 (Com. Jud. Conduct; censure) aff'd 48 NY2d 874 (1979)

Matter of Stanley Wolanin and Matter of Carlton Chase, NYLJ Aug. 9, 1979, p. 5, col. 2 (Com. Jud. Conduct; censure)

Matter of Thomas Haberneck and Matter of Horace Sawyer, NYLJ Aug. 10, 1979, p. 12, col. 5 (Com. Jud. Conduct; censure)

Matter of James Jerome and Matter of John O'Connor, NYLJ Aug. 13, 1979, p. 11, col. 5 (Com. Jud. Conduct; censure)

Matter of Norman E. Kuehnel, NYLJ Sep. 26, 1979, p. 12, col. 5 (Com. Jud. Conduct; removal)

Matter of J. Douglas Trost, NYLJ Oct. 9, 1979, p. 12, col. 5 (Com. Jud. Conduct; censure)

Matter of Antonio S. Figueroa, NYLJ Nov. 28, 1979, p. 11, col. 1 (Com. Jud. Conduct; censure)

Matter of Anthony DeRose, NYLJ Dec. 27, 1979, p. 7, col. 5 (Com. Jud. Conduct; admonition)

Matter of Harold Sashin, NYLJ Dec. 27, 1979, p. 10, col. 1 (Com. Jud. Conduct; removal)

Matter of James L. Kane, NYLJ Jan. 3, 1980, p. 4, col. 1 (Com. Jud. Conduct; removal)

TABLE OF CASES PENDING AS OF DECEMBER 31, 1978.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
Incorrect Ruling								
Non-Judges								
Demeanor		14	18	5	1		8	46
Delays		1	1	1				3
Confl./Interest		29	14	6	2	1	6	58
Bias							1	1
Corruption			2					2
Intoxication								
Disable/Qualif.		2	2	1	1		1	7
Political Activ.		3	1	4	1		1	10
Finances, Records, Training		2	2	2	1	1	3	11
Ticket-Fixing		64	14	52	6	7	41	184
Miscellaneous		1			1			2
TOTALS		116	54	71	13	9	61	324

* Investigations closed upon vacancy of office other than by resignation.
** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

TABLE OF NEW COMPLAINTS CONSIDERED BY THE COMMISSION IN 1979.

SUBJECT OF COMPLAINT	*DISMISSED UPON INITIAL REVIEW*	*STATUS OF CASES INVESTIGATED*						*TOTALS*
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION***	
Incorrect Ruling	279							279
Non-Judges	27							27
Demeanor	52	28	13	3		2		98
Delays	27		1					28
Confl./Interest	12	16	9		1	1		39
Bias	21	4	3					28
Corruption	7	2						9
Intoxication	2	2						4
Disable/Qualif.	6	1	2		2			11
Political Activ.	8	4	2	3	1			18
Finances, Records, Training	11	35	2	1	5			54
Ticket-Fixing	4	2						6
Miscellaneous	4	4	3				1	12
TOTALS	460	98	35	7	9	3	1	613

* *Investigations closed upon vacancy of office other than by resignation.*
** *Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.*

ALL CASES CONSIDERED BY THE COMMISSION IN 1979: 613 NEW COMPLAINTS AND 324 PENDING FROM 1978.

SUBJECT OF COMPLAINT	*DISMISSED UPON INITIAL REVIEW*	*STATUS OF CASES INVESTIGATED*						*TOTALS*
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION***	
Incorrect Ruling	279							279
Non-Judges	27							27
Demeanor	52	42	31	8	1	2	8	144
Delays	27	1	2	1				31
Confl./Interest	12	45	23	6	3	2	6	97
Bias	21	4	3				1	29
Corruption	7	2	2					11
Intoxication	2	2						4
Disable/Qualif.	6	3	4	1	3		1	18
Political Activ.	8	7	3	7	2		1	28
Finances, Records, Training	11	37	4	3	6	1	3	65
Ticket-Fixing	4	66	14	52	6	7	41	190
Miscellaneous	4	5	3		1		1	14
TOTALS	460	214	89	78	22	12	62	937

** Investigations closed upon vacancy of office other than by resignation.*
*** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.*

ALL CASES CONSIDERED SINCE THE INCEPTION OF THE TEMPORARY COMMISSION (JANUARY 1975).

SUBJECT OF COMPLAINT	*DISMISSED UPON INITIAL REVIEW*	*STATUS OF CASES INVESTIGATED*						*TOTALS*
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION***	
Incorrect Ruling	1323							1323
Non-Judges	137							137
Demeanor	155	42	217	17	12	5	52	500
Delays	77	1	21	4	3		5	111
Confl./Interest	48	45	135	23	14	2	26	293
Bias	85	4	25		3		1	118
Corruption	33	2	25		4	2	3	69
Intoxication	5	2	3				4	14
Disable/Qualif.	13	3	14	1	5	1	4	41
Political Activ.	22	7	21	24	3	2	6	85
Finances, Records, Training	36	37	26	4	15	8	7	133
Ticket-Fixing	15	66	53	133	32	55	105	459
Miscellaneous	38	5	19	1	3	1	2	69
TOTALS	1987	214	559	207	94	76	215	3352

** Investigations closed upon vacancy of office other than by resignation.*
*** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.*

END