STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

EDMUND V. CAPLICKI, JR.,

a Justice of the LaGrange Town Court,
Dutchess County.

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THE COMMISSION:

Raoul Lionel Felder, Esq., Chair
Honorable Thomas A. Klonick, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Melissa R. DiPalo, Of Counsel) for the Commission

Sarah Diane McShea for the Respondent

The respondent, Edmund V. Caplicki, Jr., a Justice of the LaGrange Town Court, Dutchess County, was served with a Formal Written Complaint dated December 1,

2006, containing one charge. The Formal Written Complaint alleged that respondent made demeaning, derisive and otherwise inappropriate remarks about a female attorney.

On September 12, 2007, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts and that respondent be censured, and waiving further submissions and oral argument.

On September 19, 2007, the Commission accepted the Agreed Statement of Facts and made the following determination.

1. Respondent was admitted to the practice of law in New York in 1970. He has been a Justice of the LaGrange Town Court since June 1974.

2. On June 25, 2005, at about 3:00 A.M., respondent arraigned Ronald Wood, who had been picked up on a bench warrant for failing to appear in court on a felony grand larceny charge. During the arraignment, respondent asked Mr. Wood whether he had an attorney and advised him that if he did not, an attorney would be appointed to represent him. Mr. Wood responded that he had an attorney, but could not remember his attorney's name or address or phone number. Mr. Wood stated that his attorney had represented him on other charges and had helped him "beat" those charges. Mr. Wood also stated that he liked his attorney and that she was "cute" and "had a nice butt." Respondent set bail, assigned the Dutchess County Public Defender's Office to represent Mr. Wood since he could not remember his attorney's name and scheduled his

next court appearance for June 28, 2005. Respondent noted Mr. Wood's comments about his attorney on the arraignment sheet, believing that the attorney had a right to know what her client had said about her. Mr. Wood was produced in court on June 28, 2005, but the Public Defender's Office was not present in court and his case was adjourned until July 5, 2005.

3. On July 5, 2005, respondent handled the calendar call at the LaGrange Town Court, substituting for a colleague who was on vacation that day. Respondent presided over *People v. Ronald Wood*, in which the defendant, Mr. Wood, was charged with Grand Larceny in the Fourth Degree. A senior assistant public defender appeared on behalf of Mr. Wood, who had been held in custody by the Dutchess County Sheriff's Office since his arraignment on June 25, 2005.

4. When Mr. Wood's case was called, respondent asked Mr. Wood if he had counsel. Mr. Wood identified the public defender who was present as his attorney. Respondent asked the defendant's attorney and the assistant district attorney to approach the bench. In a sidebar conference, respondent advised the defendant's attorney and the assistant district attorney that Mr. Wood had stated at his arraignment that he "liked his attorney," that she had gotten him off several other times on other charges, and that she was "cute" and had a "nice butt." Mr. Wood, who was nearby, confirmed that he had made the remarks.

5. Respondent raised the subject of the defendant's remarks about his attorney because he wanted to advise the attorney that her client had made comments

about her. Respondent used the same words that Mr. Wood had used – "cute" and "nice butt" – and now realizes that he should not have repeated Mr. Wood's actual words.

6. In response to a plea offer by the assistant district attorney, Mr. Wood agreed to enter a guilty plea to a lesser offense of Petit Larceny. During the plea allocution in open court, respondent asked Mr. Wood whether he was satisfied with his attorney and if she was a "good attorney." Mr. Wood replied "yes" to both questions. Respondent also said that at arraignment, Mr. Wood had stated that his attorney was "cute" and had a "nice butt," and he asked whether Mr. Wood was still of that same opinion. (Although respondent does not recall repeating the actual remarks, he accepts the recollection of the defendant's attorney that he did so.) Mr. Wood again answered "yes."

7. Respondent asked Mr. Wood to provide his address and telephone number and advised him to contact his attorney when he was contacted by the Probation Department. The defendant's attorney also asked Mr. Wood to provide his telephone number, and respondent stated to her, "Oh, now you're getting his number." (While respondent does not recall making this comment, and the court clerk's contemporaneous notes indicate only that respondent requested Mr. Wood's telephone number, respondent accepts the recollection of the defendant's attorney.) Respondent's comment was intended as humor, and he acknowledges that it was inappropriate.

8. The same afternoon, the same attorney represented three other male defendants whose cases were heard by respondent. In connection with these cases,

respondent asked each defendant if he agreed with Mr. Wood's remarks about the attorney. He did not repeat the remarks, but as the courtroom was relatively small, it was likely that Mr. Wood's remarks had been heard by the defendants and that respondent was aware of this when he asked the question referring to Mr. Wood's prior remarks. Respondent's inappropriate remarks were a misguided attempt at humor. Although he did not intend to demean or embarrass the attorney, his conduct had that effect and was inappropriate.

9. The following day, July 6, 2005, the attorney appeared again before respondent. In colloquy before calling the cases on his calendar, in the presence of the attorney and two other attorneys, respondent told the attorney that he would call her case first because of how he had treated her the previous day. Respondent also laughed and recounted Mr. Wood's statements about the attorney being "cute" and having a "nice butt," and said, "Is that so bad?" (Respondent does not recall repeating Mr. Wood's words, but accepts the attorney's recollection that he did so.) Respondent's comment was intended as humor, and he acknowledges that it was inappropriate and offensive.

10. Respondent sincerely regrets his conduct and unequivocally states that he did not intend to offend or embarrass the attorney. He recognizes that his comments, which were intended to be humorous and not denigrating, were inappropriate and insensitive, and he apologizes for them. Prior to the incident on July 5, 2005, the attorney had appeared regularly in respondent's courtroom without incident, and they had enjoyed a collegial professional relationship. Respondent is known among local lawyers

for his sense of humor, which is often self-effacing, but in this instance, he realizes he went too far at someone else's expense. There is no indication that this episode was part of a larger pattern of conduct demeaning to litigants, lawyers or others. Respondent strives to be respectful of all with whom he deals in his official capacity, but in this matter he made a serious misjudgment, which he recognizes and regrets.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(3) and 100.3(B)(4) of the Rules Governing Judicial Conduct ("Rules") and Sections 700.5(a) and 700.5(e) of the Rules of the Supreme Court, Appellate Division, Second Department ("Second Department Rules"), and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions, and respondent's misconduct is established.

A judge is obliged to be the exemplar of dignity and decorum in the courtroom and to treat those who appear in the court with courtesy and respect (Rules, §100.3[B][3]; Second Department Rules, §700.5[a], [e]). By gratuitously repeating and repeatedly joking about a defendant's inappropriate comments about his attorney's physical appearance, respondent clearly violated those standards.

When the defendant stated at the arraignment that his attorney was "cute"

and "had a nice butt," it was entirely unnecessary for respondent to note those comments on the arraignment sheet and to repeat them in a sidebar conference ten days later when the case came before him, notwithstanding his rationale that he believed the defendant's attorney, a senior assistant public defender, had "a right to know" of the comments. It is no excuse that in using that language, respondent was simply reiterating the inappropriate statements that the defendant had made. Repeating those comments served no salutary purpose, demeaned the attorney and undermined her professional status. Respondent's conduct was contrary to the standards of dignity, decorum and respect required of every judge.

Respondent compounded his misconduct on July 5th by reciting the defendant's comments in open court, by continuing to refer to the comments when other defendants appeared before him that day, and by reiterating them the following day even after he apparently realized that his conduct was improper. During the plea allocution, respondent reminded the defendant of his earlier comments, using the same language the defendant had used, and asked the defendant whether he still agreed with them. When the attorney asked the defendant for his telephone number (after respondent had directed the defendant to provide it), respondent joked, "Oh, now you're getting his number." Thereafter, in another misguided attempt at humor, respondent asked each of three other male defendants, all of whom were represented by the same attorney, whether each defendant agreed with Mr. Wood's remarks about the attorney. With each question that gratuitously alluded to those comments, respondent participated in the demeaning banter

and subjected the attorney to further disrespect. The next day, apparently having recognized the impropriety of his behavior -- respondent told the attorney that he would call her cases first because of the way he had treated her the previous day -- he nevertheless repeated the defendant's statements for at least the third time and joked about them, stating, "Is that so bad?"

Such conduct is inexcusable and clearly lacks the courtesy and respect a judge is required to accord to attorneys. Respondent's persistence in his attempted humor at the attorney's expense is simply inexplicable and demonstrates a gross insensitivity to the injurious effects of such behavior. It was demeaning to the attorney and diminishes the dignity of the court. It embarrasses the judiciary as a whole.

As far back as 1983, the Commission held that remarks which serve to demean female attorneys because of their gender have no place in the courts of this state. *See*, *Matter of Jordan*, 1984 Annual Report 104 (Supreme Court Justice was admonished for addressing a female attorney as "little girl" and for repeating the comment after she objected); *Matter of Doolittle*, 1986 Annual Report 87 (District Court Judge was admonished for repeatedly commenting about the appearance and physical attributes of female attorneys appearing before him); *Matter of Blangiardo*, 1988 Annual Report 129 (Acting Supreme Court Justice was admonished for stating, after swatting at a female lawyer's hand, "I like to hit girls because they are soft").

In considering the sanction, we note that testimonials submitted on respondent's behalf by female attorneys indicate that at other times he has been a

respectful, able, dignified professional. Thus, the breach of judicial decorum depicted here, while serious, appears to be an aberration. We also note that respondent recognizes that his comments were inappropriate. We note further that respondent was censured for ticket-fixing in 1978 and has an otherwise unblemished record in more than three decades on the bench.

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

Mr. Felder, Judge Klonick, Mr. Coffey, Ms. DiPirro, Mr. Emery, Mr. Harding, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

CERTIFICATION

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

Dated: September 26, 2007

Jean M Savanyu

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