

ANNUAL REPORT

March 1982

New York State Commission on Judicial Conduct



1982 ANNUAL REPORT
OF THE
NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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

Pursuant to Section 42, paragraph 4 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, 1981, through December 31, 1981.

Respectfully submitted,

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

March 1, 1982
New York, New York

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INTRODUCTION

The State Commission on Judicial Conduct is the disciplinary agency designated to review complaints of judicial misconduct in New York State. The Commission's objective is to safeguard the right of judges to exercise discretion while enforcing their obligation to observe high standards of conduct.

By offering a forum for citizens with conduct-related complaints, the Commission seeks 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 judicial decisions or rulings, or investigate complaints that judges are either too lenient or too severe toward defendants accused or convicted of crimes.

All 50 states and the District of Columbia have adopted a commission system to meet these goals.

In New York, a temporary commission created by the Legislature in 1974 began operations in January 1975. It was made permanent in September 1976 by virtue of a constitutional amendment. A second constitutional amendment, effective on April 1, 1978, created the present Commission with an expanded membership and jurisdiction. (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.)*

*A description of the temporary and former commissions, their composition and workload, is appended.

STATE COMMISSION ON JUDICIAL CONDUCT

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. It does not review judicial decisions or alleged errors of law, does not issue advisory opinions, does not give legal advice and does not 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...and may determine that a judge or justice be admonished, censured or removed from office 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 that a judge or justice 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, gross neglect, corruption, certain prohibited political activity and other misconduct on or off the bench.

Standards of conduct are set forth primarily in 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 that disciplinary action is warranted, it may render a determination to impose one of four sanctions, subject to review by the Court of Appeals upon timely request by the respondent-judge. If no review is sought within 30 days of service, the determination becomes final. 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 is determined that circumstances warrant such comment. In some cases the Commission has issued such a letter after charges of misconduct have been sustained.

Procedures

The Commission convenes approximately once a month. At its meetings, 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. The filing of formal charges also 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. The judge's testimony is under oath, and at least one Commission member must be present. Although such an "investigative appearance" is not a formal hearing, the judge is entitled to be represented by counsel. 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 its administrator to serve upon the judge a Formal Written Complaint containing specific charges of misconduct. The Formal Written Complaint institutes the formal 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 make summary determination inappropriate or that are not resolved by an agreed statement of facts, the Commission appoints a referee to conduct a formal hearing and report proposed findings of fact and conclusions of law. Referees are designated by the Commission from a panel of attorneys and former judges. Following the Commission's receipt of the referee's report, on a motion to confirm or disaffirm the report, both the administrator and the respondent may submit legal memoranda and present oral argument on issues of misconduct and sanction. The respondent-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 pertaining to cases in which Formal Written Complaints have been served, 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 investigative 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 serves it upon the respondent. Upon completion of service, 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 less or more severe sanction, or impose no sanction. If no request for review is made within 30 days, the sanction determined by the Commission becomes effective.

Membership and Staff

The Commission is composed of 11 members serving four-year terms. 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; David Bromberg, Esq., of New Rochelle; E. Garrett Cleary, Esq., of Rochester; Dolores DelBello of South Salem; Michael M. Kirsch, Esq., of Brooklyn; Victor A. Kovner, Esq., of New York City; Honorable William J. Ostrowski of Buffalo, Justice of the Supreme Court, Eighth Judicial District; Honorable Felice K. Shea of New York City, Judge of the Civil Court of the City of New York; Honorable Isaac Rubin of Rye, Associate Justice of the Appellate Division, Second Department; and Carroll L. Wainwright, Jr., Esq., of New York City. William V. Maggipinto, Esq., of Southampton, served as a member until April 1, 1981, when he was succeeded by Mr. Cleary. The Honorable Richard J. Cardamone of Utica, the Senior Associate Justice of the Appellate Division, Fourth Department, served as a member until November 13, 1981, when he was appointed to the United States Court of Appeals for the Second Circuit. The Commission takes this opportunity to recognize the dedicated and distinguished service of Judge

Cardamone and Mr. Maggipinto.

The administrator of the Commission is Gerald Stern, Esq. The deputy administrator is Raymond S. Hack, Esq. The chief attorney in Albany is Stephen F. Downs, Esq. The chief attorney in Rochester is Cody B. Bartlett, Esq. The clerk of the Commission is Robert H. Tembeckjian.*

The Commission has 45 full-time staff employees, including 10 attorneys. A limited number of law students are 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 Rochester.

*Biographies are appended.

COMPLAINTS AND INVESTIGATIONS IN 1981

In 1981, 607 new complaints were received. Of these, 447 were dismissed upon initial review, and 160 investigations were authorized and commenced.* As in previous years, the majority of complaints were submitted by civil litigants and by 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 35 initiated by the Commission on its own motion.

The Commission carried over 149 investigations and proceedings on formal charges from 1980.

Some of the 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 complained 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 fear of being investigated for their rulings or decisions.

*The statistical period in this report is January 1, 1981, through December 31, 1981. Statistical analysis of the matters considered by the temporary, former and present Commissions is appended in chart form.

Of the combined total of 309 investigations and proceedings on formal charges conducted by the Commission in 1981 (149 carried over from 1980 and 160 authorized in 1981), the Commission recorded the following:

- 54 matters were dismissed outright after investigations were completed.
- 25 matters were dismissed with letters of dismissal and caution. (21 were issued upon conclusion of an investigation and 4 were issued upon conclusion of a formal hearing.)
- 12 matters involving 11 different judges were closed upon resignation of the judge from office. (8 of these matters were closed at the investigation stage and 4 during the formal proceedings stage.)
- 19 matters involving 13 different judges were closed upon vacancy of office due to the judge's retirement or failure to win re-election. (18 of these matters were closed at the investigation stage and 1 during a formal proceeding.)
- 37 matters involving 32 different judges resulted in formal discipline (admonition, censure or removal from office).

One hundred sixty-two matters were pending at the end of the year. One hundred seventeen were in the investigation stage. Forty-five matters involving 36 different judges were in the formal proceedings stage.

ACTION TAKEN IN 1981

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 the respondent has been afforded an opportunity for a formal hearing. These proceedings fall within the confidentiality provisions of the Judiciary Law and are not public unless confidentiality is waived, in writing, by the judge.

In 1981, the Commission authorized Formal Written Complaints against 35 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 1981 and made public pursuant to the applicable provisions of the Judiciary Law.

Determinations of Removal

The Commission completed seven disciplinary proceedings in 1981 in which it determined that the judge involved should be removed from office.

Matter of Harold B. Carpenter

Harold B. Carpenter, a justice of the Town Court of Hounsfield, Jefferson County, was served with a Formal Written Complaint dated May 30, 1980, alleging various acts of misconduct with respect to court funds entrusted to his care. Judge Carpenter did not file answer.

The Commission granted the administrator's motion for summary determination on November 24, 1980, and found respondent's misconduct established. Both sides made written submissions as to appropriate sanction. Judge Carpenter waived oral argument.

The Commission filed with the Chief Judge its determination dated February 18, 1981, that Judge Carpenter be removed from office. A copy of the determination is appended.

Judge Carpenter did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on March 27, 1981.

Matter of David W. Petrie

David W. Petrie, a justice of the Town Court of Danube, Herkimer County, was served with a Formal Written Complaint dated July 8, 1980, alleging various acts of misconduct with respect to court funds entrusted to his care. Judge Petrie did not file an answer.

The Commission granted the administrator's motion for summary determination on November 6, 1980, and found respondent's misconduct established. Judge Petrie did not submit papers as to

appropriate sanction or appear for oral argument.

The Commission filed with the Chief Judge its determination dated February 18, 1981, that Judge Petrie should be removed from office. A copy of the determination is appended.

Judge Petrie requested review of the Commission's determination by the Court of Appeals. On September 22, 1981, the Court unanimously accepted the Commission's determination and removed Judge Petrie from office.

Matter of William J. Quinn

William J. Quinn, a justice of the Supreme Court, Fourth Judicial District (Albany County), was served with a Formal Written Complaint dated November 27, 1979, alleging intemperate and unjudicious conduct for operating a motor vehicle while under the influence of alcohol. He had been admonished previously by the Commission for public intoxication. Judge Quinn filed an answer dated January 19, 1980.

A hearing was held before a referee, the Honorable Bertram Harnett. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Quinn appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated May 1, 1981, that Judge Quinn be removed from office. A copy of the determination is appended.

Judge Quinn requested review of the Commission's determination by the Court of Appeals. On November 24, 1981, the

Court unanimously reduced the sanction to censure, noting that Judge Quinn had retired from office after the Commission's determination was rendered and that, in view of Judge Quinn's alcoholism, the Commission more appropriately might have determined to retire him for disability.

Matter of Morgan Bloodgood

Morgan Bloodgood, a justice of the Town Court of Malta, Saratoga County, was served with a Formal Written Complaint dated September 11, 1979, alleging that he intentionally directed an ethnic religious slur at a defendant in a case pending before him. Judge Bloodgood filed an answer dated October 4, 1979.

A hearing was held before a referee, the Honorable H. Hawthorne Harris. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Bloodgood appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated June 11, 1981, that Judge Bloodgood be removed from office. A copy of the determination is appended.

Judge Bloodgood did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on July 20, 1981.

Matter of James E. Joedicke

James E. Joedicke, a justice of the Town Court of Stamford, Delaware County, was served with a Formal Written Complaint dated March 17, 1981, alleging that he had not completed a training program required by law and alleging various administrative and accounting deficiencies. Judge Joedicke did not file an answer.

A hearing was held before a referee, Ira M. Belfer, Esq. Judge Joedicke did not submit papers with respect to the referee's report and he did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated July 1, 1981, that Judge Joedicke should be removed from office. A copy of the determination is appended.

Judge Joedicke did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on August 18, 1981.

Matter of Willard H. Harris, Jr.

Willard H. Harris, Jr., a part-time judge of the City Court of Lockport, Niagara County, who is also permitted to practice law, was served with a Formal Written Complaint dated April 15, 1980, alleging that he violated various prohibitions on the practice of law by part-time judges in their own courts and before other part-time lawyer-judges in the same county. Judge Harris filed an answer dated August 8, 1980.

A hearing was held before a referee, the Honorable Louis Otten. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Harris appeared for oral argument, pro se.

The Commission filed with the Chief Judge its determination dated November 6, 1981, that Judge Harris be removed from office. A copy of the determination is appended.

Judge Harris requested review of the Commission's determination. As of December 31, 1981, the matter was pending in the Court of Appeals.

Matter of Carl R. Scacchetti, Jr.

Carl R. Scacchetti, Jr., a judge of the City Court of Rochester, Monroe County, was served with a Formal Written Complaint dated June 1, 1979, alleging that he failed to disqualify himself and improperly participated in eight cases in June 1978 in which he had personal knowledge of disputed evidentiary facts. Judge Scacchetti filed an answer dated July 13, 1979.

Judge Scacchetti was served with a second Formal Written Complaint, dated April 15, 1981, alleging (i) that he presided over two proceedings in which the defendant was a close friend and from whom he contemporaneously accepted a loan and (ii) that he presided over a criminal trial and contemporaneously arranged through a friend to solicit and accept a camera and accessories from the defendant's employer. The judge filed an

answer dated May 5, 1981.

A hearing was held before a referee, William F. Fitzpatrick, Esq., as to the first Formal Written Complaint, and before the Honorable Carman F. Ball as to the second. Both sides filed motion papers with respect to the referees' reports to the Commission, and Judge Scacchetti appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated November 25, 1981, that Judge Scacchetti be removed from office. A copy of the determination is appended.

Judge Scacchetti requested review of the Commission's determination. As of December 31, 1981, the matter was pending in the Court of Appeals.

Determinations of Censure

Twelve determinations of censure were rendered by the Commission in 1981. Seven 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 Joseph W. Dally

Joseph W. Dally, a justice of the Town and Village Courts of Monroe, Orange County, was served with a Formal Written Complaint dated August 13, 1979, alleging that he presided over 11 cases in which he was related to the defendants and that he

failed to meet various record keeping and financial reporting requirements. Judge Dally filed an answer dated October 1, 1979.

A hearing was held before a referee, the Honorable Joseph F. Hawkins. Both sides filed motion papers with respect to the referee's report to the Commission, and Judge Dally appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated January 28, 1981, that Judge Dally be censured. A copy of the determination is appended.

Judge Dally did not request review of the Commission's determination, which thus became final.

Matter of John T. Racicot

John T. Racicot, a justice of the Town Court of Champlain, Clinton County, was served with a Formal Written Complaint dated December 14, 1979, alleging various acts of misconduct with respect to two cases in which, inter alia, he had improper ex parte communications and presided notwithstanding his having personal knowledge of disputed evidentiary facts. Judge Racicot filed an answer dated January 4, 1980.

Judge Racicot, his counsel and the Commission's administrator entered into an agreed statement of facts on June 25, 1980, stipulating to the facts substantially as alleged in the Formal Written Complaint. The Commission approved the agreed statement. Both sides filed papers with respect to the conclusions of law to be drawn from the stipulated facts and with respect to

appropriate sanction. Judge Racicot waived oral argument.

The Commission filed with the Chief Judge its determination dated February 6, 1981, that Judge Racicot be censured. A copy of the determination is appended.

Judge Racicot did not request review of the Commission's determination, which thus became final.

Matter of Charles P. Garvey

Charles P. Garvey, a judge of the County, Family and Surrogate Courts in Essex County, was served with a Formal Written Complaint dated October 19, 1979, alleging misconduct with respect to various business activities, such as receiving loans from attorneys who practiced before him. Judge Garvey filed an answer dated December 7, 1979.

A hearing was held before a referee, William F. Fitz-Patrick, Esq. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Garvey appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated June 23, 1981, that Judge Garvey be censured. A copy of the determination is appended.

Judge Garvey did not request review of the Commission's determination, which thus became final.

Matter of Alan I. Friess

Alan I. Friess, a judge of the Criminal Court of the

City of New York, was served with a Formal Written Complaint dated February 10, 1981, alleging that he invited to his home the defendant in an arraignment over which he had just presided. Judge Friess filed an answer dated March 6, 1981.

Judge Friess, his counsel and the Commission's administrator entered into an agreed statement of facts on April 16, 1981, stipulating to the facts substantially as alleged in the Formal Written Complaint. The Commission approved the agreed statement. Both sides filed papers with respect to the conclusions of law to be drawn from the stipulated facts and with respect to appropriate sanction. Judge Friess appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated June 25, 1981, that Judge Friess be censured. A copy of the determination is appended.

Judge Friess did not request review of the Commission's determination, which thus became final.

Matter of Samuel C. Alessi, Jr.

Samuel C. Alessi, Jr., a judge of the City Court of Jamestown, Chautauqua County, was served with a Formal Written Complaint dated February 3, 1981, alleging that he abused the power and prestige of judicial office to advance the private interests of a party to a civil action. Judge Alessi filed an answer dated February 17, 1981.

A hearing was held before a referee, Saul H. Alderman, Esq. Both sides filed motion papers with respect to the referee's

report to the Commission. Judge Alessi appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated November 13, 1981, that Judge Alessi be censured. A copy of the determination is appended.

Judge Alessi did not request review of the Commission's determination, which thus became final.

Determinations of Admonition

Thirteen determinations of admonition were rendered by the Commission in 1981. Eight of these were with respect to ticket-fixing cases and are discussed in a separate section on ticket-fixing in this report. The remaining admonitions are discussed below.

Matter of Alvin F. Klein

Alvin F. Klein, a justice of the Supreme Court, First Judicial District (Bronx County), was served with a Formal Written Complaint dated February 29, 1980, alleging misconduct in that he received financial benefits with respect to three vacation trips arranged by a man whose solicitation and acceptance of receivership appointments by other justices of the Supreme Court Judge Klein helped promote. Judge Klein filed an answer dated April 28, 1980.

A hearing was held before a referee, the Honorable James Gibson. Both sides filed motion papers with respect to the

referee's report to the Commission. Judge Klein appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated July 6, 1981, that Judge Klein be admonished. A copy of the determination is appended.

Judge Klein did not request review of the Commission's determination, which thus became final.

Matter of Daniel P. Falsioni

Daniel P. Falsioni, a part-time judge of the City Court of Lockport, Niagara County, who is also permitted to practice law, was served with a Formal Written Complaint dated April 15, 1980, alleging that he permitted other part-time lawyer-judges to practice in his court, contrary to the Rules Governing Judicial Conduct. Judge Falsioni filed an answer dated May 29, 1980.

A hearing was held before a referee, the Honorable Louis Otten. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Falsioni did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated November 6, 1981, that Judge Falsioni be admonished. A copy of the determination is appended.

Judge Falsioni did not request review of the Commission's determination, which thus became final.

Matter of James H. Richardson

James H. Richardson, a justice of the Village Court of Waterloo, Seneca County, was served with a Formal Written Complaint dated January 28, 1981, alleging intemperate behavior in connection with his arrest in April 1977 for driving while intoxicated. Judge Richardson filed an answer dated February 16, 1981.

A hearing was held before a referee, the Honorable Harold A. Felix. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Richardson did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated December 8, 1981, that Judge Richardson be admonished. A copy of the determination is appended.

Judge Richardson did not request review of the Commission's determination, which thus became final.

Matter of Donald X. Clavin

Donald X. Clavin, a judge of the District Court, Nassau County, was served with a Formal Written Complaint dated December 6, 1979, alleging intemperance and other unjudicious demeanor in eight cases in 1976 and 1977. Judge Clavin filed an answer dated February 19, 1980.

A hearing was held before a referee, Gerald Harris, Esq. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Clavin appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated December 28, 1981, that Judge Clavin be admonished. A copy of the determination is appended.

Judge Clavin did not request review of the Commission's determination, which thus became final.

Matter of James H. Reedy

James H. Reedy, a justice of the Town Court of Galway, Saratoga County, was served with a Formal Written Complaint dated June 25, 1980, alleging various discrepancies in his deposits of court funds and financial reports to the Department of Audit and Control. Judge Reedy filed an answer dated July 29, 1980.

A hearing was held before a referee, Martin M. Goldman, Esq. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Reedy appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated December 28, 1981, that Judge Reedy be admonished. A copy of the determination is appended.

Judge Reedy did not request review of the Commission's determination, which thus became final.

Dismissed Formal Written Complaints

In 1981 the Commission disposed of eight Formal Written Complaints without rendering public discipline.

Four matters were closed without further action upon the resignation or retirement of the judge involved.

In four other matters the Commission determined that the Formal Written Complaint had been sustained, that the judge involved had committed misconduct but that, under the circumstances, issuance of a confidential letter of dismissal and caution was the appropriate disposition.

Letters of Dismissal and Caution

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

Where the Commission determines that allegations of misconduct or the misconduct itself does not warrant public discipline, the Commission can privately call a judge's attention to technical or de minimus violations of ethical standards which should be avoided in the future, by issuing a letter of dismissal and caution. The confidential nature of the communication is valuable since it is effective and is the only method by which the Commission may caution a judge as to his or her 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 1981, 25 letters of dismissal and caution were issued by the Commission. In sum total, the Commission has issued 151 letters of dismissal and caution since its inception on April 1, 1978. Of these, 18 were issued after formal charges had been sustained and determinations made that the judges had engaged in misconduct.

Matters Closed Upon Resignation

Eleven judges resigned in 1981 while under investigation or under formal charges by the Commission.

Since 1975, 96 judges have resigned while under investigation or charges by the temporary, former or present 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 present Commission may retain jurisdiction over a judge for 120 days following a resignation. The Commission may proceed within this 120-day period, but no sanction other than removal may be determined by the Commission within such period. (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 removal is not warranted.

Ticket-Fixing Proceedings

In June 1977, the former Commission issued a report on its investigation of a widespread practice characterized 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 1981, 16 ticket-fixing matters were concluded, resulting in the following:

- 7 censures;
- 8 admonitions;
- 1 matter closed upon judge's retirement.

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

Philip S. Caponera, a justice of the Town Court of Colonie, Albany County;

Angelo Darrigo, a justice of the Town Court of Newburgh, Orange County;

Burton Ledina, a justice of the Town Court of Thompson, Sullivan County;

Leonard J. Litz, a judge of the Family Court, Schenectady County;

Duncan MacAffer, a justice of the Village Court of Menands, Albany County;

George R. Murtaugh, a justice of the Town Court of Frankfort, Herkimer County; and

Walter J. Steria, a justice of the Town Court of New Bremen, Lewis County.

None of the judges listed above requested review of the Commission's determination in his particular case. The determinations thus became final.

Determinations of Admonition. The Commission rendered determinations of admonition with respect to the following eight judges upon completion of formal disciplinary proceedings:

Claude C. Barclay, a justice of the Town Court of Parma, Monroe County;

Donald L. Boughner, a justice of the Town Court of Riga, Monroe County;

William J. Foltman, a justice of the Town Court of Princeton, Schenectady County;

Charles R. Leggett, a justice of the Town Court of Chester, Warren County;

Thomas Reed, a justice of the Town Court of Pleasant Valley, Dutchess County;

Michael V. Tepedino, a judge of the Family Court, Albany County;

James C. Tippet, a justice of the Town Court of Tonawanda, Erie County; and

Judson Wright, a justice of the Town
Court of Coxsackie, Greene County.

None of the judges listed above requested review of the
Commission's determination in his particular case. The determina-
tions thus became final.

Summary of Ticket-Fixing Cases

From the beginning of the Commission's inquiry into
ticket-fixing through 1981, actions taken with respect to ticket-
fixing account for the following totals:

- 5 removals;
- 3 suspensions;
- 102 censures, one of which was modified
to admonition by the Court of Appeals;
- 32 admonitions;
- 149 letters of dismissal and caution;
- 32 cases closed upon resignation of
the judge;
- 56 cases closed upon vacancy of office
other than by resignation; and
- 53 dismissals without action.

Two ticket-fixing matters remained pending as of December
31, 1981.

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

Since January 1975, when the temporary Commission commenced operations, 4651 complaints of judicial misconduct have been considered by the temporary, former and present Commissions.

Of the 4651 complaints received since 1975, the following dispositions have been made through December 31, 1981:

- 2980 dismissed upon initial review;
- 1671 investigations authorized;
- 710 dismissed without action after investigation;
- 271 dismissed with caution or suggestions and recommendations to the judge;
- 113 closed upon resignation of the judge;
- 105 closed upon vacancy of office by the judge other than by resignation; and
- 310 resulted in disciplinary action.

Of the 310 disciplinary matters above, the following actions have been recorded since 1975 in matters initiated by the temporary, former or present Commission*:

- 28 judges were removed from office;
- 2 removal determinations are pending review before the New York State Court of Appeals;

*It should be noted that several complaints against a single judge may be disposed of in a single action. This accounts for the apparent discrepancy between the number of complaints which resulted in action and the number of judges disciplined.

- 3 judges were suspended without pay for six months;
- 2 judges were suspended without pay for four months;
- 121 judges have been censured;
- 47 judges have been admonished publicly; and
- 59 judges have been admonished confidentially by the temporary or former Commission, which had such authority.

In addition, 96 judges resigned during an investigation, upon the commencement of disciplinary proceedings or in the course of the proceedings themselves.

REVIEW OF COMMISSION DETERMINATIONS
BY THE COURT OF APPEALS

Determinations rendered by the Commission are filed with the Chief Judge of the Court of Appeals and served by the Chief Judge on the respondent-judge, pursuant to statute. The Judiciary Law allows the respondent-judge 30 days 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.

In 1981, the Court had before it five requests for review, one of which had been filed in late 1980 and four of which were filed in 1981. Of these five matters, the Court decided three in 1981 and two are pending.

Matter of Patricia Cooley

On September 9, 1980, the Commission determined that Patricia Cooley, a justice of the Village Court of Alexandria Bay, Jefferson County, be removed from office for (i) failing to report and remit in a timely manner to the State Comptroller monies received in her judicial capacity over a 12-month period, (ii) failing to make entries in her docket and cash books over a 9-month period and (iii) failing to respond to inquiries by the Office of Court Administration and the Commission with respect thereto.

Judge Cooley requested review of the Commission's determination by the Court of Appeals.

In its opinion dated June 4, 1981, the Court unanimously accepted the Commission's determination and removed Judge Cooley from office. 53 NY2d 64 (1981).

Matter of David W. Petrie

As noted earlier in this report, the Commission determined on February 18, 1981, that David W. Petrie, a justice of the Town Court of Danube, Herkimer County, be removed from office for various acts of misconduct with respect to court funds entrusted to his care.

Judge Petrie requested review of the Commission's determination by the Court of Appeals.

In its decision dated September 22, 1981, the Court unanimously accepted the Commission's determination and removed Judge Petrie from office, noting that his "disregard for statutory record-keeping requirements and his carelessness in handling public moneys is a serious violation of his official responsibilities." 54 NY2d 807 (1981).

Matter of William J. Quinn

As noted earlier in this report, the Commission determined on May 1, 1981, that William J. Quinn, a justice of the Supreme Court, Fourth Judicial District (Albany County), be removed for bringing disrepute to the judiciary by his intemperate and unjudicious conduct during an arrest for driving while under the influence of alcohol. Judge Quinn had been admonished previ-

ously by the Commission for public intoxication.

Judge Quinn requested review of the Commission's determination by the Court of Appeals.

In its unanimous opinion dated November 24, 1981, the Court did not accept the Commission's determination of removal. The Court noted that Judge Quinn had retired from office after the Commission's determination was rendered and that, in view of Judge Quinn's alcoholism, the Commission more appropriately might have determined to retire him for disability. The Court censured Judge Quinn. 54 NY2d 386 (1981).

CHALLENGES TO COMMISSION PROCEDURES

The Commission's staff litigated a number of cases in state and federal courts in 1981, involving several important constitutional and statutory issues relative to the Commission's jurisdiction and procedures.

Shilling v. Commission

The Commission had determined in 1980 that New York City Civil Court Judge Norman Shilling be censured. Upon its review of the determination at Judge Shilling's request, the Court of Appeals removed him from office. Judge Shilling appealed to the United States Supreme Court, claiming that the Court of Appeals' authority to impose a sanction greater than that determined by the Commission creates an unconstitutional burden on the right of review, since under New York law the Court of Appeals reviews determinations only at the request of the disciplined judge.

The Supreme Court summarily dismissed the appeal.

Leff et al. v. Commission

The plaintiff, Supreme Court Justice James J. Leff, brought suit in federal court under 42 USC §1983, seeking an injunction requiring the Commission to conduct its investigation in public and open to the press. The Judiciary Law permits formal hearings to be open to the public upon a written waiver of confidentiality by the judge involved, but there is no such

waiver provision with respect to Commission investigations. (A previous Article 78 proceeding in state court, seeking the same relief, had been dismissed.)

The United States District Court for the Southern District of New York dismissed the complaint.

Matter of Petrie

As noted earlier in this report, the Commission determined that Danube Town Court Justice David W. Petrie be removed from office. Judge Petrie requested review by the Court of Appeals and claimed that the initial complaint against him, which alleged his failure to account for certain specified court funds, was an insufficient basis for the Commission's wider investigation of the judge's overall handling of court funds and record keeping. Judge Petrie also challenged the Commission's procedure for summary determination, which was adopted by the Commission in its rules as of April 1, 1978.

The Court of Appeals accepted the Commission's determination that Judge Petrie be removed from office. The Court upheld both the scope of the wider investigation and the Commission rule providing for summary determination where no issue of fact is raised.

Matter of Richter v. Commission

Kingston City Court Judge Hubert Richter was called to testify before the Commission pursuant to an investigation of a

complaint against him. Judge Richter commenced an Article 78 proceeding in Supreme Court, Greene County, claiming that the matters the Commission sought to cover at his appearance went beyond the limits of the complaint which formed the basis of the investigation. Prior to the court's decision, Judge Richter appeared before the Commission to testify.

The court upheld Judge Richter's claim.

On appeal by the Commission, the Appellate Division, Third Department, found that the matters covered by the Commission went beyond the wording of the complaint, but the court held that the motion for rehearing should have been granted, because Judge Richter had appeared and testified, and the issue was moot. Accordingly, the order denying the motion was reversed and the Article 78 petition was dismissed.

Sims v. Commission

The petitioner, Buffalo City Court Judge Barbara Sims, brought a number of Article 78 proceedings to stay or quash a pending disciplinary proceeding. All petitions to that effect have been dismissed and all stays vacated.

Matter of Schiano v. Commission

After the disciplinary hearing had been held but before the Commission had rendered its determination in the matter involving Rochester City Court Judge Carl R. Scacchetti, Jr., discussed earlier in this report, Judge Scacchetti's attorney

brought an Article 78 proceeding to stay the Commission from (i) considering the referee's report of the hearing and (ii) rendering its determination.

The Supreme Court, Monroe County, dismissed the petition, and the Commission concluded its proceeding as scheduled.

SPECIFIC PROBLEMS IDENTIFIED
BY THE COMMISSION

In 1981 Commission investigations, Formal Written Complaints and discipline involved a variety of judicial misconduct. Among the cases considered were several concerning political activity and a large number involving shoddy and negligent record keeping and financial management by part-time justices.

Political Activity

The Election Law, the Rules Governing Judicial Conduct and the Code of Judicial Conduct set forth certain guidelines limiting political activity by judges and candidates for judicial office, which are designed to avoid appearances of impropriety and actual conflicts of interest that may later arise. The relevant provisions are intended to prevent the practice or appearance of administering judicial office with a bias toward those who supported a judge's candidacy or with a prejudice against those who opposed it.

In most respects, the Rules Governing Judicial Conduct address more forcefully the same matters covered by the Code of Judicial Conduct. With respect to political activity, however, there are certain matters addressed by the Code but not the Rules. Campaign conduct by a judge or judicial aspirant is one such matter.

The Rules should be reviewed comprehensively and revised to clarify existing ambiguities. The Rules should cover all the

relevant ethical standards on political activity. A review should include such matters as:

- attendance by a judge at his or her own fund-raising event;
- the practical policy considerations of prohibiting a judge from knowing the names of campaign contributors, even though such contributors are required by law to be on a public record filed by the judge's campaign finance committee; and
- the manner in which funds are raised, including loans by the judge to his or her campaign and the solicitations of lawyers who may practice in the judge's court.

These and other subjects deserve serious consideration, and the Commission urges a full review of the political activity standards.

Of course, the overwhelming body of political activity guidelines is unequivocal, and where transgressions occur, the Commission will continue to act. Although the exigencies of raising funds and assembling campaign organizations sometime make it difficult or inconvenient to adhere to the applicable standards, the overriding public interest in an impartial, honorable judiciary requires compliance with those standards.

Improper Financial Management
And Record Keeping

In 1981 the Commission rendered two determinations that town court justices be removed from office and one that a town

court justice be admonished for improprieties arising from their failure, in whole or in part, to observe various financial deposit, reporting and remitting requirements. The Commission also issued four letters of dismissal and caution in this regard.

Improper or neglected accounting of court finances inevitably leads to suspicions that the judge may be using court money for personal purposes. While improper financial management and record keeping most often result from honest mistakes, they sometimes serve to camouflage serious misconduct.

In a number of cases before the Commission, judges have deposited their personal checks into court accounts to balance the books. In many cases, deficiencies result from the failure to make prompt deposits of court monies in official court accounts, and from the failure to make timely remittances of court funds to the State Comptroller as required by law. In some cases, substantial court funds, in cash, are kept under the judge's personal control, for long periods of time, resulting in the inevitable suspicion that the money is subject to the judge's personal use.

Improper or neglected posting of court records makes it difficult to assess the work of the court and even to determine the status of particular matters pending before the court. This becomes apparent with respect to complaints that allege undue delay in the rendering of a decision.

Many town and village court justices do not have sufficient accounting backgrounds or clerical and administrative assistance to maintain accurate records in the appropriate manner.

Where a town board has available resources, it should make a greater commitment to the administration of the court. In addition, the Office of Court Administration could devote to this problem a greater portion of the training program required by law for all non-lawyer part-time justices. The training could be augmented by a team of financial managers who could visit the local judge and set up bookkeeping and record keeping systems in those courts which do not have administrative personnel and in which problems have been identified. The cost of operating such a modest program would be more than recovered by the money which would be reported and transmitted promptly from these courts to the State Comptroller.

Of course, where the evidence in a particular case suggests misconduct, the Commission will pursue the matter as it has in the past.

REVISIONS IN THE RULES GOVERNING
JUDICIAL CONDUCT

Several revisions in the Rules Governing Judicial Conduct were adopted by the Chief Administrative Judge, as approved by the Court of Appeals, effective January 1, 1982. The major changes are reviewed below.

Numbering System

The rules were previously designated as Part 33 of the NYCRR and are now Part 100, with most section numbers in the new edition corresponding to their antecedents. For example, Section 33.1 becomes Section 100.1.

Judge's Spouse Serving as Court Clerk

Section 100.3(b)(4) prohibits the appointment of relatives to a judge's staff or court. A new exception is adopted which allows the spouse (or other household member) of a town or village court justice to serve as court clerk upon receiving prior approval of the Chief Administrator of the Courts.

Use of Judge's Name on Stationery
Used for Fund-Raising

Section 100.5(b)(2) now prohibits the listing of a judge on the letterhead of stationery used to solicit funds for educational, religious, charitable, fraternal or civic organizations.

Limited Partnerships

Section 100.5(c)(2)(iii) now permits a judge to be a limited partner in a limited partnership, as contemplated by Article 8 of the Partnership Law, provided that the judge "does not take part in the control of the business of the limited partnership."

Wedding Ceremonies

Section 100.5(c)(5) now prohibits a judge who performs a wedding ceremony from requiring, soliciting or accepting a fee or a gift from the participants, their relatives or their friends.

Employment of Part-Time Judges

Section 100.5(h) now permits part-time judges to accept private employment or public employment in a federal, state or municipal department or agency, "provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties."

Other Needed Reforms

The recent revisions in the Rules are valuable and help clarify certain matters. The Commission hopes that this important step is followed up with continued review of those areas which would benefit from clarification, such as the political activities addressed earlier in this annual report.

CONCLUSION

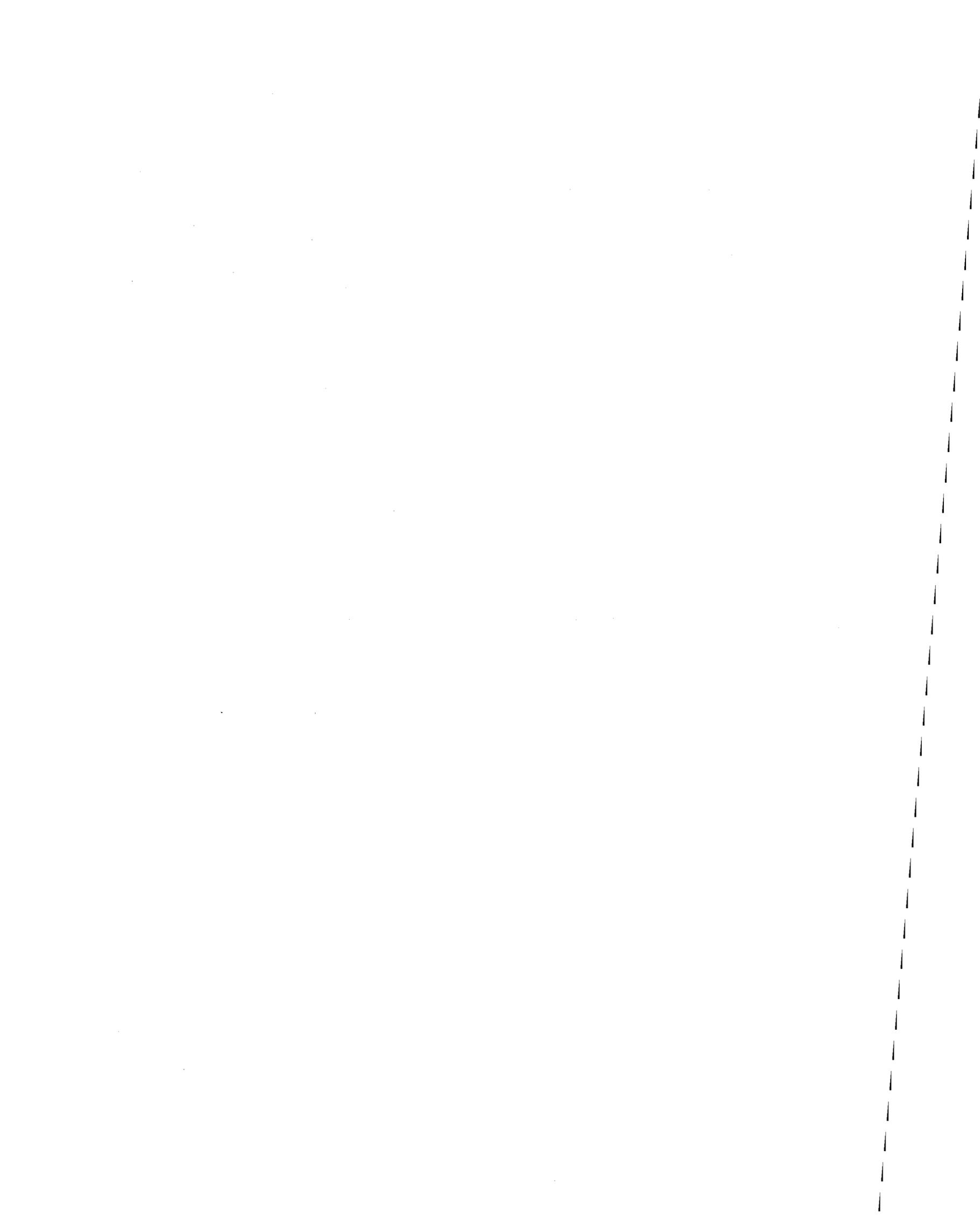
The decisions the Commission is called upon to make are often very difficult. Reputations and careers may hang in the balance. Nonetheless, if public confidence in the judiciary is to be maintained, misconduct, when it occurs, must be addressed.

We seek in every matter before us first to determine whether there was misconduct, then to assess its gravity and finally to render an appropriate determination. We have adopted procedures which the courts have upheld as fair and which allow us to deal with matters of misconduct without encroaching on the independence of the judiciary or interfering with the ability of the court to conduct its business properly.

We continue to take satisfaction in our contribution to the fair and proper administration of justice.

Respectfully submitted,

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



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. 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. Judge Cardamone served on the Commission until November 13, 1981, when he was sworn in as a Judge of the United States Court of Appeals for the Second Circuit, on appointment of President Ronald W. Reagan.

E. GARRETT CLEARY, ESQ., attended St. Bonaventure University and is a graduate of Albany Law School. He was an Assistant District Attorney in Monroe County from 1961 through 1964. In August of 1964, he resigned as Second Assistant District Attorney and became a member of the law firm of Streppa, Osgood, Cleary, Persons & Gaenzle in Rochester. In January 1969 he was appointed a Special Assistant Attorney General in charge of a Grand Jury Investigation ordered by the late Governor Nelson A. Rockefeller to investigate financial irregularities in the Town of Arietta, Hamilton County, New York. In 1970 he was designated as the Special Assistant Attorney General in charge of an investigation ordered by Governor Rockefeller into a student-police confrontation that occurred on the campus of Hobart College, Ontario County, New York, and in 1974 he was appointed a Special Prosecutor in Schoharie County for the purpose of prosecuting the County Sheriff. Mr. Cleary is a member of the Monroe County and New York State Bar Associations, and he has served as a member of the governing body of the Monroe County Bar Association, Oak Hill Country Club, St. John Fisher College, Better Business Bureau of Rochester, Automobile Club of Rochester, Hunt Hollow Ski Club and the Monroe County Advisory Committee for the Title Guarantee Company. In 1981 he became the Chairman of the Board of Trustees of St. John Fisher College.

DOLORES DEL BELLO received a baccalaureate degree from the College of New Rochelle and a masters degree from Seton Hall University. She is presently Public Relations Director for Bloomingdale's/Westchester. Mrs. DelBello is a member of the League of Women Voters, the Board of Overseers for the Naylor Dana Institute for Disease Prevention, American Health Foundation, the Board of Trustees of St. Cabrini Nursing Home, Inc., the Board of Directors for Clearview School, Hadassah, the Executive Board of Westchester Women in Communications and a member of Alpha Delta Kappa, the 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 American Bar Association, the American Judicature Society, the International Association of Jewish Lawyers and Jurists, and other professional societies. He was president of the Brooklyn Bar Association, 1971/72, and Chairman and member of many of its committees, and is still active on its Trustees Council and various committees. In 1978 he was the recipient of the Brooklyn Bar Association's Annual Gold Medal Award for distinguished service in the law, and in 1979 he received the Surrogate Maximilian Moss Foundation Award for his communal activities and service to the Bar. He was a member of the House of Delegates of the New York State Bar Association, 1972-78, and a member of its Nominating Committee, and its Committee on Judicial Administration, 1978 to present. For seventeen years he was a member and Panel Chairman of the Local Draft Board, United States Selective Service. He was a member of the Appellate Division's Judiciary Relations Committee for the Second and Eleventh Judicial Districts; and since 1974 to the present he has been and is a member of the State Commission on Judicial Conduct and its predecessor, the Temporary State Commission.

VICTOR A. KOVNER, ESQ., is a graduate of Yale College and the Columbia Law School. He is a partner in the firm of Lanckenau 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 was a member of the Commission from its inception as a temporary commission in 1974 through March 31, 1981, when his term of office expired.

HONORABLE WILLIAM J. OSTROWSKI is a graduate of Canisius College and received law degrees from Georgetown and George Washington Universities. He attended the National Judicial College in 1967. Justice Ostrowski is a justice of the Supreme Court in the Eighth Judicial District and was elected to that office in 1976. During the preceding 16 years he was a judge of the City Court of Buffalo, and from 1956 to 1960 he was a deputy Corporation Counsel of the City of Buffalo. He served with the 100th Infantry Division in France and Germany during World War II. He has been married to Mary V. Waldron since 1949 and they have six children and two grandchildren. Justice Ostrowski is a member of the American Law Institute, American Bar Association and its National Conference of State Trial Judges; American Judicature Society; National Advocates Society; New York State Bar Association and its Judicial Section; Erie County Bar Association; and the Lawyers Club of Buffalo.

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 is a member of the Advisory Committee of the Center for Judicial Conduct Organizations of the American Judicature Society. 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 Appellate Division, Second Department, to which he was appointed by Governor Carey in January 1982. Prior to this appointment, Justice Rubin sat in the Supreme Court, Ninth Judicial District, where he served as Deputy Administrative Judge of the County Courts and superior criminal courts. 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 American Bar Association's Special Committee 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 Committee on Consumer Affairs and its Committee on Juvenile Justice.

CARROLL L. WAINWRIGHT, JR., ESQ., is a graduate of Yale College 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 Trustee of the Church Pension Fund of the Episcopal Church. He is a former Treasurer and a former Vice President of the Association 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.

ADMINISTRATOR OF THE COMMISSION

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.

DEPUTY ADMINISTRATOR

RAYMOND S. HACK, ESQ., is a graduate of the Bronx High School of Science, City College of New York and Columbia Law School where he was appointed Joseph P. Chamberlain Scholar in Legislation. Upon graduation he joined the office of the District Attorney of New York County where he served as an Assistant District Attorney from 1961 to 1966. Thereafter, he served as Assistant Corporation Counsel of New York City and was in private practice. He joined the Commission as Chief Attorney in 1979 and was appointed Deputy Administrator in 1980.

CHIEF ATTORNEY, ALBANY

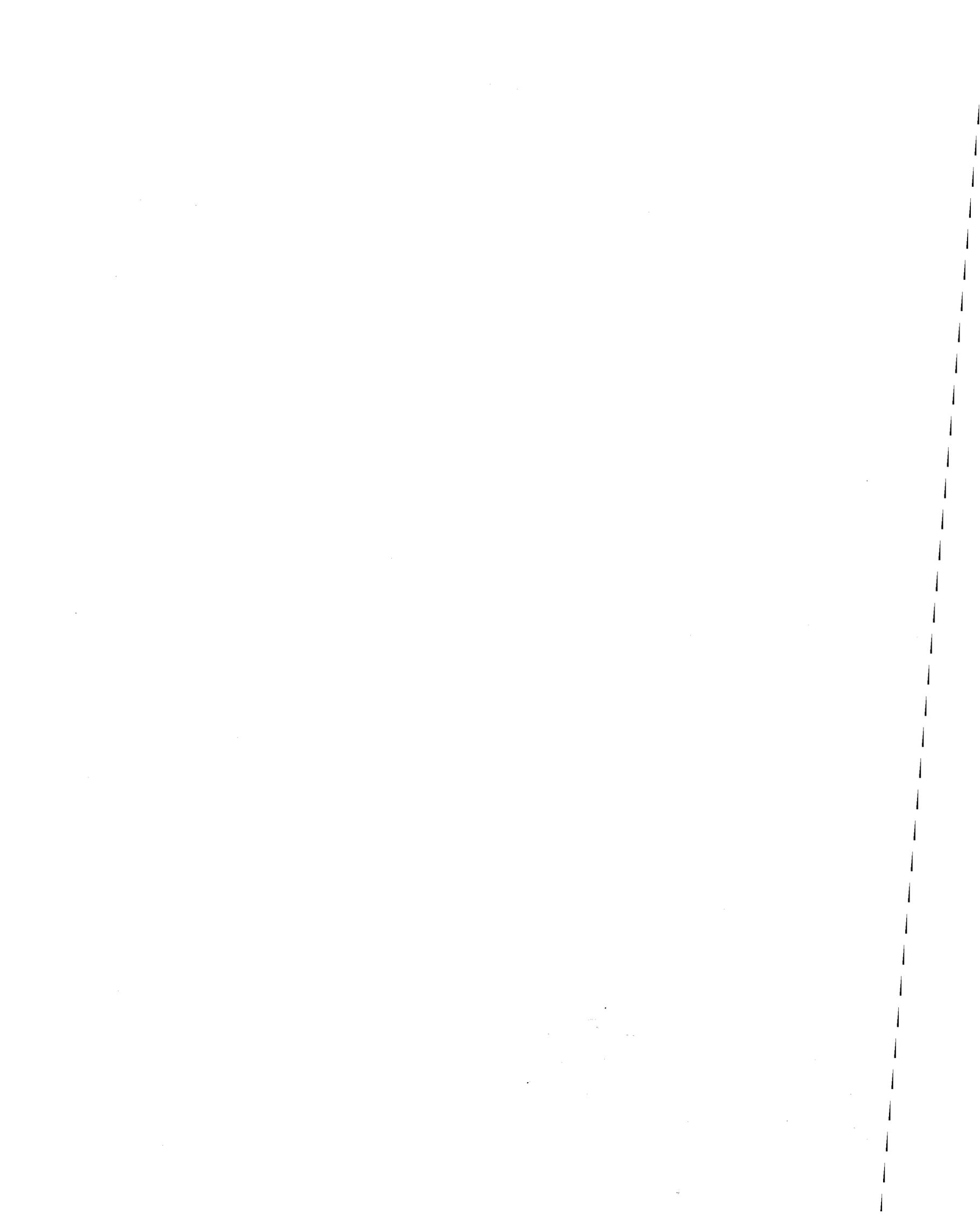
STEPHEN F. DOWNS, ESQ., is a graduate of Amherst College and Cornell Law School. He served in India as a member of the Peace Corps from 1964 to 1966. He was in private practice in New York City from 1969 to 1975, and he joined the Commission's staff in 1975 as a staff attorney. He has been Chief Attorney in charge of the Commission's Albany office since 1978.

CHIEF ATTORNEY, ROCHESTER

CODY B. BARTLETT, ESQ., is a graduate of Auburn Community College, Michigan State University, and the Harvard Law School. He was Director of Administration of the Courts, Fourth Judicial Department, from 1972 through 1980. Mr. Bartlett was previously in the private practice of law in Michigan and New York. He was an adjunct professor at the Syracuse University College of Law, an adjunct professor at the College of Criminal Justice at the Rochester Institute of Technology, an undergraduate assistant in the political science department at Michigan State University, a member of the Advisory Committee to the Regional Criminal Justice Education and Training Center at Monroe Community College, and Special Administrator of the 1973 Dangerous Drug Control Program in the Fourth Judicial Department.

CLERK OF THE COMMISSION

ROBERT H. TEMBECKJIAN is a graduate of Syracuse University and Fordham Law School. He previously served as special assistant to the Deputy Director of the Ohio Department of Economic and Community Development, staff director of the Governor's Cabinet Committee on Public Safety in Ohio and publications director for the Council on Municipal Performance in New York. Mr. Tembeckjian joined the Commission's staff in 1976 and was appointed its clerk when the position was created in 1979.



APPENDIX B

COMMISSION BACKGROUND

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.*

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.

*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.

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 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 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 remaining 32 proceedings were pending when the former Commission expired. They were continued by the present 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 And 1979 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 present Commission.

Twenty-seven of these 32 proceedings were concluded in 1978 and 1979, with the following results, reported in greater detail in the Commission's previous annual reports:

- 1 judge was removed from office;
- 2 judges were suspended without pay for four months;
- 20 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
- 2 judges died before the matters were concluded.

The remaining five cases were pending as of December 31, 1979.

State Commission on Judicial Conduct

The present 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.

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 B. CARPENTER,

a Justice of the Town Court of
Hounsfield, Jefferson County.

APPENDIX C

Determinations
Rendered in 1981

Determination

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

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel)
for the Commission

Giles, Maloney, Marsh, Swartz & Goodwin
(By Michael W. Schell) for Respondent

The respondent, Harold B. Carpenter, a justice of the Town Court of Hounsfield, Jefferson County, was served with a Formal Written Complaint dated May 30, 1980, charging him with (i) failing to make timely deposits of court funds (ii) failing to report or remit to the State Comptroller monies received in his official capacity and (iii) withdrawing court funds by writing checks payable to himself. Respondent, in a letter from his counsel dated June 18, 1980, waived an answer.

By motion dated November 5, 1980, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's operating procedures and rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion, found respondent's misconduct established and set a schedule for memoranda and oral argument with respect to an appropriate sanction. The administrator submitted a

memorandum. Respondent submitted a letter. Oral argument was waived.

The Commission considered the record of this proceeding on December 17, 1980, and makes the following findings of fact.

1. On September 7, 1979, the State Department of Audit and Control directed the Supervisor of the Town of Hounsfield to defer payment of respondent's salary, pursuant to Section 27 of the Town Law, for respondent's failure to file with the State Comptroller the financial reports of his court activity for June and July 1979 required by Section 27 of the Town Law.

2. From July 1979 to March 1980, respondent failed to report or remit to the State Comptroller any monies he received in his judicial capacity, in violation of Section 27 of the Town Law, Sections 2020 and 2021(1) of the Uniform Justice Court Act and Section 1803 of the Vehicle and Traffic Law. During this period respondent received \$996 in fines, as detailed in Column 1 of Schedule A appended hereto.

3. From May 1979 to March 1980, respondent received monies in his official capacity totaling \$1,426, as detailed in Column 1 of Schedule A appended hereto. During this period respondent made only three deposits totaling \$764 into his official court account, as detailed in Column 2 of Schedule A appended hereto. In so doing, respondent violated Section 30.7 of the Uniform Justice Court Rules, which requires the deposit of all official funds within 72 hours of receipt. A total of \$662 was undeposited and remains unaccounted for, as detailed in Column 3 of Schedule A appended hereto.

4. Between March 5, 1978, and February 8, 1980, respondent withdrew a total of \$225 from his official court account by making four checks payable to himself, as detailed in Schedule B appended hereto.

5. In the investigation of this matter prior to service of the Formal Written Complaint, respondent appeared on April 30, 1980, before a member of the Commission to testify with respect to his reporting and remitting deficiencies. At that appearance, respondent refused to answer questions about certain court records or accounts, citing his Fifth Amendment privilege against self-incrimination. Respondent specifically refused to account for the \$662 in undeposited funds noted in paragraph 3 above and for the \$225 in withdrawn funds noted in paragraph 4 above.

6. On April 29, 1980, respondent deposited his personal check for \$843 into his official court account. On April 30, 1980, respondent forwarded to the State Comptroller a check for \$843 from his official court account, representing fines received in his official capacity from August 1979 to March 1980.

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 3B(1) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained and respondent's misconduct is established.

By his persistent failure to make timely deposits of monies received in his official capacity, and by his equally persistent failure to report and remit these monies to the State Comptroller in the time and manner required by law, respondent has exhibited a callous disregard of the financial reporting and remitting responsibilities of his office.

By refusing to account for specific deficiencies amounting to \$887, and by involving his Fifth Amendment privilege in so doing, respondent has irreparably undermined the integrity of his judicial office. Public confidence in the judiciary requires a full and satisfactory accounting of the public funds entrusted to a judge's care.

Respondent's misconduct is not mitigated by his returning a portion of the missing funds with his personal check more than two years after the irregularities in his court finances began, after notice of the Commission's investigation into this matter and on the same day he appeared to testify on these matters before a member of the Commission. Whether or not we were to conclude that the missing money had been converted to respondent's own use -- and the indications of such a conversion are persuasive -- respondent's conduct has prejudiced the administration of justice and demonstrated his lack of fitness for judicial office.

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

All concur.

Dated: February 18, 1981
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

DAVID W. PETRIE,

Determination

a Justice of the Town Court of
Danube, Herkimer County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
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.

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel) for the
Commission

David W. Petrie, Respondent Pro Se

The respondent, David W. Petrie, a justice of the Town Court of Danube, Herkimer County, was served with a Formal Written Complaint dated July 8, 1980, alleging various acts of misconduct with respect to court funds entrusted to his care. Respondent did not file an answer.

By motion dated October 3, 1980, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's operating procedures and rules (22 NYCRR 7000.6[c]). Respondent submitted a letter in response to the motion.

The Commission granted the administrator's motion, found respondent's misconduct established and set the matter down for oral argument on the question of sanction. The administrator filed a memorandum. Respondent did not. Oral argument was waived.

The Commission considered the record of this proceeding on December 18, 1980, and makes the following findings of fact.

1. Between January 1, 1976, and December 31, 1978, respondent failed to deposit in his court account money received in his official capacity within 72 hours of receipt as required by Section 30.7 of the Uniform Justice Court Rules.

2. Between January 1, 1976, and December 31, 1978, respondent's court account was deficient by an average of \$4,813, with the deficiency totaling as much as \$9,860 in one month, as detailed in Schedule A appended hereto.

3. Respondent's practice was to keep in a box in his home, for an indeterminate period of time, the money he received in his official capacity, prior to depositing it in his official court account.

4. Respondent alleges that on September 6, 1976, his home was burglarized and that the only item stolen was the box containing court money. Respondent had not kept records of the money he kept in the box and so could not account for the actual amount allegedly stolen, though he indicated the figure was approximately \$2,500.

5. Between October 1976 and March 1977, respondent made six deposits in his official court accounts, including \$17,937 from more than 213 checks issued prior to the date of the alleged burglary. Respondent stated that at the time of the alleged burglary, the additional checks were probably in envelopes on top of the desk from which the box was stolen.

6. Notwithstanding the alleged theft of court funds from the box in his home on September 6, 1976, respondent allowed at least 285 checks totaling \$6,220 in fines to accumulate in his home throughout the remainder of September 1976, as detailed in Schedule B appended hereto. Some of these checks were not deposited in respondent's official court account for up to six months thereafter.

7. Between April 1978 and September 1978, respondent accumulated in his home at least 30 checks in payment of fines totaling \$977, as detailed in Schedule C appended hereto. In September 1978 respondent's overall court account deficit was \$2,601.

8. To date, respondent's court accounts remain unreconciled.

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 3B(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

Respondent has been more than simply careless in his handling of public money entrusted to his care. His failure to make timely deposits of official funds resulted in an average monthly deficiency of \$4,813 over a three-year period. His allowing thousands of dollars in court funds to accumulate in his home for months at a time, unrecorded and unprotected, is utterly without justification. We do not credit respondent's explanation that a burglary of his home resulted in the disappearance of a substantial amount of court funds since the record establishes that respondent subsequently deposited a number of checks issued prior to the theft. His complete failure to account properly following the purported burglary, as well as his failure to reconcile his court accounts to date, are evidence either of respondent's unwillingness or inability to discharge the responsibilities of judicial office.

Respondent's gross neglect of these fiduciary obligations is serious misconduct. In Bartlett v. Flynn, 50 AD2d 401 (4th Dept 1976), app disp 30 NY2d 942 (1976), a judge was removed from office for "the careless manner in which he handled funds entrusted to his care and the disdain he demonstrated, not only for statutory record keeping, but also for deposit and remittance requirements."

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

All concur.

Dated: February 18, 1981
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

WILLIAM J. QUINN,

Determination

a Justice of the Supreme Court,
Fourth Judicial District.

BEFORE: 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.

APPEARANCES:

Gerald Stern (Jack J. Pivar, Of Counsel)
for the Commission
Thomas J. McDonough for Respondent

The respondent, William J. Quinn, a justice of the Supreme Court, Fourth Judicial District, was served with a Formal Written Complaint dated November 27, 1979, alleging misconduct with respect to respondent's operating a motor vehicle while under the influence of alcohol. Respondent filed an answer dated January 19, 1980.

By order dated March 18, 1980, the Commission designated the Honorable Bertram Harnett referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on August 18 and 19, 1981, and the referee filed his report to the Commission on December 23, 1980.

*Mr. Maggipinto's term as a member of the Commission expired on March 31, 1981. The vote on this determination was taken on March 10, 1981.

By motion dated January 9, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. By cross-motion dated February 17, 1981, respondent moved to disaffirm the referee's report and for dismissal of the Formal Written Complaint.

The Commission heard oral argument on the motions on March 10, 1981, thereafter considered the record of the proceeding and makes the following findings of fact.

1. On May 4, 1975, respondent was found by an officer of the Lake George Village Police to be asleep behind the wheel of his automobile. Upon being awakened, respondent was found to be under the influence of alcohol, was taken to a police station, and, upon confirmation of his identity, was driven home.

2. On May 16, 1975, respondent was found by an officer from the Warren County Sheriff's office to be asleep behind the wheel of his automobile. Upon being awakened, respondent was found to be under the influence of alcohol. After his identity was confirmed, he was driven home.

3. On May 22, 1975, respondent drove his automobile while his ability to operate a vehicle was impaired by the consumption of alcohol. His car entered the southbound lane on the Northway (Interstate 87), going north. He continued in the wrong direction until he was stopped and arrested by New York State Troopers.

4. On May 29, 1975, respondent pleaded guilty in the Town Court of Moreau to driving while his ability was impaired on May 22, 1975, in violation of Section 1192.1 of the Vehicle and Traffic Law.

5. On November 10, 1977, respondent was admonished by the State Commission on Judicial Conduct, concerning his drinking habits.

6. After receiving the admonition, respondent continued to have at least one or two alcoholic drinks on several occasions each week outside his home. On some of these occasions respondent was in an inebriated condition and was seen to be so in public.

7. On January 16, 1979, respondent had several drinks at a private club in mid-afternoon and then drove home in an intoxicated condition. By his conduct, respondent acted in disregard of the Commission's admonition.

8. While driving home on January 16, 1979, respondent's car stopped, blocking traffic. Respondent had passed out at the wheel with the motor running and the car in gear.

9. A number of witnesses observed respondent in an inebriated condition and summoned the police.

10. When a police officer arrived, respondent refused to give his identification, insulted the officer, and attempted to invoke the authority of his office by making such statements as, "Do you know who I am?" Respondent was arrested.

11. After his arrest, respondent, in plain view, urinated on the police car.

12. Thereafter at the stationhouse, in the presence of at least four police employees, respondent displayed his checkbook and asked what he would have to do to "get this straightened out," repeatedly referred to his judicial position and said, "Let's get this thing settled now." He also stated, "My name is not Mr. Quinn; it's Judge Quinn and don't forget it."

13. Respondent was belligerent and uncooperative in taking a breathalyzer test.

14. The breathalyzer test showed that respondent's blood alcohol content was .19%, well above the .10% needed to demonstrate intoxication.

15. Respondent threatened the arresting police officers by making such statements as, "I know where you were Saturday night;" "I've got files on all you Glenville cops;" and "Your ex-Chief tried the same thing and you know what happened to him."

16. Respondent refused on January 16, 1979, to cooperate in having his fingerprints taken.

17. On February 16, 1979, respondent pleaded guilty to driving with more than .10% blood alcohol, and, accordingly, entered a plea of guilty to Section 1192.2 of the Vehicle and Traffic Law in the Town Court of Glenville. He was given a conditional discharge. One of the conditions was that he submit to fingerprinting.

18. Between January 16, 1979, and August 23, 1979, in connection with his arrest for and conviction of driving with more than .10% blood alcohol, respondent refused to make himself available for fingerprinting pursuant to Section 160.10 of the Criminal Procedure Law, notwithstanding that he was ordered by the Court, as part of the terms under which his plea of guilty was accepted, to make himself available to the Glenville Police for the purpose of taking his fingerprints.

19. On August 23, 1979, at the urging of the District Attorney, respondent agreed to have his fingerprints taken in his chambers by a police officer. He was, however, not cooperative with the police officer and a clear set of fingerprints could not be obtained.

20. No adequate fingerprints of respondent were ever obtained in connection with his arrest on January 16, 1979.

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(a) of the Rules Governing Judicial Conduct and Canons 1, 2A and 5A of the Code of Judicial Conduct. Charges I through IX of the Formal Written Complaint are sustained and respondent's misconduct is established. The affirmative defenses raised by respondent are not sustained and therefore are dismissed.

Respondent's misconduct has been serious and continuing since 1975. More than once he was found by police to be asleep at the wheel of his car while under the influence of alcohol. He was arrested twice for driving while intoxicated or while his ability to drive was impaired by alcohol, once having been stopped while driving the wrong way on a major highway. He identified himself as a judge and asserted the prestige of his judicial position, attempted to influence the police who arrested him, directed abusive language toward the police and refused to cooperate as they attempted to discharge their official responsibilities. He refused for several months to obey a court order to be fingerprinted and, when he finally did submit to the process, he was so uncooperative that the administering police officer was unable to obtain a legible set of prints.

A judge may not flout the laws he is sworn to uphold. By his conduct respondent has cast grave doubt on his fitness to serve. He has demeaned the dignity of his office and has acted in a manner that has brought shame and disrepute to the judiciary.

In determining the appropriate sanction in a disciplinary proceeding, the Commission must balance its responsibility to insure to the public a judiciary in whose integrity it may have confidence and its responsibility to deal fairly with the individual judge. In this case, the circumstances involve a judge whose serious drinking problem underlay the uncontroverted acts of misconduct and on whom a prior admonition has had no discernible reforming effect.

In the circumstances of this case, the Commission concludes that public confidence in respondent is irretrievably lost and that the public interest can be protected only by removal of respondent from office. The manifestations of misconduct engendered by respondent's alcoholism, are so serious as to reflect clearly respondent's lack of fitness to serve as a judge. The risks inherent in permitting respondent to remain on the bench far outweigh the prospects of his regaining the public's confidence in his performance.

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

All concur, except for Judge Rubin, who abstains.

Dated: May 1, 1981
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

MORGAN BLOODGOOD,

a Justice of the Town Court of Malta,
Saratoga County.

Determination

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

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel)
for the Commission

William F. McDermott for Respondent

The respondent, Morgan Bloodgood, a justice of the Town Court of Malta, Saratoga County, was served with a Formal Written Complaint dated September 11, 1979, alleging that respondent intentionally directed an ethnic religious slur at a defendant in a pending case. Respondent filed an answer dated October 4, 1979.

By order dated January 9, 1980, the Commission designated the Honorable H. Hawthorne Harris as referee to hear and report proposed findings of fact and conclusions of law. The hearing was conducted on March 10 and 11, 1980, and the report of the referee was filed on June 26, 1980.

By motion dated August 19, 1980, the administrator of the Commission moved (i) to confirm in part and to disaffirm in part the referee's report,

(ii) for a determination that respondent's misconduct is established and (iii) that oral argument be scheduled as to appropriate sanction. Respondent cross-moved on September 5, 1980, to dismiss the Formal Written Complaint.

The Commission heard oral argument on the motions on October 30, 1980, and thereafter found respondent's misconduct established.

Oral argument on sanction was heard on April 22, 1981, having been adjourned to that date due to the hospitalization of respondent's counsel.

Now upon consideration of the record of this proceeding, the Commission makes the following findings of fact.

1. On February 13, 1979, David Rosenblum, a resident of Pennsylvania, was issued a traffic summons for speeding, returnable on February 21, 1979, in respondent's court. Mr. Rosenblum failed to respond to the summons on its return date.

2. On March 27, 1979, Mr. Rosenblum entered a plea of guilty by completing and signing the appropriate portions of the traffic summons and mailing it to respondent with a personal check for \$15, in payment of the appropriate fine as stated on the summons. Respondent received the plea and check at his court on March 29, 1980.

3. On March 30, 1979, respondent sent the record of the conviction to the Department of Motor Vehicles, deposited the \$15 check in his official court account and transmitted \$15 in payment of the fine to the Department of Audit and Control.

4. On April 10, 1979, respondent received from the bank handling his court account a notice that Mr. Rosenblum's check had been returned, unpaid, by reason of an order by Mr. Rosenblum to stop payment.

5. On April 11, 1979, respondent personally typed a letter on official court stationery to Mr. Rosenblum, acknowledging the stopped payment. Respondent's letter was sarcastic in tone and concluded with the words "So long Kikie". Respondent mailed the letter the following day.

6. Respondent did not know Mr. Rosenblum prior to the incident herein. Respondent "assumed" Mr. Rosenblum is Jewish. Respondent, knowing the term "kike" is an ethnic religious slur used to characterize Jewish people, invoked it to shock, irritate and provoke Mr. Rosenblum into replacing the \$15 stopped check.

7. Respondent did not notify the motor vehicle departments of either New York or Pennsylvania about the return of Mr. Rosenblum's check. Respondent did not file the appropriate scofflaw notices against Mr. Rosenblum, nor did he take any other appropriate action on Mr. Rosenblum's license to drive an automobile.

8. On April 14, 1979, Mr. Rosenblum received respondent's letter and was angered and irritated by it. He telephoned respondent, said he would send another check for \$15, and expressed his anger to respondent.

9. On April 16, 1979, Mr. Rosenblum sent a money order to respondent, to make up for the \$15 check on which payment had been stopped. On May 24, 1979, respondent sent a letter to Mr. Rosenblum, apologizing for the "poor choice of words" in his letter of April 11, 1979.

By reason of the foregoing, respondent violated Sections 33.1, 33.2 and 33.3(a)(3) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Ethnic or religious slurs, offensive to decorum and decency under ordinary circumstances, are particularly intolerable when spoken or written by a judge. When a judge demonstrates prejudice by deliberately using the term "kikie", public confidence in the integrity of the courts is diminished, and the administration of justice is seriously compromised.

Respondent's use of the offensive term was neither accidental nor spontaneous. Respondent called Mr. Rosenblum "kikie" in a letter which he himself typed on court stationery one day and did not mail until the next. Although there was time for respondent to reconsider his action and not mail the letter, he chose to send it.

By his conduct, respondent has demeaned the high office he holds and has demonstrated a remarkable insensitivity to his obligation to conduct himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The Commission notes that, prior to this incident, respondent had been disciplined four times for other matters. He had been admonished for misconduct twice by the Appellate Division, Third Department, once by the Temporary State Commission on Judicial Conduct, and censured once by the Court on the Judiciary.

Standing alone, respondent's conduct in the instant case warrants severe discipline. In the context of his extensive record of prior discipline, the Commission concludes that respondent lacks the requisite fitness to serve as a judge.

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

All concur.

Dated: June 11, 1981

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 E. JOEDICKE,

Determination

a Justice of the Town Court of
Stamford, Delaware County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Stephen F. Downs and
John J. Postel, Of Counsel) for the
Commission
James E. Joedicke, Respondent Pro Se

The respondent, James E. Joedicke, a justice of the Town Court of Stamford, Delaware County, was served with a Formal Written Complaint dated March 17, 1981, alleging that respondent had not completed a certification program required by law for all town and village justices who are not lawyers, and alleging various administrative and accounting deficiencies. Respondent did not file an answer.

By order dated April 10, 1981, the Commission designated Ira M. Belfer, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on May 12, 1981, and the referee filed his report on May 19, 1981.

By motion dated May 26, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent did not oppose the motion. Oral argument was not requested.

The Commission considered the administrator's motion and the record of the proceeding on June 18, 1981, and makes the determination herein.

With respect to Charge I of the Formal Written Complaint, the Commission makes the following findings of fact.

1. Respondent served as town court justice part-time. He is not an attorney. His regular occupation is superintendent for a construction company. He first took judicial office in 1974. He was re-elected to a new term of office which commenced on January 1, 1979. He resigned from office effective April 8, 1981.

2. From October 11, 1977, to February 10, 1981, respondent refused to open 81 pieces of mail he received in his official capacity, as set forth in Schedule 1 appended hereto.

3. Respondent was aware that this correspondence was stored unopened in his court desk. The unopened correspondence included letters from government agencies, attorneys and litigants, as noted in Schedule 1.

4. Respondent failed to open the 81 letters set forth in Schedule 1 despite an inquiry from the Commission on December 22, 1980, with respect thereto.

5. On February 10, 1981, respondent appeared before a member of the Commission to testify under oath and offered no reason or explanation for his failure to open the 81 letters.

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)(5) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(5) and 3B(1) 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 of the Formal Written Complaint, the Commission makes the following findings of fact.

6. By letter dated September 3, 1980, the Honorable Howard Zeller, administrative judge for the Sixth Judicial District, in which respondent's court is located, advised respondent that he had not attended the advanced judicial training course required by law for the re-certification of all non-attorney judges re-elected to judicial office. The letter from the administrative judge informed respondent that the next training session was scheduled for September 15, 1980, and that failure to attend the required training course could lead to removal from office.

7. Respondent failed to attend the advanced training course held on September 15, 1980.

8. On September 27, 1980, respondent spoke with Administrative Judge Zeller regarding his lack of certification. By letter dated September 29, 1980, Judge Zeller again advised respondent of his lack of certification. The letter informed respondent that the next training session was scheduled for October 23 and 24, 1980, in Dryden, New York.

9. Respondent attended the first day of the advanced training course in Dryden on October 23, 1980. He did not attend the second day's session on October 24, 1980. Respondent failed to take the required examination and did not receive certification.

10. By letter dated November 10, 1980, Administrative Judge Zeller advised respondent that he remained uncertified because of his failure to take the required examination. Respondent did not respond to Judge Zeller's letter and remained uncertified through the date of his resignation from office.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Article 6, Section 20(c), of the State Constitution, Section 31 of the Town Law, Section 105 of the Uniform Justice Court Act, Section 30.6(b) of the Uniform Justice Court Rules, Sections 33.1, 33.2(a), 33.3(a)(5) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct. Charge II of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge III of the Formal Written Complaint, the Commission makes the following findings of fact.

11. In the 24-month period from October 1978 through September 1980, respondent, contrary to the requirements of Section 30.7 of the Uniform Justice Court Rules, retained possession of court funds and regularly failed to deposit those funds within 72 hours of receipt, as set forth in Schedule 2 appended hereto. In this period respondent was aware of the requirements of Section 30.7.

12. In 16 of the 24 months from October 1978 through September 1980, as set forth in Schedule 2, respondent failed to make any deposits at all of the monies received in his official capacity, despite having such monies under his personal control each month.

13. In his testimony before a member of the Commission on February 10, 1981, respondent failed to give a satisfactory account for the deficiencies in his court account and for his handling of court monies during those periods in which such monies were undeposited and under his personal control.

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)(5) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct. Charge III of the Formal Written Complaint is sustained and respondent's misconduct is established.

By his conduct, respondent has evinced a gross neglect of the duties of judicial office.

By refusing to open his court mail, respondent failed to discharge properly his administrative responsibilities and he compromised the administration of justice in his court. It is inexcusable that official correspondence from court administrators, lawyers involved in proceedings before him, and others, would remain unopened for months at a time.

By failing to deposit official funds for several months while such funds were under his personal control, respondent violated the specific requirements of the Uniform Justice Court Rules (Section 30.7[a]). Such conduct demonstrates an intolerable neglect of his responsibilities for the public money entrusted to his care. See Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976), app. dismissed 39 NY2d 946 (1976), judge removed inter alia for "gross neglect" in handling court funds.

By failing to attend and complete the training and certification program required by law for all non-lawyer town and village justices, despite repeated notice from his administrative judge, respondent again demonstrated a gross disregard of the constitutional and statutory obligations of judicial office. Failure to obtain the required certificate renders a judge unqualified to hold office and has been held, per se, to constitute cause for removal. Bartlett v. Bedient, 47 AD2d 389 (4th Dept. 1975).

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

This determination is rendered pursuant to Section 47 of the Judiciary Law in view of respondent's resignation from office.

Dated: July 1, 1981
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

Determination

WILLARD H. HARRIS, JR.,

a Judge of the City Court of Lockport,
Niagara County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable Isaac Rubin

APPEARANCES:

Gerald Stern (John W. Dorn, of Counsel)
for the Commission

Willard H. Harris, Jr., Respondent Pro Se

The respondent, Willard H. Harris, Jr., is a part-time judge of the City Court of Lockport, Niagara County, who is permitted to practice law. He was served with a Formal Written Complaint dated April 15, 1980, alleging (i) that respondent practiced law in the Lockport City Court, (ii) that respondent permitted his law partner and associates to practice law in the Lockport City Court, (iii) that respondent permitted other Lockport City Court judges, their law partners and associates to practice in the Lockport City Court and (iv) that respondent failed to cooperate with the Commission during its investigation of these matters. Respondent filed an answer dated August 8, 1980.

The Commission designated the Honorable Louis Otten referee to hear and report proposed findings of fact and conclusions of law. The hearing was held from October 6 through 10, 1980, and the referee filed his report to the Commission on February 6, 1981.

By motion dated May 21, 1981, the administrator of the Commission moved to confirm in part and disaffirm in part the referee's report and for a determination that respondent be removed from office. Respondent cross-moved on August 14, 1981, to disaffirm the referee's report and to dismiss the Formal Written Complaint. The Commission heard oral argument on September 22, 1981, thereafter considered the record of the proceeding and now makes the following findings of fact.

1. The City Court of Lockport is organized administratively in two sections: the Civil Division and the Criminal Division. The Uniform City Court Act governs the Lockport City Court and both divisions thereof. The jurisdictions of the two divisions are separate and distinct, as are their clerical staffs. Each division occupies a separate office in the same building, maintains its own dockets and observes separate procedures. Both divisions use the same courtroom.

2. Respondent presided in the Criminal Division during the entire period at issue in the instant proceeding. The Honorable Daniel P. Falsioni presided in the Civil Division during the same period. Both respondent and Judge Falsioni are part-time judges who also practice law. The Honorable Gerald D. Watson and the Honorable Spencer Lerch presided as acting judges in the Criminal Division during the periods noted below and were at those times part-time judges who also practiced law. The Honorable Fred J. Smith and the Honorable Richard H. Speranza presided as acting judges in the Civil Division during the periods noted below and were at those times part-time judges who also practiced law.

3. A judge of either division of the Lockport City Court is empowered to sit in the other division of the court if necessary. In 1973 and 1974, respondent presided over cases in the Civil Division in Judge Falsioni's absence.

4. Between September 5, 1974, and September 25, 1978, respondent permitted Richard C. Southard, Allen Miskell and Walter Moxham, Jr., to practice law by obtaining default judgments on behalf of their clients in the Civil Division in 223 of the 224 cases listed in Exhibit 1 appended to the Formal Written Complaint and by appearing in a summary proceeding in the remaining case listed in Exhibit 1. At the relevant times Mr. Southard was a member of respondent's law firm "Harris and Southard," and Mr. Moxham and Mr. Miskell were associated in the practice of law with respondent. Respondent benefitted from the practice of law by his associates in that the legal fees earned in those cases inured to his benefit.

5. On January 22, 1974, respondent permitted Richard C. Southard to practice law by appearing as his own attorney and obtaining a default judgment in the Civil Division in Andrews and Southard v. Balcom. At the time Mr. Southard was a member of respondent's law firm.

6. On July 8, 1974, and January 28, 1976, respondent presided over People v. Andrew Filipovich and People v. Kevin A. Bancroft, respectively, in which the defendants were clients of his law firm and in which Richard C.

Southard, a member of respondent's law firm, was listed as attorney of record. Respondent benefitted from Mr. Southard's appearances in these cases as a result of the firm's financial agreements.

7. On December 23, 1973, and on February 22, 1974, while serving as a judge in the Civil Division during Judge Falsioni's absence, respondent practiced law in the Civil Division by obtaining default judgments in Thurston v. Nerber and Household Finance Corp. v. Wagner, respectively.

8. Between June 24, 1974, and February 10, 1977, respondent practiced law by obtaining default judgments in the Civil Division in the 16 cases listed in Exhibit 2 appended to the Formal Written Complaint.

9. Between February 20, 1974, and August 15, 1978, respondent permitted Gerald D. Watson to practice law before him in the Criminal Division in the 84 cases listed in Exhibit 3 appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Watson was an acting judge of the Lockport City Court, Criminal Division.

10. Between February 20, 1974, and September 27, 1978, respondent permitted Anthony C. Ben, James Fox, Robert Scheffer and Edward Thiel to practice law before him in the Criminal Division in the 172 cases listed in Exhibit 4 appended to the Formal Written Complaint. Respondent knew at the relevant times that these attorneys were associated in the practice of law with Acting Lockport City Court Judge Gerald D. Watson of the Criminal Division.

11. On January 31, 1978, respondent permitted Spencer Lerch to practice law before him in People v. David L. Lewis in the Criminal Division. Respondent knew at the time that Mr. Lerch was an acting judge of the Lockport City Court, Criminal Division.

12. On February 6, 1978, respondent permitted Lockport Assistant Corporation Counsel Morgan C. Jones to practice law before him in People v. Patrick Hawkins in the Criminal Division. Respondent knew at the time that Mr. Jones was associated in the practice of law with Acting Lockport City Court Judge Spencer Lerch of the Criminal Division.

13. Between June 8, 1976, and August 9, 1977, respondent permitted James J. Sansone to practice law before him in the Criminal Division in the 13 cases listed in Exhibit 5 appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Sansone was associated in the practice of law with Lockport City Court Judge Daniel P. Falsioni of the Civil Division.

14. Between January 29, 1976, and August 23, 1977, respondent permitted Richard Speranza to practice law before him in the Criminal Division in the 87 cases listed in Exhibit 6 appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Speranza was an acting judge of the Lockport City Court, Civil Division.

15. Between December 2, 1974, and January 10, 1978, respondent permitted Leonard Tilney, Joseph Foltz and Richard May to practice law before him

in the Criminal Division in the 44 cases listed in Exhibit 7A appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Tilney, Mr. Foltz and Mr. May were associated in the practice of law with Acting Lockport City Court Judges Richard Speranza and Fred Smith of the Civil Division.

16. Between December 2, 1974, and December 2, 1975, respondent permitted Richard Speranza to practice law before him in the Criminal Division in the 19 cases listed in Exhibit 7B appended to the Formal Written Complaint. Respondent knew at the time that Mr. Speranza was a member of the law firm of Acting Lockport City Court Judge Fred J. Smith of the Civil Division.

17. Respondent failed to respond to six written inquiries sent to him by the Commission between March 5, 1979, and October 8, 1979, during the Commission's investigation of the matter herein.

18. On July 12, 1979, respondent appeared to give testimony before a member of the Commission during the Commission's investigation of the matter herein. At his appearance, respondent claimed to have responded to a Commission letter dated March 29, 1979. Such letter was never received by the Commission. Respondent was asked at his appearance to furnish a copy of such letter to the Commission. Respondent failed to furnish such copy.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 16, 42 and 471 of the Judiciary Law, Sections 33.1, 33.2(a), 33.3(b)(3) and 33.5(f) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3B(3) of the Code of Judicial Conduct. Charge I, paragraphs (a) and (c), of the Formal Written Complaint, and Charges II through XI of the Formal Written Complaint are sustained and respondent's misconduct is established. Paragraph (b) of Charge I of the Formal Written Complaint is not sustained and therefore is dismissed.

A part-time lawyer-judge (i) may not practice law in his own court, (ii) may not practice law before any other part-time lawyer-judge in the same county as his own court, (iii) may not permit his law partners or associates to practice in his court, (iv) may not permit the practice of law in his court by other part-time lawyer-judges whose courts are in the same county as his own court and (v) may not permit the practice of law in his court by the partners and associates of the part-time lawyer-judges of his own court (Section 33.5[f] of the Rules Governing Judicial Conduct). Public confidence in the integrity and impartiality of the courts is diminished when a part-time judge acts as a lawyer in a proceeding in his own court before one of his judicial colleagues. Public confidence is likewise diminished by the appearance of favoritism when part-time lawyer-judges and their associates routinely appear before one another.

Respondent's assertion that the two divisions of the Lockport City Court comprise two different courts and are therefore not subject to the applicable rules is without merit. Both divisions operate under the appellation of Lockport City Court. Both divisions are governed by the Uniform City Court Act. Both are located in the same building and share the same courtroom. When a judge of one division is unavailable, he may be relieved by a judge of the

other division. Indeed, respondent, though himself a judge of the Criminal Division, sat in the Civil Division in 1973 and 1974 in the absence of one of the judges of that division. Whatever the local practice may have been with regard to the two divisions of the court, the fact is that there is one Lockport City Court, and it is improper for the judges and associates of one division to practice law in the other division.

In any event, respondent's assertion that the two divisions are in fact two separate courts is of no consequence with respect to (i) representing clients in his own division of the court, (ii) presiding over cases in which the defendants were clients of his own law firm and (iii) permitting other Criminal Division judges and their associates to practice law before him in that division. Respondent's misconduct in these matters has compromised the integrity of his court and has prejudiced the administration of justice. His misconduct is exacerbated by the financial benefits he derived from his own inappropriate appearances as a lawyer in his own division, and from the appearances of his law associates in cases before him.

In hundreds of cases over several years, respondent engaged in conduct which failed to conform to the ethical standards required of a judge. His misconduct was not isolated or temporary. His assertion of good faith misinterpretation of the applicable statutes and rules is disingenuous. One need not be familiar with specific statutes and canons of judicial conduct, for example, to know that a judge should not preside over cases involving his law firm's clients.

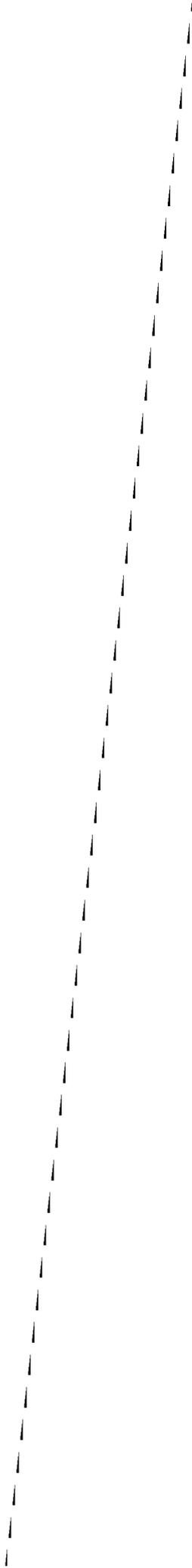
Respondent's failure to cooperate with the Commission during its investigation of the matters herein further compounds the impropriety of his conduct and demonstrates a disregard of the obligations of judicial office. Judiciary Law Section 42(3); Matter of Jordan, 47 NY2d(xxx)(zzz)(Ct. on the Judiciary 1979); Matter of Cooley, 53 NY2d 64 (1981).

The totality of respondent's misconduct is grave, brings disrepute to the judiciary and warrants appropriate discipline.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

Dated: November 6, 1981



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

Determination

CARL R. SCACCHETTI, JR.,

a Judge of the Rochester City Court,
Monroe County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern for the Commission

Charles A. Schiano for Respondent

The respondent, Carl R. Scacchetti, Jr., a judge of the City Court of Rochester, Monroe County, was served with a Formal Written Complaint dated April 15, 1981, alleging misconduct with respect to his presiding over two criminal proceedings in which the defendant was a close friend from whom respondent contemporaneously (i) accepted a loan or gift of \$262.10 and (ii) solicited and accepted a camera and accessories. Respondent filed an answer dated May 5, 1981.

By order dated June 8, 1981, the Commission designated the Honorable Carman F. Ball referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 22, 27, 28 and 28, 1981, and the referee filed his report to the Commission on September 25, 1981.

By motion dated October 1, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent did not file opposing papers. On October 22, 1981, the Commission heard oral argument on the administrator's motion. Respondent appeared by counsel for oral argument. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact:

1. Respondent has known Albert Tantalo since 1976 and the two have been close friends since 1978. As early as 1979, respondent and Mr. Tantalo discussed certain business and Internal Revenue Service problems Mr. Tantalo had.

2. On March 20, 1978, respondent presided at a criminal proceeding in which Mr. Tantalo was the defendant. The case was dismissed upon Mr. Tantalo's promise to make restitution to the complaining witness and upon the recommendation of the District Attorney. In accordance with law, the case file was sealed by the court clerk.

3. On January 30, 1979, respondent went to Mr. Tantalo's place of business and accepted a check which was signed by Mr. Tantalo but which in all other respects was blank. Respondent subsequently filled in the check in the amount of \$262.10 to pay for a 35mm camera he purchased at LeBeau Photo Shop.

4. Respondent considered the \$262.10 to be a loan from Mr. Tantalo which he testified was repaid in cash installments, the last installment being paid in late May or early June of 1979.

5. There is no record of the loan or respondent's repayment of it. Respondent did not report the loan to the clerk of the Rochester City Court, as required by Sections 33.5(c)(3)(iii) and 33.6(c) of the Rules Governing Judicial Conduct.

6. On March 1, 1979, while Mr. Tantalo's purported loan to respondent was still outstanding, respondent presided over the case of Svatek v. World Wide Tire, Inc. Respondent knew at the time that the defendant corporation was controlled and operated by Mr. Tantalo. On April 11, 1979, while Mr. Tantalo's purported loan to respondent was still outstanding, respondent dismissed the plaintiff's complaint in the Svatek case for lack of a cause of action.

7. On December 6, 7, 10, 11, 13 and 17, 1979, respondent and Mr. Tantalo had conversations by telephone and in person, concerning inter alia, People v. Wesley Hutchinson, a case then pending before respondent. The conversation of December 13 took place in Florida, where both men happened to be at the time. The conversation of December 17 took place at respondent's home. The others were over the telephone, with respondent in chambers. During these conversations, the following occurred:

- (a) Mr. Tantalo requested special consideration from respondent on behalf of the defendant in People

v. Wesley Hutchinson.

- (b) Mr. Tantalo convinced respondent that Wesley Hutchinson's employer was interested in the outcome of the case.
- (c) Respondent assured Mr. Tantalo that he would consider the latter's request for special consideration.
- (d) Respondent recommended to Mr. Tantalo a specific attorney to represent Mr. Hutchinson.
- (e) While discussing the Hutchinson case, respondent advised Mr. Tantalo that he needed a 35mm camera. Respondent told Mr. Tantalo to obtain a good Minolta camera for him.
- (f) Mr. Tantalo advised respondent that Wesley Hutchinson's employer would buy the camera for respondent.
- (g) It was apparent to respondent that he would not pay for the camera, that Mr. Hutchinson's employer would pay for the camera and that respondent would receive it as a gift. Respondent asked Mr. Tantalo to ask Mr. Hutchinson's employer for a motor drive accessory to the camera.

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)(1), 33.3(c)(1), 33.5(c)(3)(iii) and 33.6(c) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3C(1), 5C(4)(c) and 6 of the Code of Judicial Conduct. Charge I of the Formal Written Complaint dated April 15, 1981, is sustained and respondent's misconduct is established.

By presiding over cases involving a close friend, and by accepting a loan from that friend and presiding over an action against him while the loan was outstanding, respondent violated those rules which require a judge's disqualification from cases in which his impartiality might reasonably be questioned (Section 33.3[c]). His conduct impaired public confidence in the integrity and impartiality of the judiciary (Sections 33.1 and 33.2). A judge may not accept loans from persons whose interests have been or are likely to come before him, and any loan in excess of \$100 must be reported to the clerk of the court (Sections 33.5[c][3][iii] and 33.6[c]). Respondent violated the applicable rules.

By entertaining a request for special consideration on behalf of the defendant in a criminal case before him and soliciting a gift in return, respon-

dent engaged in egregious misconduct. Respondent's actions prejudiced the administration of justice, compromised the integrity of his court and irreparably impaired his effectiveness as a judge. Respondent has demonstrated his willingness to use judicial office to advance the private interests of his friends and those who would reward him for his services.

Respondent's misconduct in this matter, as well as with regard to the determination dated June 10, 1981, appended hereto, demonstrates that he lacks the moral qualities required of a judge and therefore is unfit to serve.

By reason of the foregoing, the Commission determines that respondent should be removed from office.

Appended hereto is the determination of the Commission dated June 10, 1981, with respect to the earlier, unrelated proceeding against respondent. In that proceeding, the Commission (i) found that respondent's misconduct was established and (ii) deferred consideration of sanction until the instant matter was determined.

All concur.

Dated: November 25, 1981

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

Determination

CARL R. SCACCHETTI,

a Judge of the City Court of
Rochester, Monroe County.

BEFORE: 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.

APPEARANCES:

Gerald Stern (John W. Dorn, Of Counsel)
for the Commission
Charles A. Schiano for Respondent

The respondent, Carl R. Scacchetti, a judge of the City Court of Rochester, Monroe County, was served with a Formal Written Complaint dated June 1, 1979, alleging that he failed to disqualify himself and improperly participated in eight cases in June 1978. Respondent filed an answer dated July 13, 1979.

By order dated November 5, 1979, the Commission designated William F. FitzPatrick, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on March 11, 12 and 13, 1980, and the referee filed his report to the Commission on September 12, 1980.

By motion dated December 3, 1980, the administrator of the Commission moved to confirm the referee's report, and for a finding that

*Mr. Maggipinto's term as a member of the Commission expired on March 31, 1981. The vote on this determination was rendered on March 10, 1981.

respondent had engaged in misconduct. Respondent opposed the motion on February 23, 1981. Oral argument was waived.

The Commission considered the record of the proceeding on March 10, 1981, and makes the determination herein.

With respect to Charge I of the Formal Written Complaint, the Commission makes the following findings of fact.

1. Respondent's brother, Anthony Scacchetti, at all times mentioned in the Formal Written Complaint, was a Sergeant in the Rochester Police Department assigned to the "Lake Section", which includes Ontario Beach Park.

2. Charles J. Cortese and Wayne Hadley at all times mentioned in the Formal Written Complaint were members of the Rochester Police Department assigned to the Lake Section.

3. On the evening of June 20, 1978, Officers Cortese and Hadley were on duty between 3 p.m. and 11 p.m. under the supervision of Sergeant Scacchetti.

4. On that night, Sergeant Scacchetti drove his police vehicle to respondent's home and asked respondent if he wanted to visit their mother, who resided at the Senior Citizens' Tower on Ontario Beach Park. Respondent accepted and accompanied Sergeant Scacchetti in the police vehicle.

5. On the way to his mother's home, Sergeant Scacchetti drove through Ontario Beach Park on patrol.

6. Between 9:45 p.m. and 10:00 p.m., respondent was present in his brother's police car at Ontario Beach Park where Officers Cortese and Hadley arrested Peter Saxe, Patrick Muldoon, Thomas Monna, David Magee, Dennis Betetti, Bruce Mitchell, Kevin Bordonaro and James Gately.

7. Respondent arrived in the area of the park pavilion subsequent to the arrest of the defendants Magee, Mitchell and Betetti. While at the place of arrest, he observed:

a. two police cars about 50-70 feet away, and Officers Cortese and Hadley making out their arrest reports for the defendants;

b. beer bottles and cans in and around the pavilion where the youths were arrested;

c. Dennis Betetti, one of the defendants, with a beer in his hand; and

d. people in the pavilion.

8. Respondent was present in the police car when Dennis Betetti, one of the defendants, discussed his arrest with Sergeant Scacchetti.

9. Dennis Betetti, after being advised by Sergeant Scacchetti that a judge was in the police car, asked respondent if respondent could do something about his arrest for drinking in the park.

10. Respondent observed a group of people sitting and standing in and near the pavilion, subsequent to the arrest of Magee, Mitchell and Betetti.

11. The remaining defendants were arrested at the lavatory area of the park.

12. Respondent was assigned to Part I of the Rochester City Court to preside over arraignments during the period from June 20 to June 28, 1978.

13. Between June 21 and June 28, 1978, respondent presided over the arraignments of Peter Saxe, Patrick Muldoon, Thomas Monna, David Magee, Dennis Betetti, Bruce Mitchell, Kevin J. Bordonaro and James Gately and, except as hereafter noted with respect to defendant Betetti, failed to disqualify himself from handling any and all parts of the proceedings involving the defendants named above.

14. Respondent accepted a plea of guilty at Dennis Betetti's arraignment on June 21, 1978, and upon being made aware that Betetti was the individual who had approached the car on the previous evening, stated that he disputed a factual assertion made by Mr. Betetti, as follows:

You made a statement to this court that you were not drinking beer. You had no beer in your hand, and Mr. Betetti, I saw with my own eyes beer in your hand. Therefore, I am going to disqualify myself...[Ex. 1A(6-7)]

15. Respondent thereafter disqualified himself from handling further proceedings in regard to defendant Betetti.

With respect to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact.

16. During the course of the arraignment proceedings held on June 21, 1978, in the cases of People v. David Magee, Dennis Betetti and Bruce Mitchell, respondent improperly participated in those proceedings by:

(a) Making the following remarks from the bench concerning Officer Wayne Hadley, one of the arresting officers:

MR. BETETTI: Yes. Can I just ask one more question. The officer that arrested us, he stated that he thought he was doing wrong and he felt that the arrest was wrong, but he had to do it because you were in the car behind him.

THE COURT: He said that?

MR. MAGEE: That's right.

THE COURT: You gentlemen stay right in the court. He is going to say that on the record. You heard him say that?

MR. BETETTI: He said -- I said the officer --

THE COURT: He said that. Let him say that on the record. It doesn't make any difference. He will be suspended from the force saying that. You sit right here in the courtroom while he gets called in and says that on the record. He will be suspended from the force. There is no question. You will be here Friday?

.

THE COURT: Jack, I want Officer Wayne Hadley called in immediately. Immediately.

(Arr. Tr. 3-5, June 21, 1978)

(b) Initiating an ex parte conversation with Officer Wayne Hadley, in respondent's chambers during a recess of the proceedings, concerning Mr. Betetti's statement to the court set forth in paragraph 16(a) above and thereafter resolved the issue raised by the defendant Betetti against his interest;

(c) Making the following remarks from the bench which were based upon his presence and observations at the place of arrest:

MR. MAGEE: Didn't your brother say that the signs were torn down in the--

THE COURT: Some of the signs.

MR. MAGEE: We didn't know.

THE COURT: Mr. Magee, you are going to help us put them back up. June 28th for sentencing, Mr. Magee. Your case will be transferred to Judge Cassetti, Mr. Betetti.

MR. MAGEE: When you came up to the group there was at least five or six other people, right? They just walked away and went away; is that fair?

THE COURT: No, I didn't see that, Mr. Magee.

MR. MAGEE: You didn't see that?

THE COURT: No.

MR. MAGEE: You didn't see the beer sitting around then?

THE COURT: Oh yes. I did see that. I did see that. You are right. I did see that.

MR. MAGEE: How?

THE COURT: Mr. Magee, I am telling you I didn't see it. Now, if you want me to say I saw it, I will say I saw it. If you want me to say it. Would it make you happy if I say--

MR. MAGEE: Not unless you really didn't see it.

THE COURT: Then I didn't see it. Mr. Magee, is it that you don't want to ---

MR. MAGEE: That is it is not -- I can't ---

THE COURT: I didn't see it because I was not looking for it.

MR. MAGEE: You saw---

THE COURT: I didn't see you at all, Mr. Magee. I never saw you. You understand that?

MR. MAGEE: All right.

THE COURT: He is the only one I ever saw. That is why I disqualified myself. I never saw you, Mr. Magee. You could have been there I don't remember you at all.

(Arr. Tr. 8-10, June 21, 1978)

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

Charge III of the Formal Written Complaint is not sustained and

therefore is dismissed.

A judge is required to disqualify himself from presiding over any proceeding in which he has personal knowledge of disputed evidentiary facts, has been a material witness to the matter at bar, is related within six degrees of relationship to a material witness, or in which his impartiality might otherwise be reasonably questioned (Section 33.3[c] of the Rules).

Because he had been present with his police sergeant brother at the scene of the arrests of eight defendants on June 20, 1978, was a witness to some of the arrests, was related to a witness thereto and himself had personal knowledge of evidentiary facts, respondent was obliged under the Rules to recuse himself from any participation in the cases when they appeared on the court calendar. Instead of immediately stepping down, however, respondent conducted the arraignments and, from the bench, engaged in disagreements over the facts in the case at issue with two of the defendants. Such conduct, apart from violating the rules on disqualification, was injudicious.

The matter of an appropriate sanction is not now before us. Written and oral argument on sanction shall be scheduled by the clerk of the Commission upon application of counsel.

All concur.

Dated: June 10, 1981

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

JOSEPH W. DALLY,

a Justice of the Town and Village
Courts of Monroe, Orange County

Determination

BEFORE: 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 (abstaining)
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel)
for the Commission

Robert T. Hartmann for Respondent

The respondent, Joseph W. Dally, a justice of the Town and Village Courts of Monroe, Orange County, was served with a Formal Written Complaint dated August 13, 1979, alleging (i) that between 1973 and 1978, respondent presided over 11 cases in which he was related to the defendants and (ii) that between 1975 and 1977 respondent failed to meet various record keeping and financial reporting requirements. Respondent filed an answer dated October 1, 1979.

By order dated November 19, 1979, the Commission designated the Honorable Joseph F. Hawkins as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on February 7 and March 18 and 19, 1980, and the report of the referee was filed on May 14, 1980.

By motion dated September 8, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion on October 3, 1980, and cross-moved for dismissal of a substantial portion of the Formal Written Complaint.

The Commission heard oral argument on the motions on October 30, 1980, at which respondent and his counsel were heard, thereafter considered the record of the proceeding and now makes the determination herein.

With respect to Charges I through XI of the Formal Written Complaint, the Commission makes the following findings of fact.

1. From February 18, 1974, to February 27, 1974, respondent presided over the case of People v. Douglas Dally, in which the defendant was charged with operating a vehicle with a broken windshield, notwithstanding that the defendant was his son. The defendant was fined \$10.

2. From March 28, 1973, to December 6, 1973, respondent presided over the case of People v. Arthur Daniel Dally, in which the defendant was charged with burglary in the third degree, notwithstanding that the defendant was the son of respondent's first cousin. The charge was reduced to petty larceny, and the defendant was sentenced to probation for three years as a youthful offender.

3. From March 30, 1973, to December 6, 1973, respondent presided over the case of People v. Arthur Daniel Dally, in which the defendant was charged with public intoxication, notwithstanding that the defendant was the son of respondent's first cousin. Respondent granted an unconditional discharge in the case.

4. From June 1, 1973, to December 6, 1973, respondent presided over the case of People v. Arthur Daniel Dally, in which the defendant was charged with harassment, notwithstanding that the defendant was the son of respondent's first cousin. Respondent granted an unconditional discharge in the case.

5. From October 22, 1977, to November 30, 1977, respondent presided over the case of People v. Arthur Daniel Dally, in which the defendant was charged with disorderly conduct, notwithstanding that the defendant was the son of respondent's first cousin. Respondent imposed a conditional discharge in the case.

6. On August 9, 1978, respondent presided over the case of People v. Arthur Daniel Dally, in which the defendant was charged with driving while intoxicated, notwithstanding that the defendant was the son of respondent's first cousin. Respondent imposed a conditional discharge in the case, requiring the defendant to attend a "drinking driver" program.

7. From August 6, 1974, to March 19, 1975, respondent presided over the case of People v. Lawrence A. Dally, in which the defendant was charged with operating a motor vehicle without insurance and driving a vehicle with an expired registration, notwithstanding that the defendant was the son of respondent's first cousin. The insurance charge was dismissed upon presentation of proof of insurance. The defendant was fined \$50 on the remaining charge.

8. From November 2, 1974, to March 19, 1975, respondent presided over the case of People v. Lawrence A. Dally, in which the defendant was charged with operating a motor vehicle without insurance, operating a vehicle with a broken windshield and operating an unregistered vehicle, notwithstanding that the defendant was the son of respondent's first cousin. The insurance charge was dismissed upon presentation of proof of insurance. The defendant was fined \$50 on each of the remaining two charges.

9. From December 19, 1975, to February 17, 1976, respondent presided over the case of People v. Lawrence A. Dally, in which the defendant was charged with operating a motor vehicle without insurance and with operating an unregistered vehicle, notwithstanding that the defendant was the son of respondent's first cousin. The insurance charge was dismissed upon presentation of proof of insurance. The defendant was fined \$10 on the remaining charge.

10. On October 12, 1973, respondent presided over the case of People v. William L. Dally, Jr., in which the defendant was charged with drinking in a park, notwithstanding that the defendant was the son of respondent's first cousin. The defendant was fined \$25.

11. From March 26, 1973, to May 2, 1973, respondent presided over the case of People v. David M. Dally, in which the defendant was charged with operating a truck with an overload, notwithstanding that the defendant was respondent's first cousin. The defendant was fined \$100.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated (i) Section 14 of the Judiciary Law as to each charge, (ii) Sections 33.1, 33.2, 33.3(a)(1) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct as to Charge I and Charges V through IX, and (iii) Sections 1, 2, 3A(1) and 3C(1)(d)(i) of the Code of Judicial Conduct as to Charge I. Charges I through XI of the Formal Written Complaint are sustained, and respondent's misconduct is established. The affirmative defenses interposed by respondent's answer are without merit and are dismissed.

With respect to Charges XII and XIII of the Formal Written Complaint, the Commission makes the following findings of fact.

12. From June 4, 1975, to December 31, 1977, respondent's court records were deficient as noted below, thus making impossible a full audit of the records by the Department of Audit and Control.

- (a) The cash receipts record had not been properly maintained.
- (b) A monthly listing of outstanding bail was not maintained.
- (c) Monthly reconciliations of official bank accounts were not prepared and lists of outstanding checks were not prepared.
- (d) The criminal dockets were incomplete in that the receipt and disbursement of bail was not recorded therein.
- (e) Duplicate forfeitures of bail were made in some instances, and in other instances bail was refunded in amounts greater than that received, resulting in deficits in the bail account.
- (f) Monthly reconciliations of respondent's assets and liabilities were not prepared.
- (g) Disbursement of monies from specific cases was made from the town court account when the deposit had been to the village court account, and vice versa.
- (h) Several outstanding bails dating back to April 1971 were unresolved.

13. From June 4, 1975, to December 31, 1977, respondent failed to deposit all monies received in his official capacity into his official bank accounts within 72 hours of receipt.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 30.7 of the Uniform Justice Court Rules, Sections 33.1, 33.2 and 33.3 (b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3B(1) of the Code of Judicial Conduct. Charges XII and XIII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The applicable provisions of the Judiciary Law and the Rules Governing Judicial Conduct, cited above, prohibit a judge from presiding over any matter in which he is related by consanguinity or affinity to a party in the proceeding, within the sixth degree. By presiding over matters in which the defendants were his son, his first cousin and the sons of his first cousin, respondent violated those provisions.

Respondent's assertion that he was unaware of the applicable statute, rules and canons is not persuasive. Respondent's misconduct was clearly improper, and he knew or should have known the impropriety of presiding over cases involving his relatives, even in the absence of a specific prohibition. Professed ignorance of so fundamental a rule of conduct is no excuse. Indeed, Section 33.3(c)(1) of the Rules generally requires a judge to "disqualify himself in a proceeding in which his impartiality might reasonably be questioned...."

Although in most of the cases herein respondent imposed fines or conditional discharges on the defendants consistent with usual court practice, the prohibitions of the relevant statute and rules apply irrespective of the eventual outcome of the matter. Respondent's misconduct in these cases is, however, in part mitigated by the apparent impartiality with which he dealt with his relatives.

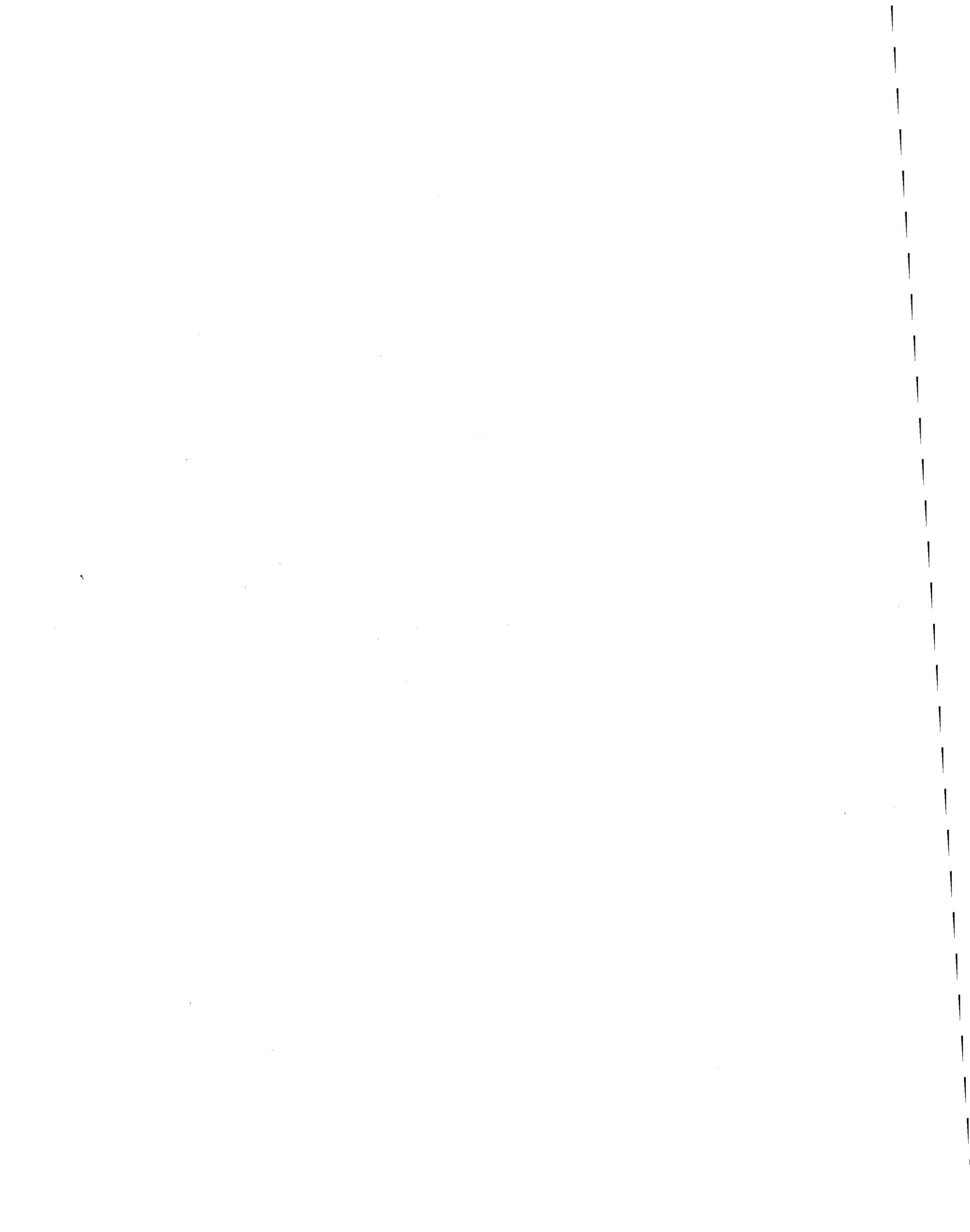
With respect to his records keeping deficiencies and his failure to deposit court money in a timely fashion, respondent has failed to discharge diligently his administrative responsibilities. His records are so poorly maintained that a thorough review by the Department of Audit and Control is virtually impossible, thus contributing further to a lack of confidence in respondent's court.

Having considered the nature of respondent's misconduct and the factors in mitigation, the Commission determines that removal from office would be too severe in this case. Respondent should be given the opportunity to conform his conduct to the applicable standards.

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

All concur.

Dated: January 28, 1981
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

JOHN T. RACICOT,

Determination

a Justice of the Town Court of
Champlain, Clinton County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
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.

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel)
for the Commission

Gary L. Favro for Respondent

The respondent, John T. Racicot, a justice of the Town Court of Champlain, Clinton County, was served with a Formal Written Complaint dated December 14, 1979, alleging impropriety in his conduct in two cases. Respondent filed an answer dated January 4, 1980.

On June 25, 1980, 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 agreed upon facts. The Commission approved the agreed statement and scheduled oral argument as to whether the facts constitute misconduct and, if so, an appropriate sanction. Both the administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record of this proceeding on October 30, 1980, and upon that record makes this determination.

With respect to Charge I of the Formal Written Complaint, the Commission makes the following findings of fact.

1. From December 1976 to October 1977, two cases entitled People v. Stephen Barge were pending in respondent's court, one charging the defendant for driving while license suspended, the other for operating an uninsured and unregistered motor vehicle.

2. Mr. Barge had contended in other proceedings that he was a resident of Ohio and thus was not required to obtain a New York State driver's license.

3. While the two cases against Mr. Barge were pending in respondent's court, respondent had ex parte communications with Mr. Barge's fellow employees, neighbors and others, including Mary Lou Bernard, Mrs. Joseph Papin, Robert Marra and Sandra Hanfield, to determine whether Mr. Barge was a resident of Stony Point. The purpose of these ex parte communications was to determine where Mr. Barge resided and to test the validity of the defense he had offered pertaining to his Ohio residency.

4. On October 6, 1977, after Mr. Barge had pled guilty before respondent on the charges at issue, and after Mr. Barge had taken an appeal from his conviction based in part on his claim that he was a resident of Ohio and had a valid Ohio driver's license and insurance, respondent wrote a letter, ex parte, to Robert Marra, who was Mr. Barge's employer, in an attempt to obtain proof of Mr. Barge's employment and residence in New York State.

5. Respondent acknowledged that it was improper to have had ex parte communications with the employer, fellow employees and neighbors of a defendant in his court to obtain personal knowledge of disputed evidentiary matters.

With respect to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact.

6. On March 31, 1978, Stephen Barge was issued a summons for speeding, returnable before respondent on April 12, 1978.

7. On March 31, 1978, at the request of counsel for Mr. Barge, respondent adjourned the trial date to May 6, 1978, but made no written notation of the adjournment.

8. On April 26, 1978, notwithstanding the adjournment he had granted, respondent signed a warrant for Mr. Barge's arrest for failure to obey the speeding summons.

9. Respondent acknowledged that his conduct with respect to this incident was negligent and improper.

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)(1), 33.3(a)(4), 33.3(a)(6), and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A and 3B of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

By not only receiving but soliciting ex parte communications concerning disputed evidentiary matters in a case pending before him, respondent prejudiced the impartiality of the adjudicatory process and violated a specific prohibition that a judge "except as authorized by law neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings" (Section 33.3[a][4] of the Rules).

By communicating about the Barge cases with numerous individuals not parties to the proceedings, respondent compromised the integrity of the court and also violated a specific obligation to "abstain from public comment about a pending or impending proceeding" (Section 33.3[a][6] of the Rules).

By his conduct in these matters, respondent exhibited insensitivity to his obligation to be an impartial arbiter of the issues before him. Moreover, Section 33.3(c)(1)(i) of the Rules requires a judge to disqualify himself from any proceeding in which he has personal knowledge of disputed evidentiary facts.

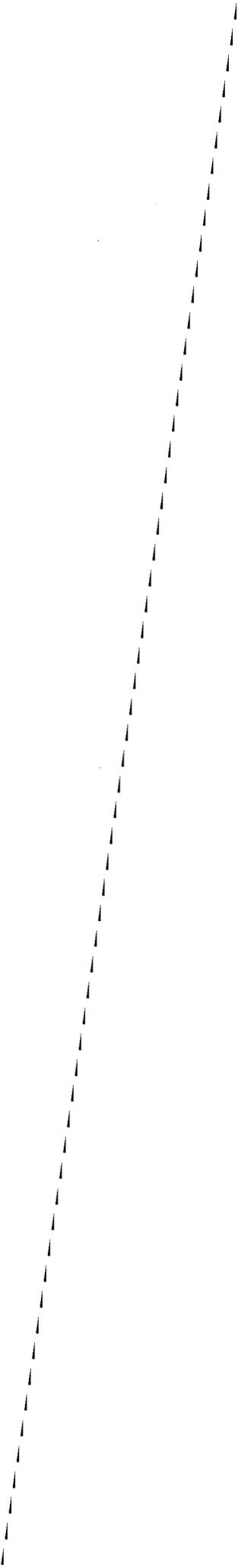
With respect to the charge involving the arrest warrant, respondent was negligent in the performance of his administrative duties and as a result created hardship for the defendant and prejudiced his case. He thus failed in his obligation to discharge diligently his administrative responsibilities (Section 33.3[b][1] of the Rules).

In determining sanction, the Commission notes that respondent acknowledges his misconduct, appears to appreciate the issues underlying this disciplinary proceeding and concurs in the request by counsel to the Commission for censure.

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

All concur.

Dated: February 6, 1981
New York, 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

CHARLES P. GARVEY,

Determination

a Judge of the County Court,
Family Court and Surrogate Court,
Essex County.

BEFORE: 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.

APPEARANCES:

Gerald Stern (Jack J. Pivar, Of Counsel)
for the Commission
Ainsworth, Sullivan, Tracy & Knauf (By
John E. Knauf) for Respondent

The respondent, Charles P. Garvey, a judge of the County, Family and Surrogate Courts of Essex County, was served with a Formal Written Complaint dated October 19, 1979. The complaint alleged misconduct with respect to respondent's (i) failure to prepare and maintain adequate records concerning payments he had received from his court stenographer, and his failure to

*Mr. Maggipinto's term as a member of the Commission expired on March 31, 1981. The votes enumerated on page 4 were taken on March 10, 1981.

explain them adequately to the Commission, (ii) receiving loans on four occasions from attorneys who practiced before him, (iii) understating his indebtedness on applications for bank loans on four occasions, (iv) maintaining an interest in licensed racehorses and (v) signing his wife's name to a notarized application for a racing license. Respondent filed an answer dated December 7, 1979, in part admitting, in part denying, and in part neither admitting nor denying these allegations.

By order dated January 9, 1980, the Commission designated William F. FitzPatrick, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 23, 1980, and the referee filed his report to the Commission on December 1, 1980.

By motion dated December 24, 1980, the administrator of the Commission moved to confirm in part and to disaffirm in part the referee's report, and for a determination that respondent be removed from office. By motion dated January 26, 1981, respondent cross-moved to disaffirm in part and confirm in part the referee's report, for a finding that respondent had not engaged in misconduct, and for a determination that the Formal Written Complaint be dismissed or, in the alternative, that respondent be disciplined confidentially.

The Commission heard oral argument on the motions on February 5, 1981. Respondent appeared with his counsel. Thereafter and on March 10, 1981, the Commission considered the record of the proceeding and makes the determination herein.

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

With respect to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact.

1. On March 29, 1977, respondent asked John Manning for a \$1,000 loan, and shortly thereafter Mr. Manning made a \$1,000 interest free loan to respondent.
2. Mr. Manning is an attorney who practiced before respondent prior to and subsequent to the making of the loan.
3. Respondent repaid Mr. Manning the \$1,000 within two months. Respondent kept no records of the loan. Respondent did keep a record of the repayment, in the form of a cancelled note showing the dates of repayment.
4. While the loan was outstanding, Mr. Manning appeared before respondent on numerous occasions on ex parte matters.

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(c) of the Rules Governing Judicial Conduct and Canons 1, 2 and 5C of the Code of Judicial Conduct. Charge II of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge III of the Formal Written Complaint, the Commission makes the following findings of fact.

5. On February 6, 1978, respondent solicited and obtained a loan of \$6,500 from John Manning.

6. Mr. Manning is an attorney who practiced before respondent prior to and subsequent to the making of the loan.

7. On April 26, 1976, respondent solicited and obtained a loan of \$1,500 from James Murphy.

8. Mr. Murphy is an attorney who practiced before respondent prior to and subsequent to the making of the loan.

9. Carlton King was an attorney practicing in a firm with Mr. Murphy, under the firm name of Murphy, King and Douval. The firm had appeared on numerous occasions before respondent.

10. On August 1, 1977, respondent solicited and obtained a loan of \$2,700 from Mr. King. Although Mr. King was no longer a member, the firm continued under the name of Murphy, King and Douval.

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(c) of the Rules Governing Judicial Conduct and Canons 1, 2 and 5C of the Code of Judicial Conduct. Charge III of the Formal Written Complaint is sustained and respondent's misconduct is established.

Charges IV and V of the Formal Written Complaint are not sustained and therefore are dismissed.

With respect to Charge VI of the Formal Written Complaint, the Commission makes the following findings of fact.

11. Jane K. Garvey is respondent's spouse.

12. On April 14, 1977, respondent signed the name "Jane K. Garvey" to an application to the New York State Racing and Wagering Board for a racing license. Thereafter respondent had the signature notarized by a court employee and had the application filed with the Racing and Wagering Board.

13. Respondent could not lawfully obtain a racing license under his own name.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1 and 33.2 of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct. Charge VI of the Formal Written Complaint is sustained and respondent's misconduct is established.

A judge's obligation to be and appear impartial in the matters coming before him is fundamental to public confidence in the administration of justice. By soliciting and obtaining substantial sums of money from attorneys who appeared before him or who were associated with a firm which appeared before him, respondent acted in a manner which both was improper and appeared to be improper, even in the absence of any evidence that respondent gave preferred treatment to his attorney-creditors. The applicable rules and canons expressly prohibit a judge from accepting loans from persons whose interests have or are likely to come before him.

By signing his wife's name to an application for a racing license which he then had notarized and filed with a state agency, respondent acted improperly, knowing that statements in the application attesting to his wife's swearing to the truth thereof by her signature were false. Respondent's assertion that he signed the application on his wife's behalf pursuant to a power of attorney is irrelevant to the issue here considered. The fact is that he signed his wife's name, not his own, as her attorney-in-fact, thus creating the false impression that she was the actual signatory thereto.

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

With respect to the particular charges in the Formal Written Complaint, the Commission records the following votes.

Charge I was dismissed by vote of 9 to 2, with Mr. Bromberg and Mrs. DelBello dissenting and voting to sustain the charge.

Charges II and III were sustained by unanimous vote.

Charge IV was dismissed by vote of 6 to 5, with Mr. Bromberg, Mrs. DelBello, Mr. Kirsch, Mrs. Robb and Judge Shea dissenting and voting to sustain the charge.

Charge V was dismissed by unanimous vote.

Charge VI was sustained by vote of 6 to 5, with Judge Alexander, Judge Cardamone, Mr. Kovner, Judge Shea and Mr. Wainwright dissenting and voting to dismiss the charge.

Mrs. Robb and Judge Shea dissent in a separate opinion with respect to the majority's finding as to Charge IV.

With respect to sanction, the following members of the Commission voted that the appropriate sanction is censure: Judge Alexander, Judge Cardamone, Mr. Kovner, Mr. Maggipinto, Mrs. Robb, Judge Rubin, Judge Shea and Mr. Wainwright. Mr. Kirsch votes that the appropriate sanction is removal and dissents in a separate opinion. Mr. Bromberg and Mrs. DelBello also vote that the appropriate sanction is removal and also dissent in a separate opinion.

With respect to the dissenting views expressed on sanction, the majority notes that the sanction the dissenters would impose is based in part on charges which the majority of the Commission has found not to be sustained.

In view of the dissenters' views on Charge IV in particular, it seems appropriate to comment on the dismissal of the charge. The banks which made personal loans to respondent had authorization to do so under the banking law and were required to keep records of the loans in such form as the superintendent of banking prescribed (Banking Law, §108 subd. 4[a] and §202). The regulations promulgated and published pursuant to this statute specify the personal loan records to be kept (3 NYCRR, Banking, §320.1). Based upon the record the loans made to respondent were classified under the cited regulations either as "secured" or "unsecured" (3 NYCRR, Banking, 320.1[a][1]).

The President of the Essex County-Champlain National Bank was called as the Commission's witness. He testified that the financial statements that were filed were obtained to show the reason for the loan and that he, as President of the bank, had authority to make loans on his own authority up to \$50,000. He further testified that respondent Garvey had been a customer of his bank for over 25 years and that these financial statements were filed to support a line of credit that had been extended to respondent Garvey and also in connection with his loan application for a second mortgage. In response to a question as to the basis on which the bank made a loan, he stated: "I as a bank examiner consider character, the number of years experience we have had with a customer. Certainly in this case we are not particularly concerned and have never been concerned about the financial status on paper of a borrower such as our experience dictated over the years with Judge Garvey and as an individual prior to that." It was this experience over many, many years and the fact that Judge Garvey in all those years had never reneged on a loan either as to principal or interest that prompted the bank to make loans to respondent. He stated that the key was that loans are made on the basis of character, credibility and the standing of the individual borrower and that the bank was in no way misled by the financial statements presented by respondent. The Commission called no other witnesses relative to the loans obtained at the other two banks.

Moreover, the statement is an unsworn written representation that the borrower has a net worth sufficient to support the credit he seeks. While the statements were not fully accurate as to respondent's liabilities and assets -- indeed, it is obvious they were negligently prepared -- it does appear that they satisfactorily met the requirements of the lending institutions. Concededly a statement of net worth was required to be filed by a borrower periodically and kept by the bank for its files in connection with such loans, even though that requirement is not specifically set forth either in the statute or the published regulations. The record is devoid, however, of any evidence of any intent on the part of respondent either to defraud the bank or to induce the making of the loan through material misrepresentations. It is significant in our view that the bank did not rely upon such statements in making the loans.

Under these circumstances, to find judicial misconduct after the fact appears to us would place an unfair and onerous burden on respondent, who filed his financial statements in the customary, though hasty, manner. An unwary judicial officer should not later learn that he acted at his peril when applying for a loan in a manner consistent with the requirements of and satisfactory to the lending institution. We cannot find, as do the dissenters, sufficient evidence on this record to prove judicial misconduct on Charge IV.

Dated: June 23, 1981
New York, New York

State of New York
Commission on Judicial Conduct

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

ALAN I. FRIESS,

Determination

Judge of the Criminal Court
of the City of New York,
Kings County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea

APPEARANCES:

Gerald Stern (Alan W. Friedberg, of Counsel)
for the Commission
Eric A. Seiff for Respondent

The respondent, Alan I. Friess, a judge of the Criminal Court of the City of New York, Kings County, was served with a Formal Written Complaint dated February 10, 1981, alleging misconduct in relation to the arraignment of the defendant in People v. Elisia Fominas in November 1980. Respondent filed an answer dated March 6, 1981.

By order dated March 16, 1981, the Commission designated Robert MacCrate, Esq., referee to hear and report proposed findings of fact and conclusions of law.

On April 16, 1981, 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 by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination upon the pleadings and the agreed upon facts.

The Commission approved the agreed statement, obviating the hearing and the further services of the referee.

The Commission heard oral argument on May 26, 1981, as to whether the agreed upon facts established respondent's misconduct and, if so, the appropriate sanction. Respondent appeared with his counsel at oral argument. Thereafter the Commission considered the record of this proceeding and now makes the following findings of fact.

1. November 27, 1980, was Thanksgiving day. At approximately 12:45 A.M. on that date, respondent presided over the arraignment of the defendant in People v. Elisia Fominas in Part APAR3 of the Criminal Court of the City of New York in Kings County (Brooklyn). The defendant was charged with murder and hindering prosecution. She was represented by the Legal Aid Society.

2. During the course of the arraignment, on the second call of the case, respondent stated that he would release the defendant in his (respondent's) custody and would find lodging for her with a woman friend of his. Subsequently, on the third call of the case, respondent released the defendant on her own recognizance and adjourned the case to the next session of the court, scheduled for the evening of November 27, 1980. Respondent then accompanied the defendant to his residence in Brooklyn and provided overnight lodging for her. Respondent and a woman friend of his remained at the premises.

3. Between 10:45 A.M. and 11:15 A.M. on November 27, 1980, following a conversation between respondent and the defendant, respondent asked Bernard Udell, an attorney friend of his, to meet with the defendant. The Legal Aid Society was still the defendant's attorney of record.

4. Mr. Udell met with Ms. Fominas during the day on November 27, 1980, and appeared with her in court that evening as her attorney. Mr. Udell neither requested nor received a fee. He did not discuss the merits of the case with respondent.

5. During the day on November 27, 1980, respondent arranged for another judge to preside over the Fominas case at the court session scheduled for that evening. At approximately 7:30 P.M. on November 27, 1980, respondent formally recused himself from the Fominas case, stating in open court, on the record, that he had taken steps to provide the defendant with lodging. Respondent's formal recusal from the case preceded, by at least 24 hours, publication in the press of his earlier actions.

6. Respondent testified under oath that he made his offer to provide the defendant with lodging because the defendant was poor and she feared for her safety. Respondent believed that the defendant had no available friends or relatives to whom she could turn and that there were no public facilities readily accessible to her at that holiday hour.

7. The evidence indicates that respondent was motivated by compassion and his concern for the defendant's welfare and safety.

8. Respondent acknowledges that, by providing lodging at his residence for the defendant and by asking an attorney to meet with the defendant who at the time was represented by the Legal Aid Society, his actions created the appearance of impropriety and brought the judiciary into disrepute.

Upon the foregoing findings of fact, 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. The charge in the Formal Written Complaint is sustained and respondent's misconduct is established.

Public confidence in the integrity and impartiality of the judiciary is indispensable to the fair and proper administration of justice. A judge's conduct must be and appear to be beyond reproach if respect for the court is to be maintained.

By his conduct in this case, respondent exhibited extraordinarily poor judgment and a serious misunderstanding of the role of a judge in our legal system. Respondent's conduct in providing shelter to Ms. Fominas compromised the judge's impartiality in the case and diminished public confidence in the court. It was also improper for respondent to introduce new counsel to a defendant already represented by other counsel in a case before him.

Though respondent was motivated by compassion for the defendant, the result of his conduct was to bring the judiciary into disrepute. While much of the public attention focussed on this case has been characterized by exaggeration and unwarranted salacious innuendo, respondent should have known that his conduct would make him and the judiciary vulnerable to such publicity.

The issue now before us is whether respondent's credibility as a judge has been so compromised as to require his removal from office. A single act of misconduct of such magnitude by a judge might well warrant removal, absent compelling mitigating circumstances. Here there are such mitigating circumstances.

Respondent realized the error in his action almost immediately and, without prompting, took steps to ameliorate the situation by arranging for another judge to replace him in the case. He reported his error in open court, on the record, at the session next following his mistaken act. We believe that respondent has reflected on the ramifications of his actions, and we are convinced that he now understands the nature of his misconduct and will never again repeat it.

Respondent is an intelligent, capable jurist with an otherwise unblemished record. Respondent must be disciplined for his conceded, serious misconduct, but the Commission believes that respondent's capacity to serve and regain public confidence has not been irreparably harmed.

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

All concur except Judge Rubin, who dissents only with respect to sanction and votes that the appropriate sanction is removal from office.

Dated: June 25, 1981
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

SAMUEL C. ALESSI, JR.

Determination

a Judge of the City Court of
Jamestown, Chautauqua County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel)
for the Commission

Robert H. Alessi for Respondent

The respondent, Samuel C. Alessi, Jr., a judge of the City Court of Jamestown, Chautauqua County, was served with a Formal Written Complaint dated February 3, 1981, alleging misconduct with respect to respondent's conduct in a 1980 civil matter. Respondent filed an answer dated February 17, 1981.

By order dated March 16, 1981, the Commission designated Saul H. Alderman, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on May 21, 1981, and the referee filed his report on July 27, 1981.

By motion dated August 13, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion on August 21, 1981, and moved to dismiss the Formal Written Complaint. The Commission heard oral argument on the motions on September 23, 1981, thereafter considered the record of the proceeding and

now makes the following findings of fact.

1. Martin P. Carlson is a real estate broker. G. Jeffrey Weise and Howard Crossley are attorneys who were representing the purchaser and seller in a real property transaction in April and May 1980 involving Mr. Carlson as broker.

2. On May 1, 1980, based upon an oral complaint and request by Mr. Weise and Mr. Crossley, respondent issued a summons directing the appearance "forthwith" of Mr. Carlson. No criminal information, prosecutor's information or formal complaint of any kind had been filed with the court. The summons stated that Mr. Carlson was "wrongfully withholding personal property" belonging to Mr. Weise and Mr. Crossley, "to wit: the keys to the Nichols property". The summons contained no reference to any Penal Law violation and was not issued to obtain the defendant's appearance for the purpose of arraignment. Respondent was aware that the matter related to a civil dispute but issued the summons nonetheless. The issuance of a "forthwith" summons was not respondent's common practice. Moreover, such procedure did not comport with Section 130.10 of the Penal Law, of which respondent had specific knowledge.

3. Prior to issuing the summons, respondent spoke by telephone with Mr. Carlson and attempted without success to persuade him to surrender the key to the property.

4. Upon issuance of the summons, respondent instructed the police to effect Mr. Carlson's appearance forthwith. Thereupon Jamestown Police Officer Gunnard Kindberg served the summons on Mr. Carlson, placed him in custody and escorted him to respondent's chambers. Neither Mr. Weise nor Mr. Crossley were present.

5. Respondent and Mr. Carlson discussed the realty matter privately in respondent's chambers. Respondent did not advise Mr. Carlson of his right to counsel, denied Mr. Carlson's request to have an attorney present, and demanded that Mr. Carlson surrender the key in question. Respondent told Mr. Carlson that his business would be affected adversely if he persisted in his "arrogant" attitude, that he could be charged with possession of stolen property and practicing law without a license, and that he could have problems with his real estate license.

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)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 3A(1) and 3A(4) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

By attempting to persuade Mr. Carlson in an ex parte telephone conversation to surrender the disputed key, respondent lent the prestige of his office to advance the private interests of others (Section 33.2[c] of the Rules Governing Judicial Conduct). By thereafter issuing a criminal summons for Mr. Carlson's "forthwith" appearance in a civil matter and having him brought to chambers in

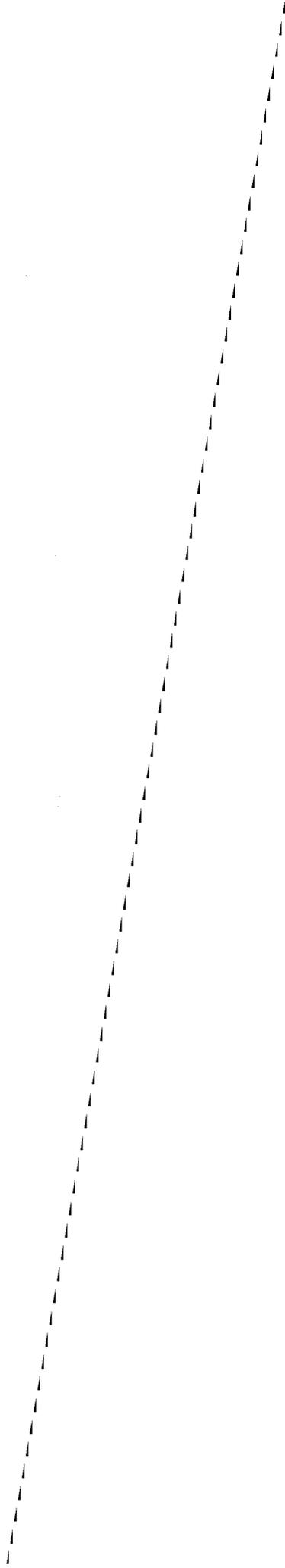
police custody, respondent knowingly acted contrary to the relevant provisions of law. By interrogating Mr. Carlson privately and demanding the surrender of the disputed key, by denying Mr. Carlson's request for the presence of an attorney and by failing to advise him of his right to counsel, respondent acted in a manner inconsistent with his obligations to promote public confidence in the integrity and impartiality of the judiciary and to be faithful to the law (Sections 33.2[a] and 33.3[a] of the Rules). By warning Mr. Carlson that his business and livelihood could be affected adversely by a continued refusal to cooperate, respondent appeared to be coercing Mr. Carlson into submission.

Respondent's conduct in this case is a gross abuse of the power and prestige of judicial office. Respondent improperly extended the court's authority and jurisdiction beyond lawful limits and perverted it to advance private interests. Such conduct is cause for discipline. Matter of Perry, 53 AD2d 882 (2d Dept. 1976).

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

All concur, except Mr. Cleary and Mr. Wainwright dissent with respect to sanction and vote that respondent should be admonished.

Dated: November 13, 1981



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

ALVIN F. KLEIN,

a Justice of the Supreme Court,
First Judicial District.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
E. Garrett Cleary, Esq.
Dolores DelBello
Honorable Isaac Rubin
Honorable Felice K. Shea

APPEARANCES:

Gerald Stern (Raymond S. Hack, Barry M. Vucker
and Seth A. Halpern, Of Counsel) for the
Commission
Stroock & Stroock & Lavan (By Charles G. Moerdler,
Burton Lipshie and William R. Kutner) for
Respondent

The respondent, Alvin F. Klein, a justice of the Supreme Court, First Judicial District, was served with a Formal Written Complaint dated February 29, 1980, alleging misconduct in that he received financial benefits with respect to three vacation trips arranged by a man who was actively soliciting and being appointed to receiverships by other justices of respondent's court, who was receiving fees with respect thereto, and who was appearing before other justices of respondent's court. Respondent filed an answer dated April 28, 1980.

By order dated May 20, 1980, the Commission designated the Honorable James Gibson referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on October 20, 21, 22, 23, 28 and 29, 1980, and the report of the referee was filed on January 15, 1981.

By motion dated March 9, 1981, the administrator of the Commission moved to confirm the referee's report, for a finding that respondent's misconduct was established and for a determination that respondent be censured. By cross-motion dated March 30, 1981, respondent moved to confirm in part and disaffirm in part the referee's report and for dismissal of the Formal Written Complaint.

The Commission heard oral argument on the motions on May 26, 1981. Respondent appeared with counsel. Thereafter the Commission considered the record of this proceeding and makes the determination herein.

With respect to Charges I and III of the Formal Written Complaint, the Commission makes the following findings of fact.

1. From 1974 through 1978, Bernard Lange actively solicited justices of the Supreme Court for appointments as a receiver in real property mortgage foreclosure proceedings. He received more than 150 such appointments in that period.

2. From 1974 through 1978, the primary source of Mr. Lange's income was from fees awarded by justices of the Supreme Court in connection with his appointments as a receiver. Mr. Lange was awarded more than \$500,000 in such fees in that period.

3. By 1974 respondent knew that Mr. Lange had received appointments as a receiver and therefore that Mr. Lange had interests which had come and were likely to come before the Supreme Court.

4. Respondent had introduced Mr. Lange, at the latter's request, to other judges for the purpose of enhancing Mr. Lange's prospects for obtaining receivership appointments.

5. Prior to October 24, 1975, respondent requested Mr. Lange to arrange a trip for respondent and his wife to the Americana Aruba Hotel in Aruba for the forthcoming Christmas and New Year's holiday.

6. Mr. Lange was not a member of the International Association of Travel Agents and did not hold himself out to the general public as a person engaged in the travel business.

7. Mr. Lange could obtain from various hotels preferential treatment and reservations not otherwise available to the general public. He had informed respondent that he could obtain for respondent reduced rates at the Americana Aruba Hotel.

8. Mr. Lange arranged for respondent's transportation and hotel accommodations at reduced rates for respondent's trip to the Americana Aruba Hotel from December 20, 1975, to January 4, 1976.

9. After a communication between Mr. Lange and the general manager of the hotel, the rate respondent was to be charged was reduced by 50 percent. A direction that the bill be charged to Mr. Lange was endorsed upon the bill.

10. Respondent and his wife were guests at the Americana Aruba Hotel from December 20, 1975, to January 4, 1976, during which time the value of the room, food and other services they received, based upon the rates available to the general public, was approximately \$1,549.40.

11. At the conclusion of his stay at the Americana Aruba, respondent was presented with the bill which set forth the daily posting of room charges, meal charges and incidentals and which specified that the rate was to be reduced 50 percent and that Mr. Lange was to be charged.

12. Respondent paid \$776.15 for all of the services he and his wife received at the Americana Aruba Hotel.

13. Respondent knew that the sum he paid the Americana Aruba Hotel was substantially less than the charges listed on the bill.

14. Respondent knew that he had received a reduced rate at the Americana Aruba Hotel.

15. At the time of his departure from the hotel, respondent was presented with a bill which contained a direction that the bill be charged to Mr. Lange.

16. Respondent accepted and was the beneficiary of a gift and favor from or through Mr. Lange worth approximately \$773.25.

17. Respondent took no steps to avoid receiving the benefits noted above related to his stay at the Americana Aruba Hotel, notwithstanding that he had ample notice that he was receiving or was about to receive such benefits.

18. Some time prior to May 1977, Mr. Lange informed respondent that he could obtain for respondent reduced rates at the Southampton Princess Hotel in Bermuda.

19. Prior to May 27, 1977, respondent requested Mr. Lange to arrange a trip for respondent and his wife to the Southampton Princess Hotel for the forthcoming Memorial Day weekend.

20. Mr. Lange made reservations for respondent and his wife at the Southampton Princess Hotel for May 27 to May 30, 1977. In so doing Mr. Lange arranged for respondent to receive a "deluxe" room for \$40 less per night than the price charged to the general public for such a room.

21. Respondent and his wife stayed in a deluxe room at the Southampton Princess Hotel from May 27 to May 30, 1977, and were charged \$40 less per night than the price charged to the general public for such a room.

22. The value of the room, food and other services received by respondent and his wife, based upon the rates available to the general public, was \$442.20.

23. Respondent paid a total of \$335.85 for the room, food and other services received from the hotel.

24. Respondent knew he had received a reduced rate at the Southampton Princess Hotel.

25. Respondent accepted and was the beneficiary of a gift and favor from or through Mr. Lange worth approximately \$106.35.

26. Respondent took no steps to avoid receiving the benefits described above related to his stay at the Southampton Princess Hotel, notwithstanding that he had ample notice that he was receiving or about to receive such benefits.

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(c)(3)(iii) of the Rules Governing Judicial Conduct, Section 20.4 of the General Rules of the Administrative Board of the Judicial Conference and Canons 1, 2 and 5C(4)(c) of the Code of Judicial Conduct. Charges I and III of the Formal Written Complaint are sustained, the referee's report with respect thereto is confirmed and respondent's misconduct is established.

Charge II of the Formal Written Complaint is not sustained and therefore is dismissed. The referee's report with respect thereto is confirmed.

By his conduct, respondent created an appearance of impropriety. He introduced Bernard Lange to judges and others, in furtherance of Mr. Lange's solicitation of court-appointed receiverships, and during the same period accepted financial benefits arranged through Mr. Lange in the form of significant reductions in hotel rates. By introducing Mr. Lange to other judges, respondent appeared to be lending the prestige of his judicial office to advance a private interest, in violation of the Rules Governing Judicial Conduct (Section 33.2). By accepting hotel rate reductions arranged by Mr. Lange, respondent violated that provision of the General Rules of the Administrative Board of the Judicial Conference which prohibits a judge from receiving "any gratuity or gift from any attorney or from any person having or likely to have any official transaction with the court" (Section 20.4). That the foregoing acts and events were contemporaneous gives rise to an appearance of impropriety in that respondent appeared to have benefitted from Mr. Lange's hotel connections in return for having assisted in the furtherance of Mr. Lange's business with the court.

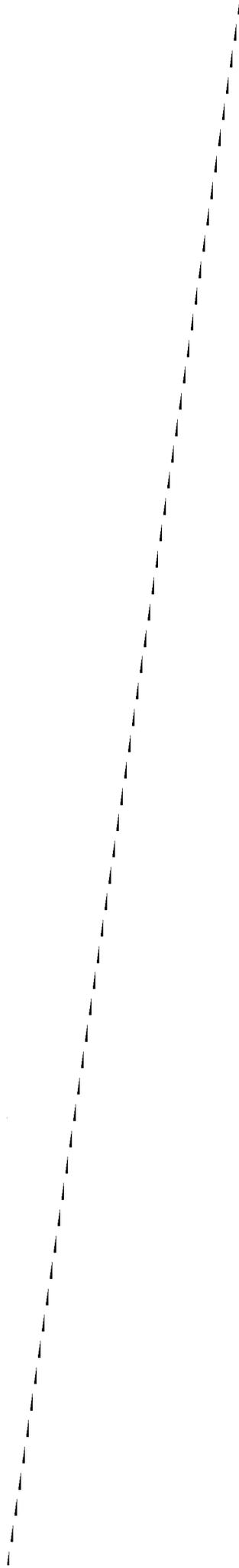
Although respondent himself neither awarded appointments to Mr. Lange nor approved the fees Mr. Lange received for his services to the court, respondent was nevertheless obliged to refrain from business transactions with Mr. Lange in light of the applicable ethical standard which prohibits a judge

"from financial and business dealings that...involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves" (Section 33.5[c][iii] of the Rules). While a judge may not know all the people who are likely to come before the court on which he serves, in this case respondent was fully aware of Mr. Lange's business with the court and indeed had introduced Mr. Lange to other judges in furtherance of that business.

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

All concur, except Judge Rubin and Judge Shea, who dissent in a separate opinion and vote that the appropriate disposition is a letter of dismissal and caution.

Dated: July 6, 1981



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

Determination

DANIEL P. FALSIONI,

a Judge of the City Court of Lockport,
Niagara County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (John W. Dorn, Of
Counsel) for the Commission

Honorable Daniel P. Falsioni, Respondent
Pro Se.

The respondent, Daniel P. Falsioni, is a part-time judge of the City Court of Lockport, Niagara County, who is permitted to practice law. He was served with a Formal Written Complaint dated April 15, 1980, alleging (i) that respondent permitted the other part-time lawyer-judges of the Lockport City Court, and their law partners and associates, to practice law in 335 cases in the Lockport City Court, Civil Division, from 1974 to 1978 and (ii) that respondent permitted his own law partner to practice law in 13 cases in the Lockport City Court, Criminal Division, from 1976 to 1977. Respondent filed an answer dated May 29, 1980.

The Commission designated the Honorable Louis Otten referee to hear and report proposed findings of fact and conclusions of law. The hearing was

held on November 17, 1980, and the referee filed his report to the Commission on February 21, 1981.

By motion dated May 21, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion in papers dated June 5, 1981. Oral argument was waived.

The Commission considered the record of this proceeding on June 18, 1981, and makes the following findings of fact.

1. The City Court of Lockport is organized administratively in two sections: the Civil Division and the Criminal Division. The Uniform City Court Act governs the Lockport City Court and both divisions thereof. The jurisdictions of the two divisions are separate and distinct, as are their clerical staffs. Each division occupies a separate office in the same building, maintains its own dockets and observes separate procedures. Both divisions use the same courtroom. Default judgments in the Civil Division are generally processed by the court clerk on papers, without the specific knowledge of the judge in individual cases.

2. Respondent presided in the Civil Division during the entire period at issue in the instant proceeding. The Honorable Willard H. Harris, Jr., presided in the Criminal Division during the same period. Both respondent and Judge Harris are part-time judges who also practice law. The Honorable Gerald D. Watson and the Honorable Spencer Lerch presided as acting judges in the Criminal Division during the periods noted below and were at those times part-time judges who also practiced law. The Honorable Fred J. Smith and the Honorable Richard H. Speranza presided as acting judges in the Civil Division during the periods noted below and were at those times part-time judges who also practiced law.

3. A judge of either division of the Lockport City Court is empowered to sit in the other division of the court if necessary. In 1973 and 1974, Judge Willard H. Harris, Jr., of the Criminal Division presided over cases in the Civil Division in respondent's absence.

4. On May 26, 1977, respondent presided over Rignall v. Burdick, notwithstanding that counsel for the plaintiffs, Allen D. Miskell, was an attorney associated in the practice of law with Judge Willard H. Harris, Jr. Respondent knew at the time that Mr. Miskell and Judge Harris were law associates. The defendants were not represented by counsel, were informed of the association and consented to proceed with the hearing.

5. Between August 12, 1974, and September 25, 1978, respondent permitted attorneys Allen D. Miskell, Walter Moxham, Jr., and Richard Southard to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients in the Civil Division in the 223 cases listed in Exhibit 1 appended to the Formal Written Complaint, notwithstanding that these attorneys were associated in the practice of law with Judge Willard H. Harris, Jr. Respon-

dent knew at the relevant times that these attorneys and Judge Harris were law associates. Although respondent had no knowledge that these attorneys had applied for default judgments in these particular cases, he had failed to instruct his clerk not to process default judgments for the other Lockport City Court judges and their associates, and he otherwise failed to take steps to prevent such associates from practicing law in the court.

6. On April 18, 1975, respondent permitted Judge Willard H. Harris, Jr., to practice before him as plaintiff's counsel in Bull v. Rauber. The defendants were not represented by counsel. Respondent knew at the time that Judge Harris was a judge of the Lockport City Court but took no action to prohibit him from appearing in the case. Respondent offered to disqualify himself from presiding but proceeded upon consent of the parties.

7. Between May 10, 1974, and May 18, 1977, respondent permitted Judge Willard H. Harris, Jr., to practice law in the Lockport City Court by obtaining default judgments on behalf of his clients in the Civil Division in the 15 cases listed in Exhibit 2 appended to the Formal Written Complaint. Respondent knew at the relevant times that Judge Harris was a judge of the Lockport City Court. Although respondent had no knowledge that Judge Harris had applied for default judgments in these particular cases, he had not instructed his clerk not to process default judgments for the other Lockport City Court judges and their associates, nor had he otherwise taken steps to prevent Judge Harris from practicing law in the court.

8. Between February 17, 1975, and April 24, 1978, respondent permitted Acting Judge Gerald D. Watson to practice law in the Lockport City Court by obtaining default judgments on behalf on his clients in the Civil Division in the nine cases listed in Exhibit 3 appended to the Formal Written Complaint. Respondent knew at the relevant times that Judge Watson was an acting judge of the Lockport City Court. Although respondent had no knowledge that Judge Watson had applied for default judgments in these particular cases, he had failed to instruct his clerk not to process default judgments for the other Lockport City Court judges, and he otherwise failed to take steps to prevent such judges from practicing law in the court.

9. Between May 20, 1974, and August 4, 1978, respondent permitted attorneys Anthony C. Ben, James L. Fox and Edward Thiel to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients in the Civil Division in the 28 cases listed in Exhibit 4 appended to the Formal Written Complaint, notwithstanding that these attorneys were associated in the practice of law with Acting Judge Gerald D. Watson. Respondent knew at the relevant times that these attorneys and Judge Watson were law associates and should have known they were practicing law in his court, but he took no action to prohibit these attorneys from practicing law in his court in these cases.

10. Between January 18, 1978, and May 22, 1978, respondent permitted attorneys William B. May and Morgan L. Jones, Jr., to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients in the Civil Division in the five cases listed in Exhibit 5 appended to the Formal

Written Complaint, notwithstanding that these attorneys were associated in the practice of law with Acting Judge Spencer Lerch. Respondent should have known these attorneys were practicing law in his court but took no action to prohibit them from doing so.

11. Between November 26, 1974, and June 18, 1975, respondent permitted Acting Judge Fred J. Smith to practice law in the Lockport City Court by obtaining default judgments on behalf of his clients in the Civil Division in the seven cases listed in Exhibit 7 appended to the Formal Written Complaint. Respondent knew at the relevant times that Judge Smith was an acting judge of the Lockport City Court but took no action to prevent Judge Smith from practicing law in these particular cases.

12. On April 8, 1975, and on June 16, 1975, in the cases of Kohl v. Muir and Ben v. Levenson, respectively, respondent permitted Richard H. Speranza to practice law before him. Respondent knew at these times that Mr. Speranza was a member of the law firm of Acting Judge Fred J. Smith. Respondent offered to disqualify himself from presiding but took no action to prohibit Mr. Speranza from practicing before him.

13. Between January 24, 1975, and October 16, 1975, respondent permitted Richard H. Speranza and Leonard G. Tilney to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients in the Civil Division in the 18 cases listed in Exhibit 8 appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Speranza and Mr. Tilney were law partners of Acting Judge Fred J. Smith but took no action to prohibit them from practicing law in his court in these cases.

14. On May 19, 1977, respondent permitted Acting Judge Richard H. Speranza to practice before him as plaintiff's counsel in Wagner v. Bowers. Respondent knew at the time that Judge Speranza was an acting judge of the Lockport City Court. Respondent offered to disqualify himself but took no action to prohibit Mr. Speranza from practicing before him.

15. On March 26, 1976, respondent permitted Acting Judge Richard H. Speranza to practice law in the Lockport City Court by obtaining a default judgment on behalf of his client in the Civil Division in Ferington v. Wilson. Respondent knew at the time that Judge Speranza was an acting judge of the Lockport City Court but took no action to prohibit Judge Speranza from practicing law in this case.

16. On February 3, 1977, respondent permitted Acting Judge Richard H. Speranza to practice before him by appearing as his own counsel in Speranza v. Rau. Respondent knew at the time that Judge Speranza was an acting judge of the Lockport City Court. Respondent offered to disqualify himself but took no action to prohibit Judge Speranza from practicing law in this case.

17. Between February 10, 1976, and October 4, 1977, respondent permitted Leonard G. Tilney, R. Joseph Foltz and Richard T. May to practice law in the Lockport City Court by obtaining default judgments on behalf of their clients

in the Civil Division in the 23 cases listed in Exhibit 9 appended to the Formal Written Complaint. Respondent knew at the relevant times that Mr. Tilney, Mr. Foliz and Mr. May were associated in the practice of law with Acting Judge Richard Speranza but took no action to prohibit them from practicing law in these cases.

18. In April 1977 and January 1978, respondent and the director of administration of the courts for the Fourth Judicial Department discussed the applicability of Section 33.5(f) of the Rules Governing Judicial Conduct to the Lockport City Court, said section governing the conduct of part-time judges who practice law. On April 21, 1978, respondent received an opinion from the director of administration, indicating that practice in one division of the court by a judge or the associate of a judge from the other division of the court is improper. Despite the director's opinion, respondent took no action to enforce Section 33.5(f) until he appeared before the Commission to address the issues herein on June 20, 1979. Thereafter, respondent instructed his court clerk (i) to return any papers received from other Lockport City Court judges, acting judges and the law partners and associates of these judges and (ii) to advise them by letter that they could no longer practice in his court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 16 and 471 of the Judiciary Law, Sections 33.1, 33.2(a), 33.2(c), 33.3(b)(1), 33.3(b)(2) and 33.5(f) of the Rules Governing Judicial Conduct and Canons 1,2 3B(1) and 3B(2) of the Code of Judicial Conduct. Charges I through VII and Charges IX through XIV of the Formal Written Complaint are sustained and respondent's misconduct is established. Charge VIII of the Formal Written Complaint is not sustained and therefore is dismissed.

A part-time lawyer-judge (i) may not practice law in his own court, (ii) may not practice law before any other part-time lawyer-judge in the same county as his own court, (iii) may not permit his law partners or associates to practice law in his court, (iv) may not permit the practice of law in his court by other part-time lawyer-judges whose courts are in the same county as his own court and (v) may not permit the practice of law in his court by the partners and associates of the part-time lawyer-judges of his own court (Section 33.5[f] of the Rules Governing Judicial Conduct). A presiding judge's offer to recuse himself from such cases does not constitute compliance with these rules. Such a recusal does not address the gravamen of the matter, which is that a lawyer prohibited from doing so is indeed practicing law in the court. Nor does recusal satisfy the presiding judge's obligation to enforce the rule. Public confidence in the courts is diminished by the appearance of favoritism when a judge acts as the lawyer in a proceeding in his own court, presided over by his judicial colleague.

The assertion that the two divisions of the Lockport City Court comprise two different courts and are therefore not subject to the applicable rules is without merit. Both divisions operate under the appellation of Lockport City Court. Both divisions are governed by the Uniform City Court Act. Both are located in the same building and share the same courtroom. When a judge of one division is unavailable, he may be relieved by a judge of the other division.

Whatever the local practice may have been with regard to the two divisions of the court, the fact is that there is one Lockport City Court, and it is improper for the judges and associates of one division to practice in the other division. The entry of a default judgment by an attorney unquestionably constitutes the practice of law, and where the attorney is also a part-time judge, the prohibitions of the Rules apply with equal force. Moreover, in those cases in which respondent permitted the proscribed practice in his own division by part-time judges of that division (the Civil Division), the asserted distinction between the civil and criminal divisions is of no moment.

In initiating discussions of the issues herein with the director of administration as early as 1977, respondent demonstrated a commendable sensitivity to the improprieties and appearances of impropriety inherent in his conduct and that of his colleagues. Nevertheless, his failure to take any corrective action for more than two years after these discussions and more than one year after receipt of an opinion from the director of administration indicating the impropriety of the conduct of the part-time lawyer-judges of Lockport, cannot be overlooked.

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

All concur, except that Mr. Cleary dissents only with respect to sanction and votes that the appropriate disposition is a letter of dismissal and caution.

Dated: November 6, 1981

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

Determination

JAMES H. RICHARDSON

a Justice of the Village Court of
Waterloo, Seneca County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (John W. Dorn, Of Counsel)
for the Commission

Charles E. Shaffer for Respondent

The respondent, James H. Richardson, a justice of the Village Court of Waterloo, Seneca County, was served with a Formal Written Complaint dated January 28, 1981, charging him with intemperate and otherwise injudicious behavior in connection with his arrest for driving while intoxicated in April 1977. Respondent filed an answer dated February 16, 1981.

By order dated March 5, 1981, the Commission designated the Honorable Harold A. Felix referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on April 7 and 8, 1981, and the referee filed his report to the Commission on June 23, 1981.

By motion dated September 3, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be

censured. Respondent opposed the administrator's motion on October 8, 1981, and cross-moved for dismissal of the Formal Written Complaint or, in the alternative, for a determination that respondent be admonished. Oral argument was waived.

The Commission considered the record of this proceeding on October 27, 1981, and made the following findings of fact:

1. On April 4, 1977, at approximately 2:00 A.M., Seneca Falls Village Police Sergeant Louis Van Cleef and Officer Steven Manino stopped a motor vehicle driven by respondent and charged respondent with driving in excess of the 30 mph speed limit on Falls Street in Seneca Falls and driving while intoxicated.

2. At the time of arrest, respondent made derogatory remarks to Sergeant Van Cleef about Officer Manino, referring to Officer Manino as a "little pisspot" and stating that "he never should have been a cop to begin with". Respondent's remarks were heard by Officer Manino.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1 and 33.5(a) of the Rules Governing Judicial Conduct and Canons 1 and 5A of the Code of Judicial Conduct. Paragraphs 4 and 5b of the Formal Written Complaint are sustained and respondent's misconduct is established. Paragraphs 5a, 5c and 5d of the Formal Written Complaint are not sustained and therefore are dismissed.

Respondent's operation of a motor vehicle in such a condition as to result in a charge of driving while intoxicated, and his derogatory remarks about one of the police officers who effected his arrest, demonstrated a failure to observe the high standards of conduct required of a judge and detracted from the dignity of his office.

By reason of the foregoing, the Commission determines that respondent should be admonished.

All concur.

Dated: December 8, 1981

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

Determination

DONALD X. CLAVIN,

a Judge of the District Court,
Nassau County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Robert H. Straus and Jean Savanyu,
Of Counsel) for the Commission

William E. Turner for Respondent

The respondent, Donald X. Clavin, a judge of the District Court, Nassau County, was served with a Formal Written Complaint dated December 6, 1979, alleging intemperance and other unjudicious demeanor in eight cases in 1976 and 1977. Respondent filed an answer dated February 19, 1980.

By order dated March 18, 1980, the Commission designated Gerald Harris, Esq., referee to hear and report proposed findings of facts and conclusions of law. The hearing commenced on May 2, 1980, and was concluded on February 5, 1981.

By motion dated March 6, 1981, respondent moved to dismiss the Formal Written Complaint. By determination and order dated April 30, 1981, the Commis-

sion denied the motion.

The referee filed his report to the Commission on July 6, 1981. By motion dated August 25, 1981, the administrator of the Commission moved to confirm in part and to disaffirm in part the referee's report and for a determination that respondent be censured. Respondent cross-moved on October 5, 1981, to disaffirm in part and to confirm in part the referee's report and to dismiss the Formal Written Complaint. The Commission heard oral argument on the motion on October 22, 1981, thereafter considered the record of this proceeding and made the following findings of fact:

1. From May 4, 1976, through May 12, 1976, respondent presided over the jury trial of People v. Jeffrey Attie. The exchanges from the trial transcript, as set forth in Charge I of the Formal Written Complaint, are accurate, and respondent made the statements attributed to him therein. During the trial respondent:

(a) created the appearance that he was partial to the prosecution and its case;

(b) deprived the defendant, his attorney and witnesses of the opportunity to be heard fully by engaging in conduct which tended to intimidate and threaten them;

(c) unduly projected himself into the trial in a prosecutorial manner;

(d) made statements tending to prejudice the jury against the defendant, his attorney, his witnesses and the merits of his case; and

(e) was impatient with and discourteous to defendant's counsel.

2. On July 12, 1976, respondent presided over the non-jury small claims trial of Fetkowitz v. Tauscher. The exchanges from the trial transcript, as set forth in Charge II of the Formal Written Complaint, are accurate, and respondent made the statements attributed to him therein. During the trial respondent:

(a) was impatient and discourteous toward the defendant;

(b) deprived the defendant of the opportunity to be heard fully by engaging in conduct which tended to intimidate, threaten and harass him;

and

(c) disparaged and demeaned the defendant.

3. On June 29, 1977, respondent presided over the non-jury small claims trial of Cepale v. Woods, Walter Kiddie & Co., Inc. The exchanges from the trial transcript, as set forth in Charge IV of the Formal Written Complaint, are accurate, and respondent made the statements attributed to him therein. During the trial respondent:

(a) deprived defendant Eugene Woods of the opportunity to be heard fully by engaging in conduct which tended to intimidate, threaten and harass him; and

(b) disparaged and demeaned Mr. Woods.

4. On June 29, 1977, respondent conducted an inquest in the small claims matter of Davis v. Jacobson. During the proceeding, respondent made the statement attributed to him in Charge V of the Formal Written Complaint. Respondent:

(a) was impatient, inconsiderate and discourteous toward the plaintiff and

(b) disparaged and demeaned the plaintiff.

5. On June 29, 1977, respondent presided over the non-jury small claims trial of Feinne v. Daljack Co., Inc. The exchanges from the trial transcript, as set forth in Charge VI, subparagraph (c), of the Formal Written Complaint, are accurate, and respondent made the statements attributed to him therein. During the trial respondent disparaged Daniel Itzler, the defendant corporation's representative.

6. On June 29, 1977, respondent presided over the non-jury small claims trial of Bowers v. Mauro. The exchanges from the trial transcript as set forth in Charge VII of the Formal Written Complaint are accurate, and respondent made the statements attributed to him therein. During the trial, respondent's threat to cause a summons to be issued to the defendant constituted improper intimidation.

7. On June 29, 1977, respondent presided over the non-jury small claims trial of Lester v. VIP Sleep Shops, Ltd. During the trial, respondent made the statement attributed to him in Charge VIII of the Formal Written Complaint and thereby disparaged Nadalynne Aaronson, the defendant corporation's

representative.

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), 33.3(a)(2), 33.3(a)(3), and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2A, 3A(1), 3A(2), 3A(3) and 3A(4) of the Code of Judicial Conduct and Sections 700.5(a) and (e) of the Rules of the Appellate Division, Second Department. Charges I and II and Charges IV through VIII of the Formal Written Complaint are sustained insofar as they are consistent with the findings of fact herein, and respondent's misconduct is established. Charge III of the Formal Written Complaint is not sustained and therefore is dismissed. Respondent's motion to dismiss the Formal Written Complaint is denied. Respondent's legal arguments have been considered and found to be without merit.

Respondent's demeanor in the cases at issue was impatient, threatening and disparaging of parties in litigation before him. His manner often created the appearance of partiality toward one party or the other and intimidated lawyers, litigants and witnesses.

The deficiencies of the physical plant, the crowded court calendar and the general atmosphere of tension in the small claims part of the District Court may have contributed to but do not excuse respondent's intemperate demeanor. Most people have their only contact with the legal system in such forums as small claims courts, and their experiences will often form the basis for their views toward the judicial system. It is therefore particularly important for judicial officers in lower courts to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The Commission notes in mitigation that respondent appears to be contrite with respect to his misconduct and that, at the oral argument before the Commission, he expressed an intention to improve his conduct.

By reason of the foregoing, the Commission determines that respondent should be admonished.

All concur.

Dated: December 28, 1981

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

Determination

JAMES H. REEDY,

a Justice of the Town Court of
Galway, Saratoga County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Jack J. Pivar, Of Counsel)
for the Commission

Morris D. Strauss for Respondent

The respondent, James H. Reedy, a justice of the Town Court of Galway, Saratoga County, was served with a Formal Written Complaint dated June 25, 1980, alleging various discrepancies in his deposits of court funds and financial reports to the Department of Audit and Control. Respondent filed an answer on July 29, 1980.

By order dated August 22, 1980, the Commission designated Martin M. Goldman, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on December 5, 1980, and the referee filed his report on May 15, 1981.

By motion dated June 17, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be

removed from office. Respondent opposed the motion on August 5, 1981. The Commission heard oral argument on the motion on October 22, 1981, thereafter considered the record of the proceeding and made the following findings of fact:

1. Respondent has been a justice of the Town Court of Galway for 10 years. He is also a justice of the Village Court of Galway.

2. Respondent suffered a heart attack in 1974. From 1975 through 1977, during respondent's convalescence, his wife, Florence Reedy, acted as his court clerk in charge of records. Under respondent's direction, Mrs. Reedy assumed responsibility for respondent's official court accounts and his deposit, remittance and reporting requirements. Mrs. Reedy was not trained to fulfill these responsibilities but attempted to qualify herself by taking an adult education course in bookkeeping.

3. Between 1975 and 1977, respondent and his wife would place court funds, including checks and cash received from fines paid to the court, in an unlocked desk drawer in their home prior to depositing them in the official court bank account.

4. Between March 1975 and November 1977, respondent and his wife (i) failed to deposit in the official court bank account \$752 in fine monies received by respondent in his judicial capacity, (ii) omitted references to 23 cases in reports to the Department of Audit and Control amounting to \$567 of the \$752 deficiency, as set forth in Schedule A appended to the Formal Written Complaint, and (iii) under-reported to the Department of Audit and Control the fines received in nine cases amounting to \$185 of the \$752 deficiency, as set forth in Charge II of the Formal Written Complaint. Respondent's certification of the accuracy of his reports to the Department of Audit and Control was false.

5. After respondent's records and funds were audited by the Department of Audit and Control, Mrs. Reedy filed an amended report, correcting the errors and omissions noted in paragraph 4 above and paying out of her personal funds the \$752 discrepancy.

6. Between March 1975 and November 1977, respondent's individual docket sheets accurately reflected the amounts of the fines received in the 32 cases referred to in paragraph 4 above. There is no indication that respondent's records and bookkeeping were deficient prior to 1975 or after 1977.

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 3B(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

Respondent's failure to supervise the preparation and handling of court accounts, reports and records resulted in a \$752 deficiency in court funds as well as inaccurate reports and incomplete remittances of official funds to the Department of Audit and Control from 1975 through 1977. (Respondent's

medical fitness to serve during this period, when he was recovering from a heart attack, is not in issue, since respondent presided over cases and otherwise performed his judicial duties.)

The placement of court monies by respondent in an unlocked desk drawer in his home constituted negligence in his management of the public money entrusted to his care. His assertion that \$25 of that money may have been stolen by the child of a neighbor illustrates one consequence of his carelessness in leaving court funds unprotected, but neither accounts for the unexplained \$752 deficiency in his court accounts nor excuses the failure to report nine cases and the under-reporting of 23 others to Audit and Control.

The Commission notes in mitigation that respondent's records and remittances have otherwise been accurate, that the referee did not find that the unreported money had been converted to respondent's personal use, and that respondent and his wife complied with bookkeeping suggestions and directions made by Audit and Control after the discovery of the discrepancy.

By reason of the foregoing, the Commission determines that respondent should be admonished.

All concur, except Mrs. DelBello and Mr. Kirsch dissent with respect to sanction and vote that respondent should be censured.

Dated: December 28, 1981

TABLE OF CASES PENDING AS OF DECEMBER 31, 1980.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>								
<i>Non-Judges</i>								
<i>Demeanor</i>		10	12	1	2	5	8	38
<i>Delays</i>		1						1
<i>Confl./Interest</i>		15	7	7	1		8	38
<i>Bias</i>		1						1
<i>Corruption</i>		1	2		1		1	5
<i>Intoxication</i>		2	1		1		2	6
<i>Disable/Qualif.</i>		1	1				1	3
<i>Political Activ.</i>		2	3	3				8
<i>Finances, Records, Training</i>		11	3	3	2		2	21
<i>Ticket-Fixing</i>		2				1	15	18
<i>Miscellaneous</i>		4	2	3		1		10
TOTALS		50	31	17	7	7	37	149

* 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 CASES CONSIDERED BY THE COMMISSION IN 1981.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>	288							288
<i>Non-Judges</i>	25							25
<i>Demeanor</i>	39	29	10	2	2	2		84
<i>Delays</i>	27	5	1					33
<i>Confl./Interest</i>	26	14	4	3	1	1		49
<i>Bias</i>	19	5						24
<i>Corruption</i>	1	1	1					3
<i>Intoxication</i>		4			1			5
<i>Disable/Qualif.</i>		1			1	1		3
<i>Political Activ.</i>	5	4	2	1				12
<i>Finances, Records, Training</i>	15	29	2	1		7	1	55
<i>Ticket-Fixing</i>								
<i>Miscellaneous</i>	2	20	3	1				26
TOTALS	447	112	23	8	5	11	1	607

* 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 1981: 607 NEW COMPLAINTS AND 149 PENDING FROM 1980

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>	288							288
<i>Non-Judges</i>	25							25
<i>Demeanor</i>	39	39	22	3	4	7	8	122
<i>Delays</i>	27	6	1					34
<i>Confl./Interest</i>	26	29	11	10	2	1	8	87
<i>Bias</i>	19	6						25
<i>Corruption</i>	1	2	3		1		1	8
<i>Intoxication</i>		6	1		2		2	11
<i>Disable/Qualif.</i>		2	1		1	1	1	6
<i>Political Activ.</i>	5	6	5	4				20
<i>Finances, Records, Training</i>	15	40	5	4	2	7	3	76
<i>Ticket-Fixing</i>		2				1	15	18
<i>Miscellaneous</i>	2	24	5	4		1		36
TOTALS	447	162	54	25	12	18	37	756

* 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**	
<i>Incorrect Ruling</i>	1912							1912
<i>Non-Judges</i>	208							208
<i>Demeanor</i>	267	39	280	29	16	12	67	710
<i>Delays</i>	130	6	24	5	3		6	174
<i>Confl./Interest</i>	93	29	172	36	17	6	40	393
<i>Bias</i>	131	6	27	1	3		1	169
<i>Corruption</i>	45	2	29		5	2	4	87
<i>Intoxication</i>	6	6	5		2		7	26
<i>Disable/Qualif.</i>	16	2	16	1	7	2	5	49
<i>Political Activ.</i>	37	6	29	30	3	2	6	113
<i>Finances, Records, Training</i>	68	40	48	13	22	23	18	232
<i>Ticket-Fixing</i>	15	2	53	149	32	56	153	460
<i>Miscellaneous</i>	52	24	27	7	3	2	3	118
TOTALS	2980	162	710	271	113	105	310	4651

* 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.