

ANNUAL REPORT

March 1983

**New York State
Commission on Judicial Conduct**



1983 ANNUAL REPORT
OF THE
NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

COMMISSION MEMBERS

MRS. GENE ROBB, Chairwoman
HONORABLE FRITZ W. ALEXANDER, II
JOHN J. BOWER, ESQ.
(Term Commenced April 1, 1982)
DAVID BROMBERG, ESQ.
E. GARRETT CLEARY, ESQ.
MRS. DOLORES DEL BELLO
MICHAEL M. KIRSCH, ESQ.
(Served through March 31, 1982)
VICTOR A. KOVNER, ESQ.
HONORABLE WILLIAM J. OSTROWSKI
HONORABLE ISAAC RUBIN
HONORABLE FELICE K. SHEA
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HON. ISAAC RUBIN
HON. FELICE K. SHEA
CARROLL L. WAINWRIGHT, JR.
CLERK
ROBERT H. TEMBECKJIAN

GERALD STERN
ADMINISTRATOR

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

Pursuant to 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, 1982, through December 31, 1982.

Respectfully submitted,

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

March 1, 1983
New York, New York

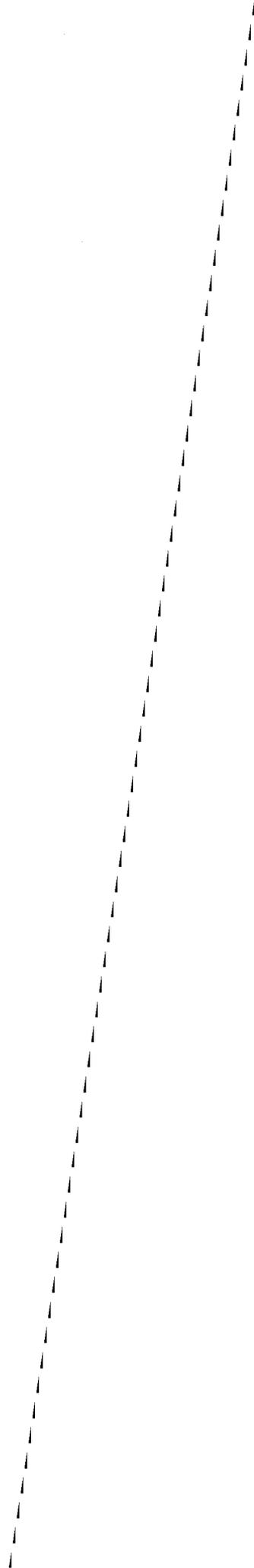


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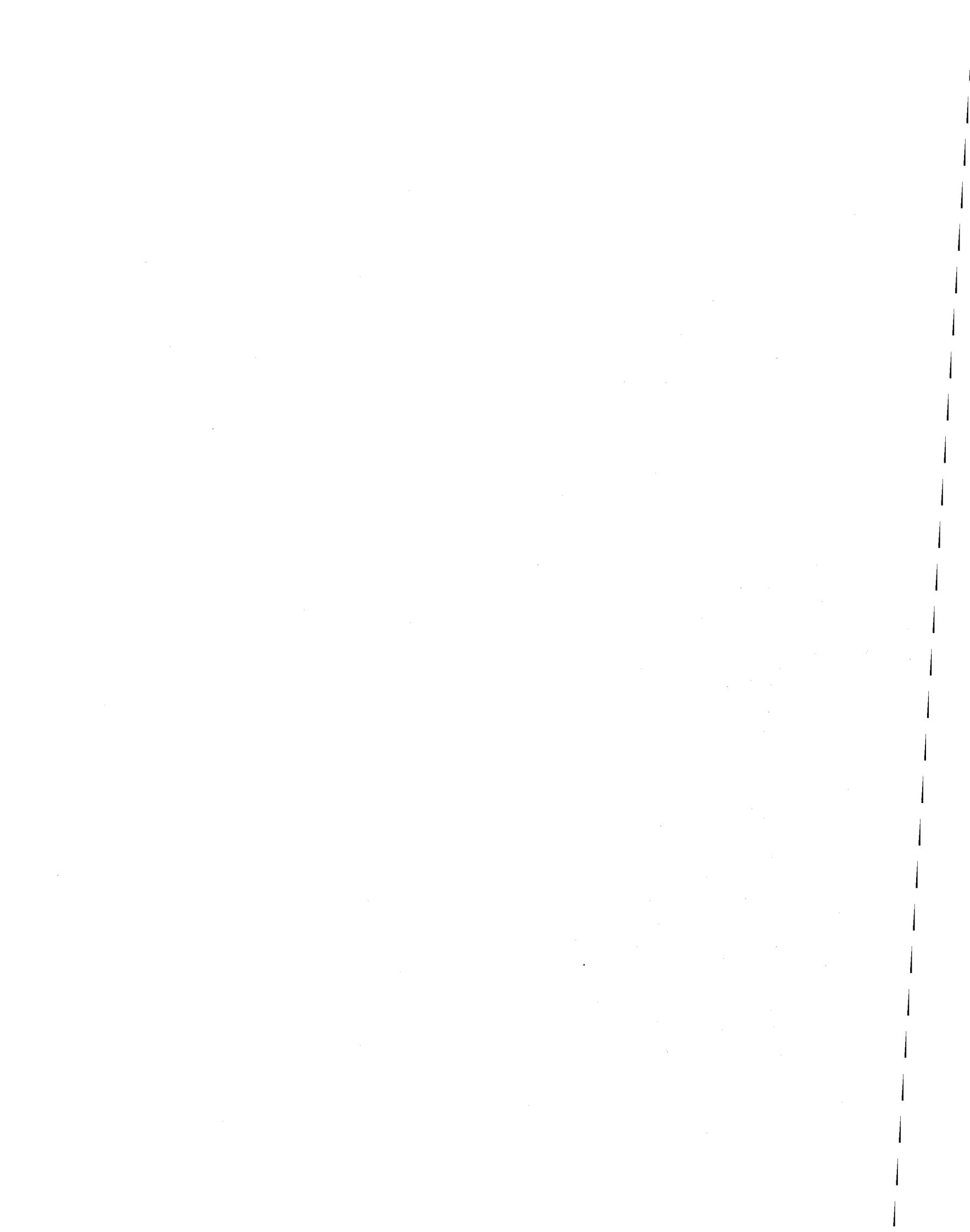
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INTRODUCTION

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 enforce the obligation of judges to observe high standards of conduct while safeguarding their right to decide cases independently.

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, does not make judgments as to the merits of judicial decisions or rulings, and does not investigate complaints that judges are either too lenient or too severe in criminal cases.

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 a constitutional amendment. A second constitutional amendment, effective on April 1, 1978, created the present Commission with 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, nor does it issue advisory opinions, give legal advice or represent litigants. When appropriate, it refers complaints to other agencies.

By provision of the State Constitution (Article VI, Section 22), the Commission:

shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system...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 with the approval of the Court of Appeals), 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 review is not requested within 30 days of service of the determination upon the judge, 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 the circumstances so warrant. In some cases the Commission has issued such a letter after charges of misconduct have been sustained.

Procedures

The Commission convenes once a month. At its meetings, the Commission reviews each new complaint of misconduct and makes an initial decision whether to investigate 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 Commission business.

No investigation may be commenced by staff without 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 (in addition to his or her counsel) 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 Appellate Division, First Department; John J. Bower, Esq., of Upper Brookville; David Bromberg, Esq., of New Rochelle; E. Garrett Cleary, Esq., of Rochester; Dolores DelBello of South Salem; Victor A. Kovner, Esq., of New York City; Honorable William J. Ostrowski of Buffalo, Justice of the Supreme Court, Eighth Judicial District; Honorable Isaac Rubin of Rye, Justice of the Appellate Division, Second Department; Honorable Felice K. Shea of New York City, Justice of the Supreme Court, First Judicial District; and Carroll L. Wainwright, Jr., Esq., of New York City. Michael M. Kirsch, Esq., of Brooklyn, served as a member through March 31, 1982, when he was succeeded by Mr. Bower. The Commission takes this opportunity to recognize the dedicated and distinguished service of Mr. Kirsch, who was a member of the Commission since its inception as a temporary commission in 1974.

The administrator of the Commission is Gerald Stern, 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, Esq.*

*Biographies are appended.

The Commission has 46 full-time staff employees, including nine 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.

COMPLAINTS AND INVESTIGATIONS IN 1982

In 1982, 684 new complaints were received. Of these, 529 were dismissed upon initial review, and 155 investigations were authorized and commenced.* As in previous years, the majority of complaints were submitted by civil litigants and by complaining witnesses 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 36 initiated by the Commission on its own motion.

The Commission carried over 162 investigations and proceedings on formal charges from 1981.

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, 1982, through December 31, 1982. Statistical analysis of the matters considered by the temporary, former and present Commissions is appended in chart form.

Of the combined total of 317 investigations and proceedings on formal charges conducted by the Commission in 1982 (162 carried over from 1981 and 155 authorized in 1982), the Commission recorded the following:

- 82 matters were dismissed outright after investigations were completed.
- 31 matters involving 26 different judges were dismissed with letters of dismissal and caution. (29 of these matters were dismissed with caution upon conclusion of an investigation and 2 were issued upon conclusion of a formal proceeding.)
- 14 matters involving 11 different judges were closed upon resignation of the judge from office. (13 of these matters were closed at the investigation stage and 1 during the formal proceeding stage.)
- 9 matters involving 9 different judges were closed upon vacancy of office due to the judge's retirement or failure to win re-election. (7 of these matters were closed at the investigation stage and 2 during a formal proceeding.)
- 39 matters involving 24 different judges resulted in formal discipline (admonition, censure or removal from office).

One hundred forty-two matters were pending at the end of the year. Of these, 106 were in the investigation stage, and 36 matters involving 28 different judges were in the formal proceedings stage.

ACTION TAKEN IN 1982

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 1982, the Commission authorized Formal Written Complaints against 25 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 other matters, absent a waiver by the judge, 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 1982 and made public pursuant to the applicable provisions of the Judiciary Law.

Determinations of Removal

The Commission completed 12 disciplinary proceedings in 1982 in which it determined that the judge involved should be removed from office.

Matter of Ronald Lemon

Ronald Lemon, a justice of the Allegany Town Court, Cattaraugus County, was served with a Formal Written Complaint dated February 25, 1981, alleging various deficiencies in his court accounts and records. Judge Lemon filed an answer dated March 23, 1981.

A hearing was held before a referee, the Honorable John S. Marsh. Judge Lemon did not submit motion papers as to the referee's report or appropriate sanction, nor did he appear for oral argument.

The Commission filed with the Chief Judge its determination dated March 15, 1982, that Judge Lemon be removed from office. A copy of the determination is appended.

Judge Lemon did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on April 23, 1982.

Matter of Patrick J. Cunningham

Patrick J. Cunningham, a judge of the County Court, Onondaga County, was served with a Formal Written Complaint dated July 8, 1981, alleging that he improperly advised a lower court judge that his decisions would not be reversed on appeals over which Judge Cunningham might preside. Judge Cunningham filed an answer dated July 28, 1981.

Judge Cunningham, his counsel and the Commission's administrator entered into an agreed statement of facts on No-

vember 20, 1981, stipulating to the facts substantially as alleged in the Formal Written Complaint. The Commission approved the agreed statement. Both sides filed memoranda with respect to the conclusions of law to be drawn from the stipulated facts and with respect to appropriate sanction. Judge Cunningham appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated April 20, 1982, that Judge Cunningham be removed from office. A copy of the determination is appended.

Judge Cunningham requested review of the Commission's determination by the Court of Appeals. On November 11, 1982, the Court accepted the Commission's finding that respondent's misconduct had been established but, in a four to three decision, modified the sanction from removal to censure. 57 NY2d 270 (1982).

Matter of Ronald Lew

Ronald Lew, a justice of the Waterville Village Court, Oneida County, was served with a Formal Written Complaint dated November 25, 1981, alleging various financial and record-keeping improprieties and deficiencies. Judge Lew did not submit an answer.

The Commission granted the administrator's motion for summary determination and found respondent's misconduct established. Judge Lew did not submit a memorandum as to appropriate sanction, nor did he appear for oral argument.

The Commission filed with the Chief Judge its determina-

tion dated April 22, 1982, that Judge Lew be removed from office. A copy of the determination is appended.

Judge Lew did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on June 4, 1982.

Matter of John Mahar

John Mahar, a justice of the Hoosick Town Court, Rensselaer County, was served with a Formal Written Complaint dated November 4, 1981, alleging inter alia that he threatened an attorney who had lodged a complaint against him with the Commission. Judge Mahar filed an answer dated January 9, 1982.

A hearing was held before a referee, Bernard H. Goldstein, Esq. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Mahar did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated June 10, 1982, that Judge Mahar be removed from office. A copy of the determination is appended.

Judge Mahar did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on July 16, 1982.

Matter of Anthony G. Ellis

Anthony G. Ellis, a justice of the Altamont Town and Tupper Lake Village Courts, Franklin County, was served with a Formal Written Complaint dated April 20, 1981, alleging inter alia

that he intentionally incarcerated certain defendants for lengthy periods contrary to law. Judge Ellis filed an answer dated July 8, 1981.

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

The Commission filed with the Chief Judge its determination dated July 14, 1982, that Judge Ellis be removed from office. A copy of the determination is appended.

Judge Ellis requested review of the Commission's determination. After granting two requests for extensions of time to submit a record and petitioner's brief, and after petitioner failed to make such submissions, the Court of Appeals ordered his removal from office on October 26, 1982.

Matter of Thomas D. George

Thomas D. George, a justice of the Varick Town Court, Seneca County, was served with a Formal Written Complaint dated February 1, 1982, alleging that he failed to report and remit official monies to the State Comptroller, did not disqualify himself in a criminal proceeding in which he owed a debt to the defendant, and failed to cooperate with the Commission. Judge George did not file an answer.

The Commission granted the administrator's motion for summary determination on April 26, 1982, and found respondent's

misconduct established. Judge George did not submit a memorandum as to appropriate sanction, nor did he appear for oral argument.

The Commission filed with the Chief Judge its determination dated July 14, 1982, that Judge George be removed from office. A copy of the determination is appended.

Judge George did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on September 9, 1982.

Matter of Raymond E. Aldrich, Jr.

Raymond E. Aldrich, Jr., a judge of the County Court, Dutchess County, was served with a Formal Written Complaint dated June 16, 1981, alleging that he presided over two sessions of court while intoxicated and, in such condition, held a knife to a security guard and made racist, sexist and vulgar remarks. Judge Aldrich filed an answer dated July 9, 1981.

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

The Commission filed with the Chief Judge its determination dated September 17, 1982, that Judge Aldrich be removed from office. A copy of the determination is appended.

Judge Aldrich requested review of the Commission's determination by the Court of Appeals, where the matter is pending.

Matter of J. Richard Sardino

J. Richard Sardino, a judge of the Syracuse City Court, Onondaga County, was served with a Formal Written Complaint dated May 29, 1981, alleging inter alia that he deliberately denied defendants various rights and acted in a demeaning manner toward defendants and others in his court. Judge Sardino filed an answer dated August 11, 1981.

A hearing was held before a referee, the Honorable John S. Marsh. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Sardino appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated September 20, 1982, that Judge Sardino be removed from office. A copy of the determination is appended.

Judge Sardino requested review of the Commission's determination by the Court of Appeals, where the matter is pending.

Matter of Ronald Pulver

Ronald Pulver, a justice of the Kinderhook Town Court, Columbia County, was served with a Formal Written Complaint dated April 26, 1982, alleging that he presided over four cases involving his relatives. Judge Pulver did not file an answer.

The Commission granted the administrator's motion for summary determination on August 20, 1982, and found respondent's misconduct established. Judge Pulver did not submit a memorandum as to appropriate sanction, nor did he appear for oral argument.

The Commission filed with the Chief Judge its determina-

tion dated November 12, 1982, that Judge Pulver be removed from office. A copy of the determination is appended.

Judge Pulver did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on December 22, 1982.

Matter of Susan A. Stafford

Susan A. Stafford, a justice of the Newfield Town Court, Tompkins County, was served with a Formal Written Complaint dated April 28, 1982, alleging that she failed to discharge her judicial duties for 16 months and failed to cooperate with various state agencies inquiring into her conduct. Judge Stafford did not file an answer.

The Commission granted the administrator's motion for summary determination on August 20, 1982, and found respondent's misconduct established. Judge Stafford did not submit a memorandum as to appropriate sanction, nor did she appear for oral argument.

The Commission filed with the Chief Judge its determination dated November 11, 1982, that Judge Stafford be removed from office. A copy of the determination is appended.

Judge Stafford did not request review of the Commission's determination, and the Court of Appeals ordered her removal from office on December 22, 1982.

Matter of Carl W. Simon

Carl W. Simon, a justice of the Galen Town Court, Wayne

County, was served with a Formal Written Complaint dated March 19, 1982, alleging that he failed to deposit, report and remit to the State Comptroller various funds received in his official capacity. Judge Simon did not file an answer.

The Commission granted the administrator's motion for summary determination on August 20, 1982, and found respondent's misconduct established. Judge Simon did not submit a memorandum as to appropriate sanction or appear for oral argument.

The Commission filed with the Chief Judge its determination dated November 12, 1982, that Judge Simon be removed from office. A copy of the determination is appended.

Judge Simon did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on January 14, 1983.

Matter of Virginia New

Virginia New, a justice of the Philadelphia Town Court, Jefferson County, was served with a Formal Written Complaint dated April 26, 1982, alleging that she failed to deposit, report and remit to the State Comptroller various funds received in her official capacity. Judge New did not file an answer.

A hearing was held before a referee, Saul H. Alderman, Esq. Judge New did not file papers with respect to the referee's report to the Commission, nor did she appear for oral argument.

The Commission filed with the Chief Judge its determination dated December 8, 1982, that Judge New be removed from office. A copy of the determination is appended.

Judge New did not request review of the Commission's determination, and the Court of Appeals ordered her removal from office on February 11, 1983.

Determinations of Censure

The Commission completed seven disciplinary proceedings in 1982 in which it determined that the judge involved should be censured.

Matter of Joseph Reich

Joseph Reich, a justice of the Tannersville Village Court, Greene County, was served with a Formal Written Complaint dated December 8, 1980, alleging that he failed to make timely and appropriate deposits of monies received in his official capacity. Judge Reich filed an answer dated January 15, 1981.

A hearing was held before a referee, Richard L. Baltimore, Esq. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Reich appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated January 20, 1982, that Judge Reich be censured. A copy of the determination is appended.

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

Matter of Stanley C. Wolanin

Stanley C. Wolanin, a justice of the Whitestown Town

Court and an acting justice of the Whitesboro Village Court, Oneida County, was served with a Formal Written Complaint dated September 12, 1980, alleging various deficiencies in his court finances and reports. Judge Wolanin filed an answer dated October 8, 1980.

A hearing was held before a referee, Charles T. Major, Esq. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Wolanin did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated April 22, 1982, that Judge Wolanin be censured. A copy of the determination is appended.

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

Matter of Lawrence L. Rater

Lawrence L. Rater, a justice of the Sherman Town Court, Chautauqua County, was served with an amended Formal Written Complaint dated April 14, 1981, alleging that he failed to meet various financial reporting and record-keeping requirements and that he improperly presided over a traffic case in which his brother was the defendant. Judge Rater filed an answer dated May 1, 1981.

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

The Commission filed with the Chief Judge its determination dated May 6, 1982, that Judge Rater be censured. A copy of the determination is appended.

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

Matter of Francis B. Pritchard

Francis B. Pritchard, a justice of the Grand Island Town Court, Erie County, was served with a Formal Written Complaint dated February 20, 1981, alleging five instances of ticket-fixing and failure to disqualify himself in a case involving a defendant against whom a client of respondent's law practice had a pending claim. Judge Pritchard filed an answer dated April 3, 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 Pritchard appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated June 10, 1982, that Judge Pritchard be censured. A copy of the determination is appended.

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

Matter of James J. Leff

James J. Leff, a justice of the Supreme Court, First Judicial District (New York County), was served with a Formal Written Complaint dated January 5, 1981, alleging that for six

months he refused to obey an administrative order assigning him to civil cases. Judge Leff filed an answer dated February 18, 1981.

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 Leff appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated August 20, 1982, that Judge Leff be censured. A copy of the determination is appended.

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

Matter of Albert Montaneli

Albert Montaneli, a justice of the Ancram Town Court, Columbia County, was served with a Formal Written Complaint dated October 14, 1981, alleging that he interceded with the police and another judge on behalf of a defendant who was a friend. Judge Montaneli filed an answer dated November 25, 1981.

A hearing was held before a referee, the Honorable Simon Liebowitz. Both parties filed motion papers with respect to the referee's report to the Commission. Judge Montaneli did not appear for oral argument.

The Commission filed with the Chief Judge its determination dated September 10, 1982, that Judge Montaneli be censured. A copy of the determination is appended.

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

Matter of Angelo D. Roncallo

Angelo D. Roncallo, a justice of the Supreme Court, Tenth Judicial District (Nassau County), was served with a Formal Written Complaint dated April 5, 1982, alleging that he presided over a case involving an insurance commission-sharing practice in which he himself had participated.

Judge Roncallo, his counsel and the Commission's administrator entered into an agreed statement of facts on May 28, 1982, in lieu of an answer, stipulating to the facts substantially as alleged in the Formal Written Complaint. The Commission approved the agreed statement. Both sides filed memoranda with respect to the conclusions of law to be drawn from the stipulated facts and with respect to appropriate sanction. Judge Roncallo appeared by counsel for oral argument.

The Commission filed with the Chief Judge its determination dated November 12, 1982, that Judge Roncallo be censured. A copy of the determination is appended.

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

Determinations of Admonition

The Commission completed five disciplinary proceedings in 1982 in which it determined that the judge involved should be admonished.

Matter of Margaret Taylor

Margaret Taylor, a judge of the New York City Civil Court, New York County, was served with a Formal Written Complaint dated March 3, 1981, alleging misconduct with respect to her retaliatory conduct toward attorneys in two cases. Judge Taylor filed an answer dated April 13, 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 Taylor appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated January 13, 1982, that Judge Taylor be admonished. A copy of the determination is appended.

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

Matter of Ruth Milks

Ruth Milks, a justice of the Perry Town and Village Courts, Wyoming County, was served with a Formal Written Complaint dated February 25, 1981, alleging that she used the prestige of her judicial office to collect a private debt on behalf of her employer. Judge Milks filed an answer dated May 2, 1981.

A hearing was held before a referee, the Honorable John S. Marsh. Judge Milks did not submit motion papers with respect to the referee's report, nor did she appear for oral argument.

The Commission filed with the Chief Judge its determination dated January 20, 1982, that Judge Milks be admonished. A copy of the determination is appended.

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

Matter of Joseph DiFede

Joseph DiFede, a justice of the Supreme Court, First Judicial District (Bronx County), was served with a Formal Written Complaint dated February 29, 1980, alleging that he received financial benefits with respect to four vacation trips arranged by a man who, inter alia, was actively soliciting and was awarded receivership appointments by respondent and other judges in respondent's court. Judge DiFede filed an answer dated September 16, 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 DiFede appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated June 8, 1982, that Judge DiFede be admonished. A copy of the determination is appended.

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

Matter of Alexander Chananau

Alexander Chananau, a justice of the Supreme Court, First Judicial District (Bronx County), was served with a Formal Written Complaint dated February 29, 1980, alleging that he took two vacation trips at discounted rates arranged by a receiver doing business with the court and as to whose cases Judge Chananau had decided motions. Judge Chananau filed an answer dated May 7, 1980.

A hearing was scheduled before a referee, the Honorable James Gibson. The hearing was obviated when the respondent, his counsel and the administrator of the Commission entered into an agreed statement of facts on April 20, 1982, stipulating to the facts substantially as alleged in the Formal Written Complaint. The Commission approved the agreed statement. Both sides filed memoranda with respect to the conclusions of law to be drawn from the stipulated facts and with respect to appropriate sanction. Judge Chananau appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated September 9, 1982, that Judge Chananau be admonished. A copy of the determination is appended.

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

Matter of Anthony J. Certo

Anthony J. Certo, a judge of the Niagara Falls City Court, Niagara County, was served with a Formal Written Complaint

dated February 17, 1981, alleging that he received for his personal use approximately \$10,000 raised in a fund-raising testimonial. Judge Certo filed an answer on March 19, 1981, and an amended answer on July 7, 1981.

A hearing was held before a referee, the Honorable Harry D. Goldman. Both sides filed motion papers with respect to the referee's report to the Commission. Judge Certo appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated December 28, 1982, that Judge Certo be admonished. A copy of the determination is appended.

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

Dismissed Formal Written Complaints

The Commission disposed of four Formal Written Complaints in 1982 without rendering public discipline.

In one of these four matters, the Commission determined that, although the charges in the Formal Written Complaint had been sustained and the judge involved had committed misconduct, issuance of a confidential letter of dismissal and caution was the appropriate disposition.

In a second matter, the Formal Written Complaint was withdrawn without a finding of misconduct, and the judge was cautioned.

In a third matter, the Commission found that the judge

involved had committed misconduct but that, upon the judge's resignation from office, further action was not warranted.

In the fourth matter, after a hearing before a referee, the Commission found that the judge's misconduct was not established and the Formal Written Complaint was therefore dismissed.

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, by issuing a letter of dismissal and caution, can privately call a judge's attention to de minimus violations of ethical standards which should be avoided in the future. Such a communication is valuable since it 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 1982, 26 letters of dismissal and caution were issued by the Commission. In sum total, the Commission has issued 177 letters of dismissal and caution since its inception on April 1, 1978. Of these, 19 were issued after formal charges had been sus-

tained and determinations made that the judges had engaged in misconduct.

Matters Closed Upon Resignation

Eleven judges resigned in 1982 while under investigation or under formal charges by the Commission.

Since 1975, 107 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 1982, the two remaining ticket-fixing matters were concluded. One resulted in censure (Grand Island Town Justice Francis Pritchard, Erie County). The other was closed upon the judge's resignation.

Summary of Ticket-Fixing Cases

The Commission's inquiry into the widespread practice of ticket-fixing is now concluded. Actions taken with respect to ticket-fixing account for the following totals:

- 5 removals;
- 3 suspensions;
- 103 censures, one of which was modified to admonition by the Court of Appeals;
- 32 admonitions;
- 149 letters of dismissal and caution;
- 33 cases closed upon resignation of the judge;

- 56 cases closed upon vacancy of office other than by resignation; and
- 53 dismissals without action.

In its June 1977 report on the assertion of influence in traffic cases, the Commission identified a widespread pattern of ticket-fixing in many areas of New York State. Typically, one judge (or other person of influence) would request special consideration of another judge on behalf of a defendant who had received a traffic summons. In the cases investigated, the requests were usually granted, and the motorists who had been charged with speeding, for example, or even driving while intoxicated, were found guilty of "reduced" charges such as driving with a faulty muffler or some other no-point, non-moving violation. Such "reductions" are not authorized in law, and the use of judicial office to request or grant special consideration is prohibited by the Rules Governing Judicial Conduct. In some cases, charges against the motorist were dismissed altogether as a favor to the requesting judge. In certain cases, the judges requesting favors for their friends and relatives assured the judges who had jurisdiction over the particular cases that the favors would be reciprocated. In almost all the cases investigated by the Commission there was not even a pretense that the defendant motorist was not guilty of the charge.

Many of the judges and justices who appeared before the Commission with respect to specific ticket-fixing charges defended the practice as time-honored and widespread. Both the Commission and the courts have held that such an argument is no defense to

the misconduct inherent in asserting special influence. (See, for example, Matter of Byrne, 42 NY2d[b][1978], in which the Court on the Judiciary held that such favoritism as characterizes ticket-fixing is "malum in se," is "wrong and has always been wrong.")

The detrimental effect of ticket-fixing on the administration of justice is obvious. Those who engaged in the practice created two systems of justice, one for the average citizen and another for people with influence. While most citizens accept the consequences of traffic violations (e.g. fines, points on their licenses, sometimes higher insurance costs), others are treated more favorably because they have the right "connections." The disrespect that such a practice breeds for the entire system of justice is a very serious matter. Ticket-fixing adversely affects fair and efficient police work, allows the guilty to evade responsibility for their actions and diminishes the honest citizen's regard for the courts. Moreover, once tolerated in a single case, favoritism in deciding legal matters may too easily become the basis for adjudicating other cases.

Since the Commission's inquiry into ticket-fixing cases began and various judges and justices have been disciplined, it is a generally accepted view, based on reliable reports from several parts of the state, that the widespread practice of ticket-fixing in New York State has ended. Public confidence in the integrity and impartiality of the courts is consequently enhanced.

To the extent that isolated instances of ticket-fixing occur, the Commission will take appropriate action.

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

Since January 1975, when the temporary Commission commenced operations, 5335 complaints of judicial misconduct have been considered by the temporary, former and present Commissions.

Of the 5335 complaints received since 1975, the following dispositions have been made through December 31, 1982:

- 3509 dismissed upon initial review;
- 1826 investigations authorized;
- 792 dismissed without action after investigation;
- 302 dismissed with caution or suggestions and recommendations to the judge;
- 127 closed upon resignation of the judge;
- 114 closed upon vacancy of office by the judge other than by resignation; and
- 349 resulted in disciplinary action.

Of the 349 disciplinary matters noted above, the following actions have been recorded since 1975 in matters initiated by the temporary, former or present Commission*:

- 38 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;
- 130 judges have been censured publicly;
- 51 judges have been admonished publicly; and
- 59 judges have been admonished confidentially by the temporary or former Commission, which had such authority.

In addition, 107 judges resigned during investigation, upon the commencement of disciplinary proceedings or in the course of those proceedings.

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 1982, the Court had before it five requests for review, two of which had been filed in late 1981 and three of which were filed in 1982. Of these five matters, the Court decided three in 1982 and two are pending.

Matter of Willard H. Harris, Jr.

On November 6, 1981, the Commission determined that Willard H. Harris, Jr., a part-time judge of the Lockport City Court, Niagara County, who is also permitted to practice law, should be removed from office for violating various prohibitions on the practice of law by part-time lawyer-judges in their own courts and before other part-time lawyer-judges in their own county.

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

In its opinion dated June 17, 1982, the Court unanimously accepted the Commission's determination and removed Judge Harris from office. 56 NY2d 365 (1982).

Matter of Carl R. Scacchetti, Jr.

On November 25, 1981, the Commission determined that Carl R. Scacchetti, Jr., a judge of the Rochester City Court, Monroe County, should be removed from office for (i) failing to disqualify himself and for improperly participating in eight cases in which he had personal knowledge of disputed evidentiary facts, (ii) presiding over two proceedings in which the defendant was a close personal friend and from whom he contemporaneously accepted a loan and (iii) presiding over a criminal trial and contemporaneously arranging through a friend to solicit and accept a camera and accessories from the defendant's employer.

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

In its opinion dated June 17, 1982, the Court unanimously accepted the Commission's determination and removed Judge Scacchetti from office. 56 NY2d 980 (1982).

Matter of Patrick J. Cunningham

As noted earlier in this report, the Commission determined on April 20, 1982, that Patrick J. Cunningham, a judge of the County Court, Onondaga County, be removed from office for improperly advising a lower court judge that his decisions would not be reversed on appeals over which Judge Cunningham might preside.

Judge Cunningham requested review of the Commission's determination.

In its opinion dated November 11, 1982, the Court did not accept the Commission's determination of removal. While unanimously holding that Judge Cunningham had engaged in misconduct, the Court in a four to three decision modified the sanction to censure. 57 NY2d 270 (1982).

SPECIFIC PROBLEMS IDENTIFIED BY THE COMMISSION

In the course of its inquiries into individual complaints, the Commission has identified certain types of misconduct which appear to occur periodically and sometimes frequently. Ticket-fixing, which has been discussed at length in previous Commission reports, is one example. Other matters of significance are commented upon below.

Receiving Financial Benefits from Individuals Awarded Appointments by the Court

In 1981 and 1982, the Commission considered four cases in which justices of the Supreme Court were alleged to have taken vacations at special rates arranged by a person who had been awarded receivership appointments in numerous matters before the Supreme Court and was soliciting additional appointments.

Three of the four proceedings resulted in the judges being admonished. The fourth judge was privately cautioned.

The Rules Governing Judicial Conduct specifically prohibit a judge from engaging in financial and business dealings that involve him or her in frequent transactions with lawyers or other persons likely to come before the court. See Section 100.5 (c) (iii) of the Rules. Furthermore, Section 6.1 of the Rules of the Chief Judge (formerly Section 20.4 of the General Rules of the Administrative Board of the Judicial Conference) prohibits a judge from receiving "any gratuity or gift from any attorney or person

having or likely to have any official transaction with the court."

The appearance of impropriety is inevitable whenever a judge has extra-judicial business dealings with a person who regularly appears before him or his colleagues, especially if the judge derives financial benefit from the association, such as by taking vacation trips at special rates. Public confidence in the impartiality of the judiciary is diminished by such conduct.

Of course, direct financial benefit to the judge need not occur for an appearance of impropriety to be created. In previous annual reports, the Commission has commented on several cases in which court-awarded appointments have been based on favoritism and were improper although the judges did not appear to profit personally.

For example, in Matter of Spector v. State Commission on Judicial Conduct, 47 NY2d 462 (1979), the Court of Appeals accepted the Commission's determination that a Supreme Court justice engaged in misconduct and should be admonished for awarding court appointments to the sons of other judges who were contemporaneously awarding appointments to his son in similar matters. In Matter of Kane v. State Commission on Judicial Conduct, 50 NY2d 360 (1980), the Court of Appeals accepted the Commission's determination that a Supreme Court justice engaged in misconduct and should be removed from office for awarding

appointments to his own son and his son's law partner, and for engaging with a co-judge in contemporaneous cross-appointments of his son and the co-judge's brother. In a third case, a now-retired Supreme Court justice awarded several lucrative appointments to his former law partner, his sister-in-law, his son-in-law and his son-in-law's partners. (The judge's retirement precluded the Commission from acting.)

Misuse of the appointment power, and the appearance of impropriety inherent in a judge's accepting personal benefits from individuals receiving court-awarded appointments, are not limited to any one part of the state. Moreover, they are not always so easy to identify as in the example of a judge awarding appointments to a son or daughter, or a judge accepting special vacation rates arranged by a person who receives appointments from the judge and judge's colleagues. Without some meaningful checks and balances to temper a judge's otherwise unfettered discretion in the appointments process, abuses may occur and public confidence in the judiciary would consequently decline. While the Commission will continue to act when misconduct is indicated, improved statewide procedures at the appointment stage itself are necessary to insure that favoritism is avoided, that qualified individuals are designated and that a single system replaces the disparate procedures followed in the various judicial departments. While no system can prevent the occasional incidence of serious misconduct, public confidence in the admin-

istration of justice can only be enhanced by constructive reforms in the way appointments are awarded.

Improper Financial Management
And Record Keeping

In 1982 the Commission rendered five determinations that town court justices be removed from office and three determinations that town court justices be censured for improprieties arising from their failure, in whole or in part, to observe various financial reporting, depositing and remitting requirements. (See Matters of Ronald Lemon, Ronald Lew, Ronald Pulver, Carl W. Simon, Virginia New, Joseph Reich, Stanley C. Wolanin and Lawrence Rater.) The Commission also issued six letters of dismissal and caution in this regard.

Improper and neglected accountings of court monies have been reported on in our last five annual reports and continue to be a problem, especially in those town and village courts in which the judge handles official monies (fines, fees, bail) and has insufficient clerical or administrative assistance in keeping records up to date. While deficiencies in financial management and records keeping most often result from honest mistakes, they sometimes serve to camouflage serious misconduct.

In many cases, cash deficiencies result from the judge's failure to make prompt deposits of court monies in official court bank accounts, and from the failure to make timely remittances of those funds to the State Comptroller as required by law. In some

instances, substantial amounts of court funds are kept for long periods under the judge's personal control, resulting in the inevitable suspicion that the money is being used by the judge. Indeed, in a number of cases before the Commission over the past few years, judges have deposited their personal checks into court accounts to balance their official books.

Improper or neglected posting of court funds and records makes it difficult to assess the work of the court and determine the status of particular matters whose dispositions may have been unduly delayed.

In several annual reports, and again in this one, the Commission recommends greater clerical assistance for the town and village justices throughout the state. Where a town board has available resources, it should make a greater commitment to the court's administration. In addition, the statewide Office of Court Administration and the State Comptroller's Department of Audit and Control should seek continued improvement of the training provided by law to town and village justices. We again propose that such training programs 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 that lack administrative personnel and in which problems have been identified. The cost of operating such a modest program would be more than offset by the prompt reporting and remitting of funds to the State Comptroller and by the consequent decline in the number

of disciplinary proceedings against judges whose financial records raise misconduct issues.

Presiding in Situations Involving
Conflicts of Interest

In 1982 the Commission disciplined five judges for, inter alia, presiding over cases from which they should have withdrawn because of a conflict of interest.

The Rules Governing Judicial Conduct require that a judge be disqualified from a proceeding in which his or her impartiality might reasonably be questioned. Numerous specific examples of such disqualifying conflicts are recited in the Rules, including matters in which the judge's relatives are involved and in which the judge has personal knowledge of factual issues in dispute. See Section 100.3(c) of the Rules.

One judge was removed for presiding over four cases in which his relatives were involved. (See Matter of Ronald Pulver.) In three of those four cases, the judge's nephew was the defendant. A second judge was removed in part for presiding over a criminal proceeding in which he owed a private debt to the defendant. (See Matter of Thomas D. George.)

Three judges were censured for failing to disqualify themselves in cases where recusal was mandated by the Rules. One judge presided over a traffic case in which his brother had been issued a ticket. (See Matter of Lawrence Rater.) In a second matter, a judge presided over a case in which the defendant owed

money to a client of the judge's law firm. (See Matter of Francis B. Pritchard.) In the third instance, a judge heard a case involving an insurance commission-sharing practice in which he himself had participated. (See Matter of Angelo D. Roncallo.)

Public confidence in the integrity and impartiality of the courts requires that a judge preside over legal disputes in a fair and impartial manner. Where a jurist's impartiality or the appearance of impartiality cannot reasonably be assured in a particular case, the integrity of the courts requires the judge to step aside. Often such a decision will rest on the judge's subjective judgment, and disqualification will not be compelling. In such cases the judge could disclose, on the record, the grounds for possible recusal, so the parties may have an opportunity to be heard on the matter. This procedure is suggested by Section 100.3(d) of the Rules Governing Judicial Conduct.

Sometimes, however, disqualification is mandatory and a purely objective standard applies, such as in cases involving the judge's close relatives, defined by the Rules as persons within six degrees of relation to the judge or judge's spouse.

CHALLENGES TO COMMISSION PROCEDURES

The Commission's staff litigated a number of cases in state and federal courts in 1982, involving several important constitutional and statutory issues relative to the Commission's jurisdiction and procedures.

Sims v. Commission (State Court Case)

The petitioner, Buffalo City Court Judge Barbara Sims, brought two CPLR Article 78 proceedings in State Supreme Court to stay or quash a pending disciplinary proceeding. The petitions were dismissed and all stays vacated. The judge is appealing the dismissal of the petitions.

Sims v. Commission (Federal Court Case)

Judge Sims, the Buffalo Chapter of the National Bar Association, and the Northern Region Black and Puerto Rican Political Caucus brought an action in Federal District Court against the Commission, a newspaper, a television station, various editors and others, claiming civil rights violations in connection with the news reporting and investigation of the judge. Asserting violations of their constitutional rights, the plaintiffs sought damages and declaratory and injunctive relief. The plaintiffs' motion for a preliminary injunction was denied. Depositions have been taken. The Commission and other defendants have moved for summary judgment.

Matter of Scacchetti

The Commission had determined in 1981 that Rochester City Court Judge Carl R. Scacchetti should be removed from office. Judge Scacchetti requested review of that determination by the Court of Appeals. The judge asserted, inter alia, that the Court lacked jurisdiction to order his removal since his term of office had expired after his request for review was effected.

The Court accepted the Commission's determination that Judge Scacchetti be removed from office. The Court held that it had jurisdiction to order the judge's removal notwithstanding that the judge's term of office had expired, and that it was implicit in Section 47 of the Judiciary Law, which bars a judge who is removed from holding future judicial office, that expiration of the judge's term did not moot the proceeding.

Matter of Harris

The Commission determined in 1981 that Lockport City Court Judge Willard H. Harris, Jr., should be removed from office. Judge Harris requested review of that determination by the Court of Appeals. The judge asserted, inter alia, that the Commission violated his due process rights; that the combination of investigative and adjudicative functions in the Commission was unconstitutional; that the Civil and Criminal Divisions of the Lockport City Court were separate courts; and that the Lockport City Charter exempted him from the restrictions on the practice of law by part-time judges imposed by the Rules Governing Judicial Conduct.

The Court accepted the Commission's determination that Judge Harris be removed from office, held that the two Lockport court divisions were consolidated in 1964 under the provisions of the Uniform City Court Act, and concluded that it was thus improper for the judge or his law partners to have practiced law in either division of the Lockport City Court. The Court of Appeals also held that by allowing temporarily-appointed City Court judges and their law partners to appear before him in the practice of law, the judge violated established ethical standards requiring a judge "to studiously avoid all taint of impropriety."

Ritz v. Commission

Brant Town Justice Kirk Ritz, who was scheduled to give testimony before a Commission member in the course of an investigation, brought an action in Supreme Court, Erie County, to enjoin the Commission from proceeding until certain litigation, about which the judge was scheduled to testify, was concluded. Judge Ritz was granted a stay of Commission proceedings, without prior notice to the Commission that a stay had been requested. In January 1983, the stay was vacated by Supreme Court Justice James B. Kane on the grounds that a state agency cannot be stayed in an ex parte proceeding. Judge Ritz thereafter appeared to testify, and his action in Supreme Court was discontinued on stipulation of the parties.

Friess v. Commission

New York City Criminal Court Judge Alan I. Friess, who had been served with a Formal Written Complaint, initiated a CPLR Article 78 proceeding in Supreme Court, by order to show cause, seeking a variety of declaratory and injunctive relief, including: a declaration that the investigative conduct of the Commission violated Section 7000.3(f) of the Commission Rules, in that he was not given an adequate opportunity to respond to the complaint against him during the investigation; severance of the two charges in the Formal Written Complaint, to be heard separately by two referees; recusal of the designated referee and a right to a voir dire of a new referee; a right to know what sanction was being sought; and a right to a higher standard of proof than preponderance of the evidence.

Judge Friess was granted a temporary stay of the scheduled hearing, pending determination of his petition, and the court records were ordered sealed. Argument on the petition was heard in camera by Justice Kenneth Shorter, who continued the stay and sealing, pending determination of the petition.

In a decision entered June 23, 1982, Justice Shorter ordered the two charges severed, unsealed the court records and denied the application for other relief. The Commission appealed on the severance issue; Judge Friess cross-appealed on the issue of the standard of proof.

In a decision dated December 16, 1982, the Appellate Division, First Department, reversed the decision of the lower court to sever the two charges and otherwise upheld the decision to deny the remainder of Judge Friess' petition. The court stated that under the circumstances "there is no warrant for the costly and time-consuming duplicative effort inherent in a severance of the charges with the requirement that each be heard before a different referee." In response to the judge's arguments for a higher standard of proof, in which he analogized his position as the respondent in a disciplinary proceeding to that of a defendant in a criminal proceeding, the court stated that the disciplinary and criminal proceedings were not synonymous; the purposes and penalties were different, and "no 'fundamental liberty interest'" was at stake in the disciplinary proceeding.

Judge Friess' motion for leave to appeal to the Court of Appeals was denied, and the hearing was held before the referee.

Hendley v. Stern

The District Attorney of Warren County, H. John Hendley, by an order to show cause, sought to vacate a Commission subpoena requiring the testimony of an assistant district attorney and a former assistant district attorney in connection with a Commission investigation. The basis of the District Attorney's objection was that the witnesses would have to refer to official records, which he claimed could only be produced upon a judicial subpoena. The District Attorney was granted a stay of Commission

proceedings, without prior notice to the Commission that a stay had been requested. The stay was vacated by Appellate Division Justice Michael E. Sweeney on the grounds that a state agency cannot be stayed in an ex parte proceeding. Argument was thereafter heard by Supreme Court Justice Thomas E. Mercure on the motion to quash the subpoena, and a stay was issued pending a decision on the motion to quash.

In a decision dated November 24, 1982, Judge Mercure denied the motion to quash the subpoena. The court held that the Commission may issue its own subpoena for the records of a district attorney's office and that CPLR 2037, requiring a judicial subpoena, was inapplicable. The court also vacated the stay against the Commission.

THE FAIRNESS OF COMMISSION PROCEDURES

From time to time, various Commission procedures are criticized as being unfair to the judge under inquiry.

When the Commission is challenged in court, typically in a proceeding brought by a judge under Article 78 of the CPLR, its staff responds with appropriate legal papers and argument on the issues in litigation. In every court challenge to our constitutional and statutory authority, and to our rules and procedures, covering over a hundred separate issues in dispute, the Commission has prevailed. In the history of this Commission, no rule or operating procedure has been voided by the courts. No jurisdictional grant of authority has been held as overbroad or otherwise unconstitutional.

In this and previous annual reports, we have reported on the major challenges filed and decided by the courts in the preceding 12 months. Despite this record, however, criticism of the Commission's procedures has continued, and it seems appropriate to address some of that criticism here.

The "Star Chamber" Analogy

Sections 44 and 45 of the Judiciary Law require that all Commission proceedings and records be confidential, with three exceptions. First, a judge under inquiry has the right to a public hearing upon written request, pursuant to Section 44. Second, a judge may waive confidentiality as to certain Commission records,

pursuant to Section 45. Third, upon the Commission's determination to admonish, censure, remove or retire a judge, the entire record of the proceeding becomes public, pursuant to Section 44. The Commission does not have the discretion to make a pending proceeding public; only the judge is given that right.

In a number of public discussions, and in at least one Article 78 proceeding, the Commission has been accused of conducting "star chamber" proceedings. The pejorative connotation of the charge is obvious. The Star Chamber was an English court in the 15th, 16th and 17th centuries, characterized primarily by secrecy and often viewed as arbitrary and oppressive.

It is ironic that some members of the judiciary have criticized the confidentiality of the Commission's proceedings in such terms, since only the judge and not the Commission has the authority to make a hearing public, and since the overwhelming majority of judges under inquiry decline to do so. In the history of the Commission, out of more than 200 formal disciplinary proceedings, only four judges have chosen to exercise the right to a public proceeding. Moreover, when the legislation setting forth the Commission's procedures was enacted, it was the Commission itself which sought to make hearings public, while various judicial associations, among others, sought to keep them confidential.

As to the suggestion of arbitrariness and oppressiveness connoted in the "star chamber" characterization, the Commission

notes that in every one of its 16 cases reviewed by the Court of Appeals to date, the Court has accepted the Commission's finding that the judge involved committed misconduct and should be disciplined. In ten of those cases, the Court also accepted the specific sanction recommended by the Commission. In five cases the Court imposed a lesser public discipline. In one case the Court imposed a greater sanction. Furthermore, as noted earlier, in the more than 100 procedural issues raised by judges and litigated in the courts, the Commission's jurisdictional authority and procedures have been sustained every time.

Due Process Guarantees

The Commission is sometimes criticized as denying due process rights to judges under inquiry. Various judges and lawyers suggest that judges before the Commission do not have appropriate discovery rights, or that judges have fewer protections than criminal defendants.

The nature of a disciplinary proceeding is civil and administrative, not criminal. The analogy between a judge and a criminal defendant is therefore inapt at the outset. The judge who commits misconduct is not fined and does not go to jail. The Commission cannot suspend the disciplined judge's license to

practice law. No fundamental liberty interest is at stake in a judicial disciplinary proceeding, as the Appellate Division recently held. (See Friess v. Commission, in this report.)

Nevertheless, the judge has broad due process protections as provided by the Commission's governing statute and internal procedures.

For example, the Judiciary Law requires that at the judge's request, no later than five days before a hearing, the judge must be provided, without cost, copies of all documents the Commission intends to introduce, copies of all written statements by witnesses the Commission intends to call and, in any case with or without request, copies of any exculpatory data and material relevant to the complaint. The Judiciary Law does not grant the Commission reciprocal rights vis a vis the judge. While some suggest that these liberal guarantees be expanded, none suggests that the Commission be granted even a single cross-discovery right, such as access to the statements of the judge's witnesses.

Moreover, although the CPLR does not govern Commission proceedings, the Commission has directed its staff to be more broad than the CPLR in areas such as setting return dates on motions, in all cases except those in which time is of the essence. In no case, however, is staff to require less time than provided by the CPLR.

The "One-Tier" System

There are basically two types of judicial disciplinary commissions -- those which investigate complaints and, when appropriate, recommend that a court commence a formal hearing, and those which investigate complaints and, when appropriate, conduct such formal hearings themselves. The former arrangement is known as a "two-tier" system, the latter as a "one-tier" system.

Forty-one states and the District of Columbia have a one-tier judicial disciplinary system. New York is among these. Nine states have a two-tier system.

The one-tier system, in which investigative and adjudicative functions are housed within the same agency, has been criticized by various judicial spokesmen as being inherently prejudicial to the interests of the judge under inquiry.

The New York State electorate overwhelmingly endorsed creation of the one-tier commission in the 1977 election, and the constitutionality of the one-tier system has been upheld. In re Nowell, 237 S.E.2d 246(1977). See also, Matter of Seraphim, 295 N.W.2d 485(1980) and Lantz v. Florida Judicial Qualifications Commission, unreported, No. 80-2211-Civ-EPS, October 2, 1980.

In administering this system, the Commission promulgated a rule prohibiting those members of staff who investigate or try cases against a judge from later assisting the Commission in rendering its determination. Indeed, the Commission bifurcated its professional staff, appointing a clerk who would not partici-

pate in an investigative or adversarial capacity in any case, and who would assist the Commission and Commission-designated referees. At the same time, the Commission prohibited any of its investigative and litigating personnel to assist the Commission in its deliberations in any formal proceeding.

Prior to the advent of the one-tier system in New York, judicial discipline was the province of the courts. The four Appellate Divisions and a special Court on the Judiciary shared responsibility for hearing and deciding charges of judicial misconduct. A major goal in the change to a one-tier commission system was to relieve judges of the responsibility for disciplining their colleagues, a system which gave rise to legislative and public concern.

However, in devising a one-tier structure, the New York State Legislature did not remove the courts from the judicial disciplinary process. The Court of Appeals has the power to review Commission disciplinary determinations, and the Commission is subject to the jurisdiction of the courts on procedural and other matters raised in an appropriate fashion by judges and others. After a judge who is the subject of a Commission determination requests review by the Court of Appeals, the Court has the power to accept or reject the Commission's findings, conclusions and determined sanction, or to make its own de novo findings of fact and conclusions of law. If the Court disagrees with the determination, it may substitute its own judgment for the

Commission's and render any prescribed discipline or no discipline at all. At that stage, then, the Commission's determination is no more than a recommendation. Thus, it is the Court of Appeals, New York's highest court, which has the final authority to impose discipline on judges.

Challenges to Referees

The Judiciary Law authorizes the Commission to designate referees to preside over hearings.

Some critics of the Commission have suggested that the Commission should not have such referee-designating authority, or that a judge under inquiry should have the right to approve a particular referee designated in the case. Others have suggested that some referees are apt to report to the Commission what they think the Commission wants to hear, in order to guarantee future assignments. Such attacks on the referee-selection process are wholly unwarranted.

The Commission assembled a list of referees by soliciting recommendations from the presiding justices of the Appellate Divisions, the presidents of various bar associations, the deans of New York State law schools, and others. The Commission compiled a list of 65 referees, of whom 25 are former judges, including former judges of the Court of Appeals and former justices of the Appellate Division. The other 40 are experienced attorneys, including former presidents and other officers of the state and local bar associations. The list is periodically revised

and updated.

In every matter which has proceeded to a Formal Written Complaint, the selection of the particular referee to conduct the hearing is made by the Commission, pursuant to law, without the presence or participation of any of its staff except the clerk of the Commission.

As reported earlier in this report, one judge challenged the Commission in an Article 78 proceeding and, inter alia, asserted a claim that he should be permitted a voir dire of prospective referees. The claim was dismissed. (See Friess v. Commission.)

Part-Time and Full-Time Judges

There are 3500 judges and justices in the state unified court system, over whom the Commission has disciplinary jurisdiction. Approximately 2400 (or about two-thirds) of these are part-time town and village justices. Roughly 2000 of those 2400 are not lawyers.

Some critics of the Commission have suggested that the Commission has concentrated too much of its time and resources in pursuing allegations of misconduct against these town and village justices, and not enough in pursuing misconduct by the full-time judiciary. Such criticism was especially advanced during the Commission's inquiry into ticket-fixing, which primarily involved the town and village courts. (The overwhelming percentage of cases in town and village courts involve traffic violation mat-

ters, whereas most cities have administrative agencies which are responsible for processing traffic matters.)

One might logically argue that the Commission's cases involve more town and village justices simply because they comprise two-thirds of the state's judiciary, and the statistics confirm this view.

Excluding ticket-fixing matters, the Commission has disciplined 78 judges, 45 of whom were town and village justices and 33 of whom were judges of city and higher courts. Thus, while 67% of the state's judiciary sit in town and village courts, approximately 57% of the Commission's non-ticket-fixing decisions have involved those judges; conversely, while 33% of the judiciary sit on higher courts, 43% of the Commission's non-ticket-fixing cases have concerned them. These figures do not reveal an inordinate concentration on town and village courts.

Anonymous Complaints

The Judiciary Law requires all complaints to the Commission to be in writing and signed. The law also provides that, in those cases where the Commission initiates a complaint on its own motion, the administrator of the Commission file a written, signed complaint as part of the Commission's records.

From time to time, the Commission receives anonymous complaints. Most of these are frivolous on their face and are accordingly dismissed without investigation. Occasionally an anonymous complaint which does not appear frivolous will be

received. In such cases the Commission will authorize an investigation and direct the administrator to file a written, signed complaint as part of its records.

Some judicial spokesmen have proposed that the Commission no longer be empowered to investigate complaints which are submitted anonymously.

Many people, including some lawyers, are intimidated by the awesome power of the courts and judiciary and are understandably reluctant to make complaints at all. Others are unfamiliar with the operation of the Commission and are inhibited by fear of rebuke, or even retribution, from revealing their identities when they submit a complaint.

Most often the complaint cannot be substantiated without the anonymous complainant and so will be dismissed. On occasion, however, the Commission will consider a complaint which can be corroborated by documentation or other sources beyond the complainant and which, if proved, would constitute judicial misconduct. There is no sound reason to ignore such complaints. Indeed, it is in the public interest to pursue such matters.

One anonymous complaint the Commission considered resulted in the removal of a judge from office, which the Court of Appeals upheld upon review. See, Matter of Kane, NYLJ Jan. 3, 1980, p. 4, col. 1, accepted 50 NY2d 360 (1980). In that case, the complainant sent the Commission published listings from a law journal showing that two judges had awarded court business to

each others' relatives in a series of contemporaneous cross-appointments. The complainant's decision not to be identified was unimportant, and none of the judge's rights was lost or impaired by that decision. There was no reason in law or logic to refrain from investigating the matter. It is interesting to note that the issue of the complainant's anonymity was never even raised by the judge.

Implicit in the statements of those who would invalidate anonymous complaints is the view that somehow the Commission would give credence to even frivolous allegations, that a judge would be disciplined solely on the basis of a meritless complaint, that some "faceless accuser" could diminish a judicial reputation. Such fears are entirely without merit. No judge can be disciplined in this state without a complete record upon which a finding of misconduct can be justified and upheld by the Court of Appeals, and in which the judge is given notice and opportunity to be heard, to adduce and contest evidence, and to appear before the Commission in person, with counsel at any and all stages of the proceedings.

Moreover, the Commission itself is composed of four judges, five lawyers and two lay people, each of whom is readily capable of distinguishing between a complaint which may have merit and one which does not. To suggest that undue credence would be given to a frivolous anonymous complaint is to underestimate the integrity of the Commission and to misunderstand the formal process by which a judge is disciplined.

The Independence of the Judiciary

Various critics of the Commission have claimed that the Commission's cases and even its existence have had a "chilling effect" on the independence of the judiciary. It is suggested that judges are somehow less willing to make appropriate decisions because they fear the scrutiny of the Commission with regard to those decisions.

The Commission's jurisdiction, of course, is limited to matters of misconduct. The Commission is not a court of law. It does not have the authority to rule upon the merits of a judge's decisions or otherwise act in an appellate capacity. It cannot reverse trial court decisions or remand cases for rehearing. No Commission determination has ever disciplined a judge for properly exercising discretion in setting bail, imposing fines or fixing jail terms. Even when the Commission determines that a judge's rulings were motivated by misconduct, the Commission can only discipline the judge; its determination has no legal effect, per se, on the misconduct-motivated ruling itself.

After five years of experience with the present Commission, there is a solid record of cases by which to evaluate its performance.

CONCLUSION

Public confidence in the integrity of the judiciary is indispensable to the rule of law. The members of the State Commission on Judicial Conduct believe the Commission contributes to that goal and to the fair and proper administration of justice.

Respectfully submitted,

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.

(Term Commenced April 1, 1982)

David Bromberg, Esq.

E. Garrett Cleary, Esq.

Mrs. Dolores DelBello

Michael M. Kirsch, Esq.

(Served through March 31, 1982)

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 is presently a Justice of the Appellate Division, First Department, to which he was appointed by Governor Carey in October 1982. He had been appointed a Justice of the Supreme Court for the First Judicial District by Governor Carey in September 1976 and was 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.

JOHN J. BOWER, ESQ., is a graduate of New York University and New York Law School. He is a partner in Bower & Gardner in New York City. He is a Fellow of the American College of Trial Lawyers, a Member of the Federation of Insurance Counsel and a Member of the American Law Institute.

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.

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. He and his wife Patricia are the parents of seven children.

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 from 1974 to March 1982 he was 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 Lankenau Kovner & Bickford. Mr. Kovner has been a member of the Mayor's Committee on the Judiciary since 1969. He was a member of Governor Carey'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 Council on Judicial Administration. 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. Mr. Kovner serves in the House of Delegates of the New York State Bar Association.

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 three 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 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 Union College. Mrs. Robb is a member of the Advisory Committee of the Center for Judicial Conduct Organizations of the American Judicature Society. Mrs. Robb received an honorary degree of Doctor of Law from Siena College, Loudonville, in 1982. She serves on the Visiting Committee for Fellowships and Internships of the Nelson A. Rockefeller Institute of Government. She is the mother of four children and grandmother of nine. 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 Justice of the Supreme Court, First Judicial District (New York County), and served previously as a Judge of the Civil Court of the City of New York and as an Acting Justice of the Supreme Court. Justice Shea is a Director of the Association of Women Judges of the State of New York, a Vice President of the New York Women's Bar Association, a Fellow of the American Bar Foundation, a Fellow of the American Academy of Matrimonial Lawyers, and an advisor to the American Bar Association's Special Committee on the Resolution of Minor Disputes. She is also a member of the Association of the Bar of the City of New York and serves on 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.

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, ESQ., 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 the judge
- 2 cases closed upon expiration of the judge's term
- 1 proceeding closed without discipline and 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, 1979 and 1980 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.

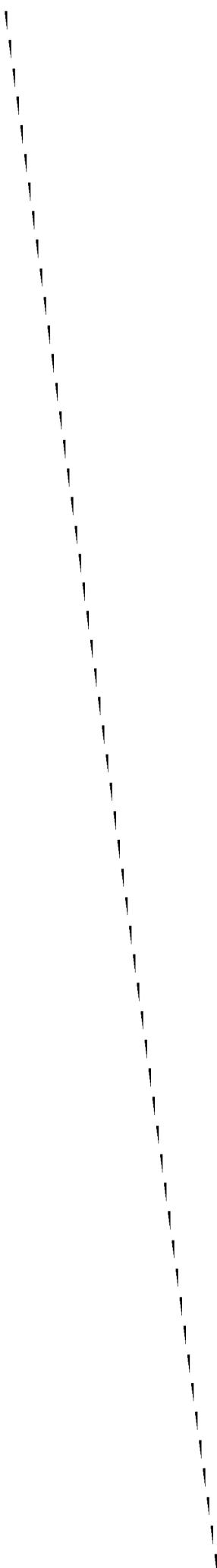
The last five of these 32 proceedings were concluded in 1980, with the following results, reported in greater detail in the Commission's previous annual reports:

- 4 judges were removed from office;
- 1 judge was suspended without pay for six months;
- 2 judges were suspended without pay for four months;
- 21 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.

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. The Court on the Judiciary was abolished, pending completion of those cases which had already been commenced before it. 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

APPENDIX C

Determinations
Rendered in 1982

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

RAYMOND E. ALDRICH, JR.,

a Judge of the County Court,
Dutchess County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin--Not Participating
Honorable Felice K. Shea--Not Participating
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Raymond S. Hack (Alan W. Friedberg,
Of Counsel) for the Commission

Peter L. Maroulis for Respondent

The respondent, Raymond E. Aldrich, Jr., a judge of the County Court, Dutchess County, was served with a Formal Written Complaint dated June 16, 1981, alleging that he presided over two sessions of court while under the influence of alcohol. Respondent filed an answer dated July 9, 1981.

By order dated July 10, 1981, the Commission designated the Honorable Raymond Reisler referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on September 15, 22, 23 and 24 and October 6, 1981, and the referee filed his report on March 11, 1982.

By motion dated April 19, 1982, the deputy 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 May 11, 1982, and, in

mitigation, asserted respondent's status as a recovering alcoholic. The deputy administrator filed a reply on May 14, 1982.

The Commission heard oral argument on May 20, 1982, at which respondent appeared with counsel. Thereafter, the Commission requested additional memoranda and reargument, which was held on June 29, 1982. Respondent appeared with counsel for reargument. Thereafter the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a judge of the County Court, Dutchess County, continuously since 1969.

2. On June 13, 1980, respondent, sitting as an acting judge of the Family Court, presided at the disposition in the juvenile delinquency proceeding involving Donald G. (Docket No. D-254-80) and Michael O. (Docket No. D-255-80).

3. Prior to the commencement of the proceeding on June 13, 1980, respondent had consumed alcoholic drinks.

4. While presiding over the proceeding on June 13, 1980, respondent was under the influence of alcohol.

5. During the course of the proceeding on June 13, 1980, at which juveniles and their parents were present, respondent used profane, improper and menacing language, made inappropriate racial references and otherwise behaved in an inappropriate and degrading manner, such as noted below.

(a) Respondent addressed the juveniles before him with respect to their prospective experience in the custody of the Department of Correction by stating, inter alia:

You are in with the blacks from New York City, and you don't dare go to sleep because if you do you will probably be raped, and not one, there may be five.... When they get you behind those cell bars they will rape the shit out of you.... You are going to be with the blacks in New York. You understand that?

(b) Respondent engaged in a verbal altercation with one of the juveniles before him, insisting that the juvenile have a shorter haircut. Respondent threatened "to bring down two deputies and a barber, and we will give Mr. O. a hair cut." Respondent then held up a pair of scissors. Respondent also told the juvenile: "Look, I am tough, Mike. I love a challenge. I love a kid who wants to bullshit a judge."

6. During the course of a conference in chambers on June 13, 1980, with the attorneys in the proceeding involving Donald G. and Michael O., respondent

referred to, described and characterized Dutchess County Executive Lucille Pattison in profane, obscene and vulgar terms, such as "cunt" and "pussy." In a telephone conversation with Ms. Pattison on that same date, respondent was hostile and incoherent.

As to Charge II of the Formal Written Complaint:

7. On March 19, 1981, respondent was assigned to conduct hearings at the Mid-Hudson Psychiatric Center involving persons detained therein. The hearings were scheduled to commence at 10:00 a.m.

8. Prior to his arrival at the Mid-Hudson facility, respondent had consumed alcoholic drinks. He arrived at the facility at 11:00 a.m. and was under the influence of alcohol.

9. Respondent arrived at the facility driving his automobile. At the entrance gate, respondent addressed Michael Weymer, the security guard on duty, and demanded to be allowed to drive his car into the facility. After Mr. Weymer consulted a superior and received permission to allow respondent to drive into the facility, respondent held the point of a large hunting knife against Mr. Weymer's body, frightening Mr. Weymer. While thus brandishing the knife, respondent addressed remarks of a racial character to Mr. Weymer, who is white.

10. When respondent appeared at the facility hearing room to preside over the scheduled hearings, his speech was slurred and rambling, his face fligid, his eyes bloodshot and his equilibrium unsteady. While on the bench respondent conducted himself in a bizarre and inappropriate manner, without due regard for the nature of the proceedings. Respondent was incapable of presiding properly.

11. As a result of respondent's incapacity, the attorneys, doctors and court personnel present for the hearings agreed upon adjournments.

Additional findings:

12. On November 23, 1980, five months after his conduct in the delinquency proceeding underlying Charge I of the Formal Written Complaint, respondent entered Highwatch Farms in Kent, Connecticut, for treatment for alcoholism. He abstained from the use of alcohol from then until February 20, 1981, one month before his conduct at the Mid-Hudson facility underlying Charge II of the Formal Written Complaint.

13. From April 6, 1981, to date, respondent has been a member of Alcoholics Anonymous, which holds meetings every day at locations near respondent's residence. Respondent attends approximately 70% of those meetings. Since April 2, 1981, respondent has abstained from the use of alcohol.

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(a)(1) through (5) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2[a] and 100.3 [a][1] through [5]) and Canons 1, 2A and 3A(1) through (5) 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 acted in a manner that renders him unfit to continue as a judge.

Twice respondent was intoxicated while on the bench. Twice he presided and attempted to render decisions while his capacity to do so was significantly diminished.

The particular conduct respondent exhibited on these occasions was egregious. In the first incident, he used profane, vulgar language in the presence of juveniles and their parents, engaged in a verbal altercation with one of the juveniles and made offensive references of a racist character about black people from New York City. Later in chambers, in a conference with attorneys, he made obscene and vulgar references of a sexist character about the Dutchess County Executive, whom he then addressed in a hostile and incoherent manner over the telephone.

In the second incident, while en route to a hearing at the Mid-Hudson Psychiatric Center, respondent brandished a weapon and threatened a security guard on duty at the facility and again made public remarks of a racial character. Thereafter he appeared at the hearing but was unable to preside properly.

Respondent's acts of misconduct, standing alone, are of sufficient gravity to warrant termination of his service as a judge. His racist, sexist, vulgar remarks, publicly uttered during the performance of his official duties, diminished the esteem of the court and the dignity of judicial office. His repeated use of racist remarks and his threatening a security officer with a hunting knife were shocking and outrageous.

Respondent is an alcoholic. His misconduct was stimulated by his drinking. Respondent's alcoholism, however, does not relieve him of responsibility for his misconduct, nor does it exempt him from discipline. However sympathetic we are to his circumstances, and however hopeful we are that he will successfully rehabilitate himself, the effect of respondent's alcoholism has been to cast grave doubt on his efficacy as a judicial officer.

It is simply intolerable for a judge to act in his official capacity while under the influence of alcohol. The very presence on the bench of an intoxicated judge, whose ability to reason is thus impaired, undermines a system of law requiring sound, reasoned, dispassionate judgments. Moreover, respondent's insistence at the hearing that, apart from intoxication, his actions were not improper, demonstrates that he fails to appreciate the gravity of his misconduct and reflects adversely on both his judgment and appreciation of his role and responsibility as a judge.

In determining the appropriate sanction to be imposed upon a judge

whose misconduct is established, the Commission must balance its responsibility to ensure to the public a judiciary beyond reproach and its responsibility to deal humanely and fairly with the individual judge. As we have observed previously, where "the misconduct is so serious and so clearly reflects a lack of fitness that public confidence in the integrity of the individual judge is irretrievably lost...the public interest can adequately be protected...only by removal of the judge from office" (cf, Matter of Culver Barr, unreported Determination, October 3, 1980; judge censured for off-the-bench conduct).

The Constitution empowers the Commission to render one of four determinations when misconduct or disability is established: admonition, censure or removal for cause, or retirement for disability (Article VI, Section 22). Respondent and two of our dissenters suggest that the Commission should engraft upon this constitutional provision a new determination, the essence of which would be to discipline respondent conditionally while monitoring his recovery from alcoholism. Respondent suggests that he would accept such a determination and stipulate to a term that would make his removal automatic should another alcohol-related incident occur. Respondent's suggested determination is outside the Commission's constitutional authority.

The overriding need for public confidence in the judiciary does not justify conditional discipline in this case. The integrity of respondent's court would be hopelessly compromised if those who stood before him were reasonably to question his sobriety or wonder with anxiety if another alcohol-related incident was imminent. Placing such a burden on the court would be of particularly dubious merit, particularly since respondent's record of rehabilitation is already blemished. After the first alcohol-related incident, respondent sought treatment, then stopped. Shortly thereafter the second alcohol-related incident occurred. Under these circumstances, the risk to the public of leaving respondent on the bench is not warranted.

Moreover, the suggested disposition proposed by respondent and the dissenters would necessarily involve the abdication by this Commission of its responsibility and would be an improper delegation of its authority. To repose in the hands of others the power to effect the removal of a judge from office clearly violates the constitutional and statutory judicial disciplinary structure, which authorizes the Commission to determine that a judge should be removed and carefully reposes in the Court of Appeals the actual power to do so.

In Quinn v. State Commission on Judicial Conduct, 54 NY2d 386 (1981) the Court of Appeals held that there is cause for terminating the services of an unfit judge whose alcoholism results in misconduct unrelated to the judicial function. In the instant case, the misconduct stimulated by respondent's alcoholism occurred on the bench and directly impaired the judicial function. Respondent's conduct prejudiced the administration of justice and brought the judiciary into disrepute. Public confidence in the integrity of his court is irretrievably lost.

For the reasons heretofore noted, termination of respondent's judicial services is appropriate. The question remains, however, as to the appropriate manner of effecting that termination: removal or retirement.

In Quinn, the Court of Appeals noted: "When misconduct is the result of alcoholism, retirement for disability may be most appropriate in cases where

discretion is called for." 54 NY2d at 393.

In oral argument before the Commission, in addition to arguing against removal and in favor of the conditional discipline noted above, respondent steadfastly maintained that he was not disabled and therefore that retirement would be an inappropriate determination. As evidence of his capacity to serve, respondent pointed to his membership in Alcoholics Anonymous, his status as a "recovering alcoholic" and his effective discharge of judicial duties since the second alcohol-related incident.

The essence of this matter involves not respondent's alcoholism but the nature of the misconduct he exhibited while under its influence, the consequent loss of public confidence in the integrity of his court, and his failure to understand that, whether or not he was intoxicated, his conduct was egregiously wrong. While respondent's alcoholism was a stimulus for his misconduct, it is not for alcoholism that he must be disciplined. Respondent must be relieved of office because the totality of his conduct renders him unfit to be a judge. In these circumstances, retirement for disability would not be appropriate.

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

All concur, except for Mr. Bower, Mr. Cleary and Judge Ostrowski, who dissent only with respect to sanction in separate opinions.

Dated: September 17, 1982

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

RAYMOND E. ALDRICH, JR.,

a Judge of the County Court,
Dutchess County.

DISSENTING
OPINION BY
MR. CLEARY

I dissent as to sanction only and vote that respondent be censured.

Respondent's misconduct occurred while he was suffering from "alcoholism", which has been defined by the legislature of this state as "a chronic illness in which the ingestion of alcohol usually results in the further compulsive ingestion of alcohol beyond the control of the sick person to a degree which impairs or destroys his capacity to function normally within his social and economic environment and to meet his civic responsibilities." (Mental Hygiene Law, §1.03, subd. 13). I feel that he is now a "recovered alcoholic", which has been defined as "a person with a history of alcoholism whose course of conduct over a sufficient period of time reasonably justifies a determination that the person's capacity to function normally within his social and economic environment is not likely to be destroyed or impaired by alcohol." Ibid, subd. 15.

While the respondent's conduct was intolerable, I feel his alcoholism at the time may be given consideration in determining the appropriate sanction, especially when he has taken the necessary steps to cure himself of the illness.

This result would apparently not be inconsistent with the thinking of the Court of Appeals, which has recently told us that the proper legal response to alcoholism "is still subject to debate and adjustment." (Matter of Quinn v. State Commission on Judicial Conduct, 54 NY2d 386, 393).

I am not convinced that removal is essential, and because of this uncertainty, I vote that respondent, whose record of disposition of cases compares "very favorably" with other County Judges in the Ninth Judicial District, should be censured. I also note that during World War II, respondent participated in the invasions of Africa, Sicily, Salerno, Anzio and Normandy.

Dated: September 17, 1982

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

RAYMOND E. ALDRICH, JR.,

a Judge of the County Court,
Dutchess County.

DISSENTING OPINION BY
MR. BOWER IN WHICH
JUDGE OSTROWSKI JOINS

I dissent from the majority on the issue of sanctions.

While misconduct has been amply established, to remove the respondent from judicial office is an act of judicial overkill. The harshness of the punishment simply does not fit the crime. Additionally, the majority failed to take into consideration the report of the referee in its essential findings of fact that the respondent is an alcoholic who qualifies for the legal definition of a "recovered alcoholic" and whose misconduct was deeply rooted in his disease.

The facts are virtually uncontested. Respondent has been a County Court judge since 1969. For some three years prior to that, he had been a Family Court judge. He has been assigned at various times to the Supreme Court, the County Court, the Family Court and the Surrogate's Court. His reputation for ability, integrity and veracity has been high, both as a judge and as a practicing lawyer. He has led a useful and unblemished life and has discharged the responsibilities of his judicial office more than adequately.

Both charges of misconduct arise from two isolated acts committed when respondent was inebriated. The first one occurred on June 13, 1980, when he used regrettable language in Family Court. Without condoning such grossly improper tactics, it is easy to see that respondent, in his inebriated state, thought this could be an effective deterrent. His use of a mild expletive while on the bench and his reference to a public official in four-letter words off the bench in a conference with attorneys, while in bad taste, do not rise above the trivial. His phone call to the public official during the same incident is but an example of drunken rambling. It is clear that the respondent's conduct on that day was indeed the result of his having been inebriated. To infer that he is either a racist or a sexist from such conduct is unwarranted.

The second act of misconduct took place some nine months later. In the intervening period, respondent had undergone some treatment for alcoholism but reverted to drinking and eventually, some nine months after the first incident, while at the Mid-Hudson Psychiatric Institute, he engaged in further misconduct.

He was unable to preside on that day in a rational and judicial manner and his acts toward the personnel of the hospital, counsel, etc., were clearly those of someone who had had too much to drink. While such behavior is unbecoming a judge and certainly reflects poorly on the judiciary, it certainly does not rise to the gravity where it would justify removal. The same is true of the first group of incidents. Yet, in some curious fashion, two incidents of moderate misconduct, while committed in an inebriated state, neither one of which would be grounds for removal, in the minds of the majority somehow are sufficient for the imposition of the gravest sanction against a judge.

The defense of mitigation has been extensively litigated and argued. It seems well established, and the referee so found, that after the second incident respondent engaged in an effort of the most stringent nature to cure himself of his alcoholic habit. The record is uncontradicted that in the past 15 months the judge has religiously attended the Alcoholics Anonymous meetings on an average of five to six times a week. He has requested and received the aid of the New York State Bar Association Committee on Alcoholism and has someone from that committee monitoring his performance both directly and through the AA program. His judicial performance merited praise from the administrative judge of his district, who testified as a witness before the referee. He has sat by assignment in the Supreme Court as well as in his other courts and has discharged his duties better than many of his colleagues. He established that he is indeed a "recovered alcoholic" as defined by the Mental Hygiene Law Section 1.03 (15). Parenthetically, the same statute (Section 19.07, subdivision 17) discusses the remedy accorded to recovered alcoholics with respect to rights or privileges impaired or forfeited as a result of their former disease and discusses the applications and benefits of anti-discrimination laws.

The focus of the majority's position is that the quality of misconduct on those two isolated occasions requires that respondent be removed from judicial office. Indeed, the majority adopted the position taken by counsel for the Commission during oral argument, which urged that because the quality of the acts clearly established that respondent, on those two isolated occasions, was unfit to perform his office as a judge because of impairment due to alcohol, he must be removed from office. This, of course, infers that there are degrees of objectionable behavior, from the mildly reprehensible to the odious, punishable on a scale of absolutes. What this argument, of course, leaves unanswered is that a lifetime of honorable, competent service on the bar and the bench can be disregarded in an able and honest judge who then suffered of a disease of which he managed to cure himself. This is especially so since neither of the acts, taken alone, shock the conscience, brought public disgrace on the judiciary in general and were deemed by participants and observers as the foolish ramblings of someone who got drunk in spite of a performance of capability and sobriety in the past. The stress of the Commission counsel adopted by the majority was that such "on the bench" as opposed to "off the bench" peccadilloes made two arguably reprehensible instances so odious as to be fatal to respondent's career.

In agreeing with this facile solution, the majority of the Commission feels that there is a scale of behavior which, when proven, requires us to administer sanctions without regard to the human worth of the respondent or the nature of mitigation offered. I should think that such absolutist view of punishment vanished with the coming of the Age of Enlightenment. We are not judging conduct

which is akin to airline pilots subject to dizzy spells or surgeons with hand tremors. Respondent's situation is more akin to the case of a patient diagnosed as suffering from schizophrenia with its irrational behavior only to find that indeed, it is a brain tumor that is at the bottom of his symptoms and, upon its removal, recovery occurs. The majority's view implies that judges who drink must cure their affliction before becoming judges. This, of course, is hardly possible. It further infers that respondent's acts of misconduct are similar to volitional acts of intoxication recognized in the criminal law as being no excuse for the commission of a crime. It urges that to protect the public from the likes of respondent, he must be removed as one cannot "take a chance" that he might fall off the wagon again.

I cannot share this draconian view. While I do not condone the off-color flavor of the judge's remarks to either the two young defendants or about the county executive, they compare with the salty language used by former Presidents of the United States and pale in comparison with the remarks of certain respected judges whose discussions were publicly reported during the airing of the Judge Leff assignment controversy. It seems that the only serious charge that this record established is respondent's threatening a guard at the hospital and his obviously impaired performance on the bench which was but one instance of public inebriation while performing judicial functions. This can be distinguished from Matter of Kuehnel, 49 NY2d 465, as there, the judge failed to recognize his problems with alcohol, engaged in public fights, had received a prior censure which he disregarded and showed total lack of remorse and candor. It is also distinguishable from Matter of Quinn, 54 NY2d 386, as there, the judge had on four occasions been found in public in an intoxicated condition, had been formally admonished for his drinking, had been convicted of driving while his ability was impaired and finally, had been convicted of a misdemeanor, driving while intoxicated. As an aggravating factor, there was a continuation of the drinking problem after the admonition had been administered to him.

We must squarely face the problem of alcoholism in the judiciary as well as in the bar. Other states have dealt with this problem by not removing judges suffering from the disease but by allowing them a probationary period, under supervision, provided their recovery is well underway. Lawyers who have committed egregious acts of breach of faith as well as neglect of clients' trust, upon being found to have suffered from alcoholism, were allowed to recover while practicing law. (See Matter of Corbett, ___ AD2d ___, 1st Dept. June 3, 1982.) Respondent's conduct cannot be compared with the type of behavior which requires removal. Venality, tyranny, cruelty and the total conscious disregard of established legal rights are all sins that should bar one from judicial office. Being an alcoholic with but two isolated instances of aberrant behavior in 13 years does not fall within this category. One who is an alcoholic may wallow in the depths of the illness for many years without a public incident. His judgment will be poor, his performance mediocre at best, his vision clouded and his private life a shambles. This, if one understands the majority view, is acceptable in a judge. Should he, however, engage but twice in 13 years in two temporally close public displays of alcoholic distemper, the wrath of the community should expel him from the ranks of the judiciary. Even more curiously, the majority holding means that if these two isolated instances of inebriation are successfully fought and remedied by 15 months of great effort and more than competent and able official and private behavior, the horrendous nature of these acts will make all efforts that followed, meaningless and hollow.

There are two rational ways to judge respondent: First, he could be censured with a clear mandate that recurrence will result in removal. Second, in a more enlightened way, the Commission could impose any sanction short of removal and stay its execution for an additional period during which attendance in a regulated program of Alcoholics Anonymous and other supervision and monitoring would be required. Nothing in Article 2-A of the Judiciary Law (Sections 41 through 48) impairs the Commission's power to do so. Indeed, many times the Board of Regents of the State of New York, in dealing with disciplining physicians and other professionals, imposes precisely that type of sanction. Revocations of licenses are enacted and stayed for five years during which the respondents must submit monthly or quarterly reports of compliance with monitoring and supervision. I cannot but feel that judges have at least the same right.

Appended to this dissent is a stipulation filed in the highest Court of Minnesota, its Supreme Court. In that matter, the judge's conduct was far more egregious than anything remotely resembling the case at bar. He frequently drank heavily at noon and was observed to be habitually inebriated in court. His behavior at public places was noted to be offensive and embarrassing. He attended bar association meetings while intoxicated. He had been repeatedly reprimanded for failing to discharge his judicial duties in a timely fashion. He sexually harassed and embarrassed female employees of the court as well as female attorneys by making suggestive and off-color remarks and at times, touching their bodies or attempting to kiss them. There is no need to detail all of the charges as the foregoing represent but just a part. It is sufficient to say that such behavior was rooted in alcoholism and the judge did not, unlike respondent in our case, have a period of sustained recovery with resultant discharge of judicial duties.

Yet, the Supreme Court of Minnesota entered the stipulation between the judge and the Board of Judicial Standards which calls for supervised probation, censure and conditional removal.

Accordingly, I dissent from the determination and vote that (i) respondent be severely censured, (ii) that for a period of two years he be subject to monthly reports that he has faithfully attended the Alcoholics Anonymous program and that his judicial performance meets with his superior's requirements, and (iii) that he be removed upon his failure to meet any of these conditions.

Dated: September 17, 1982

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

ANTHONY J. CERTO,

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

THE COMMISSION:

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

APPEARANCES:

Gerald Stern (Cody B. Bartlett, Of
Counsel) for the Commission

John P. Bartolomei for Respondent

The respondent, Anthony J. Certo, who is Chief Judge of the Niagara Falls City Court, was served with a Formal Written Complaint dated February 17, 1981, alleging misconduct with respect to a fund-raising event held in March 1980. Respondent filed an answer dated March 19, 1981, and an amended answer dated July 7, 1981.

By order dated April 30, 1981, the Commission designated the Honorable Harry D. Goldman as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 24 and October 1, 2, 5, 6, 9,

13, 20 and 21, 1981, and the referee filed his report with the Commission on December 29, 1981.

By motion dated September 16, 1982, 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 censured. Respondent opposed the motion on October 20, 1982. The Commission heard oral argument on the motion on October 29, 1982, at which respondent appeared with counsel, thereafter considered the record of this proceeding and made the following findings of fact.

As to paragraph (a) of Charge I of the Formal Written Complaint:

1. On March 6, 1980, a fund-raising event was held for respondent in Niagara Falls. The event was referred to as a testimonial. Respondent knew that the purpose of the event was to raise funds for himself.

2. Three hundred and five tickets at \$50 each were sold for the fund-raising event. The gross income from such sales was \$15,250.

3. Sometime after the fund-raising event, respondent received \$6,564.28 in checks and \$4,070.56 in cash from the money collected for the event. Respondent used these funds, totaling \$10,634.84, for personal purposes and expenditures.

4. An additional \$2,000 from the money collected for the fund-raising event was deposited into the account of respondent's re-election committee.

As to paragraph (b) of Charge I of the Formal Written Complaint:

5. Angelo J. Morinello is respondent's nephew. He and respondent have a close relationship. Mr. Morinello was the treasurer for respondent's 1980 re-election campaign. He is an attorney who from 1976 through 1979 practiced in partnership with John Mattio in Niagara Falls. In numerous cases in this period Mr. Morinello and Mr. Mattio appeared as counsel before respondent.

6. Mr. Morinello was one of the principal organizers of the fund-raising testimonial held for respondent on March 6, 1980. He acted as treasurer of the funds raised from the event.

7. A special bank account was opened to handle the funds from the testimonial. Mr. Morinello wrote all of the checks drawn on this account, including the \$2,000 paid to respondent's re-election committee and the \$10,684.34 in checks and withdrawn cash paid directly to respondent for his personal use.

As to paragraph (c) of Charge I of the Formal Written Complaint:

8. Persons who had litigation before respondent prior to the fund-raising event on March 6, 1980, purchased tickets to and attended the event.

9. Numerous attorneys who had practiced law before respondent prior to March 6, 1980, purchased tickets to and attended the event.

Additional finding:

10. Between the date of the referee's report in this matter and the date of oral argument before the Commission, respondent repaid to the contributing individuals all the money collected from the fund-raising event.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.5(b) and 100.5(c)(3) of the Rules Governing Judicial Conduct (formerly Sections 33.1, 33.2[a], 33.5[b] and 33.5[c][3]), Canons 1, 2A, 5B and 5C(4) of the Code of Judicial Conduct, and Section 20.4 of the Rules of the Chief Judge and Chief Administrator of the Courts (formerly the General Rules of the Administrative Board of the Judicial Conference). The charge in the Formal Written Complaint (Charge I, paragraphs a, b and c) is sustained and respondent's misconduct is established.

By accepting money for his personal use from contributions by attorneys and litigants who appear in his court, respondent undermined public confidence in the integrity and impartiality of the judiciary. His conduct both was improper and created an appearance of impropriety (Sections 100.1, 100.2[a] and 100.5[b] of the Rules Governing Judicial Conduct). Respondent also violated the specific prohibition against a judge accepting a "gift from any attorney or from any person having or likely to have any official transaction with the court" (Section 20.4 of the Rules of the Chief Judge). Though the particular fund-raising event at issue was called a "testimonial", respondent knew in advance that its proceeds would be given to him. The amount of money actually given to respondent, after the event, for his personal use -- over \$10,000 -- cannot reasonably be considered a "gift incident to a public testimonial" (Section 100.5[c][3] of the Rules Governing Judicial Conduct; emphasis added).

The Commission notes that respondent repaid the money collected from those who contributed to the fund-raising event.

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

Mrs. Robb, Judge Alexander, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Rubin and Mr. Wainwright concur.

Mr. Bower, Mr. Bromberg and Mrs. DelBello dissent only as to sanction and vote that respondent should be censured.

Judge Shea was not present.

Dated: December 28, 1982

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

ALEXANDER CHANANAU,

a Justice of the Supreme Court, First
Judicial District (Bronx County).

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Raymond S. Hack and Barry M.
Vucker, Of Counsel) for the Commission

Irving Anolik for Respondent

The respondent, Alexander Chananau, 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, inter alia, he received financial benefits with respect to two of three vacation trips arranged by a man who was actively soliciting and receiving receivership appointments by other judges of respondent's court and in whose cases respondent had ruled on motions and once approved a fee. Respondent filed an answer dated May 7, 1980.

By order dated June 19, 1980, the Commission designated the Honorable James Gibson referee to hear and report proposed findings of fact and conclusions of law.

Upon respondent's assertion that a health condition made impossible his participation in the proceeding, and upon his consequent motion to dismiss the Formal Written Complaint therefore, the referee appointed an impartial physician to examine respondent and report his findings. On February 4, 1982, upon consideration of the physician's report, the referee accepted the physician's conclusion that respondent "is able to participate in the pending proceedings at this time with no significant threat to his health or life." Respondent's motion to dismiss the Formal Written Complaint was denied, and the referee directed that the hearing proceed.

On April 20, 1982, 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, in which respondent agreed that his conduct created an appearance of impropriety, and waived the hearing provided by Section 44, subdivision 4, of the Judiciary Law. The Commission approved the agreed statement as submitted and heard oral argument on June 28, 1982, as to appropriate sanction. Respondent appeared by counsel for oral argument. Thereafter the Commission made the following findings of fact, as submitted by the parties in the agreed statement:

1. Bernard Lange was a person who knew the management of the Americana Aruba Hotel, and could obtain at that hotel excellent accommodations at lower rates than were available to the general public.

2. 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.

3. From 1975 to 1978, Mr. Lange actively solicited and received numerous judicial appointments from justices of the Supreme Court, Bronx County, as a receiver in real property mortgage foreclosure proceedings. Mr. Lange's main source of income during this period was derived from such judicial appointments.

4. Mr. Lange was appointed more than 150 times as a receiver in real property mortgage foreclosure proceedings. These appointments resulted in over \$500,000 in fees to Mr. Lange.

5. Respondent knew or should have known that Mr. Lange had and was likely to continue to have frequent transactions in the Supreme Court, Bronx County, because of his numerous appointments to serve as referee.

6. Between October 25, 1977, and June 26, 1978, respondent ruled upon 20 motions in real property mortgage foreclosure proceedings in which Mr. Lange was serving as receiver. (Attached to the agreed statement and made a part thereof as Exhibits 1 to 20 are copies of those motions.)

7. From April 1976 to December 1977, Mr. Lange arranged transportation and hotel accommodations for respondent and his wife for four vacation

trips. On two of those trips respondent and his family obtained excellent hotel accommodations at substantial savings. On the other two trips respondent and his family received no discounts and no preferential treatment.

8. From April 14 to April 18, 1976, respondent vacationed with his wife at the Southampton Princess Hotel in Bermuda. Transportation, hotel accommodations and hotel rates for this trip were arranged through Mr. Lange.

9. On this trip, respondent and his wife were lodged in deluxe accommodations at the Southampton Princess Hotel. The rate to the general public for such accommodations was \$120 per night including breakfast and dinner; Mr. Lange arranged to have respondent billed at the rate of \$45 per night.

10. With respect to this trip, 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 approximately \$534.20. Respondent paid \$217.70.

11. Arrangements for this trip were made by another judge through a friend of the other judge. Respondent was unaware of the identity of the travel agent until after the arrangements were completed. Respondent was not aware of any rates until he registered at the hotel and was given a registration card to sign which showed the rate to be \$45.00 per night which respondent paid as billed.

12. From December 18, 1976, to January 2, 1977, respondent vacationed with his wife at the Americana Aruba Hotel in Aruba. Transportation, hotel accommodations and hotel rates for this trip were arranged at respondent's request through Mr. Lange.

13. On this trip respondent and his wife were lodged in deluxe accommodations at the Americana Aruba Hotel. The value of the room, food and other services received by respondent and his wife based upon respondent's bill was \$1,957.75. Respondent paid \$1,293.20.

14. Respondent knew that he was receiving a reduced rate at the Americana Aruba Hotel through Mr. Lange equal in value to the difference between his hotel bill and what respondent paid.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(c)(1) and 33.5(c)(3)(iii) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2, 100.3[c][1] and 100.5[c][3][iii]), Section 20.4 of the General Rules of the Administrative Board of the Judicial Conference (now the Rules of the Chief Administrator) and Canons 1, 2, 3C(1) and 5C(4)(c) 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 conduct, respondent, as he stipulated in the agreed statement,

failed to conduct himself in a manner that promoted public confidence in the integrity and impartiality of the judiciary; created the appearance of impropriety; permitted the impression to be conveyed that Mr. Lange was doing favors for him and was in a special position to influence him; created the appearance that Mr. Lange had paid for part of his trip; failed to observe high standards of conduct; presided over 20 motions in which his impartiality could reasonably be questioned; and accepted gifts, the value of which was the difference between the rates charged to the general public and the rates that respondent paid through Mr. Lange, a person who was receiving judicial appointments and whose interests were likely to come before the Supreme Court in Bronx County.

Respondent knew that Mr. Lange was soliciting and receiving receivership appointments from Supreme Court justices and had himself presided over motions involving Mr. Lange's work as a receiver. Nevertheless, during the same period, respondent took vacations arranged by Mr. Lange and accepted financial benefits arranged through Mr. Lange in the form of significant reductions in hotel rates. In so doing, respondent violated the rule which prohibits a judge from receiving "any gratuity or gift from any attorney or person having or likely to have any official transaction with the court" (Section 20.4 of the General Rules). Respondent further failed to refrain "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][3][iiii] of the Rules Governing Judicial Conduct), as he was required to do. While a judge may not know all the people who are likely to come before the court on which he serves, respondent was fully aware of Mr. Lange's business with the court and indeed had presided over a number of Mr. Lange's matters.

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

All concur.

Dated: September 10, 1982

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

PATRICK J. CUNNINGHAM,

a Judge of the County Court,
Onondaga 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 William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

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

Bruce O. Jacobs for Respondent

The respondent, Patrick J. Cunningham, a judge of the County Court, Onondaga County, was served with a Formal Written Complaint dated July 8, 1981, alleging that he engaged in ex parte communications with a lower court judge concerning four of the lower court judge's decisions which were on appeal before respondent. Respondent filed an answer dated July 28, 1981.

On November 20, 1981, respondent, his attorney and the administrator of the Commission 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 render its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement on December 16, 1982, determined that no outstanding issue of fact remained and set a schedule for memoranda and oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an

appropriate sanction, if any.

On January 22, 1982, the Commission determined that respondent's misconduct was established. On February 24, 1982, the Commission heard oral argument as to appropriate sanction and now renders this determination.

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

1. On March 19, 1976, respondent signed three orders to show cause in connection with three appeals being taken to his court from decisions by Syracuse City Court Judge J. Richard Sardino in People v. Jerry Thousand, People v. Bonnie Chichester (Maraia) and People v. John Turner.

2. On March 20, 1976, respondent read an article in the Syracuse Post Standard in which he was quoted as making critical statements concerning Judge Sardino with respect to the three cases.

3. On March 20, 1976, respondent was told that Judge Sardino was very angry at him for having signed the three orders to show cause.

4. On March 20, 1976, in order to calm Judge Sardino and avoid criticism from him, respondent wrote the following letter to Judge Sardino on his official court stationery:

Don't believe that crap they put in the Post Standard. I was misquoted & really had nothing to say about these 3 sentences. Other than they all came in together. There is no way I would ever change a sentence that you had imposed. You can do whatever you want to whenever you want to & I'll agree with you. I signed one of those as an accomodation & the other 2 will be argued Monday. I take the position that you know the case and as sentencing judge can do whatever you damn well please to a defendant so don't get nervous at what you read in the paper. I tried to call you but couldn't locate you.

5. Thereafter respondent heard the appeals and affirmed Judge Sardino's decisions in the Thousand and Turner cases. The appeal in the Chichester case was never perfected.

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

6. On July 9, 1979, respondent signed an order to show cause in connection with an appeal being taken to his court from a decision by Syracuse City Court Judge J. Richard Sardino in People v. Jill Ann Bucktooth.

7. On July 11, 1979, respondent was told that Judge Sardino was extremely upset that respondent had signed the order to show cause in the Bucktooth

case.

8. On July 11, 1979, in order to calm Judge Sardino and avoid criticism from him, respondent wrote the following letter to Judge Sardino on his official court stationery.

I signed a show cause order on the [Bucktooth] matter.

Her retained lawyer claims she has an appeal and has some dough to perfect it. If I catch the appeal, I will affirm, as always, on a judge's discretion. The appeals are rotated when they are received, so I don't know who will get to hear it.

The appeal is moot if she has served her time. In these cases, I will sign a show cause almost automatically.

Word has it that you got a little nervous when she didn't appear at Jamesville.

9. Thereafter respondent heard the appeal in the Bucktooth case and reversed Judge Sardino's decision.

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. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

It is the essence of our system of justice that a judge strive not only to be impartial but also to appear impartial in the discharge of judicial duty. Whether at a trial or on an appellate bench, a judge must preside with equanimity, view the issues with dispassion and render decisions free from undue influence. A judge who does not meet these standards undermines his own usefulness on the bench.

Respondent's ex parte letters to Judge Sardino were in violation of the Rules Governing Judicial Conduct (Section 33.3[a] [4]). The sentiments expressed in those letters were plainly improper. By telling Judge Sardino (i) that "you can do whatever you want whenever you want to and I'll agree with you," (ii) that "[you] can do whatever you damn well please to a defendant," and (iii) "if I catch the appeal [in a particular case], I will affirm, as always," respondent abdicated his responsibility as an appellate judge to review such matters on the merits. Respondent's communications to Judge Sardino clearly indicated that appellate review in the cases at issue would be a sham, and that the lower court's decisions would be upheld automatically. Respondent's words, whether intentional or not, conveyed this unmistakable impression. Respondent appeared to be giving Judge Sardino license to do as he "damn well please[d]", as though Judge Sardino were unaccountable to a higher court.

Respondent's explanation that he wrote the letters "to calm," to "avoid criticism from" and "to make peace and keep peace" with an "angry" and "upset" Judge Sardino, does not mitigate his conduct. The personal reaction of a trial court judge to an appellate court's review of his decisions is irrelevant to the merits of the cases at bar. Indeed, it is unseemly for a higher court judge to coddle and even pander to a lower court judge in his jurisdiction. Respondent's overriding responsibility is to deal appropriately with the judicial matters before him, irrespective of public or professional disapproval. See, Section 33.3(a)(1) of the Rules Governing Judicial Conduct (formerly Section 33.3[a][1] of the Rules).

The fact that respondent reversed Judge Sardino's decision in the Bucktooth case is of little moment. The integrity of the judicial system was compromised when respondent, before considering the merits, wrote to Judge Sardino that he would "affirm, as always." Such a declaration deprives the parties of a meaningful appeal. It also deprives a trial judge of an important constraint on his exercise of discretion: the knowledge that he is accountable for his actions to a higher court.

Respondent's conduct has completely impaired his effectiveness as a judge. He has demonstrated a profound disregard of the duties of an appellate judge, resulting in an irredeemable loss of public confidence in his performance. No one could ever be reasonably certain that respondent was acting properly, on the merits, in matters that henceforth would be before him.

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

All concur, except for Judge Alexander, Mr. Bromberg, Mr. Cleary and Judge Ostrowski who dissent in a separate opinion as to sanction only and vote that respondent be censured.

Dated: April 20, 1982

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

PATRICK J. CUNNINGHAM,

a Judge of the County Court,
Onondaga County.

DISSENTING OPINION
BY JUDGE ALEXANDER
MR. BROMBERG, MR.
CLEARY AND JUDGE
OSTROWSKI

In his answer, his testimony before the Commission, the agreed statement of facts and his appearance before the Commission, respondent readily acknowledged the serious impropriety of his conduct. He expressed sincere regret for his communications to Judge Sardino, and for the effect of such communications on public perception of the administration of justice. Respondent was open and frank and has given his assurance that he will not repeat such conduct.

Respondent's disposition of the appeal in the Bucktooth case (Charge II) indicates that, in fact, he decided the appeals before him fairly and on the merits. In Bucktooth, respondent reversed Judge Sardino's decision and wrote a lengthy, well-reasoned opinion which was severely critical of Judge Sardino. Thus, respondent's judicial decision-making function was properly performed.

We cannot, on this record, agree that the sanction of removal is appropriate. Such ultimate sanction is not normally to be imposed for poor judgment, even extremely poor judgment. See, Matter of Steinberg v. State Commission on Judicial Conduct, 51 NY2d 74, 81, and Matter of Shilling v. State Commission on Judicial Conduct, 51 NY2d 397, 403.

In view of the foregoing, we believe that censure is appropriate.

Dated: April 20, 1982

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

JOSEPH DiFEDE,

a Justice of the Supreme Court,
First Judicial District.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Raymond S. Hack and
Barry M. Vucker, Of Counsel)
for the Commission

Julien, Schlesinger & Finz (By Alfred S.
Julien and David I. Weprin) for
Respondent

The respondent, Joseph DiFede, a justice of the Supreme Court, First Judicial District (in Bronx County), was served with a Formal Written Complaint dated February 29, 1980, alleging misconduct in that he received financial benefits with respect to four vacation trips arranged by a man who, inter alia, was actively soliciting and receiving receivership appointments by respondent and other judges of respondent's court. Respondent filed an answer dated September 16, 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 September 16 and 17 and October 2, 5, 6, 7 and 9, 1981. The referee filed his report with the Commission on January 21, 1982.

By motion dated February 26, 1982, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent opposed the motion and moved for dismissal of the Formal Written Complaint. The administrator filed a reply memorandum. The Commission having heard oral argument and an oral statement from respondent on April 21, 1982, thereafter considered the record of the proceeding and made the determination herein.

Preliminarily the Commission makes the following findings of fact:

1. Between 1974 and 1978, Bernard Lange was actively soliciting judicial appointments from justices of the Supreme Court as a receiver in real property mortgage foreclosure proceedings and received more than 150 such appointments. Mr. Lange informed respondent that he would like to receive such appointments in the future.

2. From 1974 through 1978, the primary source of Mr. Lange's income was fees awarded by justices of the Supreme Court in connection with his appointments as a receiver.

3. Almost all such appointments of Mr. Lange were in New York City and more were received in Bronx County than any other county.

4. Mr. Lange was first appointed by respondent as a receiver on or about January 6, 1975, while respondent was presiding in Special Term of the Supreme Court, Bronx County.

5. Prior to July 1976 respondent knew that he and other justices of the Supreme Court were appointing Mr. Lange as a receiver and therefore that Mr. Lange had interests which had come and were likely to continue to come before respondent and other justices of the Supreme Court.

6. Mr. Lange did not hold himself out to the general public as a person engaged in the travel business.

7. Mr. Lange could obtain preferential treatment and reservations for guests at Princess Hotels, which included obtaining accommodations at rates less than what was available to the general public.

8. Sometime between April 14, and April 18, 1976, during a time when respondent was vacationing at the Southampton Princess Hotel, Mr. Lange informed respondent of his special relationship with the Princess Hotel chain. Mr. Lange informed respondent that by reason of such special relationship, he was able to obtain accommodations for guests at rates less than what was available to the general public.

9. During the April 1976 trip to the Southampton Princess Hotel, respondent received a deluxe room for \$45 per night for two persons, including breakfast and dinner. The rate charged to the general public for a deluxe room in April 1976 was \$120 per night for two, including breakfast and dinner.

As to Charge II of the Formal Written Complaint, the Commission makes the following findings of fact:

10. Sometime between April 18 and July 1, 1976, respondent requested Adele D'Addario, an employee of Mr. Lange's, to arrange a vacation for himself, his wife, daughter and three grandchildren, at the Southampton Princess Hotel in Bermuda for the period July 1 to July 14, 1976.

11. Respondent approached Mr. Lange's travel agency to arrange the July 1976 trip (i) with knowledge of Mr. Lange's connections and influence in obtaining favorable rates and (ii) with knowledge that Mr. Lange had arranged for respondent a "good price", indeed an astonishingly low rate, as to respondent's April 1976 trip to the Southampton Princess Hotel.

12. From July 1 to July 14, 1976, respondent vacationed with his family at the Southampton Princess Hotel in Bermuda. Transportation, hotel accommodations and hotel rates for the trip were arranged by or through Bernard Lange.

13. Under the arrangements made through Mr. Lange, a superior room was provided at a rate of \$45 per night for three persons, including breakfast and dinner. The rate available to the general public for such accommodations was \$122.50. As a result, respondent paid a rate reduced by \$77.50 per night.

14. The value of the rooms, food and other services received by respondent and his family based upon the rate available to the general public was \$3230.60. Respondent paid for such accommodations the sum of \$2223.10.

15. Respondent accepted and was the beneficiary of a gift or favor from or through Mr. Lange worth \$1007.50.

16. Prior to the July 1976 trip, respondent had appointed Mr. Lange as a receiver in six proceedings which resulted in \$7311.80 in judicially approved fees to Mr. Lange.

17. Subsequent to the July 1976 trip, respondent appointed Mr. Lange as receiver in 20 real property mortgage foreclosure proceedings which resulted in \$31,300.72 in judicially approved fees to Mr. Lange.

18. Subsequent to the July 1976 trip, respondent approved fees to Mr. Lange in connection with Mr. Lange's appointments as a receiver in 17 instances resulting in a total of \$48,300.30.

19. From 1975 to 1978, respondent frequently ruled on motions concerning properties for which Mr. Lange served as a receiver.

As to Charge III of the Formal Written Complaint, the Commission makes the following findings of fact:

20. In December 1976, respondent requested Mr. Lange to arrange a vacation for him and his wife at the Bahamas Princess Tower Hotel in Freeport,

the Bahamas, for the period from January 8 to 22, 1977.

21. From January 8 to January 22, 1977, respondent and his wife vacationed at the Bahamas Princess Tower Hotel; transportation, hotel accommodations and hotel rates for the trip were arranged by or through Mr. Lange.

22. Under the arrangements made through Mr. Lange, a deluxe room was provided to respondent at the rate of \$20 per night for two, without meals. The rate available to the general public for such accommodations was \$71 per night. As a result, respondent paid a rate reduced by \$51 per night.

23. The rate arranged through Mr. Lange on behalf of respondent was known as a special airline rate which was available only to airline personnel and travel agents, and not to guests whose reservations had been made by travel agents.

24. The value of the room, food and services received by respondent and his wife based upon the rates available to the general public was \$1628.80. Respondent paid for such accommodations the sum of \$912.80.

25. Based upon the foregoing, including the caliber and quality of the hotel, the accommodations and the services he received in relation to the price he was charged, respondent knew that he had received a benefit of financial significance by or through Mr. Lange as described above.

26. Respondent accepted and was the beneficiary of a gift or favor from or through Mr. Lange worth \$714.

27. Prior to the January 1977 trip, respondent had appointed Mr. Lange as a receiver in 22 proceedings which resulted in \$34,708.96 in judicially approved fees to Mr. Lange.

28. Subsequent to the January 1977 trip, respondent appointed Mr. Lange as a receiver in four real property mortgage foreclosure proceedings which resulted in \$3,903.56 in judicially approved fees to Mr. Lange.

29. Prior to the January 1977 trip, respondent approved fees to Mr. Lange in connection with Mr. Lange's appointments as a receiver in eight instances totalling \$26,342.04.

30. Subsequent to the January 1977 trip, respondent approved fees to Mr. Lange in connection with Mr. Lange's appointments as a receiver in nine instances totalling \$21,958.26.

31. From 1975 to 1978 respondent frequently ruled on motions concerning property for which Mr. Lange was the receiver.

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 (now Sections 100.1, 100.2 and 100.5[c][3][iii]), Canons 1, 2 and 5C(4) of the Code of Judicial Conduct and Section 20.4

of the General Rules of the Administrative Board of the Judicial Conference. Charges II and III of the Formal Written Complaint are sustained to the extent indicated in the findings and conclusions herein, and respondent's misconduct is established. Charges I, IV, V and VI of the Formal Written Complaint are not sustained and therefore are dismissed.

By his conduct, respondent created at least an appearance of impropriety. He knew that Mr. Lange was soliciting and receiving receivership appointments from Supreme Court justices. Respondent had himself awarded Mr. Lange such appointments. During the same period, respondent accepted financial benefits arranged through Mr. Lange in the form of significant reductions in hotel rates.

By accepting the hotel rate reductions arranged by Mr. Lange, respondent violated the rule which prohibits a judge from receiving "any gratuity or gift from any attorney or any person having or likely to have any official transaction with the court" (Section 20.4 of the General Rules). Respondent was further obliged to refrain "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][3][iii] of the Rules Governing Judicial Conduct). 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 himself awarded Mr. Lange appointments of the court.

That the foregoing knowledge, appointments and vacation trips 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 furthered Mr. Lange's business with the court.

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

The Commission records the following votes.

As to Charge I, all concur that it is dismissed.

As to Charges II and III, all concur that it is sustained, except Judge Alexander, Mr. Kovner and Mr. Wainwright, who dissent and vote that the charges be dismissed.

As to Charges IV, V and VI, all concur that they are dismissed, except Mrs. DelBello, who dissents and votes that they be sustained.

As to sanction, all concur that respondent should be admonished, except that (i) Mr. Cleary votes that respondent be sent a letter of dismissal and caution and (ii) Judge Alexander, Mr. Kovner and Mr. Wainwright, having voted to dismiss all charges, vote to dismiss the Formal Written Complaint without sanction.

Dated: June 8, 1982

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 DiFEDE,

a Justice of the Supreme Court,
Bronx County.

DISSENTING OPINION
BY JUDGE ALEXANDER,
MR. KOVNER AND MR.
WAINWRIGHT

The misconduct found by the majority depends on respondent's knowledge or awareness, allegedly acquired in April 1976, that Lange had obtained for him the favorable price not available to other members of the public. This finding, we submit, was simply not established by the evidence.

It was uncontroverted that respondent was not an experienced traveler; indeed, he had not traveled abroad for many years. His trip to Bermuda in April 1976 was occasioned by a last minute change in the schedules of attorneys then before him in a lengthy contested hearing. He did not learn, until arrived in Bermuda, that Lange had arranged the trip.* He testified that he never focused on the price charged by the hotel at any time, but merely relied on the fact that reasonable arrangements had been made by others. When respondent called Lange's secretary to arrange the July trip, Lange's office was the only travel agency that occurred to him.

The referee, in finding that respondent must have been aware of the details of the favorable rate from the information set forth at the foot of the bill, made an inference supported neither by the facts nor by contemporary custom. Large numbers of experienced travelers do not study the details of their hotel bills, especially where the arrangements are made by others, and especially where the charges were grouped with charges for other accommodations (as they were in the July 1976 bill). Respondent's testimony that he was unaware of any financial benefit (other than his acknowledgment that he had received a "good" price) is both credible and uncontroverted by other testimony. The bills themselves did not constitute notice to such an inexperienced traveler that he was in receipt of some special favor.

*At no time in question did respondent learn that the primary source of Lange's income in this period was receivership fees. Although multiple appointments of the same receiver are not to be encouraged, at the time many judges in that court placed great reliance upon the recommendation of the mortgagee in foreclosure proceedings.

In the absence of knowledge or awareness of receipt of such a "gift" or "benefit," there was no impropriety; nor could there be sufficient appearance of impropriety, if the recipient of the "gift" was unaware of its existence.

Respondent's reputation as one of the First Department's most distinguished and respected judges is unquestioned. Weighing his credibility against the strained inference proffered from the receipt of the bills alone leaves this essential element of the charges unproved.

In our view, all charges should have been dismissed.

Dated: June 8, 1982

State of New York
Commission on Judicial Conduct

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

ANTHONY ELLIS,

a Justice of the Town Court of
Altamont and the Village Court of
Tupper Lake, Franklin County.

Determination

BEFORE: Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

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

Cade, Armstrong & Persons (By
William J. Cade and Robert J.
Armstrong) for Respondent

The respondent, Anthony Ellis, a justice of the Town Court of Altamont and the Village Court of Tupper Lake, was served with a Formal Written Complaint dated April 20, 1981, alleging inter alia that he intentionally incarcerated certain defendants for lengthy periods contrary to law. Respondent filed an answer dated July 8, 1981.

The Commission designated the Honorable James A. O'Connor referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 20 and 21 and August 19 and 20, 1981, and the referee filed his report to the Commission on January 26, 1982.

By motion dated March 24, 1982, 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. Oral argument was scheduled before the Commission on April 21, 1982, and was adjourned at the request of respondent's counsel to May 21, 1982. A request by respondent's counsel on May 20, 1982, for a second adjournment of oral argument was denied. Oral argument was held as scheduled on May 21, 1982. Neither respondent nor his counsel appeared.

The Commission considered the record of the proceeding on May 21, 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. From December 1976 to March 1981, in the 23 cases set forth in Schedule A appended to the Formal Written Complaint, respondent (i) exhibited prejudice toward the defendants who appeared before him, (ii) denied the defendants certain basic legal rights, including the presumption of innocence and the right to a speedy trial before an impartial judge, (iii) abused the bail process by deliberately incarcerating certain defendants for indefinite periods of time for the purpose of coercing them to plead guilty, after which they would be sentenced to the time already served, and (iv) failed to appoint counsel for indigent defendants and refused to cooperate with the public defender's office, with the purpose of increasing the period of pre-trial incarceration for such defendants.

As to Charge II of the Formal Written Complaint:

2. On July 2, 1977, respondent arraigned Timothy Demers on charges of disorderly conduct and resisting arrest. Mr. Demers is 19 years old, retarded and alcoholic. Respondent failed to assign counsel to the defendant, whom he should have known was financially unable to retain counsel. Respondent accepted a plea of guilty from the defendant, in the absence of counsel, and committed him to jail to await sentence. Respondent states that he sent the defendant to jail so he might be treated for his alcoholism. Respondent did not order such treatment, however, and he knew none was available at the jail.

3. On July 28, 1977, respondent sentenced the defendant to a conditional discharge and time already served.

4. Sometime between July 28 and September 27, 1977, respondent observed the defendant violating the terms of the conditional discharge. On September 27, 1977, respondent had the defendant brought before him, charging such violation.

5. On September 27, 1977, respondent presided over a hearing on the violation of the conditional discharge, despite having personal knowledge of disputed evidentiary facts. Respondent did not advise the assistant public defender, whom he then knew to be representing the defendant, that such a proceeding was being held. Respondent ordered the defendant incarcerated without a specific sentence and subsequently ignored communications from the public defender's office concerning the case.

6. On October 21, 1977, the defendant was released from jail on a writ of habeas corpus.

As to Charge III of the Formal Written Complaint:

7. Prior to March 15, 1978, Patrick Brophy, an attorney, had represented a client in a proceeding before respondent, who accused Mr. Brophy of demeaning him in the presence of Mr. Brophy's client. Respondent disliked Mr. Brophy.

8. On March 15, 1978, James Crockford was issued a ticket for speeding, a violation, returnable before respondent. Mr. Crockford was represented by Mr. Brophy. Mr. Brophy appeared on behalf of his client before respondent and offered to plead his client guilty to a reduced charge of an equipment violation. Respondent, however, knowingly entered a misdemeanor conviction on the defendant's record for defective brakes. Respondent knew a misdemeanor conviction for defective brakes was more serious than the original speeding violation charge. In entering the misdemeanor conviction, respondent was motivated not by the merits of the case but by his personal dislike of Mr. Brophy. Respondent acted without regard for the consequences to the defendant.

9. On December 14, 1978, Mr. Brophy advised respondent that the defendant had not intended to plead to a misdemeanor. Mr. Brophy asked respondent to advise the Department of Motor Vehicles of the proper charge. Respondent did not so notify the Department.

10. Prior to January 25, 1979, Mr. Brophy again advised respondent of the mistaken misdemeanor entry and again asked respondent to rectify the matter. Respondent did not notify the Department of Motor Vehicles until after January 25, 1979.

As to Charge IV of the Formal Written Complaint:

11. On October 20, 1978, Geraldine Beaudette, age 16, was arraigned before respondent on felony charges of burglary and grand larceny. On that same date, Robert Beaudette, age 17, was arraigned before respondent on a felony charge of burglary and a misdemeanor charge of petit larceny. Neither defendant was represented by counsel, and neither was assigned counsel by respondent. Both defendants pleaded not guilty and were committed by respondent to jail. Respondent did not set bail or a return appearance date for either defendant. Because of their ages, both defendants were eligible for, but were not granted, Youthful Offender status.

12. On October 24, 1978, Wyngar Dugan, the assistant public defender, was notified by an investigator in his office that the defendants requested to be represented by the public defender's office.

13. On October 25, 1978, Mr. Dugan went to the jail and was informed that both defendants had been released.

14. On October 25, 1978, respondent, without notifying the public defender's office, negotiated with the district attorney's office for pleas of guilty to misdemeanor charges and sentenced both defendants to the time served and conditional discharges.

As to Charge V of the Formal Written Complaint:

15. On February 13, 1977, Vincent Ormsby, age 17, was arraigned before respondent on a violation for harassment and a misdemeanor charge of resisting arrest. Respondent failed to assign counsel when he should have known the defendant was financially unable to obtain counsel. Respondent failed to set bail and committed the defendant to jail without setting a date for a return appearance.

16. By notation on the order committing the defendant to jail, respondent requested that George J. Fast, M.D., director of the Franklin County Community Mental Health Service, conduct a psychiatric evaluation of the defendant. Respondent received Dr. Fast's report on February 16, 1977.

17. By letter dated March 7, 1977, Wyngar Dugan, the assistant public defender, requested that respondent take immediate action in the Ormsby case. Respondent did not reply.

18. On March 28, 1977, without notifying Mr. Dugan, respondent had the defendant returned before him. At that proceeding respondent accepted the defendant's guilty plea and sentenced him to the time already served plus three years of probation.

As to subdivision (a) of Charge VI of the Formal Written Complaint:

19. On January 13, 1977, Thomas Boucher was arraigned before respondent on a misdemeanor charge of possession of stolen property. Respondent knew the defendant was indigent, but he failed to assign counsel and failed to set bail. Respondent committed the defendant to jail without setting a date for a return appearance.

20. On February 1, 1977, the defendant was brought before respondent, pled guilty to the charge and was sentenced to a conditional discharge.

As to subdivision (b) of Charge VI of the Formal Written Complaint:

21. On September 2, 1978, Daniel Guiney was arraigned before respondent on a charge of criminal mischief. Respondent knew the defendant to be a known drug and alcohol abuser who had been committed previously to psychiatric institutions. Respondent knew the defendant was unable to obtain counsel, but he failed to assign counsel. Respondent set bail at \$500 and committed the defendant

to jail without setting a date for a return appearance. Respondent also advised the defendant's mother to contact a physician and attempt to have the defendant committed civilly to an institution.

22. On September 27, 1978, the defendant was released from jail and the charge against him was adjourned in contemplation of dismissal.

As to subdivision (c) of Charge VI of the Formal Written Complaint:

23. On September 19, 1978, George St. Louis was arraigned before respondent on a charge of possession of a weapon. Respondent knew the defendant to be an alcoholic. Respondent knew the defendant was unable to retain counsel, but he failed to assign counsel. Respondent set bail at \$500, committed the defendant to jail and adjourned the matter to October 26, 1978.

24. Respondent stated that the adjourned date was arbitrary and was intended to keep the defendant in jail so that he could be "psychiatrically evaluated". However, respondent did not order any psychiatric evaluation of the defendant.

25. On September 27, 1978, the assistant public defender wrote to advise respondent that he was now representing the defendant.

26. On October 5, 1978, the defendant was returned to court where, in the absence of his attorney, he pled guilty to the charge and was conditionally discharged by respondent.

As to Charge VII of the Formal Written Complaint:

27. On September 23, 1978, Joseph Gadway was arraigned before respondent on a vehicle-related misdemeanor charge of permitting operation without insurance. The defendant requested assigned counsel, and respondent advised him to contact the public defender's office. Respondent did not assign counsel or notify the public defender's office of the defendant's request. At the arraignment, without the presence or advice of counsel, the defendant pled guilty to the charge and was sentenced by respondent to 89 days imprisonment.

28. After being sentenced, the defendant requested legal representation from assistant public defender Wyngar Dugan. By letter dated September 27, 1978, Mr. Dugan (i) informed respondent that an appeal was being taken in the Gadway case and (ii) requested from respondent the papers in the case.

29. On October 4, 1978, respondent was served by Mr. Dugan with an affidavit of errors as part of the appeal, to which respondent never responded.

30. On October 25, 1978, respondent, without notifying Mr. Dugan, ordered the defendant brought before him and, in the absence of counsel, reduced the defendant's sentence to time already served (32 days) and imposed a \$200 fine.

As to Charge VIII of the Formal Written Complaint:

31. On September 19, 1978, Richard Liberty was arraigned before respondent on a misdemeanor charge of unlawfully dealing with a child, for having served beer to a minor. Respondent should have known the defendant was unable to afford counsel, but he failed to assign counsel. Respondent set bail at \$250 and committed the defendant to jail without setting a date for a return appearance.

32. On September 26, 1978, the defendant requested legal representation from assistant public defender Wyngar Dugan.

33. On September 27 and 28 and October 4 and 11, 1978, Mr. Dugan wrote to respondent, requesting in each letter that respondent make available to him the court papers in the Liberty case. Respondent failed to respond to these communications.

34. On October 16, 1978, the defendant and Mr. Dugan appeared before respondent. The defendant was arraigned on an additional charge of petit larceny. The defendant pled guilty to both outstanding charges and was recommitted by respondent to jail, pending a pre-sentence report. However, respondent deliberately did not order a pre-sentence report, stating later that he intended to extend respondent's incarceration to await a possible extradition proceeding from New Jersey. Respondent had no reasonable basis to conclude that such extradition was pending.

35. On November 2, 1978, respondent sentenced the defendant to time already served (44 days) on the charge of unlawfully dealing with a child, and 89 days on the charge of petit larceny.

As to Charge IX of the Formal Written Complaint:

36. On March 17, 1978, Richard Pickering, age 17, was arraigned before respondent on charges of criminal trespass and petit larceny. The defendant pled not guilty and was committed by respondent to jail in lieu of \$1,000 bail. On April 4, 1978, the defendant was returned to court, pled guilty to both charges and was recommitted by respondent to jail, ostensibly to await a pre-sentence investigation. In fact, the defendant was recommitted to jail for an indeterminate period of time. On April 10, 1978, the probation department received the order of pre-sentence investigation. On April 24, 1978, the defendant was released from custody and sentenced by respondent to time already served (38 days).

37. On December 5, 1978, Harold Maddox, age 16, was arraigned before respondent on a charge of petit larceny. The defendant, with his father present, waived counsel and pled guilty. Respondent committed the defendant to jail on December 16, to await a pre-sentence investigation. However, respondent did not order a pre-sentence investigation until January 12, 1979, and the order was not received by the probation department until January 19, 1979.

38. On June 13, 1980, Anthony Pecararo, age 17, was arraigned before

respondent on a charge of unauthorized use of a motor vehicle. The defendant pled not guilty and was committed by respondent to jail in lieu of \$500 bail. A return date was set for August 26, 1980, at which time the defendant appeared without counsel, pled guilty and was recommitted by respondent to jail, ostensibly to await a pre-sentence investigation. By September 18, 1980, respondent had not yet issued an order for such investigation. On September 18, the assistant public defender communicated with respondent and requested such an order. On September 22, 1980, respondent's pre-sentence investigation order was delivered to the probation department by the assistant public defender.

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) and 33.3(c)(1) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2, 100.3[a][1], 100.3[a][4] and 100.3[c][1], and Canons 1, 2, 3A and 3C(1) of the Code of Judicial Conduct. Charges I through IX of the Formal Written Complaint are sustained, except for that portion of Charge IX which refers to People v. Maddox, which was withdrawn. Respondent's misconduct is established.

Respondent has engaged in a course of misconduct which both violates the relevant ethical standards and shocks the conscience. He has abused the power of his office in a manner that has brought discredit to the judiciary and has irredeemably damaged public confidence in the integrity of his court.

In the cases reported herein, respondent abused the bail process by deliberately incarcerating certain defendants for indefinite periods of time in order to coerce them to plead guilty. He deliberately failed to appoint counsel for indigent defendants. He deliberately penalized one defendant because of a personal dislike for that defendant's attorney. Respondent's treatment of the defendants was based not on the merits of their cases but on his own prejudices. Many of these defendants were inexperienced or otherwise incapable of protecting their rights; some were 16 or 17 years old, two were alcoholics, and one was retarded.

Respondent's explanations for his actions do not excuse his gross misconduct. In one case, for example, respondent claims to have incarcerated the defendant on the wrong charge because he was "confused" (Charge II of the Formal Written Complaint). In another case he failed to set bail because he was too "[b]usy with work" (Charge IV). In a third case he failed for nearly a month to send the defendant's attorney the papers before the court, because he "got carried away somewheres, probably selling a rug, probably doing a little carpenter work" (Charge VIII). In a fourth case he failed to order a pre-sentence investigation because he purportedly lost the order in a pile of papers (Charge IX). Respondent did not rectify his conduct, even when his improprieties were called to his attention by the assistant public defender.

No judge is above the law he is sworn to administer. The legal system cannot accommodate a jurist who thus disregards law. Respondent's conduct has revealed his total misunderstanding of the role of a judicial officer. He is not fit to serve as a judge.

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

All concur.

Dated: July 14, 1982

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

THOMAS D. GEORGE,

a Justice of the Town Court of
Varick, Seneca County.

BEFORE: Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Carroll L. Wainwright, Jr., Esq.

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

Thomas D. George, Respondent Pro Se

The respondent, the Honorable Thomas D. George, was served with a Formal Written Complaint dated February 1, 1982, charging him with failure to report and remit official monies to the State Comptroller, failure to disqualify himself in a criminal proceeding in which he owed a debt to the defendant, and failure to cooperate with the Commission. Respondent did not file an answer.

By motion dated March 29, 1982, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's operating procedures and rules, and for a finding that respondent's misconduct was established. Respondent did not oppose the motion.

By determination and order dated April 26, 1982, the Commission granted the motion for summary determination, found respondent's misconduct established and set a date for oral argument on the matter of appropriate

sanction. Respondent neither appeared for oral argument nor submitted a memorandum on sanction. The administrator of the Commission filed a memorandum in lieu of oral argument.

The Commission considered the record of this proceeding on May 2], 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. From March 1981 to February 1, 1982, (the date of the Formal Written Complaint in this proceeding), respondent failed to report or remit any monies he received in his judicial capacity to the State Comptroller, as required by Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27 of the Town Law and Section 1803 of the Vehicle and Traffic Law.

As to Charge II of the Formal Written Complaint:

2. On May 28, 1980, in the case of People v. Robert W. Hayssen, in which the defendant was charged with criminal mischief, respondent failed to disqualify himself, arraigned the defendant and set bail at \$250, notwithstanding that respondent owed a debt to the defendant for prior services rendered by the defendant's business to respondent. Bail was posted with \$25 in cash and an improperly endorsed third-party check.

3. On May 29, 1980, while still owing a debt to the defendant in People v. Robert W. Hayssen, respondent confronted Mr. Hayssen at a local country club and, in the presence of Mr. Hayssen's associates, requested that Mr. Hayssen properly endorse the bail check. Mr. Hayssen declined. After respondent departed, Mr. Hayssen went to the Sheriff's Department to deliver \$225 in cash for bail. There he was informed that respondent had revoked the defendant's bail and issued a warrant for the defendant's arrest. The defendant was re-arrested and arraigned again before respondent, who set new bail at \$500. The defendant was committed to the custody of the Seneca County Sheriff for two hours, until bail was posted.

As to Charge III of the Formal Written Complaint:

4. Respondent failed to cooperate with the Commission during its investigation of the matters herein in that: (i) on December 9, 1981, he failed to keep an appointment with a Commission staff member notwithstanding his previous agreement to present his court records for examination on that date; (ii) on December 15, 1981, he failed to appear to give testimony before a member of the Commission despite having been notified by personal service that his appearance on that date was required; and (iii) on January 15, 1982,

he falsely represented to a Commission staff member that he had returned his judicial records to the custody of the Town of Varick following his resignation from office on December 1, 1981.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27 of the Town Law, Section 1803 of the Vehicle and Traffic Law, Sections 100.1, 100.2(a), 100.2(b), 100.3(a)(1), 100.3(b), 100.3(b)(1) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 2B, 3A(1), 3B(1) and 3C(1) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained and respondent's misconduct is established.

Respondent has demonstrated by his conduct that he is unfit for judicial office and should be removed.

Public confidence in the courts requires those who preside over them to be impartial. While owing a debt to the defendant in People v. Robert W. Hayssen, respondent actively involved himself in the case as noted herein and undermined public confidence in the integrity and impartiality of his court.

By failing to report and remit official funds to the State Comptroller for an 11-month period, respondent violated those provisions of the law which require prompt reports and remittances of such funds.

By falsely representing that he had returned his judicial records to the custody of the Varick Town Board, when in fact he had not, respondent inexcusably hindered a Commission inquiry.

In addition, respondent failed to cooperate with the Commission during its investigation of the matter herein, did not answer the Formal Written Complaint or otherwise participate in this proceeding. See, Matter of Cooley v. State Commission on Judicial Conduct, 53 NY2d 65 (1981). Respondent has demonstrated that he is unfit for judicial office.

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

All concur.

This determination is rendered pursuant to Section 47 of the Judiciary Law, in view of respondent's failure to resign his office in the manner prescribed by law.

Dated: July 14, 1982

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 J. LEFF,

a Justice of the Supreme Court,
First Judicial District.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Felice K. Shea (Not Participating)
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Raymond S. Hack and Jean M.
Savanyu, Of Counsel) for the Commission

Kasanof Schwartz Iason (By Robert Kasanof,
Lawrence Iason and Howard E. Heiss)
for Respondent

The respondent, James J. Leff, a justice of the Supreme Court, First Judicial District (New York County), was served with a Formal Written Complaint dated January 5, 1981, alleging that, for a six-month period in 1980, respondent refused to perform his assigned duties in accordance with an administrative order. Respondent filed an answer dated February 18, 1981.

By order dated March 12, 1981, 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 September 21, 22, 24 and 25, 1981, and the referee filed his report with the Commission on January 20, 1982.

By motion dated February 24, 1982, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent

be censured. Respondent opposed the motion and cross-moved on March 29, 1982, to disaffirm the referee's report and for dismissal of the Formal Written Complaint or, in the alternative, for reference of the Formal Written Complaint to a different referee for a new hearing. The Commission heard oral argument on the matter on April 22, 1982, thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Supreme Court, First Judicial District, since January 1969, having been elected in the fall of 1968 to a 14-year term.

2. Between 1969 and April 1972, respondent served almost exclusively in civil parts of the Supreme Court.

3. Between May 1972 and June 1980, respondent served almost exclusively in criminal parts of the Supreme Court.

4. On May 27, 1980, respondent was assigned to serve in Part 4 of the Civil Term, a jury part, of the Supreme Court, New York County, for the period from June 16, 1980, to December 26, 1980. Respondent actually learned of the pending assignment by April 1980 and was notified officially on or about May 27, 1980.

5. The assignment of respondent was made in connection with the general assignment of all elected and acting Supreme Court justices to the civil and criminal parts of the Supreme Court in the counties comprising New York City, for the period from June 16, 1980, to December 26, 1980. There were at the time 167 criminal parts and 86 civil parts in the Supreme Court in New York City.

6. The assignment of respondent was recommended, approved, effected, concurred in or ratified by the following: Hon. E. Leo Milonas, Deputy Administrative Judge for New York City; Hon. Jawn A. Sandifer, Deputy Administrative Judge for the Criminal Term, Supreme Court, New York County; Hon. Edward Dudley, Assistant Administrative Judge for the Civil Term, Supreme Court, First Judicial District; Hon. Herbert Evans, Chief Administrative Judge of New York State; Hon. Francis Murphy, Presiding Justice of the Appellate Division, First Department; and the Chief Judge of the State of New York, Hon. Lawrence Cooke. In regular course during the periods at issue, assignments of elected New York Supreme Court justices in the First Judicial District to civil and criminal parts were done by the authority of both Justice Evans and Justice Murphy. In practice, as was done in respondent's case, the assignment schedules were drawn up by Justice Milonas after consultation with Justices Sandifer and Dudley. Justice Milonas then forwarded a draft assignment schedule to Justices Sandifer and Dudley for comment, and later submitted his final schedule to Justices Evans and Murphy for consideration and signature.

7. Respondent refused to serve in Part 4 of the Civil Term as

assigned and failed to perform any judicial duties in that part for the period from June 16, 1980, to December 26, 1980.

8. In the Supreme Court, in New York City, no general practice of circularizing justices for assignment preferences existed, and reasons for assignments were not given to individual justices as a matter of regular course. The only written standard for assignment of judges cited was Section 31.2 of the Rules of the Administrative Board of the Judicial Conference of the State of New York, which reads:

Assignment of justices to criminal terms.
The appropriate Appellate Division or such administrative judge or judges as it may designate, shall make the assignments of justices to criminal term parts. The aptitude, interest, and experience of justices in criminal work shall be considered in making such assignments.

Nothing was cited for assignment to civil terms.

9. Respondent discussed his assignment views and corresponded over them with judges in the administrative chain both before and after his actual learning, and official notification, of his new assignment.

10. Respondent enjoys a broad reputation for good judicial performance.

11. He has the intellect, ability and experience necessary to discharge well the functions of both civil and criminal parts of the New York State Supreme Court.

12. Respondent has for many years expressed public and private criticism of the courts and their administration.

13. Respondent, as an individual, was considered personally troublesome by Justice Sandifer.

14. In February 1980, respondent requested and was given a transfer from a criminal calendar part to a criminal trial part on respondent's own claim that he was tired and needed a rest from the calendar part.

15. No punitive or retaliatory basis, and no irregularity of any kind, was proven with respect to respondent's assignment on May 27, 1980, to Part 4 of the Civil Term of his court, the assignment here in question.

16. In December 1980, respondent was given another civil assignment, which he willingly accepted and later performed satisfactorily.

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, 33.3(a)(1), 33.3(a)(5) and 33.3(b)(1) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2[a], 100.3, 100.3[a][1], 100.3[a][5] and 100.3[b][1]) and Canons 1, 2A, 3A(1), 3A(5) and 3B(1) of the Code of Judicial Conduct. The Charge in the Formal Written Complaint is sustained and respondent's misconduct is established.

Respondent's assignment on May 27, 1980, to a civil part of the Supreme Court, was lawfully made by those justices charged with the administration of the Supreme Court. Their authority derives from Article VI, Section 28, of the State Constitution and Article 7-A of the Judiciary Law.

Respondent had a duty to serve in accordance with that assignment. In a large and complex court system, it is obvious that individual judges cannot be free to set their own assignments or reject those which they simply do not prefer. Respondent himself concedes that he does not have a right to veto his assignments. For individual judges to do so would result in chaos and negate any effective central administration.

Respondent was elected to serve as a justice of the Supreme Court, not as a justice of the criminal part of the Supreme Court. A person elected to the Supreme Court must expect to be assigned from time to time to duties in either the civil or criminal parts, in which all Supreme Court justices are constitutionally qualified to serve.

Respondent was never ordered to perform an assignment which was unconstitutional, or which even remotely shocked the conscience, or which other Supreme Court justices were not routinely required to perform, or which respondent had not already performed in the past.

Respondent's contention that the order of May 27, 1980, was punitive and in retaliation for his open criticism of court administration is without foundation. On its face, there is nothing unusual or punitive about an assignment of a Supreme Court justice to a regular civil part of the Supreme Court in his home county. On the record of this proceeding, there is no proof that this otherwise valid assignment was inspired by retaliatory motive. As Justice Harnett, the referee, concluded, "the unequivocal testimony of [Justices] Murphy, Evans, Milonas, Dudley and Sandifer explicitly negated imputation of punitive retaliation or irregularity." Surely, evidence that a judge has some ground to believe an assignment was punitive is insufficient to warrant a finding of invalidity and plainly fails to justify a private work stoppage or strike against the litigants and attorneys scheduled to appear in his court.

We reject the contention that a work stoppage is an appropriate manner by which to assert such a claim. An Article 78 proceeding to test such an assignment was the obvious alternative, and one which respondent did not

hesitate to adopt to challenge the Commission's own proceedings.* The dissent's argument that such a course of action imposes an expensive and unfair burden on the judge is unpersuasive.

In essence, this case involves not the validity of the assignment to civil term but the refusal by a judge to perform his duties for six months. Assuming, as we do, that respondent sincerely believed that the assignment of May 27 was improper, he had the obligation to seek redress in a lawful manner. One would expect that a judicial officer, when confronted by an order whose validity he challenged, would seek relief in those same courts over which he otherwise presides and before which the ordinary citizens of a civilized society are expected to bring their disputes.

There is a great irony, and a potentially dangerous message to society at large, for a judge to decline to rely upon the very legal system whose laws he applies to others, and instead take extra-judicial action. Had the order of May 27 been so onerous as to shock the conscience, had it directed respondent to commit an illegal act, for example, he still would have been obliged to challenge it in court. Respondent's implication that review of such a challenge would have been less than fair is an unwarranted slur upon the state's judiciary.

Respondent has advanced the argument, which the dissent has furthered, that the Commission, in disciplining a judge for his refusal to accept an assignment, has somehow impaired the independence of the judiciary. This contention is unsound.

Historically, the term "independent judiciary" has referred to those courts in which judges are free to decide the merits of cases without fear of public reproof for unpopular decisions and without private pressure from those who govern or others with influence. An "independent judiciary" has never encompassed authority for judges to refuse lawfully-assigned work. Indeed, in the very constitutional provision establishing this Commission, "persistent failure to perform his duties" is one of the specifically-enumerated causes for disciplining a judge (Article VI, Section 22a, of the Constitution). Thus, to argue that discipline in this case would chill judicial independence is to misunderstand the nature of that independence and to ignore our constitutional obligation to discipline a judge who does not work.

The Commission holds that refusal to accept a lawful assignment for a

*Two independent proceedings were instituted by respondent in state and federal courts in the course of this proceeding. Leff v. Commission et al., N.Y. Sup Ct (1st Jud. Dist., Index No. 18586/80, Oct. 5, 1980); and Leff v. Commission et al., U.S. Dist. Ct. (SDNY, Index No. 80Civ.6074, Nov. 3, 1980).

period of six months constitutes judicial misconduct. In so holding, we have every confidence that this determination will not impair in the slightest the abilities of our judiciary to fulfill their obligations as independent officials under our state and federal constitutions.

As to the propriety of imposing discipline for such conduct, it first must be noted that the Commission's determinations are subject to full scrutiny by the judiciary itself, in the form of de novo review by the Court of Appeals. Thus the judiciary itself, not the other independent branches of government, remains the final arbiter of judicial disciplinary proceedings. Second, the judiciary is well-represented on the Commission itself, with four of our eleven members required by law to be judges. Third, the Commission frequently, as in the instant case, turns to distinguished former judges to serve as referees during the formal hearings on stated charges which precede the issuance of determinations.

As to appropriate sanction, we find, as did the referee, that respondent enjoyed an outstanding reputation as a member of the Supreme Court. Perhaps his years of outstanding service led him to believe that his reassignment was subject to standards not applicable to his colleagues. His error is tragic. We agree with the referee's conclusion that respondent has disgraced himself and compromised the judiciary.

We note, however, that in December 1980, respondent accepted another civil part assignment and has since performed satisfactorily. We have every reason to believe that his lapse of judgment will not recur and that years of productive service lie ahead.

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

Mrs. Robb, Mr. Cleary, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Mr. Wainwright concur.

Judge Alexander and Mr. Bower concur in the findings of fact and conclusions of law but dissent as to sanction only and vote that respondent should be admonished.

Mr. Bromberg dissents from the findings and conclusions and votes that the Formal Written Complaint should be dismissed.

Dated: August 20, 1982
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

JAMES J. LEFF,

CONCURRING OPINION
BY JUSTICE OSTROWSKI

a Justice of the Supreme Court,
First Judicial District

I concur with the majority opinion but the dissent of my fellow Commission member David Bromberg prompts these additional observations.

The respondent, in papers submitted to the Commission and in his personal appearance, fashioned himself as a specialist in criminal law whose talents would be wasted in any other assignment.

Any administrative judge worth his salt will exploit the special skills and aptitudes of each judge and will try to accommodate judges who have assignment preferences. But to suggest that an administrative judge must do so under pain of mutiny must be rejected out of hand.

The Supreme Court has general original jurisdiction in law and equity. Const., Art.VI,§7. By seeking and accepting nomination for the office of justice of that court, a candidate holds himself out to the public as ready, willing and able to perform all of the manifold duties of that office and it ill behooves any incumbent to recant such compact with the electorate.

This is hardly the first time that the Commission has found misconduct in a violation of an administrative rule. Almost every decision of the Commission is premised on the Code of Judicial Conduct as originally formulated by the American Bar Association and later adopted by the New York State Bar Association. Virtually the entire Code (either one) has been codified as Rules of the Chief Administrator of the Courts (22 NYCRR 100) pursuant to very specific constitutional and statutory authority. Const., Art.VI, §20(b); §212(2,b) Judiciary Law. Hence, every time the Commission finds a violation of the Code, it simultaneously finds a violation of the corresponding rule.

Finally, the dissent says that, "The Commission has now held that a violation of, or non-compliance with, any rule or order of OCA is tantamount to a breach of judicial ethics and is punishable as judicial misconduct", and that, "...the effect of its holding is... that a judge is required by the rules of judicial conduct to obey an improper or illegal order of the Office

of Court Administration." That is an unwarranted and expansive reading of this case. The point involved here is a very narrow one and the decision is limited to the factual situation presented.

The time may well come when the Commission has to come to grips with a rule or order of the Chief Judge, or the Chief Administrator of the courts, or their designees, which it finds to be improper or illegal. That decision is for another day.

Dated: August 20, 1982
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

JAMES J. LEFF,

A Justice of the Supreme Court,
First Judicial District.

DISSENTING OPINION
BY MR. BROMBERG

I dissent from the foregoing determination because I believe that the Commission has no warrant to render sanctions against judges on complaints that they have violated, or refused to obey, administrative orders or rules of the Office of Court Administration. It is essential to our system of democratic government and to our continued freedom that our judiciary be strong and independent and perform its duties with fairness and integrity. The determination herein threatens serious erosion of the powers and independence of the judiciary and risks potential harm to the balanced operation of our governmental structure.

The constitutional amendments and legislative acts (Article VI, section 22, of the Constitution and Article 2-A of the Judiciary Law) which established the Commission (and the 49 others like it in all of the states) resulted from wide-spread public perception that the judiciary was unwilling to recognize or address the problems arising from instances of judicial misconduct. The diminished public confidence in the court system required such a solution as the establishment of this Commission. I believe that the existence of the Commission and the continuance of its work are vital to the proper administration of our judicial system; and I believe further that the record establishes that the Commission has performed its duties fairly and to good effect.

Necessary and salutary though this Commission is, each judge has now become subject to oversight by a body with power to investigate, try and punish him. Neither the executive nor legislative branches of state government are subject to any such form of oversight; nor are local office-holders (e.g. district attorneys) subject to any such disciplinary body. However, the record of the Commission to date shows careful exercise of its powers and justifies confidence that the Commission, while performing its necessary functions, is sensitive to, and does in fact avoid, any encroachment upon the powers or independence of the judiciary.

At the same time that this Commission was coming into being, the

perceived need for reform of judicial administration also resulted in the passage of a constitutional amendment and enabling legislation which established a system of centralized judicial administration for the courts. (Article VI, section 28, of the Constitution and Article 7-A of the Judiciary Law.) The Chief Judge of the Court of Appeals was given the power to appoint a chief administrator of the courts and to establish and supervise standards and administrative policies for the unified court system for all matters, including rules regulating practice and procedure in the courts, as well as hours of court, judicial assignments and judicial transfers; and he was given the power, through the chief administrator, to supervise the administrative operation of the unified court system. These powers are subject only to the advice and consent of the Administrative Board of the courts (consisting of the Chief Judge and the Presiding Justices of all the Appellate Divisions) in appointing a chief administrator and establishing rules of practice in the courts, and to consultation with the Administrative Board and approval by the Court of Appeals in establishing standards and administrative policies for court administration.

One cannot quarrel with the need for such constitutional amendment and legislation; nor with the assessment that these reforms have had a positive effect on the functioning of the justice system. Necessary and salutary though these reforms are, each judge has now become subject to a centralized authority exercised through the Office of Court Administration which sets rules for, and administers, supervises and controls, the functioning of the entire judicial system and each judge, down to the smallest detail, including fixing the place where each judge shall hold court on each month.

The Commission has now held that a violation of, or non-compliance with, any rule or order of OCA is tantamount to a breach of judicial ethics and is punishable as judicial misconduct. The determination of the Commission that it will utilize its disciplinary powers to enforce the administrative rules and orders issued by the Office of Court Administration carries with it a potential for diminution of the independence of the judiciary which is different and greater than any which could arise from the power of the Commission and the centralized court administration exercised separately from each other. The individual judge now contemplates a system of judicial administration which can bring him before a disciplinary body to answer for disobedience of any of its rules or orders, bring to bear against him the resources of two governmentally financed agencies, and subject him to the financial, emotional and other strains of a disciplinary hearing and the threat of public discipline. In the face of this, there is cause to wonder whether the individual judge -- and, in sum, the judiciary -- will be made to feel -- or will become -- more like court employees subservient to the court administration system, rather than independent constitutional officers performing the judicial functions of government.

I do not believe that the joinder of disciplinary and administrative power in such fashion was foreseen or approved by the public or the legislature, or that it is implicit in the structure of the constitutional amendments and

legislation establishing this Commission and the system of court administration. It swings the pendulum too far from the now-overcome extreme of judicial non-accountability toward the other potentially dangerous extreme of a too-controlled judiciary and, thus, threatens the independent functioning of the judiciary and the justice system.

Further, an adversarial and punitive approach to problems of court administration is itself a hindrance to the goal of improving our judicial administration system. Surely the court system and the legislature can -- and should -- develop a better method of dealing with disputes between court administrators and an individual judge.

I do not argue in support of the propriety or responsibility of the actions of respondent herein. There were other, and perhaps wiser, courses that he might have followed. But there are certain aspects of this matter which bear some discussion here.

Respondent, an experienced and effective jurist, believed that his reassignment from the criminal to the civil part was a punishment and he challenged it by refusing to accept it. The Commission's characterization of respondent's actions as a "private work stoppage or strike against...litigants and attorneys" and a "refusal to perform his duties" does no more than restate the issues of this proceeding in a pejorative manner and provide the disciplinary peg of a violation of a specific Rule Governing Judicial Conduct on which to hang the Commission's determination. In fact, respondent wished very much to work. Respondent sought work from other judges when he had completed his remaining work; thereafter he offered to accept any criminal assignment in any court; thereafter he offered to accept any civil or criminal assignment in any court, so long as his objections to the original assignment order were not thereby rendered moot; and finally, when the next round of assignment orders for the judiciary was issued by OCA, respondent accepted his assignment to a civil part. In sum, respondent did not refuse to work or to perform his duties. He opposed himself to an order of court administration which he believed to be illegal, and the only "violation" of which he could be guilty was his refusal to obey that order.

The referee and the Commission have found that the reassignment was legal and proper, and was not punitive; but the record reveals there are at least some grounds to find that respondent was being reassigned because he was abrasive and difficult and his immediate supervising judge was tired of dealing with him and wanted him elsewhere. (Hearing Tr. 274, 277; Referee Report 9-10.) The Commission's determination appears to sanction such conduct on the part of the assigning authority, and to hold that the assigning authority may properly reassign a judge for its own personal and private reasons.

I cannot agree that the Office of Court Administration has that power. More importantly, I believe that the Commission should not, in any event, function as an overseer of court administration by ruling upon the propriety or legality of Office of Court Administration assignment orders or any other orders of the court administration system. If the Commission's

determination in this matter is that it has the power to judicially review orders and rules of the Office of Court Administration and to render a determination that any such rule is improper or illegal, then I believe the Commission is overstepping its bounds.

If, on the other hand, the Commission's determination is that it has no power of review over the OCA beyond establishing that an order was regularly issued, then the effect of its holding is that the very act of disobedience of an administrative order or rule -- even if the order or rule is improper or illegal -- is, without more, an act of judicial misconduct; and that a judge is required by the Rules Governing Judicial Conduct to obey an improper or illegal order of the Office of Court Administration. The judge's only recourse would then be to find the personal determination and the resources to mount a court challenge against the illegal order of the Office of Court Administration. This is an expensive and unfair burden to impose upon an individual judge and it tilts the scales heavily against him, especially since it could be held with at least equal validity that the well-manned and financed Office of Court Administration should be the one required to institute judicial proceedings.

To those who would argue that chaos in the courts would result from the Commission's declination of jurisdiction in disputes between the Office of Court Administration and members of the judiciary, it should be said that greater faith in the integrity of the judiciary is justified than to accept such a mordant view; and that, in any event, there is more than sufficient power in the legislature, the Office of Court Administration and the courts to put down any threat of anarchy, should it become a reality.

I firmly believe that a dispassionate analysis of this problem by the OCA and the legislature outside the context of an ongoing dispute will surely reveal a more rational method to reconcile or resolve disagreements between court administration and judges than the adversarial and punitive course now being followed.

For the foregoing reasons I dissent from the determination of the Commission in this matter and I vote that the Formal Written Complaint be dismissed.

Dated: August 20, 1982
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

RONALD LEMON,

a Justice of the Town Court of
Allegany, Cattaraugus County.

Determination

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 Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

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

William H. Mountain for Respondent

The respondent, Ronald Lemon, a justice of the Town Court of Allegany, Cattaraugus County, was served with a Formal Written Complaint dated February 25, 1981, alleging various deficiencies in his court accounts and records. Respondent filed an answer dated March 23, 1981.

By order dated June 10, 1981, the Commission designated the Honorable John S. Marsh referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on July 28, 1981, and the referee filed his report with the Commission on October 7, 1981.

By motion dated December 24, 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 record of this proceeding on January 20, 1982, and made the following findings of fact.

1. Respondent has been a justice of the Town Court of Allegany since June 1969.

As to Charge I of the Formal Written Complaint:

2. From February 1, 1978, to March 14, 1980, respondent failed to deposit in his court bank account monies received in his judicial capacity within the time required by law and court rules, resulting in a deficiency of \$2,431.

3. Respondent converted to his own use more than \$2,000 in funds received by him in his judicial capacity by failing to deposit them as required and by using them for his personal benefit.

4. On March 14, 1980, respondent obtained a personal loan of \$3,000, which he used to replace the court funds he had previously converted.

5. Respondent's testimony on September 19, 1980, during the Commission's investigation of this matter, and at the hearing before the referee, lacked candor in that he knowingly gave less than truthful answers to questions put to him relating to the conversion of funds.

6. Respondent does not believe it was wrong to use court funds for his personal benefit.

As to Charge III of the Formal Written Complaint:

7. On August 27, 1979, respondent received \$600 in payment of a criminal fine from Bruce L. Steck.

8. On September 24, 1979, respondent received \$502.50 in payment of a civil fine from George C. Van Cleef.

9. On September 24, 1979, respondent deposited the \$1,102.50 he received in the Steck and Van Cleef cases into his official court account. Respondent did not report the dispositions in these two cases or remit the fines received to the State Comptroller until March 8, 1980.

10. Between September 24, 1979, and March 8, 1980, respondent used the \$1,102.50 to cover in part a pre-existing deficiency in his court bank account.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 27(1) of the Town Law, Section 30.7 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. Charges I and III of the Formal Written Complaint are sustained and respondent's misconduct is established. Charge II is not sustained and therefore is dismissed.

Respondent's failure to deposit and remit monies collected in his official capacity and his use of more than \$2,000 in court funds for personal matters are flagrant misuses of the public money entrusted to his care. Compounding his original misconduct, respondent then attempted to cover part of his court account deficiency by depositing \$1,102.50 received from cases whose

dispositions he did not report. Though he later secured a personal loan to cover the remaining court account deficiency, this in no way mitigates his having converted court money to his personal use. Such a breach of the public trust, standing alone, would warrant respondent's removal from office. (See, Matter of Cooley v. Commission, 53 NY2d 64 [1981] and Bartlett v. Flynn, 50 AD2d 401 [1976].)

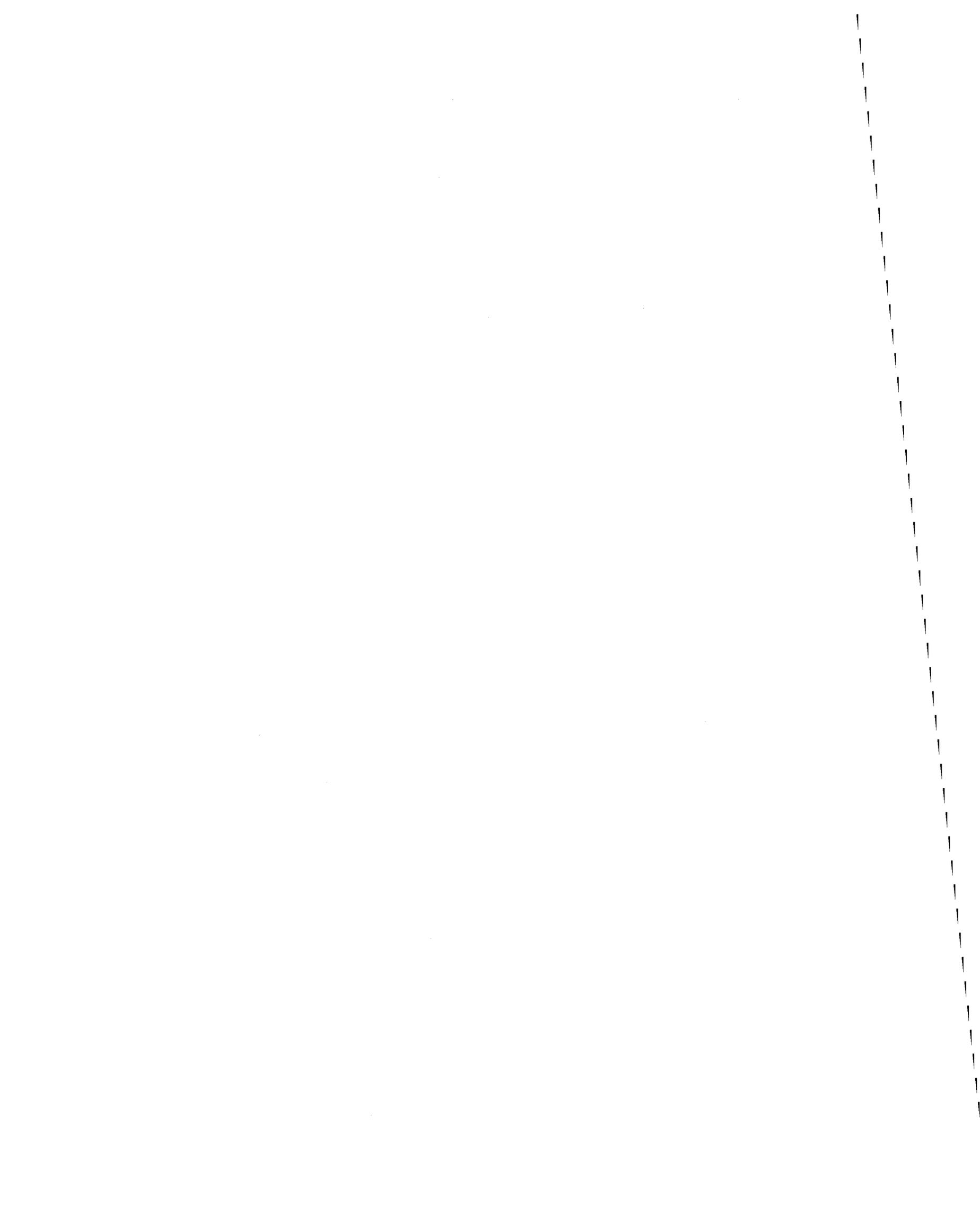
Respondent's misconduct is further compounded by his lack of candor regarding the conversion of his court funds. As the referee noted in his report:

Respondent's testimony...revealed a complete lack of candor on his part and a disposition to withhold and misrepresent relevant facts until circumstances developed during his examination indicated to him the apparent expediency to change his testimony...[Ref. Rep. 10].

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

All concur.

Dated: March 15, 1982



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

RONALD LEW,

a Justice of the Village Court of
Waterville, Oneida County.

BEFORE: Mrs. Gene Robb, Chairwoman
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.

APPEARANCES:

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

Ronald Lew, Respondent Pro Se

The respondent, Ronald Lew, a justice of the Village Court of Waterville, Oneida County, was served with a Formal Written Complaint dated November 25, 1981, alleging various financial and record keeping improprieties and deficiencies. Respondent did not submit an answer.

By motion dated December 31, 1981, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent did not oppose the motion or file any papers in response thereto.

By determination and order dated January 26, 1982, the Commission granted the administrator's motion, found respondent's misconduct established and set a schedule for argument as to appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent neither submitted a memorandum nor requested oral argument.

The Commission considered the record of this proceeding on February 25, 1982, and made the following findings of fact.

1. Charge I: Between February 1975 and September 1980, respondent wrote 71 checks to "cash" on his official court account totaling \$2,690, and cashed the checks at two supermarkets.

2. Charge II: From January 1979 through November 1981, respondent (i) failed to report to the Department of Audit and Control 55 cases disposed of during this period, (ii) under-reported the fine collected in a 56th case and (iii) failed to remit to the State Comptroller \$1,295 in fines received in connection with these cases, as set forth in Schedule A appended to the Formal Written Complaint. Respondent did not have sufficient funds in his court account to make payment for the fines he received, and he failed to deposit sufficient funds in his court account to make up the deficiency, despite notice in January 1981 from the Department of Audit and Control.

3. Charge III: Between December 1976 and May 1979, in the eight cases set forth in Schedule B appended to the Formal Written Complaint, respondent received funds totaling \$150 but reported only \$90 to the Department of Audit and Control.

4. Charge IV: On January 6, 1981, respondent's court account was deficient by \$1,512.21. On November 25, 1981, his court account was still deficient by \$1,355.

5. Charge V: From May 1981 through November 1981, in the 40 cases set forth in Schedule C appended to the Formal Written Complaint, respondent received \$625 in fines but did not report the cases or remit the money to the State Comptroller.

6. Charge VI: Between January 1978 and October 1981, respondent failed to file reports or remit money to the Department of Audit and Control within ten days of the month following collection, as set forth in Schedule D appended to the Formal Written Complaint.

7. Charge VII: Between October 1975 and November 1980, respondent failed to maintain in his official court account sufficient funds to cover his liabilities, and his account was overdrawn 35 times, as set forth in Schedule E appended to the Formal Written Complaint.

8. Charge VIII: From January 1979 through November 1981, respondent failed to perform his administrative duties in that he (i) failed to keep complete and accurate dockets of his court activities, (ii) failed to keep a complete and accurate cashbook and (iii) failed to keep a complete and accurate account of moneys received.

9. Charge IX: Respondent failed to cooperate with a duly authorized Commission investigation in that he refused to appear to testify under oath before a member of the Commission on the matters addressed herein, despite having been duly notified that his appearance was required.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act, Sections 30.7(a) and 30.7(b) of the Uniform Justice Court Rules, Section 1803 of the Vehicle and Traffic Law, Section 4-410 of the Village Law, 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.

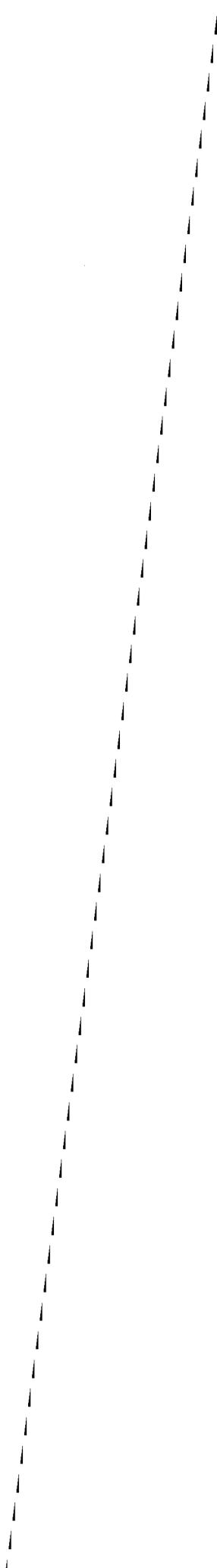
Respondent's failure to deposit court funds in official court bank accounts, and his failure to report dispositions and remit such funds to the State Comptroller, constitute a gross neglect of his statutory and ethical obligations and are grounds for removal from office. Matter of Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981); Matter of Cooley v. State Commission on Judicial Conduct, 53 NY2d 64 (1981); and Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976).

In the instant matter, respondent's negligence is exacerbated by his apparent conversion of court funds for his personal use. Those funds which respondent in fact deposited in his official court accounts were promptly withdrawn by checks which he drew to "cash". Such conduct is intolerable.

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

All concur.

Dated: April 22, 1982



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 MAHAR,

Determination

a Justice of the Town Court of
Hoosick, Rensselaer County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Albert B. Lawrence, Of
Counsel) for the Commission

John Mahar, Respondent Pro Se

The respondent, John Mahar, a justice of the Town Court of Hoosick, Rensselaer County, was served with a Formal Written Complaint dated November 4, 1981, alleging inter alia that he threatened an attorney who had lodged a complaint against him with this Commission. Respondent filed an answer dated January 9, 1982.

The Commission designated Bernard H. Goldstein, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on January 22, 1982. The referee filed his report with the Commission on March 15, 1982.

By motion dated March 26, 1982, 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 by letter dated April 6, 1982. Oral argument was waived.

The Commission considered the record of this proceeding on April 21, 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Rolf M. Sternberg is an attorney admitted to the practice of law in New York. In May 1979, Mr. Sternberg filed a written complaint and affidavit with the Commission concerning respondent.

2. On August 1, 1980, the Commission sent Mr. Sternberg's complaint and affidavit to respondent and asked for his comments with respect thereto. Respondent received the material on August 5, 1982.

3. On August 19, 1980, Mr. Sternberg appeared in the Hoosick Town Court on a matter presided over by respondent's co-justice. As he left the court, Mr. Sternberg was approached by respondent, who said he was "going to win" the matter before the Commission and was thereafter "going to get" Mr. Sternberg. Respondent's threat was motivated by his rancor at Mr. Sternberg for having filed the complaint with the Commission. In testimony before the Commission during its investigation of this matter, respondent acknowledged that his conduct was improper.

As to Charge II of the Formal Written Complaint:

4. On May 4, 1981, in connection with a Commission proceeding concerning Mr. Sternberg's complaint against respondent, Commission attorney Stephen F. Downs sent to respondent's attorney the statements of witnesses who would testify at the proceeding. Among the statements sent on that date was one by Ralph Helft, who was scheduled to testify against respondent.

5. Wayne Weeden is respondent's next-door neighbor. He is also a bartender at "R's Tavern" in the Village of Hoosick Falls. Charges of burglary and possession of stolen property were pending against Mr. Weeden in Troy, New York, in 1981, arising from a tire-stealing incident in 1979.

6. On two occasions in May 1981, respondent asked Mr. Weeden to make a statement that would incriminate Mr. Helft in the tire-stealing matter. Respondent indicated to Mr. Weeden that he himself was in "some kind of trouble" and that, in return for such testimony, respondent would use his influence to clear Mr. Weeden's arrest records in Troy. Respondent told Mr. Weeden that he wanted to retaliate against Mr. Helft. Mr. Weeden subsequently testified that Mr. Helft was not involved in the tire-stealing incident.

As to Charge III of the Formal Written Complaint:

7. On July 18, 1981, respondent was notified by the Commission that his appearance and testimony were required with respect to his conversations with Mr. Weeden.

8. On August 3, 1981, Mr. Weeden was at his job tending bar at R's Tavern. Respondent was drinking alcohol at the tavern over a period of two hours and was inebriated. In a loud voice that other patrons could hear, respondent repeatedly used vulgar language and called Mr. Weeden a liar. Respondent was known by other patrons to be a judge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.2(c) of the

Rules Governing Judicial Conduct (now renumbered 100.1, 100.2[a] and 100.2[c]) and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, except for that portion of Charge III that alleges that respondent threatened to "get even" with Mr. Weeden for testifying before the Commission, which is dismissed. Respondent's misconduct is established.

Respondent has demonstrated by his conduct that he is unfit to continue as a judge.

By encouraging a witness to make a false statement in a criminal matter, by offering the prestige of his office to help that witness in return, and by threatening an attorney who properly availed himself of judicial grievance procedures, respondent prejudiced the administration of justice and obstructed the very search for truth which our courts and judges are supposed to enhance. Such conduct warrants removal. See, Matter of Jones, 47 NY2d (mmm) (Ct. on the Judiciary 1979).

By allowing himself to become intoxicated in a public place where he was known to be a judge, by using vulgar language in a loud and offensive manner, and by repeatedly calling a witness against him a liar, respondent undermined public confidence in the integrity of the judiciary. See, Matter of Quinn, 54NY2d 386, 392 (1981), and Matter of Kuehnel, 49 NY2d 465 (1980).

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

All concur.

Dated: June 10, 1982

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

RUTH MILKS,

Determination

a Justice of the Town and Village
Courts of Perry, Wyoming County.

BEFORE: Mrs. Gene Robb, Chairwoman
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 (Cody B. Bartlett,
Of Counsel) for the Commission

Philip A. McBride for Respondent

The respondent, Ruth Milks, a justice of the Town and Village Courts of Perry, Wyoming County, was served with a Formal Written Complaint dated February 25, 1981, alleging that she used the prestige of her judicial office to collect a private debt on behalf of her employer. Respondent filed an answer on May 2, 1981.

The Commission designated the Honorable John S. Marsh referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on June 1, 1981, and the referee submitted his report on August 18, 1981.

By motion dated October 5, 1981, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent waived submission of opposing papers and oral argument.

The Commission considered the record of this proceeding on November 23, 1981, and made the following findings of fact:

1. Respondent serves part-time as justice of the Town and Village Courts of Perry. Respondent has served as Village Court Justice continuously since June 1979 and as Town Court Justice since January 1981. From April 1980 to April 1981, respondent was also employed as a debt collector for the Rochester office of American Health Fitness Centers. Her collections territory included the Rochester and Buffalo areas. She had no accounts in Wyoming County and did not preside over suits involving her employer. Respondent resigned her position with American Health on April 1, 1981, on advice of counsel.

2. In March 1980 Christopher DiVincenzo, a resident of Kenmore, New York (Erie County), signed a contract for a fitness program with American Health. Shortly thereafter Mr. DiVincenzo and American Health disagreed on the terms of payment and Mr. DiVincenzo neither used American Health's facilities nor made any payments on the contract.

3. In early June 1980, respondent telephoned Mr. DiVincenzo's home, identified herself as "Judge Milks" and left a message for Mr. DiVincenzo to call her. Mr. DiVincenzo returned the call on June 4, 1980. Respondent again identified herself as "Judge Milks" and stated that she had called him to discuss his non-payment on the American Health contract. Respondent told Mr. DiVincenzo that his credit would be ruined if he did not make the payments and that he would have two weeks to make payment arrangements before she would submit the case to court. Respondent told Mr. DiVincenzo that American Health matters were not handled in her court. In answer to his inquiry as to his chances in a court case, respondent told Mr. DiVincenzo: "If you went to court you would lose."

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

A judge is obliged to refrain from financial and business dealings that tend to exploit or reflect adversely upon judicial office (Section 33.5[c][1] of the Rules). A judge is also obliged not to lend the prestige of judicial office to advance a private interest (Section 33.2[c] of the Rules). By identifying herself as a judge while attempting to collect a disputed debt on behalf of her non-judicial employer, respondent violated the applicable rules. As such respondent failed to conduct herself in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Sections 33.1 and 33.2 of the Rules).

The Commission notes in mitigation that respondent resigned her position as a debt collector and that therefore the circumstances herein are not continuing.

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

All concur.

Dated: January 20, 1982

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

ALBERT MONTANELI,

a Justice of the Ancram Town Court,
Columbia County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Stephen F. Downs and Albert B.
Lawrence, Of Counsel) for the Commission

Daley and Baldwin (By Andrew J. Baldwin)
for Respondent

The respondent, Albert Montaneli, a justice of the Ancram Town Court, Columbia County, was served with a Formal Written Complaint dated October 14, 1981, alleging that he improperly intervened on behalf of the defendant in a case not before him in November and December 1980. Respondent filed an answer on November 25, 1981.

By order dated December 1, 1981, the Commission designated the Honorable Simon J. Liebowitz referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on January 11, 1982, and the referee filed his report with the Commission on March 15, 1982.

By motion dated May 5, 1982, 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 May 21, 1982, and waived oral argument.

The Commission considered the record of the proceeding on June 28, 1982, and made the following findings of fact.

1. Joseph DiCaprio is the owner of a bar in the town of Ancram. He was arrested on November 28, 1980, for two counts of serving alcohol to minors, a misdemeanor. The case was returnable before Ancram Town Court Justice Joan Dwy, respondent's co-justice.

2. Mr. DiCaprio and his family and respondent are close personal friends.

3. On the night of November 28, 1980, after the arrest of Mr. DiCaprio, respondent telephoned the State Police officers who had made the arrest. Respondent identified himself as the Ancram town justice and as a close friend of Mr. DiCaprio and the DiCaprio family.

4. On December 8, 1980, respondent spoke to the assistant district attorney assigned to the DiCaprio case and engaged the prosecutor in a conversation relating to a possible plea bargain, reduction of sentence and lenient treatment of his friend Mr. DiCaprio. The prosecutor rejected respondent's suggestions and told respondent not to involve himself in the case in any way.

5. On December 8, 1980, respondent spoke to Justice Dwy and suggested a fine of \$200 in the event the defendant pled guilty to the charge. Such fine would be less than the maximum penalty allowed by law of \$250 or 90 days in jail per count. Justice Dwy subsequently imposed a fine of \$200 on Mr. DiCaprio.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.2(b), 33.2(c), 33.3(a)(4) and 33.3(c) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2[a], 100.2[b], 100.2[c], 100.3[a][4] and 100.3[c] and Canons 1, 2A, 2B, 3A(4) and 3C of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained to the extent indicated in the findings and conclusions herein, and respondent's misconduct is established.

Respondent lent the prestige of his office to advance a private interest (i) by identifying himself as a judge when he made inquiries to the police on behalf of a friend who was arrested and (ii) by attempting to influence the prosecutor and presiding judge as they discharged their responsibilities in the case. In essence, respondent sought special consideration on behalf of a friend charged with a crime. See, Matter of Byrne, 47 NY2d (b), (c), (Ct. on the Jud. 1978).

Respondent's conduct undermined the administration of justice and diminished public confidence in the integrity and impartiality of the judiciary.

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

Judge Alexander, Mr. Bower, Mr. Cleary and Judge Rubin dissent and conclude that respondent's misconduct was not established.

Dated: September 10, 1982

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

VIRGINIA NEW,

a Justice of the Philadelphia
Town Court, Jefferson County.

Determination

THE COMMISSION:

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

APPEARANCES:

Gerald Stern (Albert B. Lawrence, Of
Counsel) for the Commission

Virginia New, Respondent Pro Se

The respondent, Virginia New, a justice of the Philadelphia Town Court, Jefferson County, was served with a Formal Written Complaint dated April 26, 1982, alleging inter alia that she failed to meet various records keeping and financial reporting, deposit and remittance requirements. Respondent did not answer the Formal Written Complaint.

By notice dated June 1, 1982, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent opposed the motion on June 21, 1982, with what was, in effect, an answer to the Formal Written Complaint. The administrator thereupon withdrew his motion for summary determination.

By order dated July 13, 1982, 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 August 23 through 26, 1982, and the referee filed his report with the Commission on October 19, 1982.

By motion dated October 27, 1982, the administrator moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent did not oppose the motion or request oral argument.

The Commission considered the record of the proceeding on November 29, 1982, and made the following findings of fact.

Preliminary Findings:

1. Respondent has been a justice of the Philadelphia Town Court continuously since 1973. Respondent was a justice of the Philadelphia Village Court from April 1974 to April 1982.

2. Respondent serves as a justice part-time. She has a college degree in accounting. Respondent is self-employed as an accountant and also works nights for the Crosby's Super Duper store in Watertown (Jefferson County), New York.

As to Charge I of the Formal Written Complaint:

3. Between July 1977 and December 1981, as set forth in Schedules A and B appended to the Formal Written Complaint, respondent failed to deposit official monies within 72 hours of receipt, as required by Section 30.7 of the Uniform Justice Court Rules, with the result that her court accounts were deficient. Respondent was aware of the 72-hour deposit requirement.

4. From August 14, 1979, to December 31, 1979, respondent failed to deposit any monies she received in her judicial capacity into her town and village court accounts, notwithstanding that she received \$2,104 during this period.

5. From January 15, 1980, to July 1980, respondent failed to deposit any monies she received in her official capacity into her town and village court accounts, notwithstanding that she received \$637 during this period.

6. In December 1980, John F. McKiernan, an examiner with the Department of Audit and Control, audited respondent's court records and spoke to her about her depositing practices. Respondent offered no explanation for the late deposits and reports.

As to Charge II of the Formal Written Complaint:

7. Between July 1977 and February 1982, as set forth in Schedules C and D appended to the Formal Written Complaint, respondent failed to file reports

and remit monies to the State Comptroller within ten days of the month following collection, as required by Section 2021(1) of the Uniform Justice Court Act.

8. In December 1980, John F. McKiernan, an examiner with the Department of Audit and Control, audited respondent's court records and spoke to her about her late reports. Thereafter respondent continued to fail to file reports and remit monies to the State Comptroller in a timely manner.

9. Respondent has filed her monthly reports and remittances as late as 199 days.

10. For 53 of the 56 months between July 1977 and February 1982, as indicated in Schedule C appended to the Formal Written Complaint, respondent was late in filing her town court monthly reports and in remitting official town court monies to the State Comptroller.

11. For 52 of the 56 months between July 1977 and February 1982, as indicated in Schedule D appended to the Formal Written Complaint, respondent was late in filing her village court monthly reports and in remitting official village court monies to the State Comptroller.

As to Charge III of the Formal Written Complaint:

12. From June 1978 to October 1981, as indicated in Schedule E appended to the Formal Written Complaint and Exhibits 16 and 18 accepted into evidence by the referee, respondent:

(a) failed to dispose of 116 cases in her court, notwithstanding that the defendants had pled guilty;

(b) failed to respond at all to the pleas or inquiries of 95 defendants;

(c) failed to return driver's license renewal stubs to 73 defendants who had forwarded the stubs with their pleas of guilty;

(d) failed to make entries in her docket for 74 criminal cases pending in her court;

(e) failed to maintain any records for 25 cases pending in her court;
and

(f) failed to keep any case files or indices of cases pending in her court.

13. As of August 26, 1982, the last day of the hearing before the referee in this matter, respondent had in her personal possession 14 checks and money orders totaling \$217, in fines paid by defendants as long ago as January 1980. She had not deposited these funds in her official bank account, issued receipts to the defendants or disposed of the cases.

As to Charge IV of the Formal Written Complaint:

14. Respondent failed to cooperate with the Commission during its investigation of the matters herein, in that she failed on five occasions (September 18, October 28 and December 30, 1981; January 7 and January 15, 1982) to appear to give testimony before a member of the Commission, despite having been duly required to appear pursuant to Section 44, subdivision 3, of the Judiciary Law.

As to Charge V of the Formal Written Complaint:

15. Respondent's term of office as Philadelphia Village Justice, to which she was not re-elected, expired on April 5, 1982. Respondent knew she was required by law to turn over her village court records to the village clerk by April 5, 1982. Notwithstanding repeated requests by the village clerk, the village mayor and her successor as village justice, respondent has failed to turn over her records to the village clerk.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct; Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct; Section 30.7 of the Uniform Justice Court Rules; Sections 2019, 2019-a, 2020 and 2021(1) of the Uniform Justice Court Act; Section 1803 of the Vehicle and Traffic Law; Section 27(1) of the Town Law; Section 410(1) of the Village Law; and Sections 105.1 and 105.3 of the Rules of the Chief Administrator of the Courts on Recordkeeping Requirements for Town and Village Courts. Charges I through V of the Formal Written Complaint are sustained and respondent's misconduct is established.

Over a four-year period, respondent has disregarded various statutory records keeping and financial reporting requirements. She has been negligent in her handling of public monies. She has failed to dispose of scores of cases and failed to respond to citizens' inquiries about the status of their cases. She failed to cooperate with the Commission during its investigation of the matters herein.

The totality of respondent's conduct constitutes a serious violation of her official responsibilities and an irreparable breach of the public's trust in her judicial performance. (See, Matter of Cooley, 53 NY2d 64; Matter of Petrie, 54 NY2d 807.)

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

All concur.

Dated: December 8, 1982
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

FRANCIS B. PRITCHARD,

a Justice of the Town Court of
Grand Island, Erie County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

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

Cole, Sorrentino, Cavanaugh, Stephenson &
O'Brien (By Stephen E. Cavanaugh) for
Respondent

The respondent, Francis B. Pritchard, is a part-time justice of the Town Court of Grand Island, Erie County, and an attorney permitted to practice law. He was served with a Formal Written Complaint dated February 20, 1981, alleging misconduct with respect to his actions in five traffic cases and his failure to disqualify himself from presiding over two cases in which his impartiality might reasonably be questioned. Respondent filed an answer on April 3, 1981.

By order dated April 23, 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 June 30 and July 1, 1981, and the referee filed his report with the Commission on October 20, 1981.

By motion dated December 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. The Commission heard oral argument on the matter on April 22, 1982, thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. On November 3, 1975, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Guy San Lorenzo as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

As to Charge II of the Formal Written Complaint:

2. On March 3, 1976, respondent reduced a charge of passing a red light to driving with an unsafe tire in People v. William M. Walsh as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

As to Charge III of the Formal Written Complaint:

3. On July 21, 1976, respondent reduced a charge of speeding 93 mph in a 55 mph zone to speeding 75 mph in a 55 mph zone in People v. Alfonso R. Pacitti as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

As to Charge V of the Formal Written Complaint:

4. On March 9, 1977, respondent reduced a charge of speeding to driving with an unsafe tire in People v. Armand J. Castellani as a result of a letter he received from Lewiston Town Court Justice Sebastian Lombardi, seeking special consideration on behalf of the defendant.

As to Charge VI of the Formal Written Complaint:

5. From 1973 to 1977, respondent represented three plaintiffs who brought actions against Michael Sendlbeck: Link Building Products v. Sendlbeck in 1973, Calvin Jenkins and Jeffrey Hawkins v. Sendlbeck in 1973 and Grand Island Penny Saver v. Sendlbeck in 1975. In the Penny Saver case, judgment in the amount of \$257.49 was entered against Mr. Sendlbeck on September 15, 1975, and remained unsatisfied until January 1977.

6. On September 3, 1976, Michael Sendlbeck was arraigned before respondent on charges of non-payment of wages in People v. Michael Sendlbeck. At the time of the defendant's arraignment, the judgment in the Penny Saver case was still outstanding.

7. Mr. Sendlbeck moved for respondent to recuse himself from presiding over People v. Sendlbeck. Respondent denied the motion. Mr. Sendlbeck thereafter entered a plea of guilty to the charge and was sentenced by respondent to 60 days in jail and a \$500 fine. The County Court, Erie County, subsequently modified the term of imprisonment to time already served by the defendant.

8. A portion of the money received from Mr. Sendlbeck's bail checks was used by his attorney to satisfy the Penny Saver judgment and to pay respondent's fee for that case.

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(b)(2) and 33.3(c)(1)(i) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2, 100.3[a][1], 100.3[a][4], 100.3[b][2] and 100.3[c][1][i]) and Canons 1, 2, 3A(1), 3A(4) and 3C(1)(a) of the Code of Judicial Conduct. Charges I, II, III, V and VI of the Formal Written Complaint are sustained and respondent's misconduct is established. Charges IV and VII of the Formal Written Complaint are not sustained and therefore are dismissed.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By granting ex parte requests of another judge for favorable dispositions for the defendants in traffic cases, respondent violated the applicable rules enumerated above.

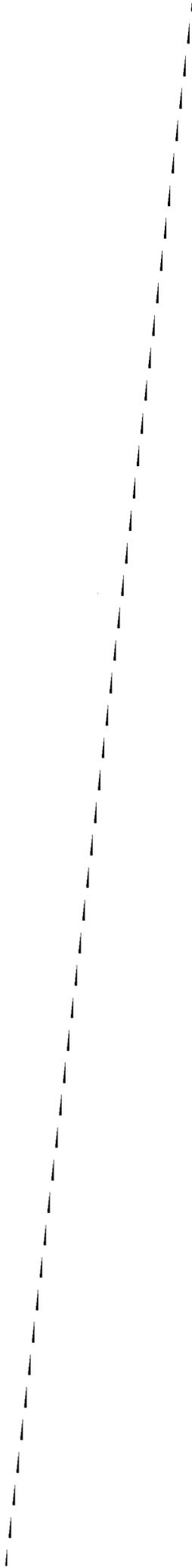
Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism. In Matter of Byrne, 47NY2d (b), (c) (Ct. on the Judiciary 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." Id.

With respect to his conduct in the Sendlbeck case, respondent, by failing to disqualify himself, failed to separate his judicial duties from his private interests as a practicing attorney. Respondent should have recognized the appearance of impropriety that would result from his presiding over a matter in which the defendant owed money to a client of his. By refusing to recuse himself, respondent acted in a manner in which his impartiality and objectivity might reasonably be questioned.

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

All concur.

Dated: June 10, 1982



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

RONALD R. PULVER,

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

Determination

THE COMMISSION:

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

APPEARANCES:

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

Ronald R. Pulver, Respondent Pro Se

The respondent, Ronald R. Pulver, a justice of the Kinderhook Town and Valatie Village Courts, was served with a Formal Written Complaint dated April 26, 1982, alleging that he presided over four cases from 1978 to 1981 involving his relatives. Respondent did not file an answer.

By motion dated July 20, 1982, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established, pursuant to 22 NYCRR 7000.6(c). Respondent did not oppose the motion. By determination and order dated August 20, 1982, the Commission granted the administrator's motion, found respondent's misconduct established and set a date for oral argument on the issue of sanction. Respondent did not

appear for oral argument and sent the Commission a letter indicating his intention to resign. The administrator filed a memorandum in lieu of oral argument. The Commission considered the record of the proceeding on September 16, 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. On April 15, 1978, respondent presided over an arraignment in People v. Charles Pulver, Jr., in which the defendant was charged with burglary in the third degree, notwithstanding that the defendant was his nephew. Respondent failed to keep any record of the arraignment.

As to Charge II of the Formal Written Complaint:

2. Between January 1979 and January 1981, respondent presided over People v. Suzanne Klein, in which the defendant was charged with endangering the welfare of a minor, notwithstanding that the complaining witness in the case, Ruth Pulver, was respondent's sister-in-law, and notwithstanding that the minor whose welfare was at issue was respondent's niece.

As to Charge III of the Formal Written Complaint:

3. On January 17, 1979, respondent presided over People v. Charles Pulver, Jr., in which the defendant was charged with criminal trespass in the second degree, notwithstanding that the defendant was his nephew. Respondent dismissed the charges and failed to keep any record of the proceeding.

As to Charge IV of the Formal Written Complaint:

4. On March 12, 1980, respondent presided over People v. Charles Pulver, Jr., in which the defendant was charged with assault in the third degree, notwithstanding that the defendant was his nephew. Respondent reduced the charges against the defendant to harassment and imposed a \$50 fine against him.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 14 of the Judiciary Law, Sections 2019 and 2019-a of the Uniform Justice Court Act, Sections 105.1 and 105.3 of the Recordkeeping Requirements for Town and Village Courts, Sections 100.1, 100.2, 100.3(a)(1) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3C(1) of the Code of Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained and respondent's misconduct is established.

An independent, impartial judiciary is essential for the fair and proper administration of justice. It is improper for a judge to preside over cases involving relatives within six degrees of consanguinity or affinity. To do

so would violate Section 14 of the Judiciary Law and Section 100.3(c)(1) of the Rules Governing Judicial Conduct, which require the judge's disqualification in such circumstances.

By presiding over cases involving his nephew, sister-in-law and niece, and by violating the relevant ethical provisions cited above, respondent irreparably diminished public confidence in the integrity and impartiality of his court and has demonstrated his unfitness for judicial office.

Respondent compounded the seriousness of his misconduct by failing to keep proper records of the cases at issue, despite the mandates of law and the rules relevant to town and village court administration. Such misconduct suggests a deliberate attempt by respondent to conceal what he knew to be improper conduct. We are not persuaded by respondent's assertion that he merely forgot to keep certain records (Charges I and IV) or that he had no recollection of the case involving the allegedly endangered welfare of his niece.

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

This determination is made pursuant to Section 47 of the Judiciary Law in view of respondent's recent resignation.

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mrs. DelBello and Judge Rubin were not present.

Dated: November 12, 1982

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

LAWRENCE L. RATER,

a Justice of the Town Court of
Sherman, Chautauqua County.

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

APPEARANCES:

Gerald Stern (Cody B. Bartlett, Of Counsel)
for the Commission

Cole, Sorrentino, Cavanaugh, Stephenson
and O'Brien (By Stephen E. Cavanaugh)
for Respondent

The respondent, Lawrence L. Rater, a justice of the Town Court of Sherman, Chautauqua County, who is not a lawyer, was served with a Formal Written Complaint dated March 6, 1981, and an amended Formal Written Complaint dated April 14, 1981, alleging that he failed to meet various financial reporting and record-keeping requirements and that he improperly presided over a traffic case in which his brother was the defendant. Respondent filed an answer dated May 1, 1981.

By order dated June 10, 1981, the Commission designated the Honorable Harry D. Goldman referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on September 14, 1981, and the referee filed his report with the Commission on November 19, 1981.

By motion dated January 26, 1982, 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 March 10, 1982. The Commission heard oral argument on the matter on March 25, 1982, thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. From January 1, 1976, to July 30, 1980, respondent was negligent in accounting for monies received in his official capacity, resulting in a deficiency in the amount of \$264.68.

2. From May 21, 1979, to August 2, 1979, and from October 31, 1979, to November 30, 1979, respondent failed to deposit official funds into his court account within 72 hours of receipt, as required by Section 30.7(a) of the Uniform Justice Court Rules.

3. From January 1, 1976, to July 30, 1980, respondent failed to report and remit to the State Comptroller, within the first ten days of receipt, all fines, civil fees and bail forfeitures received in his official capacity, as required by Sections 2020 and 2021(1) of the Uniform Justice Court Act and Section 1803 of the Vehicle and Traffic Law.

4. From January 1, 1976, to December 15, 1980, respondent failed to maintain a complete cashbook and index of cases as required by Section 30.9 of the Uniform Justice Court Rules.

As to Charge II of the Formal Written Complaint:

5. On March 18, 1978, respondent's brother, Norman Rater, was charged with speeding 43 miles per hour in a 30 miles per hour zone. On March 28, 1978, respondent presided over the case of People v. Norman Rater and dismissed the charge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 14 of the Judiciary Law, Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(5), 33.3(b)(1) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(5), 3B(1) and 3C(1)(d) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established.

By failing to make timely deposits of official funds, by failing to report and to remit such funds in a timely manner to the State Comptroller, and by failing to maintain complete and accurate records such that his accounts were \$264 deficient, respondent failed to discharge diligently his administrative responsibilities. Such neglect of his duties is cause for discipline. Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976), app. dismissed, 39 NY2d 942 (1976); Matter of Reich, unreported (Com. on Jud. Conduct, Jan. 20, 1982); Matter of Reedy, unreported (Com. on Jud. Conduct, Dec. 28, 1981).

By presiding over his brother's traffic case and by dismissing the charge, respondent violated the rules and statutory prohibitions on hearing a matter involving relatives within six degrees of consanguinity (Section 14 of the Judiciary Law and Section 33.3[c][1] of the Rules Governing Judicial Conduct).

By so doing, respondent prejudiced the administration of justice and undermined public confidence in the integrity and impartiality of the judiciary.

There remains the issue of appropriate sanction. Considering the circumstances of this case, we conclude that censure is more appropriate than removal from office.

While respondent's administrative failures constitute clear misconduct, we note (i) the relatively modest deficiency occurring over a long period of time (\$264 over four-and-a-half years), (ii) the absence of evidence of conversion, (iii) the subsequent balancing of the court account and (iv) respondent's frank admission of error.

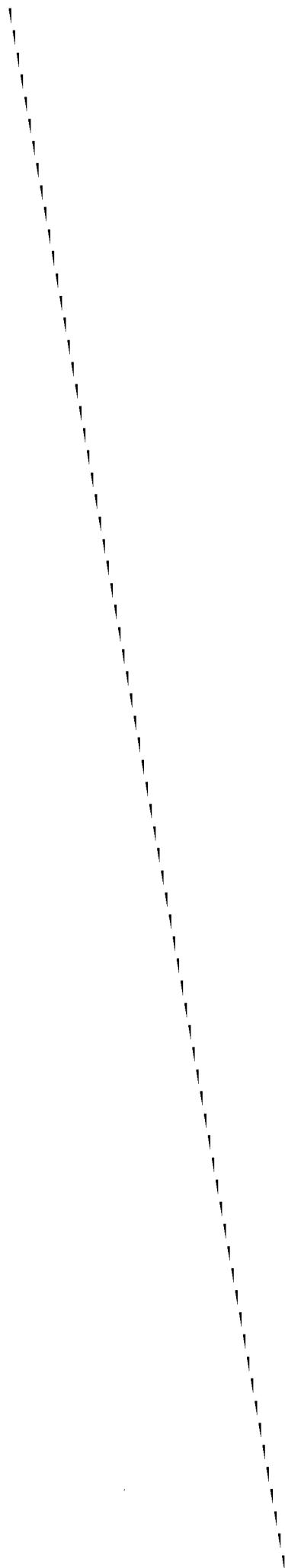
Respondent's presiding over his brother's case is serious misconduct, but we note in mitigation (i) respondent's apparently honest failure to understand that recusal is mandatory in such cases, (ii) that this is an isolated incident and (iii) that respondent frankly admitted wrongdoing.

Although these mitigating factors in no way excuse respondent of his misconduct or exempt him from stern public discipline, they do in our judgment require a sanction short of removal. The facts here differ from other cases in which the Commission determined that removal was the appropriate sanction. Cf., Matter of Adams, NYLJ, Jan. 19, 1979, p. 1, col. 1 (Com. on Jud. Conduct, Nov. 29, 1978), Matter of Seaton, unreported (Com. on Jud. Conduct, May 8, 1980), and Matter of Schultz, NYLJ, June 8, 1979, p. 1, col. 2 (Com. on Jud. Conduct, May 29, 1979).

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

All concur.

Dated: May 6, 1982



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 REICH,

a Justice of the Village Court
of Tannersville, Greene County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Honorable Isaac Rubin
Honorable Felice Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Raymond S. Hack and Jack J.
Pivar, Of Counsel) for the Commission

Alex Wiltse, Jr., for Respondent

The respondent, Joseph Reich, a justice of the Village Court of Tannersville, Greene County, was served with a Formal Written Complaint dated December 8, 1980, alleging that from July 1974 to March 1978 he failed to make proper deposits of monies received in his official capacity. Respondent filed an answer dated January 15, 1981.

By order dated February 17, 1981, the Commission designated Richard L. Baltimore, Esq., referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on June 4, 1981, and the referee filed his report on September 18, 1981.

By motion dated October 16, 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 November 4, 1981.

The Commission heard oral argument on the motion on November 23, 1981, thereafter considered the record of the proceeding and made the following findings of fact:

1. On May 6, 1976, respondent deposited into his personal checking account \$830 in court funds. Respondent testified that this deposit was made by mistake and that he was unaware of it until May 1981.

2. On May 17, 1976, the balance in respondent's personal checking account fell to \$615.78, and on November 18, 1976, it fell to \$74.25. On July 13, 1976, respondent's official court account became overdrawn by \$90. Respondent should have known of the mistaken deposit of \$830 by virtue of this deficiency in his court funds.

3. For 25 of the 45 months from July 1974 to March 1978, respondent deposited less money than he had received in his official capacity. For 20 of those 45 months, he deposited more money than he had received in his official capacity. In this 45-month period respondent's average cumulative deficiency was \$664.11.

4. Respondent's bookkeeping procedures are inadequate in that the transactions in his official bank account are not fully and accurately reflected in his records. Respondent's records of his finances and banking transactions are so inaccurate as to be unreliable. When requested by the Commission in August 1980 to explain the deficiencies in his court account, respondent was unable to do so.

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(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.

A judge is obliged to segregate and account for the funds he receives in his official capacity (Section 30.7 of the Uniform Justice Court Rules; see also Section 4-410 of the Village Law). By depositing \$830 of court funds into his personal bank account, respondent violated the applicable rules and demonstrated negligence in his handling of public monies. Respondent's misconduct in this regard is exacerbated by his inadequate bookkeeping procedures, which are so unreliable that (i) the mistaken deposit of \$830 was undiscovered for five years, even after the personal account into which it was deposited fell to \$74.25 and the court account into which it should have been deposited was overdrawn by \$90, (ii) for 45 consecutive months respondent's deposits either fell short or exceeded but never equalled the amount of money he actually received, resulting in an average deficit of over \$664, and (iii) respondent himself could not adequately explain his records to the Commission.

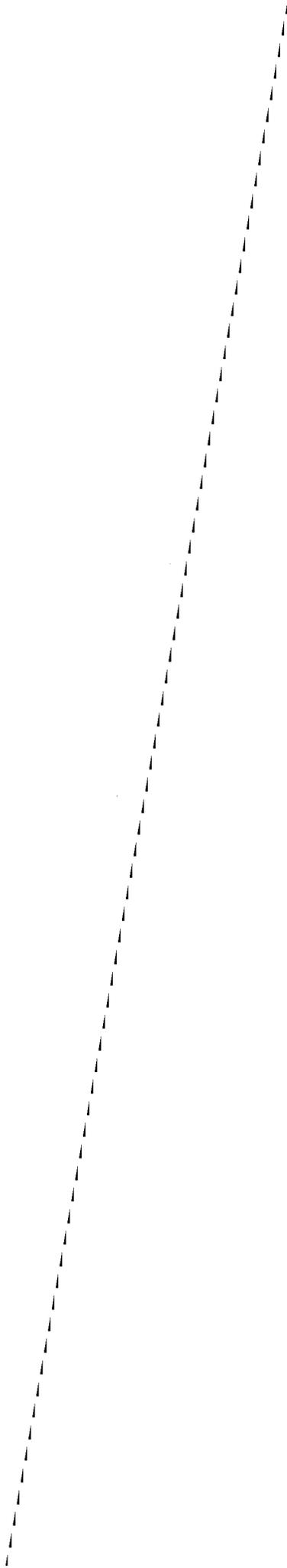
The Commission concludes that the cumulative deficiency in respondent's court account relates to the mistaken deposit of \$830 in May 1976. However,

in view of the serious disorganization of respondent's records and accounting procedures, such an error cannot be minimized. Unless respondent's practices are dramatically improved, such mistakes may recur and go undetected.

By reason of the foregoing, the Commission concludes that respondent should be censured.

All concur.

Dated: January 20, 1982



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

ANGELO D. RONCALLO,

a Justice of the Supreme Court,
Tenth Judicial District (Nassau County).

Determination

THE COMMISSION:

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

APPEARANCES:

Gerald Stern (Robert Straus, Of
Counsel) for the Commission

Irving A. Cohn for Respondent

The respondent, Angelo D. Roncallo, a justice of the Supreme Court, Tenth Judicial District (Nassau County), was served with a Formal Written Complaint dated April 5, 1982, alleging inter alia that he failed to disqualify himself in a 1979 proceeding in which his impartiality reasonably might be questioned.

On May 28, 1982, respondent, his counsel and the Commission's administrator entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing authorized by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission

make its determination on the agreed-upon facts. The Commission approved the agreed statement of facts and, on September 16, 1982, heard oral argument on the issues herein. Respondent's counsel appeared for oral argument. The reafter the Commission considered the record of the proceeding and made the following findings of fact.

1. On January 12, 1979, respondent, while assigned to Special Term, Part I, of the Supreme Court, Nassau County, issued a memorandum decision in Worthley et al. v. Williams et al., dismissing the plaintiffs' complaint, notwithstanding the following:

(a) The plaintiffs in Worthley alleged and based their request for relief on the claim that the Nassau County system of insurance commission-sharing was illegal and improper. Respondent had personal knowledge of and participated in the same insurance commission-sharing system at issue in the suit.

(b) Between 1968 and 1972, respondent received payments totalling \$8,030 from an insurance agency which, as broker of record for Nassau County, participated in the aforementioned insurance commission-sharing system. That insurance agency, after changing its name to Richard B. Williams & Son, Inc., continued to participate in the aforementioned insurance commission-sharing system as broker of record for Nassau County and was a defendant in the Worthley case.

(c) Respondent had prior political, business and close personal relationships with several of the defendants in the Worthley case.

(d) Respondent submitted the names of persons and organizations who were to be designated to share in the commissions produced by the aforementioned insurance commission-sharing system. Respondent knew or had reason to know that such persons or organizations were among those named as defendants in the Worthley case.

(e) Respondent failed to disclose to the plaintiffs or their attorneys any of the facts or circumstances set forth in subparagraphs (a) through (d) above.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3C(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 of the courts requires that a judge preside over legal disputes in a fair and impartial manner.

Respondent's conduct was plainly improper. When a matter came before

him concerning the propriety of a commission-sharing practice in which he himself had participated, involving defendants with whom he was associated either professionally or personally, respondent was required by specific Rule to disqualify himself (Section 100.3[c][1] of the Rules). His failure to do so, and his failure to disclose these facts to the parties, clearly impaired the integrity of the judicial process. Such misconduct threatens public confidence in the impartiality of the judiciary.

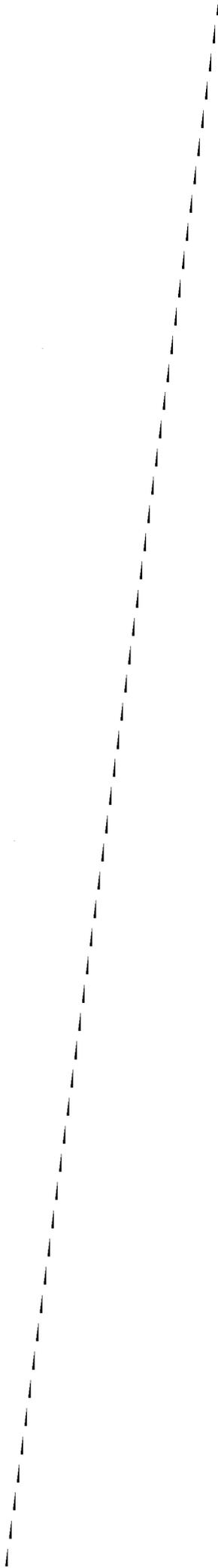
We note that respondent admits that his conduct was improper.

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

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mrs. DelBello and Judge Rubin were not present.

Dated: November 12, 1982



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

J. RICHARD SARDINO,

a Judge of the Syracuse
City Court, Onondaga County.

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Robert H. Straus and Albert B.
Lawrence, Of Counsel) for the Commission

Langan, Grossman, Kinney and Dwyer (By
Richard D. Grossman and James L. Sonneborn)
for Respondent

The respondent, J. Richard Sardino, a judge of the Syracuse City Court, Onondaga County, was served with a Formal Written Complaint dated May 29, 1981, alleging various acts of misconduct in the course of 63 cases before respondent in 1979 and 1980. Respondent filed an answer on August 11, 1981.

By order dated August 24, 1981, the Commission designated the Honorable John S. Marsh referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on October 13, 14, 15, 19, 20 and 21, 1981, and the referee filed his report with the Commission on March 31, 1982.

By motion dated May 11, 1982, 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. Respondent cross-moved for, inter alia, dismissal of the Formal Written Complaint. The Commission heard oral argument on the motions on June 28, 1982, at which respondent and his counsel appeared. Thereafter the Commission made the following findings of fact.*

As to Charge I of the Formal Written Complaint:

1. In 62 of the 63 cases listed in Schedule A appended to the Formal Written Complaint (cases numbered 1 through 8 and 10 through 63), respondent engaged in a pattern of behavior in which he knowingly deprived the defendants of basic, well-established rights and conveyed the impression of partiality toward the prosecution and prejudice against the defendants.

(a) In 44 of the 63 cases (numbered 1 through 4, 6 through 8, 13 through 19, 21 and 22, 25 through 27, 29 and 30, 32 through 35, 37 through 41, 44 and 45, 47 through 49, 51 through 55, 58 through 61, and 63), respondent failed to adhere to Sections 170.10 and 180.10 of the Criminal Procedure Law, in that he failed to advise the defendants of their rights, failed to accord them the opportunity to exercise those rights or failed to take the affirmative steps necessary to effectuate those rights.

(b) In 38 of the 63 cases (numbered 1 through 3, 6 through 8, 13 through 17, 19, 22, 25 through 27, 29, 32 through 35, 37 through 39, 41, 44 and 45, 49 through 51, 53 through 55, 58 through 61, and 63), respondent failed to afford the defendants their right to the assistance of counsel, and he failed to effectuate that right.

(c) In 52 of the 63 cases (numbered 1 through 4, 6 through 8, 11 through 19, 21 through 26, 28 through 30, 32 through 45, 47 through 49, 51, 53 through 56, 58 through 61, and 63), respondent abused the bail process and thereby improperly caused the defendants to be incarcerated, in that he (i) failed to inquire into factors required to be considered in the fixing of bail, (ii) unreasonably refused to fix bail in certain cases, (iii) fixed bail without legal authorization in some cases, (iv) directed that certain defendants be held without bail in cases where bail is required by law, (v) arbitrarily and improperly directed that certain defendants, unrepresented by counsel, be held without bail for "mental examinations" and (vi) used the bail process in a punitive manner.

(d) In nine of the 63 cases (numbered 4, 6, 8, 11, 12, 13, 21, 30 and 36), respondent made improper public inquiries of defendants, and improperly elicited potentially incriminating statements from them, with respect to charges pending against them.

(e) In 23 of the 63 cases (numbered 5, 6, 8, 11 through 13, 17 through 21, 25, 30, 36, 39, 43, 45 through 48, 55, 57 and 59), at arraignment or before each matter had been adjudicated and the individual defendant's guilt

* Appended hereto and made a part hereof is a summary of each case referred to in these findings of fact, except for People v. Willard Roy, which is described in full detail in paragraph 17 herein.

established, respondent conveyed the impression that he believed the defendants to be guilty of the crimes and offenses with which they were charged.

(f) In 39 of the 63 cases (numbered 2, 5 through 8, 10 through 13, 16 through 21, 24 through 26, 29 through 31, 35 and 36, 39, 41 through 48, 52, 55, 57, 59 and 60, and 62), respondent was impatient, discourteous and undignified. He disparaged and demeaned persons appearing before him. Often at arraignments he implied that defendants appearing before him were guilty as charged. He acted in an adversarial manner which conveyed the impression that he was biased in favor of the prosecution and prejudiced against the defendants.

(g) In nine of the 63 cases (numbered 2, 8, 10, 24, 31, 36, 43, 47 and 62), respondent improperly criticized other judges, refused to honor negotiated pleas on sentences, or improperly raised or fixed bail set by other judges in cases not properly before him.

(h) In 17 of the 63 cases (numbered 6 through 8, 17 and 18, 21 through 23, 26, 30, 33 and 34, 42, 53, 55, 57 and 60), respondent scheduled or adjourned the cases in a manner which was likely to deny defendants the right (i) to have timely hearings or trials or (ii) to be released from custody or have the charges against them dismissed for the failure of the prosecution to provide timely hearings or trials.

As to Charge II of the Formal Written Complaint:

2. On January 16, 1979, respondent presided over People v. Kevin Joyce in the Traffic Division of the Syracuse City Court. During that proceeding, before the defendant's guilt or innocence had been established, respondent:

(a) repeatedly disparaged and demeaned the defendant;

(b) improperly deprived the defendant of the right to have bail fixed by revoking the defendant's release on recognizance and remanding him to be held without bail;

(c) made the following remarks upon being told the defendant's car had been destroyed in an accident: "Too bad he wasn't destroyed and the car was still here. That would be beneficial to the community...";

(d) conveyed the impression that he believed the defendant to be guilty of the crimes and offenses with which he was charged;

(e) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant and his attorney; and

(f) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge III of the Formal Written Complaint:

3. On May 22, 1980, while arraigning the defendant in People v. Brian Courbat in the Traffic Division of the Syracuse City Court, respondent:

(a) improperly questioned the defendant and elicited facts concerning the case against him before the defendant had entered a plea or had an opportunity to assert his rights to trial and representation by counsel;

(b) conveyed the impression that he believed the defendant to be guilty of the crimes and offenses with which he was charged;

(c) imposed an unconditional discharge on a charge of Driving An Unregistered Vehicle, without taking a plea from the defendant, who was not represented by counsel, and without advising him of his rights, although the defendant had asserted his innocence;

(d) notwithstanding that he had previously dismissed the remaining charges, respondent improperly ordered the defendant held on bail, adjourned the case for 27 days and threatened him with a charge of contempt, because he thought the defendant had addressed him sarcastically;

(e) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant; and

(f) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge IV of the Formal Written Complaint:

4. On August 15, 1979, while arraigning the defendant in People v. Robert Gemmill in the Criminal Division of the Syracuse City Court, respondent:

(a) repeatedly disparaged and demeaned the defendant;

(b) improperly elicited from the defendant potential admissions and incriminating statements concerning the crimes with which he was charged;

(c) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged and suggested that he "should be exterminated";

(d) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant and his attorney; and

(e) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge V of the Formal Written Complaint:

5. On February 22, 1980, while arraigning the defendant in People v.

Joseph Manzi in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) improperly elicited from the defendant and his mother potential admissions concerning the crime with which the defendant was charged;

(c) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged;

(d) deprived the defendant of the assistance of counsel;

(e) improperly failed to afford the defendant's mother the opportunity to be heard on the subject of bail; and

(f) was impatient, undignified, inconsiderate and discourteous to the Legal Aid Society lawyer who had offered to represent the defendant.

As to Charge VI of the Formal Written Complaint:

6. On August 13, 1979, while arraigning the defendants in People v. Norma North, Maria North, Roy Abear and Donald Westcott in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendants of their rights, did not accord them an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) did not inquire into the indigency of defendant Abear, and did not appoint an attorney, when Mr. Abear requested that an attorney be appointed;

(c) did not inquire into the indigency of defendant Westcott, and did not appoint an attorney, when Mr. Westcott stated he could not afford a lawyer; and

(d) set bail for each of the defendants without inquiring into the facts and circumstances required to be considered.

As to Charge VII of the Formal Written Complaint:

7. On February 14, 1980, while arraigning the defendant in People v. Donald Parks in the Criminal Division of the Syracuse City Court, respondent:

(a) refused to appoint a Legal Aid Society lawyer, David Okun, as defendant's counsel, despite Mr. Okun's representation to the court that the

defendant was eligible for legal aid and that Mr. Okun was prepared to take the case; respondent instead assigned a student from the Syracuse University Law Clinic to represent the defendant;

(b) directed the student to proceed notwithstanding the student's expressed reservations about appearing for the defendant in the absence of the student's supervising attorney, such supervision being required by Section 478 of the Judiciary Law;

(c) suggested that the defendant had not been entitled to assigned counsel on a previous charge because his father, though unemployed when the Legal Aid Society was appointed, had previously been employed;

(d) stated that the Legal Aid Society lawyer "should proceed against [the defendant's] father for reimbursement of the taxpayers of the expenses of legal representation" on the previous case;

(e) cut short the student attorney's time to confer with his client;

(f) conveyed the impression that he believed the defendant to be guilty of the offense with which he was charged; and

(g) made disparaging remarks about the defendant and his family, and was sarcastic, curt, impatient, undignified, inconsiderate and discourteous to the defendant, to the student and to the Legal Aid Society lawyer.

As to Charge VIII of the Formal Written Complaint:

8. On September 26, 1979, while arraigning the defendant in People v. Paulette Morabito in the Criminal Division of the Syracuse City Court, respondent:

(a) improperly elicited potentially incriminating statements from the defendant;

(b) conveyed the impression that he believed the defendant to be guilty of the crime with which she was charged;

(c) conveyed the appearance of prejudice against the defendant because of her previous record; and

(d) was impatient, undignified, inconsiderate and discourteous to the defendant and her attorney.

As to charge IX of the Formal Written Complaint:

9. On September 8, 1979, while arraigning the defendants in People v. James Grimes and James Rivers in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendants of their rights, did not accord them the opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendants of the assistance of counsel;

(c) failed to inquire into the ability of the defendants to obtain counsel, after being placed on notice that the defendants might be unable to afford counsel;

(d) conveyed the impression that he was prejudiced against the defendants because of the previous record of one of them; and

(e) fixed bail without inquiring into the facts and circumstances required to be considered.

As to Charge X of the Formal Written Complaint:

10. On February 22, 1980, while arraigning the defendants in People v. Donald Jenner and Patty Wilson in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendants, who were not represented by counsel, of their rights, did not accord them an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) improperly elicited potentially incriminating statements from the defendant Jenner;

(c) conveyed the appearance of prejudice against the defendants;

(d) fixed bail without inquiring into the facts and circumstances required to be considered; and

(e) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendants and the mother of one of the defendants.

As to Charge XI of the Formal Written Complaint:

11. On September 18, 1979, while arraigning the defendant in People v. John Perry in the Criminal Division of the Syracuse City Court, respondent:

(a) improperly ignored the defendant's request to be allowed to make a telephone call;

(b) refused to allow the defendant's newly-assigned attorney to

confer with his client before fixing bail, then remanded the defendant in lieu of \$1,000 bail;

(c) fixed bail without inquiring into the facts and circumstances required to be considered; and

(d) acted in an adversarial manner which gave the impression of bias and partiality toward the prosecution and against the defendant.

As to Charge XII of the Formal Written Complaint:

12. On February 13, 1980, while arraigning the defendant in People v. Dorothy Reese in the Criminal Division of the Syracuse City Court, respondent:

(a) conveyed the impression that he believed the defendant to be guilty of the crime with which she was charged;

(b) conveyed the appearance of prejudice against the defendant because of her previous record; and

(c) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant and her attorney.

As to Charge XIII of the Formal Written Complaint:

13. The charge is not sustained and therefore is dismissed.

As to Charge XIV of the Formal Written Complaint:

14. On February 21, 1980, while arraigning the defendant in People v. John LaPorte in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take the affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel; and

(c) unlawfully deprived the defendant of his liberty by ordering him held, without bail, on a non-criminal offense charge for which the defendant was not subject to arrest, incarceration or fingerprinting; respondent did so notwithstanding that the defendant was appearing voluntarily pursuant to an appearance ticket.

As to Charge XV of the Formal Written Complaint:

15. On February 18, 1980, while arraigning the defendant in People v. Frank Trivison in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) did not appoint counsel and did not inquire into the defendant's indigency in response to the defendant's statement that he could not afford an attorney;

(d) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged;

(e) fixed bail without inquiring into the facts and circumstances required to be considered;

(f) conveyed the appearance of prejudice against the defendant because of his previous record; and

(g) was sarcastic, impatient, undignified, inconsiderate and discourteous to the defendant.

As to Charge XVI of the Formal Written Complaint:

16. On October 16, 1979, while arraigning the defendant in People v. Glenn Watts in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) failed to inquire into the defendant's ability to obtain counsel;

(d) unlawfully deprived the defendant of his liberty by fixing bail on a non-criminal offense charge for which the defendant was not subject to arrest, incarceration or fingerprinting; respondent did so notwithstanding that the defendant was appearing voluntarily pursuant to an appearance ticket;

(e) adjourned the case for 13 days after fixing bail at \$500 knowing that the defendant was not represented by counsel; and

(f) acted in an adversarial manner which gave the impression of

partiality toward the prosecution and prejudice against the defendant.

As to Charge XVII of the Formal Written Complaint:

17. On August 21, 1980, respondent dismissed a charge of speeding in the case of People v. Willard Roy, as a result of a letter he received from Deputy Chief Richard L. Haumann of the Syracuse Police Department, seeking special consideration on behalf of the defendant.

(a) The letter from Deputy Chief Haumann was ex parte in nature and not authorized by law.

(b) Respondent failed to refer the summons to the Traffic Part when he received it in June 1980, and instead, held it until he presided in that Part on August 21, 1980, so that he could dismiss the charge.

(c) The disposition by respondent of People v. Willard Roy was unrelated to the guilt or innocence of the defendant and was not based upon the facts or the law.

(d) Respondent failed to set forth, on the record, his reasons for the dismissal, as required by Section 170.40 of the Criminal Procedure Law, and he failed to require the defendant's appearance in court.

(e) Respondent knew or should have known, prior to dismissing the charge in the Roy case, that it was improper for a judge to grant special consideration to a defendant based on an improper ex parte communication on behalf of the defendant.

As to Charge XVIII of the Formal Written Complaint:

18. On September 6, 1979, while arraigning the defendant in People v. Elaine Benedict in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of her rights, did not accord her an opportunity to exercise those rights, and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) fixed bail without inquiring into the facts and circumstances required to be considered; and

(d) after being advised that the defendant was indigent and was being represented by assigned counsel on other charges, disregarded a request that counsel be assigned to represent the defendant, revoked the defendant's release on recognizance on the other charges, fixed bail and adjourned the matter before him, all in the absence of counsel for the defendant.

As to Charge XIX of the Formal Written Complaint:

19. On September 18, 1980, while arraigning the defendant in People v. Charles Cronk in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel; and

(c) with knowledge that the defendant was not represented by counsel, improperly and arbitrarily ordered the defendant held, without bail, for an "informal" mental examination.

As to Charge XX of the Formal Written Complaint:

20. On September 6, 1979, while arraigning the defendant in People v. John D. Alling (Dalling) in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 180.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) improperly and arbitrarily ordered the defendant held, without bail, for a mental examination, knowing that the defendant was not represented by counsel;

(d) improperly elicited a potential admission from the defendant;

(e) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged; and

(f) fixed bail, pending the outcome of the mental examination, without inquiring into the facts and circumstances required to be considered.

As to Charge XXI of the Formal Written Complaint:

21. On August 15, 1979, while presiding over People v. Edward Dillenbeck in the Criminal Division of the Syracuse City Court, respondent;

(a) disparaged and demeaned the defendant;

(b) was sarcastic, undignified, discourteous and intemperate toward the defendant; and

(c) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge XXII of the Formal Written Complaint:

22. On September 11, 1979, while arraigning the defendant in People v. Christopher Gilbert in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendant of his rights, did not accord him an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendant of the assistance of counsel;

(c) conveyed the impression that he believed the defendant to be guilty of the crime with which he was charged;

(d) improperly and arbitrarily ordered the defendant held, without bail, for a mental examination, knowing that the defendant was not represented by counsel;

(e) fixed bail, pending the outcome of the mental examination, without inquiring into the facts and circumstances required to be considered;

(f) improperly elicited potentially incriminating statements from the defendant;

(g) improperly and unlawfully directed the prosecuting attorney to notify "the county judge" to revoke the defendant's license to possess a weapon, while stating that the defendant would be charged with unlawful possession of a weapon if he did not immediately surrender his gun;

(h) rescinded his order for a mental examination, at the request of the prosecuting attorney, while improperly and unlawfully conditioning the release of the defendant on his own recognizance on the surrender of the defendant's weapons and weapons permit to the Syracuse Police Department; and

(i) acted in an adversarial manner which gave the impression of partiality toward the prosecution and prejudice against the defendant.

As to Charge XXIII of the Formal Written Complaint:

23. On June 27, 1979, while sentencing the defendant in People v. Lindy McCauliffe in the Criminal Division of the Syracuse City Court, respondent:

(a) knowingly, improperly and unjustifiably imposed a sentence greater than that approved by the judge who had accepted the defendant's plea of guilty, requiring a modification of the sentence on appeal;

(b) disparaged and demeaned the defendant; and

(c) was impatient, undignified, inconsiderate and discourteous to the defendant.

As to Charge XXIV of the Formal Written Complaint:

24. On February 23, 1980, while arraigning the defendants in People v. Mary Herring and Josie Miranda in the Criminal Division of the Syracuse City Court, respondent:

(a) failed to advise the defendants of their rights, did not accord them an opportunity to exercise those rights and did not take any affirmative steps to effectuate those rights, as required by Section 170.10 of the Criminal Procedure Law;

(b) deprived the defendants of the assistance of counsel;

(c) conveyed the impression that he believed the defendants to be guilty of the crimes with which they were charged;

(d) fixed bail without inquiring into the facts and circumstances required to be considered; and

(e) was impatient, undignified, inconsiderate and discourteous to the defendants.

As to Charge XXV of the Formal Written Complaint:

25. On March 23, 1981, while conducting a pre-trial conference in People v. Kimberly Cook in the Criminal Division of the Syracuse City Court, respondent:

(a) conveyed the appearance of prejudice against the defendant and witnesses to be called on her behalf;

(b) conveyed the appearance of partiality toward the prosecution and its case;

(c) conveyed the impression that he believed the defendant to be guilty of the crime with which she was charged; and

(d) was impatient, undignified, inconsiderate and discourteous to the defendant.

As to Charge XXVI of the Formal Written Complaint:

26. On September 14, 1979, while arraigning the defendants in People v. Donna Pilon and Sarah Stephens in the Criminal Division of the Syracuse City Court, respondent:

(a) conveyed the impression that he believed the defendants to be guilty of the crimes with which they were charged;

(b) deprived the defendant Stephens of the right to have bail fixed by holding her without bail on an unrelated charge which was not properly before respondent and on which another judge had previously fixed bail;

(c) conveyed the impression that he believed the defendant Pilon had been guilty of a charge which had previously been dismissed;

(d) was impatient, undignified, discourteous and intemperate toward the defendant Pilon's mother; and

(e) acted in an adversarial manner which gave the impression of bias and partiality toward the prosecution and against the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.2(a), 33.3(a)(1), 33.3(a)(3) and 33.3(a)(4) of the Rules Governing Judicial Conduct (now Sections 100.1, 100.2, 100.2[a], 100.3[a][1], 100.3[a][3] and 100.3[a][4]) and Canons 1, 2, 2A, 3A(3) and 3A(4) of the Code of Judicial Conduct. Charges II through XII and Charges XIV through XXVI of the Formal Written Complaint are sustained in toto. Charge I of the Formal Written Complaint is sustained, except for (i) that portion referring to People v. Thelma Davis, (ii) those portions in subparagraph (b)(4) of the Charge referring to People v. Holmes, People v. Jenner and Wilson, People v. Manzi and People v. Rebensky and (iii) that portion of subparagraph (f) of the Charge referring to People v. Joyce, which are not sustained and therefore are dismissed. Charge XIII of the Formal Written Complaint, as hereinbefore noted, is not sustained and therefore is dismissed. As to the sustained charges, respondent's misconduct is established.

Respondent has engaged in a course of conduct which both violates the relevant ethical standards and shocks the conscience. He has abused the power of his office in a manner that has brought discredit to the judiciary and has irredeemably impaired public confidence in the integrity of his court.

The record reveals that respondent routinely conducted himself not as the dignified, impartial adjudicator a judge is required to be but as an intemperate, biased partisan who was predisposed to favor the prosecution and who regularly and deliberately disparaged, demeaned and deprived defendants of their constitutional rights. The evidence of respondent's misconduct is plain and overwhelming.

Respondent knowingly and deliberately ignored certain provisions of the Criminal Procedure Law, such as those which require a judge to advise defendants of the right to counsel and the opportunity to make a telephone call. He knowingly and deliberately ordered certain defendants held for mental examinations, without justification and in the absence of counsel. He knowingly and deliberately required some defendants to post bail for offenses for which incarceration was not authorized. He knowingly and deliberately failed to assign court-appointed lawyers to the indigent, and he did not make the simplest inquiries as to the circumstances of those defendants who volunteered that they could not afford counsel. Respondent did not rectify his conduct, even when the improprieties of his actions were called to his attention by Legal Aid Society attorneys.

In one case (People v. Courbat, Charge III), respondent knowingly and deliberately reinstated previously-dismissed motor vehicle charges and ordered the defendant held in lieu of bail. This decision was based not on the merits but was motivated by personal pique at the real or imagined sarcasm exhibited by the defendant toward the court.

At times from the bench respondent expressed displeasure with the actions and decisions of other judges and, on occasion, improperly sought to impose his own decisions in matters decided elsewhere and not properly before him. For example, in People v. McCauliffe, Charge XXIII, respondent knowingly and deliberately ignored a sentence approved by another judge in order to impose a greater sentence on the defendant. In People v. Gilbert, Charge XXII, respondent improperly and unlawfully directed the prosecuting attorney to advise another judge to reverse a previous ruling with respect to the defendant. In People v. Joyce, Charge II, respondent declared that he would "not be bound by any other judge or district attorney...including the Court of Appeals."

In other cases, respondent revealed his disbelief of statements made by defendants, well before guilt or innocence was established. He did so on numerous occasions at the arraignment stage, before individual defendants had even entered their pleas. He said, for example, that one defendant was "probably still out writing bad checks," that another "almost decapitated a couple of police officers," that a third was "carrying a loaded handgun around" and that a fourth had engaged in "gross" conduct by "blow[ing] up a shotgun in a discotheque." He routinely displayed hostility and animosity toward defendants in his court, stating for example, that one should be "exterminated" and another was "scummy."

Respondent's manner in open court was virtually devoid of those qualities of decorum which the Rules Governing Judicial Conduct require: patience, dignity and courtesy by the judge toward all who appear before him. Such appearances of bias diminish public confidence in the impartiality of the judiciary and reveal respondent's disregard for the obligation of a judge to preside in a fair and even-handed manner.

The record also reveals that it was respondent's practice to conduct ex parte discussions with an assistant district attorney on impending matters, prior to the calling of those cases before him. (Transcript of October 19, 1982, pages 31-47.) Such ex parte communications are prohibited by the Rules Governing Judicial Conduct (Section 33.3[a][4], now 100.3[a][4]). The fact that they occurred underscores the appearance that respondent was prejudiced against defen-

dants and predisposed toward the prosecution. Respondent in some cases knowingly and deliberately elicited incriminating statements from defendants who were not yet represented by counsel.

The totality of respondent's conduct shows a shocking disregard for due process of law. Respondent has grossly abused judicial power and process, routinely denied defendants their rights, ignored the mandates of law, disregarded the jurisdiction of other courts, disparaged attorneys, demeaned defendants and otherwise acted in a manner bringing disrepute to the courts and the judiciary.

Respondent has so distorted his role as a judge as to render him unfit to remain in judicial office.

As to respondent's claim that laches bars discipline in this matter, we note the following. The Formal Written Complaint was served in May 1981 after a predicate investigation. The cases at issue occurred in 1979, 1980 and 1981 and were well within the memory of most of the witnesses. Furthermore, transcripts and other documentary evidence were introduced as to all material facets of the charges. In addition, two lengthy adjournments were requested by respondent during the proceedings and were granted. The laches argument is without merit.

As to respondent's claim that certain portions of the Formal Written Complaint should be dismissed because of tainted evidence adduced in support thereof, we conclude that all of the evidence in the record of this proceeding was properly admitted by the referee and was otherwise properly before the Commission.

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

All concur.

Dated: September 20, 1982

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

CARL W. SIMON,

a Justice of the Galen Town
Court, Wayne County.

Determination

THE COMMISSION:

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

APPEARANCES:

Gerald Stern (Cody B. Bartlett, Of
Counsel) for the Commission

Carl W. Simon, Respondent Pro Se

The respondent, Carl W. Simon, a justice of the Galen Town Court, Wayne County, was served with a Formal Written Complaint dated March 19, 1982, alleging inter alia that he failed to deposit, report and remit to the State Comptroller various funds received in his official capacity. Respondent did not file an answer.

By motion dated July 26, 1982, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent did not oppose the motion. By determination and order

dated August 20, 1982, the Commission granted the administrator's motion, found respondent's misconduct established and set a date for oral argument on the issue of sanction. Respondent did not appear for oral argument or submit a memorandum in lieu thereof. The administrator filed a memorandum in lieu of oral argument. The Commission considered the record of this proceeding on September 16, 1982, and made the following findings of fact.

1. From January 1, 1980, through December 31, 1981, respondent failed to perform properly his administrative duties, as follows.

(a) Respondent failed to account for, deposit or make a record of \$175 received in cash from Mr. Mike Bishop on October 13, 1980, in payment of a fine. Respondent failed to write an official receipt for the \$175.

(b) Respondent failed to deposit within 72 hours of receipt all monies collected in his official capacity, as required by Section 30.7 of the Uniform Justice Court Rules.

(c) Respondent failed to make any deposits in eight of the 24 months in this period, notwithstanding that he received funds in his official capacity during those months, as set forth in Schedule A appended hereto.

(d) Respondent failed to report and remit to the State Comptroller in a timely manner all fines, civil fees and bail forfeitures received in his official capacity, as set forth in Schedule B appended hereto, as required by Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27 of the Town Law and Section 1803 of the Vehicle and Traffic Law. Respondent's judicial salary consequently was suspended by the State Comptroller.

(e) Respondent failed to maintain an index of cases and a cashbook prior to October 1980, as required by Section 30.9 of the Uniform Justice Court Rules.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27 of the Town Law, Section 1803 of the Vehicle and Traffic Law, Section 30.7 of the Uniform Justice Court Rules, Sections 100.1, 100.2(a), 100.3(a)(5) and 100.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 3A(5) and 3B(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained and respondent's misconduct is established.

The laws and rules cited above require a town or village justice (i) to maintain proper docket books of matters on the court's calendar, (ii) to maintain a cashbook, (iii) to deposit official funds in an official court account within 72 hours of receipt and (iv) to report and remit to the State

Comptroller all collected monies on or before the tenth day of the month following collection. Failure to do so constitutes misconduct and may result in removal of the judge from office. Cooley v. State Commission on Judicial Conduct, 53 NY2d 64 (1981); Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981).

By failing for as long as two years to meet the various financial and administrative responsibilities noted above, and by failing altogether to account for certain cash received in his official capacity, respondent has exhibited an inability or unwillingness to discharge the obligations of judicial office in a responsible manner. Respondent's behavior clearly was improper, constituted at least negligence and evinced an indifference to the legal and ethical constraints upon him. Such conduct is inconsistent with his position of trust and responsibility as a judicial officer.

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

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mrs. DelBello and Judge Rubin were not present.

Dated: November 12, 1982

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

SUSAN A. STAFFORD,

a Justice of the Newfield Town
Court, Tompkins County.

Determination

THE COMMISSION:

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

APPEARANCES:

Gerald Stern (Cody B. Bartlett, Of
Counsel) for the Commission

Susan A. Stafford, Respondent Pro Se

The respondent, Susan A. Stafford, a justice of the Newfield Town Court, Tompkins County, was served with a Formal Written Complaint dated April 28, 1982, alleging inter alia that she failed to discharge her judicial duties for 16 months and failed to cooperate with state agencies inquiring into her conduct. Respondent did not file an answer.

By motion dated July 23, 1982, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct was established. Respondent did not oppose the motion. By determination and order dated August 20, 1982, the Commission granted the administrator's motion, found respondent's misconduct established and set a date for oral argument on the issue of sanction.

Respondent did not appear for oral argument or submit a memorandum in lieu thereof. The administrator filed a memorandum in lieu of oral argument. The Commission considered the record of this proceeding on September 16, 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent took office as Newfield town justice on January 1, 1980. Since that date she has presided over one arraignment, conducted in April 1980. Respondent has presided over no other arraignments, trials or other proceedings and has otherwise failed to carry out virtually all her judicial duties.

As to Charge II of the Formal Written Complaint:

2. Respondent did not file required monthly reports with the State Comptroller from January 1980 to November 1980. Respondent's reports for this period were filed on December 17, 1980. Since that date, respondent has failed to file any of the required monthly reports. Since January 1980 respondent has failed to respond to inquiries from the Department of Audit and Control with respect to such unfiled reports. In addition, respondent failed to reply to letters dated October 24 and December 15, 1980, from the Director of Administration of the Courts for the Third Judicial Department, concerning the unanswered inquiries made by the Department of Audit and Control. The State Comptroller, pursuant to law, stopped payment of respondent's salary for her failure to file the required reports.

As to Charge III of the Formal Written Complaint.

3. Respondent failed to respond to letters dated March 9, April 3 and April 15, 1981, sent from this Commission to respondent pursuant to Section 44, subdivision 3, of the Judiciary Law, in the course of a duly authorized investigation of the matters herein. Respondent failed to appear for testimony before a member of the Commission during the investigation of this matter, despite being duly requested to do so pursuant to Section 44, subdivision 3, of the Judiciary Law, by letter dated May 1 and personally served on May 4, 1981. In so doing, respondent failed to cooperate with the Commission.

As to Charge IV of the Formal Written Complaint:

4. From January 1, 1980, to the commencement of this proceeding, respondent failed to file with the Office of Court Administration her oath of office, questionnaire and bank account statement, as required. In this period respondent did not reply to inquiries from the Office of Court Administration with respect thereto. In addition, respondent did not reply to letters dated February 2 and February 26, 1982, from the administrative judge of the Sixth Judicial District (in which respondent's court is located), concerning the unanswered inquiries made by the Office of Court Administration.

As to Charge V of the Formal Written Complaint:

5. Respondent was admitted to the New York State bar in 1978. On October 9, 1981, she was suspended indefinitely from the practice of law by the Appellate Division, for her failure to appear pursuant to an order of the court during a duly

authorized inquiry commenced by the committee on grievances. From October 9, 1981, to the commencement of this proceeding, respondent did not complete a course of training required of all non-lawyer town and village justices by statute and court rules.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 105 of the Uniform Justice Court Act, Section 31 of the Town Law, Section 17.2 of the Judicial Education and Training Rules of the Chief Judge (formerly Section 30.6 of the Uniform Justice Court Rules), Sections 100.1, 100.2(a), 100.3(a)(1) and 100.3 (b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained and respondent's misconduct is established.

The record of this proceeding reveals respondent's gross neglect of judicial duties. Her failure to do anything more than preside over one arraignment in 28 months, her failure to fulfill a variety of required administrative responsibilities and her repeated, continuing failure to respond to inquiries from several state agencies evince an indifference to both the obligations of her judicial office. Such conduct warrants removal from office. Cooley v. State Commission on Judicial Conduct, 53 NY2d 64 (1981); Petrie v. State Commission on Judicial Conduct, 54 NY2d 807 (1981).

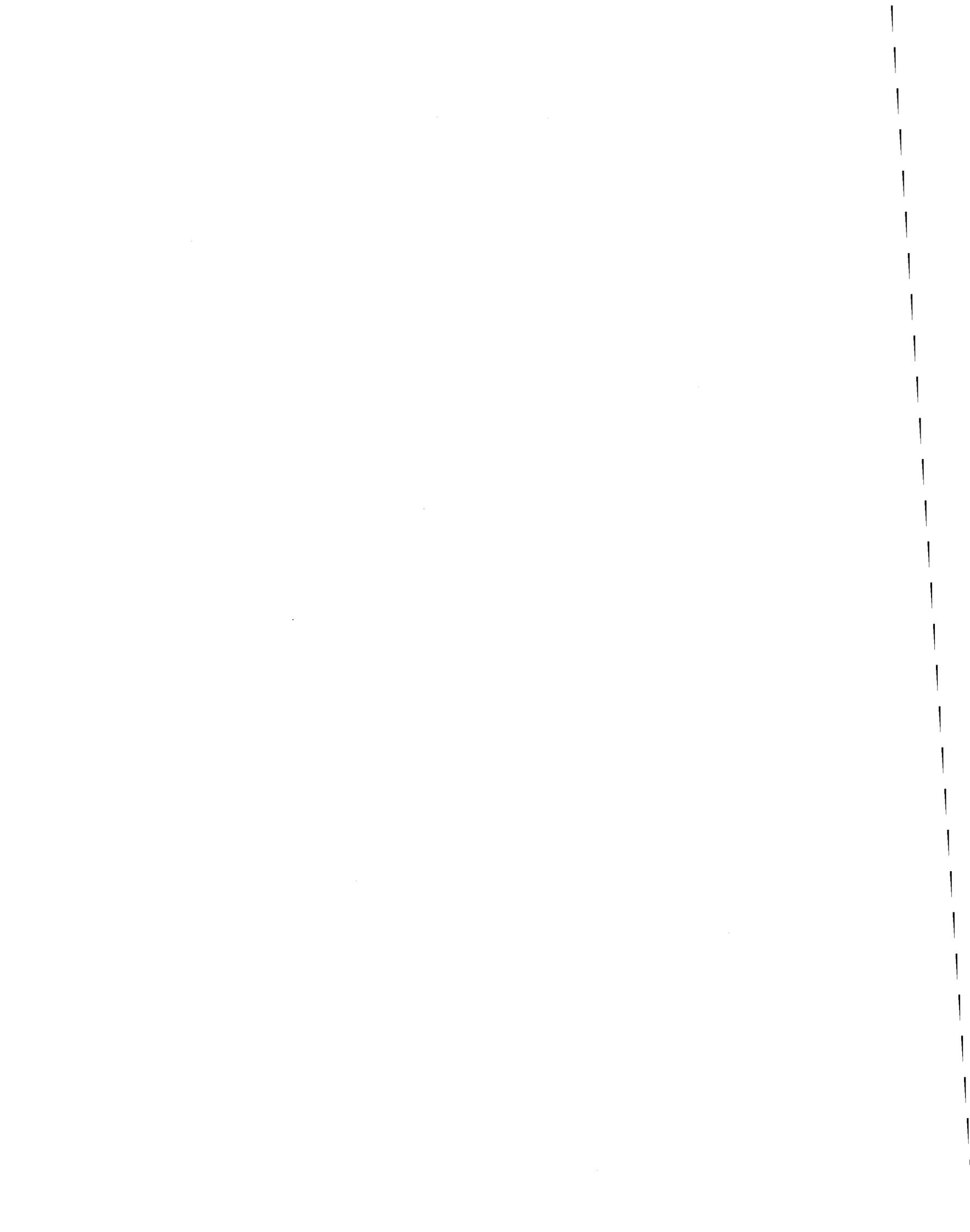
Judicial office, voluntarily assumed, obliges those who hold it to discharge their duties faithfully and conscientiously. Public confidence in the courts and judiciary requires no less. Respondent's conduct and the related suspension of her license to practice law have irreparably diminished public confidence in her court.

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

Mrs. Robb, Judge Alexander, Mr. Bower, Mr. Bromberg, Mr. Cleary, Mr. Kovner, Judge Ostrowski, Judge Shea and Mr. Wainwright concur.

Mrs. DelBello and Judge Rubin were not present.

Dated: November 12, 1982



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

MARGARET TAYLOR,

a Judge of the Civil Court of the
City of New York, New York County.

BEFORE: Mrs. Gene Robb, Chairwoman
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea

APPEARANCES:

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

Julien, Schlesinger & Finz (By
Alfred S. Julien; David Weprin,
Of Counsel) for Respondent

The respondent, Margaret Taylor, a judge of the Civil Court of the City of New York, New York County, was served with a Formal Written Complaint dated March 3, 1981, alleging misconduct with respect to her actions toward attorneys in two cases in October 1979. Respondent filed an answer dated April 13, 1981.

By order dated April 23, 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 June 2, 3, 10 and 11, 1981, and the referee filed his report on August 28, 1981.

By motion dated September 25, 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 and cross moved to dismiss the Formal Written Complaint. The Commission heard oral argument on the motions on November 24, 1981, thereafter considered the record of the proceeding and made the findings

of fact herein.

With respect to Charge I, the Commission makes the following findings of fact:

1. Respondent has been a judge of the New York City Civil Court since January 1, 1977. In October 1979, respondent was assigned to Part XII, a Conference and Assignment Part of the Civil Court. A rule of the Civil Court required the appearance in that part by attorneys or their representatives who were authorized to settle, make binding concessions or otherwise dispose of matters before the court. Cases not settled would be assigned for immediate trial.

2. On October 17, 1979, the case of Schwartz v. Republic Insurance Company came before respondent, having been adjourned from a previous date. The plaintiff was represented by Lawrence Anderson and the defendant by Roberta Tarshis.

3. In conference with counsel on the Schwartz case, respondent was advised that the defendant company disputed the amounts sought by the plaintiff and that an issue of fraud, possibly vitiating the underlying insurance policy, might be involved in the case.

4. In the conference with respondent, Ms. Tarshis stated that the defendant company demanded a jury trial. Respondent sought to dissuade Ms. Tarshis from the jury demand. Respondent told Ms. Tarshis that, notwithstanding the right to demand a jury trial, the goal of preserving the jury system would not be enhanced by jurors (i) who were reluctant to sit on long, detailed accounting cases such as the Schwartz case and (ii) who publicly voiced their displeasure at such assignments.

5. In seeking to persuade Ms. Tarshis to waive the jury, respondent warned Ms. Tarshis that unless there were such a waiver, Ms. Tarshis would be forced to sit in court until the jury was waived.

6. In the conference with opposing counsel, respondent was made aware that both sides were ready for trial in the Schwartz case. In response to an inquiry from respondent, plaintiff's counsel Mr. Anderson said a settlement was not possible because of the defendant company's position. Thereafter Ms. Tarshis undertook to call her client to ascertain whether it would waive a jury, notwithstanding its previously asserted position to the contrary. The matter was adjourned to 9:30AM the next day.

7. On October 18, 1979, both Ms. Tarshis and Mr. Anderson were present in court and ready for trial at 9:30 AM. At 2:30PM, Ms. Tarshis approached the bench and asked that the Schwartz case be called. Respondent, aware that the jury demand had not been waived, directed Ms. Tarshis to sit down.

8. On at least two occasions on the afternoon of October 18, 1979, respondent announced the availability of trial parts and asked if any attorneys were present who were ready for trial or to select a jury. On both occasions Ms. Tarshis and Mr. Anderson stood up, announced their readiness and were told by respondent to resume their seats. In a colloquy later that afternoon, respondent told Ms. Tarshis that the Schwartz case would not be called until her client

waived a jury trial.

9. At approximately 3:30PM on October 18, 1979, after Ms. Tarshis and Mr. Anderson again indicated their readiness to pick a jury, respondent stated that she did not wish them to select a jury. Respondent thereupon excused Mr. Anderson from court and directed Ms. Tarshis to remain seated.

10. After respondent excused Mr. Anderson, Ms. Tarshis requested that a court reporter record the incident. Her request was not granted. Ms. Tarshis was excused by respondent approximately five minutes after Mr. Anderson had been excused.

11. At approximately 3:45PM on October 18, 1979, Mr. Anderson and Ms. Tarshis went to the office of Judge Eugene Wolin, Judge-In-Charge of the Civil Court, New York County, to discuss the foregoing events in the Schwartz case. At the conclusion of this meeting, Ms. Tarshis returned to respondent's court and was informed by respondent that the case had been adjourned to 9:30AM the next day.

12. On October 19, 1979, Ms. Tarshis reported early to respondent's court and proceeded to respondent's chambers, where she expressed her concern about the foregoing events in the Schwartz case. Ms. Tarshis told respondent she was upset about the matter. Respondent assured Ms. Tarshis that there was nothing personal in her actions toward Ms. Tarshis and that she was acting to preserve the jury system. Respondent apologized to Ms. Tarshis for any inconvenience or difficulty Ms. Tarshis may have encountered.

13. On October 19, 1979, at the opening of court, respondent apologized in open court to Ms. Tarshis and adjourned the proceedings in the Schwartz case to the November term of court before another judge. The Schwartz case was settled on February 4, 1980.

With respect to Charge II, the Commission makes the following findings of fact:

14. On October 11, 1979, at approximately 2:00PM, the case of Giordano v. Allstate Insurance Co. was called in respondent's part. The defendant was represented by James P. McCarthy, an attorney admitted to the bar in 1963. The plaintiff was represented by the firm of Weg, Myers, Jacobson & Sheer.

15. When the Giordano case was called, Mr. McCarthy approached the bench and advised respondent that he had a complaint with regard to the order in which the court clerks were calling the cases to be heard. Mr. McCarthy advised respondent that certain lawyers had their cases called shortly after they arrived in court, ahead of others who had been waiting in court for up to several hours. Mr. McCarthy and respondent discussed the court's calendar procedure in general.

16. While respondent and Mr. McCarthy were discussing court procedures, Glen Jacobson approached the bench. Mr. Jacobson was a law clerk for the plaintiff's counsel. He had graduated from law school but had not yet been admitted to the bar. Mr. Jacobson handed respondent an affirmation which he designated as one of engagement made by plaintiff's counsel, in support of an application for an

adjournment. Respondent threw the affirmation back at Mr. Jacobson and stated the case was ready for trial. Mr. McCarthy stated that it appeared respondent denied Mr. Jacobson's application because Mr. McCarthy criticized court procedures, whereupon respondent left the courtroom.

17. At approximately 2:15PM on October 11, 1979, Mr. McCarthy, Mr. Jacobson and two other attorneys who had been in court and observed the foregoing events, went to the office of the Honorable Eugene Wolin, Judge-In-Charge of the Civil Court, New York County, to inform him of respondent's action. Judge Wolin telephoned respondent and told her there were attorneys in his office who were complaining about her actions in the Giordano case. Respondent told Judge Wolin that she would return to her courtroom shortly.

18. At approximately 2:20PM, respondent returned to the courtroom and stated that the Giordano case would not be heard until all other cases had been heard.

19. At approximately 3:30PM on October 11, 1979, after all the other cases had been heard, respondent called the Giordano case and adjourned it to the following day.

20. Respondent acted in the manner described on the afternoon of October 11, 1979, because of her anger at the complaint made to Judge Wolin by Mr. McCarthy and Mr. Jacobson about her procedure.

21. On October 12, 1979, respondent directed her court clerks to call the Giordano case after all the other cases had been heard. At 9:45AM, all the parties in the Giordano case were present in court. At approximately 12:30PM, the Giordano case was called. Respondent denied the plaintiff's request for an adjournment and subsequently granted the plaintiff's request to have the case marked off the calendar.

22. Respondent acted in the manner described on October 12, 1979, because of her anger at the complaint made the previous day to Judge Wolin by Mr. McCarthy and Mr. Jacobson about her procedure.

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(a)(1-5) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3A(1-5) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained and respondent's misconduct is established, except that paragraph 12 of Charge II is not sustained and therefore is dismissed.

A judge is obliged, inter alia, to be patient, dignified and courteous to those who appear before her in her official capacity, to accord parties and their counsel full right to be heard according to law, and to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Sections 33.2 and 33.3 of the Rules). Respondent's conduct did not comport with these standards.

By refusing to call and by otherwise impeding the prompt disposition of the Giordano case, respondent was, in essence, retaliating against the attorneys

in that case for their having complained about respondent's court procedures to the administrative judge. Such a deliberate manipulation of the court calendar constitutes an abuse of judicial authority which impaired the rights of the parties, the dignity of the proceedings and the public's confidence in the integrity of the judiciary.

By forcing defendant's counsel in the Schwartz case to sit in court to compel a waiver of a jury trial, even though both sides were ready to select a jury and trial parts were available, respondent in essence (i) punished a lawyer whose client did not wish to pursue a settlement and (ii) tried to coerce the lawyer to waive a right she had repeatedly asserted.

The administrative directives and pressures on a judge to try to settle cases in busy courts such as respondent's do not excuse the abuses of discretion and decorum exhibited by respondent in the matters herein.

The Commission notes that respondent apologized to one of the lawyers she had mistreated. The Commission also notes that the apology followed complaints by lawyers to the administrative judge about respondent's conduct.

By reason of the foregoing, the Commission, by vote of 6 to 2, determines that respondent should be admonished. Mr. Kovner and Judge Shea dissent as to sanction and vote that the appropriate disposition is a letter of dismissal and caution. Mr. Kovner also dissents as to Charge II (the Giordano matter) and votes that the charge be dismissed. Mr. Kovner files herewith his dissenting opinion.

Dated: January 13, 1982

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

MARGARET TAYLOR,

DISSENTING OPINION
BY MR. KOVNER

a Judge of the Civil Court of the
City of New York, New York County.

For the reasons set forth below, I concur with respect to Charge I, dissent with respect to Charge II, and conclude that a private letter of dismissal and caution would be the appropriate sanction.

Judge Taylor was, in October 1979, assigned to a conference and assignment part, which was responsible for a calendar previously handled by three such parts (formerly called "blockbuster" parts). During eighteen court days of that month, 1032 cases appeared on Judge Taylor's calendar. During that month, 367 were settled, 229 were marked off calendar and 45 were set down for inquest, a record praised by Judge Francis X. Smith, the Administrative Judge of the Civil Court, and by Justice Leonard Sandler of the Appellate Division, First Department, both of whom testified before the referee.

Judge Taylor's mandate, in that difficult part, was to conference and settle cases, narrow the issues where possible, and to discourage adjournments and thus encourage discussions among the waiting attorneys with the expectation that more settlements, or at least issue stipulations, could be achieved.* As Justice Sandler testified at the hearing before the referee "Well, I think that when lawyers are together waiting in a courtroom setting, it is conducive to their talking to each other. I think it encourages communication of a kind that may not otherwise take place" [440]** The rules applicable to such parts were well publicized by the New York Law Journal:

*In noting the objectives of judges assigned to such parts, I do not suggest that the present system is ideal but merely recognize the inevitable burdens facing urban judges assigned to such parts.

**Bracketed numbers without a prefix refer to the hearing transcript. Bracketed numbers with the prefix "Ref." refer to the referee's report.

Attorneys or those representatives who are thoroughly familiar with the actions and fully authorized to settle, make binding concessions or otherwise to dispose of the matter are required to answer this calendar.

Cases not settled will be forthwith assigned for immediate trial. Consent adjournments will not be recognized nor will service representatives be permitted to answer this calendar [Hearing Exhibit E].

The record is uncontroverted that, to achieve these results, Judge Taylor frequently took lunch while working through the lunch hour, made certain cases returnable in the afternoon to accommodate members of the bar, and rarely left the part before 5:00PM. The court staff assigned to assist such a judge had been called upon to work beyond the normal hours required of such personnel. This is the context in which the events of October 11 and October 12 must be viewed.

The findings of fact made by the referee with respect to Charge II are not disputed by respondent. When Giordano v. Allstate Insurance Co. was first called, no representative of plaintiff was present. Indeed, in sending to court a clerk not yet admitted to the bar, with an "Affirmation of Engagement", plaintiff's attorneys appeared to be in violation of the applicable rule, supra, and respondent would have been justified in marking the case off the calendar on October 11.* Since the majority did not base its finding of misconduct on the manner in which the affirmation was rejected, it need only be noted that the toss of the document back to Mr. Jacobson, landing on respondent's desk near Mr. Jacobson, cannot be viewed as misconduct.

The essence of the misconduct found by the majority is based not in lack of temperament but in abuse of authority, that is, in the inappropriate direction that Giordano be called last on the afternoon of October 11 and last again on the morning of October 12. A trial judge has, of course, very broad discretion in the control and ordering of his or her own calendar. Landis v. North American Co., 299 US 248, 254. Such discretion, however, does not extend to punitive or discriminatory actions in the calling of a calendar. Thus, no one would contend that a trial judge could direct that the cases of black attorneys be called last, or that the cases of an attorney, conceded to be a social friend of the judge, be called first.

*To offer the affirmation as one of "actual engagement" was misleading, since there is a question as to whether it was sufficient to justify the requested adjournment.

In finding misconduct, the majority appears to rely on the referee's finding that the direction to call Giordano last on the two occasions was

for no reason other than respondent's resentment at Mr. McCarthy's bringing to her attention what he believed was wrongful action in respect to the calling of cases by her court officers and going to the Deputy Administrative Judge immediately thereafter [Ref. 39, emphasis added].

I do not find in the record adequate support for such a finding.

The respondent testified that the decision to call Giordano last was, in part, due to her concern that loud allegations of favoritism* on the part of the court officers should not be made in the presence of many other people [576] and that she hoped that a trial lawyer (as opposed to a clerk not yet admitted to practice) would appear prior to the calling of the case on October 11. The Commission's counsel urged that such testimony was at variance with the respondent's Answer to the Formal Written Complaint and with her testimony at an earlier investigative appearance, where she referred to her concern about the complaint to Judge Wolin and acknowledged an effort

to protect the reputation of the two court officers who were diligently performing their tasks, on many occasions without taking lunch, and in a proper manner assisting the court to cope with a daily calendar of 100-150 cases [Answer Par. 23].

I find no inconsistency between respondent's testimony at the hearing before the referee, on the one hand, and her testimony at the investigative appearance and in her Answer, on the other. The fact that she expressed annoyance at what she regarded as a serious but baseless allegation is not inconsistent with her testimony at the hearing that she preferred a less crowded courtroom at a time she anticipated the reassertion or further discussion of such serious charges. Unlike the referee who concluded that the action was motivated by "pure pique" [Ref. 83], I reject the urging of Commission's counsel to disregard respondent's testimony at the hearing. In doing so, I note that Commission's counsel has not challenged the evidence that respondent's "truthfulness, veracity, honesty and integrity" are unquestioned.

*McCarthy's allegation of favoritism in the calling of the calendar carried the implication that gratuities had been received by the court officers.

I believe that the effort to limit the number of persons who could hear the expected allegations (previously made in a loud voice) against the court officers was a legitimate concern for a trial judge assigned to the conference and assignment part. In perceiving a legitimate concern, I do not suggest that the method adopted (i.e. the calling of Giordano last on two occasions) was appropriate. Nor does respondent, who readily acknowledges her error. Obviously, not every abuse of discretion amounts to misconduct, as this Commission has often observed. And, in ordering her calendar, as opposed to rulings on substantive matters, respondent's discretion was especially broad.

Respondent could have marked Giordano off the calendar on October 11 at approximately 2:00PM when it was first called. That it was not recalled until approximately 3:30PM should not be viewed as punitive, especially where respondent had not taken a lunch hour. The case was in fact marked off the calendar between noon and 1:00PM the next day, due to plaintiff's attorney's announcement that he was not ready to proceed.* Although respondent's failure to call Giordano until the end of the morning calendar was inappropriate, her action did not rise to the level of misconduct.

With respect to sanction, it must be noted that the misconduct in Charge I led to a prompt private apology from respondent to Ms. Tarshis. Although the private apology followed the complaint to Judge Wolin, it was repeated in public in her courtroom, before many of the same people who had witnessed the inappropriate actions taken the previous day.

A public admonition, though less severe than a censure, is a serious sanction to any judge. There may be occasions where such discipline is appropriate, even for isolated misconduct. Unlike most conduct that has warranted such discipline, here there was no special interest served. Here, there is no issue of favoritism to relative of judges (Matter of Spector, 47 NY2d 463 [1979]), no favors to other judges or public officials, as in the admonitions imposed in ticket-fixing cases (e.g., Matter of Dixon, 47 NY2d 532 [1979]), and no use of judicial office for a private interest (Matter of Lonschein, 50 NY2d 569 [1980]). The pending proceeding is based upon what was essentially over-zealous actions by a judge, perhaps unduly responsive to administrative goals. Furthermore, there was no pattern of inappropriate conduct as was found, for example, in Matter of Kaplan, NYLJ Sept. 7, 1979, p. 5, col. 4, Matter of Sena, NYLJ Feb. 2, 1980, p.1, col. 4, Matter of Mertens, 56 AD2d 456, 392 NYS2d 860, or Matter of Richter, 42 NY2d (a), 409 NYS2d 1013.

*Significantly, the morning of October 12 was the only occasion at which attorneys for both parties could discuss settlement. As Justice Sandler testified, the practice of keeping people in court and trying to get them to talk together was "consonant with achieving results in the calendar" [440].

Relevant, too, is respondent's overall record. I believe the majority gave insufficient weight to the testimony of Judges Sandler and Smith, who praised her performance in the arduous part to which she was assigned.

In view of the respondent's impressive achievements on the bench, I believe that a private letter of dismissal and caution would have been the appropriate sanction.

Dated: January 13, 1982

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

STANLEY C. WOLANIN,

Determination

a Justice of the Town Court of
Whitestown and an Acting Justice
of the Village Court of Whitesboro,
Oneida 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 Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

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

Evans, Severn, Bankert & Peet (By
Anthony T. Panzone) for Respondent

The respondent, Stanley C. Wolanin, a justice of the Town Court of
Whitestown and an acting justice of the Village Court of Whitesboro, Oneida
County, was served with a Formal Written Complaint dated September 12, 1980,
alleging various deficiencies in his court finances and reports. Respondent filed
an answer dated October 8, 1980.

By order dated November 3, 1980, Charles T. Major, Esq., was designated
referee to hear and report proposed findings of fact and conclusions of law. The
hearing was conducted on February 25 and 26, 1981, and the referee filed his
report to the Commission on October 6, 1981.

By motion dated October 26, 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 removed from office. Respondent opposed the
motion by answering affidavit dated December 6, 1981. The parties filed reply
papers. Oral argument was waived.

The Commission considered the record of this proceeding on January 20, 1982, and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Between November 1977 and November 1978, in his capacity as justice of the Town Court of Whitestown, respondent received monies from fines and made the deposits in his court account as set forth in Exhibit A of the Formal Written Complaint.

2. Between November 1977 and November 1978, respondent retained possession of and did not safeguard large amounts of court funds and regularly failed to deposit those funds in court accounts within the time required by law and court rules.

3. An audit was performed on respondent's court account in December 1978 by the Department of Audit and Control. The audit was based solely on the entries made in respondent's records.

4. Prior to the audit being performed, respondent produced \$1,039 from his briefcase (\$690 in cash and \$349 in undeposited checks) and certified that this represented all the court funds that he had on hand.

5. During the audit, respondent was notified that his account was deficient by \$1,608.50. Thereupon, respondent on December 14, 1978, deposited \$1,608.50 in his court account.

6. On December 20, 1978, respondent was notified that he was deficient by another \$157.40 and he deposited this amount in his court on the same day.

As to Charge II of the Formal Written Complaint:

7. Between January 1975 and December 1978, respondent failed to report or remit to the State Comptroller, within the time required by law and court rules, fines totaling \$470 which he received in his capacity as acting justice of the Village Court of Whitesboro, as follows:

- (a) \$160 from parking violation fines in 1975;
- (b) \$190 in fines from cases adjudicated between January 1975 and May 1978; and
- (c) \$120 in fines from cases adjudicated between May 1978 and August 1978.

8. On December 8, 1978, respondent filed a supplemental report with the Department of Audit and Control to account for the \$470 in fines he had previously failed to report.

9. Between March 1975 and December 1978, respondent failed to deposit \$250 he received in his official capacity as acting justice of the Village Court of Whitesboro. Respondent deposited \$250 in his official court account in December 1978.

10. From May 1978 to November 6, 1978, respondent received \$155 in fines in his capacity as acting justice of the Village Court of Whitesboro, as set forth in Exhibit B of the Formal Written Complaint. Respondent deposited \$155 in his official court account on December 8, 1978.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 1803 of the Vehicle and Traffic Law, Section 30.7 of the Uniform Justice Court Rules, 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.

Over a four-year period, respondent failed to make prompt deposits of court funds in his official bank accounts, and he failed to make timely reports and remittances of those funds to the State Comptroller, as required by the applicable laws and rules cited above. Moreover, respondent failed to safeguard adequately the public money entrusted to his care, and he failed in these proceedings to explain satisfactorily the deficiencies, which at one point exceeded \$1750.

Respondent's busy calendar and the inadequate administrative assistance provided to his court do not excuse the financial and record keeping deficiencies addressed herein. It is a judge's responsibility to meet statutory depositing, reporting, remitting and record keeping requirements.

The voluntary assumption of judicial office carries the obligation to discharge all the duties of that office diligently. We note that respondent's court has an unusually heavy caseload. We believe respondent now fully understands his judicial obligations and is committed to discharging his administrative duties promptly and accurately.

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

All concur, except for Judge Alexander and Mr. Bromberg, who dissent and vote that respondent should be removed from office.

Dated: April 22, 1982

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

STANLEY C. WOLANIN,

a Justice of the Town Court of
Whitestown and an Acting Justice
of the Village Court of Whitesboro,
Oneida County.

DISSENTING OPINION
BY MR. BROMBERG
JUDGE ALEXANDER AND
MRS. DELBELLO

We respectfully dissent from the majority determination that respondent be censured. We believe the record of this proceeding requires respondent's removal from office.

Respondent's gross negligence in the handling of court funds and his failure to account for funds, standing alone, even absent any conversion (or apparent conversion) of court funds to his use, would warrant removal. Matter of Petrie, v. State Commission on Judicial Conduct, 54 NY2d 807 (1981); Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976), app. dismissed, 39 NY2d 942 (1976); Matter of Lew (Commission determination rendered on this date).

By way of explanation for the \$1,608.50 deficiency in his court account, respondent testified that when the deficiency was reported to him by Audit and Control (i) he was "surprised", (ii) he went home, searched through a desk, found \$1,200 to \$1,500 in bail money in an envelope, (iii) added enough money of his own to bring the amount to \$1,608.50 and (iv) deposited the money in his court account. Respondent claimed that the money found in the desk was from bail which he had forgotten to deposit. However, he was unable to locate an entry for the bail anywhere in his records or give any details concerning the circumstances under which the money was received. Coincidentally, shortly before he "found" the unreported bail money, respondent withdrew \$1,200 from his personal savings account, but he could not explain the reason for that withdrawal.

It is reasonable, indeed compelling, to conclude that the money purportedly found in the desk came not from bail but from respondent's personal funds. Yet even if it were accepted at face value, respondent's explanation would create more problems than it would solve. The \$1,608.50 deficiency related to fines and bail which respondent had reported but had not deposited or remitted. The money purportedly from the desk was from "bail" he had not reported. Thus, if respondent made up for the deficiency as to reported cases with money from unreported cases, the money from the unreported cases would now be missing. In fact, the \$1,200 in bail which respondent claims to have found in his desk is to this day unreported and outstanding.

Under the circumstances we are not persuaded that respondent's purported "renewed commitment" to the prompt and accurate discharge of his administrative duties either excuses or mitigates the gross misconduct revealed by this record. Nor do we feel such commitment to be reliable when considered in light of the explanations offered by respondent of his conduct herein.

We note that respondent was previously censured for ticket-fixing activities. Matter of Stanley C. Wolanin, NYLJ Aug. 9, 1979, p. 5, col. 1 (Com. on Jud. Conduct, July 10, 1979).

Accordingly, it is our view that the appropriate sanction is removal from office. Under the circumstances, we see no alternative.

Dated: April 22, 1982

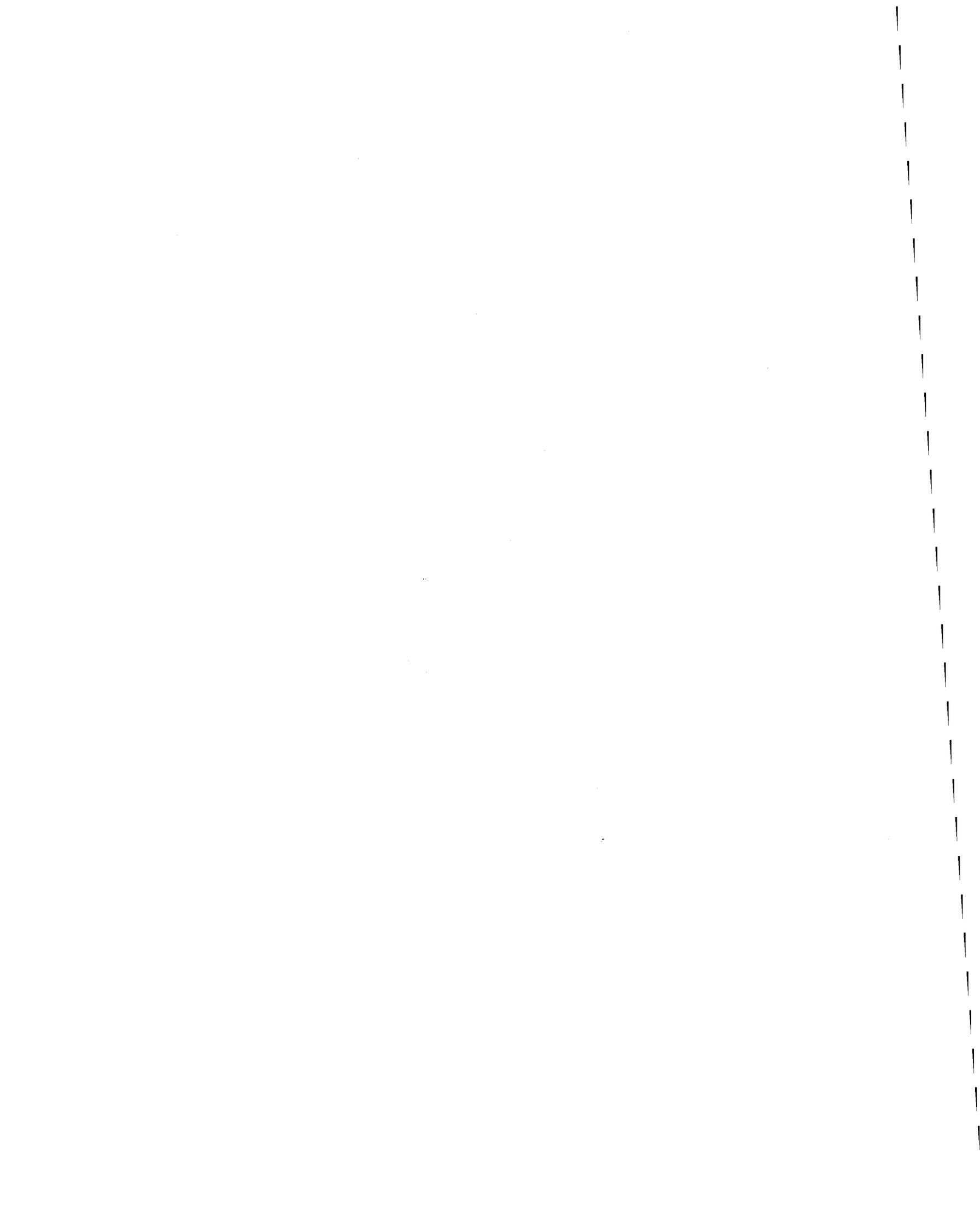


TABLE OF CASES PENDING AS OF DECEMBER 31, 1981.

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>		12	13	4	1	1	8	39
<i>Delays</i>			3	2			1	6
<i>Confl./Interest</i>		6	7	3	1		12	29
<i>Bias</i>		2	3				1	6
<i>Corruption</i>			2					2
<i>Intoxication</i>		2	1				3	6
<i>Disable/Qualif.</i>						1	1	2
<i>Political Activ.</i>		3	1	2				6
<i>Finances, Records, Training</i>		5	7	8	7	4	9	40
<i>Ticket-Fixing</i>					1		1	2
<i>Miscellaneous</i>		6	8	5	1	1	3	24
TOTALS		36	45	24	11	7	39	162

* 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.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>	329							329
<i>Non-Judges</i>	25							25
<i>Demeanor</i>	63	30	20	2	1			116
<i>Delays</i>	29	2	4	2				37
<i>Confl./Interest</i>	23	12	6					41
<i>Bias</i>	15	1						16
<i>Corruption</i>	2	4	1		1			8
<i>Intoxication</i>		3	1					4
<i>Disable/Qualif.</i>	2	1						3
<i>Political Activ.</i>	8	24		1				33
<i>Finances, Records, Training</i>	23	19	3	1	1	1		48
<i>Ticket-Fixing</i>								
<i>Miscellaneous</i>	10	10	2	1		1		24
TOTALS	529	106	37	7	3	2		684

* 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 1982: 684 NEW COMPLAINTS
AND 162 PENDING FROM 1981.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>	329							329
<i>Non-Judges</i>	25							25
<i>Demeanor</i>	63	42	33	6	2	1	8	155
<i>Delays</i>	29	2	7	4			1	43
<i>Confl./Interest</i>	23	18	13	3	1		12	70
<i>Bias</i>	15	3	3				1	22
<i>Corruption</i>	2	4	3		1			10
<i>Intoxication</i>		5	2				3	10
<i>Disable/Qualif.</i>	2	1				1	1	5
<i>Political Activ.</i>	8	27	1	3				39
<i>Finances, Records, Training</i>	23	24	10	9	6	5	9	88
<i>Ticket-Fixing</i>					1		1	2
<i>Miscellaneous</i>	10	16	10	6	1	2	3	48
TOTALS	529	142	82	31	14	9	39	846

* 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.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>	2241							2241
<i>Non-Judges</i>	233							233
<i>Demeanor</i>	330	42	313	35	18	13	75	826
<i>Delays</i>	159	2	31	9	3		7	211
<i>Confl./Interest</i>	116	18	185	39	18	6	52	434
<i>Bias</i>	146	3	30	1	3		2	185
<i>Corruption</i>	47	4	32		6	2	4	95
<i>Intoxication</i>	6	5	7		2		10	30
<i>Disable/Qualif.</i>	18	1	16	1	7	3	6	52
<i>Political Activ.</i>	45	27	30	33	3	2	6	146
<i>Finances, Records, Training</i>	91	24	58	22	30	28	27	280
<i>Ticket-Fixing</i>	15		53	149	33	56	154	460
<i>Miscellaneous</i>	62	16	37	13	4	4	6	142
TOTALS	3509	142	792	302	127	114	349	5335

* 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.